

3A:6-16.1

LEGISLATIVE FACT SHEET

N.J.R.S. *3A:6-16.1, 16.2, 16.3* on Powers of executors, administrators, guardians and trustees.
3A:16-1, 12

(1968 Amendment)

LAWS OF 1968

CHAPTER 270 Sept. 4, 1968

SENATE BILL 788

ASSEMBLY BILL

INTRODUCED *May 27, 1968*

BY *McDERMOTT et al.*

SPONSOR'S STATEMENT

YES NO

ASSEMBLY COMMITTEE STATEMENT

YES NO

SENATE COMMITTEE STATEMENT

YES NO

FISCAL NOTE

YES NO

AMENDED DURING PASSAGE

YES NO

HEARING *None discovered*

VETO

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SPONSOR'S STATEMENT. to S788

This bill is modeled on the New York Fiduciaries' Powers Act, Estates, Powers and Trusts Law, section 11-1.1, as amended, Laws 1967, chapter 686, §107, effective September 1, 1967.

JA/PC
11/7/75

STATE OF NEW JERSEY

INTRODUCED MAY 27, 1968

By Senators McDERMOTT, LACORTE and RINALDO

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning the powers of executors, administrators, guardians and trustees, and supplementing chapter 6 of Title 3A of the New Jersey Statutes, amending section 3A:16-1 of the New Jersey Statutes, and repealing section 3A:16-12.

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

1 1. As used in this act, unless the context or subject matter
2 otherwise requires:

3 (a) The term "estate" means the estate of a decedent;

4 (b) The term "trust" means any express trust of real or per-
5 sonal property, or both, created by a will, deed or other instrument
6 whereby there is imposed upon a trustee the duty to administer
7 a trust asset, transferred to the trust by a testator or settlor, for
8 benefit of a named or otherwise described income or principal
9 beneficiary, or both. A trust shall not include trusts for the benefit
10 of creditors, resulting or constructive trusts, business trusts where
11 certificates of beneficial interest are issued to the beneficiary, in-
12 vestment trust, voting trusts, security investments such as deeds
13 of trust and mortgages, trusts created by the judgment or decree
14 of a court, liquidation or reorganization trusts, trusts for the sole
15 purpose of paying dividends, interest, interest coupons, salaries,
16 wages, pensions or profits, instruments wherein one or more per-
17 sons are mere nominees for another or others, or trusts created
18 in deposits in any banking institution or savings and loan institu-
19 tion;

20 (c) The term "fiduciary" means executors, administrators
21 with the will annexed, administrators pendente lite, trustees of
22 express trusts, including a corporate as well as a natural person
23 acting as a fiduciary, and an ancillary, successor or substituted
24 fiduciary.

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

1 2. In the absence of contrary or limiting provisions in the
2 judgment or order appointing a fiduciary, in the will, deed or
3 other instrument or in a subsequent court judgment or order,
4 every fiduciary shall, in the exercise of good faith and reasonable
5 discretion, have the power:

6 (a) To accept additions to any estate or trust from sources other
7 than the estate of the decedent or the settlor of a trust;

8 (b) To acquire the remaining undivided interest in an estate or
9 trust asset in which the fiduciary, in his fiduciary capacity, holds
10 an undivided interest;

11 (c) To invest and reinvest assets of the estate or trust under the
12 provisions of the will, deed or other instrument or as otherwise
13 provided by law and to exchange assets for investments and other
14 property upon such terms as may seem to the fiduciary advisable;

15 (d) To effect and keep in force fire, rent, title, liability, casualty
16 or other insurance to protect the property of the estate or trust
17 and to protect the fiduciary.

