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RH/CL

P.L. 2017, CHAPTER 316, *approved January 16, 2018*
Senate, No. 3377 (*First Reprint*)

1 AN ACT concerning powers of appointment ¹**[established by will,]**¹
2 and amending N.J.S.3B:3-45.

3

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

6

7 1. N.J.S.3B:3-45 is amended to read as follows:

8 3B:3-45. Exercise of power of appointment.

9 a. ¹**[Whenever a testator's]** Unless the terms of a will, trust, or
10 other governing instrument expressly provide otherwise, whenever
11 such¹ will¹, trust, or other governing instrument grants¹ ¹**[provides**
12 **for]**¹ a power of appointment to another person, who as the ¹**[donee**
13 **of the power]** power holder¹ is authorized to further dispose of the
14 ¹**[testator's]**¹ property amongst appointees selected by the
15 ¹**[donee]** power holder¹, that ¹**[donee]** power holder¹, other than a
16 ¹**[donee]** power holder¹ acting in the capacity of a trustee or other
17 fiduciary, shall be deemed authorized to exercise the power of
18 appointment to create less than absolute interests for the benefit of
19 one or more permissible appointees of the power, including
20 interests in trust and the creation of new powers of appointment,
21 whether general or limited, exercisable by the one or more
22 appointees. A ¹**[testator's]**¹ direction ¹**[in the will, trust, or**
23 **governing instrument]**¹ that property subject to a power of
24 appointment be distributed "to" an appointee, or to an appointee
25 "outright," "in fee simple," "absolutely," "forever," or any other
26 term, phrase, or statement of similar import, shall not be deemed to
27 evidence the ¹**[testator's intention]**¹ intent of the testator, settlor, or
28 creator of the governing instrument¹ to prohibit the exercise of a
29 power of appointment to create less than absolute interests,
30 including interests in trust.

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

36 (cf: N.J.S.3B:3-45)

37

38 2. This act shall take effect immediately, and apply to any
39 instrument executed before, on, or after the effective date.

40

41

42

Concerns power of appointment.

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted December 18, 2017.

SENATE, No. 3377

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JUNE 22, 2017

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Concerns powers of appointment established by will.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning powers of appointment established by will, and
2 amending N.J.S.3B:3-45.

3

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

6

7 1. N.J.S.3B:3-45 is amended to read as follows:

8 3B:3-45. Exercise of power of appointment.

9 a. Whenever a testator's will provides for a power of
10 appointment to another person, who as the donee of the power is
11 authorized to further dispose of the testator's property amongst
12 appointees selected by the donee, that donee, other than a donee
13 acting in the capacity of a trustee or other fiduciary, shall be
14 deemed authorized to exercise the power of appointment to create
15 less than absolute interests for the benefit of one or more
16 permissible appointees of the power, including interests in trust and
17 the creation of new powers of appointment, whether general or
18 limited, exercisable by the one or more appointees. A testator's
19 direction that property subject to a power of appointment be
20 distributed "to" an appointee, or to an appointee "outright," "in fee
21 simple," "absolutely," "forever," or any other term, phrase, or
22 statement of similar import, shall not be deemed to evidence the
23 testator's intention to prohibit the exercise of a power of
24 appointment to create less than absolute interests, including
25 interests in trust.

26 b. A general residuary clause in a will, or a will making general
27 disposition of all of the testator's property, does not exercise a
28 power of appointment held by the testator unless specific reference
29 is made to the power or there is some other indication of intention
30 to include the property subject to the power.

31 (cf: N.J.S.3B:3-45)

32

33 2. This act shall take effect immediately, and apply to any
34 instrument executed before, on, or after the effective date.

35

36

37

STATEMENT

38

39 This bill concerns powers of appointment established by will and
40 is intended to codify longstanding New Jersey case law. The
41 purpose of the power of appointment is to allow a testator, when
42 preparing a will, to name another party, who, as the donee of the
43 power, appoints, following the testator's death, the one or more
44 appointees to be the recipients of the testator's property. An
45 example: A testator's will transfers all property in trust, to pay

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

Matter underlined thus is new matter.

S3377 SARLO, SCUTARI

1 income to the testator's spouse for life and upon the spouse's death,
2 to such person or persons as the spouse shall appoint (the spouse is
3 the donee of the testator's power of appointment, which is to be
4 exercised upon the spouse's death and likely evidenced by
5 appointments made in the spouse's own will).

