

3A:2A-29.1

LEGISLATIVE HISTORY CHECKLIST

(Trustees Acts--Approval by holder of general power of appointments--binding upon beneficiaries)

(W)SA 3A:2A-29.1

LAWS OF 1979

CHAPTER 219

Bill No. A7

Sponsor(s) Burstein and Bate

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes No

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Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

Noted on sponsor's statement:

Uniform Probate Code §1-108 (attached)

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219 10-11-79
ASSEMBLY, No. 7

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning trusts; the effect to be given consent by holders of general powers of appointment upon beneficiaries, and supplementing Title 3A of the New Jersey Statutes.

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

1 1. For the purpose of granting consent or approval with regard
2 to the acts or accounts of a fiduciary or trustee, including relief
3 from liability or penalty for failure to post bond, or to perform
4 other duties, and for purposes of consenting to modification or
5 termination of a trust or to deviation from its terms, the sole
6 holder or all co holders of a presently exercisable general power
7 of appointment, including one in the form of a power of amend-
8 ment or revocation, are deemed to act for beneficiaries to the extent
9 that the interests of the beneficiaries as objects, takers in default,
10 or otherwise are subject to the power.

1 2. This act shall take effect immediately.

STATEMENT

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency, and is one of a series of bills adapted from the provisions of the Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association.

It has to do with situations where property is left to "A" in trust for "B" for life with power in "B" to appoint the person who shall be the beneficiary of the trust on "B's" death.

This bill will codify the existing case law that approval of a trustee's acts by the holder of a general power of appointment is binding upon beneficiaries.

It has been held that a life beneficiary, having a general power of appointment, has an estate tantamount to a fee, and that his consent precludes his appointees from objecting to actions of the trustee consented to by the holder of the general power. The consent by the holder of a general power of appointment also precludes those persons taking in default of an appointment from objecting where consent has been given by the holder of the power.

A general power of appointment is to be distinguished from a special power of appointment. Under a general power of appointment, the holder thereof has an unrestricted power to appoint while those holding special powers of appointment are limited as to whom they may appoint by the instrument creating the power.

New Probate Code—uniform or uninformal? Edward M. Arundel. 42 *Hennepin Lawyer* 12 (July, August 1974).

New York law of intestate succession compared with Uniform Probate Code: Julian R. Kossow. 4 *Fordham Urban L.J.* 233 (1976).

Non-probate transfers under the Uniform Probate Code. M. Greenfield, Jr. and W. C. Vandivort. 29 *J. of Mo.Bar* (1973).

Oklahoma law and this Code: A comparison. Orley R. Lilly, Jr. 9 *Tulsa L.J.* 1 (1973).

Policies and prospects of the Code. James N. Zartman. 113 *Bar J.* 428 (1973).

Probate and administration under Uniform Probate Code. Stephen N. Limbaugh. 29 *J. of Mo.Bar* 430 (1973-74).

Probate in North Dakota. Kirk Smith and Gary R. Thune. 50 *N.D.L.Rev.* 593 (1974).

Probate law and the uniform code. J. R. Kossow. 61 *Geo.L.J.* 1357 (July 1973).

Probate reform for South Carolina: An introduction to Uniform Probate Code. Jerome Braun. 29 *S.C.L.Rev.* (1978).

Protection of surviving spouse. Alfred C. Emery. 1976 *Utah L.Rev.* 771 (1976).

Recommendation for adoption of Code in Rhode Island. 24 *Rhode Island B.J.* 7 (1975).

Uniform Probate Code: A bold and progressive reform. J. Pennington Straus. 49 *Pa. B. A. Q.* 71 (1969).

Uniform Probate Code: A modern approach for Pennsylvania. George J.

Hauptfuhrer, Jr. 41 *Pa. B. A. Q.* 79 (1969).

Uniform Probate Code: A possible answer to probate avoidance. Richard V. Wellman. 42 *S.D.L.Rev.* 4 (1973).

