

3B:1-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 132

NJSA: 3B:1-1 (Revises statutes on wills and estates)

BILL NO: S708 (Substituted for A2046)

SPONSOR(S): Adler and others

DATE INTRODUCED: January 26, 2004

COMMITTEE: **ASSEMBLY:**
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2004

SENATE: March 29, 2004

DATE OF APPROVAL: August 31, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) 1st reprint enacted

S708

[SPONSOR'S STATEMENT:](#) (Begins on page 47 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

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

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

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

A2046

[SPONSOR'S STATEMENT:](#) (Begins on page 47 of original bill) [Yes](#)

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

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

§28 -
C.3B:3-33.1
§§58,59 -
C.3B:7-1.1 &
3B:7-1.2
§§67,68 -
C.3B:9-4.1 &
3B:9-4.2
§79 - C.3B:9-14
§81 - C.3B:17-13
§93 - C.46:2E-14
§94 - Repealer
§95 - Note to all
sections

P.L. 2004, CHAPTER 132, *approved August 31, 2004*
Senate, No. 708 (*First Reprint*)

1 **AN ACT** concerning wills and estates and revising various sections of
2 the statutory law.

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:1-1 is amended to read as follows:

8 3B:1-1. As used in this title, unless otherwise defined:

9 "Administrator" includes general administrators of an intestate and
10 unless restricted by the subject or context, administrators with the will
11 annexed, substituted administrators, substituted administrators with
12 the will annexed, temporary administrators and administrators
13 pendente lite.

14 "Beneficiary," as it relates to trust beneficiaries, includes a person
15 who has any present or future interest, vested or contingent, and also
16 includes the owner of an interest by assignment or other transfer and
17 as it relates to a charitable trust, and includes any person entitled to
18 enforce the trust.

19 "Child" means any individual, including a natural or adopted child,
20 entitled to take by intestate succession from the parent whose
21 relationship is involved and excludes any [person] individual who is
22 only a stepchild, a foster child, a grandchild or any more remote
23 descendant.

24 "Claims" include liabilities whether arising in contract, or in tort or
25 otherwise, and liabilities of the estate which arise at or after the death
26 of the decedent, including funeral expenses and expenses of
27 administration, but does not include estate or inheritance taxes,
28 demands or disputes regarding title to specific assets alleged to be
29 included in the estate.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted February 23, 2004.

1 "Cofiduciary" means each of two or more fiduciaries jointly serving
2 in a fiduciary capacity.

3 "Descendant" of an individual means all of his progeny of all
4 generations, with the relationship of parent and child at each
5 generation being determined by the definition of child contained in this
6 section and parent contained in N.J.S.3B:1-2.

7 "Devise," when used as a noun, means a testamentary disposition
8 of real or personal property and when used as a verb, means to dispose
9 of real or personal property by will.

10 "Devisee" means any person designated in a will to receive a
11 devise. In the case of a devise to an existing trust or trustee, or to a
12 trustee [on] of a trust described by will, the trust or trustee is the
13 devisee and the beneficiaries are not devisees.

14 "Distributee" means any person who has received property of a
15 decedent from his personal representative other than as a creditor or
16 purchaser. A trustee is a distributee only to the extent of a distributed
17 asset or increment thereto remaining in his hands. A beneficiary of a
18 trust to whom the trustee has distributed property received from a
19 personal representative is a distributee of the personal representative.

20 "Domiciliary foreign fiduciary" means any fiduciary who has
21 received letters, or has been appointed, or is authorized to act as a
22 fiduciary, in the jurisdiction in which the decedent was domiciled at the
23 time of his death, in which the ward is domiciled or in which is located
24 the principal place of the administration of a trust.

25 "Estate" means all of the property of a decedent, minor or
26 incapacitated [person] individual, trust or other person whose affairs
27 are subject to this title as the property is originally constituted and as
28 it exists from time to time during administration.

29 "Fiduciary" includes executors, general administrators of an
30 intestate estate, administrators with the will annexed, substituted
31 administrators, substituted administrators with the will annexed,
32 guardians, substituted guardians, trustees, substituted trustees and,
33 unless restricted by the subject or context, temporary administrators,
34 administrators pendente lite, administrators ad prosequendum,
35 administrators ad litem and other limited fiduciaries.

36 "Governing instrument" means a deed, will, trust, insurance or
37 annuity policy, account with the designation "pay on death" (POD) or
38 "transfer on death" (TOD), security registered in beneficiary form with
39 the designation "pay on death" (POD) or "transfer on death" (TOD),
40 pension, profit-sharing, retirement or similar benefit plan, instrument
41 creating or exercising a power of appointment or a power of attorney,
42 or a dispositive, appointive, or nominative instrument of any similar
43 type.

44 "Guardian" means a person who has qualified as a guardian of the
45 person or estate of a minor or incapacitated [person] individual
46 pursuant to testamentary or court appointment, but excludes one who

1 is merely a guardian ad litem.

2 "Heirs" means those persons, including, but not limited to, the
3 surviving spouse and the descendants of the decedent, who are entitled
4 under the statutes of intestate succession to the property of a
5 decedent.

6 (cf: P.L.1997, c.379, s.2.)

7

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

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

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

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

20 "Issue" of [a person includes all of his lineal descendants, natural
21 or adopted, of all generations, with the relationship of parent and child
22 at each generation being determined by the definition of child and
23 parent] an individual means a descendant as defined in N.J.S.3B:1-1.

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

29 "Local administration" means administration by a personal
30 representative appointed in this State.

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

34 ["Incapacitated person" means a person who is impaired by reason
35 of mental illness or mental deficiency to the extent that he lacks
36 sufficient capacity to govern himself and manage his affairs.

37 The term incapacitated person is also used to designate a person
38 who is impaired by reason of physical illness or disability, chronic use
39 of drugs, chronic alcoholism or other cause (except minority) to the
40 extent that he lacks sufficient capacity to govern himself and manage
41 his affairs.

42 The terms incapacity and incapacitated person refer to the state or
43 condition of an incapacitated person as hereinbefore defined.]

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

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

1 "Parent" means any person entitled to take or who would be
2 entitled to take if the child, natural or adopted, died without a will, by
3 intestate succession from the child whose relationship is in question
4 and excludes any person who is a stepparent, foster parent or
5 grandparent.

6 "Per capita" If a governing instrument requires property to be
7 distributed "per capita," the property is divided to provide equal shares
8 for each of the takers, without regard to their shares or the right of
9 representation.

10 "Payor" means a trustee, insurer, business entity, employer,
11 government, governmental agency or subdivision, or any other person
12 authorized or obligated by law or a governing instrument to make
13 payments.

14 "Person" means an individual or an organization.

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

23 "Personal representative" includes executor, administrator,
24 successor personal representative, special administrator, and persons
25 who perform substantially the same function under the law governing
26 their status. "General personal representative" excludes special
27 administrator.

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

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

43 "Security" includes any note, stock, treasury stock, bond,
44 mortgage, financing statement, debenture, evidence of indebtedness,
45 certificate of interest or participation in an oil, gas or mining title or
46 lease or in payments out of production under the title or lease,

1 collateral, trust certificate, transferable share, voting trust certificate
2 or, in general, any interest or instrument commonly known as a
3 security or as a security interest or any certificate of interest or
4 participation, any temporary or interim certificate, receipt or certificate
5 of deposit for, or any warrant or right to subscribe to or purchase, any
6 of the foregoing.

7 "Stepchild" means a child of the surviving, deceased, or former
8 spouse of the testator.

9 "Successor personal representative" means a personal
10 representative, other than a special administrator, who is appointed to
11 succeed a previously appointed personal representative.

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

15 "Testamentary trustee" means a trustee designated by will or
16 appointed to exercise a trust created by will.

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

18 "Trust" includes any express trust, private or charitable, with
19 additions thereto, wherever and however created. It also includes a
20 trust created by judgment under which the trust is to be administered
21 in the manner of an express trust. "Trust" excludes other constructive
22 trusts, and it excludes resulting trusts, guardianships, personal
23 representatives, trust accounts created under the "Multiple-party
24 Deposit Account Act," P.L.1979, c.491 [(C.17:161-1 et seq.)]
25 (C.17:161-1 et seq.), gifts to minors under the "New Jersey Uniform
26 Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), or the
27 "New Jersey Uniform Transfers to Minors Act," R.S.46:38A-1 et, seq.
28 business trusts providing for certificates to be issued to beneficiaries,
29 common trusts, security arrangements, liquidation trusts, and trusts for
30 the primary purpose of paying debts, dividends, interest, salaries,
31 wages, profits, pensions or employee benefits of any kind, and any
32 arrangement under which a person is nominee or escrowee for another.

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

35 "Ward" means [a person] an individual for whom a guardian is
36 appointed or [a person] an individual under the protection of the
37 court.

38 "Will" means the last will and testatment of a testator or testatrix
39 and includes any codicil and any testamentary instrument that merely
40 appoints an executor, revokes or revises another will, nominates a
41 guardian, or expressly excludes or limits the right of a person or class
42 to succeed to property of the decedent passing by intestate succession.

43 (cf: P.L.1997, c.379, s.3)

44

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

46 3B:1-3. Devolution of property upon death.

1 Upon the death of [a person] an individual, his real and personal
2 property devolves to the persons to whom it is devised by his will or
3 to those indicated as substitutes for them in cases involving lapse,
4 renunciation, or other circumstances affecting the devolution of testate
5 estates, or in the absence of testamentary disposition, to his heirs, or
6 to those indicated as substitutes for them in cases involving
7 renunciation or other circumstances affecting devolution of intestate
8 estates, subject to rights of creditors and to administration.

9 (cf: P.L.1981, c.405, s.3B:1-3)

10

11 4. N.J.S.3B:2-5 is amended to read as follows:

12 3B:2-5. Disputes or doubts in proceedings before the surrogate.

13 In the event of any dispute or doubt arising before the surrogate or
14 in the surrogate's court, neither [he] the surrogate nor the court shall
15 take any further action therein, except in accordance with the order of
16 the Superior Court.

17 (cf: P.L.1981, c.405, s.3B:2-5)

18

19 5. N.J.S.3B:2-6 is amended to read as follows:

20 3B:2-6. Oath; affidavit; deposition or proof.

21 Any oath, affidavit, deposition or proof required to be made or
22 taken in any proceeding before a surrogate, [his] the surrogate's court
23 or in the Superior Court, or necessary or proper to be used before the
24 surrogate or the court, may be made and taken before the surrogate
25 or before any [person] individual authorized by law to administer
26 oaths. Qualifications of executors and administrators and acceptances
27 of trusteeships and guardianships may be taken as provided by the
28 rules of the Supreme Court.

29 (cf: P.L.1981, c.405, s.3B:2-6)

30

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

32 3B:2-7. Issuance of [subpenas] subpoenas by surrogate.

33 A surrogate may issue process of [subpenas] subpoenas to any
34 person within the State to appear and give evidence in any matter
35 pending before the surrogate's court.

36 (cf: P.L.1981, c.405, s.3B:2-7)

37

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

39 3B:2-8. Penalty for failure to obey [subpena] subpoena.

40 Any person [subpenaed] subpoenaed as a witness by a surrogate,
41 who does not appear pursuant thereto, or appearing refuses to be
42 sworn or give evidence, without reasonable cause assigned, shall, for
43 every such default or refusal, be subject to a fine of not more than
44 \$50.00, as the surrogate's court issuing the [subpena] subpoena shall
45 by judgment determine proper to impose. The fine, when collected,
46 shall be paid to the county.

1 In default of the payment of a fine so imposed, the surrogate's court
2 by its judgment may commit the witness to the county jail of the
3 county until it is paid or he is sooner discharged.

4 The judgment of the surrogate's court imposing a fine or committing
5 a witness to jail shall be reviewable by the Superior Court in the same
6 manner as other judgments of the court are reviewed.

7 (cf: P.L.1981, c.405, s.3B:2-8)

8

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

10 3B:3-1. **[Persons]** Individuals competent to make a will and
11 appoint a testamentary guardian.

12 Any **[person]** individual 18 or more years of age who is of sound
13 mind may make a will and may appoint a testamentary guardian.

14 (cf: P.L.1981, c.405, s.3B:3-1)

15

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

17 3B:3-2. **[Formal execution of will]** Execution; Witnessed Wills;
18 Writings Intended as Wills.

19 **[Except as provided in N.J.S.3B:3-3, every will shall be in writing,**
20 **signed by the testator or in his name by some other person in his**
21 **presence and at his direction, and shall be signed by at least two**
22 **persons each of whom witnessed either the signing or the testator's**
23 **acknowledgment of the signature or of the will]**

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

26 (1) in writing;

27 (2) signed by the testator or in the testator's name by some other
28 individual in the testator's conscious presence and at the testator's
29 direction; and

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

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

37 c. Intent that the document constitutes the testator's will can be
38 established by extrinsic evidence, including writings intended as wills,
39 portions of the document that are not in the testator's handwriting.

