INTRODUCTION TO THE UNIFORM PROBATE CODE AND THE PROBATE PROCESS IN GEORGIA

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I. INTRODUCTION TO THE UNIFORM PROBATE CODE

1) MODEL PROBATE CODE

Promulgated in 1946 by the ABA Section of Real Property, Probate & Trust Law at the suggestion of Professor Thomas E. Atkinson

2) UNIFORM PROBATE CODE

Combined effort of ABA Section and National Conference of Commissioners on Uniform State Laws (NCCUSL, now the Uniform Law Commission)

Study begun in 1962, with Professor Richard V. Wellman as Chief Reporter


Joint Editorial Board for the Uniform Probate Code established in 1970

As of 2017, enacted in Alaska, Arizona, Colorado, Hawaii, Idaho (first state to adopt in 1971), Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah

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II. PROBATE AND ESTATE ADMINISTRATION IN GEORGIA

REVISED PROBATE CODE OF 1998
Official Code of GA Annotated (OCGA) Title 53, Chapters 1-11

1) Structure of Georgia probate courts

Each of Georgia’s 159 counties has one probate judge
   Elected for 4-year terms (unlimited number of terms)
   Must be age 25 or older, registered voter, high-school diploma
   Each probate judge may appoint one “associate probate judge”

Subject Matter Jurisdiction:

According to O.C.G.A. §15-9-30, probate courts have original, exclusive, and general jurisdiction over the following matters:
(1) The probate of wills;
(2) The granting of letters testamentary and of administration and the repeal or revocation of the same;
(3) All controversies in relation to the right of executorship or administration;
(4) The sale and disposition of the property belonging to, and the distribution of, deceased persons' estates;….
(7) The auditing and passing of returns of all executors, administrators, guardians of property, conservators, and guardians;
(8) “The discharge of former sureties and the requiring of new sureties from administrators, guardians of property, conservators, and guardians.”…. 
(10) All other matters and things as appertain or relate to estates of deceased persons and to persons who are incompetent because of mental illness or mental retardation;…. 

Some probate courts handle other matters, such as marriage licenses, gun licenses, traffic cases

Two “tiers” of probate courts (as of 1986)
   a. “Article 6” Judges (Judges with “enhanced” or “expanded” jurisdiction
       County with a population of over 90,000 (about 18-20 counties)
       Must be age 30 or over + licensed to practice law for 7 years
   b. Under OCGA §15-9-127, these judges have concurrent jurisdiction with the superior courts over:

      (1) declaratory judgments involving fiduciaries;
      (2) estate planning dispositions by individuals for whom a conservator has been appointed;
      (3) the approval of will contest settlements;
      (4) the appointment of new trustees,
      (5) acceptance of a written resignation of a trustee upon the consent of the beneficiaries;
      (6) acceptance of the resignation of a trustee upon the request of the
trustee;
(7) motions seeking determinations as to DNA testing and disinterment of a decedent's remains;
(8) conversion to a unitrust; and
(9) adjudication of petitions for direction and construction of wills pursuant to O.C.G.A. §23-2-92.

Probate judges who have “expanded” jurisdiction are authorized to hold jury trials

Probate Court Standard Forms (over 50)
Probate Court Rules (1987)

2) Disposition of a decedent’s remains:

O.C.G.A 31-21-7 sets out the priority of those who can determine the disposition of a decedent's remains

If there is a disagreement among 2 or more persons who have equal priority,” the probate court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The following provisions shall apply to the court's determination under this subsection:

(1) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral home with custody of the remains may file a petition asking the probate court to make a determination in the matter;
(2) In making a determination under this subsection, the probate court shall consider the following:
(A) The reasonableness and practicality of the proposed funeral arrangements and disposition;
(B) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
(C) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
(D) The convenience and needs of other families and friends wishing to pay respects;
(E) The desires of the decedent; and
(F) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;”

