

3A:2A-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3A:2A-1 et al. Probate Code revisions

LAWS OF: 1977 CHAPTER: 412

Bill No: A1712

Sponsor(s): Burstein and others

Date Introduced: March 8, 1976

Committee: Assembly: Judiciary, Law, Public Safety & Defense
Senate: County & Municipal Gov't; Judiciary

Amended during passage: Yes Only amendment: Second sentence added to sec. 44, subsec. 2

Date of Passage: Assembly: June 28, 1976
Senate: September 29, 1977

Date of Approval: February 23, 1978

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes
Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

Earlier hearings and reports:

974.90 N.J. Division of Law Revision. Legislative Services Agency.
C866 1972-3 legislation adopted from the proposed
1973k Uniform Probate Code, prepared for use...at a public hearing, Sept. 11, 1973.

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- 974.90 New Jersey. Legislature. Senate. Judiciary Committee.
C866 Public hearing on Uniform Probate Code Bills, held 9-11-73.
1973h
- 974.90 New Jersey. Legislature. Assembly. Judiciary, Law, Public Safety
C866 and Defense Committee.
1974c Public hearing on A1185 and A1186 (Uniform Probate Code), held
5-23-74.

The following information is important in tracing the history of A1712 through the above publications.

A1712 (1976) was a re-introduction of A1186&S1007 (1974). These 1974 bills were derived from all or part of twelve bills from the 1972-73 legislative session (S902, S903, S904, S905, S1104, S2274, S2275, S2276, S2277, S2293, S2326, S2327). The constitutionality of these 1973-73 bills had been questioned, since some of them had titles that did not fully explain their contents and since some of the bills covered more than one subject. A1186 was drafted in response to the objections to the earlier bills.

Further background information:

Diab, Robert A. New Jersey and the Uniform Probate Code, 2 Seton Hall L. Rev. 323-355 (1971).

(Compares provisions of UPC with current NJ law.)

Clapp, Alfred C. New Jersey and the Uniform Probate Code, 61 N.J. State Bar J. 14-17 (Nov. 1972).

(Comments on P.L. 1971, c. 373 and c.374 and several 1972 bills-S899, S902, S903, S904 and S905.)

A New Probate Code, editorial, 96 NJLJ 1100 (Sept. 13, 1973).

(Brief discussion of hearing held 9/11/73- particularly S899, S902, S903, S2145 and S2275).

Roehrenbeck, Carol A. A History of the Uniform Probate Code in New Jersey.

Selected New Acquisitions, v. 13, no.7 (March 1978). Rutgers University Law Library, Newark.

(Primarily a list of bills including action on them from 1972 through 1977.)

Uniform Probate Code

The notes following each section in NJSA give reference to the Uniform Probate Code adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association. The official text and comments for each of these sections (including the 1969 act and later amendments) are available in:

KF Uniform Laws Annotated. Master Edition
165 Estate, Probate and Related Laws.
A5
1968

Or

KF Uniform Probate Code: Official Text with Comments. West, 1969- (various
765 editions).
A4269
A2

CHAPTER 412 LAWS OF N. J. 1977
APPROVED 2-23-78

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1712

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1976

By Assemblymen BURSTEIN, DORSEY and BATE

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

AN ACT concerning decedents' estates, supplementing Title 3A of the New Jersey Statutes, amending N. J. S. 3A:3-18, 3A:3-27, 3A:3-28, 3A:5-6, 3A:26-1 and 3A:40-1, and repealing 3A:1-1, 3A:3-1 through 3A:3-3, 3A:3-6 through 3A:3-11, 3A:3-13, 3A:3-14, 3A:3-22, 3A:4-1 through 3A:4-7, 3A:4-9 through 3A:4-11, 3A:12-7 through 3A:12-9, 3A:13-1, 3A:24-2, 3A:25-1 and 3A:25-8 and revising parts of the statutory law.

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

A. DEFINITIONS

1 1. As used in this act, unless restricted by the subject or context:

2 a. "Administrator" includes general administrators of an
3 intestate and unless restricted by the subject or context,
4 administrators with the will annexed, substituted administrators,
5 substituted administrators with the will annexed, temporary ad-
6 ministrators and administrators pendente lite.

7 b. "Child" means any individual, including a natural or adopted
8 child, entitled to take by intestate succession from the parent
9 whose relationship is involved and excludes any person who is
10 only a stepchild, a foster child, a grandchild or anymore remote
11 descendant.

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

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

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

20 e. "Devise," when used as a noun, means a testamentary dis-
21 position of real or personal property and when used as a verb,
22 means to dispose of real or personal property by will.

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

27 g. "Distributee" means any person who has received property
28 of a decedent from his personal representative other than as a
29 creditor or purchaser. A trustee is a distributee only to the extent
30 of a distributed asset or increment thereto remaining in his hands.
31 A beneficiary of a trust to whom the trustee has distributed prop-
32 erty received from a personal representative is a distributee of the
33 personal representative.

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

40 i. "Estate" means all of the property of the decedent, trust or
41 other person whose affairs are subject to this act as the property
42 is originally constituted and as it exists from time to time during
43 administration.

44 j. "Fiduciary" includes executors, general administrators of
45 an intestate, administrators with the will annexed, substituted
46 administrators, substituted administrators with the will annexed,
47 guardians, substituted guardians, trustees, substituted trustees
48 and, unless restricted by the subject or context, temporary admin-
49 istrators, administrators pendente lite, administrators ad prose-
50 quendum, administrators ad litem and other limited fiduciaries.

51 k. "Heirs" means those persons, including the surviving spouse,
52 who are entitled under the statutes of intestate succession to the
53 property of a decedent.

54 l. "Issue" of a person includes all of his lineal descendants,
55 natural or adopted, of all generations, with the relationship of
56 parent and child at each generation being determined by the
57 definition of child and parent.

58 m. "Local administration" means administration by a personal
59 representative appointed in this State.

60 n. "Local fiduciary" means any fiduciary who has received
61 letters in this State and excludes foreign fiduciaries who acquire
62 the power of local fiduciary pursuant to this act.

63 o. "Nonresident decedent" means a decedent who was domiciled
64 in another jurisdiction at the time of his death.

65 p. "Parent" means any person entitled to take or would be
66 entitled to take if the child, natural or adopted, died without a
67 will, by intestate succession from the child whose relationship is
68 in question and excludes any person who is a stepparent, foster
69 parent or grandparent.

70 q. "Personal representative" includes executor, administrator,
71 successor personal representative, special administrator, and per-
72 sons who perform substantially the same function under the law
73 governing their status. "General personal representative" ex-
74 cludes special administrator.

75 r. "Resident creditor" means a person domiciled in, or doing
76 business in this State, who is, or could be, a claimant against an
77 estate.

78 s. "Security" includes any note, stock, treasury stock, bond,
79 mortgage, financing statement, debenture, evidence of indebtedness,
80 certificate of interest or participation in an oil, gas or mining title
81 or lease or in payments out of production under such a title or
82 lease, collateral trust certificate, transferable share, voting trust
83 certificate or, in general, any interest or instrument commonly
84 known as a security or as a security interest or any certificate
85 of interest or participation, any temporary or interim certificate,
86 receipt or certificate of deposit for, or any warrant or right to
87 subscribe to or purchase, any of the foregoing.

88 t. "Successor personal representative" means a personal repre-
89 sentative, other than a special administrator, who is appointed to
90 succeed a previously appointed personal representative.

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

94 v. "Testamentary trustee" means a trustee designated by will
95 or appointed to exercise a trust created by will.

96 w. "Will" means the last will and testament of the testator and
97 includes any codicil.

B. DEVOLUTION OF ESTATE AT DEATH

1 2. Upon the death of a person, his real and personal property
2 devolves to the persons to whom it is devised by his will or to

3 those indicated as substitutes for them in cases involving lapse,
4 renunciation, or other circumstances affecting the devolution of
5 testate estate, or in the absence of testamentary disposition, to his
6 heirs, or to those indicated as substitutes for them in cases involv-
7 ing renunciation or other circumstances affecting devolution of
8 intestate estates, subject to rights of creditors and to administra-
9 tion.

C. WILLS

1. REQUISITES, EXECUTION AND CONTENT

1 3. Any person 18 or more years of age who is of sound mind
2 may make a will and may appoint a testamentary guardian.

1 4. Except as provided in section 5., every will shall be in writing,
2 signed by the testator or in his name by some other person in his
3 presence and at his discretion, and shall be signed by at least two
4 persons each of whom witnessed either the signing or the testator's
5 acknowledgment of the signature or of the will.

1 5. A will which does not comply with section 4. is valid as a
2 holographic will, whether or not witnessed, if the signature and
3 material provisions are in the handwriting of the testator.

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

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

17
Testator

18 ,
19 the witnesses, being first duly sworn, do each hereby declare to
20 the undersigned authority that the testator signs and executes
21 this instrument as his last will and that he signs it willingly (or

22 willingly directs another to sign for him), and that each of us
23 states that in the presence and hearing of the testator, he hereby
24 signs this will as witness to the testator's signing, and that to the
25 best of his knowledge the testator is 18 years of age or older, of
26 sound mind, and under no constraint or undue influence.

27
Witness

28
Witness

29 The State of

30 County of

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

36 (SEAL) (Signed)
37
(Official capacity of officer)

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

40 b. An attested will may at any time subsequent to its execution
41 be made self-proved by the acknowledgment thereof by the testator
42 and the affidavits of the witnesses, each made before any officer
43 authorized pursuant to R. S. 46:14-6, 46:14-7 or 40:14-8 to take
44 acknowledgments and proofs of instruments entitled to be recorded
45 under the laws of this State and evidenced by the officer's certificate,
46 under official seal, attached or annexed to the will in form and
47 content substantially as follows:

48,
49 and, the testator and the witnesses,
50 respectively, whose names are signed to the attached (or foregoing)
51 instrument, being first duly sworn, do hereby declare to the under-
52 signed authority that the testator signed and executed the instru-
53 ment as his last will and that he had signed willingly (or directed
54 another to sign for him), and that he executed it as his free and
55 voluntary act for the purposes therein expressed; and that each
56 witness states that he signed the will as witness in the presence
57 and hearing of the testator, and that to the best of his knowledge
58 the testator was at that time 18 or more years of age, of sound mind
59 and under no constraint or undue influence.

60
Testator

61
Witness

62
Witness

63 Subscribed, sworn to and acknowledged before me by
64 , the testator, and subscribed and
65 sworn to before me by and ,
66 witnesses, this day of , 19.....

67 (SEAL) (Signed)
68
(Official capacity of officer)

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

1 7. a. Any person generally competent to be a witness may act as
2 a witness to a will and to testify concerning the execution thereof.

3 b. A will or any provision thereof is not invalid because the will
4 is signed by an interested witness.

1 8. A written will is validly executed if executed in compliance
2 with sections 4 or 5 or its execution was in compliance with the
3 law of the place where it was executed, or with the law of the place
4 where at the time of execution or at the time of death the testator
5 was domiciled, had a place of abode or was a national.