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

41

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

43 3B:3-3. **[Holographic will]** Writings intended as wills.

44 **[A will which does not comply with N.J.S.3B:3-2 is valid as a**
45 **holographic will, whether or not witnessed, if the signature and**
46 **material provisions are in the handwriting of the testator]**

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

10 (cf: P.L.1981, c.405, s.3B:3-3)

11

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

13 3B:3-4. Any will executed on or after September 1, 1978 may be
 14 simultaneously executed, attested, and made self-proved, by
 15 acknowledgment thereof by the testator and affidavits of the witnesses,
 16 each made before an officer authorized pursuant to [R.S.46:14-6,
 17 R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take acknowledgments
 18 and proofs of instruments entitled to be recorded under the laws of
 19 this State, in substantially the following form:

20 I, , the testator, sign my name to this instrument this day
 21 of , [19...,] 20.... and being duly sworn, do hereby declare to the
 22 undersigned authority that I sign and execute this instrument as my last
 23 will and that I sign it willingly (or willingly direct another to sign for
 24 me), that I execute it as my free and voluntary act for the purposes
 25 therein expressed, and that I am 18 years of age or older, of sound
 26 mind, and under no constraint or undue influence.

27

28 Testator

29

30 We,....., the witnesses, sign our names to this instrument, and,
 31 being duly sworn, do hereby declare to the undersigned authority that
 32 the testator signs and executes this instrument as [his] the testator's
 33 last will and that [he] the testator signs it willingly (or willingly
 34 directs another to sign for him), and that each of us, in the presence
 35 and hearing of the testator, hereby signs this will as witness to the
 36 testator's signing, and that to the best of our knowledge the testator
 37 is 18 years of age or older, of sound mind, and under no constraint or
 38 undue influence.

39

40 Witness

41

42 Witness

43 The State of.....

44 County of.....

45 Subscribed, sworn to and acknowledged before me by,
 46 the testator and subscribed and sworn to before me by and

1 , witnesses, this day of.....

2 (Signed).....

3

4 (Official capacity of officer)

5 (cf: P.L.1991, c.255, s.1)

6

7 12. N.J.S.3B:3-5 is amended to read as follows:

8 3B:3-5. Making will self-proved subsequent to time of execution.

9 A will executed in compliance with N.J.S.3B:3-2 may at any time
10 subsequent to its execution be made self-proved by the
11 acknowledgment thereof by the testator and the affidavits of the
12 witnesses, each made before an officer authorized pursuant to
13 [R.S.46:14-6, R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take
14 acknowledgments and proofs of instruments entitled to be recorded
15 under the laws of this State, attached or annexed to the will in
16 substantially the following form:

17

18 The State of

19

20 County of

21

22 We, , and , the testator and the witnesses,
23 respectively, whose names are signed to the attached or foregoing
24 instrument, being duly sworn, do hereby declare to the undersigned
25 authority that the testator signed and executed the instrument as his
26 last will and that [he] the testator had signed willingly (or willingly
27 directed another to sign for [him] the testator), and that he executed
28 it as [his] the testator's free and voluntary act for the purposes therein
29 expressed, and that each of the witnesses, in the presence and hearing
30 of the testator, signed the will as witness and that to the best of his
31 knowledge the testator was at that time 18 years of age or older, of
32 sound mind and under no constraint or undue influence.

33

34 Testator

35

36 Witness

37

38 Witness

39

40 Subscribed, sworn to and acknowledged before me by ,
41 the testator, and subscribed and sworn to before me by
42 and , witnesses, this day of .

43

44 (Signed)

45

46 (Official capacity of officer)

47 (cf: P.L.1981, c.405, s.3B:3-5)

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

2 3B:3-7. Who may witness a will.

3 Any [person] individual generally competent to be a witness may
4 act as a witness to a will and to testify concerning execution thereof.
5 (cf: P.L.1981, c.405, s.3B:3-7)

6

7 14. N.J.S.3B:3-11 is amended to read as follows:

8 3B:3-11. Identifying devise of tangible personal property by
9 separate writing.

10 A will may refer to a written statement or list to dispose of items of
11 tangible personal property not otherwise specifically disposed of by the
12 will, other than money[, evidences of indebtedness, documents of title,
13 and securities and property used in trade or business]. To be
14 admissible under this section as evidence of the intended disposition,
15 the writing must be either in the handwriting of the testator or be
16 signed by [him] the testator and must describe the items and the
17 devisees with reasonable certainty. The writing may be referred to as
18 one to be in existence at the time of the testator's death; it may be
19 prepared before or after the execution of the will; it may be altered by
20 the testator after its preparation; and it may be a writing which has
21 no significance apart from its effect upon the dispositions made by the
22 will.

23 (cf: P.L.1981, c.405, s.3B:3-11)

24

25 15. N.J.S.3B:3-12 is amended to read as follows:

26 3B:3-12. Acts and events of independent significance.

27 A will may dispose of property by reference to acts and events
28 which have significance apart from their effect upon the dispositions
29 made by the will, whether they occur before or after the execution of
30 the will or before or after the testator's death. The execution or
31 revocation of a will of another [person] individual is such an event.
32 (cf: P.L.1981, c.405, s.3B:3-12)

33

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

35 3B:3-13. Revocation by [acts of testator] writing or by act.

36 A will or any part thereof is revoked:

37 [a. By a subsequent will which revokes the former will or part
38 expressly or by inconsistency; or

39 b. By being burned, torn, canceled, obliterated, or destroyed with
40 the intent and for the purpose of revoking by the testator or by another
41 person in his presence and by his direction.]

42 a. By the execution of a subsequent will that revokes the previous
43 will or part expressly or by inconsistency; or

44 b. By the performance of a revocatory act on the will, if the
45 testator performed the act with the intent and for the purpose of
46 revoking the will or part or if another individual performed the act in

1 the testator's conscious presence and by the testator's direction. For
2 purposes of this subsection, "revocatory act on the will" includes
3 burning, tearing canceling, obliterating or destroying the will or any
4 part of it. A burning, tearing or cancelling is a "revocatory act on the
5 will," whether or not the burn, tear, or cancellation touched any of the
6 words on the will.

7 (1) If a subsequent will does not expressly revoke a previous will,
8 the execution of the subsequent will wholly revokes the previous will
9 by inconsistency if the testator intended the subsequent will to replace
10 rather than supplement the previous will.

11 (2) The testator is presumed to have intended a subsequent will to
12 replace rather than supplement a previous will if the subsequent will
13 makes a complete disposition of the testator's estate. If this
14 presumption arises and is not rebutted by clear and convincing
15 evidence, the previous will is revoked; only the subsequent will is
16 operative on the testator's death.

17 (3) The testator is presumed to have intended a subsequent will to
18 supplement rather than replace a previous will if the subsequent will
19 does not make a complete disposition of the testator's estate. If this
20 presumption arises and is not rebutted by clear and convincing
21 evidence, the subsequent will revokes the previous will only to the
22 extent the subsequent will is inconsistent with the previous will; each
23 will is fully operative on the testator's death to the extent they are not
24 inconsistent.

25 (cf: P.L.1981, c.405, s.3B:3-13)

26
27 17. N.J.S.3B:3-14 is amended to read as follows:

28 3B:3-14. Revocation of probate and non-probate transfers by
29 divorce or annulment; revival by remarriage to former spouse.

30 [If after having executed a will the testator is divorced or his
31 marriage annulled, the] a. Except as provided by the express terms
32 of a governing instrument, a court order, or a contract relating to the
33 division of the marital estate made between the divorced individuals
34 before or after the marriage, divorce or annulment, a divorce or
35 annulment ;

36 (1) revokes any revocable:

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

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

45 (c) [any] nomination in a governing instrument of [the] a divorced
46 individual's former spouse or a relative of the divorced individual's

1 former spouse [as executor, trustee, or guardian, unless the will
2 expressly provides otherwise. Property prevented from passing to a
3 former spouse because of revocation by divorce or annulment passes
4 as if the former spouse failed to survive the decedent, and other
5 provisions conferring some power or office on the former spouse are
6 interpreted as if the spouse failed to survive the decedent] to serve in
7 any fiduciary or representative capacity; and

8 (2) severs the interests of the former spouses in property held by
9 them at the time of the divorce or annulment as joint tenants with the
10 right of survivorship or as tenants by the entireties, transforming the
11 interests of the former spouses into tenancies in common. [A judgment
12 from bed and board is a divorce for the purpose of this section.]

13 In the event of a divorce or annulment, provisions of a governing
14 instrument are given effect as if the former spouse and relatives of the
15 former spouse disclaimed all provisions revoked by this section or, in
16 the case of a revoked nomination in a fiduciary or representative
17 capacity, as if the former spouse and relatives of the former spouse
18 died immediately before the divorce or annulment. If provisions are
19 revoked solely by this section, they are revived by [testator's] the
20 divorced individual's remarriage to the former spouse or by the
21 revocation, [or] suspension [of a judgment of divorce from bed and
22 board] or nullification of the divorce or annulment. No change of
23 circumstances other than as described in this section [revokes a will]
24 and in N.J.S.3B:7-1 effects a revocation or severance.

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

32 b. For purposes of this section: (1) "divorce or annulment" means
33 any divorce or annulment, or other dissolution or invalidity of a
34 marriage including a judgment of divorce from bed and board; (2)
35 "governing instrument" means a governing instrument executed by the
36 divorced individual before the divorce or annulment; (3) "divorced
37 individual" includes an individual whose marriage has been annulled;
38 and (4) "relative of the divorced individual's former spouse" means an
39 individual who is related to the divorced individual's former spouse by
40 blood, adoption or affinity and who, after the divorce or annulment, is
41 not related to the divorced individual by blood, adoption or affinity.

42 c. This section does not affect the rights of any person who
43 purchases property from a former spouse for value and without notice,
44 or receives a payment or other item of property in partial or full
45 satisfaction of a legally enforceable obligation, which the former
46 spouse was not entitled to under this section, but the former spouse is

1 liable for the amount of the proceeds or the value of the property to
2 the person who is entitled to it under this section.

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

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

10

11 18. N.J.S.3B:3-15 is amended to read as follows:

12 3B:3-15. Revival of revoked will.

13 a. Except as otherwise provided in N.J.S.3B:3-14 or as provided
14 in subsections b., c. and d. of this section, a revoked will or codicil
15 shall not be revived except by reexecution or by a duly executed
16 codicil expressing an intention to revive it.

17 b. If a subsequent will that wholly revoked a previous will is
18 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, the
19 previous will remains revoked unless it is revived. The previous will
20 is revived if there is clear and convincing evidence from the
21 circumstances of the revocation of the subsequent will or from the
22 testator's contemporary or subsequent declarations that the testator
23 intended the previous will to take effect as executed.

24 c. If a subsequent will that partly revoked a previous will is
25 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, a
26 revoked part of the previous will is revived unless there is clear and
27 convincing evidence from the circumstances of the revocation of the
28 subsequent will or from the testator's contemporary or subsequent
29 declarations that the testator did not intend the revoked part to take
30 effect as executed.

31 d. If a subsequent will that revoked a previous will in whole or in
32 part is thereafter revoked by another, later will, the previous will
33 remains revoked in whole or in part, unless it or its revoked part is
34 revived. The previous will or its revoked part is revived to the extent
35 it appears from the terms of the later will that the testator intended the
36 previous will to take effect.

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

38

39 19. N.J.S.3B:3-17 is amended to read as follows:

40 3B:3-17. Probate of will and grant of letters.

41 The surrogates of the several counties or the Superior Court may
42 take depositions to wills [and the surrogates' courts and Superior
43 Court] admit the same to probate, and grant thereon letters
44 testamentary or letters of administration with the will annexed.

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

1 20. N.J.S.3B:3-19 is amended to read as follows:

2 3B:3-19. Proof required to probate will.

3 A will executed as provided in N.J.S.3B:3-2 may be admitted to
4 probate [in common form] by the surrogate upon the proof of one of
5 the attesting witnesses or by some other [person] individual having
6 knowledge of the facts relating to the proper execution of the will by
7 the testator and its attestation by one of the witnesses.

8 A will executed and acknowledged in the manner provided in
9 N.J.S.3B:3-4, or N.J.S.3B:3-5 may be admitted to probate [in
10 common form] by the surrogate without further affidavit, deposition
11 or proof.

