

## SIDE-BY-SIDE

### Article 1- General Provisions- Parts 1 and 2

<b>Existing Law</b>	<b>Bill # S. 1243</b>
Article 1.Part 1.Construction and General Provisions	Article 1.Part 1.
<p><b>SECTION 62-1-100.</b> Effective date.</p> <p>(a) Except as otherwise provided, this Code takes effect July 1, 1987.</p> <p>(b) Except as provided elsewhere in this Code, on the effective date of this Code:</p> <p>(1) the Code applies to any estates of decedents dying thereafter;</p> <p>(2) the procedural provisions of the Code apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;</p> <p>(3) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter;</p> <p>(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code. Unless otherwise provided in the Code, a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right;</p> <p>(5) a rule of construction or presumption provided in this code applies to multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.</p> <p>(c) Section 62-2-502 is effective for all wills executed after June 27, 1984, whether the testator dies before or after July 1, 1987.</p>	<p><b>SECTION 62-1-100.</b></p> <p>(a) Except as otherwise provided, this Code takes effect July 1, 1987.</p> <p>(b) Except as provided elsewhere in this Code, on the effective date of this Code:</p> <p>(1) the Code applies to any estates of decedents dying thereafter;</p> <p>(2) the procedural provisions of the Code apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;</p> <p>(3) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter;</p> <p>(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code. Unless otherwise provided in the Code, a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right;</p> <p>(5) a rule of construction or presumption provided in this code applies to multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.</p> <p>(c) Section 62-2-502 is effective for all wills executed after June 27, 1984, whether the testator dies before or after July 1, 1987.</p>

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<p><b>SECTION 62-1-101.</b> Short title.</p> <p>Sections 62-1-101 et seq. shall be known and may be cited as the South Carolina Probate Code. in Sections 62-1-101 et seq. to the term “Code”, unless the context clearly indicates otherwise, shall mean the South Carolina Probate Code.</p> <p><b>SECTION 62-1-102.</b> Purposes; rules of construction.</p> <p>(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.</p> <p>(b) The underlying purposes and policies of this Code are:</p> <p>(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;</p> <p>(2) to discover and make effective the intent of a decedent in the distribution of his property;</p> <p>(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;</p> <p>(4) to facilitate use and enforcement of certain trusts;</p> <p>(5) to make uniform the law among the various jurisdictions.</p> <p><b>SECTION 62-1-103.</b> Supplementary general principles of law applicable.</p> <p>Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.</p> <p><b>SECTION 62-1-104.</b> Severability.</p> <p>If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect</p>	<p><b>SECTION 62-1-101.</b></p> <p>Sections 62-1-101 et seq. shall be known and may be cited as the South Carolina Probate Code. References in Sections 62-1-101 et seq. to the term ‘Code’, unless the context clearly indicates otherwise, shall mean the South Carolina Probate Code.</p> <p><b>SECTION 62-1-102.</b></p> <p>(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.</p> <p>(b) The underlying purposes and policies of this Code are:</p> <p>(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;</p> <p>(2) to discover and make effective the intent of a decedent in the distribution of his property;</p> <p>(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;</p> <p>(4) to facilitate use and enforcement of certain trusts;</p> <p>(5) to make uniform the law among the various jurisdictions.</p> <p><b>SECTION 62-1-103.</b></p> <p>Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.</p> <p><b>SECTION 62-1-104.</b></p> <p>If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application and to this end the</p>

