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# HANDICAPPED PERSONS Community Trusts: Clarify Definition of Successor Trusts; Clarify Distributions to Successor Trusts; Provide for Distributions to Successor Trusts After Death of Life Beneficiary When Donor had Designated Self or Spouse as Life Beneficiary; Provide for Distributions Upon Withdrawal or Revocation of the Donation; Allow for More Frequent Use of Trust Funds to Provide Noncash Benefits; Provide for Use of Funds in Successor Trusts for the Benefit of Indigent Persons Suffering from Impairments; Provide for Distribution of Assets from Trusts or Successor Trusts to the Nonprofit Organization

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Administering the Trust in Specified  
Circumstances; Provide that One or More  
Accounts May be Set Up for a Life Beneficiary;  
Clarify Power of Co-Trustee with Regard to the  
Withdrawal; Clarify Applicability of Qualified  
Immunity for Trustees

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## HANDICAPPED PERSONS

*Community Trusts: Clarify Definition of Successor Trusts; Clarify Distributions to Successor Trusts; Provide for Distributions to Successor Trusts After Death of Life Beneficiary When Donor Has Designated Self or Spouse as Life Beneficiary; Provide for Distributions Upon Withdrawal or Revocation of the Donation; Allow for More Frequent Use of Trust Funds to Provide Noncash Benefits; Provide for Use of Funds in Successor Trusts for the Benefit of Indigent Persons Suffering from Impairments; Provide for Distribution of Assets from Trusts or Successor Trusts to the Nonprofit Organization Administering the Trust in Specified Circumstances; Provide that One or More Accounts May be Set Up for a Life Beneficiary; Clarify Power of Co-Trustee with Regard to Withdrawal; Clarify Applicability of Qualified Immunity for Trustees*

CODE SECTIONS: O.C.G.A. §§ 30-10-2 to -8 (amended)  
BILL NUMBER: HB 650  
ACT NUMBER: 219  
GEORGIA LAWS: 1997 Ga. Laws 576  
SUMMARY: The Act makes changes to improve implementation of the 1996 Georgia law allowing donors to make contributions to a community trust for the benefit of any person with a mental or physical disability in order to supplement that person's government assistance.  
EFFECTIVE DATE: July 1, 1997

### *History*

Prior to the 1996 legislative session, the Georgia General Assembly established two interim committees to study the concept of establishing trusts to assist individuals with disabilities.<sup>1</sup> In their joint meetings, the committees dealt with two issues.<sup>2</sup> First, there was interest in providing a trust fund to make loans to disabled persons so that they could buy technology-related devices (such as a van with hand controls for driving) in order to become more self-sufficient and to enable them to work.<sup>3</sup> As described below, the General Assembly passed a law in the 1996 session to establish such a trust fund.<sup>4</sup> In order for this law to

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1. See Telephone Interview with Mary Riddle, Assistant Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly (Apr. 22, 1997) [hereinafter Riddle Interview].

2. See *id.*

3. See *id.*

4. See *id.*; 1996 Ga. Laws 804, § 1, at 805.

have become effective, however, an amendment to the Georgia Constitution was required, and the General Assembly never acted to submit such an amendment.<sup>5</sup> The second issue the committee dealt with was authorization of donors to make contributions to a community trust for the benefit of any person with a mental or physical disability in order to supplement, but not replace, basic governmental support (such as Medicaid).<sup>6</sup>

In 1996 the General Assembly passed an Act<sup>7</sup> that created chapters 9 and 10 of title 30 of the Georgia Code.<sup>8</sup> Chapter 9 was entitled the "Technology Related Assistance for Individuals with Disabilities Act."<sup>9</sup> The chapter provided for a "Technology Related Trust Fund for Individuals with Disabilities," and for a commission to administer the fund to make loans to disabled persons for technology related devices.<sup>10</sup> However, chapter 9 was problematic because it required an amendment to the Georgia Constitution, and no such amendment passed the General Assembly for submission in the 1996 general election.<sup>11</sup> Thus, the title 30, chapter 9 provisions never became effective.<sup>12</sup>

The portion of the 1996 Act that established chapter 10 of title 30 became effective July 1, 1996, and is entitled "Community Trusts."<sup>13</sup> The community trust idea actually originated from constituents of Representative Robert F. Ray and Senator George Hooks.<sup>14</sup> The constituents were in their seventies and had a disabled son.<sup>15</sup> The parents were of moderate income, and were worried about what would happen to their son after they died.<sup>16</sup> Although the parents could have set up a private trust to provide for their son, the cost to set up and administer such a trust would have been prohibitively expensive.<sup>17</sup> The

5. See Riddle Interview, *supra* note 1.

6. See *id.*; Telephone Interview with Rep. Jim Martin, House District No. 47, Chairman of the House Judiciary Committee (Apr. 22, 1997) [hereinafter Martin Interview].

