

3A:2A-6 et al

LEGISLATIVE HISTORY CHECKLIST

WJSA 3A:2A-6 et al. (Decedents estates--various amendments)

LAWS OF 1979 CHAPTER 221

Bill No. A1678

Sponsor(s) Burstein

Date Introduced Oct. 5, 1978

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks.

Date of Passage: Assembly Nov. 20, 1978

Senate May 21, 197

Date of approval Oct. 11, 1979

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly ~~xxx~~ No

Senate Yes ~~xxx~~

Fiscal Note ~~xxx~~ No

Veto message ~~xxx~~ No

Message on signing ~~xxx~~ No

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

Cited in sponsor's and Senate committee statement:

TB153 Joint Editorial Board for the Uniform Probate Code.
A493 Uniform probate code: official 1977 text
1977 with comments. 5th ed. St. Paul, Minn., West, 1977.
(sections 2-502, 3-709, and 3-908--attached)

2/1/78

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ASSEMBLY, No. 1678

STATE OF NEW JERSEY

INTRODUCED OCTOBER 5, 1978

By Assemblyman BURSTEIN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning decedents' estates and amending and supplementing P. L. 1977, c. 412.

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

1 1. Section 6 of P. L. 1977, c. 412 (C. 3A:2A-6) is amended to
2 read as follows:

3 6. [a. An attested will may at the time of its execution be made
4 self-proved, by the acknowledgment thereof by the testator and
5 the affidavits of the witnesses, each made before any officer autho-
6 rized pursuant to R. S. 46:14-6, 46:14-7 or 46:14-8 to take acknowl-
7 edgments and proofs of instruments entitled to be recorded under
8 the laws of this State, and evidenced by the officer's certificate,
9 under official seal, attached or annexed to the will in form and
10 content substantially as follows:

11 I,, the testator, sign my name
12 to this instrument this day of, 19.....,
13 and being first duly sworn, do hereby declare to the undersigned
14 authority that I sign and execute this instrument as my last will
15 and that I sign it willingly (or willingly direct another to sign for
16 me), that I execute it as my free and voluntary act for the purposes
17 therein expressed, and that I am 18 years of age or older, of sound
18 mind, and under no constraint or undue influence.

19
Testator

20,,
21 the witnesses, being first duly sworn, do each hereby declare to
22 the undersigned authority that the testator signs and executes
23 this instrument as his last will and that he signs it willingly (or
24 willingly directs another to sign for him), and that each of us
25 states that in the presence and hearing of the testator, he hereby
26 signs this will as witness to the testator's signing, and that to the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

27 best of his knowledge the testator is 18 years of age or older, of
28 sound mind, and under no constraint or undue influence.

29
Witness

30
Witness

31 The State of

32 County of

33 Subscribed, sworn to and acknowledged before me by
34, the testator, and subscribed and
35 sworn to before me by
36 and, witnesses, this
37 day of, 19.....

38 (SEAL) (Signed)

39
(Official capacity of officer)

40 (If a notary public or other officer whose commission has an
41 expiration date, state the date commission expires.)

42 b. An attested will may at any time subsequent to its execution
43 be made self-proved by the acknowledgment thereof by the testator
44 and the affidavits of the witnesses, each made before any officer
45 authorized pursuant to R. S. 46:14-6, 46:14-7 or 46:14-8 to take
46 acknowledgments and proofs of instruments entitled to be recorded
47 under the laws of this State and evidenced by the officer's certificate,
48 under official seal, attached or annexed to the will in form and
49 content substantially as follows:

50,
51 and, the testator and the witnesses,
52 respectively, whose names are signed to the attached (or foregoing)
53 instrument, being first duly sworn, do hereby declare to the under-
54 signed authority that the testator signed and executed the instru-
55 ment as his last will and that he had signed willingly (or directed
56 another to sign for him), and that he executed it as his free and
57 voluntary act for the purposes therein expressed; and that each
58 witness states that he signed the will as witness in the presence
59 and hearing of the testator, and that to the best of his knowledge
60 the testator was at that time 18 or more years of age, of sound mind
61 and under no constraint or undue influence.

62
Testator

63
Witness

64
Witness

65 Subscribed, sworn to and acknowledged before me by
 66 , the testator, and subscribed and
 67 sworn to before me by and
 68 witnesses, this day of , 19.....
 69 (SEAL) (Signed)
 70
 (Official capacity of officer)

71 (If a notary public or other officer whose commission has an
 72 expiration date, state the date commission expires.)]

