

PROPOSED REVISIONS TO GEORGIA'S TRUST CODE – 2008
Brief Summary

Major changes to Georgia's Current Trust Code:

1. Creation and Validity of Trusts:

- a) Adds statutes (OCGA §§ 53-12-5 & 53-12-6) that clarify which state's laws apply in decisions relating to the validity of a trust and the meaning and effect of trust terms.
- b) Adds provision that allows an agent under a power of attorney to create a trust for the principal if the power of attorney expressly authorizes the agent to do so. (OCGA § 53-12-10).
- c) Repeals the current statute that allows for the creation of oral life insurance trusts.
- d) Clarifies that a transfer of legal title of property be made to the trustee in order for property to become trust property. (OCGA § 53-12-15)
- e) Provides that a trust has a "reasonably ascertainable beneficiary" if the trustee or some other person has the power to select the beneficiaries based on a standard or in the discretion of that person. (OCGA § 53-12-10)
- f) Adds a definition of "qualified beneficiaries" (OCGA § 53-12-2). These beneficiaries are qualified to notice in more circumstances than are contingent beneficiaries. (See, e.g., OCGA § 53-14-32, notice as to existence of trust)
- g) Allows a settlor to create a trust for animals (e.g., pets). (OCGA § 53-12-18)
- h) Imports from Georgia's probate code the provision that describes the effect of an "in terrorem" ("no contest") clause in a trust. (OCGA § 53-12-12)
- i) Clarifies that a trust will not be considered to be revocable merely because the life beneficiary has a reversion in or a power of appointment over assets of the trust or because the life beneficiary's heirs or estate have a remainder interest therein. (OCGA § 53-12-24)

2. Modification and Termination of Trusts:

- a) Allows for reformation of trust by court to correct mistakes. (OCGA 53-12-30)
- b) Adds more detailed provisions relating to modification of administrative and dispositive terms of trust by court. (OCGA 53-13-32)
- c) Clarifies when a settlor's agent or conservator can modify a revocable trust. (OCGA § 53-12-23)
- d) Adds a provision for the termination of "uneconomic trusts" (trusts of less than \$50,000 of which trustee's fee is 5% or more) (OCGA § 53-12-35)

3. Revocable Trusts, Spendthrift Trusts, & Creditors' Rights:

- a) Adds provisions that explain creditors' rights against interest of settlor of in a revocable or irrevocable trust, both during settlor's life and at settlor's death. (OCGA § 53-12-42)
- b) Spendthrift Trusts: Keeps current Georgia law except that tort judgment creditors may no longer reach a beneficiary's interest in a spendthrift trust.(OCGA § 53-12-28)

4. Notification of Existence of Trust: Within 60 days after the date of creation of an irrevocable trust or of the date on which a revocable trust becomes irrevocable, the trustee shall notify the qualified beneficiaries of the trust of the existence of the trust and the name and mailing address of the trustee. (OCGA § 53-14-32). This requirement can be waived by the settlor of the trust and all irrevocable trusts in existence on the date the new Trust Code becomes effective will be deemed to have waived this requirement.

5. Statutes of Limitations: The proposed Code would add statutes that:

a) Provide that any judicial proceeding to contest the validity of a trust that was revocable at the settlor's death must be commenced within two years of the settlor's death.

b) Change the statute of limitations for bringing actions for breach of trust to two years from the date a beneficiary has received a written report that adequately discloses the existence of a claim against the trustee for breach of trust; in all other cases, six years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim. (OCGA § 53-14-57).

6. Trustee Compensation: Changes trustee compensation statute to provide:

a) With respect to a corporate trustee, its published fee schedule provided such fees are reasonable under the circumstances.

b) For individual trustees, unless the settlor specifies otherwise, a compensation schedule that includes 1% of the value of the trust property upon initial funding of the trust and an annual fee ranging from 1.75% to .50% per year, with the lower percentages applying to the larger trusts.

7. Powers of Trustees: The proposed Code will provide that a trustee automatically has a broad range of powers to deal with trust property, unless the settlor limits those powers.

8. Trust Certification: Allows trustee to give a certification of trust rather than entire trust document to all who request to see the trusts, except trust beneficiaries, who must be given the entire document. OCGA 53-14-45

9. Investment of Trust Assets:

a) Addition of a statute (OCGA § 53-15-2) that describes a trustee's duties with relation to managing the risk of concentrated holdings.

b) Addition of a statute that allows for the creation of a unitrust (OCGA § 53-15-12).

c) Replacement of the Georgia Principal and Income Act with the most recent version of the Uniform Principal and Income Act (Ch. 15, Art. 2)