6 The bill states that whenever a testator's will provides for a
7 power of appointment to a donee, that donee, other than a donee
8 acting in the capacity of a trustee or other fiduciary, is deemed
9 authorized to exercise the power of appointment to create less than
10 absolute interests for the benefit of one or more permissible
11 appointees of the power, including interests in trust and the creation
12 of new powers of appointment, whether general or limited,
13 exercisable by the one or more appointees. Additionally, a
14 testator's direction that property subject to a power of appointment
15 be distributed "to" an appointee, or to an appointee "outright," "in
16 fee simple," "absolutely," "forever," or any other term, phrase, or
17 statement of similar import, would not be deemed to evidence the
18 testator's intention to prohibit the exercise of a power of
19 appointment to create less than absolute interests, including
20 interests in trust.

21 The bill would take effect immediately, and apply to any will or
22 other instrument executed before, on, or after the effective date.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3377

STATE OF NEW JERSEY

DATED: JUNE 26, 2017

The Senate Judiciary Committee reports favorably Senate Bill No. 3377.

This bill concerns powers of appointment established by will and is intended to codify longstanding New Jersey case law. The purpose of the power of appointment is to allow a testator, when preparing a will, to name another party, who, as the donee of the power, appoints, following the testator's death, the one or more appointees to be the recipients of the testator's property. An example: A testator's will transfers all property in trust, to pay income to the testator's spouse for life and upon the spouse's death, to such person or persons as the spouse shall appoint (the spouse is the donee of the testator's power of appointment, which is to be exercised upon the spouse's death and likely evidenced by appointments made in the spouse's own will).

The bill states that whenever a testator's will provides for a power of appointment to a donee, that donee, other than a donee acting in the capacity of a trustee or other fiduciary, is deemed authorized to exercise the power of appointment to create less than absolute interests for the benefit of one or more permissible appointees of the power, including interests in trust and the creation of new powers of appointment, whether general or limited, exercisable by the one or more appointees. Additionally, a testator's direction that property subject to a power of appointment be distributed "to" an appointee, or to an appointee "outright," "in fee simple," "absolutely," "forever," or any other term, phrase, or statement of similar import, would not be deemed to evidence the testator's intention to prohibit the exercise of a power of appointment to create less than absolute interests, including interests in trust.

The bill would take effect immediately, and apply to any will or other instrument executed before, on, or after the effective date.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3377

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3377.

This bill concerns powers of appointment established by will, trust or other governing instrument and is intended to codify longstanding New Jersey case law. A power of appointment is created if a testator, settlor or creator of any other governing instrument grants a person such power. This person is then deemed the power holder. As the power holder, the person is authorized to further dispose of the property to one or more recipients. For example, a testator's will transfers all property in trust, to pay income to the testator's spouse for life, and upon the spouse's death all principal is to be distributed to such person or persons as the spouse (the power holder) shall appoint in her will at her death.

The bill states that whenever a will, trust or other governing instrument grants a power of appointment to a power holder, that power holder, other than a power holder acting in the capacity of a trustee or other fiduciary, is deemed authorized to exercise the power of appointment to create less than absolute interests for the benefit of one or more permissible appointees of the power, including interests in trust and the creation of new powers of appointment, whether general or limited, exercisable by the one or more appointees. Additionally, a direction in the will, trust or other governing instrument that property subject to a power of appointment be distributed "to" an appointee, or to an appointee "outright," "in fee simple," "absolutely," "forever," or any other term, phrase, or statement of similar import, would not be deemed to evidence the intent of the testator, settlor or creator of the governing instrument to prohibit the exercise of a power of appointment to create less than absolute interests, including interests in trust.

The bill would take effect immediately, and apply to any will, trust or other instrument executed before, on, or after the effective date.

As reported by the committee, Senate Bill No. 3377 (1R) is identical to Assembly Bill No. 5263 (1R) which is also reported by the committee on this date.

COMMITTEE AMENDMENTS

1. Amend title to eliminate the terms “established by will.”
2. Amend section 1 to clarify the authority of a “power holder.”
3. Replace synopsis.

ASSEMBLY, No. 5263

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED DECEMBER 4, 2017

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

SYNOPSIS

Concerns powers of appointment established by will, trust, or other governing instrument.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning powers of appointment established by will,
2 trust, or other governing instrument, and amending N.J.S.3B:3-
3 45.

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

7
8 1. N.J.S.3B:3-45 is amended to read as follows:

9 3B:3-45. Exercise of power of appointment.

10 a. Whenever a testator's will provides for a power of
11 appointment to another person, who as the donee of the power is
12 authorized to further dispose of the testator's property amongst
13 appointees selected by the donee, that donee, other than a donee
14 acting in the capacity of a trustee or other fiduciary, shall be
15 deemed authorized to exercise the power to create less than absolute
16 interests for the benefit of one or more of the permissible
17 appointees, including interests in trust and the creation of new
18 powers of appointment, whether general or limited, exercisable by
19 the one or more appointees. A testator's direction that property
20 subject to a power of appointment be distributed "to" an appointee,
21 or to an appointee "outright," "in fee simple," "absolutely,"
22 "forever," or any other term, phrase, or statement of similar import,
23 shall not be deemed to evidence the testator's intention to prohibit
24 the exercise of a power of appointment to create less than absolute
25 interests, including interests in trust.