73 *a. A will executed in compliance with section 4 of this act may*
 74 *be simultaneously executed, attested, and made self-proved, by*
 75 *acknowledgment thereof by the testator and affidavits of the*
 76 *witnesses, each made before an officer authorized pursuant to*
 77 *R. S. 46:14-6, R. S. 46:14-7 or R. S. 46:14-8 to take acknowledg-*
 78 *ments and proofs of instruments entitled to be recorded under the*
 79 *laws of this State, in substantially the following form:*

80 *I,, the testator, sign my name*
 81 *to this instrument this day of,*
 82 *19, and being duly sworn, do hereby declare to the undersigned*
 83 *authority that I sign and execute this instrument as my last will*
 84 *and that I sign it willingly (or willingly direct another to sign for*
 85 *me), that I execute it as my free and voluntary act for the purposes*
 86 *therein expressed, and that I am eighteen years of age or older, of*
 87 *sound mind, and under no constraint or undue influence.*
 88

Testator

89 *We,, the witnesses, sign*
 90 *our names to this instrument, and, being duly sworn, do hereby*
 91 *declare to the undersigned authority that the testator signs and*
 92 *executes this instrument as his last will and that he signs it willingly*
 93 *(or willingly directs another to sign for him), and that each of us,*
 94 *in the presence and hearing of the testator, hereby signs this will*
 95 *as witness to the testator's signing, and that to the best of our*
 96 *knowledge the testator is eighteen years of age or older, of sound*
 97 *mind, and under no constraint or undue influence.*
 98

Witness

99
Witness

100 *The State of*
 101 *County of*

102 Subscribed, sworn to and acknowledged before me by
103 the testator and subscribed and sworn to before me by
104 and , witnesses, this day
105 of

106 (Signed)
107
(Official capacity of officer)

108 b. A will executed in compliance with section 4 of this act may
109 at any time subsequent to its execution be made self-proved by the
110 acknowledgment thereof by the testator and the affidavits of the
111 witnesses, each made before an officer authorized pursuant to
112 R. S. 46:14-6, R. S. 46:14-7 or R. S. 46:14-8 to take acknowledg-
113 ments and proofs of instruments entitled to be recorded under the
114 laws of this State, attached or annexed to the will in substantially
115 the following form:

116 The State of
117 County of

118 We,, and,
119 the testator and the witnesses, respectively, whose names are signed
120 to the attached or foregoing instrument, being duly sworn, do
121 hereby declare to the undersigned authority that the testator signed
122 and executed the instrument as his last will and that he had signed
123 willingly (or willingly directed another to sign for him), and that
124 he executed it as his free and voluntary act for the purposes therein
125 expressed, and that each of the witnesses, in the presence and
126 hearing of the testator, signed the will as witness and that to the
127 best of his knowledge the testator was at that time eighteen years
128 of age or older, of sound mind and under no constraint or undue
129 influence.

130
Testator
131
Witness
132
Witness

133 Subscribed, sworn to and acknowledged before me by
134 the testator, and subscribed and sworn to before me by
135 and , witnesses, this day
136 of

137 (Signed)
138
(Official capacity of officer)

1 2. Section 44 of P. L. 1977, c. 412 (C. 3A:2A-41) is amended to
2 read as follows:

3 44. If, for purposes of intestate succession, a relationship of
4 parent and child must be established to determine succession by,
5 through, or from a person.

6 a. **【An adopted person is the child of an adopting parent and
7 not of the natural parents except that adoption of a person by the
8 spouse of a natural parent shall have no effect on the relationship
9 between the person and that natural parent; provided, however,
10 that all rights of inheritance between an adopted person and his
11 natural parents existing by virtue of any law concerning the
12 adoption of persons in effect at the time any judgment of adoption
13 has been or shall be entered shall not be changed by virtue of this
14 section. The provisions of this subsection shall not have the effect
15 of changing any rights of inheritance granted or restrictions
16 thereon imposed under N. J. S. 2A:22-3.】**

17 *The relationships and rights of an adopted minor child shall be
18 those as provided by section 14 of P. L. 1977, c. 367 (C. 9:3-50),
19 and the relationships and rights of an adopted adult shall be as
20 provided in N. J. S. 2A:22-3.*

21 b. In cases not covered by a., a person born out of wedlock is a
22 child of the mother. That person is also a child of the father, if:

23 (1) The natural parents, before or after the birth of the child,
24 participated in a ceremonial marriage or shall have consummated
25 a common-law marriage where such marriage is recognized as
26 valid in the manner authorized by the law of the place where such
27 marriage took place, even though the attempted marriage is void;
28 or

29 (2) The paternity is established by an adjudication before the
30 death of the father or is established thereafter by clear and con-
31 vincing proof, except that the paternity established under this
32 subparagraph is ineffective to qualify the father or his kindred to
33 inherit from or through the child unless the father has openly
34 treated the child as his, and has not refused to support the child.