12 A [holographic] writing intended as a will may be admitted to
13 probate only [in solemn form] in the manner provided by the Rules
14 Governing the Courts of the State of New Jersey.

15 (cf: P.L.1981, c.405, s.3B:3-19)

16

17 21. N.J.S.3B:3-20 is amended to read as follows:

18 N.J.S.3B:3-20. Probate of a will of testator who died in military
19 service or within 2 years of discharge

20 When a resident of this State dies while a member of the armed
21 forces of the United State or within 2 years from the date of his
22 discharge from the armed forces and no witness to his will is available
23 in this State to prove the will, either because of death, incapacity,
24 nonresidence, absence, or for any other reason, the will shall be
25 admitted to probate upon proof of the signature of the testator by any
26 two [persons] individuals, provided the will was validly executed as
27 provided in N.J.S.3B:3-9, and the will would have been admitted to
28 probate if the witnesses were dead.

29 (cf: P.L.1981, c.405, s.3B:3-20)

30

31 22. N.J.S.3B:3-24 is amended to read as follows:

32 3B:3-24. Where a will of a resident is to be probated; effect of
33 failure to probate.

34 The will of any [person] individual resident within any county of
35 this State at his death may be admitted to probate in the surrogate's
36 court of the county or in the Superior Court. If the will of any
37 [person] individual resident within the State at his death is probated
38 [without] outside the State, it shall be without effect unless or until
39 probate is granted within the State.

40 (cf: P.L.1981, c.405, s.3B:3-24)

41

42 23. N.J.S.3B:3-26 is amended to read as follows:

43 3B:3-26. Probate of will of nonresident probated in another state
44 or country.

45 When the will of any [person] individual not resident in this State

1 at his death shall have been admitted to probate in any state of the
2 United States or other jurisdiction or country, the surrogate's court of
3 any county may admit it to probate for any purpose and issue letters
4 thereon, provided the will is valid under the laws of this State.

5 (cf: P.L.1981, c.405, s.3B:3-26)

6

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

8 3B:3-28. Probate of will of nonresident decedent where property
9 situated in New Jersey.

10 Where the will of any [person] individual not resident in this State
11 at his death has not been admitted to probate in the state, jurisdiction
12 or country in which he then resided and no proceeding is there pending
13 for the probate of the will, and he died owning real estate situate in
14 any county of this State or personal property, or evidence of the
15 ownership thereof, situate therein at the time of probate, the Superior
16 Court or the surrogate's court may admit the will to probate and grant
17 letters thereon.

18 (cf: P.L.1997, c.20, s.1)

19

20 25. N.J.S.3B:3-28.1 is amended to read as follows:

21 3B:3-28.1. Probate of will of nonresident where laws of decedent's
22 domicile are discriminatory.

23 Where the will of any [person] individual who is not resident in this
24 State at the time of his death has not been admitted to probate in the
25 state in which he resided and no proceeding is there pending for the
26 probate of the will, the Superior Court may admit the will to probate
27 and grant letters thereon if the laws of that state discriminate against
28 residents of New Jersey either as a beneficiary or as a fiduciary.

29 (cf: P.L.1981, c.405, s.3B:3-28.1)

30

31 26. N.J.S.3B:3-31 is amended to read as follows:

32 3B:3-31. Judgment for probate; conclusive effect on title to real
33 property after 7 years.

34 Where judgment has been or shall be entered by any surrogate's
35 court in this State or Superior Court of the State, admitting to probate
36 the will of any [person] individual whether or not a resident of the
37 State at his death and 7 years have elapsed after the judgment, the
38 judgment unless set aside, shall, as to all matters adjudicated thereby,
39 be conclusive upon the title to real estate.

40 (cf: P.L.1981, c.405, s.3B:3-31)

41

42 27. N.J.S.3B:3-32 is amended to read as follows:

43 3B:3-32. [Requirement that devisee survive testator by 120 hours;
44 exceptions.

45 A devisee who does not survive the testator by 120 hours is treated
46 as if he predeceased the testator, unless the will of decedent contains

1 some language dealing explicitly with simultaneous deaths or deaths
2 in a common disaster, or requiring that the devisee survive the testator
3 or survive the testator for a stated period in order to take under the
4 will. To the extent this section is inconsistent with the "Uniform
5 Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the provision of this
6 section shall apply.】

7 Requirement of survival by 120 hours; exceptions; survivorship with
8 respect to future interests.

9 a. Except as provided in subsections b. and c., for purposes of
10 construing a will, trust agreement, or other governing instrument, an
11 individual who is not established by clear and convincing evidence to
12 have survived an event, including the death of another individual, by
13 120 hours is deemed to have predeceased the event.

14 b. If it is not established by clear and convincing evidence that one
15 of two co-owners with right of survivorship survived the other co-
16 owner by 120 hours, one-half of the property passes as if one had
17 survived by 120 hours and one-half as if the other had survived by 120
18 hours.

19 c. If there are more than two co-owners and it is not established
20 by clear and convincing evidence that at least one of them survived the
21 others by 120 hours, the property passes in the proportion that one
22 bears to the whole number of co-owners.

23 d. The 120 hour survival requirement of subsections a., b. and c.
24 shall not apply if: (1) the will, trust agreement, or other governing
25 instrument, contains some language applicable to the event dealing
26 explicitly with simultaneous deaths or deaths in a common disaster, or
27 requiring survival for a stated time period; (2) application would cause
28 a non-vested property interest or power of appointment to be invalid
29 under a rule against perpetuities concerning an interest created prior
30 to the enactment of P.L. 1999, c. 159 (effective on July 8, 1999); or
31 (3) it is established by clear and convincing evidence that application
32 to multiple governing instruments would result in an unintended failure
33 or duplication of a disposition.

34 e. For purposes of this section, "co-owners with right of
35 survivorship" includes joint tenants, tenants by the entireties, and other
36 co-owners of property or accounts held under circumstances that
37 entitle one or more to the whole of the property or account on the
38 death of the other or others.

39 To the extent this section is inconsistent with the "Uniform
40 Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the provisions of
41 this section shall apply.

42 (cf: P.L.1981, c.405, s.3B:3-32)

43

44 28. (New Section) Testator's intention; settlor's intention; rules of
45 construction applicable to wills, trusts and other governing
46 instruments.

1 a. The intention of a testator as expressed in his will controls the
2 legal effect of his dispositions, and the rules of construction expressed
3 in N.J.S.3B:3-34 through N.J.S.3B:3-48 shall apply unless the
4 probable intention of the testator, as indicated by the will and relevant
5 circumstances, is contrary.

6 b. The intention of a settlor as expressed in a trust, or of an
7 individual as expressed in a governing instrument, controls the legal
8 effect of the dispositions therein and the rules of construction
9 expressed in N.J.S.3B:34 through N.J.S.3B:3-48 shall apply unless the
10 probable intent of such settlor or of such individual, as indicated by the
11 trust or by such governing instrument and relevant circumstances, is
12 contrary. For purposes of this Title, when construing each of these
13 rules of construction the word "testator" shall include but not be
14 limited to a settlor or a creator of any other governing instrument; the
15 word "will" shall include a trust or other governing instrument; the
16 word "devise" shall include any disposition in a trust or other
17 governing instrument; and the word "devisee" shall include a
18 beneficiary of a trust or other governing instrument.

19
20 29. N.J.S.3B:3-33 is amended to read as follows:

21 3B:3-33. Choice of law as to meaning and effect of wills; testator's
22 intention; rules of construction.

23 The meaning and legal effect of a disposition in a will, trust or other
24 governing instrument shall be determined by the local law of a
25 particular state selected in the will, trust or other governing
26 instrument, [by the testator in his instrument] unless the application
27 of that law is contrary to the provisions relating to the elective share
28 described in N.J.S.3B:8-1 et seq. or any other public policy of this
29 State otherwise applicable to the disposition. [The intention of a
30 testator as expressed in his will controls the legal effect of his
31 dispositions, and the rules of construction expressed in N.J.S.3B:3-33
32 through N.J.S.3B:3-48 apply, unless the probable intention of the
33 testator, as indicated by the will and relevant circumstances, is
34 contrary.]

35 (cf: P.L.1981, c.405, s.3B:3-33)

36
37 30. N.J.S.3B:3-34 is amended to read as follows:

38 3B:3-34. Will construed to pass all property of testator including
39 after-acquired property.

40 [A will] Unless a will expressly provides otherwise, it is construed
41 to pass all property [which] the testator owns at [his] death including
42 property acquired after the execution of the will, and all property
43 acquired by the estate after the testator's death.

44 (cf: P.L.1981, c.405, s.3B:3-34)

45
46 31. N.J.S.3B:3-35 is amended to read as follows:

1 3B:3-35. Anti-lapse; deceased devisee; class gifts.

2 If a devisee who is a grandparent, stepchild or a lineal descendant
3 of a grandparent of the testator is dead at the time of the execution of
4 the will, [or] fails to survive the testator, or is treated as if he
5 predeceased the testator, [the] any [issue] descendants of the
6 deceased devisee who [survive] survives the testator by 120 hours
7 [take] take by representation in place of the deceased devisee [and
8 if they are all of the same degree of kinship to the devisee they take
9 equally, but if of unequal degree then those of more remote degree
10 take by representation]. One who would have been a devisee under a
11 class gift if he had survived the testator is treated as a devisee for
12 purposes of this section whether his death occurred before or after the
13 execution of the will. For purposes of this section, a "stepchild" means
14 a child of the surviving, deceased or former spouse of the testator.
15 (cf: P.L.1981, c.405, s.3B:3-35)

16

17 32. N.J.S.3B:3-36 is amended to read as follows:

18 3B:3-36. Failure of testamentary provision; residuary devise to two
19 or more residuary devisees; death of one or more before testator.

20 Except as provided in N.J.S.3B:3-35 [if a devise other than a
21 residuary devise fails for any reason, it becomes a part of the residue]:

22 a. a devise, other than a residuary devise, that fails for any reason
23 becomes a part of the residue.

24 b. if the residue is devised to two or more persons, unless a
25 contrary intention shall appear by the will, the share of a residuary
26 devise that fails for any reason passes to the other residuary devisee,
27 or to other residuary devisees in proportion to the interest of each in
28 the remaining part of the residue.

29 (cf: P.L.1981, c.405, s.3B:3-36)

30

31 33. N.J.S.3B:3-38 is amended to read as follows:

32 3B:3-38. Construction of words "die without issue" or "die without
33 descendants".

34 In a devise of real or personal property the words "die without
35 issue" or "die without descendants" or "die without lawful issue" or
36 "die without lawful descendants" or "have no issue" or "have no
37 descendants" or other words which may import a want or failure of
38 issue or descendants of [a person] an individual in his lifetime, or at
39 his death, or an indefinite failure of his issue or descendants, shall be
40 construed to mean a failure of issue or descendants at the death of the
41 [person] individual, unless a contrary intention shall otherwise appear
42 by the will.

43 (cf: P.L.1981, c.405, s.3B:3-38)

44

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

1 3B:3-41. Issue and descendants to take [per stirpes] by
2 representation.

3 Where under any will or trust provision is made for the benefit of
4 issue and descendants and no contrary intention is expressed, the issue
5 or descendants shall take [per stirpes] by representation.
6 (cf: P.L.1981, c.405, s.3B:3-41)

7

8 35. N.J.S.3B:3-42 is amended to read as follows:

9 3B:3-42. [Specific devise of securities; change; accessions;
10 nonademption] Increase in securities, accessions.

11 [a. If the testator intended a specific devise of certain securities
12 rather than the equivalent value thereof, the specific devisee is entitled
13 only to:

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

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

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

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

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

29 a. If a testator executes a will that devises securities and the
30 testator then owned securities that meet the description in the will, the
31 devise includes additional securities owned by the testator at death to
32 the extent the additional securities were acquired by the testator after
33 the will was executed as a result of the testator's ownership of the
34 described securities and are securities of any of the following types:

35 (1) securities of the same organization acquired by reason of action
36 initiated by the organization or any successor, related, or acquiring
37 organization, excluding any acquired by exercise of purchase options;

38 (2) securities of another organization acquired as a result of a
39 merger, consolidation, reorganization, or other distribution by the
40 organization or any successor, related, or acquiring organization; or

41 (3) securities of the same organization acquired as a result of a plan
42 of reinvestment.

43 b. Distributions in cash declared and payable as of a record date
44 before death with respect to a described security, whether paid before
45 or after death, are not part of the devise.

46 (cf: P.L.1981, c.405, s.3B:3-42)

1 36. N.J.S.3B:3-43 is amended to read as follows:

2 3B:3-43. ~~[Specific]~~ Nonademption of specific devise; sale by or
3 payment of condemnation award or insurance proceeds to guardian of
4 testator or agent.