3) County of DOMICILE determines which probate court has jurisdiction

Nursing home statute
4) Accessing the Will

Safe deposit box statute (OCGA §7-1-356): with probate court order

Lost Will: presumed revoked, can be overcome by preponderance of evidence

5) Probate in Common Form vs. Probate in Solemn Form

No notice required for common form; not appealable; not effective for 4 years

6) Petition to probate in solemn form

No death certificate required

Executor or any “interested person” may offer will for probate

Time Limit: no later than 5 years from the later of date on which a petition for the
appointment of a PR is filed or an order issued that “no administration is
necessary”

Notice

Heirs, beneficiaries & propounders of any other purported will for which probate
proceedings are pending in Georgia

Service: Personally or by mail (including a copy of the will)

Appointment of GAL for minors or incapacitated persons (but see: “guardian”
definition)

Notice to Debtors & Creditors: published once a week for 4 weeks

Witnesses may “appear” by written interrogatory

If no caveat, only one witness needed

Self-proved will = no witnesses needed

Acknowledgment of Service & Consent to Probate Instanter

Filing a “caveat”:

Any interested person (person who would be injured by the probate of the will)
may caveat

Written allegations; may be amended

Time for filing caveat:

Court issues a citation that sets date for objections to be filed:

Personal service: no sooner than 10 days from service
US residents: not less than 13 days from date of mailing
Non-US: not less than 30 days from mailing
Publication: No sooner than 1st day of week following last publication (4wks.)

Proceeding to set aside probate: different will should have been probate or order was obtained by fraud or other irregularity (must be filed w/in 3 years)

Oath of Office and Issuance of Letters Testamentary

Original probate v. ancillary probate

Requirement of filing of will even if not probated (CN also)

No one is REQUIRED to apply for probate of a will (CN law re: executors)

But executor may lose priority if not qualified w/in 90 days

Settlement Agreement

An Article 6 probate court or a superior court may approve a settlement under which probate is granted or denied, providing for a disposition of the property contrary to the terms of the will.

Approval of any settlement agreement that provides for the sustaining of the caveat or the disposition of the property contrary to the terms of the will shall be after a hearing, notice of which shall be given as the court may direct, at which evidence is introduced and at which the court finds as a matter of fact that there is a bona fide contest or controversy.

7) Intestate Estates: Appointment of Administrator

Notice given to heirs

Heirs may choose Administrator by unanimous consent

Priority order: Preference, not required: Spouse; Heirs selected by the majority; “Any other eligible person”, Creditor, County Administrator

8) Temporary administration (See CN rules on Temp Admins)

Whether or not here is a will

No notice

Court chooses person who is “in the best interests of the estate”

Collect & preserve estate assets (including bringin an action to collect debts or personal property) ; expend funds for this purpose but only after such notice as the judge deems appropriate
Required to give bond

May petition for leave to sell property with good cause shown

May apply for “reasonable compensation” + notice to “interested parties”

9) “No administration necessary” (Intestate estates only)

Size of estate is irrelevant

Estate owes no debts (or, creditors have consented)

If any creditor objects, court cannot grant the order

Heirs have agreed to a distribution of the property (signed & notarized copy)

Probate court must file copy in the deed records where real property is located

10) Notice to Creditors (no statutory time bar)

Creditors who fail to give notice of claims within 3 months from the date of the latest publication lose all rights to equal participation with the other creditors and cannot hold the PR liable for a misappropriation of funds. Even if they don’t give notice, if there are funds left over after all creditors who gave notice are paid, these creditors will be paid

PR does not have to pay debts or make distributions for 6 months (Statute of Limitations on claims is suspended)

Payments of Claims

If a debt is not due by its terms, it should be satisfied in such manner as suits the best interest of the estate. It may be prepaid (if there is a right to prepay); w/ creditor’s agreement, paid before it is due in a mutually satisfactory amount; w/ creditor’s agreement, assumed by the heirs or beneficiaries; w/ creditor agreement or by court order, arrangements can be made to pay the debt in the future