1 3. Section 47 of P. L. 1977, c. 412 (C. 3A:2A-44) is amended to
2 read as follows:

3 47. a. If a testator fails to provide by will for his surviving
4 spouse who married the testator after the execution of the will, the
5 omitted spouse shall receive the same share of the estate he would
6 have received if the decedent left no will unless it appears from the
7 will that the omission was intentional or the testator provided for
8 the spouse by transfer outside the will and the intent that the

9 transfer be in lieu of a testamentary provision is shown by state-
10 ments of the testator or from the amount of the transfer or other
11 evidence.

12 b. The share of any such spouse shall be taken from devisees
13 under the will ratably in proportion to their respective interests
14 therein.

15 c. *This section shall apply only to wills executed on or after*
16 *September 1, 1978.*

1 4. Section 54 of P. L. 1977, c. 412 (C. 3A:2A-51) is amended to
2 read as follows:

3 54. a. A personal representative is under a duty to settle and
4 distribute the estate of the decedent in accordance with the terms
5 of any probated and effective will and applicable law, and as
6 expeditiously and efficiently as is consistent with the best interests
7 of the estate. He shall use the authority conferred upon him by
8 law, the terms of the will, if any, and any order in proceedings to
9 which he is a party for the best interests of successors to the estate.

10 b. A personal representative shall not be surcharged for acts of
11 administration or distribution **["because of lack of authority"]** if the
12 conduct in question was authorized at the time. Subject to other
13 obligations of administration, a probated will is authority to admin-
14 ister and distribute the estate according to its terms. An order of
15 appointment of a personal representative is authority to distribute
16 apparently intestate assets to the heirs of the decedent if, at the
17 time of distribution, the personal representative is not aware of a
18 pending proceeding to probate a will or to determine heirs, a
19 proceeding to vacate an order entered in an earlier proceeding to
20 probate a will, a formal proceeding questioning his appointment or
21 fitness to continue. Nothing in this section affects the duty of the
22 personal representative to administer and distribute the estate in
23 accordance with the rights of claimants and others interested in
24 **["this"]** *the* estate.

25 c. Except as to proceedings which do not survive the death of
26-27 the decedent, a personal representative of a decedent domiciled in
28 this State at his death has the same standing to sue and be sued in
29 the courts of this State and the courts of any other jurisdiction as
30 his decedent had immediately prior to death.

31 d. Except as otherwise provided by the terms of **["the"]** *a*
32 *decedent's will*, the personal representative shall observe the
33 standards in dealing with the estate assets that would be observed
34 by a prudent man dealing with the property of another, and if the
35 personal representative has special skills or is named personal

36 representative on the basis of representations of special skills or
37 expertise, he is under a duty to use those skills.

1 5. Section 57 of P. L. 1977, c. 412 (C. 3A:2A-54) is amended to
2 read as follows:

3 57. Except as otherwise provided by a decedent's will, every per-
4 sonal representative has a right to, and shall take possession or
5 control of, the decedent's **[personal]** property, except that any
6 *real property* or tangible personal property may be left with or
7 surrendered to the person presumptively entitled thereto unless
8 or until, in the judgment of the personal representative, possession
9 of the property by him will be necessary for purposes of adminis-
10 tration. The request by a personal representative for delivery of
11 any **[personal]** property possessed by an heir or devisee is con-
12 clusive evidence, in any action against the heir or devisee for
13 possession thereof, that the possession of the property by the
14 personal representative is necessary for purposes of administra-
15 tion. The personal representative shall *pay taxes on, and* take all
16 steps reasonably necessary for the management, protection and
17 preservation of, the estate in his possession. He may maintain
18 an action to recover possession of property or to determine the
19 title thereto.

