

3B:1-2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 160

NJSA: 3B:1-2 (Makes certain corrections to statutory provisions governing wills and estates)

BILL NO: S2104 (Substituted for A3520)

SPONSOR Adler

DATE INTRODUCED: December 6, 2004

COMMITTEE: **ASSEMBLY:**
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 20, 2005

SENATE: March 21, 2005

DATE OF APPROVAL: July 19, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

S2104

[SPONSOR'S STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

A3520

[SPONSOR'S STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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P.L. 2005, CHAPTER 160, *approved July 19, 2005*
Senate, No. 2104 (*Second Reprint*)

1 AN ACT concerning wills and estates ²[and],² amending ²and
2 supplementing² various sections of Title 3B of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ²1. N.J.S.3B:1-2 is amended to read as follows:

9 3B:1-2. "Incapacitated individual" means an individual who is
10 impaired by reason of mental illness or mental deficiency to the extent
11 that he lacks sufficient capacity to govern himself and manage his
12 affairs.

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted January 24, 2005.

² Senate floor amendments adopted March 14, 2005.

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

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

9 "Person" means an individual or an organization.

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

18 "Personal representative" includes executor, administrator,
19 successor personal representative, special administrator, and persons
20 who perform substantially the same function under the law governing
21 their status. "General personal representative" excludes special
22 administrator.

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

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

38 "Security" includes any note, stock, treasury stock, bond, mortgage,
39 financing statement, debenture, evidence of indebtedness, certificate
40 of interest or participation in an oil, gas or mining title or lease or in
41 payments out of production under the title or lease, collateral, trust
42 certificate, transferable share, voting trust certificate or, in general,
43 any interest or instrument commonly known as a security or as a
44 security interest or any certificate of interest or participation, any
45 temporary or interim certificate, receipt or certificate of deposit for,

1 or any warrant or right to subscribe to or purchase, any of the
2 foregoing.

3 "Stepchild" means a child of the surviving, deceased, or former
4 spouse who is not a child of the [testator] decedent.

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

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

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

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

14 "Trust" includes any express trust, private or charitable, with
15 additions thereto, wherever and however created. It also includes a
16 trust created by judgment under which the trust is to be administered
17 in the manner of an express trust. "Trust" excludes other constructive
18 trusts, and it excludes resulting trusts, guardianships, personal
19 representatives, trust accounts created under the "Multiple-party
20 Deposit Account Act," P.L.1979, c.491 (C.17:16I-1 et seq.), gifts to
21 minors under the "New Jersey Uniform Gifts to Minors Act,"
22 P.L.1963, c.177 (C.46:38-13 et seq.), or the "New Jersey Uniform
23 Transfers to Minors Act," R.S.46:38A-1 et seq., business trusts
24 providing for certificates to be issued to beneficiaries, common trusts,
25 security arrangements, liquidation trusts, and trusts for the primary
26 purpose of paying debts, dividends, interest, salaries, wages, profits,
27 pensions or employee benefits of any kind, and any arrangement under
28 which a person is nominee or escrowee for another.

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

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

33 "Will" means the last will and testament of a testator or testatrix
34 and includes any codicil and any testamentary instrument that merely
35 appoints an executor, revokes or revises another will, nominates a
36 guardian, or expressly excludes or limits the right of a person or class
37 to succeed to property of the decedent passing by intestate succession.
38 (cf: P.L. 2004, c.132, s.2)²

39

40 ²[1.] 2.² N.J.S. 3B:3-2 is amended to read as follows:

41 3B:3-2. Execution; witnessed wills; writings intended as wills.

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

44 (1) in writing;

45 (2) signed by the testator or in the testator's name by some other

1 individual in the testator's conscious presence and at the testator's
2 direction; and

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

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

10 c. Intent that the document constitutes the testator's will can be
11 established by extrinsic evidence, including for writings intended as
12 wills, portions of the document that are not in the testator's
13 handwriting.

14 (cf: P.L.2004, c.132, s.9)

15

16 ²[2.] 3.² N.J.S.3B:3-3 is amended to read as follows:

17 3B:3-3. Writings intended as wills.

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

27 (cf: P.L.2004, c.132, s.10)

28

29 ²[3.] 4.² N.J.S.3B:3-14 is amended to read as follows:

30 3B:3-14. Revocation of probate and non-probate transfers by
31 divorce or annulment; revival by remarriage to former spouse.

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

36 (1) revokes any revocable:

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

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

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

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

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

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

23 b. For purposes of this section: (1) "divorce or annulment" means
24 any divorce or annulment, or other dissolution or declaration of
25 invalidity of a marriage including a judgment of divorce from bed and
26 board; (2) "governing instrument" means a governing instrument
27 executed by the divorced individual before the divorce or annulment;
28 (3) "divorced individual" includes an individual whose marriage has
29 been annulled; and (4) "relative of the divorced individual's former
30 spouse" means an individual who is related to the divorced individual's
31 former spouse by blood, adoption or affinity and who, after the
32 divorce or annulment, is not related to the divorced individual by
33 blood, adoption or affinity.