Priority of Claims

1) Year’s Support; 2) Funeral Expenses; 3) Other Necessary Expenses of Administration (court costs, employment of agents, legal counsel); 4) Reasonable Expenses of Decedent’s Last Illness; 5) Unpaid Taxes or Debts due the State or US; 6) Judgments, Secured Interests, Other Liens; 7) All Other Claims

11) Powers of PRs:

a) Some are automatically granted by statute (OCGA Sec. 53-7-6)

Fulfill the executory contracts of the decedent and comply with all executed contracts; provide legal counsel for estate (either attorney or PR may petition
court to fix the fees); continue the decedent’s business for up to 12 months; sell listed stocks and bonds at published bid price

Compromise, adjust, arbitrate, assign, sue or defend, abandon, or otherwise deal with or settle debts or claims in favor of or against the estate.

A personal representative who declines to litigate any claim may assign the claim to a creditor or an heir of an intestate estate or a beneficiary of a testate estate for the purpose of prosecuting the claim at that person's own expense and, after reimbursement of the expenses to the creditor, heir, or beneficiary, any remaining proceeds shall be paid over to the personal representative for administration. (OCGA 53-7-45)

Power to sell, rent, lease, exchange or otherwise dispose of estate property:

Property that is perishable, liable to deteriorate or expensive to keep shall be sold as early as possible, in manner and with notice and hearing as the probate court determines serves the best interest of the estate

For all other property, PR must petition the probate court, stating the terms and purchase of the transaction. Notice given to heirs or beneficiaries. If no objection, court summarily orders the sale. If objection is filed, court must hold a hearing before granting or denying petition. PR must make a return to the probate court of the sale (including purchasers, terms, etc.)

If real property is sold per the probate court’s order, liens on the property may be divested and transferred to the proceeds of the sale

PR cannot bind the estate, including by giving warranties

Investment powers: 2 possible approaches:

i) SAFE HARBOR: Invest in investments that are on the “legal list”: real property (with court permission and heirs’/beneficiaries’ consent), government bonds, FDIC-insured interest-bearing deposits

ii) Invest “off the list”: Held to the standard that “persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds”

PR may retain any property that was received upon the original creation of the estate, even if it is not “on the list”

b) Granted by the testator in the will

Describe the OCGA 53-12-261 powers (attached)

c) Granted by the probate judge (in bulk or case-by-case)
“In bulk”: At time of appointment or any time thereafter, heirs or will beneficiaries may petition court to grant the PR any or all of the powers set forth in OCGA 53-12-261

“Case-by-case”: borrow money to pay taxes; make contracts for labor or service to benefit the estate; “perform such other acts as may be in the best interest of the estate”

12) Inventory

Required to be made within 6 months of appointment

Failure to make inventory = grounds for removal

PR may be relieved of this duty in the will

Any beneficiary or heir may waive the right to receive

By unanimous consent, heirs or beneficiaries may authorize the court to relieve the PR from duty to make inventory

13) Bond

Double the value of the personal property

If secured by a licensed commercial surety, only the amount of the personal property

Not required of executors (administrators and temporary administrators only)

But court may require bond on its own motion

Not required of financial institutions with combined capital, surplus & profit of $400,000

Heirs by unanimous consent may waive bond for administrators in intestate proceedings

Can’t waive bond for temporary administrators

14) Vesting of title

Testate estates: Title vests in the executor who must then assent to vesting of title in the beneficiaries (Deed of Assent)

One year after appointment, beneficiary may cite executor to show cause why such assent should not be given

Intestate estates: Title vests in the heirs at decedent’s death “subject to divestment by the appointment of an administrator”

15) Annual Returns

Yearly filings with probate court on anniversary date of PR qualification
Accounting of receipts & expenditures of the estate during the year +updated inventory

Original vouchers need not be filed

Annual return must be mailed to heirs or beneficiaries (Anyone may waive receipt)