5 If specifically devised property is sold or mortgaged by a guardian
6 for a testator, or by an agent acting within the authority of a durable
7 power of attorney for an incapacitated individual, or if a
8 condemnation award ~~[or]~~, insurance proceeds or recovery for injury
9 to the property are paid to a guardian for a testator or such agent as
10 a result of condemnation, fire or casualty, the specific devisee has the
11 right to a general pecuniary devise equal to the net sale price, the
12 amount of the unpaid loan, the condemnation award, ~~[or]~~ the
13 insurance proceeds or the recovery. This section does not apply if
14 subsequent to the sale, mortgage, condemnation ~~[or]~~, casualty, or
15 recovery the guardianship is terminated or the durable power of
16 attorney is revoked by the testator and the testator survives by 1 year
17 the judgment terminating the guardianship or such revocation. The
18 right of the specific devisee under this section is reduced by any right
19 he has under N.J.S.3B:3-44.

20 (cf: P.L.1981, c.405, s.3B:3-43)

21

22 37. N.J.S.3B:3-44 is amended to read as follows:

23 3B:3-44. Specific devise; right of devisee after sale, condemnation,
24 casualty loss or foreclosure.

25 A specific devisee has the right to the remaining specifically devised
26 property in the testator's estate at death and:

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

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

32 c. Any proceeds unpaid at death on fire or casualty insurance on ~~,~~
33 or other recovery for injury to, the property; and

34 d. Property owned by testator at his death as a result of
35 foreclosure, or obtained in lieu of foreclosure, of the security for a
36 specifically devised obligation.

37 (cf: P.L.1981, c.405, s.3B:3-44)

38

39 38. N.J.S.3B:3-46 is amended to read as follows:

40 3B:3-46. Ademption by satisfaction.

41 a. Property which a testator gave in his lifetime to a person is
42 treated as a satisfaction of a devise to that person in whole or in part,
43 only if the will provides for deduction of the lifetime gift, or the
44 testator declares in a contemporaneous writing that the value of the
45 gift is to be deducted from the value of the devise or is in satisfaction
46 of the devise, or the devisee acknowledges in writing that the gift is in

1 satisfaction of the devise or that its value is to be deducted from the
2 value of the devise.

3 b. For purpose of partial satisfaction, property given during lifetime
4 is valued as of the time the devisee came into possession or enjoyment
5 of the property or as of the time of death of the testator, whichever
6 occurs first.

7 c. If the devisee fails to survive the testator, in the case of a
8 substituted devise or a devise saved from lapse, the gift is treated as
9 a full or partial satisfaction of the devise, as appropriate, unless the
10 testator's contemporaneous writing provides otherwise.

11 (cf: P.L.1981, c.405, s.3B:3-46)

12

13 39. N.J.S.3B:3-48 is amended to read as follows:

14 3B:3-48. Construction of generic terms included in class gift
15 terminology.

16 [Halfbloods, adopted persons and persons born out of wedlock are
17 included in class gift terminology and terms of relationship in
18 accordance with rules for determining relationships for purposes of
19 intestate succession.]

20 a. Adopted individuals and individuals born out of wedlock, and
21 their respective descendants if appropriate to the class, are included in
22 class gifts and other terms of relationship in accordance with the rules
23 for intestate succession. Terms of relationship that do not differentiate
24 relationships by the half blood from those by the whole blood, such as
25 "brothers," "sisters," "nieces," or "nephews," are construed to include
26 both types of relationships.

27 b. In addition to the requirements of subsection a., in construing a
28 donative disposition by a transferor who is not the natural parent, an
29 individual born to the natural parent is not considered the child of that
30 parent unless the individual lived while a minor as a regular member
31 of the household of that natural parent or of that parent's parent,
32 brother, sister, spouse or surviving spouse.

33 c. In addition to the requirements of subsection a., in construing a
34 dispositive provision by a transferor who is not the adoptive parent, an
35 adopted individual is not considered the child of the adoptive parent
36 unless the adopted individual lived while a minor, either before or after
37 the adoption, as a regular member of the household of the adoptive
38 parent.

39 (cf: P.L.1981, c.405, s.3B:3-48)

40

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

42 3B:4-2. [Devise to trustee of trust created other than by testator's
43 will] Devise to trustee of trust created other than by testator's will.

44 A [devise] will may [be made by a will] validly devise property to
45 the trustee [or trustees] of a trust established or a trust which will be
46 established: (1) during the testator's lifetime by [a] the testator, or by

1 [a] the testator and some other person [or persons], or by some other
2 person [or persons] including a funded or unfunded life insurance
3 trust, although the settlor has reserved any or all rights of ownership
4 of the insurance contracts, or (2) at the testator's death by the
5 testator's devise to the trustee, if the trust is identified in the testator's
6 will, and its terms are set forth in a written instrument, other than a
7 will, executed before [or], concurrently with, or after the execution
8 of the testator's will [, or in the valid last will and testament of a
9 person who] or in another individual's will, executed before,
10 concurrently with or after the execution of the testator's will, if that
11 other individual has predeceased the testator, regardless of the
12 existence, size, or character of the corpus of the trust. [A devise so
13 made shall be valid and enforceable to the same extent as if the trust
14 had been created by the testator by his will, and as if the terms of the
15 trust, as contained in the will or other instrument creating or
16 evidencing it, had been set out in full in the will of the testator. The
17 existence, size or character of the trust property shall not affect the
18 validity of the devise, nor shall any devise be invalid because the trust
19 is a funded or unfunded life insurance trust, although the creator of the
20 trust has reserved any or all rights of ownership of the insurance
21 contracts.]

22 (cf: P.L.1981, c.405, s.3B:4-2)

23

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

25 3B:4-3. [Devise not invalidated because trust is amendable or
26 revocable] Devise not invalidated because trust is amendable or
27 revocable.

28 A devise [made as provided in N.J.S.3B:4-2] made as provided in
29 N.J.S.3B:4-2 shall not be invalid because the trust is amendable or
30 revocable, [or both,] or because the trust was amended after the
31 execution of the will or [after the death of the testator] the testator's
32 death.

33 (cf: P.L.1981, c.405, s.3B:4-3)

34

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

36 3B:4-4. Administration of trust.

37 Unless the testator's will provides otherwise, [the] property devised
38 to a trust described [as provided] in N.J.S.3B:4-2 shall not be
39 deemed to be held under a testamentary trust of the testator, but shall
40 become a part of the trust to which it is [given] devised and shall be
41 administered and disposed of in accordance with the provisions of the
42 [will or other] governing instrument setting forth the terms of the
43 trust, including any amendments thereto made before or after the
44 [death of the testator] testator's death[, whether made before or after
45 the execution of the testator's will, and, if the testator's will so

1 provides, including any amendments of the trust made after the death
2 of the testator].

3 (cf: P.L.1981, c.405, s.3B:4-4)

4

5 43. N.J.S.3B:4-5 is amended to read as follows:

6 3B:4-5. Lapse of devise.

7 [A] Unless the testator's will provides otherwise, a revocation or
8 termination of the trust before the [death of the testator shall cause]
9 testator's death causes the devise to lapse.

10 (cf: P.L.1981, c.405, s.3B:4-5)

11

12 44. N.J.S.3B:5-1 is amended to read as follows:

13 3B:5-1. Requirement that heir survive decedent by 120 hours.

14 [Any person who fails to survive the decedent by 120 hours is
15 deemed to have predeceased the decedent for] For the purposes of
16 intestate succession[, and the decedent's heirs are determined
17 accordingly. If the time of death of the decedent or of the person who
18 would otherwise be an heir, or the times of death of both, cannot be
19 determined, and it cannot be established that the person who would
20 otherwise be an heir has] an individual who is not established by clear
21 and convincing evidence to have survived the decedent by 120
22 hours[,it] is deemed [that the person failed to survive for the
23 required period] to have predeceased the decedent. This section is not
24 to be applied where its application would result in a taking of intestate
25 estate by the State ¹[under [N.J.S.3B:5-6] N.J.S.3B:5-5]¹.

26 (cf: P.L.1981, c.405, s.3B:5-1)

27

28 45. N.J.S.3B:5-2 is amended to read as follows:

29 3B:5-2. Intestate estate.

30 a. Any part of the decedent's estate [of a decedent] not effectively
31 disposed of by his will passes by intestate succession to [his] the
32 decedent's heirs as prescribed in N.J.S.3B:5-3 through N.J.S.3B:5-14,
33 except as modified by the decedent's will.

34 b. A decedent by will may expressly exclude or limit the right of an
35 individual or class to succeed to property of the decedent passing by
36 intestate succession. If that individual or member of that class
37 survives the decedent, the share of the decedent's intestate estate to
38 which that individual or class would have succeeded passes as if that
39 individual or each member of that class had disclaimed his intestate
40 share.

41 (cf: P.L.1981, c.405, s.3B:5-2)

42

43 46. N.J.S.3B:5-3 is amended to read as follows:

44 3B:5-3. Intestate share of decedent's surviving spouse. The
45 intestate share of the surviving spouse is:

1 a. [If there is no surviving issue or parent of the decedent, the]
2 The entire intestate estate if:

3 (1) No descendant or parent of the decedent survives the
4 decedent; or

5 (2) All of the decedent's surviving descendants are also descendants
6 of the surviving spouse and there is no other descendant of the
7 surviving spouse who survives the decedent;

8 b. [If there is no surviving issue but the decedent is survived by a
9 parent or parents, the] The first 25% of the intestate estate, but not
10 less than \$50,000.00 nor more than \$200,000.00, plus [one-half of
11 the] three-fourths of any balance of the intestate estate, if no
12 descendant of the decedent survives the decedent, but a parent of the
13 decedent survives the decedent;

14 c. [If there are surviving issue all of whom are issue of the
15 surviving spouse also, the] The first 25% of the intestate estate, but
16 not less than \$50,000.00 nor more than \$200,000.00, plus one-half of
17 the balance of the intestate estate[;]:

18 (1) If all of the decedent's surviving descendants are also
19 descendants of the surviving spouse and the surviving spouse has one
20 or more surviving descendants who are not descendants of the
21 decedent; or

22 (2) If one or more of the decedent's surviving descendants is not a
23 descendant of the surviving spouse.

24 [d. If there are surviving issue one or more of whom are not issue
25 of the surviving spouse, one-half of the intestate estate.]

26 (cf: P.L.1981, c.405, s.3B:5-3)

27

28 47. N.J.S.3B:5-4 is amended to read as follows:

29 3B:5-4. Intestate shares of heirs other than surviving spouse.

30 [The] Any part of the intestate estate not passing to the decedent's
31 surviving spouse under N.J.S.3B:5-3, or the entire intestate estate if
32 there is no surviving spouse, passes [as follows] in the following
33 order to the individuals designated below who survive the decedent:

34 a. To the [issue of the decedent; if they are all of the same degree
35 of kinship to the decedent they take equally, but if of unequal degree,
36 then those of more remote degree take by representation] decedent's
37 descendants by representation;

38 b. If there is no surviving [issue] descendants, to [his parent or]
39 the descendant's parents equally if both survive, or to the surviving
40 parent;

41 c. If there is no surviving [issue] descendants or parent, to the
42 [issue] descendants of the decedent's parents or either of them by
43 representation;

44 d. If there is no surviving [issue] descendant, parent or [issue]
45 descendant of a parent, but the decedent is survived by one or more

1 grandparents[:

2 (1) Half of the estate passes to the paternal grandparents equally
3 if both survive, or to the surviving paternal grandparent; or if both are
4 deceased and the decedent is survived by maternal grandparents or
5 grandparent, then to the issue of the paternal grandparents, the issue
6 taking equally if they are all of the same degree of kinship to the
7 decedent, but if of unequal degree those of more remote degree take
8 by representation;

9 (2) The other half passes to the maternal grandparents equally if
10 both survive, or to the surviving maternal grandparent; or if both are
11 deceased and the decedent is survived by paternal grandparents or
12 grandparent, then to the issue of the maternal grandparents, the issue
13 taking equally if they are all of the same degree of kinship to the
14 decedent, but if of unequal degree, those more remote take by
15 representation;

16 (3) If the decedent is survived by a grandparent or grandparents
17 only on the paternal side or only on the maternal side and by no issue
18 of the grandparents on the other side, the entire estate passes to the
19 surviving grandparent or grandparents equally;], half of the estate
20 passes to the decedent's paternal grandparents equally if both survive,
21 or to the surviving paternal grandparent, or to the descendants of the
22 decedent's paternal grandparents or either of them if both are
23 deceased, the descendants taking by representation; and the other half
24 passes to the decedent's maternal relatives in the same manner; but if
25 there is no surviving grandparent, or descendant of a grandparent on
26 either the paternal or the maternal side, the entire estate passes to the
27 decedent's relatives on the other side in the same manner as the half.