1 9. Any writing in existence when a will is executed may be incor-
2 porated by reference if the language of the will manifests this
3 intent and describes the writing sufficiently to permit its
4 identification.

1 10. A will may refer to a written statement or list to dispose of
2 items of tangible personal property not otherwise specifically
3 disposed of by the will, other than money, evidences of indebted-
4 ness, documents of title, and securities and property used in trade
5 or business. To be admissible under this section as evidence of the
6 intended disposition, the writing must be either in the handwriting
7 of the testator or be signed by him and must describe the items
8 and the devisees with reasonable certainty. The writing referred
9 to may be one in existence at the time of the testator's death, may
10 be prepared before or after the execution of the will, may be altered
11 by the testator after its preparation and may be a writing which
12 has no significance apart from its effect upon the dispositions made
13 by the will.

1 11. A will may dispose of property by reference to acts and
2 events which have significance apart from their effect upon the
3 dispositions made by the will, whether they occur before or after
4 the execution of the will or before or after the testator's death.
5 The execution or revocation of a will of another person is such
6 an event.

2. REVOCATION

1 12. A will or any part thereof is revoked:

2 a. By a subsequent will which revokes the former will or part
3 expressly or by inconsistency; or

4 b. By being burned, torn, canceled, obliterated, or destroyed with
5 the intent and for the purpose of revoking by the testator or by
6 another person in his presence and by his direction.

1 13. If after having executed a will the testator is divorced or his
2 marriage annulled, the divorce or annulment revokes any disposi-
3 tions or appointment of property made by the will to the former
4 spouse, any provision conferring a general or special power of
5 appointment on the former spouse, and any nomination of the
6 former spouse as executor, trustee, or guardian, unless the will
7 expressly provides otherwise. Property prevented from passing
8 to a former spouse because of revocation by divorce or annulment
9 passes as if the former spouse failed to survive the decedent, and
10 other provisions conferring some power or office on the former
11 spouse are interpreted as if the spouse failed to survive the
12 decedent. A judgment from bed and board is a divorce for the
13 purpose of this section. If provisions are revoked solely by this
14 section, they are revived by testator's remarriage to the former
15 spouse or by the revocation or suspension of a judgment of divorce
16 from bed and board. No change of circumstances other than as
17 described in this section revokes a will.

1 14. A revoked will or codicil shall not be revived except by re-
2 execution or by a duly executed codicil expressing an intention to
3 revive it.

3. PROBATE AND RECORD

1 15. a. A will executed as provided in section 4 may be admitted
2 to probate in common form upon the proof of one of the attesting
3 witnesses or by some other person having knowledge of the facts
4 relating to the proper execution of the will by the testator and
5 its attestation by one of the witnesses.

6 b. A will executed and acknowledged in the manner provided in
7 section 6 may be admitted to probate in common form without
8 further affidavit, deposition or proof.

9 c. A holographic will may be admitted to probate only in solemn
10 form in the manner provided by the Rules Governing the Courts
11 of the State of New Jersey.

1 16. To be effective to prove the transfer of any property or to
2 nominate an executor, a will must be admitted to probate.

1 17. N. J. S. 3A :3-18 is amended to read as follows :

2 3A :3-18. The will of any person resident within any county of
3 this State at his death may be admitted to probate in the surro-
4 gate's court of the county or in the Superior Court. If the will of
5 any person resident within the State at his death is probated with-
6 out the State, it shall be without effect unless or until probate is
7 granted within the State. **【The failure to probate a will shall not**
8 **prevent the passage of title to real estate under the will.】**

1 18. N. J. S. 3A :3-27 is amended to read as follows :

2 3A :3-27. When the will of any person not resident in this State
3 at his death shall have been admitted to probate in any state of the
4 United States or other jurisdiction or country, the surrogate's
5 court of any county may admit it to probate for any purpose and
6 issue letters thereon, provided the will **【is executed in accordance**
7 **with the laws of this State】** *is valid under the laws of this State.*

1 19. N. J. S. 3A :3-28 is amended to read as follows :

2 3A :3-28. A copy of any will or of the record of any will of a
3 decedent not resident in this State at his death, admitted to probate
4 in any state of the United States or other jurisdiction or country,
5 and of the certificate or judgment for probate, and if title to real
6 estate of the decedent depends on the conveyance by an executor,
7 administrator with the will annexed, substituted administrator with
8 the will annexed, trustee or substituted trustee, of the record of
9 the grant of letters testamentary thereon, or of administration, or
10 substitutionary administration, with the will annexed, or of a copy
11 of such letters, attested and certified pursuant to the rules of the
12 Supreme Court or, if it be a record of any state of the United States,
13 exemplified and authenticated according to the act of Congress,
14 heretofore or hereafter filed and recorded in the office of the
15 surrogate of any county in this State, shall have the same force and
16 effect in respect to all real estate whereof the testator died seized,
17 as if the will had been admitted to probate and the letters aforesaid
18 had been issued in this State, provided it appears either from the
19 deposition in the record or the attestation clause, or by a deposition

20 taken under a commission or otherwise, that the will [was executed
21 in accordance with the laws of this State] *is valid under the laws*
22 *of this State.*

23 All conveyances of such real estate heretofore or hereafter made
24 by any executor, administrator with the will annexed, substituted
25 administrator with the will annexed, trustee, substituted trustee, or
26 the survivor or survivors of them, or by any devisee or persons
27 claiming under such devisee shall be as valid as if such will had been
28 admitted to probate and letters aforesaid had been issued in this
29 State.

30 Certified copies of such will, deposition, judgment for probate
31 and letters, or of the record thereof, shall be received in evidence
32 in all the courts of this State.

1 20. If an issue as to the execution of a will arises in a contested
2 probate action, the testimony of at least one of the attesting wit-
3 nesses, if within the State, competent and able to testify, is re-
4 quired. Other evidence is admissible as to the due execution of a
5 will.

1 21. A final order of a court of another state admitting a will to
2 probate or determining the validity or construction of a will made
3 in a proceeding involving notice to and an opportunity for contest
4 by all interested persons must be accepted as determinative by the
5 courts of this State if it includes, or is based upon, a finding that
6 the decedent was domiciled at his death in the state where the
7 order was made.

4. CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

1 22. A contract to make a will or devise, or not to revoke a will or
2 devise, or to die intestate, if executed after the effective date of
3 this act, can be established only by (1) provisions of a will stating
4 material provisions of the contract; (2) an express reference in
5 a will to a contract and extrinsic evidence proving the terms of the
6 contract; or (3) a writing signed by the decedent evidencing the
7 contract. The execution of a joint will or mutual wills does not
8 create a presumption of a contract not to revoke the will or wills.

5. CONSTRUCTION

1 23. A devisee who does not survive the testator by 120 hours is
2 treated as if he predeceased the testator, unless the will of decedent
3 contains some language dealing explicitly with simultaneous deaths
4 or deaths in a common disaster, or requiring that the devisee

5 survive the testator or survive the testator for a stated period in
6 order to take under the will. To the extent this section is incon-
7 sistent with the Uniform Simultaneous Death Law, N. J. S.
8 3A:5-1 et seq., the provision of this section shall apply.

1 24. The meaning and legal effect of a disposition in a will shall be
2 determined by the local law of a particular state selected by the
3 testator in his instrument unless the application of that law is
4 contrary to the public policy of this State otherwise applicable to
5 the disposition. The intention of a testator as expressed in his will
6 controls the legal effect of his dispositions, and the rules of con-
7 struction expressed in sections 25 through 35 of this act apply,
8 unless the probable intention of the testator, as indicated by the
9 will and relevant circumstances, is contrary.

1 25. A will is construed to pass all property which the testator
2 owns at his death including property acquired after the execution
3 of the will.

1 26. If a devisee who is a grandparent or a lineal descendant of
2 a grandparent of the testator is dead at the time of the execution
3 of the will, or fails to survive the testator, or is treated as if he
4 predeceased the testator, the issue of the deceased devisee who
5 survive the testator by 120 hours take in place of the deceased
6 devisee and if they are all of the same degree of kinship to the
7 devisee they take equally, but if of unequal degree then those of
8 more remote degree take by representation. One who would have
9 been a devisee under a class gift if he had survived the testator is
10 treated as a devisee for purposes of this section whether his death
11 occurred before or after the execution of the will.

1 27. Except as provided in section 26 of this act if a devise other
2 than a residuary devise fails for any reason, it becomes a part of
3 the residue.

1 28. When a residuary devise shall be made to two or more per-
2 sons by the will of any testator, unless a contrary intention shall
3 appear by the will, the share of any such residuary devisees dying
4 before the testator and not saved from the lapse by section 26 of
5 this act, or not capable of taking effect because of any other cir-
6 cumstance or cause, shall go to and be vested in the remaining
7 residuary devisees, if any there be, and if more than one, then
8 to the remaining residuary devisees in proportion to their respec-
9 tive shares in said residue.

10 29. a. If the testator intended a specific devise of certain securi-
11 ties rather than the equivalent value thereof, the specific devisee
12 is entitled only to:

13 (1) As much of the devised securities as is a part of the estate
14 at time of the testator's death;

15 (2) Any additional or other securities of the same entity owned
16 by the testator by reason of action initiated by the entity and
17 attributable to the securities devised excluding any acquired by
18 exercise of purchase options;

19 (3) Securities of another entity owned by the testator as a result
20 of a merger, consolidation, reorganization or other similar action
21 initiated by either entity and attributable to the specific devise; and

22 (4) Any additional securities of the entity owned by the testator
23 as a result of a plan of reinvestment if it is a regulated investment
24 company and attributable to the specific devise.

25 b. Distributions prior to death with respect to a specifically
26 devised security not provided for in subsection a. are not part of
27 the specific devise.

1 30. If specifically devised property is sold by a guardian for a
2 testator, or if a condemnation award or insurance proceeds are paid
3 to a guardian for a testator as a result of condemnation, fire or
4 casualty, the specific devisee has the right to a general pecuniary
5 devise equal to the net sale price, the condemnation award, or the
6 insurance proceeds. This subsection does not apply if subsequent
7 to the sale, condemnation or casualty, the guardianship is termi-
8 nated and the testator survives by 1 year the judgment terminating
9 the guardianship. The right of the specific devisee under this
10 section is reduced by any right he has under section 31.

1 31. A specific devisee has the right to the remaining specifically
2 devised property and:

3 a. Any balance of the purchase price (together with any security
4 interest) owing from a purchaser to the testator at death by reason
5 of sale of the property;

6 b. Any amount of a condemnation award for the taking of the
7 property unpaid at death;

8 c. Any proceeds unpaid at death on fire or casualty insurance on
9 the property; and

10 d. Property owned by testator at his death as a result of fore-
11 closure, or obtained in lieu of foreclosure, of the security for a
12 specifically devised obligation.

1 32. A general residuary clause in a will, or a will making general
2 disposition of all of the testator's property, does not exercise a
3 power of appointment held by the testator unless specific reference
4 is made to the power or there is some other indication of intention
5 to include the property subject to the power.

1 33. Halfbloods, adopted persons and persons born out of wedlock
2 are included in class gift terminology and terms of relationship in
3 accordance with rules for determining relationships for purposes
4 of intestate succession.