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<p>without the invalid provision or application and to this end the provisions of this Code are declared to be severable.</p> <p><b>SECTION 62-1-105.</b> Construction against implied repeal.</p> <p>This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.</p> <p><b>SECTION 62-1-106.</b> Effect of fraud and evasion.</p> <p>Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.</p> <p><b>REPORTER'S COMMENTS</b></p> <p>By virtue of this section, the six-year period of limitation provided by Section 15-3-530(7) of the 1976 Code for actions for relief on the ground of fraud is reduced, with respect to fraud perpetrated in connection with proceedings and statements filed under this Code, or to circumvent its provisions or purposes. Under this section, actions for relief on the ground of fraud must be brought within two years after discovery of the fraud. In no event, however, may an action be brought against one not the perpetrator of the fraud (such as an innocent party benefiting from the fraud) later than five years after the commission of the fraud.</p>	<p>provisions of this Code are declared to be severable.</p> <p><b>SECTION 62-1-105.</b></p> <p>This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.</p> <p><b>SECTION 62-1-106.</b></p> <p>Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may: <u>(i)</u> obtain appropriate relief against the perpetrator of the fraud <del>or</del> <u>and (ii)</u> restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.</p> <p><b>REPORTER'S COMMENTS</b></p> <p>By virtue of this section, the six-year period of limitation provided by Section 15-3-530(7) of the 1976 Code for actions for relief on the ground of fraud is reduced, with respect to fraud perpetrated in connection with proceedings and statements filed under this Code, or to circumvent its provisions or purposes. Under this section, actions for relief on the ground of fraud must be brought within two years after discovery of the fraud. In no event, however, may an action be brought against one not the perpetrator of the fraud (such as an innocent party benefiting from the fraud) later than five years after the commission of the fraud.</p>

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<p>The last sentence of this section, however, excepts from this section actions “relating to fraud practiced on a decedent during his lifetime which affect the succession of his estate” such as fraud inducing the execution or revocation of a will. There is some general authority for the proposition that one who is damaged by fraud which interferes with the making of a will may maintain an action for damages against the person who commits the fraud, 79 Am. Jur. 2d, Wills Section 414. In such a case, the six-year limitation provided by Section 15-3-530(7) of the 1976 Code should continue to apply. In cases involving direct contest of wills which are allegedly the result of fraud, however, the provisions of Section 62-3-108 would be applicable and a formal probate proceeding would have to be commenced within the later of twelve months from the informal probate or three years from the decedent’s death, at which time the allegations of fraud would be considered.</p> <p><b>SECTION 62-1-107.</b> Evidence as to death or status.</p> <p>In proceedings under this Code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code. In addition, the following rules relating to determination of death and status are applicable:</p> <p>(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.</p> <p>(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.</p> <p>(3) A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not</p>	<p>The last sentence of this section, however, excepts from this section actions ‘relating to fraud practiced on a decedent during his lifetime which affect the succession of his estate’ such as fraud inducing the execution or revocation of a will. There is some general authority for the proposition that one who is damaged by fraud which interferes with the making of a will may maintain an action for damages against the person who commits the fraud, 79 Am. Jur. 2d, Wills Section 414. In cases involving direct contest of wills which are allegedly the result of fraud, however, the provisions of Section 62-3-108 would be applicable and a formal probate proceeding would have to be commenced within the later of twelve months from the informal probate or three years from the decedent’s death, at which time the allegations of fraud would be considered.</p> <p>The 2012 amendment clarified that any person injured by the effects of fraud may (i) obtain relief against the perpetrator of the fraud and (ii) restitution from any other person (other than a bona fide purchaser) benefitting from the fraud.</p> <p><b>SECTION 62-1-107.</b></p> <p>In proceedings under this Code the <u>South Carolina Rules of Evidence in courts of general jurisdiction, including any relating to simultaneous deaths</u>, are applicable unless specifically displaced by the Code. <del>In addition, the following rules relating to determination of death and status are applicable:</del></p> <p><del>(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.</del></p> <p><del>(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.</del></p> <p><del>(3) A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not</del></p>

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<p>satisfactorily explained after diligent search or inquiry, is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.</p>	<p><del>satisfactorily explained after diligent search or inquiry, is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.</del></p>
<p>REPORTER’S COMMENTS See Sections 62-1-501 to 62-1-508 for the Uniform Simultaneous Death Act.</p>	<p>REPORTER’S COMMENTS  This section states that the rules of evidence that apply in circuit court also apply in probate court proceedings unless specifically displaced by provisions of the South Carolina Probate Code. The <del>2011</del> <b>2012</b> Amendment removed those sections related to evidence as to the status of death, and these provisions have been incorporated into §62-1-507 of the Uniform Simultaneous Death Act. See §§62-1-500 to 62-1-510 for the Uniform Simultaneous Death Act.</p>
<p><b>SECTION 62-1-108.</b> Acts by holder of general power.</p>	<p><b>SECTION 62-1-108.</b></p>
<p>For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The term “presently exercisable general power of appointment” includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder’s last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.</p>	<p>For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The term ‘presently exercisable general power of appointment’ includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder’s last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.</p>
<p>REPORTER’S COMMENTS This section allows one who is the holder of a presently exercisable</p>	<p>REPORTER’S COMMENTS This section allows one who is the holder of a presently exercisable</p>

