

3A:6-16.1 and 3A:6-16.2

LEGISLATIVE HISTORY CHECKLIST

WSA 3A:6-16.1 and 3A:6-16.2 (Probate--Powers of executors, administrators, guardians)

LAWS OF 1979 CHAPTER 489

Bill No. A1624

Sponsor(s) Burstein

Date Introduced Sept. 25, 1978

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage ~~Yes~~ No

Date of Passage: Assembly June 18, 1979

Senate Dec. 10, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement Yes ~~Yes~~

Committee Statement: Assembly ~~Yes~~ No

Senate ~~Yes~~ No

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~Yes~~

Following were printed.

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

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ASSEMBLY, No. 1624

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 25, 1978

By Assemblyman BURSTEIN

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

“AN ACT concerning powers of executors, administrators, guardians and trustees,” and amending P. L. 1968, c. 270.

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

1 1. Section 1 of P. L. 1968, c. 270 (C. 3A:6-16.1) is amended to
2 read as follows:

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

5 (a) The term “estate” means the estate of a decedent **[;]** *or*
6 *the estate of a minor or mentally incompetent person;*

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

23 (c) The term “fiduciary” means *guardians, executors, adminis-*
24 *trators, administrators with the will annexed, administrators*
25 *pendente lite, trustees of express trusts, including a corporate as*
26 *well as a natural person acting as a fiduciary, and an ancillary,*
27 *successor or substituted 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. Section 2 of P. L. 1968, c. 270 (C. 3A:6-16.2) is amended to
2 read as follows:

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

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

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

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

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

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

24 i. To take possession of, collect the rents from and manage
25 the same, and pay taxes, mortgage interest and other charges
26 against the property;

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

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

38 iv. To mortgage the same;

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

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

43 (f) To make repairs to the property of the estate or trust for
44 the purpose of preserving the property or rendering it rentable
45 or saleable;

46 (g) To grant options for the sale of any property of the estate
47 or trust for a period not exceeding 6 months;

48 (h) With respect to any mortgage held by the estate or trust
49 (i) to continue the same upon and after maturity, with or without
50 renewal or extension, upon such terms as may seem to the fiduciary
51 advisable, and (ii) to foreclose, as an incident to collection of any
52 bond or note, any mortgage and purchase the mortgaged property
53 or acquire the property by deed from the mortgagor in lieu of
54 foreclosure;

55 (i) In the case of the survivor or survivors of two or more
56 fiduciaries to administer the estate or trust without the appoint-
57 ment of a successor to the fiduciary or fiduciaries who have ceased
58 to act and to exercise or perform all of the powers given unless con-
59 trary to the express provision of the will, deed or other instrument;

60 (j) As a new, alternate, successor, substitute or additional
61 fiduciary or fiduciaries, to have or succeed to all of the powers,
62 duties and discretion of the original fiduciary or fiduciaries, with
63 respect to the estate or trust, as were given to the original fiduciary
64 or fiduciaries named in or appointed by a will, deed or other in-
65 strument, unless the exercise of such powers, duties or discretion
66 of such original fiduciary or fiduciaries is expressly prohibited by
67 the will, deed or other instrument to any successor or substitute
68 fiduciary or fiduciaries;

69 (k) Where there are three or more fiduciaries qualified to act, to
70 take any action with respect to the estate or trust which a majority
71 of such fiduciaries shall determine. A fiduciary who fails to act
72 through absence or disability, or a dissenting fiduciary who joins
73 in carrying out the decision of a majority of the fiduciaries if his
74 dissent is expressed promptly in writing to his cofiduciaries, shall
75 not be liable for the consequences of any majority decision, pro-
76 vided that liability for failure to join in administering the trust
77 or to prevent a breach of trust may not thus be avoided;

78 (l) To employ and compensate attorneys;

79 (m) To compromise, contest or otherwise settle any claim in
80 favor of the estate, trust or fiduciary or in favor of third persons
81 and against the estate, trust or fiduciary, including transfer in-
82 heritance, estate, income and other taxes;

83 (n) To vote in person or by proxy, discretionary or otherwise,
84 shares of stock or other securities held by the estate or trust;

85 (o) To pay calls, assessments and any other sums chargeable
86 or accruing against or on account of shares of stock, bonds, debentures
87 or other corporate securities in the hands of a fiduciary,
88 whenever such payments may be legally enforceable against the
89 fiduciary or any property of the estate or trust or the fiduciary
90 deems payment expedient and for the best interests of the estate
91 or trust;

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

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

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

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

113 (t) To join with the surviving spouse, the executor of his or her
114 will or the administrator of his or her estate in the execution and
115 filing of a joint income tax return for any period prior to the
116 death of a decedent for which he has not filed a return or a gift
117 tax return on gifts made by the decedent's surviving spouse, and
118 to consent to treat such gifts as being made one-half by the decedent,
119 for any period prior to a decedent's death, and to pay such taxes
120 thereon as are chargeable to the decedent[.];

121 (u) *To acquire or dispose of an asset, including real or personal*
122 *property in this or another state, for cash or on credit, at public*
123 *or private sale; and manage, develop, improve, exchange, partition,*
124 *change the character of, or abandon an estate asset.*

1 3. This act shall take effect immediately.