1 34. Property which a testator gave in his lifetime to a person is
2 treated as a satisfaction of a devise to that person in whole or in
3 part, only if the will provides for deduction of the lifetime gift, or
4 the testator declares in a contemporaneous writing that the gift is
5 to be deducted from the devise or is in satisfaction of the devise,
6 or the devisee acknowledges in writing that the gift is in satisfac-
7 tion. For purpose of partial satisfaction, property given during
8 lifetime is valued as of the time the devisee came into possession or
9 enjoyment of the property or as the time of death of the testator,
10 whichever occurs first.

1 35. A provision in a will purporting to penalize any interested
2 person for contesting the will or instituting other proceedings
3 relating to the estate is unenforceable if probable cause exists for
4 instituting proceedings.

D. INTESTACY

1. SUCCESSION

1 36. Any part of the estate of a decedent not effectively disposed
2 of by his will passes to his heirs as prescribed in sections 37 through
3 46 of this act.

1 37. The intestate share of the surviving spouse is:

2 a. If there is no surviving issue or parent of the decedent, the
3 entire intestate estate;

4 b. If there is no surviving issue but the decedent is survived by
5 a parent or parents, the first \$50,000.00, plus one-half of the balance
6 of the intestate estate;

7 c. If there are surviving issue all of whom are issue of the
8 surviving spouse also, the first \$50,000.00, plus one-half of the
9 balance of the intestate estate;

10 d. If there are surviving issue one or more of whom are not
11 issue of the surviving spouse, one-half of the intestate estate.

1 38. The part of the intestate estate not passing to the surviving
2 spouse under section 37 of this act, or the entire intestate estate if
3 there is no surviving spouse, passes as follows:

4 a. To the issue of the decedent; if they are all of the same degree
5 of kinship to the decedent they take equally, but if of unequal
6 degree, then those of more remote degree take by representation;

7 b. If there is no surviving issue, to his parent or parents equally;

8 c. If there is no surviving issue or parent, to the issue of the
9 parents or either of them by representation;

10 d. If there is no surviving issue, parent or issue of a parent, but
11 the decedent is survived by one or more grandparents;

12 (1) Half of the estate passes to the paternal grandparents
13 equally if both survive, or to the surviving paternal grandparent;
14 or if both are deceased and the decedent is survived by maternal
15 grandparents or grandparent, then to the issue of the paternal
16 grandparents, the issue taking equally if they are all of the same
17 degree of kinship to the decedent, but if of unequal degree those of
18 more remote degree take by representation;

19 (2) The other half passes to the maternal grandparents equally
20 if both survive, or to the surviving maternal grandparent; or if
21 both are deceased and the decedent is survived by paternal grand-
22 parents or grandparent, then to the issue of the maternal grand-
23 parents, the issue taking equally if they are all of the same degree
24 of kinship to the decedent, but if of unequal degree, those more
25 remote take by representation;

26 (3) If the decedent is survived by a grandparent or grand-
27 parents only on the paternal side or only on the maternal side and
28 by no issue of the grandparents on the other side, the entire estate
29 passes to the surviving grandparent or grandparents equally;

30 e. If there is no surviving issue, parent, issue of a parent or no
31 surviving grandparent, but the decedent is survived by issue of
32 grandparents, the issue take equally if they are all of the same
33 degree of kinship to the decedent, but if of unequal degree those
34 of more remote degree take by representation.

1 39. Any person who fails to survive the decedent by 120 hours
2 is deemed to have predeceased the decedent for purposes of in-
3 testate succession, and the decedent's heirs are determined accord-
4 ingly. If the time of death of the decedent or of the person who
5 would otherwise be an heir, or the times of death of both, cannot
6 be determined, and it cannot be established that the person who
7 would otherwise be an heir has survived the decedent by 120 hours,
8 it is deemed that the person failed to survive for the required
9 period. This section is not to be applied where its application
10 would result in a taking of intestate estate by the State under
11 section 40 of this act.

1 40. If there are none who may inherit an intestate estate that
2 estate shall escheat to the State.

1 41. When representation is required to effect disposition of an
2 estate, the estate is divided into as many shares as there are sur-

3 viving heirs in the nearest degree of kinship and deceased persons
4 in the same degree who left issue who survive the decedent, each
5 surviving heir in the nearest degree receiving one share and the
6 share of each deceased person in the same degree being divided
7 among his issue in the same manner.

1 42. Relatives of the half blood inherit the same share they would
2 inherit if they were of the whole blood.

1 43. Relatives of the decedent conceived before his death but born
2 thereafter inherit as if they had been born in the lifetime of the
3 decedent.

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

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

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

15 (1) The natural parents, before or after the birth of the child,
16 participated in a ceremonial marriage or shall have consummated
17 a common-law marriage where such marriage is recognized as
18 valid in the manner authorized by the law of the place where such
19 marriage took place, even though the attempted marriage is void;
20 or

21 (2) The paternity is established by an adjudication before the
22 death of the father or is established thereafter by clear and con-
23 vincing proof, except that the paternity established under this
24 subparagraph is ineffective to qualify the father or his kindred to
25 inherit from or through the child unless the father has openly
26 treated the child as his, and has not refused to support the child.

1 45. A debt owed to the decedent by an heir is not charged against
2 the intestate share of any person except that heir. If the debtor
3 fails to survive the decedent, the debt is not taken into account in
4 computing the intestate share of the debtor's issue.

1 46. No person is disqualified to take as an heir because he or a
2 person through whom he claims is or has been an alien.

2. INHERITANCE BY SPOUSE OR CHILDREN
NOT PROVIDED FOR IN WILL

1 47. a. If a testator fails to provide by will for his surviving
2 spouse who married the testator after the execution of the will, the
3 omitted spouse shall receive the same share of the estate he would
4 have received if the decedent left no will unless it appears from the
5 will that the omission was intentional or the testator provided for
6 the spouse by transfer outside the will and the intent that the
7 transfer be in lieu of a testamentary provision is shown by state-
8 ments of the testator or from the amount of the transfer or other
9 evidence.

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

1 48. a. If a testator fails to provide in his will for any of his
2 children born or adopted after the execution of his will, the omitted
3 child receives a share in the estate equal in value to that which he
4 would have received if the testator had died intestate unless:

5 (1) It appears from the will that the omission was intentional;

6 (2) When the will was executed the testator had one or more
7 children and devised substantially all his estate to the other parent
8 of the omitted child; or

9 (3) The testator provided for the child by transfer outside the
10 will and the intent that the transfer be in lieu of a testamentary
11 provision is shown by statements of the testator or from the amount
12 of the transfer or other evidence.

13 b. If at the time of execution of the will the testator fails to
14 provide in his will for a living child solely because he believes the
15 child to be dead, the child receives a share in the estate equal in
16 value to that which he would have received if the testator had died
17 intestate.

18 c. The share of any such child shall be taken from devisees
19 under the will ratably and in proportion to their respective
20 interests therein.

E. PAYMENT OF CLAIMS

1 49. Unless an estate is insolvent the personal representative may,
2 but only with the consent of all successors, waive any defense of
3 limitations available to the estate. If the defense is not waived, no
4 claim which was barred by any statute of limitations at the time
5 of the decedent's death shall be allowed or paid.

1 50. a. If the applicable assets of the estate are insufficient to pay
 2 all claims in full, the personal representative shall make payment
 3 in the following order :

- 4 (1) Reasonable funeral expenses ;
- 5 (2) Costs and expenses of administration ;
- 6 (3) Debts and taxes with preference under Federal law or the
 7 laws of this State ;
- 8 (4) Reasonable medical and hospital expenses of the last illness
 9 of the decedent, including compensation of persons attending him ;
- 10 (5) All other claims.

11 b. No preference shall be given in the payment of any claim over
 12 any other claim of the same class, and a claim due and payable
 13 shall not be entitled to a preference over claims not due.

1 51. a. All assets of estates being administered in this State are
 2 subject to all claims and charges existing or established against the
 3 personal representative wherever appointed.

4 b. If the estate either in this State or as a whole is insufficient to
 5 cover all claims and prior charges, each claimant whose claim has
 6 been allowed either in this State or elsewhere in administrations
 7 of which the personal representative is aware, is entitled to receive
 8 payment of an equal proportion of his claim. If a preference or
 9 security in regard to a claim is allowed in another jurisdiction but
 10 not in this State, the creditor so benefited is to receive dividends
 11 from local assets only upon the balance of his claim after deducting
 12 the amount of the benefit.

13 c. In case the claims and prior charges of the entire estate exceed
 14 the total value of the portions of the estate being administered
 15 separately and this State is not the state of the decedent's last
 16 domicile, the claims allowed in this State shall be paid their pro-
 17 portion if local assets are adequate for the purpose, and the balance
 18 of local assets shall be transferred to the domiciliary personal
 19 representative. If local assets are not sufficient to pay all claims
 20 allowed in this State the amount to which they are entitled, local
 21 assets shall be marshaled so that each claim allowed in this State
 22 is paid its proportion as far as possible, after taking into account
 23 all dividends on claims allowed in this State from assets in other
 24 jurisdictions.

F. FIDUCIARIES

1. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

1 52. The duties and powers of a personal representative com-
 2 mence upon his appointment. The powers of a personal repre-

3 sentative relate back in time to give acts by the person appointed
4 which are beneficial to the estate occurring prior to appointment the
5 same effect as those occurring thereafter. Prior to appointment, a
6 person named executor in a will may carry out written instructions
7 of the decedent relating to his body, funeral and burial arrange-
8 ments. A personal representative may ratify and accept acts on
9 behalf of the estate done by others where the acts would have been
10 proper for a personal representative.

1 53. A person to whom general letters of appointment are issued
2 first has exclusive authority under the letters until his appointment
3 is terminated or modified. If, through error, general letters of
4 appointment are afterwards issued to another, the first appointed
5 personal representative may recover any property of the estate in
6 the hands of the personal representative subsequently appointed,
7 but the acts of the latter done in good faith before notice of the
8 first letters are not void for want of validity of appointment.

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

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

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

28 d. Except as otherwise provided by the terms of the will, the
29 personal representative shall observe the standards in dealing with
30 the estate assets that would be observed by a prudent man dealing
31 with the property of another, and if the personal representative
32 has special skills or is named personal representative on the basis
33 of representations of special skills or expertise, he is under a duty
34 to use those skills.

1 55. The right to possession of property transferred in fraud of
2 creditors recovered for the benefit of creditors is exclusively in
3 the personal representative.

1 56. A personal representative shall proceed expeditiously with
2 the settlement and distribution of a decedent's estate and do so
3 without adjudication, order, or direction of a court, but he may
4 invoke the jurisdiction of a court, in proceedings authorized by law
5 to resolve questions concerning the estate or its administration.