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

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

1 severance or forfeiture under this section.

2 (cf: P.L.2004, c.132, s.17)

3

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

5 3B:3-35 Anti-lapse; deceased devisee; class gifts.

6 If a devisee who is a grandparent, stepchild or a lineal descendant
7 of a grandparent of the [testator] decedent is dead at the time of the
8 execution of the [will] governing instrument, fails to survive the
9 [testator]decedent, or is treated as if he predeceased the
10 [testator]decedent, any descendants of the deceased devisee who
11 survives the [testator]decedent by 120 hours take by representation
12 in place of the deceased devisee. One who would have been a devisee
13 under a class gift if he had survived the [testator] decedent is treated
14 as a devisee for purposes of this section whether his death occurred
15 before or after the execution of the [will]governing instrument. For
16 purposes of this section, a "stepchild" means a child of the surviving,
17 deceased or former spouse who is not a child of the
18 [testator]decedent.

19 (cf: P.L. 2004, c.132, s.31)²

20

21 ²[4.] 6.² N.J.S.3B:3-41 is amended to read as follows:

22 3B:3-41. Issue and descendants to take by representation.

23 Where under any [will or trust] governing instrument provision is
24 made for the benefit of issue and descendants and no contrary
25 intention is expressed, the issue or descendants shall take by
26 representation.

27 (cf: P.L.2004, c.132, s.34)

28

29 ²[5.] 7.² N.J.S.3B:5-8 is amended to read as follows:

30 3B:5-8. After born heirs.

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

33 (cf: P.L.2004, c.132, s.50)

34

35 ²[6.] 8.² Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended
36 to read as follows:

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

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

45 b. The intentional killing of the decedent:

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

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

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

19 (cf: P.L.2004, c.132, s.58)

20
21 ²[7.] 9.² Section 68 of P.L.2004, c.132 (C.3B:9-4.2) is amended
22 to read as follows:

23 68. Time for disclaiming. a. The disclaimer of an interest in
24 property may be delivered, and if required by this chapter filed, at any
25 time after the effective date of the governing instrument, or in the case
26 of an intestacy, at any time after the death of the intestate decedent,
27 and must be delivered, and if required by this chapter filed, before the
28 right to disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9. With
29 respect to joint property, the barring of the right to disclaim the
30 present interest does not bar the right to disclaim the future interest.

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

35 (cf: P.L.2004, c.132, s.68)

36
37 ²10. N.J.S.3B:9-8 is amended to read as follows:

38 3B:9-8 Effect of disclaimer. A disclaimer acts as a nonacceptance
39 of the disclaimed interest, rather than as a transfer of the disclaimed
40 interest. The disclaimant is treated as never having received the
41 disclaimed interest. Unless a governing instrument otherwise provides,
42 the property or interest disclaimed devolves:

43 a. As to a present interest:

44 (1) in the case of an intestacy, a will, a testamentary trust or a
45 power of appointment exercised by a will or testamentary trust, as if
46 the disclaimant had predeceased the decedent or, if the disclaimant is

1 designated to take under a power of appointment exercised by a will
2 or testamentary instrument, as if the disclaimant had predeceased the
3 donee of the power. If by law or under the will or testamentary trust
4 the descendants of the disclaimant would take the disclaimant's share
5 by representation were the disclaimant to predecease the [disclaimant]
6 decedent, then the disclaimed interest devolves by representation to
7 the descendants of the disclaimant who survive the decedent; and

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

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

23 b. As to a future interest:

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

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

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

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

41 (cf: P.L. 2004, c.132, s.71)²

42

43 ²[8.] 11.² N.J.S.3B:9-9 is amended to read as follows:

44 3B:9-9. Bar of right to disclaim.