1 6. Section 74 of P. L. 1977, c. 412 (C. 3A:2A-71) is amended to
2 read as follows:

3 74. A person who in good faith either assists a fiduciary or
4 deals with him for value is protected as if the fiduciary properly
5 exercised his power. The fact that a person knowingly deals with
6 a fiduciary does not alone require the person to inquire into the
7 existence of a power or the propriety of its exercise. **[No]** *Except*
8 *as to real property specifically devised, no* provision in any will
9 or order of court purporting to limit the power of a fiduciary is
10 effective except as to persons with actual knowledge thereof. A
11 person who in good faith pays, transfers or delivers to a fiduciary
12 money or other property is not responsible for the proper applica-
13 tion thereof by the fiduciary; and any right or title acquired from
14 the fiduciary in consideration of such payment, transfer or delivery
15 is not invalid in consequence of a misapplication by the fiduciary.
16 The protection here expressed extends to instances in which some
17 procedural irregularity or jurisdictional defect occurred in pro-
18 ceedings leading to the issuance of letters, including a case in which
19 the alleged decedent is found to be alive. The protection here
20 expressed is in addition to that provided by comparable provisions
21 of the laws relating to commercial transactions and laws simplify-
22 ing transfers of securities by fiduciaries.

1 7. Section 76 of P. L. 1977, c. 412 (C. 3A:2A-73) is amended to
2 read as follows:

3 76. a. Except as provided in subsection b. **and except as may be**
4 **otherwise provided by law**, shares of distributees abate, without
5 any preference or priority as between real and personal property,
6 in the following order: (1) property passing by intestacy; (2)
7 residuary devisees; (3) general devisees; (4) specific devisees. For
8 purposes of abatement, a general devise charged on any specific
9 property or fund is a specific devise to the extent of the value of the
10 property on which it is charged, and upon the failure or in-
11 sufficiency of the property on which it is charged, a general devise
12 to the extent of the failure or insufficiency. Abatement within each
13 classification is in proportion to the amounts of property each of
14 the beneficiaries would have received if full distribution of the
15 property had been made in accordance with the terms of the will.

16 b. If the will expresses an order of abatement, or if the testa-
17 mentary plan or the express or implied purpose of the devise would
18 be defeated by the order of abatement stated in subsection a., the
19 shares of the distributees abate as may be found necessary to give
20 effect to the intention of the testator.

1 8. Section 79 of P. L. 1977, c. 412 (C. 3A:2A-76) is amended to
2 read as follows:

3 79. a. **Unless a contrary intention is indicated by the will, the**
4 *The* distributable assets of **a decedent's estate shall** *an intestate's*
5 *estate or testator's estate shall, unless a contrary intention is*
6 *indicated by the will*, be distributed in kind to the extent reasonably
7 possible through application of the following provisions:

8 (1) A specific devisee is entitled to distribution of the thing
9 devised to him.

10 (2) Any devise payable in money *or an intestate share* may be
11 satisfied by value in kind provided:

12 (a) The person entitled to the payment has not demanded
13 payment in cash;

14 (b) The property distributed in kind is valued at fair market
15 value as of the date of its distribution; and

16 (c) No residuary devisee has requested that the asset in
17 question remain a part of the residue of the estate.

18 (3) For the purpose of valuation under paragraph (2) securities
19 regularly traded on recognized exchanges, if distributed in kind,
20 are valued at the price for the last sale of like securities traded on
21 the business day prior to distribution, or if there was no sale on
22 that day, at the median between amounts bid and offered at the
23 close of that day. Assets consisting of sums owed the decedent or

24 the estate by solvent debtors as to which there is no known dispute
 25 or defense are valued at the sum due with accrued interest or dis-
 26 counted to the date of distribution. For assets which do not have
 27 readily ascertainable values, a valuation as of a date not more than
 28 30 days prior to the date of distribution, if otherwise reasonable,
 29 controls. For purposes of facilitating distribution, the personal
 30 representative may ascertain the value of the assets as of the time
 31 of the proposed distribution in any reasonable way, including the
 32 employment of qualified appraisers, even if the assets may have
 33 been previously appraised.

34 (4) If the personal representative of either a testate or an
 35 intestate estate has, in the exercise of good faith and reasonable
 36 discretion, continued to hold in kind the distributable assets of an
 37 intestate estate or of the residue of a testate estate, the assets
 38 shall be distributed in kind if there is no objection to the proposed
 39 distribution and it is practicable to distribute undivided interests,
 40 otherwise those assets shall be converted into cash for distribution.

41 b. After the probable charges against the estate are known, the
 42 personal representative may mail or deliver a proposal for distri-
 43 bution to all persons who have a right to object to the proposed
 44 distribution. Such proposal shall notify all persons who have a
 45 right to object to the proposal of their right to object and that their
 46 objection must be in writing and received by the personal repre-
 47 sentative within 30 days after the mailing or delivery of the
 48 proposal. The right of any distributee to object to the proposed
 49 distribution on the basis of the kind or value of asset he is to
 50 receive, if not waived earlier in writing, terminates if he fails to
 51 object in writing received by the personal representative within
 52 30 days after mailing or delivery of the proposal.