1 57. Except as otherwise provided by a decedent's will, every per-
2 sonal representative has a right to, and shall take possession or
3 control of, the decedent's personal property, except that any
4 tangible personal property may be left with or surrendered to the
5 person presumptively entitled thereto unless or until, in the judg-
6 ment of the personal representative, possession of the property by
7 him will be necessary for purposes of administration. The request
8 by a personal representative for delivery of any personal property
9 possessed by an heir or devisee is conclusive evidence, in any action
10 against the heir or devisee for possession thereof, that the
11 possession of the property by the personal representative is
12 necessary for purposes of administration. The personal repre-
13 sentative shall take all steps reasonably necessary for the manage-
14 ment, protection and preservation of, the estate in his possession.
15 He may maintain an action to recover possession of property or to
16 determine the title thereto.

1 58. Until termination of his appointment a personal representa-
2 tive has the same power over the title to property of the estate
3 that an absolute owner would have, in trust however, for the
4 benefit of the creditors and others interested in the estate. This
5 power may be exercised without notice, hearing, or order of court.

1 59. A successor personal representative has the same power and
2 duty as the original personal representative to complete the
3 administration and distribution of the estate, as expeditiously as
4 possible, but he shall not exercise any power expressly made per-
5 sonal to the executor named in the will.

1 60. Unless the terms of the will otherwise provide, every power
2 exercisable by copersonal representatives may be exercised by the
3 one or more remaining after the appointment of one or more is
4 terminated, and if one of two or more nominated as copersonal
5 representatives is not appointed, those appointed may exercise all
6 the powers incident to the office.

2. POWERS AND JURISDICTION OVER FOREIGN FIDUCIARIES

1 61. At any time after the expiration of 60 days from the appoint-
2 ment of a domiciliary foreign fiduciary, any person indebted to
3 the estate or having possession or control of personal property,
4 or of an instrument evidencing a debt, obligation, stock or chose
5 in action belonging to the estate may pay the debt, deliver the
6 personal property, or the instrument evidencing the debt, obliga-
7 tion, stock or chose in action, to the domiciliary foreign fiduciary
8 upon being presented with a certificate of his letters or other proof
9 of his authority and an affidavit made by or on his behalf stating:

10 a. The date of the letters of the domiciliary foreign fiduciary,
11 or the date when he first received authority to act as such;

12 b. That no letters have issued in this State and no action there-
13 for is pending in this State;

14 c. That the domiciliary foreign fiduciary is entitled to payment
15 or delivery.

1 62. Payment or delivery made in good faith on the basis of the
2 proof of authority and affidavit releases the debtor or person
3 having possession of the personal property to the same extent as
4 if payment or delivery had been made to a local fiduciary.

1 63. Payment or delivery under section 61 of this act may not be
2 made if a resident creditor of the estate has notified the debtor or
3 the person having possession of the personal property that the
4 debt should not be paid nor the property delivered to the domi-
5 ciliary foreign fiduciary.

1 64. If no letters have issued in this State or no action therefor
2 is pending in this State, a domiciliary foreign fiduciary or any
3 other person may file in the office of the Clerk of the Superior
4 Court, or if the decedent, ward, or trust has an interest in real
5 estate in any county of this State, then either in that office or in
6 the office of the surrogate of that county, authenticated copies of
7 the letters or appointment of the fiduciary and of any official bond
8 he has given.

1 65. Upon compliance with section 64, a domiciliary foreign fi-
2 duciary may exercise as to assets in this State all powers he would
3 have had if he had received letters or been appointed in this State,

4 including the power to release and discharge real or personal estate
5 from a mortgage, judgment or other lien or encumbrance held
6 by his decedent, ward or trust. Whether section 64 is complied with
7 prior to, pending, or subsequent to the action, a domiciliary foreign
8 fiduciary may maintain, or be made a party defendant or otherwise,
9 to any action in any court of this State as if letters had been
10 granted to him in this State, subject to any conditions generally
11 imposed upon nonresident parties. Security for costs may be
12 required of him.

1 66. The power of a domiciliary foreign fiduciary under sections
2 64 or 65 shall be exercised only if no letters have issued or action
3 therefor is pending in this State. The issuance of local letters or
4 an action therefor terminates the power of the domiciliary foreign
5 fiduciary to act under section 65, but a court in this State may allow
6 the domiciliary foreign fiduciary to exercise limited powers to
7 preserve the estate. No person who, before receiving actual notice
8 of local letters or an action therefor, has changed his position in
9 reliance upon the powers of the domiciliary foreign fiduciary, shall
10 be prejudiced by reason of the action for, or issuance of, local
11 letters. The local fiduciary is subject to all duties and obligations
12 which have accrued by virtue of the exercise of the powers by the
13 domiciliary foreign fiduciary and may be substituted for him in
14 any action in this State.

1 67. A domiciliary foreign fiduciary submits himself personally
2 to the jurisdiction of the courts of this State in any proceeding
3 relating to the estate by (1) filing authenticated copies of his letters
4 or appointment as provided in section 64 (2) receiving payment
5 of money or taking delivery of personal property under section 61
6 or (3) doing any act as a fiduciary in this State which would have
7 given the State jurisdiction over him as an individual. Jurisdic-
8 tion under (2) is limited to the money or value of personal property
9 collected.

1 68. In addition to jurisdiction conferred by section 67, a domi-
2 ciliary foreign fiduciary for a decedent is subject to the jurisdiction
3 of the courts of this State to the same extent that his decedent was
4 subject to their jurisdiction immediately prior to death.

1 69. If a domiciliary foreign fiduciary has submitted himself to
2 the jurisdiction of the courts of this State, service of process shall
3 be made upon him as provided by the Rules of the Supreme Court
4 of New Jersey.

1 70. An adjudication rendered in any jurisdiction in favor of or
2 against any fiduciary of the estate is as binding on the local fi-
3 duciary upon notice to him as if he were a party to the adjudication.

3. LIABILITY

1 71. a. Unless otherwise provided in the contract, a fiduciary is
2 not individually liable on a contract properly entered into in his
3 fiduciary capacity in the course of administration of the estate
4 unless he fails to reveal his fiduciary capacity and identify the
5 estate in the contract.

6 b. A fiduciary is individually liable for obligations arising from
7 ownership or control of the estate or for torts committed in the
8 course of administration of the estate only if he is personally at
9 fault.

10 c. Claims based on contracts entered into by a fiduciary in his
11 fiduciary capacity, on obligations arising from ownership or control
12 of the estate or on torts committed in the course of estate admin-
13 istration may be asserted against the estate by proceeding against
14 the fiduciary in his fiduciary capacity, whether or not the fiduciary
15 is individually liable therefor.

16 d. Issues of liability as between the estate and the fiduciary
17 individually may be determined in a proceeding for accounting,
18 surcharge or indemnification or other appropriate proceeding.

1 72. If the exercise of power concerning the estate is improper,
2 the fiduciary is liable to interested persons for damage or loss
3 resulting from breach of his fiduciary duty to the same extent as a
4 trustee of an express trust. The rights of purchasers and others
5 dealing with a fiduciary shall be determined as provided in sections
6 73 and 74 of this act.

1 73. Any sale or encumbrance to the fiduciary, his spouse, agent
2 or attorney, or any corporation or trust in which he has a sub-
3 stantial beneficial interest, or any transaction which is affected
4 by a substantial conflict of interest on the part of the fiduciary, is
5 voidable by any person interested in the estate except one who
6 has consented after fair disclosure, unless:

7 a. The will or a contract entered into by the decedent expressly
8 authorized the transaction; or

9 b. The transaction is approved by the court after notice to
10 interested persons.

1 74. A person who in good faith either assists a fiduciary or
2 deals with him for value is protected as if the fiduciary properly
3 exercised his power. The fact that a person knowingly deals with a
4 fiduciary does not alone require the person to inquire into the
5 existence of a power or the propriety of its exercise. No provision
6 in any will or order of court purporting to limit the power of a
7 fiduciary is effective except as to persons with actual knowledge

8 thereof. A person who in good faith pays, transfers or delivers
 9 to a fiduciary money or other property is not responsible for the
 10 proper application thereof by the fiduciary; and any right or title
 11 acquired from the fiduciary in consideration of such payment,
 12 transfer or delivery is not invalid in consequence of a misapplica-
 13 tion by the fiduciary. The protection here expressed extends to
 14 instances in which some procedural irregularity or jurisdictional
 15 defect occurred in proceedings leading to the issuance of letters,
 16 including a case in which the alleged decedent is found to be alive.
 17 The protection here expressed is in addition to that provided by
 18 comparable provisions of the laws relating to commercial transac-
 19 tions and laws simplifying transfers of securities by fiduciaries.

G. DISTRIBUTION

1 75. The estate of a nonresident decedent being administered by a
 2 personal representative appointed in this State shall, if there is a
 3 personal representative of the decedent's domicile willing to receive
 4 it, be distributed to the domiciliary personal representative for the
 5 benefit of the successors of the decedent unless (1) by virtue of the
 6 decedent's will, if any, and applicable choice of law rules, the
 7 successors are identified pursuant to the local law of this State
 8 without reference to the local law of the decedent's domicile; or
 9 (2) the personal representative of this State, after reasonable
 10 inquiry, is unaware of the existence or identity of a domiciliary
 11 personal representative. In other cases, distribution of the estate
 12 of a decedent shall be made in accordance with the law.

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

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

19 c. If the subject of a preferred devise is sold or used incident to
20 administration, abatement shall be achieved by appropriate ad-
21 justments in, or contribution from, other interests in the remaining
22 assets.

1 77. The amount of a noncontingent indebtedness of a successor
2 to the estate if due, or its present value if not due, shall be offset
3 against the successor's interest; but the successor has the benefit
4 of any defense which would be available to him in a direct proceed-
5 ing for recovery of the debt.

1 78. General pecuniary devises bear interest at the rate of 4% per
2 annum beginning 1 year after the first appointment of a personal
3 representative until payment, unless a contrary intent is indicated
4 by the will.

1 79. a. Unless a contrary intention is indicated by the will, the
2 distributable assets of a decedent's estate shall be distributed in
3 kind to the extent reasonably possible through application of the
4 following provisions:

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

7 (2) Any devise payable in money may be satisfied by value in
8 kind provided:

9 (a) The person entitled to the payment has not demanded
10 payment in cash;

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

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

15 (3) For the purpose of valuation under paragraph (2) securities
16 regularly traded on recognized exchanges, if distributed in kind,
17 are valued at the price for the last sale of like securities traded on
18 the business day prior to distribution, or if there was no sale on
19 that day, at the median between amounts bid and offered at the
20 close of that day. Assets consisting of sums owed the decedent or
21 the estate by solvent debtors as to which there is no known dispute
22 or defense are valued at the sum due with accrued interest or dis-
23 counted to the date of distribution. For assets which do not have
24 readily ascertainable values, a valuation as of a date not more than
25 30 days prior to the date of distribution, if otherwise reasonable,
26 controls. For purposes of facilitating distribution, the personal
27 representative may ascertain the value of the assets as of the time
28 of the proposed distribution in any reasonable way, including the

29 employment of qualified appraisers, even if the assets may have
30 been previously appraised.

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

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

1 80. If distribution in kind is made, the personal representative
2 may and, if requested, shall execute an instrument or deed of
3 distribution assigning, transferring or releasing the assets to the
4 distributee as evidence of the distributee's title to the property.