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

34 f. If there are no surviving descendants of grandparents, then the
35 decedent's step-children or their descendants by representation.

36 (cf: P.L.1981, c.405, s.3B:5-4)

37

38 48. Section 1 of P.L. 2001, c. 109 (C.3B5-5.1) is amended to read
39 as follows:

40 1. If it appears to a fiduciary administering an intestate estate that
41 there may be [persons] individuals whose names or addresses are
42 unknown who may be entitled to participate in the distribution of the
43 estate, the fiduciary shall make a diligent inquiry, under the
44 circumstances, to identify and locate the [persons] individuals. The
45 actions taken by a fiduciary shall be those that have some reasonable

1 likelihood of finding the [persons] individuals and are reasonable in
2 cost compared with the amount of the distribution involved.
3 (cf: P.L.2001, c.109, s.1)

4

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

6 3B:5-6. Determining representation.

7 [When representation is required to effect disposition of an estate,
8 the estate is divided into as many shares as there are surviving heirs in
9 the nearest degree of kinship and deceased persons in the same degree
10 who left issue who survive the decedent, each surviving heir in the
11 nearest degree receiving one share and the share of each deceased
12 person in the same degree being divided among his issue in the same
13 manner.]

14 a. As used in this section:

15 (1) "Deceased descendant," "deceased parent," or "deceased
16 grandparent" means a descendant, parent or grandparent who either
17 predeceased the decedent or is deemed to have predeceased the
18 decedent under N.J.S.3B:5-1.

19 (2) "Surviving descendant" means a descendant who neither
20 predeceased the decedent nor is deemed to have predeceased the
21 decedent under N.J.S.3B:5-1.

22 b. If, under N.J.S.3B:5-4, a decedent's intestate estate or part
23 thereof passes "by representation" to the decedent's descendants, the
24 estate or part thereof is divided into as many equal shares as there are:
25 (1) surviving descendants in the generation nearest to the decedent
26 which contains one or more surviving descendants; and (2) deceased
27 descendants in the same generation who left surviving descendants, if
28 any. Each surviving descendant in the nearest generation is allocated
29 one share. The remaining shares, if any, are combined and then
30 divided in the same manner among the surviving descendants of the
31 deceased descendants as if the surviving descendants who were
32 allocated a share and their surviving descendants had predeceased the
33 decedent.

34 c. If, under sections c. or d. of N.J.S.3B:5-4, a decedent's intestate
35 estate or a part thereof passes "by representation" to the descendants
36 of the decedent's deceased parents or either of them or to the
37 descendants of the decedent's deceased paternal or maternal
38 grandparents or either of them, the estate or part thereof is divided
39 into as many equal shares as there are: (1) surviving descendants in the
40 generation nearest the deceased parents or either of them, or the
41 deceased grandparents or either of them, that contains one or more
42 surviving descendants; and (2) deceased descendants in the same
43 generation who left surviving descendants, if any. Each surviving
44 descendant in the nearest generation is allocated one share. The
45 remaining share, if any, are combined and then divided in the same
46 manner among the surviving descendants of the deceased descendants

1 as if the surviving descendants who were allocated a share, and their
2 surviving descendants had predeceased the decedent.

3 (cf: P.L.1981, c.405, s.3B:5-6)

4

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

6 3B:5-8. After born heirs.

7 [Relatives of the decedent conceived before his death but born
8 thereafter inherit as if they had been born in the lifetime of the
9 decedent.] An individual in gestation at a particular time is treated as
10 living at that time if the person lives 120 hours or more after birth.

11 (cf: P.L.1981, c.405, s.3B:5-8)

12

13 51. N.J.S.3B:5-9 is amended to read as follows:

14 3B:5-9. Adopted child.

15 If, for the purposes of intestate succession, a relationship of parent
16 and child must be established to determine succession by, through or
17 from [a person] an individual, the relationships and rights of a minor
18 adopted child shall be those as provided in section 14 of P.L.1977,
19 c.367 (C.9:3-50), and the relationships and rights of an adopted adult
20 shall be as provided in N.J.S.2A:22-3.

21 (cf: P.L.1981, c.405, s.3B:5-9)

22

23 52. N.J.S.3B:5-10 is amended to read as follows:

24 3B:5-10. Establishment of Parent-Child Relationship.

25 If, for the purposes of intestate succession, a relationship of parent
26 and child must be established to determine succession by, through, or
27 from [a person] an individual, in cases not covered by N.J.S.3B:5-9,
28 [a person] an individual is the child of the [person's] individual's
29 parents regardless of the marital state of the [person's] individual's
30 parents, and the parent and child relationship may be established as
31 provided by the "New Jersey Parentage Act," P.L.1983, c.17
32 (C.9:17-38 et seq.). The parent and child relationship may be
33 established for purposes of this section regardless of the time
34 limitations set forth in subsection b. of section 8 of P.L.1983, c.17
35 (C.9:17-45).

36 (cf: P.L. 1997, c.376, s.1)

37

38 53. N.J.S.3B:5-11 is amended to read as follows:

39 3B:5-11. Debt [owed by heir] to decedent.

40 A debt owed to [the] a decedent [by an heir] is not charged against
41 the intestate share of any [person] individual except [that heir] the
42 debtor. If the debtor fails to survive the decedent, the debt is not
43 taken into account in computing the intestate share of the debtor's
44 [issue] descendants.

45 (cf: P.L.1981, c.405, s.3B:5-11)

1 54. N.J.S.3B:5-12 is amended to read as follows:

2 3B:5-12. Aliens not disqualified; individuals related to descendant
3 through two lines.

4 [A person is not disqualified to take as an heir because he or a
5 person through whom he claims is or has been an alien] a. An
6 individual is not disqualified to take as an heir because he or an
7 individual through whom he claims is or has been an alien.

8 b. An individual who is related to the decedent through two lines
9 of relationship is entitled to only a single share based on the
10 relationship that would entitle the individual to the larger share.

11 (cf: P.L.1981, c.405, s.3B:5-12)

12

13 55. N.J.S.3B:5-13 is amended to read as follows:

14 3B:5-13. [Advancement to heir] Advancements.

15 [Property given by a decedent during his lifetime to a person
16 entitled under this article to the property as an heir of the decedent
17 shall be treated as an advancement against that person's share of the
18 estate only if so declared in a contemporaneous writing by the
19 decedent or acknowledged in writing as such by the recipient. The
20 property advanced shall be valued as of the time the recipient came
21 into possession or enjoyment of the property or as of the time of the
22 death of the decedent, whichever occurs first. If the recipient fails to
23 survive the decedent the value of the property shall not be taken into
24 account in computing the intestate share to be received by his issue
25 unless the declaration or acknowledgment provides otherwise.]

26 a. If an individual dies intestate as to all or a portion of his estate,
27 property the decedent gave during the decedent's lifetime to an
28 individual who, at the decedent's death, is an heir is treated as an
29 advancement against the heir's intestate share only if: (1) the decedent
30 declared in a contemporaneous writing or the heir acknowledged in
31 writing that the gift is an advancement; or (2) the decedent's
32 contemporaneous writing or the heir's written acknowledgment
33 otherwise indicates that the gift is to be taken into account in
34 computing the division and distribution of the decedent's intestate
35 estate.

36 b. For purposes of subsection a., property advanced is valued as of
37 the time the heir came into possession or enjoyment of the property or
38 as of the time of the decedent's death, whichever occurs first.

39 c. If the recipient of the property fails to survive the decedent, the
40 property is not taken into account in computing the division and
41 distribution of the decedent's intestate estate, unless the decedent's
42 contemporaneous writing or the heirs' written acknowledgment
43 provides otherwise.

44 (cf: P.L.1981, c.405, s.3B:5-13)

45

46 56. N.J.S.3B:5-15 is amended to read as follows:

1 3B:5-15. [~~Inheritance by~~] Entitlement of spouse [~~not provided for~~
2 ~~in~~]; Premarital will.

3 a. If a [~~testator fails to provide by will for his~~] testator's surviving
4 spouse [~~who~~] married the testator after the [~~execution of the~~]
5 testator executed his will, the [~~omitted spouse shall receive the same~~
6 ~~share of the estate he would have received if the decedent left no will~~]
7 surviving spouse is entitled to receive, as an intestate share, no less
8 than the value of the share of the estate he would have received if the
9 testator had died intestate, unless:

10 (1) it appears from the will or other evidence that [~~the omission~~
11 ~~was intentional or~~] the will was made in contemplation of the
12 testator's marriage to the surviving spouse;

13 (2) the will expresses the intention that it is to be effective
14 notwithstanding any subsequent marriage; or

15 (3) the testator provided for the spouse by transfer outside the will
16 and the intent that the transfer be in lieu of a testamentary provision
17 is shown by the testator's statements [~~of the testator~~] or is reasonably
18 inferred from the amount of the transfer or other evidence.

19 b. [~~The~~] In satisfying the share [~~of the spouse shall be taken from~~
20 ~~devisees under the will~~] provided by this section, devises made by the
21 will to the testator's surviving spouse, if any, are applied first, and
22 other devises shall abate ratably and in proportion to their respective
23 interests therein.

24 c. Notwithstanding any other provision of law to the contrary, this
25 section shall apply only to wills executed on or after September 1,
26 1978.

27 (cf: P.L.1981, c.405, s.3B:5-15)

28

29 57. N.J.S.3B:5-16 is amended to read as follows:

30 3B:5-16. [~~Inheritance by~~] Omitted children [~~not provided for in~~
31 ~~will~~].

32 a. [~~If~~] Except as provided in subsection b., if a testator fails to
33 provide in his will for any of his children born or adopted after the
34 execution of his will, the omitted after-born or after-adopted child
35 receives a share in the estate [~~equal in value to that which he would~~
36 ~~have received if the testator had died intestate unless~~] as follows:

37 (1) If the testator had no child living when he executed the will, an
38 omitted after-born or after-adopted child receives a share in the estate
39 equal in value to that which the child would have received had the
40 testator died intestate, unless the will devised all or substantially all of
41 the estate to the other parent of the omitted child or to a trust
42 primarily for the benefit of that other parent and that other parent
43 survives the testator and is entitled to take under the will.

44 (2) If the testator had one or more children living when he
45 executed the will, and the will devised property or an interest in

1 property to one or more of the then-living children, an omitted after-
2 born or after-adopted child is entitled to share in the testator's estate
3 as follows:

4 (a) the portion of the testator's estate in which the omitted after-
5 born or after-adopted child is entitled to share is limited to devises
6 made to the testator's then-living children under the will.

7 (b) the omitted after-born or after-adopted child is entitled to
8 receive the share of the testator's estate, as limited in subparagraph (a),
9 that the child would have received had the testator included all omitted
10 after-born and after-adopted children with the children to whom
11 devises were made under the will and had given an equal share of the
12 estate to each child.

13 (c) to the extent feasible, the interest granted an omitted after-born
14 or after-adopted child under this section must be of the same
15 character, whether equitable or legal, present or future, as that devised
16 to the testator's then-living children under the will.

17 (d) in satisfying a share provided by this paragraph, devises to the
18 testator's children who were living when the will was executed abate
19 ratably. In abating the devises of the then-living children, the court
20 shall preserve to the maximum extent possible the character of the
21 testamentary plan adopted by the testator.

22 b. Neither subsection a. (1) nor subsection a. (2) applies if:

23 (1) [It] it appears from the will that the omission was intentional;

24 [(2) When the will was executed the testator had one or more
25 children and devised substantially all his estate to the other parent of
26 the omitted child;] or

27 [(3)] (2) [The] the testator provided for the omitted after-born
28 or after-adopted child by transfer outside the will and the intent that
29 the transfer be in lieu of a testamentary provision is shown by the
30 testator's statements or is reasonably inferred from the amount of the
31 [testator or from the amount of the] transfer or other evidence.

32 [b.] c. If at the time of execution of the will the testator fails to
33 provide in his will for a living child solely because he believes the child
34 to be dead, the child [receives] is entitled to a share in the estate
35 [equal in value to that which he would have received if the testator
36 had died intestate] as if the child were an omitted after-born or after-
37 adopted child.

38 [c.] d. The share [of the child] provided by subsection a. (1) shall
39 be taken from devisees under the will ratably and in proportion to their
40 respective interests therein.

41 (cf: P.L.1981, c.405, s.3B:5-16)

42

43 58. (New section) Effect of intentional killing on intestate
44 succession, wills, trusts, joint assets, life insurance and beneficiary
45 designations.