1 9. Section 81 of P. L. 1977, c. 412 (C. 3A:2A-78) is amended to
 2 read as follows:

3 81. Proof that a distributee has received an instrument or deed
 4 of distribution of assets in kind or payment in distribution, from
 5 a personal representative, is conclusive evidence that the dis-
 6 tributee has succeeded to the interest of the estate in the distributed
 7 assets, as against all persons interested in the estate~~],~~ *except that*
 8 *the personal representative may recover the assets or their value*
 9 *if the distribution was improper.*

1 10. Section 82 of P. L. 1977, c. 412 (C. 3A:2A-79) is amended to
 2 read as follows:

3 82. ~~]~~ **]** If property distributed in kind or a security interest therein
 4 is acquired by a purchaser, or lender, for value from a distributee

5 who has received an instrument or deed of distribution from the
6 personal representative, the purchaser or lender takes title free
7 of any claims of the estate and incurs no personal liability to the
8 estate, whether or not the distribution was proper. To be protected
9 under this provision, a purchaser or lender need not inquire
10 whether a personal representative acted properly in making the
11 distribution in kind.】

12 *If property distributed in kind or a security interest therein is*
13 *acquired for value by a purchaser from or lender to a distributee*
14 *who has received an instrument or deed of distribution from the*
15 *personal representative, or is so acquired by a purchaser from or*
16 *lender to a transferee from such distributee, the purchaser or*
17 *lender takes title free of rights of any interested person in the*
18 *estate and incurs no personal liability to the estate, or to any inter-*
19 *ested person, whether or not the distribution was proper or sup-*
20 *ported by court order or the authority of the personal representa-*
21 *tive was terminated before execution of the instrument or deed.*
22 *This section protects a purchaser from or lender to a distributee*
23 *who, as personal representative, has executed a deed of distribu-*
24 *tion to himself, as well as a purchaser from or lender to any other*
25 *distributee or his transferee. To be protected under this provi-*
26 *sion, a purchaser or lender need not inquire whether a personal*
27 *representative acted properly in making the distribution in kind,*
28 *even if the personal representative and the distributee are the same*
29 *person, or whether the authority of the personal representative*
30 *had terminated before the distribution. Any recorded instrument*
31 *described in this section on which a State documentary fee is noted*
32 *pursuant to section 3 of P. L. 1968, c. 49 (C. 46:15-7) shall be prima*
33 *facie evidence that such transfer was made for value.*

1 11. Section 84 of P. L. 1977, c. 412 (C. 3A:2A-81) is amended to
2 read as follows:

3 84. Subject to the rights [or] of creditors and taxing authorities,
4 competent successors may agree among themselves to alter the
5 interests, shares, or amounts to which they are entitled under the
6 will of the decedent, or under the laws of intestacy, in any way that
7 they provide in a written contract executed by all who are affected
8 by its provisions. The personal representative shall abide by the
9 terms of the agreement subject to his obligation to administer the
10 estate for the benefit of creditors, to pay all taxes and costs of
11 administration, and to carry out the responsibilities of his office
12 for the benefit of any successors of the decedent who are not
13 parties. Personal representatives of decedent's estates are not
14 required to see to the performance of trusts if the trustee thereof

15 is another person who is willing to accept the trust. Accordingly,
 16 trustees of a testamentary trust are successors for the purposes of
 17 this section. Nothing herein relieves trustees of any duties owed
 18 to beneficiaries of trusts.

1 12. (New section) Except as otherwise provided in a decedent's
 2 will, the property of a decedent's estate shall abate for the purposes
 3 of paying debts and claims, without any preference or priority
 4 as between real and personal property, in the following order:

- 5 a. Property passing by intestacy;
- 6 b. Residuary devises;
- 7 c. General devises, and
- 8 d. Specific devises.

1 13. (New section) The provisions of P. L. 1977, c. 412, shall
 2 apply to any wills of decedents dying on or after September 1, 1978.

1 14. (New section) The provisions of P. L. 1977, c. 412, shall
 2 govern the rights, duties and powers of personal representatives
 3 as well as all successors relating to the administration of all estates
 4 except that the validity and propriety of all acts done by a personal
 5 representative and all rights established in successors prior to
 6 September 1, 1978, shall be determined under the law as then in
 7 effect.