1 81. Proof that a distributee has received an instrument or deed
2 of distribution of assets in kind or payment in distribution, from
3 a personal representative, is conclusive evidence that the dis-
4 tributee has succeeded to the interest of the estate in the distributed
5 assets, as against all persons interested in the estate.

1 82. If property distributed in kind or a security interest therein
2 is acquired by a purchaser, or lender, for value from a distributee
3 who has received an instrument or deed of distribution from the
4 personal representative, the purchaser or lender takes title free
5 of any claims of the estate and incurs no personal liability to the
6 estate, whether or not the distribution was proper. To be protected
7 under this provision, a purchaser or lender need not inquire
8 whether a personal representative acted properly in making the
9 distribution in kind.

1 83. When two or more heirs or devisees are entitled to distribu-
2 tion of undivided interests in any real or personal property of the

3 estate, the personal representative or one or more of the heirs or
4 devisees may institute an action, prior to the formal or informal
5 closing of the estate, for partition. After notice to the interested
6 heirs or devisees, the court shall partition the property in the same
7 manner as provided by law for civil actions of partition. The court
8 may direct the personal representative to sell any property which
9 cannot be partitioned without prejudice to the owners and which
10 cannot conveniently be allotted to any one party.

1 84. Subject to the rights of creditors and taxing authorities,
2 competent successors may agree among themselves to alter the
3 interests, shares, or amounts to which they are entitled under the
4 will of the decedent, or under the laws of intestacy, in any way that
5 they provide in a written contract executed by all who are affected
6 by its provisions. The personal representative shall abide by the
7 terms of the agreement subject to his obligation to administer the
8 estate for the benefit of creditors, to pay all taxes and costs of
9 administration, and to carry out the responsibilities of his office
10 for the benefit of any successors of the decedent who are not
11 parties. Personal representatives of decedent's estates are not
12 required to see to the performance of trusts if the trustee thereof
13 is another person who is willing to accept the trust. Accordingly,
14 trustees of a testamentary trust are successors for the purposes of
15 this section. Nothing herein relieves trustees of any duties owed
16 to beneficiaries of trusts.

1 85. A personal representative may discharge his obligation to
2 distribute to any person under legal disability by distributing to
3 his guardian.

H. EFFECT OF HOMICIDE OF DECEDENT

1 86. a. A surviving spouse, heir or devisee who intentionally kills
2 the decedent is not entitled to any benefits under a testate or
3 intestate estate and the estate of decedent passes as if the killer
4 had predeceased the decedent. Property appointed by the will of
5 the decedent to or for the benefit of the killer passes as if the killer
6 had predeceased the decedent.

7 b. Any joint tenant who intentionally kills another joint tenant
8 thereby effects a severance of the interest of the decedent so that
9 the share of the decedent passes as his property and the killer has
10 no rights by survivorship. This provision applies to joint tenancies
11 and tenancies by the entirety, joint accounts in banks, savings and
12 loan associations, credit unions and other institutions, and any
13 other form of coownership with survivorship incidents.

14 c. A named beneficiary of a bond, life insurance policy, or other
 15 contractual arrangement who intentionally kills the principal
 16 obligee or the person upon whose life the policy is issued is not
 17 entitled to any benefit under the bond, policy or other contractual
 18 arrangement, and it becomes payable as though the killer had
 19 predeceased the decedent.

20 d. Any other acquisition of property or interest by the killer
 21 shall be treated in accordance with the principles of this section.

22 e. A final judgment of conviction of intentional killing is con-
 23 clusive for purposes of this section. In the absence of a conviction
 24 of intentional killing the court may determine by a preponderance
 25 of evidence whether the killing was intentional for purposes of this
 26 section.

27 f. This section does not affect the rights of any person who,
 28 before rights under this section have been adjudicated, purchases
 29 from the killer for value and without notice property which the
 30 killer would have acquired except for this section, but the killer is
 31 liable for the amount of the proceeds or the value of the property.
 32 Any insurance company, bank, or other obligor making payment
 33 according to the terms of its policy or obligation is not liable by
 34 reason of this section unless prior to payment it has received at its
 35 home office or principal address written notice of a claim under this
 36 section.

I. SIMULTANEOUS DEATH

1 87. N. J. S. 3A:5-6 is amended to read as follows:

2 3A:5-6. This chapter shall not apply [in the case of wills] to a
 3 *devolution of property of a decedent under a will or upon intestacy,*
 4 *where the law provides that in order to take on the devolution, a*
 5 *person shall survive the decedent by 120 hours,* living trusts, deeds,
 6 or contracts of insurance, wherein provision has been made for
 7 distribution of property different from the provisions of this
 8 chapter.

J. PRESUMPTION OF DEATH

1 88. N. J. S. 3A:40-1 is amended to read as follows:

2 3A:40-1. [If a] A resident or nonresident of this State who
 3 absents himself from the place of his last known residence [for 7
 4 years successively and after diligent inquiry it cannot be ascer-
 5 tained that he was alive or that he died during the 7 years, or at
 6 any subsequent time, he shall, whenever his existence comes into
 7 question, be presumed to be dead, unless it is proved he was alive
 8 within the 7 years or at any subsequent time] for a continuous

9 *period of 5 years, during which he has not been heard from, and*
10 *whose absence is not satisfactorily explained after diligent search,*
11 *or inquiry is presumed to be dead. His death is presumed to have*
12 *occurred at the end of the period unless there is sufficient evidence*
13 *for determining that death occurred earlier.*

K. EXONERATION OF PROPERTY

1 89. N. J. S. 3A:26-1 is amended to read as follows:

2 3A:26-1. When **[real estate]** *property* subject to a mortgage
3 *or security interest* descends to an heir or passes to a devisee,
4 such heir or devisee shall not be entitled to have such mortgage *or*
5 *security interest* discharged out of **[the personalty or]** any other
6 **[real estate]** *property* of the ancestor or testator, but such **[real**
7 **estate]** *property* so descending or passing to him shall be primarily
8 liable for the mortgage *or secured* debt, unless the will of the
9 testator shall expressly or impliedly direct that the mortgage *or*
10 *security interest* be otherwise paid.

L. REPEALERS

1 90. N. J. S. 3A:1-1, 3A:3-1 through 3A:3-3, 3A:3-6 through
2 3A:3-11, 3A:3-13, 3A:3-14, 3A:3-22, 3A:4-1 through 3A:4-7,
3 3A:4-9 through 3A:4-11, 3A:12-7 through 3A:12-9, 3A:13-1,
4 3A:24-2, 3A:25-1 and 3A:25-8 are hereby repealed.

1 91. This act shall take effect 18 months after its enactment.

9 period of 5 years, during which he has not been heard from, and
 10 whose absence is not satisfactorily explained after diligent search,
 11 or inquiry is presumed to be dead. His death is presumed to have
 12 occurred at the end of the period unless there is sufficient evidence
 13 for determining that death occurred earlier.

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SPONSORS' STATEMENT

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

The following statement of the provisions of this bill gives details of its consistencies and inconsistencies with our present law.

Section 1 defines words and phrases as used generally throughout the bill and repeats many definitions presently found in N. J. S. 3A:1-1.

Section 2 repeats the general law providing for the right of successors to the devolution of a decedent's property.

Section 3 lowers the age of general competence to make a will from 21 years to 18 years in conformity with N. J. S. 9:17B-3.

Section 4 relaxes the formalities required in the execution of a will so that the testator and both witnesses need not be present at the same time.

Section 5 permits any competent person to make a holographic will. It is presently permitted only to members of the Armed Forces. It is required for uniformity since this bill permits the probate in New Jersey of any will valid where made.

Section 6 provides for the acknowledgment of the execution of a will, and under section 15 such a will may be admitted to probate without further proof of execution.

Section 7 removes the prohibition of a testamentary gift to an attesting witness.

Section 8 provides a will is validly executed if execution is in compliance with sections 4 and 5 or in compliance with the law of the place where executed or where the testator was domiciled either at that time or at his death.

Sections 9 and 10 authorize the incorporation by reference of the disposition of items of tangible property.

Section 11 authorizes the disposition of property by reference to the possible happening of extraneous acts and events.

Section 12 sets forth the manner in which a will may be revoked by the physical acts of the testator.

Section 13 states the effect of a judgment of divorce or annulment on a testamentary disposition to a spouse.

Section 14 sets forth the manner in which a will or codicil may be revived.

Section 15 provides for the manner in which attested wills, self-proved wills and holographic wills may be admitted to probate in New Jersey.

Sections 16 through 19 revise the present New Jersey law concerning the probate of domestic and foreign wills to conform with the provisions of the Uniform Probate Code as set forth in this bill.

Section 20 requires that in any contested probate action at least one attesting witness must be brought in to testify, if within the State, and competent and able to testify.

Section 21 requires that full faith and credit shall be given to the judgment of a court of the testator's domicile admitting his will to probate and determining its validity and construction, provided notice and opportunity to be heard has been given to all interested parties.

Section 22 sets forth the manner in which a contract to make or revoke a will or die intestate can be established.

Section 23 provides that a devisee must survive the testator by 120 hours unless the will provides to the contrary.

Section 24 sets forth the circumstances under which a testator may exercise a choice of the law by which terms of his will shall be construed.

Section 25 provides that all property owned by a testator at the time of his death, including property acquired after the execution of a will, passes by his will. This will not change the present law.

Section 26 provides that a devise made to a grandparent or lineal descendant of a grandparent of the testator who fails to survive the testator shall go to the issue of the deceased devisee. This expands our present lapse statute.

Section 27 provides that if a devise other than a residuary devise lapses, it becomes a part of the residue.

Under section 28 if the residue is devised to two or more persons, unless a contrary intention appears in the will, and a residuary devisee dies before the testator and his share is not saved from lapse, his share passes to the remaining residuary devisee or devisees. This section reenacts the present New Jersey law.

Section 29 provides for the manner in which satisfaction shall be made of a specific devise of securities.

Sections 30 and 31 sets forth the right of devisees to the value of specifically devised property sold by a testator's guardian or lost by him through condemnation or by fire or other casualty or in satisfaction of a specifically devised obligation.

Under section 32 a power of appointment in a will must be specifically exercised to have a valid effect.

Section 33 provides that adopted or illegitimate children and half bloods are included in class gifts which are expressed in terms of family relationship.

Section 34 provides for the manner in which a gift made by a testator during his lifetime is to be treated as a satisfaction of a testamentary gift. This section is in accord with P. L. 1971, c. 374 relating to intestate estates.

Section 35 codifies existing New Jersey case law providing that a testamentary provision purporting to penalize any interested person for contesting or instituting any other proceedings relating to the will is unenforceable, if probable cause exists.