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

7 b. The intentional killing of the decedent:

8 (1) revokes any revocable (a) disposition or appointment of
9 property made by decedent to the killer in a governing instrument and
10 any disposition or appointment created by law or in a governing
11 instrument to a relative of the killer, (b) provision in a governing
12 instrument conferring a general or special power of appointment on
13 the killer or a relative of the killer, and (c) nomination in a governing
14 instrument of the killer or a relative of the killer, nominating or
15 appointing the killer or a relative of the killer to serve in any fiduciary
16 or representative capacity; and

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

21 c. For purposes of this chapter: (1) "governing instrument" means
22 a governing instrument executed by the decedent; and (2) "relative of
23 the killer" means a person who is related to the killer by blood,
24 adoption or affinity and who is not related to the decedent by blood or
25 adoption or affinity.

26

27 59. (New section). Effect of Revocation. Provisions of a
28 governing instrument are given effect as if the killer or relative of the
29 killer disclaimed all provisions revoked by this chapter or, in the case
30 of a revoked nomination in a fiduciary or representative capacity, as
31 if the killer or relative of the killer predeceased the decedent.

32

33 60. N.J.S.3B:7-5 is amended to read as follows:

34 3B:7-5. Other acquisitions of property by decedent's killer.

35 Any other acquisition of property or interest by the decedent's killer
36 or by a relative of the killer not covered by this chapter shall be treated
37 in accordance with the [principles of this chapter] principle that a
38 killer or a relative of a killer cannot profit from the killer's
39 wrongdoing.

40 (cf: P.L.1981, c.405, s.3B:7-5)

41

42 61. N.J.S.3B:7-6 is amended to read as follows:

43 3B:7-6. Effect of final judgment of conviction.

44 A final judgment of conviction [of] establishing responsibility for
45 the intentional killing of the decedent is conclusive for purposes of
46 this chapter. In the absence of such a conviction [of intentional

1 killing] the court may determine by a preponderance of evidence
2 whether the [killing was intentional] individual was responsible for the
3 intentional killing of the decedent for purposes of this chapter.

4 (cf: P.L.1981, c.405, s.3B:7-6)

5

6 62. N.J.S.3B:7-7. is amended to read as follows:

7 3B:7-7. Rights of purchasers; [payments made by insurance
8 company, bank or other obligor] protection of payors and other third
9 parties.

10 This chapter does not affect the rights of any person who, before
11 rights under this chapter have been adjudicated, purchases from the
12 killer for value and without notice [property] or receives a payment
13 or other item of property in partial or full satisfaction of a legally
14 enforceable obligation which the killer would have acquired except for
15 this chapter, but the killer is liable for the amount of the proceeds or
16 the value of the property. [Any insurance company, bank, or other
17 obligor] A payor or other third party making payment or transferring
18 an item of property or other benefit according to the terms of [its
19 policy or obligation] a governing instrument affected by an intentional
20 killing is not liable by reason of this chapter unless prior to such
21 payment or transfer it has received at its home office or principal
22 address written notice of a [claim] claimed forfeiture or revocation
23 under this chapter.

24 (cf: P.L.1981, c.405, s.3B:7-7)

25

26 63. N.J.S.3B:9-1 is amended to read as follows:

27 3B:9-1. Definitions.

28 As used in this chapter:

29 a. A "present interest" is one to take effect in immediate
30 possession, use or enjoyment without the intervention of a preceding
31 estate or interest or without being dependent upon the happening of
32 any event or thing;

33 b. A "future interest" is one to take effect in possession, use or
34 enjoyment dependent upon the termination of an intervening estate or
35 interest or the happening of any event or thing;

36 c. A "devisee" means any person designated in a will to receive a
37 devise, but does not mean a trustee or trust designated in a will to
38 receive a devise;

39 d. The "effective date" is the date on which a property right vests,
40 or a contract right arises, even though the right is subject to
41 divestment;

42 e. "Joint property" is property that is owned by two or more
43 persons with rights of survivorship and includes a tenancy by the
44 entirety, a joint tenancy, a joint tenancy with rights of survivorship and
45 a joint life estate with contingent remainder in fee. For purposes of

1 this chapter, joint property is deemed to consist of a present interest
2 and a future interest. The future interest is the right of survivorship.

3 f. "Joint tenant" is the co-owner of joint property.

4 (cf: P.L.1981, c.405, s.3B:9-1).

5
6 64. N.J.S.3B:9-2 is amended to read as follows:

7 3B:9-2. **[Right to disclaim]** Disclaimer of an interested party.

8 a. Any person who is an heir, or a devisee or beneficiary under a
9 will or testamentary [instrument] trust, or appointee under a power
10 of appointment exercised by a will or testamentary [instrument] trust,
11 including a person succeeding to a disclaimed interest, [or an heir]
12 may disclaim in whole or in part [the right of succession to] any
13 property or interest therein, including a future interest, by delivering
14 and filing a disclaimer under this chapter.

15 b. Any person who is a grantee, donee, surviving joint tenant,
16 surviving party to a P.O.D. account or a trust deposit account, person
17 succeeding to a disclaimed interest, beneficiary under a
18 nontestamentary instrument or contract, appointee under a power of
19 appointment exercised by a nontestamentary instrument, or a
20 beneficiary under an insurance policy, may disclaim in whole or in part
21 any such property or interest therein by delivering, and if required by
22 ¹[N.J.S.9-7] N.J.S. 3B:9-7¹, by filing, a written disclaimer under this
23 chapter.

24 c. A surviving joint tenant may disclaim as a separate interest any
25 property or interest therein devolving to him by right of survivorship
26 without regard to the extent, if any, the surviving joint tenant
27 contributed to the creation of the joint property interest.

28 d. A disclaimer may be of a pecuniary or a fractional share,
29 expressed as either a percentage or dollar amount, specific property
30 or any limited interest or estate.

31 (cf: P.L.1981, c.405, s.3B:9-2).

32
33 65. N.J.S.3B:9-3 is amended to read as follows:

34 3B:9-3. **[Form and contents of instrument disclaiming]**
35 Requirements of a disclaimer.

36 **[The instrument disclaiming]** a. A disclaimer shall be in writing,
37 signed and acknowledged by the person disclaiming, and shall:

38 [a.] (1) Describe the property [or], interest, power or discretion
39 disclaimed;

40 [b.] (2) If the property [or] interest disclaimed is real property,
41 identify the municipality and county in which the real property is
42 situated; and

43 [c.] (3) Declare the disclaimer and the extent thereof.

44 b. The disclaimer shall be made within the time prescribed by
45 section 68 of P.L. , c. (C.)(now pending before the Legislature as

1 section 68 of this bill).
2 (cf: P.L.1981, c.405, s.3B:9-3).

3
4 66. N.J.S.3B:9-4 is amended to read as follows:

5 3B:9-4. Disclaimer [on behalf of decedent, minor or mentally
6 incompetent person] by a fiduciary of an interest in property.

7 a. A [disclaimer] fiduciary or agent acting on behalf of a
8 [decedent, minor or mentally incompetent person may be made by the
9 personal representative of the decedent or the guardian of the estate
10 of the minor or mentally incompetent person. The] principal within the
11 express, general or implied authority of a power of attorney, may
12 disclaim property or any interest therein.

13 b. Except as provided in subsection c. of this section, such
14 disclaimer shall not be effective unless, prior thereto, [the personal
15 representative or guardian] fiduciary or agent has been authorized to
16 disclaim by the court having jurisdiction [of the estate of the decedent,
17 minor or mentally incompetent person,] over the fiduciary or the
18 principal after finding that [it] such disclaimer is advisable and will
19 not materially prejudice the rights of: (1) creditors, devisees, heirs or
20 beneficiaries of the [decedent,] estate; (2) beneficiaries of the trust;
21 or (3) the minor [or mentally incompetent person or his creditors, as
22 the case may be] the incapacitated individual, the conservatee or the
23 principal for whom such fiduciary or agent acts.

24 c. If the governing instrument expressly authorizes the fiduciary or
25 the agent to disclaim, the disclaimer by the fiduciary or agent shall be
26 effective without court authorization.

27 (cf: P.L.1981, c.405, s.3B:9-4).

28

29 67. (New section) Disclaimer by a fiduciary of a power of
30 discretion.

31 a. Any fiduciary, including an agent acting on behalf of a principal
32 within the implied or general authority of a power of attorney, may
33 disclaim any power or discretion held by such fiduciary in a fiduciary
34 capacity. Unless the governing instrument specifically authorizes the
35 fiduciary to disclaim such power or discretion without obtaining court
36 authorization to do so, the disclaimer by the fiduciary shall not be
37 effective unless, prior thereto, such fiduciary has been authorized to
38 disclaim by the court having jurisdiction over the fiduciary after
39 finding that it is advisable and will not materially prejudice the rights
40 of: (1) devisees, heirs, or beneficiaries of the decedent; (2) the minor,
41 the incapacitated individual, the conservatee, or the principal; or (3)
42 the beneficiaries of the trust.

43 b. Unless expressly authorized by the court or by the governing
44 instrument:

45 (1) Any disclaimer under this section shall be personal to the

1 fiduciary so disclaiming and shall not constitute a disclaimer by a co-
2 fiduciary or a successor or substituted fiduciary of such power or
3 discretion;

4 (2) No disclaimer shall affect the rights of: (a) devisees, heirs or
5 beneficiaries of the decedent; (b) the minor, the incapacitated
6 individual, the conservatee, or the principal; or (c) the beneficiaries of
7 the trust.

8

9 68. (New section) . Time for disclaiming.

10 a. The disclaimer of an interest in property may be delivered, and
11 if required by this chapter filed, at any time after the effective date of
12 the governing instrument, or in the case of an intestacy, at any time
13 after the death of the intestate decedent, and must be delivered, and if
14 required by this chapter filed, before the right to disclaim is barred by
15 N.J.S.3B:9-10. With respect to joint property, the barring of the right
16 to disclaim the present interest does not bar the right to disclaim the
17 future interest.

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

22

23 69. N.J.S.3B:9-6 is amended to read as follows:

24 3B:9-6. Delivering and Filing disclaimer[; service of copy].

25 a. The disclaimer of an interest by an intestate heir, or a person who
26 is a devisee or beneficiary under ¹a¹ will or a testamentary trust or
27 who is an appointee under a power of appointment exercised by a will
28 or testamentary trust, including a person succeeding to a disclaimed
29 interest, shall be filed in the office of the surrogate or clerk of the
30 Superior Court in which proceedings have been commenced or will be
31 commenced for the administration of the estate of the decedent or
32 deceased donee of the power of appointment. A copy of the disclaimer
33 shall also be delivered [in person or mailed by registered or certified
34 mail] to any personal representative, or other fiduciary of the
35 decedent or to the donee of the power or to the holder of the legal title
36 to which the interest relates. The fiduciary shall promptly notify the
37 person or persons who take the disclaimed interest, although any such
38 failure to provide the notice required herein shall not affect the validity
39 of the disclaimer.

40 b. The disclaimer of an interest in property, other than property
41 passing under or pursuant to a will or testamentary trust shall be
42 delivered to the fiduciary, payor or other person having legal title to
43 or possession of the property or interest disclaimed or who is entitled
44 thereto in the event of disclaimer. ¹[Any fiduciary, payor or other
45 person having title to or possession of the property or interest
46 disclaimed or who is entitled thereto in the event of disclaimer.]¹ Any

1 fiduciary, payor or other person having title to or possession of the
2 property or interest who receives such disclaimer shall promptly notify
3 the person or persons who take the disclaimed interest, although any
4 such failure to provide the notice required herein shall not affect the
5 validity of the disclaimer.

6 c. In the case of a disclaimer by a fiduciary of a power or
7 discretion:

8 (1) If such disclaimer is made after court authorization, the fiduciary
9 shall deliver a copy to such person or persons and in such manner as
10 shall be directed by the court; or

11 (2) If such disclaimer is made without court authorization pursuant
12 N.J.S.3B:9-4(a), the fiduciary shall deliver a copy to all co-fiduciaries,
13 but if there are none, then to all person whose property interests are
14 affected by the disclaimer.

15 d. In the case of a will or testamentary trust or power of
16 appointment under a will or testamentary trust, if real property or any
17 interest therein is disclaimed, the surrogate or clerk of the Superior
18 Court, as the case may be, shall forthwith forward a copy of the
19 disclaimer for filing in the office of the clerk or register of deeds and
20 mortgages of the county in which the real property is situated. In the
21 case of a nontestamentary instrument or contract, if real property or
22 any interest therein is disclaimed, the original thereof shall be filed in
23 the office of the clerk or register of deeds and mortgages of the county
24 in which the real property is situated.

