

## CHAPTER 140

**AN ACT** concerning certain fiduciaries and amending N.J.S.3B:15-1, N.J.S.3B:12-16 and N.J.S.3B:12-33.

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

1. N.J.S.3B:15-1 is amended to read as follows:

Bonds of fiduciaries; exceptions.

3B:15-1. The court or surrogate appointing a fiduciary in any of the instances enumerated below shall secure faithful performance of the duties of his office by requiring the fiduciary thereby authorized to act to furnish bond to the Superior Court in a sum and with proper conditions and sureties, having due regard to the value of the estate in his charge and the extent of his authority, as the court shall approve:

a. When an appointment is made upon failure of the will, or other instrument creating or continuing a fiduciary relationship, to name a fiduciary;

b. When a person is appointed in the place of the person named as fiduciary in the will, or other instrument creating or continuing the fiduciary relationship;

c. When the office to which the person is appointed is any form of administration, except (1) administration ad litem which may be granted with or without bond; or (2) administration granted to a surviving spouse where the decedent's entire estate is payable to the surviving spouse;

d. When the office to which the person is appointed is any form of guardianship of a minor or incapacitated person, except as otherwise provided in N.J.S.3B:12-16 or N.J.S.3B:12-33 with respect to a guardian appointed by will;

e. When letters are granted to a nonresident executor, except in cases where the will provides that no security shall be required of the person named as executor therein;

f. When an additional or substituted fiduciary is appointed;

g. When an appointment is made under chapter 26 of this title, of a fiduciary for the estate or property, or any part thereof, of an absentee;

h. When a fiduciary moves from the State, the court may require him to give such security as it may determine; or

i. (1) When an appointment is made, regardless of any direction in a last will and testament relieving a personal representative, testamentary guardian or testamentary trustee or their successors from giving bond, that person shall, before receiving letters or exercising any authority or control over the property, provide bond to secure performance of his duties with respect to property to which a developmentally disabled person as defined in section 3 of P.L.1985, c.145 (C.30:6D-25) is, or shall be entitled, if:

(a) the testator has identified that a devisee or beneficiary of property of the decedent's estate is such a developmentally disabled person; or

(b) the person seeking appointment has actual knowledge that a devisee or beneficiary of property of the decedent's estate is such a developmentally disabled person.

(2) No bond shall be required pursuant to paragraph (1) of this subsection if:

(a) the court has appointed another person as guardian of the person or guardian of the estate for the developmentally disabled person;

(b) the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally disabled person; or

(c) the total value of the real and personal assets of the estate or trust does not exceed \$25,000.

(3) A personal representative, testamentary guardian or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection shall file with the Superior Court an initial inventory and a final accounting of the estate in his charge containing a true account of all assets of the estate. Such person shall file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court, in the case of an extended estate or trust administration. A copy of the accountings shall be served on the Public Advocate. The Public Advocate, on behalf of the developmentally disabled person or that person's estate, may file exceptions and objections to interim or final accountings and may initiate an action to compel the person to file an accounting of the trust or estate.

(4) A personal representative, testamentary guardian or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection may make application to the court to waive the bond or reduce the amount of bond for good cause shown, including the need to preserve assets of the estate.

This subsection shall not apply to qualified financial institutions pursuant to section 30 of P.L.1948, c.67 (C.17:9A-30) or to non-profit community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.).

Nothing contained in this section shall be construed to require a bond in any case where it is specifically provided by law that a bond need not be required.

2. N.J.S.3B:12-16 is amended to read as follows:

Bond of testamentary guardian.

3B:12-16. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of a minor shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by direction of the will of the parent appointing the guardian or by order of the court. However, regardless of the direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent or other than any policy of life insurance upon the life of the parent, give bond in accordance with that section before exercising any authority or control over the property.

The provisions of this section relieving a testamentary guardian of a minor from giving bond by direction of the will of the parent shall not apply to a testamentary guardian of a minor with a developmental disability. Such guardian shall be bonded pursuant to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-1.

3. N.J.S.3B:12-33 is amended to read as follows:

Bond of testamentary guardian.

3B:12-33. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of an incapacitated person shall give bond in accordance with N.J.S.3B:15-1 unless the guardian is relieved from doing so by direction of the will of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) appointing the guardian. However, regardless of any direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) or other than any policy of life insurance upon the life of the parent,

spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), give bond in accordance with that section before exercising any authority or control over that property.

The provisions of this section relieving a testamentary guardian of an incapacitated person from giving bond by direction of the will of the parent, spouse or domestic partner shall not apply to a testamentary guardian of a minor with a developmental disability. Such guardian shall be bonded pursuant to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-1.

4. This act shall take effect on the 60th day following enactment.

Approved October 19, 2009.