Sections 36 through 46 relate to intestate succession. They change existing law. The distinction between real and personal property is eliminated. The share of a surviving spouse is increased. The surviving spouse will receive the entire estate if there are no surviving issue or parent of the decedent. If there is

no surviving issue but the decedent is survived by a parent, the surviving spouse will receive \$50,000.00 plus one-half of the balance of the estate; if there are surviving issue of the decedent all of whom are issue of the spouse, the surviving spouse will receive \$50,000.00 plus one-half of the balance of the estate; if all of the issue are not the issue of the surviving spouse, the surviving spouse inherits only one-half of the estate. Adopted persons inherit as children of the adopting parents; rights of inheritance between an adopted person and his natural parents in effect at the time of adoption are not changed by reason of such adoption. Relatives of the half blood inherit as if they were of the whole blood. An illegitimate child is a child of the mother, and is also a child of the father, if before or after the birth of the child the parents participated in a ceremonial marriage or shall have consummated a common-law marriage where such marriage is recognized as valid even though the attempted marriage is void. This language in the bill conforms to the language of our present divorce law (P. L. 1971, c. 212, s. 7). An illegitimate child may inherit from its father if paternity is established by an adjudication or other clear and convincing proof, but neither the father nor his kindred shall inherit from or through the illegitimate child unless the father has openly treated the child as his and not refused to support him. If there are no surviving spouse or issue, the order of descent is to the decedent's parents or their issue and the decedent's grandparents or their issue. Thereafter an estate will escheat. Similar to the provisions of section 23 it will be necessary for a person to survive the decedent by 120 hours in order to inherit. A debt owed to a decedent by an heir is not chargeable against his issue who take by representation. The existing law regarding the right of aliens to take is retained.

Section 47 gives to a surviving spouse, not provided for in a will executed before marriage, an intestate share of the decedent's estate unless it appears from the will that the omission was intentional or provision was made outside of the will for the spouse and intended to be in lieu of testamentary provision. This is a new concept in New Jersey.

Section 48 will give to a child born or adopted after the execution of a will his intestate share of the decedent's estate unless: (1) it appears from the will the omission was intentional; (2) when the will was executed the testator had one or more children and devised substantially all of his estate to the other parent of the omitted child; and (3) provision was made for the child outside of the will and intended to be in lieu of testamentary provision. The section

also provides that if the testator omitted a living child under the misapprehension of the child's death, such child will be entitled to his intestate share. The section incorporates some new features in New Jersey law.

Section 49 changes the existing law and prohibits a personal representative of an insolvent estate from waiving any defense of limitations and pay any claim without the consent of all successors of the estate.

Section 50 changes the existing law relating to the payment of claims by an insolvent estate by removing the priority of judgments over claims not reduced to judgment. A preference shall not be given to claims due and payable over claims not due.

Section 51 is concerned with multiprobate. All of the decedent's assets wherever located are subject to all claims wherever proved. If a preference or security is allowed in another jurisdiction, the creditor shall receive benefits from local assets only upon the balance of his claim after deducting the allowed benefit. If claims exceed the total estate being administered, and this State is not the decedent's domicile, the claims allowed here shall be paid their proportion if local assets are adequate. Any balance of local assets shall thereafter be transferred to the domiciliary representative. If local assets are insufficient to pay all local claims, local assets shall be marshaled so that local claims are paid their proportion after taking into account all dividends allowed in this State or assets of other jurisdictions.

Section 52 provides that the powers and duties of a personal representative commence upon his appointment and relate back in time to ratify acts which are beneficial to the estate. A person named in a will as executor is authorized to carry out the decedent's written instructions relating to funeral arrangements prior to appointment.

Under section 53 a person to whom letters are first issued has exclusive authority to act until his appointment is terminated or modified. If, through error, letters are issued to another, the acts of the latter done in good faith are not void for want of a valid appointment.

Section 54 provides that a personal representative shall settle and distribute his decedent's estate expeditiously and efficiently, and he shall not be liable for acts of administration, if his conduct was authorized at the time. His appointment is his authority to do all acts required consistent with the best interest of the estate. A personal representative of a decedent domiciled in this State

has the same right as his decedent had to sue or be sued. Unless otherwise provided by the law, a personal representative must exercise the same standard of care in dealing with the estate as would be observed by a prudent man dealing with the property of another; if the personal representative has special skills or is named on the basis thereof, he must exercise or use those skills. This codifies existing law.

As provided in section 55, the right to possession of property transferred in fraud of creditors recovered for the benefit of creditors is exclusively in the personal representative. This section will make certain that property fraudulently conveyed will be recovered to its full extent for the benefit of all unpaid creditors and not just for the benefit of a plaintiff-creditor.

Section 56 authorizes a personal representative to settle his decedent's estate without court direction. He may apply for directions to resolve questions relating to the estate or its administration.

Under section 57, in the absence of a contrary intention in the will, a personal representative shall take possession or control of the decedent's personal property. Tangible property may be left with the person presumptively entitled thereto unless or until it is needed for purposes of administration.

Under section 58 a personal representative has the same power of title to property as an absolute owner in trust, however, for the benefit of creditors or others interested in the estate.

Under section 59 a successor personal representative has the same powers and duties as an original personal representative to complete the administration and distribution of an estate unless restricted by the will.

Under section 60 if multiple personal representatives are named in a will, those appointed may exercise all powers incident to the office. A surviving personal representative may exercise all powers after the appointment of one or more is terminated.

Under sections 61 through 63 at any time 60 days after appointment of the domiciliary foreign fiduciary, anyone indebted to or possessed of personal property belonging to the estate may pay the debt and deliver the personal property to the fiduciary upon being presented with the required proof. The person making payment or delivery is released as if he had made payment or delivery to a local fiduciary. Payment or delivery may not be made if a resident creditor notifies the person of his objection.

Under sections 64 and 65 if no letters have been issued here or no action for letters is pending here, a domiciliary foreign fiduciary may file authenticated copies of his appointment in the office of a surrogate or Clerk of the Superior Court. He may then exercise all powers as if he had been appointed in this State as to all assets here, and he may sue or be sued in this State.

Section 66 provides that the issuance of local letters or an action therefore terminates the power of a domiciliary foreign fiduciary, but he may be permitted to exercise limited powers to preserve the estate. Persons who deal with a domiciliary foreign fiduciary are protected.

Sections 67 through 69 relate to jurisdiction over a domiciliary foreign fiduciary and acts by which he submits himself thereto. In addition, a domiciliary foreign fiduciary is subject to jurisdiction here to the same extent that his decedent was prior to death. Service of process shall be made as provided by the Rules of the Supreme Court of New Jersey.

Section 70 provides that an adjudication rendered in any jurisdiction against any fiduciary of an estate is as binding on the local fiduciary as if he were a party thereto.

Section 71 changes the present rule relating to the personal liability of a fiduciary. Unless otherwise provided in the contract, a fiduciary is not individually liable on contracts entered into in his fiduciary capacity unless he fails to reveal his fiduciary capacity and identify the estate in the contract. He is not individually liable for obligations or for torts committed in the course of administration of the estate unless he is personally at fault. The estate is made primarily liable for claims, and the issues of liability between the estate and fiduciary are determined in proceedings for accounting, surcharge or indemnification.

Under section 72 a fiduciary is liable to interested persons for damage or loss resulting from a breach of his duty to the same extent as the trustee of an express trust if he improperly exercises a power.

Under section 73 a sale or encumbrance by a fiduciary to himself, directly or indirectly, is voidable unless duly authorized.

Under section 74 a person who in good faith deals with a fiduciary is protected as to the exercise of a power by the fiduciary. The title or right acquired by a person acting in good faith is not invalidated by a misapplication of funds by the fiduciary. This protection is in addition to that provided by laws relating to commercial transactions and simplifying transfer of securities by fiduciaries.

Section 75 relates to the distribution of the estate of a non-resident decedent being administered by a local personal representative. Such estate shall be distributed to the domiciliary personal representative unless the will provides otherwise or the local personal representative is unaware of the existence or identity of a domiciliary personal representative.

Section 76 provides for the manner in which shares of distributees abate. There is no preference or priority as between real and personal property. If a testator's will is contrary to the statute, the will controls. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by contribution from other interests in the remaining assets.

Section 77 provides that a noncontingent provable debt of a successor to an estate, if due, or its present value, if not due, shall be offset against the successors' interests.

Section 78 provides that, in the absence of a contrary intension expressed in a will, a general pecuniary devise bears interest at the rate of 4% per annum beginning 1 year after the appointment of a personal representative. The present statute calls for 3% after 18 months.

Sections 79 through 84 relate to distribution in kind of assets in a decedent's estate and directs distribution in kind whenever feasible.

Assets are to be valued and distributed in the manner therein set forth. Successors may agree in writing to alter their interest. The agreement cannot affect the rights of creditors or taxing authorities.

Section 85 provides that a personal representative may make distribution to the guardian of any person under legal disability. The present law requires a court order in some cases.

Section 86 codifies existing New Jersey case law relating to the effect of the homicide of a decedent. The perpetrator of an intentional homicide resulting in the death of the decedent cannot benefit from his wrongdoing. A final judgment of conviction of an intentional homicide is conclusive evidence of that fact, and, in the absence of such a conviction, the court may determine in a civil suit by a preponderance of evidence whether the homicide was intentional. Purchasers from the perpetrator for value and without notice are protected for making payments to a perpetrator.

Section 87 amends the Simultaneous Death Law to coordinate it with the provisions of section 23 hereof.

Section 88 amends N. J. S. 3A:40-1 to change the period after which a person is presumed dead from 7 to 5 years.

Section 89 amends N. J. S. 3A:26-1 to provide that property subject to a mortgage or security interest passes to an heir or devisee without exoneration unless the will of a testator expressly or impliedly directs otherwise.

Section 90 repeals statutes which are contrary to the provisions of this bill.

ASSEMBLY COMMITTEE ON JUDICIARY, LAW,
PUBLIC SAFETY AND DEFENSE

STATEMENT TO
ASSEMBLY, No. 1712
with Assembly committee amendment

STATE OF NEW JERSEY

DATED: MAY 27, 1976

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Under section 59 a successor personal representative has the same powers and duties as an original personal representative to complete the administration and distribution of an estate unless restricted by the will.

Under section 60 if multiple personal representatives are named in a will, those appointed may exercise all powers incident to the office. A surviving personal representative may exercise all powers after the appointment of one or more is terminated.

Under sections 61 through 63 at any time 60 days after appointment of the domiciliary foreign fiduciary, anyone indebted to or possessed of personal property belonging to the estate may pay the debt and deliver the personal property to the fiduciary upon being presented with the required proof. The person making payment or delivery is released as if he had made payment or delivery to a local fiduciary. Payment or delivery may not be made if a resident creditor notifies the person of his objection.

Under sections 64 and 65 if no letters have been issued here or no action for letters is pending here, a domiciliary foreign fiduciary may file authenticated copies of his appointment in the office of a surrogate or Clerk of the Superior Court. He may then exercise all powers as if he had been appointed in this State as to all assets here, and he may sue or be sued in this State.

Section 66 provides that the issuance of local letters or an action therefore terminates the power of a domiciliary foreign fiduciary, but he may be permitted to exercise limited powers to preserve the estate. Persons who deal with a domiciliary foreign fiduciary are protected.

Sections 67 through 69 relate to jurisdiction over a domiciliary foreign fiduciary and acts by which he submits himself thereto. In addition, a domiciliary foreign fiduciary is subject to jurisdiction here to the same extent that his decedent was prior to death. Service of process shall be made as provided by the Rules of the Supreme Court of New Jersey.

