

CHAPTER 160

AN ACT concerning wills and estates, amending and supplementing various sections of Title 3B of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.3B:1-2 is amended to read as follows:

Definitions I to Z.

3B:1-2. "Incapacitated individual" means an individual who is impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

The term incapacitated individual is also used to designate an individual who is impaired by reason of physical illness or disability, chronic use of drugs, chronic alcoholism or other cause (except minority) to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

The terms incapacity and incapacitated individual refer to the state or condition of an incapacitated individual as hereinbefore defined.

"Issue" of an individual means a descendant as defined in N.J.S.3B:1-1.

"Joint tenants with the right of survivorship" means co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership in which the underlying ownership of each party is in proportion to that party's contribution.

"Local administration" means administration by a personal representative appointed in this State.

"Local fiduciary" means any fiduciary who has received letters in this State and excludes foreign fiduciaries who acquire the power of local fiduciary pursuant to this title.

"Minor" means an individual who is under 18 years of age.

"Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

"Parent" means any person entitled to take or who would be entitled to take if the child, natural or adopted, died without a will, by intestate succession from the child whose relationship is in question and excludes any person who is a stepparent, resource family parent or grandparent.

"Per capita." If a governing instrument requires property to be distributed "per capita," the property is divided to provide equal shares for each of the takers, without regard to their shares or the right of representation.

"Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"Person" means an individual or an organization.

"Per Stirpes." If a governing instrument requires property to be distributed "per stirpes," the property is divided into as many equal shares as there are: (1) surviving children of the designated ancestor; and (2) deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

"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.

"Representation; Per Capita at Each Generation." If an applicable statute or a governing instrument requires property to be distributed "by representation" or "per capita at each generation," the property is divided into as many equal shares as there are: (1) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants; and (2) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants, as if the surviving descendants who were

allocated a share and their surviving descendants had predeceased the designated ancestor.

"Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate.

"Security" includes any note, stock, treasury stock, bond, mortgage, financing statement, 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 the title or lease, collateral, trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or as a security interest 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.

"Stepchild" means a child of the surviving, deceased, or former spouse who is not a child of the decedent.

"Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

"Successors" means those persons, other than creditors, who are entitled to real and personal property of a decedent under his will or the laws governing intestate succession.

"Testamentary trustee" means a trustee designated by will or appointed to exercise a trust created by will.

"Testator" includes an individual and means male or female.

"Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created by judgment 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, guardianships, personal representatives, trust accounts created under the "Multiple-party Deposit Account Act," P.L.1979, c.491 (C.17:16I-1 et seq.), gifts to minors under the "New Jersey Uniform Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), or the "New Jersey Uniform Transfers to Minors Act," R.S.46:38A-1 et seq., business trusts providing for certificates to be issued to beneficiaries, common 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.

"Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

"Ward" means an individual for whom a guardian is appointed or an individual under the protection of the court.

"Will" means the last will and testament of a testator or testatrix and includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of a person or class to succeed to property of the decedent passing by intestate succession.

2. N.J.S. 3B:3-2 is amended to read as follows:

Execution; witnessed wills; writings intended as wills.

3B:3-2. Execution; witnessed wills; writings intended as wills.

a. Except as provided in subsection b. and in N.J.S.3B:3-3, a will shall be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and at the testator's direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

b. A will that does not comply with subsection a. is valid as a writing intended as a will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

c. Intent that the document constitutes the testator's will can be established by extrinsic

evidence, including for writings intended as wills, portions of the document that are not in the testator's handwriting.

3. N.J.S.3B:3-3 is amended to read as follows:

Writings intended as wills.

3B:3-3. Writings intended as wills.

Although a document or writing added upon a document was not executed in compliance with N.J.S.3B:3-2, the document or writing is treated as if it had been executed in compliance with N.J.S.3B:3-2 if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute: (1) the decedent's will; (2) a partial or complete revocation of the will; (3) an addition to or an alteration of the will; or (4) a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will.

4. N.J.S.3B:3-14 is amended to read as follows:

Revocation of probate and non-probate transfers by divorce or annulment; revival by remarriage to former spouse.

3B:3-14. Revocation of probate and non-probate transfers by divorce or annulment; revival by remarriage to former spouse.

a. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, a divorce or annulment:

(1) revokes any revocable:

(a) dispositions or appointment of property made by a divorced individual to his former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(b) provision in a governing instrument conferring a general or special power of appointment on the divorced individual's former spouse, or on a relative of the divorced individual's former spouse; and

(c) nomination in a governing instrument of a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship or as tenants by the entireties, transforming the interests of the former spouses into tenancies in common.