26 b. A general residuary clause in a will, or a will making general
27 disposition of all of the testator's property, does not exercise a
28 power of appointment held by the testator unless specific reference
29 is made to the power or there is some other indication of intention
30 to include the property subject to the power.

31 (cf: N.J.S.3B:3-45)

32
33 2. This act shall take effect immediately, and, pursuant to
34 section 28 of P.L.2004, c.132 (C.3B:3-33.1) and N.J.S.3B:31-12,
35 apply to any will, trust, or other governing instrument executed
36 before, on, or after the effective date.

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38

39

STATEMENT

40

41 This bill concerns powers of appointment established by will and
42 is intended to codify longstanding New Jersey case law. The
43 purpose of the power of appointment is to allow a testator, when
44 preparing a will, to name another party, who, as the donee of the
45 power, appoints the one or more appointees to be the recipients of

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

Matter underlined thus is new matter.

1 the testator's property following the testator's death. An example:
2 A testator's will transfers all property in trust, to pay income to the
3 testator's spouse for life and upon the spouse's death, to such
4 person or persons as the spouse shall appoint (the spouse is the
5 donee of the testator's power of appointment, which is to be
6 exercised upon the spouse's death and likely evidenced by
7 appointments made in the spouse's own will).

8 The bill states that whenever a testator's will provides for a
9 power of appointment to a donee, that donee, other than a donee
10 acting in the capacity of a trustee or other fiduciary, is deemed
11 authorized to exercise the power of appointment to create less than
12 absolute interests for the benefit of one or more permissible
13 appointees, including interests in trust and the creation of new
14 powers of appointment, whether general or limited, exercisable by
15 the one or more appointees. Additionally, a testator's direction that
16 property subject to a power of appointment be distributed "to" an
17 appointee, or to an appointee "outright," "in fee simple,"
18 "absolutely," "forever," or any other term, phrase, or statement of
19 similar import, would not be deemed to evidence the testator's
20 intention to prohibit the exercise of a power of appointment to
21 create less than absolute interests, including interests in trust.

22 Although the main body of the bill (section 1, the operational
23 section) only makes specific reference to a will as the instrument by
24 which a power of appointment is made, as noted in the bill's
25 effective date section (section 2), the provisions of the bill would
26 also apply to a trust or other governing instrument established by a
27 trust settlor or creator of another governing instrument based upon
28 the application of various rules of construction concerning wills to
29 those other instruments as set forth in section 28 of P.L.2004, c.132
30 (C.3B:3-33.1) and N.J.S.3B:31-12.

31 The bill would take effect immediately, and apply to any will or
32 other instrument executed before, on, or after the effective date.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5263

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5263.

This bill concerns powers of appointment established by will, trust or other governing instrument and is intended to codify longstanding New Jersey case law. A power of appointment is created if a testator, settlor or creator of any other governing instrument grants a person such power. This person is then deemed the power holder. As the power holder, the person is authorized to further dispose of the property to one or more recipients. For example, a testator's will transfers all property in trust, to pay income to the testator's spouse for life, and upon the spouse's death all principal is to be distributed to such person or persons as the spouse (the power holder) shall appoint in her will at her death.

The bill states that whenever a will, trust or other governing instrument grants a power of appointment to a power holder, that power holder, other than a power holder acting in the capacity of a trustee or other fiduciary, is deemed authorized to exercise the power of appointment to create less than absolute interests for the benefit of one or more permissible appointees of the power, including interests in trust and the creation of new powers of appointment, whether general or limited, exercisable by the one or more appointees. Additionally, a direction in the will, trust or other governing instrument that property subject to a power of appointment be distributed "to" an appointee, or to an appointee "outright," "in fee simple," "absolutely," "forever," or any other term, phrase, or statement of similar import, would not be deemed to evidence the intent of the testator, settlor or creator of the governing instrument to prohibit the exercise of a power of appointment to create less than absolute interests, including interests in trust.

The bill would take effect immediately, and apply to any will, trust or other instrument executed before, on, or after the effective date.

As reported by the committee, Assembly Bill No. 5263 (1R) is identical to Senate Bill No. S3377 (1R) which is also reported by the committee on this date.

COMMITTEE AMENDMENTS

1. Amend title to eliminate the terms “established by will, trusts or other governing instrument.”
2. Amend section 1 to clarify the authority of a “power holder.”
3. Amend the effective date to clarify that the bill will take effect immediately and apply to any instrument executed before, on, or after the effective date.
4. Replace synopsis.