

CHAPTER 331

AN ACT concerning rights of surviving domestic partners and amending various sections of the statutory law.

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

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

Definitions A to H.

3B:1-1. As used in this title, unless otherwise defined:

"Administrator" includes general administrators of an intestate and unless restricted by the subject or context, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, temporary administrators and administrators pendente lite.

"Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, and includes any person entitled to enforce the trust.

"Child" means any individual, including a natural or adopted child, entitled to take by intestate succession from the parent whose relationship is involved and excludes any individual who is only a stepchild, a resource family child, a grandchild or any more remote descendant.

"Claims" include liabilities whether arising in contract, or in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration, but does not include estate or inheritance taxes, demands or disputes regarding title to specific assets alleged to be included in the estate.

"Cofiduciary" means each of two or more fiduciaries jointly serving in a fiduciary capacity.

"Descendant" of an individual means all of his progeny of all generations, with the relationship of parent and child at each generation being determined by the definition of child contained in this section and parent contained in N.J.S.3B:1-2.

"Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

"Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

"Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A trustee is a distributee only to the extent of a distributed asset or increment thereto remaining in his hands. A beneficiary of a trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Domiciliary foreign fiduciary" means any fiduciary who has received letters, or has been appointed, or is authorized to act as a fiduciary, in the jurisdiction in which the decedent was domiciled at the time of his death, in which the ward is domiciled or in which is located the principal place of the administration of a trust.

"Estate" means all of the property of a decedent, minor or incapacitated individual, trust or other person whose affairs are subject to this title as the property is originally constituted and as it exists from time to time during administration.

"Fiduciary" includes executors, general administrators of an intestate estate, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, guardians, substituted guardians, trustees, substituted trustees and, unless restricted by the subject or context, temporary administrators, administrators pendente lite, administrators ad prosequendum, administrators ad litem and other limited fiduciaries.

"Governing instrument" means a deed, will, trust, insurance or annuity policy, account with the designation "pay on death" (POD) or "transfer on death" (TOD), security registered in beneficiary form with the designation "pay on death" (POD) or "transfer on death" (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

"Guardian" means a person who has qualified as a guardian of the person or estate of a minor or incapacitated individual pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

"Heirs" means those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, who are entitled under the statutes of intestate succession to the property of a decedent.

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

Intestate share of decedent's surviving spouse or domestic partner.

3B:5-3. Intestate share of decedent's surviving spouse or domestic partner.

The intestate share of the surviving spouse or domestic partner is:

a. The entire intestate estate if:

(1) No descendant or parent of the decedent survives the decedent; or

(2) All of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and there is no other descendant of the surviving spouse or domestic partner who survives the decedent;

b. The first 25% of the intestate estate, but not less than \$50,000.00 nor more than \$200,000.00, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

c. The first 25% of the intestate estate, but not less than \$50,000.00 nor more than \$200,000.00, plus one-half of the balance of the intestate estate:

(1) If all of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and the surviving spouse or domestic partner has one or more surviving descendants who are not descendants of the decedent; or

(2) If one or more of the decedent's surviving descendants is not a descendant of the surviving spouse or domestic partner.

3. N.J.S.3B:5-4 is amended to read as follows:

3B:5-4. Intestate shares of heirs other than surviving spouse or domestic partner.

Any part of the intestate estate not passing to the decedent's surviving spouse or domestic partner under N.J.S.3B:5-3, or the entire intestate estate if there is no surviving spouse or domestic partner, passes in the following order to the individuals designated below who survive the decedent:

a. To the decedent's descendants by representation;

b. If there are no surviving descendants, to the decedent's parents equally if both survive, or to the surviving parent;

c. If there are no surviving descendants or parent, to the descendants of the decedent's parents or either of them by representation;

d. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent, or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

e. If there is no surviving descendant, parent, descendant of a parent, or grandparent, but the decedent is survived by one or more descendants of grandparents, the descendants take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.

f. If there are no surviving descendants of grandparents, then the decedent's step-children or their descendants by representation.

4. N.J.S.3B:5-14 is amended to read as follows:

Tenancy in common; marriage and domestic partnership settlements.

3B:5-14. Tenancy in common; marriage and domestic partnership settlements.

Property descending and distributable under this article to two or more persons shall devolve upon them as tenants in common. Nothing in this article shall be construed or taken to make void or in any way to affect any marriage settlement or settlement concerning a domestic partnership.

5. N.J.S.3B:5-15 is amended to read as follows:

Entitlement of spouse or domestic partner; premarital will.