Uniform Probate Code: An opportunity for Mississippi lawyers to better serve the weak and grieving. Donald L. Robertson. 45 *Miss.L.J.* 1 (1974).

Uniform Probate Code: An overview. Richard V. Wellman. 21 *Rhode Island B.J.* 4 (1973).

Uniform Probate Code—does it really work? Terry L. Crapo. 1976 *Brigham Young U.L.Rev.* 395.

Uniform Probate Code: Personal view. Joseph J. Strasburger. 64 *Ill.Bar J.* 586 (1976).

Uniform Probate Code for practicing lawyers. Harrison Durand. 42 *S.D. Bar J.* 6 (1973).

Veterans' Administration and the Uniform Probate Code. William F. Fratcher. 24 *Case W.Res.L.Rev.* 261 (1973).

Virginia law compared to Uniform Code. J. R. Johnson. 8 *Richmond L. Rev.* 41 (1973).

West Virginia and Uniform Probate Code: An overview. E. M. Curry, Jr. 76 *W.Va.L.Rev.* 111 (1974); 77 *W.Va.L. Rev.* 203 (1975).

Will Uniform Probate Code provide solutions for Maine probate reform? Charles N. Nawfel. 7 *Maine Bar Bull.* 1 (March 1973).

Wyoming's law of decedents' estates, guardianship and trusts: Comparison with the Uniform Probate Code. Lawrence H. Averill Jr. 9 *Land & Water L. Rev.* 567 (1974).

Section 1-102. [Purposes; Rule of Construction]

Notes of Decisions

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1. Generally

Legislative purpose of adoption of bulk of Uniform Probate Code was to provide for substantial revision of the State's probate laws. *Gonzalez v. Superior Court*, in and for Pima County, 1977, 570 P.2d 1077, 117 Ariz. 64.

Conservation of time, energy and money and avoidance of a multiplicity of actions is the hallmark of the probate code. *Gonzalez v. Superior Court*, In and For Pima County, Superior Court, 1976, 550 P.2d 1093, 27 Ariz.App. 51, reversed on other grounds 570 P.2d 1077, 117 Ariz. 64.

2. Intention of testator

If law is such as to permit interpretation and application of law resulting in accomplishing intent of testator, it is duty of courts to so hold. *In re Griffiths' Estate*, Fla.App.1976, 330 So.2d 797.

Section 1-106. [Effect of Fraud and Evasion]

Comment

In the eleventh line of the first paragraph of the Comment on page 304 of the main volume, the word "forgery" should read "a forgery".

Section 1-108. [Acts by Holder of General Power]

Comment

The second paragraph of the Comment on page 306 of the main volume should read: "This section permits the settlor of a revocable trust to excuse the trustee from registering the trust so long as the power of revocation continues."

"This section permits the settlor of a revocable trust to excuse the trustee

Section 1-107. [Evidence as to Death or Status.]

In proceedings under this Code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

COMMENT

Subsection (3) is inconsistent with Section 1 of Uniform Absence as Evidence of Death and Absentees' Property Act (1938). absent person may be commenced as provided in 5-401. The preliminary paragraph is designed to accommodate the Uniform Simultaneous Death Act, if it is a part of a state's law.

Proceedings to secure protection of property interests of an

Library References

Death ⇔2(1-3), 3, 4.

C.J.S. Death § 6 et seq.

Section 1-108. [Acts by Holder of General Power.]

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

COMMENT

The status of a holder of a general power in estate litigation is dealt with by section 1-403.

This section permits the settlor of a revocable trust to prevent the trustee from registering the trust so long as the power of revocation continues.

"General power," as used in this section, is intended to refer to the common law concept, rather than to tax or other statutory meanings. A general power, as used herein, is one which enables the power holder to draw absolute ownership to himself.

Library References

Powers ⇨41.

C.J.S. Powers §§ 30, 50.