45 a. The right of [a person] an individual to disclaim property or any
46 interest therein is barred by:

- 1 (1) an assignment, conveyance, encumbrance, pledge or transfer of
2 the property or interest or a contract therefor; or
3 (2) a written waiver of the right to disclaim; or
4 (3) an acceptance of the property or interest or a benefit under it
5 after actual knowledge that a property right has been conferred; or
6 (4) a sale of the property or interest [is] that was seized under
7 judicial process [issued against him] before the disclaimer is made; or
8 (5) the expiration of the permitted applicable perpetuities period; or
9 (6) a fraud on the [person's] individual's creditors as set forth in the
10 "Uniform Fraudulent Transfer Act" (R.S.25:2-20 et seq.).
- 11 b. The disclaimant shall not be barred from disclaiming all or any
12 part of the balance of the property where the disclaimant has received
13 a portion of the property and there still remains an interest which the
14 disclaimant is yet to receive.
- 15 c. A bar to the right to disclaim a present interest in joint property
16 does not bar the right to disclaim a future interest in that property.
- 17 d. The right to disclaim may be barred to the extent provided by
18 other applicable statutory law.
19 (cf: P.L.2004, c.132, s.72)
20
- 21 ²[9.] 12.² N.J.S.3B:9-10 is amended to read as follows:
22 3B:9-10. Binding effect of disclaimer or waiver.
23 The disclaimer or written waiver of the right to disclaim a property
24 interest shall be binding upon the disclaimant or the [person]
25 individual waiving and all [persons] individuals claiming by, through
26 or under him.
27 (cf: P.L.2004, c.132, s.73)
28
- 29 ²[10.] 13.² N.J.S.3B:9-12 is amended to read as follows:
30 3B:9-12. Right to disclaim, etc.; under other law not abridged. This
31 chapter does not abridge the right of [a person] an individual to
32 waive, release, disclaim or renounce property or an interest therein
33 under any other statute or law.
34 (cf:P.L.2004, c.132, s.75)
35
- 36 ²[11.] 14.² N.J.S.3B:9-13 is amended to read as follows:
37 3B:9-13. Extension of time to disclaim interest existing on
38 February 28, 1980.
39 a. An interest in property existing on February 28, 1980, as to
40 which, if a present interest, the time for filing a disclaimer under this
41 chapter has not expired, or if a future interest, the interest has not
42 become indefeasibly vested or the taker finally ascertained, may be
43 disclaimed within 9 months after February 28, 1980.
44 b. An interest in property existing on the effective date of this
45 chapter as amended and supplemented by P.L.2004, c.132

1 (C.3B:3-33.1 et al.) as to which the right to disclaim has not been
2 barred by prior law may be disclaimed at any time before the right to
3 disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9.

4 (cf: P.L.2004, c.132, s.76)

5
6 ²15. N.J.S.3B:15-23 is amended to read as follows:

7 3B:15-23. Proof of order to limit creditors required in certain
8 cases.

9 An order of discharge shall not be made in cases in which the
10 fiduciary is an executor, administrator with the will annexed,
11 substituted administrator with the will annexed, administrator or
12 substituted administrator except upon proof that [6] nine months have
13 elapsed after the entry of an order to limit creditors pursuant to N.J.S.
14 3B:22-4, and that there are not any unpaid or pending claims of
15 creditors of the decedent presented to the fiduciary pursuant to
16 chapter 22 of this title.

17 (cf: P. L.1981, c. 405, s.3B:15-23)²

18
19 ²16. N.J.S.3B:22-14 is amended to read as follows:

20 3B:22-14. Direction of court before paying claims not presented
21 within [6-month] 9-month period.

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

27 (cf: P. L.1981, c. 405, s. 3B:22-14)²

28
29 ²[12.] 17.² N.J.S. 3B:24-4 is amended to read as follows:

30 3B:24-4. Apportionment of tax to transferees in absence of
31 directions to contrary.

32 In the absence of directions to the contrary:

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

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

46 c. Any deduction for property previously taxed and any credit for

1 gift taxes paid by the decedent shall inure to the benefit of all
2 transferees and the fiduciary and the tax to be apportioned shall be the
3 tax after allowance of the deduction and credit; and

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

8 (cf: P.L.2004, c.132, s.87)

9

10 ²[13.] 18.² N.J.S.3B:25-1 is amended to read as follows:

11 3B:25-1. Nonexoneration of property subject to mortgage or
12 security interest; exception.

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

22 (cf: P.L.2004, c.132, s.88)

23

24 ²[14.] 19.² N.J.S.3B:28-1 is amended to read as follows:

25 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

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

35 (cf: P.L.2004, c.132, s.89)

36

37 ²[15.] 20.² N.J.S.3B:28-2 is amended to read as follows:

38 3B:28-2. No right of dower or curtesy created on or after May 28,
39 1980.

40 No right of dower or curtesy in real property shall arise if, on or
41 after May 28, 1980, ~~[a person]~~ an individual shall become married, or
42 such person or another to his ~~[or her]~~ use, shall become seized of an
43 estate of inheritance.

44 (cf: P.L.2004, c.132, s.90)

1 ²[16.] 21.² N.J.S.3B:28-3 is amended to read as follows:

2 3B:28-3. Right of joint possession of principal matrimonial
3 residence where no dower or curtesy applies; alienation.