Heirs or beneficiaries may relieve PR from filing returns by unanimous consent or

Court examines return. If no objection filed w/in 30 days, return will be recorded

A recorded return is “prima facie evidence of its correctness”

PR forfeits commissions for year in which return is not filed

Continued failure to file returns = grounds for removal

16) Intermediate Reports

PR may file an intermediate report after 6 months from appointment and once every 12
months thereafter

Report must show principal on hand at beginning of the period; investments received
from the decedent and still held; additions to principal during the period; investments
made; amount and purpose of deductions; principal on hand at end and estimated FMV of
each investment; report of the income received and paid out; statement of unpaid claims
and why they are not paid

Citation and notice issued to heirs or beneficiaries with time set for a hearing

Probate court may surcharge the PR if PR is liable to estate or any beneficiary

All parties are bound by the court’s order and cannot further question anything covered
by the report

17) Keeping accounts

PRs are required by law “to keep their accounts in a regular manner and to be always
ready with them supported by proper vouchers; neglect of this duty shall be ground for
charging them with interest on balances on hand and with costs.” OCGA 10-6-30

18) Distribution of estate property

An administrator may distribute property in kind in a distribution that is pro rata as to
each asset

An heir or administrator may petition the court for an order allowing an in-kind
distribution that is not pro rata as to each asset. Notice given and a hearing is held
if there is an objection
Personal property: PR gets a receipt from the beneficiary/heir. If notarized, the receipt may be admitted to record

19) Requirement to notify dept re: state assistance (See CN Ch 3, p. 6-7)

Must notify DHS if decedent was on Medicaid

20) PR fees and compensation

a) Specified in the Will

b) Written agreement either:

   i. entered into between testator and PR prior to death

   ii. signed by all the heirs/beneficiaries

c) Default statutory fee:

   2 ½% of all sums of money received and 2 ½ % of all sums of money paid out

   Reasonable comp. (as determined by judge) up to 3% for distributions in kind

   10% on interest if PR loaned money

   Comp. for working land up to 10% of the annual income (judge’s discretion)

   Extra comp. (by petition):

      Heirs/beneficiaries have right to object

      Judge’s discretion, after considering (Comment) “whether the estate administration involved unusually greater time or effort, whether the personal representative had responsibilities with respect to assets that were not subject to the jurisdiction of the probate court, whether the estate involved significant tax issues, whether the personal representative also performed legal services for the estate, and whether the personal representative continued or liquidated a business enterprise of the estate.”

   d) Reasonable expenses of administration

21) Actions against PRs

OCGA §53-7-16: “The personal representative and sureties shall be held and deemed joint and several obligors and may be subjected jointly and severally to liability in the same action. When a personal representative removes beyond the limits of this state, dies and leaves an unrepresented estate, or is in such a position that an attachment may be issued as against a debtor, any party in interest or any person having demands against that personal representative in the personal representative's representative capacity may institute an action against the sureties or any one or more of them upon the bond of the personal representative in the first instance, without first obtaining a judgment against the
personal representative in that person's representative capacity. No prior judgment establishing the liability of the personal representative or a devastavit by the personal representative shall be necessary before an action is brought against the sureties on the bond.”

22) Revocation of Letters and Other Sanctions

OCGA §53-7-54: (a) If a personal representative or temporary administrator commits a breach of fiduciary duty or threatens to commit a breach of fiduciary duty, a beneficiary of a testate estate or heir of an intestate estate shall have a cause of action:

(1) To recover damages;
(2) To compel the performance of the personal representative's or temporary administrator's duties;
(3) To enjoin the commission of a breach of fiduciary duty;
(4) To compel the redress of a breach of fiduciary duty by payment of money or otherwise;
(5) To appoint another personal representative or temporary administrator to take possession of the estate property and administer the estate;
(6) To remove the personal representative or temporary administrator; and
(7) To reduce or deny compensation to the personal representative or temporary administrator.