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<p>“general power of appointment” (which, in this context, means one having the power to take absolute ownership of property to himself, either by appointment, by amendment, or by revocation) to agree to actions taken by a personal representative or by a trustee, to consent to the modification or termination of a trust or a deviation from its terms, and, thereby, to bind the beneficiaries whose interests are subject to the power.</p> <p><b>SECTION 62-1-109.</b> Duties and obligations of lawyer arising out of relationship between lawyer and person serving as a fiduciary.</p> <p>Unless expressly provided otherwise in a written employment agreement, the creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law and governs relationships in existence between lawyers and persons serving as fiduciaries as well as such relationships hereafter created.</p> <p><b>SECTION 62-1-110.</b> Fiduciary-lawyer privilege.</p> <p>Whenever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary.</p> <p><b>SOUTH CAROLINA REPORTER’S COMMENTS</b> This section was enacted and intended to: (i) expressly reject the</p>	<p>‘general power of appointment’ (which, in this context, means one having the power to take absolute ownership of property to himself, either by appointment, by amendment, or by revocation) to agree to actions taken by a personal representative or by a trustee, to consent to the modification or termination of a trust or a deviation from its terms, and, thereby, to bind the beneficiaries whose interests are subject to the power.</p> <p><b>SECTION 62-1-109.</b></p> <p>Unless expressly provided otherwise in a written employment agreement, the creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law and governs relationships in existence between lawyers and persons serving as fiduciaries as well as such relationships hereafter created.</p> <p><b>SECTION 62-1-110.</b></p> <p>Whenever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary.</p> <p><b>REPORTER’S COMMENTS</b> This section was enacted and intended to: (i) expressly reject the</p>

<p><b>Existing Law</b></p> <p>concept of a “fiduciary exception” to any attorney-client privilege; (ii) encourage full disclosure by the fiduciary to the lawyer to further the administration of justice; and (iii) foster confidence between a fiduciary and his lawyer that will lead to a trusting and open attorney-client dialogue. See Estate of Kofsky, 487 Pa. 473 (1979). This section also expressly rejects the holding set forth in the case of Riggs Natl. Bank v. Zimmer, 355 A.2d 709 (Del. Ch. 1976)(trustee’s invocation of the attorney-client privilege does not shield document from disclosure to trust beneficiaries) as applied by the Court in Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005).</p>	<p><b>Bill # S. 1243</b></p> <p>concept of a ‘fiduciary exception’ to any attorney-client privilege; (ii) encourage full disclosure by the fiduciary to the lawyer to further the administration of justice; and (iii) foster confidence between a fiduciary and his lawyer that will lead to a trusting and open attorney-client dialogue. See Estate of Kofsky, 487 Pa. 473 (1979). This section also expressly rejects the holding set forth in the case of Riggs Natl. Bank v. Zimmer, 355 A.2d 709 (Del. Ch. 1976)(trustee’s invocation of the attorney-client privilege does not shield document from disclosure to trust beneficiaries) as applied by the Court in Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005).</p> <p><u><b>SECTION 62-1-111.</b> In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the estate that is the subject of the controversy.</u></p> <p><b>REPORTER’S COMMENTS</b></p> <p>This section was enacted to clarify the probate court’s authority to award costs and expenses. See §62-7-1004 for a similar provision in the South Carolina Trust Code.</p>
<p>Article 1.Part 2. Definitions</p>	<p>Article 1.Part 2. S. 1243</p>
<p><b>SECTION 62-1-201.</b> General definitions.</p> <p>Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code:</p> <p>(1) “Application” means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.</p> <p>(2) “Beneficiary”, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.</p>	<p><b>SECTION 62-1-201.</b></p> <p>Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code:</p> <p>(1) ‘Application’ means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.</p> <p>(2) ‘Beneficiary’, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.</p>