Section 70 provides that an adjudication rendered in any jurisdiction against any fiduciary of an estate is as binding on the local fiduciary as if he were a party thereto.

Section 71 changes the present rule relating to the personal liability of a fiduciary. Unless otherwise provided in the contract,

a fiduciary is not individually liable on contracts entered into in his fiduciary capacity unless he fails to reveal his fiduciary capacity and identify the estate in the contract. He is not individually liable for obligations or for torts committed in the course of administration of the estate unless he is personally at fault. The estate is made primarily liable for claims, and the issues of liability between the estate and fiduciary are determined in proceedings for accounting, surcharge or indemnification.

Under section 72 a fiduciary is liable to interested persons for damage or loss resulting from a breach of his duty to the same extent as the trustee of an express trust if he improperly exercises a power.

Under section 73 a sale or encumbrance by a fiduciary to himself, directly or indirectly, is voidable unless duly authorized.

Under section 74 a person who in good faith deals with a fiduciary is protected as to the exercise of a power by the fiduciary. The title or right acquired by a person acting in good faith is not invalidated by a misapplication of funds by the fiduciary. This protection is in addition to that provided by laws relating to commercial transactions and simplifying transfer of securities by fiduciaries.

Section 75 relates to the distribution of the estate of a non-resident decedent being administered by a local personal representative. Such estate shall be distributed to the domiciliary personal representative unless the will provides otherwise or the local personal representative is unaware of the existence or identity of a domiciliary personal representative.

Section 76 provides for the manner in which shares of distributees abate. There is no preference or priority as between real and personal property. If a testator's will is contrary to the statute, the will controls. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by contribution from other interests in the remaining assets.

Section 77 provides that a noncontingent provable debt of a successor to an estate, if due, or its present value, if not due, shall be offset against the successors' interests.

Section 78 provides that, in the absence of a contrary intension expressed in a will, a general pecuniary devise bears interest at the rate of 4% per annum beginning 1 year after the appointment of a personal representative. The present statute calls for 3% after 18 months.

Sections 79 through 84 relate to distribution in kind of assets in a decedent's estate and directs distribution in kind whenever feasible.

Assets are to be valued and distributed in the manner therein set forth. Successors may agree in writing to alter their interest. The agreement cannot affect the rights of creditors or taxing authorities.

Section 85 provides that a personal representative may make distribution to the guardian of any person under legal disability. The present law requires a court order in some cases.

Section 86 codifies existing New Jersey case law relating to the effect of the homicide of a decedent. The perpetrator of an intentional homicide resulting in the death of the decedent cannot benefit from his wrongdoing. A final judgment of conviction of an intentional homicide is conclusive evidence of that fact, and, in the absence of such a conviction, the court may determine in a civil suit by a preponderance of evidence whether the homicide was intentional. Purchasers from the perpetrator for value and without notice are protected for making payments to a perpetrator.

Section 87 amends the Simultaneous Death Law to coordinate it with the provisions of section 23 hereof.

Section 88 amends N. J. S. 3A:40-1 to change the period after which a person is presumed dead from 7 to 5 years.

Section 89 amends N. J. S. 3A:26-1 to provide that property subject to a mortgage or security interest passes to an heir or devisee without exoneration unless the will of a testator expressly or impliedly directs otherwise.

Section 90 repeals statutes which are contrary to the provisions of this bill.

The above reprinted sponsor's statement adequately explains the provisions of the bill. Section 44 was amended in committee to clarify that the bill would not affect any rights or restrictions with regard to inheritance by adoptees under N. J. S. 2A:22-3.

FEBRUARY 24, 1978

MAR 28 1978

KATHY FORSYTH

185 W. State Street
Trenton, N. J.

Governor Brendan Byrne has signed a bill revising the laws concerning estates and wills.

Governor Byrne signed the measure, sponsored by Assembly Majority Leader Albert Burstein (D-Bergen), on a New Jersey Public Television Special Report on Thursday evening. It was the first time that a bill was signed on a live NJPTV program.

The bill, A-1712, makes the following changes in the probate law:

- lowers the age of competence to make a will from 21 to 18 years, to conform with the New Jersey age of maturity.
- permits the witnesses to the execution of a will to either witness the signing as is required by prior law, or to witness the testator's acknowledgement of the signature of the will.
- permits any competent person to make a holographic will (a handwritten will, with no witnesses). Under prior law, only members of the Armed Forces could make such a will.
- provides that a will is validly executed if the execution is in compliance with either the law of New Jersey, the law of the place of execution or the law of the domicile of the person making the will either at the time of its execution or at the time of the person's death. Under prior law, a person moving to New Jersey with a will that was valid at the place of execution or domicile at the time of execution has an invalid will. The change brings the New Jersey law into conformity with most U.S. and European jurisdictions.
- allows a person witnessing a will to be a beneficiary of that will.
- provides that a divorce revokes the disposition of property made to the former spouse in the will, unless the person making the will states otherwise in the will.
- revises the present New Jersey law concerning the probate of domestic and foreign wills to conform with the provisions of the Uniform Probate Code.
- changes the period after which a missing person is presumed dead from seven to five years.
- provides in cases where there is no will, that if a deceased person leaves a parent and a surviving spouse, the spouse will receive \$50,000 plus one-half of the balance of the estate. If the deceased person leaves surviving children, all of whom are also children of the spouse, the surviving spouse takes the first \$50,000 plus one-half of the balance of the intestate estate and the children take the

▲ remainder. If the surviving children are not the children of the surviving spouse, the surviving spouse takes only one-half of the intestate estate.

-- enables an illegitimate child to inherit from his father if paternity has been established by the court before the father's death or by clear and convincing proof after the father's death.

-- gives a surviving spouse, not provided for in a will executed before marriage, an intestate share of the deceased person's estate unless it appears from the will that the omission was intentional or if provisions were made outside the will for the spouse and were intended to be in lieu of provisions made in the will.

-- requires that all successors to an estate consent to the waiver of a defense based on the statute of limitations. Prior law permits the executor to waive such defense in his uncontrolled discretion.

-- provides that if an executor of a will has not completed the distribution of the property by one year from the date of the death of the person who made the will, the executor must pay the beneficiaries interest at the rate of 4 per cent a year. Prior law calls for a 3 per cent interest rate after 18 months.

-- provides that if the signatures of the two witnesses of a will are notarized within two days of the signing of the will, that will may be admitted to probate without further proof of execution.

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v. 13, no. 7
March 1978

A History of The Uniform Probate Code in New Jersey
compiled by Carol A. Roehrenbeck, Head of Public Services

In 1969 the Uniform Probate Code was completed and promulgated by the Commissioners on Uniform State Laws and approved by the American Bar Association. The Code was an attempt to bring uniformity to the multiplicity of probate laws of the states and to make those laws more accurately reflect the needs of contemporary society.

The struggle in New Jersey to clarify the law and bring it into conformity with the Code dates back to 1970. The first major victory was won however this year with the enactment of Chapter 412 of the Laws of 1977 which was approved February 23, 1978. This law is entitled "An Act Concerning Decedents Estates", and it makes at least 50 changes in the present statutes. See:

New Probate Law Signed, 101 N.J.L.J. ~~1~~ (1978)
209

Mezzacappa, The Will Is Going to Clarity, The Record, Feb. 23, 1978, S, 1, at A 1 (Bergen County)

Press release from Governor Brendan Byrne (February 24, 1978) on a bill revising the laws concerning estates and wills (A.1712).

Some of the most striking provisions are the new requirements for execution (§3) which make a will valid in the state in which it was drawn valid in N. J.; the intestacy provisions (§ 36 through 46) which eliminate the distinction between real and personal property and increase the share of the surviving spouse; and the provisions allowing for holographic wills (§5).

There is a detailed statement by the sponsor of the bill (Burstein) outlining the changes and explaining the purpose of the bill. This is the only background information available since the bill passed without hearings or reports.

A. 1712 (A. Burstein)

Revises the law concerning the making, execution, acknowledgement, revocation and revival of wills.

Introduced 3/8/76

Reported with Committee amendment 5/27/76

Second reading 5/27/76

Passed Assembly, amended (70-1) 6/28/76

Received in Senate 6/28/76

Referred to Judiciary Committee 6/28/76

Passed Senate (29-0) 9/29/77

Approved C.412, 1977 2/23/78

(Effective date - 18 months from signing. A.937-78 (Burstein) would accelerate

to 7/1/78) (See A.1135-74 a companion bill from 1974 with many identical provisions.

For other Uniform Probate Code bills in 1976 see S.455, A.982, A.1696, A.1697, A.1698, A.1704, A.1705, A.1708, A.1710 on p. 6)

This brief legislative history however does not reveal the long struggle for reform that has been waged in the legislature since 1970 when the first packet of "probate bills" was introduced. In fact, many of the provisions passed in C.412 are identical to bills entered in earlier years.

In 1971, two sections of the Uniform Probate Code were enacted into law. Senate bill 2116 became Laws of 1971, c. 373 or N.J.S.A. 46:20-8. Under this law the power of attorney remains effective notwithstanding incompetence or any uncertainty as to whether dead or alive. Senate bill 2118 became Laws of 1971, c. 374 and amended N.J.S.A. 3A:4-8 so that intervivos gifts were not treated as advancements against an intestacy portion unless accompanied by a contemporaneous writing by the decedent.

These bills were the forerunners in the struggle for reform and were singled out to alert the Bar to the virtues of the Code. They were such major advances in the law and in correcting a section of our laws, i.e. advancements, they passed with little controversy. The following year however, a packet of some 18 bills was introduced to bring the law into greater conformity with the Code. This sparked much debate among the Bar and banking community. See:

Diab, New Jersey and the Uniform Probate Code, 2 Seton Hall L. Rev. 323-(1971)
355

Clapp, New Jersey and the Uniform Probate Code, 61 N.J. St.B.J. 14 (Nov.1972)

A New Probate Code, 96 N.J.L.J. 1100 (1973)

Among the bills introduced several of the more controversial dealt with allowing the surviving spouse to take against the will (S.899), simplified requirements for execution including holographic wills (S.902), and distribution of intestate estates (S.903). To promote passage of the packet public hearings were suggested and held. See:

N.J. Legislature. Senate. Judiciary Committee. Public hearing on Uniform Probate Code bills. September 11, 1973, Hackensack, N.J. (Trenton 1973)

Below is a list of the bills in the packet with accompanying notes as to companion bills and disposition. Unfortunately, none were passed at that time although a number were recommitted and ultimately passed this year.

1972-3

S. 899 (Thomas)

Grants the surviving spouse of a decedent who dies testate the right to an elective share of that decedent's estate.

(Companion A. 2280-72. Also S.1006-74, A.1185-74)

Introduced 4/17/72

Referred to Judiciary Committee 4/17/72

Reported with amendment 12/14/72

Second reading 12/14/72

(Recommitted. See: S.1006-74)

S. 902 (Thomas)

Permits a person 18 years of age or older to execute a will, provides for witnessing, revocation and revival of a revoked will.