18 (e) With respect to any property or any interest therein owned
19 by an estate or trust, **including any real property belonging to the*
19A *fiduciary's decedent at death,** except where such property or any
20 interest therein is specifically disposed of:

21 i. To take possession of, collect the rents from and manage
22 the same, and pay taxes, mortgage interest and other charges
23 against the property;

24 ii. To sell the same at public or private sale, and on such
25 terms as in the opinion of the fiduciary shall be most advanta-
26 geous to those interested therein;

27 iii. With respect to fiduciaries other than a trustee, to lease
28 the same for a term not exceeding 3 years, and in the case of
29 a trustee to lease the same for a term not exceeding 10 years,
30 though such term extends beyond the duration of the trust,
31 and in either of such cases including the right to explore for
32 and remove mineral or other natural resources, and in con-
33 nection with mineral leases to enter into pooling and unitiza-
34 tion agreements; and

35 iv. To mortgage the same;

36 v. To grant easements to adjoining owners and utilities;

37 vi. A fiduciary acting under a will may exercise any of the
38 powers granted by this subparagraph (e) notwithstanding the
39 effects upon the will of the birth of a child after its execution.

40 (f) To make repairs to the property of the estate or trust for
41 the purpose of preserving the property or rendering it rentable
42 or saleable;

- 43 (g) To grant options for the sale of any property of the estate
44 or trust for a period not exceeding 6 months;
- 45 (h) With respect to any mortgage held by the estate or trust
46 (i) to continue the same upon and after maturity, with or without
47 renewal or extension, upon such terms as may seem to the fiduciary
48 advisable, and (ii) to foreclose, as an incident to collection of any
49 bond or note, any mortgage and purchase the mortgaged property
50 or acquire the property by deed from the mortgagor in lieu of
51 foreclosure;
- 52 (i) In the case of the survivor or survivors of 2 or more fiduci-
53 aries to administer the estate or trust without the appointment
54 of a successor to the fiduciary or fiduciaries who have ceased to
55 act and to exercise or perform all of the powers given unless con-
56 trary to the express provision of the will, deed or other instrument;
- 57 (j) As a new, alternate, successor, substitute or additional
58 fiduciary or fiduciaries, to have or succeed to all of the powers,
59 duties and discretion of the original fiduciary or fiduciaries, with
60 respect to the estate or trust, as were given to the original fiduciary
61 or fiduciaries named in or appointed by a will, deed or other in-
62 strument, unless the exercise of such powers, duties or discretion
63 of such original fiduciary or fiduciaries is expressly prohibited by
64 the will, deed or other instrument to any successor or substitute
65 fiduciary or fiduciaries;
- 66 (k) Where there are 3 or more fiduciaries qualified to act, to
67 take any action with respect to the estate or trust which a majority
68 of such fiduciaries shall determine. A fiduciary who fails to act
69 through absence or disability, or a dissenting fiduciary who joins
70 in carrying out the decision of a majority of the fiduciaries if his
71 dissent is expressed promptly in writing to his cofiduciaries, shall
72 not be liable for the consequences of any majority decision, pro-
73 vided that liability for failure to join in administering the trust
74 or to prevent a breach of trust may not thus be avoided;
- 75 (l) To employ and compensate attorneys* [], brokers, accountants
76 and other agents]*;
- 77 (m) To compromise, contest or otherwise settle any claim in
78 favor of the estate, trust or fiduciary or in favor of third persons
79 and against the estate, trust or fiduciary, including transfer in-
80 heritance, estate, income and other taxes;
- 81 (n) To vote in person or by proxy, discretionary or otherwise,
82 shares of stock or other securities held by the estate or trust;
- 83 (o) To pay calls, assessments and any other sums chargeable
84 or accruing against or on account of shares of stock, bonds, de-
85 bentures or other corporate securities in the hands of a fiduciary,

86 whenever such payments may be legally enforceable against the
87 fiduciary or any property of the estate or trust or the fiduciary
88 deems payment expedient and for the best interests of the estate
89 or trust;

90 (p) To sell or exercise stock subscription or conversion rights,
91 participate in foreclosures, reorganizations, consolidations, merg-
92 ers or liquidations, and to consent to corporate sales or leases and
93 encumbrances. In the exercise of such powers, the fiduciary is
94 authorized to deposit stocks, bonds or other securities with any
95 custodian, agent, protective or other similar committee, or trustee.
96 under a voting trust agreement, under such terms and conditions
97 respecting the deposit thereof as the fiduciary may approve;