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<p>(3) “Child” includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.</p> <p>(4) “Claims”, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.</p> <p>(5) “Court” means the court or branch having jurisdiction in matters as provided in this Code.</p> <p>(6) “Conservator” means a person who is appointed by a court to manage the estate of a protected person.</p> <p>(7) “Devise”, when used as a noun, means a testamentary disposition of real or personal property, including both devise and bequest as formerly used, and when used as a verb, means to dispose of real or personal property by will.</p> <p>(8) “Devisee” means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.</p> <p>(9) “Disability” means cause for a protective order as described by Section 62-5-401.</p> <p>(10) “Distributee” means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.</p>	<p>(3) ‘Child’ includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.</p> <p>(4) ‘Claims’, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.</p> <p>(5) ‘Court’ means the court or branch having jurisdiction in matters as provided in this Code.</p> <p>(6) ‘Conservator’ means a person who is appointed by a court to manage the estate of a protected person.</p> <p>(7) ‘Devise’, when used as a noun, means a testamentary disposition of real or personal property, including both devise and bequest as formerly used, and when used as a verb, means to dispose of real or personal property by will.</p> <p>(8) ‘Devisee’ means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.</p> <p>(9) ‘Disability’ means cause for a protective order as described by Section 62-5-401.</p> <p>(10) ‘Distributee’ means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, ‘testamentary trustee’ includes a trustee to whom assets are transferred by will, to the extent of the devised assets.</p>



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<p>(11) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.</p> <p>(12) "Exempt property" means that property of a decedent's estate which is described in Section 62-2-401.</p> <p>(12A) "Expense of administration" includes commissions of personal representatives, fees and disbursements of attorneys, fees of appraisers, and such other expenses that are reasonably incurred in the administration of the estate.</p> <p>(13) "Fiduciary" includes personal representative, guardian, conservator, and trustee.</p> <p>(14) "Foreign personal representative" means a personal representative of another jurisdiction.</p> <p>(15) "Formal proceedings" means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.</p> <p>(16) "Guardian" means a person who has qualified as a guardian of an incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem or a statutory guardian.</p> <p>(16A) "General power of appointment" means any power that would cause income to be taxed to the fiduciary in his individual capacity under Section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under Section 2041(a)(2) or 2514(c) of the Internal Revenue Code.</p> <p>(17) "Heirs" means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of a decedent.</p> <p>(18) "Incapacitated person" is as defined in Section 62-5-101.</p> <p>(19) "Informal proceedings" means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.</p>	<p>(11) 'Estate' includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.</p> <p>(12) 'Exempt property' means that property of a decedent's estate which is described in Section 62-2-401.</p> <p><del>(12A)</del>(13) 'Expense of administration' includes commissions of personal representatives, fees and disbursements of attorneys, fees of appraisers, and such other expenses that are reasonably incurred in the administration of the estate.</p> <p>(14) <u>'Fair market value' is the price that property would sell for on the open market that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.</u></p> <p><del>(13)</del>(15) 'Fiduciary' includes personal representative, guardian, conservator, and trustee.</p> <p><del>(14)</del>(16) 'Foreign personal representative' means a personal representative of another jurisdiction.</p> <p><del>(15)</del>(17) 'Formal proceedings' means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for <del>the circuit court</del> <u>courts</u> and other rules of procedure in this title.</p> <p><del>(16)</del>(18) 'Guardian' means a person <u>appointed by the court as guardian who has qualified as a guardian of an incapacitated person pursuant to testamentary or court appointment</u>, but excludes one who is <del>merely a guardian ad litem or a statutory guardian</del>.</p> <p><del>(16A)</del>(19) 'General power of appointment' means any power that would cause income to be taxed to the fiduciary in his individual capacity under Section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under Section 2041(a)(2) or 2514(c) of the Internal Revenue Code.</p> <p><del>(17)</del>(20) 'Heirs' means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of a decedent.</p>

