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## WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES

### *Changes In The Law Of Wills*

CODE SECTIONS:	O.C.G.A. §§ 15-9-127 (new), 29-5-6 (amended), 53-1-5 (new), 53-6-22 to -23 (amended)
BILL NUMBERS:	HB 157, HB 257, HB 258, HB 259
ACT NUMBERS:	469, 559, 560, 602
SUMMARY:	The Acts provide for changes to the Georgia law of wills. HB 157 provides that the residence of decedents in the care of nursing homes at the time of death shall normally be the county of residence before the entry of the decedent into the facility. HB 257 defines uniform procedures governing appointment of a guardian over an incapacitated adult who owns real property. HB 258 permits lawfully admitted aliens to perform as executors of estates. HB 259 expands the concurrent jurisdiction of probate courts with superior courts to include the acceptance of the resignation of a trustee.
EFFECTIVE DATE:	July 1, 1989

#### *History - HB 157*

Georgia law requires courts to probate estates in the county where the decedent resides at the time of death.<sup>1</sup> However, elderly citizens are placed into nursing care facilities in increasing numbers.<sup>2</sup> Prior to the Act, if a person died while in the care of a nursing home in Georgia, the presumed site of probate was the county of death.<sup>3</sup> The law did not furnish guidelines for probate courts to use to determine whether a county other than the one in which death took place should be the decedent's county of residence.<sup>4</sup>

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1. O.C.G.A. § 53-3-1(b) (1982).

2. In 1986, the number of nursing home residents was 1.55 million; in 1971, there were 1.08 million nursing home residents. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. (1988).

3. *Zeh v. Griffin*, 257 Ga. 364, 364, 359 S.E.2d 899, 899 (1987).

4. *Id.*

*HB 157*

The original version of HB 157 would have permitted the probate court to exercise discretion in determining the county of residence of any person who dies while in the care of a nursing care facility.<sup>5</sup> The bill stated that such a person "shall not necessarily be considered to have been a resident of the county in which such nursing home or other similar facility is located."<sup>6</sup> The original bill required the court to apply a test of whether the decedent actually considered, or without mental impairment, would have considered, another county to be the county of his residence.<sup>7</sup> The bill, as introduced, would have permitted the court to consider certain criteria. These included the number of years the decedent resided in another county prior to being placed in the nursing home or like facility; the maintenance of the decedent's home in another county by friends or family; the county of residence of friends and relatives and "any other relevant factors."<sup>8</sup>

The Senate committee offered a substitute which required the probate court to presume the county of residence of the decedent to be the county where the decedent lived before entering the nursing home.<sup>9</sup> The committee made the presumption rebuttable, however.<sup>10</sup> As in the original version of the bill, the court evaluates whether the person considered, or without impairment would consider, another county to be his county of residence.<sup>11</sup> The Legislature adopted the Senate committee substitute as the final version of the bill.<sup>12</sup>

*History - HB 257*

The original section 29-5-6 defined the procedure a court must follow if the court appointed a guardian over a ward who owned or had an interest in real property.<sup>13</sup> This section also applied when the court terminated the guardianship.<sup>14</sup> In such a case, the law required that the judge or clerk of the probate court file a certified copy of the court order "in the real property grantor index of each county . . . in which the real property [was] located . . . ."<sup>15</sup>

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5. HB 157, as introduced, 1989 Ga. Gen. Assem.

6. *Id.*

7. *Id.*

8. *Id.*

9. HB 157 (SCS), 1989 Ga. Gen. Assem.

10. *Id.*

11. *Id.*

12. Final Composite Status Sheet, Mar. 15, 1989.

13. 1980 Ga. Laws 1661.