In the event of a divorce or annulment, provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment. If provisions are revoked solely by this section, they are revived by the divorced individual's remarriage to the former spouse or by the revocation, suspension or nullification of the divorce or annulment. No change of circumstances other than as described in this section and in N.J.S.3B:7-1 effects a revocation or severance.

A severance under paragraph (2) of subsection a. does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouse unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

b. For purposes of this section: (1) "divorce or annulment" means any divorce or annulment, or other dissolution or declaration of invalidity of a marriage including a judgment of divorce from bed and board; (2) "governing instrument" means a governing instrument executed by the

divorced individual before the divorce or annulment; (3) "divorced individual" includes an individual whose marriage has been annulled; and (4) "relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity.

c. This section does not affect the rights of any person who purchases property from a former spouse for value and without notice, or receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, which the former spouse was not entitled to under this section, but the former spouse is liable for the amount of the proceeds or the value of the property to the person who is entitled to it under this section.

d. A payor or other third party making payment or transferring an item of property or other benefit according to the terms of a governing instrument affected by a divorce or annulment is not liable by reason of this section unless prior to such payment or transfer it has received at its home or principal address written notice of a claimed revocation, severance or forfeiture under this section.

5. N.J.S.3B:3-35 is amended to read as follows:

Anti-lapse; deceased devisee; class gifts.

3B:3-35 Anti-lapse; deceased devisee; class gifts.

If a devisee who is a grandparent, stepchild or a lineal descendant of a grandparent of the decedent is dead at the time of the execution of the governing instrument, fails to survive the decedent, or is treated as if he predeceased the decedent, any descendants of the deceased devisee who survives the decedent by 120 hours take by representation in place of the deceased devisee. One who would have been a devisee under a class gift if he had survived the decedent is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the governing instrument. For purposes of this section, a "stepchild" means a child of the surviving, deceased or former spouse who is not a child of the decedent.

6. N.J.S.3B:3-41 is amended to read as follows:

Issue and descendants to take by representation.

3B:3-41. Issue and descendants to take by representation.

Where under any governing instrument provision is made for the benefit of issue and descendants and no contrary intention is expressed, the issue or descendants shall take by representation.

7. N.J.S.3B:5-8 is amended to read as follows:

After born heirs.

3B:5-8. After born heirs.

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

8. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to read as follows:

C.3B:7-1.1 Effect of intentional killing on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations.

58. Effect of intentional killing on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations.

a. An individual who is responsible for the intentional killing of the decedent forfeits all benefits under this title with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, exempt property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his share.

b. The intentional killing of the decedent:

(1) revokes any revocable (a) disposition or appointment of property made by decedent to the killer in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the killer, (b) provision in a governing instrument conferring a general or special power of appointment on the killer or a relative of the killer, and (c) nomination in a governing instrument of the killer or a relative of the killer, nominating or appointing the killer or a relative of the killer to serve in any fiduciary or representative capacity; and

(2) severs the interests of the decedent and the killer in property held by them at the time of the killing as joint tenants with the right of survivorship or as tenants by the entireties, transforming the interests of the decedent and killer into tenancies in common.

c. For purposes of this chapter: (1) "governing instrument" means a governing instrument executed by the decedent; and (2) "relative of the killer" means an individual who is related to the killer by blood, adoption or affinity and who is not related to the decedent by blood or adoption or affinity.

9. Section 68 of P.L.2004, c.132 (C.3B:9-4.2) is amended to read as follows:

C.3B:9-4.2 Time for disclaiming.

68. Time for disclaiming. a. The disclaimer of an interest in property may be delivered, and if required by this chapter filed, at any time after the effective date of the governing instrument, or in the case of an intestacy, at any time after the death of the intestate decedent, and must be delivered, and if required by this chapter filed, before the right to disclaim is barred by N.J.S.3B:9-9. With respect to joint property, the barring of the right to disclaim the present interest does not bar the right to disclaim the future interest.

b. The disclaimer of a power or discretion by a fiduciary, including an agent acting on behalf of a principal within the implied or general authority of a power of attorney, in a fiduciary capacity may be made at any time, before or after exercise.

10. N.J.S.3B:9-8 is amended to read as follows:

Effect of disclaimer.

3B:9-8 Effect of disclaimer. A disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the disclaimed interest. The disclaimant is treated as never having received the disclaimed interest. Unless a governing instrument otherwise provides, the property or interest disclaimed devolves:

a. As to a present interest:

(1) in the case of an intestacy, a will, a testamentary trust or a power of appointment exercised by a will or testamentary trust, as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take under a power of appointment exercised by a will or testamentary instrument, as if the disclaimant had predeceased the donee of the power. If by law or under the will or testamentary trust the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, then the disclaimed interest devolves by representation to the descendants of the disclaimant who survive the decedent; and

(2) in the case of a nontestamentary instrument or contract, other than a joint property interest, as if the disclaimant had died before the effective date of the instrument or contract. If by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest devolves by representation to the descendants of the disclaimant who survive the effective date of the instrument.