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

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

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

23 (cf: P.L.2004, c.132, s.91)

24

25 ²[17.] 22.² N.J.S.3B:28-3.1 is amended to read as follows:

26 3B:28-3.1. Joint occupancy of principal matrimonial residence;
27 mortgage lien. The right of joint possession to the principal
28 matrimonial residence as provided in N.J.S.3B:28-3 is subject to the
29 lien of a mortgage, irrespective of the date when the mortgage is
30 recorded, provided:

31 a. The mortgage is placed upon the matrimonial residence prior to
32 the time that title to the residence was acquired by the married
33 [person] individual; or

34 b. The mortgage is placed upon the matrimonial residence prior to
35 the marriage; or

36 c. The mortgage is a purchase money mortgage; or

37 d. The parties to the marriage have joined in the mortgage; or

38 e. The right of joint possession has been subordinated, released or
39 extinguished by subsection b. or c. of N.J.S.3B:28-3.

40 (cf: P.L.2004, c.132, s.92)

41

42 ²23. (New section) The provisions of P.L.2004, c. 132 and
43 P.L. , c. (C.) (now pending before the Legislature as this bill)
44 shall apply to any decedent dying on or after February 27, 2005.²

45

46 ²[18.] 24.² This act shall take effect on ¹[the effective date of

1 P.L.2004, c.132] February 27, 2005 and if enacted after that date shall
2 be retroactive to that date¹.

3

4

5

6

7 Makes certain corrections to statutory provisions governing wills and
8 estates.

SENATE, No. 2104

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED DECEMBER 6, 2004

Sponsored by:
Senator JOHN H. ADLER
District 6 (Camden)

SYNOPSIS

Makes certain corrections to statutory provisions governing wills and estates.

CURRENT VERSION OF TEXT

As introduced.



S2104 ADLER

2

1 **AN ACT** concerning wills and estates and amending various sections
2 of Title 3B of the New Jersey Statutes.

3

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

6

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

8 3B:3-2. Execution; witnessed wills; writings intended as wills.

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

11 (1) in writing;

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

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

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

22 c. Intent that the document constitutes the testator's will can be
23 established by extrinsic evidence, including for writings intended as
24 wills, portions of the document that are not in the testator's
25 handwriting.

26 (cf: P.L. 2004, c.132, s.9)

27

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

29 3B:3-3. Writings intended as wills.

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

39 (cf: P.L.2004, c.132, s.10)

40

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

42 3B:3-14. Revocation of probate and non-probate transfers by
43 divorce or annulment; revival by remarriage to former spouse.

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

Matter underlined thus is new matter.

S2104 ADLER

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

5 (1) revokes any revocable:

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

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

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

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

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

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

38 b. For purposes of this section: (1) "divorce or annulment" means
39 any divorce or annulment, or other dissolution or declaration of
40 invalidity of a marriage including a judgment of divorce from bed and
41 board; (2) "governing instrument" means a governing instrument
42 executed by the divorced individual before the divorce or annulment;
43 (3) "divorced individual "includes an individual whose marriage has
44 been annulled; and (4) "relative of the divorced individual's former
45 spouse" means an individual who is related to the divorced individual's
46 former spouse by blood, adoption or affinity and who, after the

S2104 ADLER

1 divorce or annulment, is not related to the divorced individual by
2 blood, adoption or affinity.

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

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

16 (cf: P.L. 2004, c.132, s.17)

17

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

19 3B:3-41. Issue and descendants to take by representation.

20 Where under any [will or trust] governing instrument provision is
21 made for the benefit of issue and descendants and no contrary
22 intention is expressed, the issue or descendants shall take by
23 representation.

24 (cf: P.L.2004, c.132, s.34)

25

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

27 3B:5-8. After born heirs.

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

30 (cf:P.L.2004, c.132, s.50)

31

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

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

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

42 b. The intentional killing of the decedent:

43 (1) revokes any revocable (a) disposition or appointment of
44 property made by decedent to the killer in a governing instrument and
45 any disposition or appointment created by law or in a governing
46 instrument to a relative of the killer, (b) provision in a governing

1 instrument conferring a general or special power of appointment on
2 the killer or a relative of the killer, and (c) nomination in a governing
3 instrument of the killer or a relative of the killer, nominating or
4 appointing the killer or a relative of the killer to serve in any fiduciary
5 or representative capacity; and

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

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

15 (cf: P.L.2004, c.132, s.58)

16

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

19 68. Time for disclaiming. a. The disclaimer of an interest in
20 property may be delivered, and if required by this chapter filed, at any
21 time after the effective date of the governing instrument, or in the case
22 of an intestacy, at any time after the death of the intestate decedent,
23 and must be delivered, and if required by this chapter filed, before the
24 right to disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9. With
25 respect to joint property, the barring of the right to disclaim the
26 present interest does not bar the right to disclaim the future interest.

