

10-1-1992

## WILLS, TRUSTS, AND ESTATES Administrators and Executors: Authorize a Trustee to Express a Choice on Behalf of the Beneficiaries of an Inter Vivos Pourover Trust

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### Recommended Citation

Jeffrey S. York, *WILLS, TRUSTS, AND ESTATES Administrators and Executors: Authorize a Trustee to Express a Choice on Behalf of the Beneficiaries of an Inter Vivos Pourover Trust*, 9 GA. ST. U. L. REV. (1992).

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## WILLS, TRUSTS, AND ESTATES

### *Administrators and Executors: Authorize a Trustee to Express a Choice on Behalf of the Beneficiaries of an Inter Vivos Pourover Trust*

CODE SECTION: O.C.G.A. § 53-6-24 (amended)  
BILL NUMBER: HB 1520  
ACT NUMBER: 771  
SUMMARY: The Act provides that a trustee of an inter vivos trust which is a beneficiary under a will, having an interest in the appointment of the administrator with will annexed, as well as a trustee of a trust created by a will, shall be authorized to express a choice on behalf of the beneficiaries of the trust.  
EFFECTIVE DATE: July 1, 1992

#### *History*

In 1991, the General Assembly amended Code section 53-6-24 to strike paragraph 11 of that section, which dealt with the naming of an administrator with the will annexed.<sup>1</sup> That paragraph previously read as follows: “[T]he beneficiaries under a will who are capable of expressing a choice shall be entitled to name an administrator with the will annexed.”<sup>2</sup> The 1991 amendment deleted the provision for choice of administrator with the will annexed and inserted a new subsection (b) to address that issue.<sup>3</sup>

Code section 53-6-24(b) provides: (1) that a “majority in interest of the beneficiaries” of an estate “who are capable of expressing a choice” are entitled to choose an administrator with will annexed; (2) in the event such a majority in interest does not agree on such an appointment, a majority in number of “the beneficiaries who are capable of expressing a choice” can choose an administrator with will annexed; and (3) “in the event neither a majority in interest nor a majority in number of the beneficiaries” who are capable of expressing a choice for the appointment of an administrator with will annexed can agree, any person interested in the administration of the estate can “petition to be named” or have another named as administrator with

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1. 1991 Ga. Laws 394 (formerly found at O.C.G.A. § 53-6-24 (Supp. 1991)).

2. *Id.*

3. *Id.*

will annexed, and in such a situation, the court will decide the best person qualified to be the administrator.<sup>4</sup>

Code section 53-6-24(b)(4) further identifies who, for the purposes of subsection (b), qualifies as “a beneficiary capable of expressing a choice”<sup>5</sup> as to the naming of an administrator with will annexed. Among others, one such beneficiary is one whose choice is expressed by “[t]he trustee of a trust created by the will.”<sup>6</sup> Therefore, the trustee of a testamentary trust can exercise the choice of a beneficiary under the will in the appointment of an administrator with will annexed.<sup>7</sup> However, this Code section was silent as to trustees of inter vivos trusts, notably inter vivos pourover trusts.<sup>8</sup>

### *HB 1520*

The Act provides that a trustee of any trust having an interest in the appointment of an administrator with the will annexed, or a trustee of a testamentary trust, may exercise a choice of administrator with will annexed on behalf of the beneficiaries of the trust.<sup>9</sup>

Specifically, the Act changes statutory language which formerly read “a beneficiary who is capable of expressing a choice is one . . . whose choice is expressed by . . . [t]he trustee of a trust created by the will . . .”<sup>10</sup> to “a beneficiary who is capable of expressing a choice is one . . . whose choice is expressed by . . . [t]he trustee of a trust which is a beneficiary under the will . . .”<sup>11</sup>

Thus, the fact that the former Code section was silent as to whether a trustee of an inter vivos pourover trust could exercise the choice option of beneficiaries of the will or trust indicates that only the trustee of a testamentary trust, a trust created by the will, could exercise a beneficiary’s choice option to name an administrator with the will annexed.<sup>12</sup>

In contrast, the Act provides affirmative language to provide that the trustee of an inter vivos trust that pours over into the will of the testator upon the testator’s death, a “pourover trust,” may exercise the choice option of a beneficiary of the trust, who is a beneficiary under

4. O.C.G.A. § 53-6-24(b) (Supp. 1992).

5. *Id.* § 53-6-24(b)(4) (Supp. 1992).

6. *Id.* § 53-6-24(b)(4)(iii) (Supp. 1992).

7. *Id.*

8. *See* 1991 Ga. Laws 394 (formerly found at O.C.G.A. § 53-6-24 (Supp. 1991)).

9. O.C.G.A. § 53-6-24(b)(4)(iii) (Supp. 1992).

10. 1991 Ga. Laws 394 (formerly found at O.C.G.A. § 53-6-24(b)(4)(iii) (Supp. 1991) (emphasis added)).

11. O.C.G.A. § 53-6-24(b)(4)(iii) (Supp. 1992) (emphasis added).

12. *See* 1991 Ga. Laws 394 (formerly found at O.C.G.A. § 53-6-24(b)(4)(C)(iii) (Supp. 1991)).

the will through the pourover trust, in the appointment of an administrator with the will annexed.<sup>13</sup> The legislature determined that the need to adopt HB 1520 presently existed in the Georgia legal community, along with other similar legislation in the area of wills, trusts, and estates.<sup>14</sup> In essence, HB 1520 and other legislation in the field were passed to bring the statutory law up to date with the needs of the law as practiced.<sup>15</sup>

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13. O.C.G.A. § 53-6-24(b)(4)(c)(iii) (Supp. 1992).

14. Telephone Interview with Rep. Thurbert E. Baker, House District No. 51 (July 22, 1992).

15. *Id.* Rep. Baker noted that HB 1520 was passed along with a number of other bills arising from the same wills, trusts, and estates "package" designed to bring the law up to date. Rep. Baker also commented on the ease with which these particular bills passed through the legislature, another indication that they were necessary. *Id.*