(3) in the case of joint property created by a will, testamentary trust or non-testamentary instrument: (a) if the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners; or (b) if the disclaimant is not the only living owner, the disclaimed interest devolves equally to the living joint owners, or all to the other

living owner, if there is only one living owner.

b. As to a future interest:

(1) In the case of a will or testamentary trust or a power of appointment exercised by a will or testamentary trust, as if the disclaimant had died before the event determining that the taker of the property or interest is finally ascertained and his interest is vested; and

(2) In the case of a nontestamentary instrument or contract, as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and the taker's interest is vested; and

(3) Notwithstanding the foregoing, a future interest that is held by the disclaimant who also holds the present interest and which takes effect at a time certain, such as a fixed calendar date or the disclaimant's attainment of a certain age, is not accelerated by the disclaimer and continues to take effect at the time certain.

c. Except as provided in subsection b. of this section, a disclaimer relates back for all purposes to the date of death of the decedent or the donee of the power or the effective date of the nontestamentary instrument or contract.

11. N.J.S.3B:9-9 is amended to read as follows:

Bar of right to disclaim.

3B:9-9. Bar of right to disclaim.

a. The right of an individual to disclaim property or any interest therein is barred by:

(1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor; or

(2) a written waiver of the right to disclaim; or

(3) an acceptance of the property or interest or a benefit under it after actual knowledge that a property right has been conferred; or

(4) a sale of the property or interest that was seized under judicial process before the disclaimer is made; or

(5) the expiration of the permitted applicable perpetuities period; or

(6) a fraud on the individual's creditors as set forth in the "Uniform Fraudulent Transfer Act" (R.S.25:2-20 et seq.).

b. The disclaimant shall not be barred from disclaiming all or any part of the balance of the property where the disclaimant has received a portion of the property and there still remains an interest which the disclaimant is yet to receive.

c. A bar to the right to disclaim a present interest in joint property does not bar the right to disclaim a future interest in that property.

d. The right to disclaim may be barred to the extent provided by other applicable statutory law.

12. N.J.S.3B:9-10 is amended to read as follows:

Binding effect of disclaimer or waiver.

3B:9-10. Binding effect of disclaimer or waiver.

The disclaimer or written waiver of the right to disclaim a property interest shall be binding upon the disclaimant or the individual waiving and all individuals claiming by, through or under him.

13. N.J.S.3B:9-12 is amended to read as follows:

Right to disclaim, etc.; under other law not abridged.

3B:9-12. Right to disclaim, etc.; under other law not abridged. This chapter does not abridge the right of an individual to waive, release, disclaim or renounce property or an interest therein under any other statute or law.

14. N.J.S.3B:9-13 is amended to read as follows:

Extension of time to disclaim interest existing on February 28, 1980.

3B:9-13. Extension of time to disclaim interest existing on February 28, 1980.

a. An interest in property existing on February 28, 1980, as to which, if a present interest, the time for filing a disclaimer under this chapter has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within 9 months after February 28, 1980.

b. An interest in property existing on the effective date of this chapter as amended and supplemented by P.L.2004, c.132 (C.3B:3-33.1 et al.) as to which the right to disclaim has not been barred by prior law may be disclaimed at any time before the right to disclaim is barred by N.J.S.3B:9-9.

15. N.J.S.3B:15-23 is amended to read as follows:

Proof of order to limit creditors required in certain cases.

3B:15-23. Proof of order to limit creditors required in certain cases.

An order of discharge shall not be made in cases in which the fiduciary is an executor, administrator with the will annexed, substituted administrator with the will annexed, administrator or substituted administrator except upon proof that nine months have elapsed after the entry of an order to limit creditors pursuant to N.J.S. 3B:22-4, and that there are not any unpaid or pending claims of creditors of the decedent presented to the fiduciary pursuant to chapter 22 of this title.

16. N.J.S.3B:22-14 is amended to read as follows:

Direction of court before paying claims not presented within 9-month period.

3B:22-14. Direction of court before paying claims not presented within 9-month period.

A personal representative may not be compelled to pay any claim not presented within the period limited pursuant to N.J.S. 3B:22-4, unless the court shall, for good cause shown, so direct or until his account has been settled by the court and the court has authorized or directed him to make the payment.

17. N.J.S. 3B:24-4 is amended to read as follows:

Apportionment of tax to transferees in absence of directions to contrary.

3B:24-4. Apportionment of tax to transferees in absence of directions to contrary.