3B:5-15. Entitlement of spouse or domestic partner; premarital will.

a. If a testator's surviving spouse married the testator after the testator executed the testator's will, or if a testator's domestic partner formed a domestic partnership with the testator after the testator executed the testator's will, the surviving spouse or domestic partner is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse or domestic partner would have received if the testator had died intestate, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse or in contemplation of the testator's formation of a domestic partnership with the domestic partner;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage or domestic partnership; or

(3) the testator provided for the spouse or domestic partner by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

b. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse or domestic partner, if any, are applied first, and other devises shall abate ratably and in proportion to their respective interests therein.

c. Notwithstanding any other provision of law to the contrary, this section shall apply only to wills executed on or after September 1, 1978.

6. 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, domestic partner'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.

7. N.J.S.3B:8-1 is amended to read as follows:

Elective share of surviving spouse or domestic partner of person dying domiciled in this State; conditions.

3B:8-1. Elective share of surviving spouse or domestic partner of person dying domiciled in this State; conditions.

If a married person or person in a domestic partnership dies domiciled in this State, on or after May 28, 1980, the surviving spouse or domestic partner has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated, provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death under the laws of this State.

8. N.J.S.3B:8-2 is amended to read as follows:

Elective share of surviving spouse or domestic partner of person dying not domiciled in this State.

3B:8-2. Elective share of surviving spouse or domestic partner of person dying not domiciled in this State.

If a married person or person in a domestic partnership not domiciled in this State dies, the right, if any, of the surviving spouse or domestic partner to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

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

Meaning of "augmented estate."

3B:8-3. Meaning of "augmented estate."

The "augmented estate" means the estate reduced by funeral and administration expenses, and enforceable claims, to which is added the value of property transferred by the decedent at any time during marriage, or during a domestic partnership, to or for the benefit of any person other than the surviving spouse or domestic partner, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

a. Any transfer made after May 28, 1980, under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

b. Any transfer made after May 28, 1980, to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

c. Any transfer made after May 28, 1980, whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

d. Any transfer made, after May 28, 1980, if made within 2 years of death of the decedent, to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.00.

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

Transfers excluded.

3B:8-5. Transfers excluded.

Any transfer of property shall be excluded from the augmented estate under N.J.S. 3B:8-3,

if made with the written consent or joinder of the surviving spouse or domestic partner. There shall also be excluded from the augmented estate any life insurance, accident insurance, joint annuity or pension payable to a person other than the surviving spouse or domestic partner.

11. N.J.S.3B:8-6 is amended to read as follows:

Other property to be included in augmented estate.

3B:8-6. Other property to be included in augmented estate.

There shall also be included in the augmented estate:

a. The value of property owned by the surviving spouse or domestic partner at the time of, or as a result of, the decedent's death to the extent that the property is derived from the decedent by means other than by testate or intestate succession without a full consideration in money or money's worth; and

b. The value of the property described in subsection a. hereof which has been transferred by the surviving spouse or domestic partner at any time during marriage or domestic partnership without a full consideration in money or money's worth to any person other than the decedent which would have been includable in the spouse's or domestic partner's augmented estate if the surviving spouse or domestic partner had predeceased the decedent.

Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

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

Property derived from decedent.

3B:8-7. Property derived from decedent.

For the purposes of N.J.S. 3B:8-6, property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse or domestic partner in a trust created by the decedent during his lifetime, any property appointed to the spouse or domestic partner by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse or domestic partner, any proceeds of insurance, including accidental death benefits on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, the value of the share of the surviving spouse or domestic partner resulting from rights in community property acquired in any other state formerly owned with the decedent and the value of any rights of dower and curtesy. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

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

Valuation of property derived from decedent.

3B:8-8. Valuation of property derived from decedent.

For the purposes of valuing property derived from the decedent as provided in N.J.S. 3B:8-6:

a. Property owned by the spouse or domestic partner at the decedent's death is valued as of the date of decedent's death; and

b. Property transferred by the spouse or domestic partner is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurs first.

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

Presumption as to property owned or previously transferred by spouse or domestic partner at decedent's death.

3B:8-9. Presumption as to property owned or previously transferred by spouse or domestic partner at decedent's death.

Property owned by the surviving spouse or domestic partner as of the decedent's death, or previously transferred by the surviving spouse or domestic partner, is presumed to have been derived from the decedent except to the extent that any party in interest establishes that it was derived from another source.

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

Waiving right to an elective share.

3B:8-10. Waiving right to an elective share.

The right of election of a surviving spouse or domestic partner and the rights of the surviving spouse or domestic partner may be waived, wholly or partially, before or after marriage before, on or after May 28, 1980, by a written contract, agreement or waiver, signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or domestic partner or a complete property settlement entered into after or in anticipation of separation, divorce or termination of a domestic partnership is a waiver of all rights to an elective share by each spouse or domestic partner in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

16. N.J.S.3B:8-11 is amended to read as follows:

Who may exercise the right to take an elective share.