7. 1996 Ga. Laws 804, § 1, at 805.

8. *Id.*

9. *Id.* § 1 (formerly found at O.C.G.A. § 30-9-1 (Supp. 1996)).

10. *Id.* (formerly found at O.C.G.A. § 30-9-2 (Supp. 1996))

11. See Summary of General Statutes Enacted at the 1996 Session of the Gen. Assem. of Ga., Legislative Services Committee, Office of Legislative Counsel, at 30; Riddle Interview, *supra* note 1.

12. See Summary of General Statutes Enacted at the 1996 Session of the Gen. Assem. of Ga., Legislative Services Committee, Office of Legislative Counsel, at 30; Riddle Interview, *supra* note 1.

13. See *generally* O.C.G.A. § 30-10-4 (Supp. 1996).

14. See Martin Interview, *supra* note 6; Riddle Interview, *supra* note 1.

15. See Riddle Interview, *supra* note 1.

16. See *id.*

17. See *id.*

idea behind the community trust was to allow people of moderate income an inexpensive way to set up a trust fund through a nonprofit organization.<sup>18</sup> During its 1997 session, the General Assembly passed HB 650 to improve the implementation of the portion of the 1996 Act regarding community trusts.<sup>19</sup>

### *HB 650*

#### *Introduction*

The General Assembly referred HB 650 to the House Judiciary Committee.<sup>20</sup> The Committee made two minor additions to the bill, one concerning the definition of successor trusts and one clarifying that nonprofit organizations administering either community or successor trusts may receive distributions of trust assets under certain circumstances.<sup>21</sup> HB 650 passed the full House by committee substitute and the bill was referred to the Senate Judiciary Committee.<sup>22</sup> The Senate passed the House version and the Governor signed the bill into law.<sup>23</sup>

#### *Definition of Successor Trust*

The Act defines a successor trust as the trust established upon distribution by the board of trustees of a community trust either: (1) after the death or ineligibility of the life beneficiary and the donor has failed to designate a remainderman or distribution to the designated remainderman is impossible, or (2) after the death of a life beneficiary if the donor designates himself, herself, or the donor's spouse as life beneficiary.<sup>24</sup> The Act goes on to specify that a successor trust must meet all community trust requirements.<sup>25</sup> Previously, a successor trust was only defined as the trust established upon distribution by the board "pursuant to notice of agreement of withdrawal or termination with a co-trustee."<sup>26</sup>

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18. See Martin Interview, *supra* note 6.

19. See *id.*; Final Composite Status Sheet, Mar. 28, 1997.

20. Final Composite Status Sheet, Mar. 28, 1997.

21. Compare HB 650, as introduced, 1997 Ga. Gen. Assem., with HB 650 (HCS), 1997 Ga. Gen. Assem.

22. See Final Composite Status Sheet, Mar. 28, 1997.

23. See Georgia Bill Tracking, 1997 Ga. HB 650.

24. O.C.G.A. § 30-10-2(7) (1997).

25. *Id.*

26. 1996 Ga. Laws 804, § 2, at 812 (formerly found at O.C.G.A. § 30-10-2(7) (Supp. 1996)).

*Terms and Conditions of the Trust*

The Act, in Code section 30-10-6(b)(2), allows a community trust to establish one or more separate accounts for each life beneficiary.<sup>27</sup> The previous language specified only that separate accounts be established for each life beneficiary.<sup>28</sup>

In the case in which a donor has designated him or herself or his or her spouse as the life beneficiary, Code section 30-10-6(b)(4)(B) requires that the funds remaining in the beneficiary's account at death be distributed to a successor trust.<sup>29</sup> The Code section previously required that the funds be "retained by the community trust."<sup>30</sup> This change was necessary in order to distribute remainder interests to the public charity portion of the trust.<sup>31</sup>

Under previous Code section 30-10-6(b)(6), the co-trustee and trustees were required to agree annually on the amount of income, principal, or both to be used to provide noncash benefits.<sup>32</sup> The Act modifies this slightly, stating that the agreement between trustees shall be annually or more frequently.<sup>33</sup>

