

House Bill 1124

By: Representatives Jones of the 25th and Scoggins of the 14th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and
2 administration of estates, so as to require written disclosure and the consent of the heirs or
3 beneficiaries before a personal representative of an estate may enter into certain contracts or
4 referral arrangements of which the personal representative has an interest; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and
9 administration of estates, is amended by revising Code Section 53-7-6, relating to power to
10 borrow money, make and fulfill contracts, provide legal counsel, continue decedent's
11 business, and perform other acts, as follows:

12 "53-7-6.

13 (a) Except as otherwise provided in the will or in subsection (b) of this Code section, a
14 personal representative is authorized:

15 (1) To borrow money and to bind the estate by the execution of a promissory note for
16 money borrowed and to pledge any or all the property of the estate for the payment of
17 such a promissory note by mortgage, trust deed, deed to secure debt, or other security
18 instrument, for the purpose of paying any gift, estate, inheritance, income, sales, or ad
19 valorem taxes due the United States, the state, or any municipality or county of the state
20 which constitute a claim or demand against the estate; provided, however, that a personal
21 representative who desires to borrow money shall file a petition with the probate court,
22 setting forth the facts and specifying the amount to be borrowed, the purpose for which
23 the same shall be used, the rate of interest to be paid, the property to be pledged as
24 security and the period of time over which the loan is to be repaid and, upon notice and
25 hearing of the petition, an order granting leave to borrow the money and encumber the

26 estate shall be entered and such order shall be binding, final, and conclusive as to all
27 interested parties;

28 (2) To make contracts for labor or service for the benefit of the estate upon such terms
29 as the personal representative deems best and all such contracts made in good faith shall
30 be a charge upon and bind the estate whenever such contracts are approved by the probate
31 court;

32 (3) To fulfill, as far as possible, the executory contracts and comply with the executed
33 contracts of the decedent, including contracts for the sale of land or bonds to make title
34 to land, and shall have a corresponding right to demand the same of parties contracted
35 with; provided, however, that if the personal skill of the decedent entered into the
36 consideration of the contract and the decedent's death renders execution impossible, the
37 contract, though entire, shall be considered divisible and closed at the decedent's death
38 and any partial execution by the decedent shall authorize and require a corresponding
39 compliance by the other contracting party;

40 (4) To provide competent legal counsel for the estate according to the needs of the estate
41 and, in such cases, either the personal representative or the attorney employed may, by
42 petition to the probate court duly served on the other, obtain a judgment fixing the
43 attorney's fees and expenses;

44 (5) To continue the business of the decedent for the 12 months following qualification
45 of the personal representative, after which the personal representative may petition for
46 permission to continue the business under such terms and conditions as the probate court
47 may specify; and

48 (6) To petition the probate court for permission to perform such other acts as may be in
49 the best interests of the estate.

50 (b)(1) Except pursuant as provided for in paragraph (2) of this subsection, no personal
51 representative shall be authorized and no probate court shall permit the personal
52 representative, in relation to the estate of which he or she serves as personal
53 representative, to:

54 (A) Contract for the compensated labor or services of any person or entity in which the
55 personal representative has a direct or indirect financial or personal interest; or

56 (B) Receive or direct the payment of a referral fee from any person or entity providing
57 compensated labor or services in which the personal representative has a direct or
58 indirect financial or personal interest.

59 (2) Subparagraph (1) of this subsection shall not apply if all heirs or beneficiaries of the
60 estate consent in writing to such contract or referral fee after the personal representative
61 has provided them with written disclosure of all terms of such contract or referral fee, and

62 the probate court may permit the personal representative to enter into such contract or
63 referral fee arrangement.

64 (3) The consent of any non sui juris heir or beneficiary may be given under this
65 subsection by such person's guardian, conservator, or court appointed guardian ad litem.

66 (4) Nothing in this subsection shall be construed to prohibit a petition by a personal
67 representative for extra compensation as provided for under Code Section 53-6-62."

68 **SECTION 2.**

69 Said title is further amended by revising paragraph (23) of subsection (b) of Code Section
70 53-12-261, relating to powers of trustee and limitation based on fiduciary duties, as follows:

71 "(23) Subject to the provisions of subsection (b) of Code Section 53-7-6, to ~~To~~ employ
72 and compensate, out of income or principal or both and in such proportion as the
73 fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or
74 assist in the administration of the estate or trust, including, but not limited to, agents,
75 accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents,
76 realtors, appraisers, and tax specialists; and to do so without liability for any neglect,
77 omission, misconduct, or default of the agent or representative, provided such person was
78 selected and retained with due care on the part of the fiduciary;"

79 **SECTION 3.**

80 All laws and parts of laws in conflict with this Act are repealed.