3B:8-11. Who may exercise the right to take an elective share.

The right of election to take an elective share by a surviving spouse or domestic partner may be exercised only during his lifetime. In the case of a surviving spouse or domestic partner for whom the court has appointed a guardian to manage his estate, the right of election may be exercised only by order of the court making the appointment after finding that the election is necessary to provide adequate support of the surviving spouse or domestic partner during his probable life expectancy.

17. N.J.S.3B:8-12 is amended to read as follows:

Filing complaint for elective share; extension of time.

3B:8-12. Filing complaint for elective share; extension of time.

The surviving spouse or domestic partner may elect to take his elective share in the augmented estate by filing a complaint in the Superior Court within 6 months after the appointment of a personal representative of the decedent's estate. The court may, before the time for election has expired and upon good cause shown by the surviving spouse or domestic partner, extend the time for election upon notice to persons interested in the estate and to distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

18. N.J.S.3B:8-13 is amended to read as follows:

Notice of hearing.

3B:8-13. Notice of hearing.

The surviving spouse or domestic partner shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

19. N.J.S.3B:8-14 is amended to read as follows:

Withdrawal of demand for an elective share.

3B:8-14. Withdrawal of demand for an elective share.

The surviving spouse or domestic partner may withdraw his demand for an elective share at any time before entry of a final judgment by the court.

20. N.J.S.3B:8-17 is amended to read as follows:

3B:8-17. Value of surviving spouse's or domestic partner's interest in any life estate.

Value of surviving spouse's or domestic partner's interest in any life estate.

In an action for an elective share, the electing spouse's or domestic partner's total or proportional beneficial interest in any life estate in real or personal property or in any trust shall be valued at one-half of the total value of the property or trust or of the portion of the property or trust subject to the life estate.

21. N.J.S.3B:8-18 is amended to read as follows:

Satisfaction of elective share.

3B:8-18. Satisfaction of elective share.

The amount of the surviving spouse's or domestic partner's elective share shall be satisfied by applying:

a. The value of all property, estate or interest therein, owned by the surviving spouse or domestic partner in his own right at the time of the decedent's death from whatever source acquired, or succeeded to by the surviving spouse or domestic partner as a result of decedent's death notwithstanding that the property, estate or interest or part thereof, succeeded to by the surviving spouse or domestic partner as the result of decedent's death has been renounced by the surviving spouse or domestic partner;

b. The value of the property described in subsection b. of N.J.S. 3B:8-6, and

c. The remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse or domestic partner is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

22. N.J.S.3B:8-19 is amended to read as follows:

Persons subject to contribution.

3B:8-19. Persons subject to contribution.

Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse or domestic partner. A person liable to contribution may choose to give up the property transferred to him or to pay its value as fixed in the manner provided in N.J.S. 3B:8-4.

23. N.J.S.3B:10-2 is amended to read as follows:

To whom letters of administration granted.

3B:10-2. To whom letters of administration granted.

If any person dies intestate, administration of the intestate's estate shall be granted to the surviving spouse or domestic partner of the intestate, if he or she will accept the administration, and, if not, or if there be no surviving spouse or domestic partner, then to the remaining heirs of the intestate, or some of them, if they or any of them will accept the administration, and, if none of them will accept the administration, then to any other person as will accept the administration.

If the intestate leaves no heirs justly entitled to the administration of his estate, or if his heirs

shall not claim the administration within 40 days after the death of the intestate, the Superior Court or surrogate's court may grant letters of administration to any fit person applying therefor.

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

When spouse or domestic partner entitled to assets without administration.

3B:10-3. When spouse or domestic partner entitled to assets without administration.

Where the total value of the real and personal assets of the estate of an intestate will not exceed \$20,000.00, the surviving spouse or domestic partner upon the execution of an affidavit before the Surrogate of the county where the intestate resided at his death, or, if then nonresident in this State, where any of the assets are located, or before the Superior Court, shall be entitled absolutely to all the real and personal assets without administration, and the assets of the estate up to \$5,000.00 shall be free from all debts of the intestate. Upon the execution and filing of the affidavit as provided in this section, the surviving spouse or domestic partner shall have all of the rights, powers and duties of an administrator duly appointed for the estate. The surviving spouse or domestic partner may be sued and required to account as if he had been appointed administrator by the Surrogate or the Superior Court. The affidavit shall state that the affiant is the surviving spouse or domestic partner of the intestate and that the value of the intestate's real and personal assets will not exceed \$20,000.00, and shall set forth the residence of the intestate at his death, and specifically the nature, location and value of the intestate's real and personal assets. The affidavit shall be filed and recorded in the office of such Surrogate or, if the proceeding is before the Superior Court, then in the office of the clerk of that court. Where the affiant is domiciled outside this State, the Surrogate may authorize in writing that the affidavit be executed in the affiant's domicile before any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take acknowledgments or proofs.