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<p>(20) “Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.</p> <p>(21) “Issue” of a person means all his lineal descendants whether natural or adoptive of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.</p> <p>(22) “Lease” includes an oil, gas, or other mineral lease.</p> <p>(23) “Letters” includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.</p> <p>(24) “Minor” means a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court.</p> <p>(25) “Mortgage” means any conveyance, agreement, or arrangement in which real property is used as security.</p> <p>(26) “Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his death.</p> <p>(27) “Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.</p> <p>(28) “Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.</p> <p>(29) “Person” means an individual, a corporation, an organization, or other legal entity.</p> <p>(30) “Personal representative” includes executor, administrator,</p>	<p><del>(18)</del>(21) ‘Incapacitated person’ is as defined in Section 62-5-101.</p> <p><del>(19)</del>(22) ‘Informal proceedings’ means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.</p> <p><del>(20)</del>(23) ‘Interested person’ includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.</p> <p><del>(21)</del>(24) ‘Issue’ of a person means all his lineal descendants whether natural or adoptive of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.</p> <p><del>(22)</del>(25) ‘Lease’ includes an oil, gas, or other mineral lease.</p> <p><del>(23)</del>(26) ‘Letters’ includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.</p> <p><del>(24)</del>(27) ‘Minor’ means a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court.</p> <p><del>(25)</del>(28) ‘Mortgage’ means any conveyance, agreement, or arrangement in which real property is used as security.</p> <p><del>(26)</del>(29) ‘Nonresident decedent’ means a decedent who was domiciled in another jurisdiction at the time of his death.</p> <p><del>(27)</del>(30) ‘Organization’ includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.</p> <p><del>(28)</del>(31) ‘Parent’ includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this</p>

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<p>successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.</p> <p>(31) “Petition” means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.</p> <p>(32) “Proceeding” includes action at law and suit in equity.</p> <p>(33) “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.</p> <p>(34) “Protected person” is as defined in Section 62-5-101.</p> <p>(35) “Protective proceeding” is as defined in Section 62-5-101.</p> <p>(36) “Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.</p> <p>(36A) “Security interest” means any conveyance, agreement, or arrangement in which personal property is used as security.</p> <p>(37) “Settlement” in reference to a decedent’s estate includes the full process of administration, distribution, and closing.</p> <p>(38) “Special administrator” means a personal representative as described by Sections 62-3-614 through 62-3-618.</p> <p>(39) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.</p> <p>(40) “Stepchild” with reference to any person means one who is the child, natural or adopted, of such person’s spouse but who is not the child, natural or adopted, of such person.</p> <p>(41) “Successor personal representative” means a personal</p>	<p>Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.</p> <p><del>(29)</del><u>(32)</u> ‘Person’ means an individual, a corporation, <del>an organization, or other legal entity</del> <u>business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.</u></p> <p><del>(30)</del><u>(33)</u> ‘Personal representative’ includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. ‘General personal representative’ excludes special administrator.</p> <p><del>(31)</del><u>(34)</u> ‘Petition’ means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.</p> <p><u>(35) ‘Probate estate’ means the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy.</u></p> <p><del>(32)</del><u>(36)</u> ‘Proceeding’ includes action at law and suit in equity.</p> <p><del>(33)</del><u>(37)</u> ‘Property’ includes both real and personal property or any interest therein and means anything that may be the subject of ownership.</p> <p><del>(34)</del><u>(38)</u> ‘Protected person’ is as defined in Section 62-5-101.</p> <p><del>(35)</del><u>(39)</u> ‘Protective proceeding’ is as defined in Section 62-5-101.</p> <p><u>(40) ‘SCACR’ means the South Carolina Appellate Court Rules.</u></p> <p><del>(36)</del><u>(41)</u> ‘Security’ includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.</p>