25 e. For the purposes of this section, delivery may be effected: (1) in
26 person; (2) by registered or certified mail; or (3) by another means
27 which is reasonably likely to accomplish delivery.

28 (cf: P.L.1981, c.405, s.3B:9-6).

29

30 70. N.J.S.3B:9-7 is amended to read as follows:

31 3B:9-7. **[Additional filing]** Recording of disclaimer where real
32 property or interest therein is disclaimed.

33 [If real property or any interest therein is disclaimed, the surrogate
34 or clerk of the Superior Court, as the case may be, shall forthwith
35 forward a copy of the disclaimer for filing in the office of the clerk or
36 register of deeds and mortgages of the county in which the real
37 property is situated.] Each county clerk or register of deeds and
38 mortgages shall provide a book to be entitled "Disclaimers," so
39 arranged that he may record therein:

40 a. The name of the disclaimant;

41 b. The name of the decedent or the name of the donee of the power
42 of appointment, the name of the trustee or other person having legal
43 title to, or possession of , the property or interest disclaimed or
44 entitled thereto in the event of disclaimer or the name of the donee of
45 the power of appointment ;

46 c. The location of the property;

1 d. The file number of the county clerk's office or the office of
2 register of deeds and mortgages indorsed upon each disclaimer filed;

3 e. The date of filing the disclaimer.

4 The county clerk or the register of deeds and mortgages shall
5 maintain in the record an alphabetical index of the names of all
6 disclaimants stated in any disclaimer file, and also keep in his office for
7 public inspection, all disclaimers so filed therein.

8 (cf: P.L.1981, c.405, s.3B:9-7).

9

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

11 3B:9-8. **[Manner in which property or interest disclaimed devolves]**
12 Effect of disclaimer.

13 A disclaimer acts as a nonacceptance of the disclaimed interest,
14 rather than as a transfer of the disclaimed interest. The disclaimant is
15 treated as never having received the disclaimed interest. Unless [the
16 decedent or donee of the power has] a governing instrument
17 otherwise ¹[provided] provides¹, the property or interest disclaimed
18 devolves:

19 a. As to a present interest[,];

20 (1) in the case of an intestacy, a will, a testamentary trust or a
21 power of appointment exercised by a will or testamentary trust, as if
22 the disclaimant had predeceased the decedent or, if the disclaimant is
23 designated to take under a power of appointment exercised by a will
24 or testamentary instrument, as if the disclaimant had predeceased the
25 donee of the power [;]. If by law or under the will or testamentary
26 trust the descendants of the disclaimant would take the disclaimant's
27 share by representation were the disclaimant to predecease the
28 disclaimant, then the disclaimed interest devolves by representation to
29 the descendants of the disclaimant who survive the decedent; and

30 (2) in the case of a nontestamentary instrument or contract, other
31 than a joint property interest, as if the disclaimant had died before the
32 effective date of the instrument or contract. If by law or under the
33 nontestamentary instrument or contract the descendants of the
34 disclaimant would take the disclaimant's share by representation were
35 the disclaimant to predecease the effective date of the instrument, then
36 the disclaimed interest devolves by representation to the descendants
37 of the disclaimant who survive the effective date of the instrument.

38 (3) in the case of joint property created by a will, testamentary trust
39 or non-testamentary instrument: (a) if the disclaimant is the only living
40 owner, the disclaimed interest devolves to the estate of the last to die
41 of the other joint owners; or (b) if the disclaimant is not the only
42 living owner, the disclaimed interest devolves equally to the living
43 joint owners, or all to the other living owner, if there is only one living
44 owner.

45 b. As to a future interest;

46 (1) In the case of a will or testamentary trust or a power of

1 appointment exercised by a will or testamentary trust, as if the
 2 disclaimant had died before the event determining that the taker of the
 3 property or interest is finally ascertained and his interest is
 4 [indefeasibly] vested; and

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

9 (3) Notwithstanding the foregoing, a future interest that is held by
 10 the disclaimant who also holds the present interest and which takes
 11 effect at a time certain, such as a fixed calendar date or the
 12 disclaimant's attainment of a certain age, is not accelerated by the
 13 disclaimer and continue to take effect at the time certain.

14 c. [A] Except as provided in subsection d. of this section, a
 15 disclaimer relates back for all purposes to the date of death of the
 16 decedent or the donee of the power or the effective date of the
 17 nontestamentary instrument or contract.

18 (cf: P.L.1981, c.405, s.3B:9-8)

19

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

21 3B:9-9. **[When right to disclaim]** Bar of right to disclaim.

22 a. The right of a person to disclaim property or any interest therein
 23 is barred[, if before the expiration of the period of time in which he is
 24 permitted to disclaim:

25 a. The] by:

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

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

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

31 (4) a sale of the property or interest is seized under judicial process
 32 issued against him; or

33 (5) the expiration of the permitted applicable perpetuities period;

34 or

35 [b. He accepts or exercises control as beneficial owner over all or
 36 any part of the property or interest; or

37 c. He voluntarily transfers or encumbers or contracts to transfer or
 38 encumber all or any part of the property or interest; or

39 d. He disclaims or attempts to disclaim all or any part of the
 40 property or interest in fraud of his]

41 (6) a fraud on the person's creditors as set forth in the "Uniform
 42 Fraudulent Transfer Act" (R.S.25:2-20 et seq.)]; or

43 e. He executes a written waiver of his right to disclaim].

44 b. The disclaimant shall not be barred from disclaiming all or any
 45 part of the balance of the property where the disclaimant has received

1 a portion of the property and there still remains an interest which the
2 disclaimant is yet to receive.

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

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

7 (cf: P.L.1988, c.74, s.2).

8

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

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

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

14 (cf: P.L.1981, c.405).

15

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

17 3B:9-11. Spendthrift provision not to affect right to disclaim.

18 The right to disclaim a property interest exists notwithstanding any
19 limitation on the interest of the disclaimant in the nature of a
20 spendthrift provision or similar restriction or any restriction or
21 limitation on the right to disclaim a property interest contained in the
22 governing instrument.

23 (cf: P.L.1981, c.405, s.2B:9-11).

24

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

26 3B:9-12. Right to disclaim, etc.; under other law not abridged.

27 This chapter does not abridge the right of a person to waive,
28 release, disclaim or renounce property or an interest therein under any
29 other statute or law.

30 (cf: P.L.1981, c.405, s.3B:9-12).

31

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

33 3B:9-13. Extension of time to disclaim interest existing on
34 February 28, 1980.

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

40 An interest in property existing on the effective date of this chapter
41 as amended and supplemented by P.L. , c. (C.)(now pending
42 before the Legislature as this bill) as to which the right to disclaim has
43 not been barred by prior law may be disclaimed at any time before the
44 right to disclaim is barred by N.J.S.3B:9-10.

45 (cf: P.L.1981, c.405, s.3B:9-13).

1 77. N.J.S.3B:10-3 is amended to read as follows:

2 3B:10-3. When spouse entitled to assets without administration
3 Where the total value of the real and personal assets of the estate
4 of an intestate will not exceed ~~[\$10,000.00]~~ \$20,000.00, the surviving
5 spouse upon the execution of an affidavit before the surrogate of the
6 county where the intestate resided at his death, or, if then nonresident
7 in this State, where any of the assets are located, or before the
8 Superior Court, shall be entitled absolutely to all the real and personal
9 assets without administration, and the assets of the estate up to
10 \$5,000.00 shall be free from all debts of the intestate. Upon the
11 execution and filing of the affidavit as provided in this section, the
12 surviving spouse shall have all of the rights, powers and duties of an
13 administrator duly appointed for the estate. The surviving spouse may
14 be sued and required to account as if he had been appointed
15 administrator by the surrogate or the Superior Court. The affidavit
16 shall state that the affiant is the surviving spouse of the intestate and
17 that the value of the intestate's real and personal assets will not exceed
18 ~~[\$10,000.00]~~ \$20,000.00, and shall set forth the residence of the
19 intestate at his death, and specifically the nature, location and value of
20 the intestate's real and personal assets. The affidavit shall be filed and
21 recorded in the office of such surrogate or, if the proceeding is before
22 the Superior Court, then in the office of the clerk of that court. Where
23 the affiant is domiciled outside this State, the surrogate may authorize
24 in writing that the affidavit be executed in the affiant's domicile before
25 any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
26 acknowledgments or proofs.

27 (cf: P.L.1983, c.246, s.1)

28

29 78. N.J.S.3B:10-4 is amended to read as follows:

30 3B:10-4. When heirs entitled to assets without administration
31 Where the total value of the real and personal assets of the estate
32 of an intestate will not exceed ~~[\$5,000.00]~~ \$10,000.00 and the
33 intestate leaves no surviving spouse, and one of his heirs shall have
34 obtained the consent in writing of the remaining heirs, if any, and shall
35 have executed before the surrogate of the county where the intestate
36 resided at his death, or, if then nonresident in this State, where any of
37 the intestate's assets are located, or before the Superior Court, the
38 affidavit herein provided for, shall be entitled to receive the assets of
39 the intestate of the benefit of all the heirs and creditors without
40 administration or entering into a bond. Upon executing the affidavit,
41 and upon filing it and the consent, he shall have all the rights, powers
42 and duties of an administrator duly appointed for the estate and may
43 be sued and required to account as if he had been appointed
44 administrator by the surrogate or the Superior Court.

45 The affidavit shall set forth the residence of the intestate at his
46 death, the names, residences and relationships of all of the heirs and

1 specifically the nature, location and value of the real and personal
2 assets and also a statement that the value of the intestate's real and
3 personal assets will not exceed ~~[\$5,000.00]~~ \$10,000.00.

4 The consent and the affidavit shall be filed and recorded, in the
5 office of the surrogate or, if the proceeding is before the Superior
6 Court, then in the office of the clerk of that court. Where the affiant
7 is domiciled outside this State, the surrogate may authorize in writing
8 that the affidavit be executed in the affiant's domicile before any of the
9 officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
10 acknowledgments or proofs.

11 (cf: P.L.1983, c.246, s.2)

12
13 79. (New section) Federal Law. The provisions of this chapter, as
14 amended and supplemented by P.L. , c. (C.)(now pending before
15 this Legislature as this bill) are not intended to enlarge, limit, modify
16 or otherwise affect the federal requirements for a qualified disclaimer
17 under 26 U.S.C. section 2518 or 26 U.S.C. section 2046.

18
19 80. N.J.S.3B:14-24 is amended to read as follow:

20 3B:14-24 Authorization to exercise other powers.

21 The court having jurisdiction of the estate or trust may authorize
22 the fiduciary to exercise any other power or to disclaim any power, if
23 the court determines such exercise or disclaimer is necessary or
24 advisable which in the judgment of the court is necessary for the
25 proper administration of the estate or trust.

26 (cf: P.L.1981, c.405, s.3B:14-24)

27
28 81. (New section) Effect of nonjudicial settlement or waiver of
29 account.

30 Unless the governing instrument expressly provides otherwise, an
31 instrument settling or waiving an account, executed by all persons
32 whom it would be necessary to join as parties in a proceeding for the
33 judicial settlement of the account, shall be binding and conclusive on
34 all other persons who may have a future interest in the property to the
35 same extent as that instrument binds the person who executed it.

36
37 82. N.J.S.3B:22-2 is amended to read as follows:

38 3B:22-2. Order of priority of claims when assets insufficient. If the
39 applicable assets of the estate are insufficient to pay all claims in full,
40 the personal representative shall make payment in the following order:

41 a. Reasonable funeral expenses;

42 b. Costs and expenses of administration;

43 c. Debts and taxes with preference under federal law or the laws of
44 this State, including debts for the reasonable value of services rendered
45 to the decedent by the Office of the Public Guardian for Elderly
46 Adults;

1 d. Reasonable medical and hospital expenses of the last illness of
2 the decedent, including compensation of persons attending him;

3 e. Judgments entered against the decedent according to the
4 priorities of their entries respectively;

5 f. All other claims.

6 No preference shall be given in the payment of any claim over any
7 other claim of the same class, and a claim due and payable shall not be
8 entitled to a preference over claims not due. The commencement of
9 an action against the personal representative for the recovery of a debt
10 or claim or the entry of a judgment thereon against the personal
11 representative shall not entitle such debt or claim to preference over
12 others of the same class.

13 (cf: P.L.1989, c.248, s.8)

14
15 83. N.J.S.3B:22-3 is amended to read as follows:

16 3B:22-3. Abatement for purpose of paying claims and debts.

17 [Except as otherwise provided in a decedent's will, the] The
18 property of a decedent's estate shall abate for the purposes of paying
19 debts and claims [, without any preference or priority as between real
20 and personal property, in the following order:

21 a. Property passing by intestacy;

22 b. Residuary devises;

23 c. General devises; and

24 d. Specific devises] in the order prescribed in N.J.S.3B:23-12.