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

31 (cf: P.L.2004, c.132, s.68)

32

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

34 3B:9-9. Bar of right to disclaim.

35 a. The right of [a person] an individual to disclaim property or any
36 interest therein is barred by:

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

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

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

42 (4) a sale of the property or interest [is] that was seized under
43 judicial process [issued against him] before the disclaimer is made; or

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

46 (6) a fraud on the [person's] individual's creditors as set forth in

S2104 ADLER

6

1 the "Uniform Fraudulent Transfer Act" (R.S.25:2-20 et seq.).

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

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

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

10 (cf: P.L.2004, c.132, s.72)

11

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

13 3B:9-10. Binding effect of disclaimer or waiver.

14 The disclaimer or written waiver of the right to disclaim a property
15 interest shall be binding upon the disclaimant or the [person]
16 individual waiving and all [persons] individuals claiming by, through
17 or under him.

18 (cf: P.L. 2004, c.132, s.73)

19

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

21 3B:9-12. Right to disclaim, etc.; under other law not abridged. This
22 chapter does not abridge the right of [a person] an individual to
23 waive, release, disclaim or renounce property or an interest therein
24 under any other statute or law.

25 (cf:P.L. 2004, c.132, s.75)

26

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

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

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

35 b. An interest in property existing on the effective date of this
36 chapter as amended and supplemented by P.L.2004, c.132
37 (C.3B:3-33.1 et al.) as to which the right to disclaim has not been
38 barred by prior law may be disclaimed at any time before the right to
39 disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9.

40 (cf: P.L. 2004, c.132, s.76)

41

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

43 3B:24-4. Apportionment of tax to transferees in absence of
44 directions to contrary.

45 In the absence of directions to the contrary:

46 a. That part of the tax shall be apportioned to each of the

1 transferees as bears the same ratio to the total tax as the ratio which
2 each of the transferees' property included in the gross tax estate bears
3 to the total property entering into the net estate for purposes of that
4 tax, and the balance of the tax shall be apportioned to the fiduciary,
5 the values as finally determined in the respective tax proceedings being
6 the values to be used as the basis for apportionment of the respective
7 taxes;

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

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

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

21 (cf: P.L.2004, c.132, s.87)

22

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

24 3B:25-1. Nonexoneration of property subject to mortgage or
25 security interest; exception.

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

35 (cf: P.L.2004, c.132, s.88)

36

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

38 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

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

1 otherwise shall have been extinguished by law.

2 (cf: P.L.2004, c.132, s.89)

3

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

5 3B:28-2. No right of dower or curtesy created on or after May 28,
6 1980.

7 No right of dower or curtesy in real property shall arise if, on or
8 after May 28, 1980, [a person] an individual shall become married, or
9 such person or another to his [or her] use, shall become seized of an
10 estate of inheritance.

11 (cf: P.L.2004, c.132, s.90)

12

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

14 3B:28-3. Right of joint possession of principal matrimonial
15 residence where no dower or curtesy applies; alienation.

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

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

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

35 (cf: P.L.2004, c.132, s.91)

36

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

38 3B:28-3.1. Joint occupancy of principal matrimonial residence;
39 mortgage lien. The right of joint possession to the principal
40 matrimonial residence as provided in N.J.S.3B:28-3 is subject to the
41 lien of a mortgage, irrespective of the date when the mortgage is
42 recorded, provided:

43 a. The mortgage is placed upon the matrimonial residence prior
44 to the time that title to the residence was acquired by the married
45 [person] individual; or

46 b. The mortgage is placed upon the matrimonial residence prior

1 to the marriage; or

2 c. The mortgage is a purchase money mortgage; or

3 d. The parties to the marriage have joined in the mortgage; or

4 e. The right of joint possession has been subordinated, released
5 or extinguished by subsection b. or c. of N.J.S.3B:28-3.

6 (cf: P.L. 2004, c.132, s.92)

7

8 18. This act shall take effect on the effective date of P.L.2004,
9 c.132.

10

11

12

STATEMENT

13

14 This bill would make certain corrections to the recently enacted
15 P.L.2004, c.132, which revised various sections of the statutory law
16 in Title 3B concerning wills and estates.

17 Sections 4, 5, 7, 8, 9, 13, 14, 15 and 16 of the bill change the word
18 "person" to "individual" in order to maintain consistency with the
19 provisions of P.L.2004, c.132. Under current law, set out in
20 N.J.S.A.1:1-2, the word "person" includes corporations, companies,
21 associations and other entities. By contrast, the word "individual" is
22 intended to mean a natural person.