Withdrawals by co-trustees are governed by Code section 30-10-6(b)(7).<sup>34</sup> The Act places an additional requirement on co-trustee withdrawal; specifically, the board of trustees must determine "that the reason for the withdrawal is good and sufficient or upon the issuance of a notice of termination by the board."<sup>35</sup> In the event of withdrawal, the fair market value is to be distributed to the donor.<sup>36</sup> Previously, the assets were distributed to the trustee of the successor trust.<sup>37</sup>

The Act also amends Code section 30-10-6(b)(8), stating that, if the life beneficiary of a community trust ceases to be eligible, then the fair market value shall be distributed to the person(s) designated by the donor.<sup>38</sup> In the event the donor has not made such designation or distribution to the designee is impossible, the board shall distribute the

27. O.C.G.A. § 30-10-6(b)(2) (1997).

28. See 1996 Ga. Laws 804, § 2, at 813 (formerly found at O.C.G.A. § 30-10-6(b)(2) (Supp. 1996)).

29. O.C.G.A. § 30-10-6(b)(4)(B) (1997).

30. 1996 Ga. Laws 804, § 2, at 814 (formerly found at O.C.G.A. § 30-10-6(b)(4)(B) (Supp. 1996)).

31. See Telephone Interview with Jim Sanders, trust attorney consulted by the House Judiciary Committee (Apr. 23, 1997) [hereinafter Sanders Interview].

32. 1996 Ga. Laws 804, § 2, at 814 (formerly found at O.C.G.A. § 30-10-6(b)(6) (Supp. 1996)).

33. O.C.G.A. § 30-10-6(b)(6) (1997).

34. *Id.* § 30-10-6(b)(7).

35. *Id.*

36. See *id.*

37. See 1996 Ga. Laws 804, § 2, at 815 (formerly found at O.C.G.A. § 30-10-6(b)(7) (Supp. 1996)).

38. O.C.G.A. § 30-10-6(b)(8) (1997).

assets to the trustee of the successor trust.<sup>39</sup> The previous language called for the fair market value to be distributed to the trustee of the successor trust, without regard to the intent of the donor.<sup>40</sup> Code section 30-10-6(b)(9) was amended to provide that, on the death of the life beneficiary, if the donor has failed to designate a remainderman or distribution to that person is impossible, then the fair market value goes to the successor trust.<sup>41</sup>

The Act amends Code section 30-10-6(b)(10) to account for the change in the definition of successor trusts.<sup>42</sup> The assets are now held for the benefit of "indigent persons suffering from one or more impairments," rather than for the aid of the life beneficiary.<sup>43</sup>

Finally, the Act adds a new subsection (c), which allows the nonprofit organization administering a community or successor trust to receive a distribution of trust assets as payment for services rendered to a beneficiary or if the assets are used solely for the beneficiary's benefit.<sup>44</sup> The previous Code sections made no provision for such a distribution.<sup>45</sup>

#### *Life Beneficiaries and Co-trustees*

The Act makes two other minor changes to previous law. First, the Act amends Code section 30-10-7(b) so that it is consistent with Code section 30-10-6(b)(7) in not permitting a co-trustee, other than the donor, to withdraw a portion of the contribution made to the account of a life beneficiary.<sup>46</sup> The new language still allows withdrawals under certain circumstances, but only of the entire fair market value.<sup>47</sup>

Second, the Act amends Code section 30-10-8 to limit the liability of successor co-trustees.<sup>48</sup> Prior to the Act, the Code section limited the liability of trustees, co-trustees, and successor trustees without mentioning successor co-trustees.<sup>49</sup>

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39. *See id.*

40. *See* 1996 Ga. Laws 804, § 2, at 815 (formerly found at O.C.G.A. § 30-10-6(b)(8) (Supp. 1996)).

41. O.C.G.A. § 30-10-6(b)(9) (Supp. 1997).

42. *Id.* § 30-10-6(b)(10).

43. *Compare id., with* 1996 Ga. Laws 804, § 2, at 815 (formerly found at O.C.G.A. § 30-10-6(b)(10) (Supp. 1996)).

44. O.C.G.A. § 30-10-6(c) (1997).

45. *See* 1996 Ga. Laws 804, § 2 (formerly found at O.C.G.A. § 30-10-6(c) (Supp. 1996)).

46. O.C.G.A. § 30-10-7 (1997).

47. *See id.*

48. *See id.* § 30-10-8.

49. *See* 1996 Ga. Laws 804, § 2, at 817 (formerly found at O.C.G.A. § 30-10-8 (Supp. 1996)).