98 (q) To execute and deliver agreements, assignments, bills of
99 sale, contracts, deeds, notes, receipts and any other instrument
100 necessary or appropriate for the administration of the estate or
101 trust;

102 (r) In the case of a trustee, to hold 2 or more trusts or parts
103 of such trusts created by the same instrument, as an undivided
104 whole, without separation as between such trusts or parts of such
105 trusts, provided that such separate trusts or parts of such trusts
106 shall have undivided interests and provided further that no such
107 holding shall defer the vesting of any estate in possession or
108 otherwise;

109 (s) To distribute in kind any property of the estate or trust at
110 its fair market value at the date of distribution;

111 (t) To join with the surviving spouse, the executor of his or her
112 will or the administrator of his or her estate in the execution and
113 filing of a joint income tax return for any period prior to the
114 death of a decedent for which he has not filed a return or a gift
115 tax return on gifts made by the decedent's surviving spouse, and
116 to consent to treat such gifts as being made $\frac{1}{2}$ by the decedent,
117 for any period prior to a decedent's death, and to pay such taxes
118 thereon as are chargeable to the decedent.

1 3. The court having jurisdiction of the estate or trust may
2 authorize the fiduciary to exercise any other power which in the
3 judgment of the court is necessary for the proper administration
4 of the estate or trust.

1 4. The powers set forth in this section are in addition to the
2 powers granted by law, and by the will, deed or other instrument.

1 5. Section 3A:16-1 of the New Jersey Statutes is amended to
2 read as follows:

3 3A:16-1. [An executor, administrator with the will annexed or
4 substituted administrator with the will annexed shall have power

5 to lease any real estate belonging to his decedent at death or form-
 6 ing a part of the decedent's estate, upon such terms and for such
 7 period of time, but not beyond the time taken for the settlement
 8 of the decedent's estate, as the fiduciary shall deem proper, and
 9 power also to collect rents from leases and tenancies existing on
 10 any such real estate at the commencement of the fiduciaryship.
 11 A guardian shall have like powers with respect to real estate of
 12 his ward, but no lease made by him shall extend beyond the ward's
 13 infancy, death or restoration to competency, as the case may be.
 14 All the income from such leases and tenancies may be used by the
 15 fiduciary to pay taxes, interest and other charges against the said
 16 real estate and the costs of its care and upkeep; and the balance
 17 thereof shall be held by him to be disposed of according to law, or
 18 the will of the deceased, as the case may be.

19 This section shall not apply to any real estate which has been
 20 specifically devised by will, nor where any directions concerning
 21 such real estate by the will are inconsistent with the power to lease
 22 or collect rents as herein contained.】

23 *A guardian shall have power to take possession of, collect the*
 24 *rents from and manage the real estate of his ward, and to lease*
 25 *the same for a term not exceeding 3 years, though the term extends*
 26 *beyond the ward's infancy, death or restoration to competency, as*
 27 *the case may be. The rents collected and the income from the ward's*
 28 *estate may be used by the guardian to pay taxes, mortgage interest*
 29 *and other charges related to the real estate.*

30 Any lease made by virtue of this section shall be subject to the
 31 right of the *【fiduciary】* *guardian* to sell such real estate under
 32 a power of sale conferred by the will or by order of any court of
 33 competent jurisdiction.

34 【The provisions of this section shall not be construed so as to
 35 deprive a surviving spouse of any right which he or she might
 36 have by virtue of any will or by way of dower, curtesy or otherwise,
 37 nor of the rents, issues, income or products thereof, to which such
 38 surviving spouse may be entitled by will, or by law.】

1 6. Section 3A:16-12 of the New Jersey Statutes is repealed.

1 7. This act shall take effect immediately and shall be applicable
 2 to any will or trust executed after such effective date or to the
 3 estate of any decedent dying intestate thereafter.

STATEMENT

This bill is modeled on the New York Fiduciaries' Powers Act, Estates, Powers and Trusts Law, section 11-1.1, as amended, Laws 1967, chapter 686, § 107, effective September 1, 1967.