23 Section 3 (N.J.S.A.3B:3-41) is amended to replace the term "will
24 or trust" with the term "governing instrument."

25 Sections 6 (N.J.S.A.3B:9-4.2) and 10 (N.J.S.A.3B:9-13) of the bill
26 are amended to correct internal cross-references.

27 Section 11 (N.J.S.A.3B:24-4) is amended to replace the term
28 "person" with "transferee."

29 The effective date of this bill is tied to the effective date of
30 P.L.2004, c.132, which was signed on August 31, 2004 and takes
31 effect 180 days after enactment.

32 The remaining changes are technical in nature.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2104

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2005

The Senate Judiciary Committee reports favorably Senate Bill No. 2104 with committee amendments.

This bill would make certain corrections to the recently enacted P.L.2004, c.132, which revised various sections of the statutory law in Title 3B concerning wills and estates.

Sections 4, 5, 7, 8, 9, 13, 14, 15 and 16 of the bill change the word "person" to "individual" in order to maintain consistency with the provisions of P.L.2004, c.132. Under current law, set out in N.J.S.A.1:1-2, the word "person" includes corporations, companies, associations and other entities. By contrast, the word "individual" is intended to mean a natural person.

Section 3 (N.J.S.A 3B:3-41) is amended to replace the term "will or trust" with the term "governing instrument."

Sections 6 (N.J.S.A.3B:9-4.2) and 10 (N.J.S.A.3B:9-13) of the bill are amended to correct internal cross-references.

Section 11 (N.J.S.A.3B:24-4) is amended to replace the term "person" with "transferee."

The effective date of this bill was tied to the effective date of P.L.2004, c. 132, which was signed on August 31, 2004 and takes effect 180 days after enactment. The committee amendments replace that language with a date certain, February 27, 2005, which is the date the original 2004 enactment takes effect. They also provide if the bill is enacted after that date, the bill shall be retroactive to it.

As amended, this bill is identical to Assembly, No. 3520 (1R).

STATEMENT TO
[First Reprint]
SENATE, No. 2104

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: MARCH 14, 2005

These floor amendments add six additional sections to the bill and would also make technical and substantive changes to make it consistent with recently enacted P.L.2004, c.132.

N.J.S.A.3B:1-2 and N.J.S.A.3B:3-35 would be added as new sections 1 and 5, respectively. These sections would be amended to clarify that "stepchild" means a child of the surviving, deceased or former spouse *who is not a* child of the decedent. The amendments would also replace the term "testator" with "decedent" and the term "wills" with "governing instrument."

N.J.S.A.3B:9-8 would be added as a new section 10 to the bill. This section would be amended to correct the erroneous use of the term "disclaimant" and replace it with "decedent."

N.J.S.A.3B:15-23 and N.J.S.3B:22-14 would be added as new sections 15 and 16, respectively. These sections would be amended to reflect the correct time frame for creditors to present their claims to a personal representative pursuant to P.L.2004, c. 132. The original statute provided a six month time frame and now P.L.2004, c.132 provides for nine months.

A new section 23 would be added to the bill. This supplemental section to Title 3B of the New Jersey Statutes would clarify that the provisions of P.L.2004, c.132 and the provisions of this bill apply to any decedent dying on or after February 27, 2005 (the date the law and the bill take effect).

ASSEMBLY, No. 3520

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED NOVEMBER 22, 2004

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Makes certain corrections to statutory provisions governing wills and estates.

CURRENT VERSION OF TEXT

As introduced.



A3520 GREENSTEIN

2

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

3

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

6

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

8 3B:3-2. Execution; witnessed wills; writings intended as wills.

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

11 (1) in writing;

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

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

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

22 c. Intent that the document constitutes the testator's will can be
23 established by extrinsic evidence, including for writings intended as
24 wills, portions of the document that are not in the testator's
25 handwriting.

26 (cf: P.L. 2004, c.132, s.9)

27

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

29 3B:3-3. Writings intended as wills.

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

39 (cf: P.L. 2004, c.132, s.10)

40

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

42 3B:3-14. Revocation of probate and non-probate transfers by
43 divorce or annulment; revival by remarriage to former spouse.

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

Matter underlined thus is new matter.

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

5 (1) revokes any revocable:

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

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

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

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

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

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

38 b. For purposes of this section: (1) "divorce or annulment" means
39 any divorce or annulment, or other dissolution or declaration of
40 invalidity of a marriage including a judgment of divorce from bed and
41 board; (2) "governing instrument" means a governing instrument
42 executed by the divorced individual before the divorce or annulment;
43 (3) "divorced individual "includes an individual whose marriage has
44 been annulled; and (4) "relative of the divorced individual's former
45 spouse" means an individual who is related to the divorced individual's
46 former spouse by blood, adoption or affinity and who, after the

1 divorce or annulment, is not related to the divorced individual by
2 blood, adoption or affinity.