25. N.J.S.3B:10-4 is amended to read as follows:

When heirs entitled to assets without administration.

3B:10-4. When heirs entitled to assets without administration.

Where the total value of the real and personal assets of the estate of an intestate will not exceed \$10,000.00 and the intestate leaves no surviving spouse or domestic partner, and one of his heirs shall have obtained the consent in writing of the remaining heirs, if any, and shall have executed before the Surrogate of the county where the intestate resided at his death, or, if then nonresident in this State, where any of the intestate's assets are located, or before the Superior Court, the affidavit herein provided for, shall be entitled to receive the assets of the intestate of the benefit of all the heirs and creditors without administration or entering into a bond. Upon executing the affidavit, and upon filing it and the consent, he shall have all the rights, powers and duties of an administrator duly appointed for the estate and may be sued and required to account as if he had been appointed administrator by the Surrogate or the Superior Court.

The affidavit shall set forth the residence of the intestate at his death, the names, residences and relationships of all of the heirs and specifically the nature, location and value of the real and personal assets and also a statement that the value of the intestate's real and personal assets will not exceed \$10,000.00.

The consent and the affidavit shall be filed and recorded, in the office of the Surrogate or, if the proceeding is before the Superior Court, then in the office of the clerk of that court. Where the affiant is domiciled outside this State, the Surrogate may authorize in writing that the affidavit be executed in the affiant's domicile before any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take acknowledgments or proofs.

26. Section 2 of P.L.1995, c.130 (C.3B:30-2) is amended to read as follows:

C.3B:30-2 Definitions.

2. As used in the act:

"Beneficiary form" means a registration of a security which indicates the present owner of the

security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

"Devisee" means any person designated in a will to receive a disposition of real or personal property.

"Heirs" means those persons, including the surviving spouse or domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.

"Person" means an individual, a corporation, an organization or other legal entity.

"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

"Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

"Register" including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

"Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

"Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

"Security account" means: a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

"State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

27. N.J.S.3A:25-12 is amended to read as follows:

Distribution; when and how made.

3A:25-12. When a portion of the proceeds of real estate sold by judgment of the Superior Court to satisfy debts of a decedent is invested for the benefit of the surviving spouse or domestic partner during his or her lifetime, the court directing the sale, shall, upon the death of the life beneficiary, order the portion so invested to be distributed to the heirs or devisees of the person whose real estate was so sold in accordance with the law of descent or the will of the testator, as the case may be, unless the amount realized from the sale of said real estate remaining after the investment of said portion for the benefit of the surviving spouse was insufficient to pay the debts of the decedent as proved and allowed in the proceedings in which said judgment to sell was made and, in such case, the court shall direct the payment of the balance of such debts out of said principal sum so invested, so far as it shall be adequate for that purpose, in pro rata shares according to the amount of such debts so proved and allowed and shall direct distribution of any balance of said principal sum, remaining after the payment of said debts and interest, among the said heirs and devisees as aforesaid. However, that if any creditor, his personal representative or successor in interest, neglects for six years after the death of such surviving spouse to claim any balance upon his claim so proved and allowed as aforesaid, the share of said principal sum which would have been paid to such creditor hereunder, shall be distributed, by order of the court, among the said heirs and devisees as aforesaid.

28. Section 1 of P.L.1979, c.484 (C.3A:25-39) is amended to read as follows:

C.3A:25-39 Definitions.

1. As used in this act:

a. A "present interest" is one to take effect in immediate possession, use or enjoyment without the intervention of a preceding estate or interest or without being dependent upon the happening of any event or thing.

b. A "future interest" is one to take effect in possession, use or enjoyment dependent upon the termination of an intervening estate or interest or the happening of any event or thing.

c. An "heir" means a person, including the surviving spouse or domestic partner, entitled under the statutes of intestate succession to the property of a decedent.

d. A "devisee" means any person designated in a will to receive a devise, but does not mean a trustee or trust designated in a will to receive a devise.

e. A "devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

29. Section 22 of P.L.2003, c.261 (C.45:27-22) is amended to read as follows:

C.45:27-22 Control of funeral, disposition of remains.

22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c.261 (C.3B:10-21.1). If the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

(1) The surviving spouse of the decedent or the surviving domestic partner.

(2) A majority of the surviving adult children of the decedent.

(3) The surviving parent or parents of the decedent.

(4) A majority of the brothers and sisters of the decedent.

(5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

For purposes of this subsection "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

(1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

30. This act shall take effect immediately.

Approved January 12, 2006.