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September 9, 2008

Ms. Patricia A. Gorham
Chairman, State Bar of Georgia Advisory Committee on Legislation
Sutherland
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996

RECEIVED
ATLANTA, GA

SEP 11 2008

Re: Proposed Georgia Trust Code Revision Act
State Bar of Georgia Fiduciary Law Section

SUTHERLAND ASBILL & BRENNAN

Dear Patricia:

On behalf of the Fiduciary Law Section of the State Bar of Georgia (the "Section"), attached hereto as Exhibit A please find legislation proposed by the Section to be brought before the 2009 Georgia General Assembly, which the Section is submitting to the Advisory Committee on Legislation for its consideration.

1. Proposed Legislation. The proposed legislation amends Title 53 of the Official Code of Georgia by repealing Chapter 12 of that Title (the "Georgia Trust Act") and replacing it with new Chapters 12, 13, 14, and 15. These chapters cover General Provisions (Ch. 12), Charitable Trusts (Ch. 13), Trustees (Ch. 14), and Trust Investments (Ch. 15). The proposed legislation is the product of a five-year study by the Trust Code Revision Committee of the Fiduciary Law Section of the State Bar of Georgia (the "TCRC".) The TCRC was chaired by William Linkous. Professor Mary Radford of the Georgia State University College of Law served as the Reporter. Members of the Committee were: Julian Friedman (Savannah), Greg Fullerton (Albany), Tom Jones (Atlanta), David Laney (Columbus), Faryl Moss (Atlanta), Albert Reichert (Macon), Ann Salo (Atlanta), John Spears (Decatur), and Rees Sumerford (Brunswick).

2. Summary of the Proposed Legislation. The proposed legislation will clarify, expand, and modernize the current Georgia Trust Code. The proposed legislation includes Comments intended to show the origins and purposes of key features of the proposed legislation. Additionally, a summary entitled "Highlights of the Proposed Revision of the Georgia Trust Code" is attached as Exhibit B.

3. Summary of Existing Law. The Georgia Trust Act (Chapter 12 of Title 53) was enacted in 1991. Since that enactment, there have been numerous developments in

trust law, both in Georgia and nationally, including the Uniform Trust Code, the Uniform Prudent Investor Act, the Uniform Principal and Income Act, the Uniform Testamentary Additions to Trusts Act, and the Restatement (Third) on the Law of Trusts, which the drafters of the 1991 Georgia Trust Act did not have opportunity to study and which have therefore had their influence on Georgia law only on a limited, piecemeal basis as opposed to the comprehensive approach reflected in the proposed legislation. Additionally, as trust law has become more complex in recent years, it has become apparent that there are areas of trust law that the 1991 Act does not address or does not cover in sufficient detail. The proposed revision of the Georgia Trust Code adopts, where appropriate, provisions of the uniform acts and likewise fills in other gaps and clarifies other ambiguities in current Georgia trust law.

4. Proponents/Opponents. The Chairs of the Sections listed in paragraph 5 were notified of the proposed legislation in June of 2007 and were each asked to further advise their respective memberships that the proposal was posted on the Fiduciary Law Section's web site. We received no formal comments, criticisms, or suggested corrections or revisions as a result of those efforts, although members of the Section do anecdotally report positive informal feedback from their peers in other Sections. During the past five years, the TCRC has met on a regular basis, at least monthly for approximately the first four of those five years. The Section has also held numerous meetings, seminars and other open forums where members of the Section and other members of the Bar able to attend and voice opinions about the proposed code revision. During those sessions (including two held at the annual Fiduciary Law Institute in the summers of 2007 and 2008 at St. Simons Island) the TCRC has received numerous comments on countless issues, including in particular (1) provisions in the proposed legislation regarding a trustee's duty to diversify investment assets held in trust, and (2) numerous technical issues of particular interest to specific professionals and industries (bankers, trust officers, fiduciary litigators, estate planners, professional fiduciaries, etc.) which have been resolved through informal "ad hoc" committees and breakfast, lunch, or other informal gatherings to the mutual satisfaction of those involved and the TCRC. Interest of the Section's membership in the proposed legislation's diversification provisions was so high that over the last year an informal "steering committee" comprised of members of the TCRC and other highly active members of the Section has met regularly to hammer out the most difficult issues raised by a legal duty to diversify, particularly "opting out" in a governing instrument and appropriate provisions for governing instruments predating the enactment of the proposed legislation. As a result of those intense activities by countless dedicated members of the Section and others, it is a great pleasure to state that at this point there are no known opponents of the proposed Trust Code revision.

5. Other Sections that may have an interest in the legislation. The proposed legislation has been posted on the Fiduciary Law Section website since June, 2007 and all members of the Section have been repeatedly notified of the posting. Also in June of 2007, William Linkous, the Chair of the TCRC, wrote to the chairs of the following other Bar sections notifying them that the proposed legislation had been posted and urging

them to encourage their members to review the proposed legislation and submit any comments:

Business Law

Corporate Counsel Law

Creditors' Rights Law

Elder Law

Family Law

General Practice & Trial

Judicial

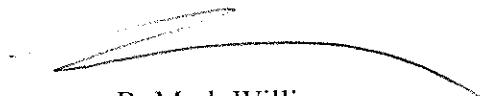
Real Property Law

Taxation Law

Tort & Insurance Practice

6. Recommendation. The Fiduciary Law Section recommends the proposed legislation to be brought before the General Assembly.

Sincerely,



R. Mark Williamson

RMW:rmw

Enclosures

cc: Adam Gaslowitz
Richard Barnes
Nick Djuric
Mary Radford
William Linkous