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

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

16 (cf: P.L.2004, c.132, s.17)

17

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

19 3B:3-41. Issue and descendants to take by representation.

20 Where under any [will or trust] governing instrument provision is
21 made for the benefit of issue and descendants and no contrary
22 intention is expressed, the issue or descendants shall take by
23 representation.

24 (cf: P.L.2004, c.132, s.34)

25

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

27 3B:5-8. After born heirs.

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

30 (cf:P.L.2004, c.132, s.50)

31

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

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

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

42 b. The intentional killing of the decedent:

43 (1) revokes any revocable (a) disposition or appointment of
44 property made by decedent to the killer in a governing instrument and
45 any disposition or appointment created by law or in a governing
46 instrument to a relative of the killer, (b) provision in a governing

1 instrument conferring a general or special power of appointment on
2 the killer or a relative of the killer, and (c) nomination in a governing
3 instrument of the killer or a relative of the killer, nominating or
4 appointing the killer or a relative of the killer to serve in any fiduciary
5 or representative capacity; and

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

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

15 (cf: P.L.2004, c.132, s.58)

16

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

19 68. Time for disclaiming. a. The disclaimer of an interest in
20 property may be delivered, and if required by this chapter filed, at any
21 time after the effective date of the governing instrument, or in the case
22 of an intestacy, at any time after the death of the intestate decedent,
23 and must be delivered, and if required by this chapter filed, before the
24 right to disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9. With
25 respect to joint property, the barring of the right to disclaim the
26 present interest does not bar the right to disclaim the future interest.

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

31 (cf: P.L.2004, c.132, s.68)

32

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

34 3B:9-9. Bar of right to disclaim.

35 a. The right of [a person] an individual to disclaim property or any
36 interest therein is barred by:

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

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

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

42 (4) a sale of the property or interest [is] that was seized under
43 judicial process [issued against him] before the disclaimer is made; or

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

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

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

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

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

9 (cf: P.L.2004, c.132, s.72)

10

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

12 3B:9-10. Binding effect of disclaimer or waiver.

13 The disclaimer or written waiver of the right to disclaim a property
14 interest shall be binding upon the disclaimant or the [person]
15 individual waiving and all [persons] individuals claiming by, through
16 or under him.

17 (cf: P.L.2004, c.132, s.73)

18

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

20 3B:9-12. Right to disclaim, etc.; under other law not abridged. This
21 chapter does not abridge the right of [a person] an individual to
22 waive, release, disclaim or renounce property or an interest therein
23 under any other statute or law.

24 (cf:P.L.2004, c.132, s.75)

25

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

27 3B:9-13. Extension of time to disclaim interest existing on
28 February 28, 1980.

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

34 b. An interest in property existing on the effective date of this
35 chapter as amended and supplemented by P.L.2004, c.132
36 (C.3B:3-33.1 et al.) as to which the right to disclaim has not been
37 barred by prior law may be disclaimed at any time before the right to
38 disclaim is barred by [N.J.S.3B:9-10] N.J.S.3B:9-9.

39 (cf: P.L.2004, c.132, s.76)

40

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

42 3B:24-4. Apportionment of tax to transferees in absence of
43 directions to contrary.

44 In the absence of directions to the contrary:

45 a. That part of the tax shall be apportioned to each of the
46 transferees as bears the same ratio to the total tax as the ratio which

1 each of the transferees' property included in the gross tax estate bears
2 to the total property entering into the net estate for purposes of that
3 tax, and the balance of the tax shall be apportioned to the fiduciary,
4 the values as finally determined in the respective tax proceedings being
5 the values to be used as the basis for apportionment of the respective
6 taxes;

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

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

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

20 (cf: P.L.2004, c.132, s.87)

21

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

23 3B:25-1. Nonexoneration of property subject to mortgage or
24 security interest; exception.

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

34 (cf: P.L.2004, c.132, s.88)

35

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

37 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

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

47 (cf: P.L.2004, c.132, s.89)

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

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

4 No right of dower or curtesy in real property shall arise if, on or
5 after May 28, 1980, [a person] an individual shall become married, or
6 such person or another to his [or her] use, shall become seized of an
7 estate of inheritance.

8 (cf: P.L.2004, c.132, s.90)

9

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

11 3B:28-3. Right of joint possession of principal matrimonial
12 residence where no dower or curtesy applies; alienation.