(b) When estate assets are misapplied and can be traced in the hands of persons affected with notice of misapplication, a trust shall attach to the assets.

(c) The provision of remedies for breach of fiduciary duty by this Code section does not prevent resort to any other appropriate remedy provided by statute or common law.

OCGA §53-7-55: Upon the petition of any person having an interest in the estate or whenever it appears to the probate court that good cause may exist to revoke the letters of a personal representative or impose other sanctions, the court shall cite the personal representative to answer to the charge. Upon investigation, the court may, in the court's discretion:

(1) Revoke the personal representative's letters;
(2) Require additional security;
(3) Require the personal representative to appear and submit to a settlement of accounts following the procedure set forth in Article 6 of this chapter, whether or not the personal representative has first resigned or been removed and whether or not a successor fiduciary has been appointed; or
(4) Issue such other order as in the court's judgment is appropriate under the circumstances of the case.

23) Resignation of PR

OCGA §53-7-56: (a) A personal representative may resign:

(1) In the manner and under the circumstances described in the will;
(2) Upon petition to the probate court, showing that the resignation has been requested in writing by all heirs of an intestate estate or all beneficiaries of a testate estate; or
(3) Upon petition to the probate court, showing to the satisfaction of the court that:
   (A) The personal representative is unable to continue serving due to age, illness, infirmity, or other good cause;
   (B) Greater burdens have developed upon the office of personal representative than those which were originally contemplated or should have been contemplated when the personal representative was qualified and the additional burdens would work a hardship upon the personal representative;
   (C) Disagreement exists between one or more of the beneficiaries or heirs and the personal representative in respect to the personal representative's management of the estate, which disagreement and conflict appear deleterious to the estate;
   (D) The resignation of the personal representative will result in or permit substantial financial benefit to the estate;
   (E) The resigning personal representative is one of two or more acting personal representatives and the other personal representatives will continue in office with no adversity to the estate contemplated; or
   (F) The resignation would not be disadvantageous to the estate.

(b) A personal representative's petition to resign shall be made to the probate court and service shall be made upon all the heirs of an intestate estate or the beneficiaries of a testate estate.

24) Settlement of Accounts
   a) Removal, Resignation or Death of the PR: the heirs/beneficiaries, sureties of the PR, or the successor PR may petition for an accounting and settlement
   b) Expiration of 6 months from the issuance of letters to the PR:
      i) any heir/beneficiary may cite the PR to appear before the probate court for a settlement of accounts
      ii) PR may cite all heirs/beneficiaries and all those who claim to be creditors whose claims the PR disputes or cannot pay in full
   c) Actions against a PR for an accounting must be brought within 10 years (+ 6 months) after the right of action accrues
      Statute of limitations may be tolled for fraud or minority of an heir/beneficiary

25) Discharge of the PR
   a) PR who has resigned or otherwise performed all duties may petition for discharge from office or discharge from office and liability
   b) Discharge from Office:
Notice: One-time publication + first-class mailing to creditors whose claims have not been paid

c) Discharge from Office and Liability

Notice to Heirs/Beneficiaries

However, notice not required if heir/beneficiary has:

i) relieved PR of all liability or

ii) been a party to proceeding such as a settlement of accounts or intermediate accounting in which PR has been relieved of liability

If heir/beneficiary is a minor, must be represented by a guardian; otherwise the discharge is not binding on that heir/beneficiary & heir/beneficiary may bring an action against the PR within 2 years of reaching majority

Notice to any creditor whose claim is disputed

Petition must state that all claims have been paid or enumerate those that are unpaid and the reason why