In the absence of directions to the contrary:

a. That part of the tax shall be apportioned to each of the transferees as bears the same ratio to the total tax as the ratio which each of the transferees' property included in the gross tax estate bears to the total property entering into the net estate for purposes of that tax, and the balance of the tax shall be apportioned to the fiduciary, the values as finally determined in the respective tax proceedings being the values to be used as the basis for apportionment of the respective taxes;

b. Any deduction allowed under the law imposing the tax by reason of the relationship of any transferee to the decedent or by reason of the charitable purposes of the gift shall inure to the benefit of the fiduciary or transferee, as the case may be, subject nonetheless to the provisions of N.J.S.3B:24-3;

c. Any deduction for property previously taxed and any credit for gift taxes paid by the decedent shall inure to the benefit of all transferees and the fiduciary and the tax to be apportioned shall be the tax after allowance of the deduction and credit; and

d. Any interest resulting from late payment of the tax shall be apportioned in the same manner as the tax and shall be charged by the fiduciary and any trustee of any inter vivos trust and any other transferee wholly against corpus.

18. N.J.S.3B:25-1 is amended to read as follows:

Nonexoneration of property subject to mortgage or security interest; exception.

3B:25-1. Nonexoneration of property subject to mortgage or security interest; exception.

When property subject to a mortgage or security interest descends to an heir or passes to a devisee, the heir or devisee shall not be entitled to have the mortgage or security interest discharged out of any other property of the ancestor or testator, but the property so descending or passing to the person shall be primarily liable for the mortgage or secured debt, unless the will of the testator shall direct that the mortgage or security interest be otherwise paid. A general direction in the will to pay debts shall not be deemed a direction to pay the mortgage or security interest.

19. N.J.S.3B:28-1 is amended to read as follows:

Estates of dower and courtesy prior to May 28, 1980.

3B:28-1. Estates of dower and courtesy prior to May 28, 1980.

The widow or widower, whether alien or not, of an individual dying intestate or otherwise, shall be endowed for the term of his life of one half of all real property of which the decedent, or another to the decedent's use, was seized of an estate of inheritance at any time during marriage prior to May 28, 1980, unless the widow or widower shall have relinquished her right of dower or his right of courtesy in the manner provided by P.L.1953, c.352 (C.37:2-18.1) or such right of dower or such right of courtesy otherwise shall have been extinguished by law.

20. N.J.S.3B:28-2 is amended to read as follows:

No right of dower or courtesy created on or after May 28, 1980.

3B:28-2. No right of dower or courtesy created on or after May 28, 1980.

No right of dower or courtesy in real property shall arise if, on or after May 28, 1980, an individual shall become married, or such person or another to his use, shall become seized of an estate of inheritance.

21. N.J.S.3B:28-3 is amended to read as follows:

Right of joint possession of principal matrimonial residence where no dower or courtesy applies; alienation.

3B:28-3. Right of joint possession of principal matrimonial residence where no dower or courtesy applies; alienation.

a. During life every married individual shall be entitled to joint possession with his spouse of any real property which they occupy jointly as their principal matrimonial residence and to which neither dower nor courtesy applies. One who acquires an estate or interest in real property from an individual whose spouse is entitled to joint possession thereof does so subject to such right of possession, unless such right of possession has been released, extinguished or subordinated by such spouse or has been terminated by order or judgment of a court of competent jurisdiction or otherwise.

b. Nothing contained herein shall be construed to prevent the release, subordination or extinguishment of the right of joint possession by either spouse, by premarital agreement, separation agreement or other written instrument.

c. The right of joint possession shall be extinguished by the consent of both parties, by the death of either spouse, by judgment of divorce, separation or annulment, by other order or judgment which extinguishes same, or by voluntary abandonment of the principal matrimonial residence.

22. N.J.S.3B:28-3.1 is amended to read as follows:

Joint occupancy of principal matrimonial residence; mortgage lien.

3B:28-3.1. Joint occupancy of principal matrimonial residence; mortgage lien. The right of joint possession to the principal matrimonial residence as provided in N.J.S.3B:28-3 is subject to the lien of a mortgage, irrespective of the date when the mortgage is recorded, provided:

- a. The mortgage is placed upon the matrimonial residence prior to the time that title to the residence was acquired by the married individual; or
- b. The mortgage is placed upon the matrimonial residence prior to the marriage; or
- c. The mortgage is a purchase money mortgage; or
- d. The parties to the marriage have joined in the mortgage; or
- e. The right of joint possession has been subordinated, released or extinguished by subsection b. or c. of N.J.S.3B:28-3.

C.3B:1-8.1 Applicability of act.

23. The provisions of P.L.2004, c. 132 and P.L.2005, c.160 (C.3B:1-8.1 et al.) shall apply to any decedent dying on or after February 27, 2005.

24. This act shall take effect on February 27, 2005 and if enacted after that date shall be retroactive to that date

Approved July 19, 2005.