STATEMENT

This bill has been drafted by the Division of Law Revision of the Law Revision and Legislative Services Agency in furtherance of its duty to conduct a continuous examination of the general and permanent statutory law of this State.

Section 1 of the bill amends section 1 of the act to include estates of a minor or mentally incompetent person within the term "estate" and guardians within the term "fiduciary" to conform the section of the act with the title which confers powers upon "executors, administrators, guardians and trustees".

Section 2 of the bill amends section 2 of the act to enlarge the powers conferred thereunder to compliment the broad grant of general powers to fiduciaries under the recently adopted act concerning decedent's estates (P. L. 1977, c. 412) and those conferred upon guardians under Assembly Bill No. 8 which was passed by the Assembly on April 20, 1978, and now awaiting action by the Senate.

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A1624(1979)

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 28, 1980

KATHRYN FORSYTH

Governor Brendan Byrne today signed eleven bills, all sponsored by Assemblyman Albert Burstein (D-Bergen), which constitute the final portion of New Jersey's probate reform package.

"The signing of these last eleven bills marks the culmination of a seven year effort to update New Jersey's probate law, making it one of the most modern and enlightened codes in the nation," said Byrne.

The first part of the probate reform program, also sponsored by Assemblyman Burstein, was enacted in 1977. The final step will be the reorganization of Title 3A, which contains the probate law, to make any necessary technical and minor substantive changes. This process should be completed by the end of the year.

Byrne said that in preparing the probate reform package, his staff and the legislature worked closely with the Committee of Real Property, Probate and Trust Law of the New Jersey State Bar Association.

He commended the efforts of Assemblyman Burstein, attorneys Alfred C. Clapp, Richard F. Lert and Harrison Durand of the New Jersey State Bar Association, and Maurice Gold of Legislative Services, "as well as the many other people whose talents contributed to this major revision of the New Jersey probate law."

These are the bills the Governor signed today:

A-18, which helps prevent the disinheritance of a husband or wife by allowing the surviving spouse to elect to take one-third of the deceased person's augmented estate.

Under prior law, New Jersey was one of the few states that allowed husbands and wives to disinherit each other.

An augmented estate is defined in the bill as being the deceased person's estate, minus administration and funeral costs, plus various kinds of property transfers made by the decedent and other types of interests.

The independent wealth of the surviving husband or wife is credited against the elective share, as is any property the surviving spouse received from the deceased person. Only the balance, if any, may be collected from the elective share.

A-8, which revises the New Jersey law governing the appointments, duties, rights and obligations of guardians for minors or mental incompetents.

The bill modernizes the definition of a mental incompetent to mean a person impaired by mental illness or mental deficiency or by a physical illness or disability, chronic use of drugs, chronic alcoholism or other cause "to the extent that he lacks sufficient capacity to govern himself or manage his affairs."

The bill sets forth rules and guidelines governing the powers and duties of the guardian of a minor or of a minor's estate and the powers of the courts in such cases.

A-6, which permits a sum of up to \$5,000 per year from an estate to be paid to or on behalf of a minor beneficiary without the necessity of formally appointing a guardian of the estate in certain cases.

The money, which can be paid to the parent, legal guardian of the minor, adult who has custody of the child and with whom he resides, or a financial institution, must be applied to the "support and educational needs of the minor."

Any excess in a given year must be preserved for the future support of the child, and any balance remaining must be delivered to the minor when he reaches the age of 18.

A-19, which clarifies the law governing disclaimers of testamentary and interstate transfers.

Clarification of the law was particularly important because of the federal gift tax consequences a beneficiary may face if he makes a disclaimer deemed untimely under the law.

A-20, which abolishes the ancient rights of dower and curtesy. Dower is the right of a surviving wife to possession for the rest of her life of one half the real estate owned in her husband's name. Curtesy is the corresponding right for surviving husbands.

A-21, which permits the court to authorize, direct or ratify transactions regarding the estate of a minor or mental incompetent in situations where the continuing services of a legal guardian are unnecessary.

A-22, which modernizes the present law governing absent persons.

The bill broadens the definition of an absent person to include "any person who has disappeared or been confined or detained by a foreign power" and eliminates special treatment of war absentees.

A trustee for the absentees property cannot be appointed unless the property is endangered or if it is needed to provide support, care or welfare to the absent person or his dependents.

A-1624, which broadens the powers of fiduciaries to permit them to acquire, dispose of, manage develop, improve, exchange, partition or abandon an estate asset.

A-1625, which makes two technical amendments to the "Prudent Investment Law." This law governs the investment powers of fiduciaries in New Jersey.

A-1626, which is a comprehensive revision of the law governing multiple-party bank accounts.

A-3144, which clarifies and revises the law governing the disclaimer of nontestamentary transfers.

A-3335, which significantly changes the calculation of corpus commissions for trustees and guardians and generally increases the amount of corpus commissions which fiduciaries may take annually without a court order.

A corpus commission is the remuneration a fiduciary receives for his services rendered in administering the principal under his control.

This bill changes the formulation calculating a trustee's corpus commission by providing for increased commissions where the length of service is long.

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