1 *15. (New section) *An acknowledgment taken on or after Sep-*
 2 *tember 1, 1978, but before the effective date of this act pursuant to*
 3 *R. S. 46:14-6, 46:14-7 or 46:14-8 to make a will self-proved under*
 4 *section 6 of P. L. 1977, c. 412 (C. 3A:2A-6) is a valid acknowledge-*
 5 *ment, notwithstanding that the certificate of acknowledgment does*
 6 *not have the officer's official seal affixed thereto.**

1 ***[15.]*** *16.* This act shall take effect immediately.

15 is another person who is willing to accept the trust. Accordingly,
 16 trustees of a testamentary trust are successors for the purposes of
 17 this section. Nothing herein relieves trustees of any duties owed
 18 to beneficiaries of trusts.

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1 14. (New section) The provisions of P. L. 1977, c. 412, shall
 2 govern the rights, duties and powers of personal representatives
 3 as well as all successors relating to the administration of all estates
 4 except that the validity and propriety of all acts done by a personal
 5 representative and all rights established in successors prior to
 6 September 1, 1978, shall be determined under the law as then in
 7 effect.

1 15. This act shall take effect immediately.

STATEMENT

This bill has been drafted by the Division of Law Revision of the Law Revision and Legislative Services Agency to amend and supplement P. L. 1977, c. 412, an act relating to decedents' estates.

Section 6 of the act is amended to expressly provide that only wills executed in accordance with section 4 of the act can be made "self-proved." The requirement of affixing an official seal by the officer taking the proof is also deleted. The remaining amendatory language of the section will conform the section with the 1977 official text of the Uniform Probate Code (Section 2-502) as adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code.

In order to avoid any conflict between subsection a of section 44 of the act and the provisions of section 14 of P. L. 1977, c. 367 (C. 9:3-50) and N. J. S. 2A:22-3, the subsection is amended to provide that the relationships and rights of adopted minors and adopted adults with respect to intestate succession are to be governed by those sections.

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Section 47 of the act provides that if a testator fails to provide in his will for a spouse who married the testator after the execution of the will, the spouse will be entitled to an intestate share in the decedent's estate. This was a change from prior law. In order to protect wills executed prior to September 1, 1978, this section has been amended to provide that it shall apply only to wills executed on or after that date.

Section 54b of the act is amended to delete superfluous and unnecessary language and make other minor language changes.

Section 57 of the act is amended to conform the section with the 1977 official text of the Uniform Probate Code (Section 3-709) adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code.

Section 74 of the act is amended to provide that the protection afforded under the section to all persons except those with actual knowledge shall not apply to real property specifically devised.

Section 76 of the act is amended to delete superfluous and unnecessary language.

The language of subsection a of section 79 of the act is clarified to expressly provide that the distributable assets of both an intestate's estate and a testator's estate be distributed in kind in the absence of contrary intention expressed by a will.

The amendatory language to section 81 of the act has been added to conform the section with the 1977 official text of the Uniform Probate Code (Section 3-908) as adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code to permit a personal representative to recover assets improperly distributed or their value.

Section 84 of the act is amended to correct a typographical error.

Section 12 of the bill supplements the act to provide for the manner in which the property of a decedent's estate shall abate for the purposes of paying debts and claims unless a contrary intention is expressed in a decedent's will. Under existing law, a decedent's personal assets are the primary source for payment of debts and claims and must be exhausted before resort may be made to real property. Under this section assets of a decedent's estate shall abate for the purposes of paying debts and claims, without any preference or priority as between real and personal property in the order set forth therein. This is in keeping with other provisions of the act which abolish the distinction between

real and personal property and also in keeping with section 76 of the act providing for the abatement of distributees' shares.

Section 13 of the bill supplements the act to provide that it shall apply to any wills of decedents dying on or after September 1, 1978.

Section 14 of the bill supplements the act to provide that the act shall apply to all personal representatives and successors except that the validity and propriety of all acts done by personal representatives and rights of successors acquired prior to September 1, 1978, shall be determined under the laws then in effect.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 16'78

STATE OF NEW JERSEY

DATED: MAY 2, 1979

This bill has been drafted by the Division of Law Revision of the Law Revision and Legislative Services Agency to amend and supplement P. L. 1977, c. 412, an act relating to decedents' estates.

Section 6 of the act is amended to expressly provide that only wills executed in accordance with section 4 of the act can be made "self-proved." The requirement of affixing an official seal by the officer taking the proof is also deleted. The remaining amendatory language of the section will conform the section with the 1977 official text of the Uniform Probate Code (Section 2-502) as adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code.