Hearing must be held if an objection is filed
(b) A trustee of an express trust, without court authorization, shall be authorized:
(1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, at public or private sale or otherwise, with or without warranties or representations, upon such terms and conditions, including credit, and for such consideration as the fiduciary deems advisable and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received;
(2) To invest and reinvest in any property which the fiduciary deems advisable, including, but not limited to, common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; any real or personal property; investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations in common trust funds;
(3) To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including, but not limited to, the power:
   (A) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
   (B) To dispose of any interest therein or acquire the interest of others therein;
   (C) To contribute or invest additional capital thereto or to lend money thereto in any such case upon such terms and conditions as the fiduciary shall approve from time to time; and
   (D) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the trust set aside for use in the business or to the trust as a whole.
In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;
(4) To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the trust property in exchange for the stock, securities, or obligations of or other interests in any such corporation or entity and to continue to hold the stock, securities, obligations, and interests;
(5) To continue any farming operation and to do any and all things deemed advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard, and forest products, including, but not limited to, the power:
   (A) To operate the farm with hired labor, tenants, or sharecroppers;
   (B) To lease or rent the farm for cash or for a share of the crops;
   (C) To purchase or otherwise acquire farm machinery, equipment, and livestock;
(D) To construct, repair, and improve farm buildings of all kinds needed, in the fiduciary's judgment, for the operation of the farm;

(E) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes, such as for production, harvesting, or marketing; or for the construction, repair, or improvement of farm buildings; or for the purchase of farm machinery, equipment, or livestock;

(F) To employ approved soil conservation practices, in order to conserve, improve, and maintain the fertility and productivity of the soil;

(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the trust;

(H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where needed;

(I) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant pastures and crops as may be necessary to carry on such operations;

(J) To market the products of the farm; and

(K) In general, to employ good husbandry in the farming operation;

(6) To manage real property:

(A) To improve, manage, protect, and subdivide any real property;

(B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;

(C) To terminate any subdivision or part thereof;

(D) To borrow money for the purposes authorized by this paragraph for the periods of time and upon the terms and conditions as to rates, maturities, and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber the property or part thereof, whether in possession or reversion;

(E) To lease the property or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses, conveyances, or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(G) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(H) To modify, renew, or extend leases;

(I) To employ agents to rent and collect rents;

(J) To create easements and to release, convey, or assign any right, title, or interest with respect to any easement on the property or part thereof;

(K) To erect, repair, or renovate any building or other improvement on the property and to remove or demolish any building or other improvement in whole or in part; and

(L) To deal with the property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this paragraph;

(7) To lease personal property of the trust or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the
period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust; and

(B) To pay from the trust all charges that the fiduciary deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which the fiduciary determines adversely affect the trust or otherwise are liabilities of the trust and to apportion all such charges among the several bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances;

(9) To receive additional property from any source and to administer the additional property as a portion of the appropriate trust under the management of the fiduciary, provided that the fiduciary shall not be required to receive the property without the fiduciary's consent;

(10) In dealing with one or more fiduciaries of the estate or any trust created by the decedent or the settlor or any spouse or child of the decedent or settlor and irrespective of whether the fiduciary is a personal representative or trustee of such other estate or trust:

(A) To sell real or personal property of the estate or trust to such fiduciary or to exchange such property with such fiduciary upon such terms and conditions as to sale price, terms of payment, and security as shall seem advisable to the fiduciary; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and

(B) To borrow money from the estate or trust for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and securities as the fiduciary shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes, the costs of the administration of the estate or trust, and like charges against the estate or trust or any part thereof or of discharging any other liabilities of the estate or trust and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as may be required to secure the loan and to renew existing loans;

(11) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the trust or any part thereof and to mortgage, pledge, or otherwise encumber such portion of the trust as may be required to secure the loan and to renew existing loans either as maker or endorser;

(12) To make loans or advances for the benefit or the protection of the trust;

(13) To vote shares of stock or other ownership interests owned by the trust, in person or by proxy, with or without power of substitution;

(14) To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship, so that title to the security may pass by delivery; but the fiduciary shall be liable for any act of the nominee in connection with the security so held;

(15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold the stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the trust so long as the fiduciary shall deem advisable;