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

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

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

32 (cf:P.L.2004, c.132, s.91)

33

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

35 3B:28-3.1. Joint occupancy of principal matrimonial residence;
36 mortgage lien. The right of joint possession to the principal
37 matrimonial residence as provided in N.J.S.3B:28-3 is subject to the
38 lien of a mortgage, irrespective of the date when the mortgage is
39 recorded, provided:

40 a. The mortgage is placed upon the matrimonial residence prior to
41 the time that title to the residence was acquired by the married
42 [person] individual; or

43 b. The mortgage is placed upon the matrimonial residence prior to
44 the marriage; or

45 c. The mortgage is a purchase money mortgage; or

46 d. The parties to the marriage have joined in the mortgage; or

47 e. The right of joint possession has been subordinated, released or

1 extinguished by subsection b. or c. of N.J.S.3B:28-3.
2 (cf: P.L.2004, c.132, s.92)

3

4 18. This act shall take effect on the effective date of P.L.2004,
5 c.132.

6

7

8

STATEMENT

9

10 This bill would make certain corrections to the recently enacted
11 P.L.2004, c.132, which revised various sections of the statutory law
12 in Title 3B concerning wills and estates.

13 Sections 4, 5, 7, 8, 9, 13, 14, 15 and 16 of the bill change the word
14 "person" to "individual" in order to maintain consistency with the
15 provisions of P.L.2004, c.132. Under current law, set out in
16 N.J.S.A.1:1-2, the word "person" includes corporations, companies,
17 associations and other entities. By contrast, the word "individual" is
18 intended to mean a natural person.

19 Section 3 (N.J.S.A 3B:3-41) is amended to replace the term "will
20 or trust" with the term "governing instrument."

21 Sections 6 (N.J.S.A.3B:9-4.2) and 10 (N.J.S.A.3B:9-13) of the bill
22 are amended to correct internal cross-references.

23 Section 11 (N.J.S.A.3B:24-4) is amended to replace the term
24 "person" with "transferee."

25 The effective date of this bill is tied to the effective date of
26 P.L.2004, c. 132, which was signed on August 31, 2004 and takes
27 effect 180 days after enactment.

28 The remaining changes are technical in nature.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3520

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2004

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3520.

This bill would make certain corrections to the recently enacted P.L.2004, c.132, which revised various sections of the statutory law in Title 3B concerning wills and estates.

Sections 4, 5, 7, 8, 9, 13, 14, 15 and 16 of the bill change the word "person" to "individual" in order to maintain consistency with the provisions of P.L.2004, c.132. Under current law, set out in N.J.S.A.1:1-2, the word "person" includes corporations, companies, associations and other entities. By contrast, the word "individual" is intended to mean a natural person.

Section 3 (N.J.S.A 3B:3-41) is amended to replace the term "will or trust" with the term "governing instrument."

Sections 6 (N.J.S.A.3B:9-4.2) and 10 (N.J.S.A.3B:9-13) of the bill are amended to correct internal cross-references.

Section 11 (N.J.S.A.3B:24-4) is amended to replace the term "person" with "transferee."

The effective date of this bill is tied to the effective date of P.L.2004, c. 132, which was signed on August 31, 2004 and takes effect 180 days after enactment.

The remaining changes are technical in nature.

The committee amended the effective date of the bill to provide that the bill becomes effective February 27, 2005 (the effective date of P.L.2004, c. 132) and to further provide that if the bill is enacted after that date the bill shall be retroactive to that date.

COMMITTEE AMENDMENTS

Amends section 18 of the bill (the effective date) to provide that the bill becomes effective February 27, 2005 (the effective date of P.L.2004, c.132, which was signed on August 31, 2004) and to further provide that if the bill is enacted after that date the bill shall be retroactive to that date.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3520

with Assembly Floor Amendments
(Proposed By Assemblywoman GREENSTEIN)

ADOPTED: MARCH 14, 2005

These floor amendments add six additional sections to the bill and would also make technical and substantive changes to make it consistent with recently enacted P.L.2004, c. 132.

N.J.S.A. 3B:1-2 and N.J.S.A.3B:3-35 would be added as new sections 1 and 5, respectively. These sections would be amended to clarify that "stepchild" means a child of the surviving, deceased or former spouse *who is not a* child of the decedent. The amendments would also replace the term "testator" with "decedent" and the term "wills" with "governing instrument."

N.J.S.A.3B:9-8 would be added as a new section 10 to the bill. This section would be amended to correct the erroneous use of the term "disclaimant" and replace it with "decedent."

N.J.S.A. 3B:15-23 and N.J.S.3B:22-14 would be added as new sections 15 and 16, respectively. These sections would be amended to reflect the correct time frame for creditors to present their claims to a personal representative pursuant to P.L.2004, c. 132. The original statute provided a six month time frame and now P.L.2004, c. 132 provides for nine months.

A new section 23 would be added to the bill. This supplemental section to Title 3B of the New Jersey Statutes would clarify that the provisions of P.L.2004, c. 132 and the provisions of this bill apply to any decedent dying on or after February 27, 2005 (the date the law and the bill take effect).