In order to avoid any conflict between subsection a of section 44 of the act and the provisions of section 14 of P. L. 1977, c. 367 (C. 9:3-50) and N. J. S. 2A:22-3, the subsection is amended to provide that the relationships and rights of adopted minors and adopted adults with respect to intestate succession are to be governed by those sections.

Section 47 of the act provides that if a testator fails to provide in his will for a spouse who married the testator after the execution of the will, the spouse will be entitled to an intestate share in the decedent's estate. This was a change from prior law. In order to protect wills executed prior to September 1, 1978, this section has been amended to provide that it shall apply only to wills executed on or after that date.

Section 54b of the act is amended to delete superfluous and unnecessary language and make other minor language changes.

Section 57 of the act is amended to conform the section with the 1977 official text of the Uniform Probate Code (Section 3-709) adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code.

Section 74 of the act is amended to provide that the protection afforded under the section to all persons except those with actual knowledge shall not apply to real property specifically devised.

Section 76 of the act is amended to delete superfluous and unnecessary language.

The language of subsection a of section 79 of the act is clarified to expressly provide that the distributable assets of both an intestate's estate and a testator's estate be distributed in kind in the absence of contrary intention expressed by a will.

The amendatory language to section 81 of the act has been added to conform the section with the 1977 official text of the Uniform Probate Code (Section 3-908) as adopted by the National Conference of Commissioners on Uniform State Laws through its Joint Editorial Board for the Uniform Probate Code to permit a personal representative to recover assets improperly distributed or their value.

Section 84 of the act is amended to correct a typographical error.

Section 12 of the bill supplements the act to provide for the manner in which the property of a decedent's estate shall abate for the purposes of paying debts and claims unless a contrary intention is expressed in a decedent's will. Under existing law, a decedent's personal assets are the primary source for payment of debts and claims and must be exhausted before resort may be made to real property. Under this section assets of a decedent's estate shall abate for the purposes of paying debts and claims, without any preference or priority as between real and personal property in the order set forth therein. This is in keeping with other provisions of the act which abolish the distinction between real and personal property and also in keeping with section 76 of the act providing for the abatement of distributees' shares.

Section 13 of the bill supplements the act to provide that it shall apply to any wills of decedents dying on or after September 1, 1978.

Section 14 of the bill supplements the act to provide that the act shall apply to all personal representatives and successors except that the validity and propriety of all acts done by personal representatives and rights of successors acquired prior to September 1, 1978, shall be determined under the laws then in effect.

By committee amendment, a new section 15 was added providing that any will executed between September 1, 1978 and the effective date of this bill shall be deemed valid and self-proved notwithstanding that the certificate of acknowledgement did not have the officer's official seal affixed.

PART 5

WILLS

GENERAL COMMENT

Part 5 of Article II deals with capacity and formalities for execution and revocation of wills. If the will is to be restored to its role as the major instrument for disposition of wealth at death, its execution must be kept simple. The basic intent of these sections is to validate the will whenever possible. To this end, the age for making wills is lowered to eighteen, formalities for a written and attested will are kept to a min-

imum, holographic wills written and signed by the testator are authorized, choice of law as to validity of execution is broadened, and revocation by operation of law is limited to divorce or annulment. However, the statute also provides for a more formal method of execution with acknowledgment before a public officer (the self-proved will).

Section 2-501. [Who May Make a Will.]

Any person 18 or more years of age who is of sound mind may make a will.

COMMENT

This section states a uniform minimum age of eighteen for capacity to execute a will. "Mi-

nor" is defined in Section 1-201, and may involve a different age than that prescribed here.

Section 2-502. [Execution.]

Except as provided for holographic wills, writings within Section 2-513, and wills within Section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least 2 persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

COMMENT

The formalities for execution of a witnessed will have been reduced to a minimum. Execution under this section normally would be accomplished by signature of the testator and of two witnesses; each of the persons signing as

witnesses must "witness" any of the following: the signing of the will by the testator, an acknowledgment by the testator that the signature is his, or an acknowledgment by the testator that the document is his will. Signing by

the testator may be by mark under general rules relating to what constitutes a signature; or the will may be signed on behalf of the testator by another person signing the testator's name at his direction and in his presence. There is no requirement that the testator publish the document as his will, or that he request the witnesses to sign, or that the witnesses sign in the presence of the testator or of each other. The testator may sign the will outside the presence of the witnesses if he later acknowledges to the witnesses that the signature is his or

that the document is his will, and they sign as witnesses. There is no requirement that the testator's signature be at the end of the will; thus, if he writes his name in the body of the will and intends it to be his signature, this would satisfy the statute. The intent is to validate wills which meet the minimal formalities of the statute.