(16) To unite with other owners of property similar to any which may be held at any time in the trust, in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property or the incorporation or reincorporation, reorganization,
or readjustment of the capital or financial structure of any corporation, company, or association
the securities of which may form any portion of an estate or trust; to become and serve as a
member of a shareholders' or bondholders' protective committee; to deposit securities in
accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that
may be required for the protection or furtherance of the interest of the beneficiaries of any trust
with reference to any such plan; and to receive as investments of the trust any securities issued as
a result of the execution of such plan;
(17) To adjust the interest rate from time to time on any obligation, whether secured or
unsecured, constituting a part of the trust;
(18) To continue any obligation, whether secured or unsecured, upon and after maturity, with or
without renewal or extension, upon such terms as the fiduciary shall deem advisable, without
regard to the value of the security, if any, at the time of the continuance;
(19) To foreclose, as an incident to the collection of any bond, note, or other obligation, any deed
to secure debt or any mortgage, deed of trust, or other lien securing the bond, note, or other
obligation and to bid in the property at the foreclosure sale or to acquire the property by deed
from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken
over without foreclosure;
(20) To carry such insurance coverage as the fiduciary shall deem advisable;
(21) To collect, receive, and issue receipts for rents, issues, profits, and income of the trust;
(22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle claims
involving the trust or the trustee;
   (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or
otherwise deal with and settle claims in favor of or against the trust as the fiduciary shall
demn advisable; the fiduciary's decision shall be conclusive between the fiduciary and the
beneficiaries of the trust and the person against or for whom the claim is asserted, in the
absence of fraud by such persons and, in the absence of fraud, bad faith, or gross negligence
of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the trust;
and
   (C) To compromise all debts, the collection of which are doubtful, belonging to the trust
when such settlements will advance the interests of those represented;
(23) To employ and compensate, out of income or principal or both and in such proportion as the
fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or assist in the
administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys
at law, attorneys in fact, investment brokers, rental agents, realtors, appraisers, and tax
specialists; and to do so without liability for any neglect, omission, misconduct, or default of the
agent or representative, provided such person was selected and retained with due care on the part
of the fiduciary;
(24) To acquire, receive, hold, and retain undivided the principal of several trusts created by a
single trust instrument until division shall become necessary in order to make distributions; to
hold, manage, invest, reinvest, and account for the several shares or parts of shares by
appropriate entries in the fiduciary's books of account and to allocate to each share or part of
share its proportionate part of all receipts and expenses; provided, however, that this paragraph
shall not defer the vesting in possession of any share or part of share of the trust;
(25) To set up proper and reasonable reserves for taxes, assessments, insurance premiums,
depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs,
improvements, and general maintenance of buildings or other property out of rents, profits, or other income received;
(26) To value assets of the trust and to distribute them in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, as the fiduciary finds to be most practical and in the best interest of the distributees, the fiduciary being able to distribute types of assets differently among the distributees;
(27) To transfer money or other property distributable to a beneficiary who is under age 21, an adult for whom a guardian or conservator has been appointed, or an adult who the fiduciary reasonably believes is incapacitated by distributing such money or property directly to the beneficiary or applying it for the beneficiary's benefit, or by:
  (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
  (B) Distributing it to the beneficiary's custodian under “The Georgia Transfers to Minors Act” or similar state law and, for that purpose, creating a custodianship and designating a custodian;
  (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or
  (D) Distributing it to any other person, whether or not appointed guardian or conservator by any court, who shall, in fact, have the care and custody of the person of the beneficiary. The fiduciary shall not be under any duty to see to the application of the distributions so made if the fiduciary exercised due care in the selection of the person, including the beneficiary, to whom the payments were made; and the receipt of the person shall be full acquittance to the fiduciary;
(28) To make, modify, and execute contracts and other instruments, under seal or otherwise, as the fiduciary deems advisable; and
(29) To serve without making and filing inventory and appraisement, without filing any annual or other returns or reports to any court, and without giving bond; but, a personal representative shall furnish to the income beneficiaries, at least annually, a statement of receipts and disbursements.