14. *Id.*

15. *Id.*

*HB 257*

HB 257 revises section 29-5-6(f)(4), deleting language concerning an "interest in property."<sup>16</sup> Thus, the procedure applies only to wards who actually own real property.<sup>17</sup> In addition, the Act requires that the court file a certificate with the clerk of the superior court in every county where the ward owns the property.<sup>18</sup> The Act specifies the information to appear on the certificate.<sup>19</sup> It requires that the certificate indicate, among other things, the name of the adult, the issue date of the order granting or terminating the guardianship, the place where a guardianship was created or terminated, and the name of the guardian.<sup>20</sup> The court must file the certificate within thirty days of the court order.<sup>21</sup>

*History - HB 258*

Before this bill's passage, Georgia law did not permit the appointment of a resident alien as an executor or administrator of an estate.<sup>22</sup> Instead, the law detailed only the circumstances under which a nonresident of Georgia might serve as executor.<sup>23</sup>

*HB 258*

The Act revises two sections enumerating the qualifications required of an individual before he or she may be appointed as an executor or administrator of a decedent's estate in Georgia.<sup>24</sup> The Act retains the language concerning nonresidents of the State, and permits such persons

16. Compare O.C.G.A. § 29-5-6(f)(4) (Supp. 1989) with 1988 Ga. Laws 1715.

17. O.C.G.A. § 29-5-6(f)(4) (Supp. 1989).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. O.C.G.A. §§ 53-6-22 to -23 (1982).

23. *Id.*

24. Prior to the Act, section 53-6-22 addressed only the eligibility requirements to permit a nonresident to act as an executor. The subsection formerly stated that the nonresident could serve as executor, but was required to give bond in an amount double the value of the estate. If the will nominating the individual relieved the nonresident from the bond requirement, the judge in his discretion was permitted to exempt the nonresident from the bond requirement. 1973 Ga. Laws 481 (formerly found at O.C.G.A. § 53-6-22 (1982)). Section 53-6-23 authorized nonresidents to serve as administrators, unless the nonresident was an heir at law with an "equal or greater interest than resident heirs." The nonresident administrator was also required to give bond in an amount double the value of the estate. 1933 Ga. Code § 113-1203 (formerly found at O.C.G.A. § 53-6-23 (1982)).

to perform as executors and administrators.<sup>25</sup> The Act also enables an "alien lawfully residing in the U.S. for permanent residence" to perform as an executor or administrator.<sup>26</sup> The Act employs a federal standard to evaluate whether the alien is lawfully admitted. The Act states that a person is lawfully admitted if and only if he "is treated as a resident of the United States in accordance with the provisions of Section 7701(b)(1)(A)(i) of the Internal Revenue Code of 1986 or the corresponding section of any future Internal Revenue law."<sup>27</sup> The Act requires the alien executors and administrators to furnish bond in the same fashion as did the section prior to the Act.<sup>28</sup> However, the Act mandates that the court relieve the alien executor of bond requirements if the will so requests.<sup>29</sup> This decision is no longer discretionary with the probate judge.<sup>30</sup>

### HB 259

The Act expands the subject matter jurisdiction that the probate courts share concurrently with the superior courts.<sup>31</sup> The Act permits probate courts to accept the resignation of a trustee, either upon written request of the beneficiaries<sup>32</sup> or upon the petition of the trustee.<sup>33</sup>

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25. O.C.G.A. § 53-6-23 (Supp. 1989).

26. O.C.G.A. § 53-6-22 (Supp. 1989).

27. O.C.G.A. § 53-6-22(c) (Supp. 1989).

28. O.C.G.A. § 53-6-22(a)-(b) (Supp. 1989). *See supra* note 24.

29. O.C.G.A. § 53-6-22(b) (Supp. 1989). The previous version of the subsection made bond relief discretionary with the probate judge. *See supra* note 24.

30. O.C.G.A. § 53-6-22(b) (Supp. 1989).

31. O.C.G.A. § 15-9-127 (Supp. 1989). The probate courts have exclusive jurisdiction over the probate of wills. O.C.G.A. § 53-3-1(a) (1985). The superior courts, except as otherwise provided in the constitution, are courts of unlimited general jurisdiction. GA. CONST. art. VI, § 4, ¶ 1.

32. O.C.G.A. § 15-9-127(5) (Supp. 1989).

33. O.C.G.A. § 15-9-127(6) (Supp. 1989).