A will which does not meet these requirements may be valid under Section 2-503 as a holograph.

Section 2-503. [Holographic Will.]

A will which does not comply with Section 2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

COMMENT

This section enables a testator to write his own will in his handwriting. There need be no witnesses. The only requirement is that the signature and the material provisions of the will be in the testator's handwriting. By requiring only the "material provisions" to be in the testator's handwriting (rather than requiring, as some existing statutes do, that the will be "entirely" in the testator's handwriting) a holo-

graph may be valid even though immaterial parts such as date or introductory wording be printed or stamped. A valid holograph might even be executed on some printed will forms if the printed portion could be eliminated and the handwritten portion could evidence the testator's will. For persons unable to obtain legal assistance, the holographic will may be adequate.

Section 2-504. [Self-proved Will.]

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where

Section 3-708. [Duty of Personal Representative; Supplementary Inventory.]

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the Court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

Section 3-709. [Duty of Personal Representative; Possession of Estate.]

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

COMMENT

Section 3-101 provides for the devolution of title on death. Section 3-711 defines the status of the personal representative with reference to "title" and "power" in a way that should make it unnecessary to discuss the "title" to decedent's assets which his personal representative acquires. This section deals with the per-

sonal representative's duty and right to possess assets. It proceeds from the assumption that it is desirable whenever possible to avoid disruption of possession of the decedent's assets by his devisees or heirs. But, if the personal representative decides that possession of an asset is necessary or desirable for purposes of admin-

istration, his judgment is made conclusive in any action for possession that he may need to institute against an heir or devisee. It may be possible for an heir or devisee to question the judgment of the personal representative in later action for surcharge for breach of fiduciary duty, but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate.

This Code follows the Model Probate Code in regard to partnership interests. In the introduction to the Model Probate Code, the following appears at p. 22:

"No provisions for the administration of partnership estates when a partner dies have been included. Several states have statutes providing that unless the surviving partner files a bond with the probate court, the personal representative of the deceased partner may administer the partnership estate upon giving an additional bond. Kan.Gen.Stat. (Supp.1943) §§ 59-1001 to 59-1005; Mo.Rev.Stat. Ann.

(1942) §§ 81 to 93 [V.A.M.S. §§ 473.220 to 473.230]. In these states the administration of partnership estates upon the death of a partner is brought more or less completely under the jurisdiction of the probate court. While the provisions afford security to parties in interest, they have caused complications in the settlement of partnership estates and have produced much litigation. Woenner, Administration (3rd ed., 1923) §§ 128 to 130; annotation, 121 A.L.R. 860. These statutes have been held to be inconsistent with section 37 of the Uniform Partnership Act providing for winding up by the surviving partner. Davis v. Hutchinson C.C.A. 9th, 1929) 36 F.(2d) 309. Hence the Model Probate Code contains no provision regarding partnership property except for inclusion in the inventory of the decedent's proportionate share of any partnership. See § 120. However, it is suggested that the Uniform Partnership Act should be included in the statutes of the states which have not already enacted it."

Section 3-710. [Power to Avoid Transfers.]

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

COMMENT

Model Probate Code section 6-201, which saves creditors' rights in regard to non-testamentary transfers effective at death. See, also, Section 6-201, which saves cred-

Section 3-907. [Distribution in Kind; Evidence.]

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

COMMENT

This and sections following should be read with Section 3-709 which permits the personal representative to leave certain assets of a decedent's estate in the possession of the person presumptively entitled thereto. The "release" contemplated by this section would be used as evidence that the personal representative had determined that he would not need to disturb the possession of an heir or devisee for purposes of administration.

Under Section 3-711, a personal representative's relationship to as-

sets of the estate is described as the "same power over the title to property of the estate as an absolute owner would have." A personal representative may, however, acquire a full title to estate assets, as in the case where particular items are conveyed to the personal representative by sellers, transfer agents or others. The language of Section 3-907 is designed to cover instances where the instrument of distribution operates as a transfer, as well as those in which its operation is more like a release.

Section 3-908. [Distribution; Right or Title of Distributee.]

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

COMMENT

The purpose of this section is to channel controversies which may arise among successors of a decedent because of improper distributions through the personal representative who made the distribution, or a successor personal

representative. Section 3-108 does not bar appointment proceedings initiated to secure appointment of a personal representative to correct an erroneous distribution made by a prior representative. But see Section 3-1006.

Section 3-909. [Improper Distribution; Liability of Distributee.]

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a