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<p>representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.</p> <p>(42) “Successors” means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.</p> <p>(43) “Testacy proceeding” means a formal proceeding to establish a will or determine intestacy.</p> <p>(44) “Trust” includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6 (Sections 62-6-101 et seq.), custodial arrangements pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.</p> <p>(45) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.</p> <p>(46) “Ward” is as defined in Section 62-5-101.</p> <p>(47) “Will” includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.</p>	<p><del>(36A)</del>(42) ‘Security interest’ means any conveyance, agreement, or arrangement in which personal property is used as security.</p> <p><del>(37)</del>(43) ‘Settlement’ in reference to a decedent’s estate includes the full process of administration, distribution, and closing.</p> <p><del>(38)</del>(44) ‘Special administrator’ means a personal representative as described by Sections 62-3-614 through 62-3-618.</p> <p><del>(39)</del>(45) ‘State’ <del>includes any</del> <u>means a</u> state of the United States, the District of Columbia, <del>the Commonwealth of Puerto Rico,</del> <u>the United States Virgin Islands, a federally recognized Indian tribe, or</u> <del>and</del> any territory or <u>insular</u> possession subject to the <del>legislative authority</del> <u>jurisdiction</u> of the United States.</p> <p><del>(40) ‘Stepchild’ with reference to any person means one who is the child, natural or adopted, of such person’s spouse but who is not the child, natural or adopted, of such person.</del></p> <p><del>(41)</del>(46) ‘Successor personal representative’ means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.</p> <p><del>(42)</del>(47) ‘Successors’ means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.</p> <p><del>(43)</del>(48) ‘Testacy proceeding’ means a formal proceeding to establish a will or determine intestacy.</p> <p><del>(44)</del>(49) ‘Trust’ includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. ‘Trust’ excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6 (Sections 62-6-101 et seq.), custodial arrangements pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.</p>

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<p style="text-align: center;"><b>REPORTER’S COMMENTS</b></p> <p>The definitions set out in this section are applicable throughout this Code. Of interest is the definition of “claims” in item (4) which includes claims arising out of tort.</p> <p>Also see Sections 62-4-101, 62-5-101, and 62-6-101 for additional definitions for Articles 4, 5, and 6.</p>	<p><del>(45)</del>(50) ‘Trustee’ includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.</p> <p><del>(46)</del>(51) ‘Ward’ is as defined in Section 62-5-101.</p> <p><del>(47)</del>(52) ‘Will’ includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.</p> <p style="text-align: center;"><b>REPORTER’S COMMENTS</b></p> <p>The definitions set out in this section are applicable throughout this Code. Of interest is the definition of ‘claims’ in item (4) which includes claims arising out of tort.</p> <p>Also see Sections 62-4-101, 62-5-101, and 62-6-101 for additional definitions for Articles 4, 5, and 6.</p> <p>The 2010 amendment revised certain definitions in Section 62-1-201, i.e., ‘application’ in item (1), ‘formal proceedings’ in item (17), ‘informal proceedings’ in item (22), ‘petition’ in item (34), and ‘testacy proceeding’ in item (48), as well as other relevant sections throughout the Probate Code, to clarify that the law requires a summons in formal proceedings and the rules of civil procedure adopted for the circuit court and other rules of procedure in this title apply to and govern formal proceedings in probate court. See S.C. Code §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP; also see, <i>Weeks v. Drawdy</i>, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).</p> <p>Prior to the 2010 amendments, certain confusion existed regarding the requirement of a summons in a formal proceeding and how the South Carolina Rules of Civil Procedure apply to formal proceedings in the probate court. The 2010 amendments in this section and throughout other portions of the Probate Code are intended to minimize such confusion and to expressly clarify that a ‘formal proceeding’ is commenced by a summons and petition and governed by the rules of civil procedure adopted for the circuit court and other rules of procedure in this title, and that an ‘application’ does not require a summons and is</p>

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	<p>not governed by or subject to the rules of civil procedure adopted for the circuit court. Where applicable and appropriate, the 2010 amendments expand the matters in which an application may be utilized.</p> <p>The 2012 amendment added definitions for 'Fair Market Value' and 'Probate Estate'. The 2012 amendment also made changes to the definitions of 'Guardian', 'Person', and 'State'. The definition of 'Stepchild' has been removed as a result of changes to Section 62-2-103(6).</p>

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