Introduced 4/17/72

Referred to Judiciary Committee 4/17/72

Reported, 2d. reading 12/14/72

Passed in Senate (21-2) 4/12/73

Received in Assembly 4/12/73

To Judiciary Committee 4/12/73

(Companion A.2284-73)

S. 903 (Thomas)

Provides for disposition of intestate estates, abolishes the estates of dower and courtesy.

(Companion A.2296-73. See also A.3142-75)

Introduced 4/17/72

Referred to Judiciary Committee 4/17/72

Reported with amendment 12/14/72

Second reading 12/14/72

(Recommitted - Became S.1013-74)

S. 904 (Thomas)

Reduces time of presumption of death after continuous absence from 7 to 5 years; clarifies the law regarding approval of actions of fiduciaries as trustees by holders of general powers of appointment.

(Companion A.2283-72)

Introduced 4/17/72

Referred to Judiciary Committee 4/17/72

Reported, second reading 12/14/72

Passed in Senate (22-0) 4/12/73

Received in Assembly 4/12/73

to Judiciary Committee 4/12/73

S. 905 (Thomas)

Prescribes the rights of the spouse and children of a testate decedent not provided for in his will.

(Companion A.2282-73)

Introduced 4/17/72

Referred to Judiciary Committee 4/17/72

Reported with Committee Amendment 12/14/72

Second reading 12/14/72

Laid over 4/12/73

Remainder of Package

S. 716 (Maressa et al.)

Permits a will to be deposited by testator or his agent with the Surrogate for safekeeping.

(Companion A.2285-73) (See also S.716-72, A.1001-73, 982-76)

Introduced 3/9/72

Referred to Judiciary Committee 3/9/72

S. 2145 (Batenan)

Prudent Investment Law.

Introduced 3/19/73

Referred to Labor, Industry 3/19/73

Reported, second reading 4/16/73

Recommitted 11/8/74

S. 2273 (Thomas)

Provides for service of process upon fiduciaries of estates.
Introduced 4/16/73
Referred to Judiciary 4/16/73

S. 2274 (Thomas)

Prescribes duties and powers of fiduciaries, the effect of homicide upon distribution of estate...
Introduced 4/16/73
To Judiciary Committee 4/16/73

S. 2275 (Thomas)

Prescribes rules of construction concerning a variety of problems which occur in interpreting wills.
Introduced 4/16/73
to Judiciary 4/16/73

S.2276 (Thomas)

Provides for payments of claims against an estate, prescribes liability of fiduciaries.
Introduced 4/16/73
To Judiciary 4/16/73

S. 2277 (Thomas)

Establishes procedures to determine when a will is properly executed and the effect of final orders in other states.
Introduced 4/16/73
To Judiciary 4/16/73

S. 2293 (Thomas)

Provides for the devolution of property under the Uniform Simultaneous Death Law.
Introduced 4/26/73
To Judiciary 4/26/73

S. 2318 (Thomas)

Revises law regarding multiple party deposit accounts.
Introduced 4/26/73
To Judiciary 4/26/73
(See also: S.2205-71, S.2263-71, S.479-72, S.482-72, S. 1014-74, A.1696-76)

S. 2326 (Thomas)

Provides for a change in the law of distribution of estates to enable executor to distribute securities in kind.
Introduced 6/18/73
To Judiciary 6/18/73

S. 2327 (Thomas)

Prescribes the powers of and jurisdiction over foreign fiduciaries.
Introduced 6/18/73
To Judiciary 6/18/73

S. 2329 (Thomas)

Protection of or disposition of property of persons who have disappeared or been confined by a foreign power.
Introduced 6/18/73
To Judiciary 6/18/73

S. 2329 (Thomas)

Powers of a guardian of a person and property of a minor and mental incompetent .
Introduced 6/18/73
To Judiciary 6/18/73

The struggle continued through the 1974-1975 legislative term. Another packet of bills was introduced. Public hearings were again held, but none of the bills were enacted. For hearings see:

N. J. Legislature. Assembly. Judiciary Committee.
Public hearing on A.1185 and A.1186 on the Uniform
Probate Code. May 23, 1974.

A list of the major bills introduced and their disposition follows:

1974-75

S. 1006 (Lynch)

Grants surviving spouse the right to an elective share of decedents estate.
Introduced 3/25/74
To Judiciary 3/25/74
(Companion bill A.1185-74. See below for hearings) (See also S.899-72, A.2280-73,
A.1185-74, A. 1698-76)

S. 1007 (Lynch)

Changes various sections of Title 3 A, concerning decedents' estates.
Introduced 3/25/74
To Judiciary 3/25/74

S. 1008 (Lynch)

Provides means for the conservation of the property of absent person.
Introduced 3/25/74
To Judiciary 3/25/74
(See also S.2328-73, A. 3137-75)

S. 1009 (Lynch)

Provides for guardians of minors and mental incompetents.
Introduced 3/25/74
To Judiciary 3/25/74
(See also S.2329-73, A.3136-75)

S. 1011 (Lynch)

Extends statute of limitations against a cause of action belonging to decedent.
Introduced 3/25/74
To Judiciary 3/25/74
(See also A.3141-75)

S. 1012 (Lynch)

Protective arrangements for minors and other incompetents.
Introduced 3/25/74
To Judiciary 3/25/74
(See also S.2329-73, A. 3139-75)

S. 1013 (Lynch)

Abolishes rights of dower and curtesy.
To Judiciary Committee
(Companion bill A. 3142-75 Burstein)

S. 1014 (Lynch)

Multiple-party deposit accounts.
Introduced 3/25/74
To Judiciary 3/25/74
(See also: S.2263-71,*S.2318-73, S.479-72, S.482-72, A.3143-75)

S. 1015 (Lynch)

Facility of payment to minors from estates.
Introduced 3/25/74
To Judiciary 3/25/74
(See also A. 3144-75, A.1697-76)

A. 1001 (Gewertz)

Permits a will to be deposited by the testator or his agent with the Surrogate of the county where the testator resides for safekeeping.
Introduced 1/28/74
To Judiciary 1/28/74
(Companion A.2285-1973)
(see also: S.716-72)

A. 1185 (Burstein)

Grants the surviving spouse of a decedent the right to an elective share of the decedent's estate.
Introduced 2/11/74
To Judiciary Committee 2/11/74
Public Hearing (see above) 5/23/74
Reported, 2d. reading 11/18/74
Passed in Assembly (63-3) 1/23/75
Received in Senate 1/23/75
Referred to Judiciary Committee 1/23/75
(see also: S.899-72, A.2280-73, S. 1006-74, A. 1698-76)

A. 1186 (Burstein)

Changes the statutes pertaining to wills and decents estates.
To Judiciary Committee 2/11/74
Public Hearing held 5/23/74
Reported with Amendment 11/18/74
Second reading 11/18/74
Passed Assembly, amended (68-1) 1/20/75
Received in Senate 1/20/75
To Judiciary Committee 1/20/75

1976-77

S.455 (Maressa)

Prohibits any person who drafts a will under which he is named a beneficiary to receive his beneficial share.
Introduced 1/13/76
To Judiciary Committee 1/13/76
(Prefiled - was S.242-74)
(See also S.2234-73, S.455-76)

A. 962 (Gewertz)

Permits a will to be deposited by the testator or his agent with the Surrogate of the county where the testator resides for safekeeping.

Introduced 1/26/76

To Judiciary, Law Committee 1/26/76

(Prefiled - was A.1001-74. See also A.2285-73, S.716-72)

A. 1696 (Burstein)

Revises the statutes with respect to multiple-party deposit accounts maintained in certain financial institutions.

Introduced 3/8/76

To Judiciary 3/8/76

(See S.1014-74, see also: A.3143-75, S.2318-73, S.479-72, S.482-72, S.2205-71, S.2263-71)

A. 1697 (Burstein)

Provides for "facility of payment" for any person under a duty to pay money or deliver personal property to a minor in amounts not exceeding \$5,000.

Introduced 3/8/76

To Judiciary 3/8/76

Reported, 2d. reading 5/20/76

Passed in Assembly 6/28/76 (62-1)

Received in Senate 6/28/76

To Judiciary Committee 6/28/76

(See also A.3144-75, S.1015-74)

A. 1698 (Burstein)

Grants the surviving spouse of a decedent the right to an elective share of that decedent's estate.

Introduced 3/8/76

To Judiciary Committee 3/8/76

Reported with amendment 5/20/76

Second reading 5/20/76

Passed in Assembly, amended (69-0)

Received in Senate 6/28/76

To Judiciary Committee 6/28/76

(See S.1325-74) (See also S.1006-74, A.1185-74, S.899-72, A.2280-73)

A. 1704 (Burstein)

Abolishes the rights of dower and curtesy.

Introduced 3/8/76

Reported with amendment 5/27/76

Second reading 5/27/76

Passed-Assembly amended (52-2) 3/21/77

Received in Senate 3/21/77

To Judiciary 3/21/77

(See also S.903-72, A. 2296-73, S.1013-74, A.3142-74)

A. 1705 (Burstein)

Prescribes protective arrangements for minors and mental incompetents.

Introduced 3/8/76

To Judiciary Committee 3/8/76

Reported, 2d. reading 5/20/76

Passed in Assembly (68-0) 6/28/76

Received in Senate 6/28/76

To Judiciary 6/28/76

(See S. 1012-74) (See also A.3139-75)

A. 1708 (Burstein)

Provides means for the conservation of the property of an absent person.
Introduced 3/8/76
To Judiciary 3/8/76
Reported, 2d. reading 5/20/76
Passed in Assembly (69-0) 6/28/76
(See also S.1008-74, A.3137-75)

A. 1710 (Burstein)

Provides that the approval of a trustee's acts by the holder of a general power of appointment is binding upon beneficiaries.
Introduced 3/8/76
To Judiciary 3/8/76
Reported, 2d. reading 5/20/76
Passed Assembly (69-0) 6/28/76
Received in Senate 6/28/76
To Judiciary 6/28/76

Chapter 412 is the culmination of many years of effort, and it makes significant changes in updating New Jersey law and bringing it into conformity with the Code and other states. It has left untouched several major questions such as the position of the surviving spouse of a testate decedent, protective arrangements for minors and incompetents and the rights of dower and curtesy. Presently wills have been introduced into the Assembly to continue the move towards uniformity. See:

A. 18 (Burstein)

Grants the surviving spouse of a decedent the right to an elective share of that decedent's estate.
Introduced 1/10/78
(See A.1698-1976, S.1006-74, A.2280-73, A.1135-74)

A. 20 (Burstein)

Abolishes dower and curtesy.
Introduced 1/10/78 (see S.903-72, A.2296-73, S.1013-74, A.3142-74)

A. 21 (Burstein)

Prescribes protective arrangements for minors and mental incompetents.
Introduced 1/10/78
Received in Senate 6/23/76
To Judiciary 6/23/76
(See S.1008-74, A.3137-75) (See also A. 1705-76)

A. 3202 (Kozloski)

Presumption that the decedent owned a proportionate share of certain jointly owned property under the transfer inheritance tax.
Introduced 4/21/71
To Taxation Committee 4/21/77