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

26
27 84. N.J.S.3B:22-4 is amended to read as follows:

28 3B:22-4. Limitation of time to present claims of creditors to
29 personal representative; discharge of personal representative where
30 claim is not duly presented before distribution.

31 [At any time after granting letters testamentary or of
32 administration, the Superior Court, or surrogate, as the case may be,
33 may, whether the estate be solvent or not, order the personal
34 representative to give public notice to creditors] Creditors of the
35 decedent [to] shall present [to him] their claims to the personal
36 representative of the decedent's estate in writing and under oath,
37 specifying the amount claimed and the particulars of the claim, within
38 [6] nine months from the date of the [order] decedent's death. If a
39 claim is not so presented to the personal representative within nine
40 months from the date of the decedent's death, the personal
41 representative shall not be liable to the creditor with respect to any
42 assets which the personal representative may have delivered or paid in
43 satisfaction of any lawful claims, devises or distributive shares, before
44 the presentation of the claim.

45 (cf: P.L.1981, c.405, s.3B:22-4)

1 85. N.J.S.3B:22-39 is amended to read as follows:

2 3B:22-39. "Heirs and devisees" defined.

3 As used in this article, heirs and devisees shall include the heirs and
4 devisees of a deceased debtor and the heirs and devisees of any of
5 them, who shall have died before the commencement of the action,
6 authorized by this article, to whom any of the real [estate] or personal
7 property, of which the debtor died seized or possessed, descended or
8 was devised.

9 (cf: P.L.1981, c.405, s.3B:22-39)

10

11 86. N.J.S.3B:23-12 is amended to read as follows:

12 3B:23-12. Abatement generally.

13 Except as provided in N.J.S.3B:23-14 and except as provided in
14 connection with the share of a surviving spouse who elects to take an
15 elective share, shares of distributees abate, without any preference or
16 priority as between real and personal property, in the following order:

17 a. Property passing by intestacy;

18 b. Residuary devises;

19 c. General devises;

20 d. Specific devises; and

21 e. Abatement within each classification is in proportion to the
22 amount of property each of the beneficiaries would have received if
23 full distribution of the property had been made in accordance with the
24 terms of the will.

25 (cf: P.L.1981, c.405, s.3B:23-12)

26

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

28 3B:24-4. Apportionment of tax to transferees in absence of
29 directions to contrary.

30 In the absence of directions to the contrary:

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

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

44 c. Any deduction for property previously taxed and any credit for
45 gift taxes paid by the decedent shall inure to the benefit of all
46 transferees and the fiduciary and the tax to be apportioned shall be the

1 tax after allowance of the deduction and credit; and

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

6 (cf: P.L.1981, c.405, s.3B:24-4)

7

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

9 3B:25-1. Nonexoneration of property subject to mortgage or
10 security interest; exception.

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

20 (cf: P.L.1981, c.405, s.3B:25-1)

21

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

23 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

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

35 [The widower's right of curtesy shall be enforced, admeasured and
36 determined in the same manner and subject to the same limitations as
37 is provided by law in the case of dower.]

38 (cf: P.L.1981, c.405, s.3B:28-1)

39

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

41 3B:28-2. [Rights] No right of dower [and] or curtesy [abolished]
42 created on [and] or after May 28, 1980.

43 [All rights] No right of dower [and] or curtesy [are abolished as
44 to the] in real property [of which a married person, or another to his
45 or her use,] shall arise if, on or after May 20, 1980, a person shall

1 become married, or such person or another to his or her use, shall [
2 on or after May 28, 1980,] become seized[, during coverture,] of an
3 estate of inheritance.

4 (cf: P.L.1981, c.405, s.3B:28-2)

5

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

7 3B:28-3. [Joint occupancy] Right of joint possession of principal
8 matrimonial residence where no dower or curtesy applies; alienation.

9 [As to real property occupied jointly by a married person with his
10 or her spouse acquired on or after May 28, 1980, as their principal
11 matrimonial residence,] a. During life every married person shall be
12 entitled to joint possession [thereof] with his or her spouse [during
13 their marriage, which right of possession may not be released,
14 extinguished or alienated without the consent of both spouses except
15 by judgment of a court of competent jurisdiction.] of any real property
16 which they occupy jointly as their principal matrimonial residence and
17 to which neither dower nor curtesy applies. [All other real property
18 owned by either spouse which is not the principal matrimonial
19 residence may be alienated without the consent of both spouses.] One
20 who acquires an estate or interest in real property from a person
21 whose spouse is entitled to joint possession thereof does so subject to
22 such right of possession, unless such right of possession has been
23 released, extinguished or subordinated by such spouse or has been
24 terminated by order or judgment of a court of competent jurisdiction
25 or otherwise.

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

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

35 (cf: P.L.1981, c.405, s.3B:28-3)

36

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

38 3B:28-3.1. Joint occupancy of principal matrimonial residence;
39 mortgage lien.

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

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

45 or

- 1 b. The mortgage is placed upon the matrimonial residence prior to
2 the marriage; or
3 c. The mortgage is a purchase money mortgage; or
4 d. The parties to the marriage have joined in the mortgage; or
5 e. The right of joint possession has been subordinated, released or
6 extinguished by subsections b. or c. of N.J.S.3B:28-3.
7 (cf: P.L.1981, c.405, s.3B:28-3.1)

8
9 93. (New section). Disclaimer of interests previously governed by
10 P.L.1979, c.492 (C.46:2E-1 to 46:2E-13).

11 A disclaimer of an interest by any person who is a grantee, donee,
12 surviving joint tenant, surviving tenant by the entirety, surviving party
13 to a joint deposit account, a P.O.D. account or a trust deposit account,
14 person succeeding to a disclaimed interest, beneficiary under a
15 nontestamentary instrument or contract, appointee under a power of
16 appointment exercised by a nontestamentary instrument or a beneficiary
17 under an insurance policy is governed by N.J.S.3B:9-1 et. seq., as
18 amended and supplemented by P.L. , c. (C.)(now pending before
19 the Legislature as this bill).

20
21 94. The following are hereby repealed:
22 N.J.S.3B:4-6;
23 N.J.S.3B:7-1 through 3B:7-4, inclusive;
24 N.J.S.3B:9-5;
25 N.J.S.3B:22-9; and
26 Laws of P.L.1979, c.492 (C.46:2E-1 to 46:2E-13 both inclusive).

27
28 95. This act shall take effect on the 180th day after enactment.

29

30

31

32

33 Revises wills and estates.

SENATE, No. 708

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Revises wills and estates.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2004)

1 AN ACT concerning wills and estates and revising various sections of
2 the statutory law.

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:1-1 is amended to read as follows:

8 3B:1-1. As used in this title, unless otherwise defined:

9 "Administrator" includes general administrators of an intestate and
10 unless restricted by the subject or context, administrators with the will
11 annexed, substituted administrators, substituted administrators with
12 the will annexed, temporary administrators and administrators
13 pendente lite.

14 "Beneficiary," as it relates to trust beneficiaries, includes a person
15 who has any present or future interest, vested or contingent, and also
16 includes the owner of an interest by assignment or other transfer and
17 as it relates to a charitable trust, and includes any person entitled to
18 enforce the trust.

19 "Child" means any individual, including a natural or adopted child,
20 entitled to take by intestate succession from the parent whose
21 relationship is involved and excludes any [person] individual who is
22 only a stepchild, a foster child, a grandchild or any more remote
23 descendant.

24 "Claims" include liabilities whether arising in contract, or in tort or
25 otherwise, and liabilities of the estate which arise at or after the death
26 of the decedent, including funeral expenses and expenses of
27 administration, but does not include estate or inheritance taxes,
28 demands or disputes regarding title to specific assets alleged to be
29 included in the estate.

30 "Cofiduciary" means each of two or more fiduciaries jointly serving
31 in a fiduciary capacity.

32 "Descendant" of an individual means all of his progeny of all
33 generations, with the relationship of parent and child at each
34 generation being determined by the definition of child contained in this
35 section and parent contained in N.J.S.3B:1-2.

36 "Devise," when used as a noun, means a testamentary disposition
37 of real or personal property and when used as a verb, means to dispose
38 of real or personal property by will.

39 "Devisee" means any person designated in a will to receive a
40 devise. In the case of a devise to an existing trust or trustee, or to a
41 trustee [on] of a trust described by will, the trust or trustee is the
42 devisee and the beneficiaries are not devisees.

43 "Distributee" means any person who has received property of a

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 decedent from his personal representative other than as a creditor or
2 purchaser. A trustee is a distributee only to the extent of a distributed
3 asset or increment thereto remaining in his hands. A beneficiary of a
4 trust to whom the trustee has distributed property received from a
5 personal representative is a distributee of the personal representative.

6 "Domiciliary foreign fiduciary" means any fiduciary who has
7 received letters, or has been appointed, or is authorized to act as a
8 fiduciary, in the jurisdiction in which the decedent was domiciled at the
9 time of his death, in which the ward is domiciled or in which is located
10 the principal place of the administration of a trust.

11 "Estate" means all of the property of a decedent, minor or
12 incapacitated [person] individual, trust or other person whose affairs
13 are subject to this title as the property is originally constituted and as
14 it exists from time to time during administration.

15 "Fiduciary" includes executors, general administrators of an
16 intestate estate, administrators with the will annexed, substituted
17 administrators, substituted administrators with the will annexed,
18 guardians, substituted guardians, trustees, substituted trustees and,
19 unless restricted by the subject or context, temporary administrators,
20 administrators pendente lite, administrators ad prosequendum,
21 administrators ad litem and other limited fiduciaries.

22 "Governing instrument" means a deed, will, trust, insurance or
23 annuity policy, account with the designation "pay on death" (POD) or
24 "transfer on death" (TOD), security registered in beneficiary form with
25 the designation "pay on death" (POD) or "transfer on death" (TOD),
26 pension, profit-sharing, retirement or similar benefit plan, instrument
27 creating or exercising a power of appointment or a power of attorney,
28 or a dispositive, appointive, or nominative instrument of any similar
29 type.

30 "Guardian" means a person who has qualified as a guardian of the
31 person or estate of a minor or incapacitated [person] individual
32 pursuant to testamentary or court appointment, but excludes one who
33 is merely a guardian ad litem.

34 "Heirs" means those persons, including, but not limited to, the
35 surviving spouse and the descendants of the decedent, who are entitled
36 under the statutes of intestate succession to the property of a
37 decedent.

38 (cf: P.L.1997, c.379, s.2.)

39

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

41 3B:1-2. "Incapacitated individual" means an individual who is
42 impaired by reason of mental illness or mental deficiency to the extent
43 that he lacks sufficient capacity to govern himself and manage his
44 affairs.

45 The term incapacitated individual is also used to designate an
46 individual who is impaired by reason of physical illness or disability.

1 chronic use of drugs, chronic alcoholism or other cause (except
2 minority) to the extent that he lacks sufficient capacity to govern
3 himself and manage his affairs.

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

6 "Issue" of [a person includes all of his lineal descendants, natural
7 or adopted, of all generations, with the relationship of parent and child
8 at each generation being determined by the definition of child and
9 parent] an individual means a descendant as defined in N.J.S.3B:1-1.

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

15 "Local administration" means administration by a personal
16 representative appointed in this State.

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

20 ["Incapacitated person" means a person who is impaired by reason
21 of mental illness or mental deficiency to the extent that he lacks
22 sufficient capacity to govern himself and manage his affairs.

23 The term incapacitated person is also used to designate a person
24 who is impaired by reason of physical illness or disability, chronic use
25 of drugs, chronic alcoholism or other cause (except minority) to the
26 extent that he lacks sufficient capacity to govern himself and manage
27 his affairs.

28 The terms incapacity and incapacitated person refer to the state or
29 condition of an incapacitated person as hereinbefore defined.]

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

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

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

38 "Per capita" If a governing instrument requires property to be
39 distributed "per capita," the property is divided to provide equal shares
40 for each of the takers, without regard to their shares or the right of
41 representation.

42 "Payor" means a trustee, insurer, business entity, employer,
43 government, governmental agency or subdivision, or any other person
44 authorized or obligated by law or a governing instrument to make
45 payments.

46 "Person" means an individual or an organization.

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

9 "Personal representative" includes executor, administrator,
10 successor personal representative, special administrator, and persons
11 who perform substantially the same function under the law governing
12 their status. "General personal representative" excludes special
13 administrator.

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

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

29 "Security" includes any note, stock, treasury stock, bond,
30 mortgage, financing statement, debenture, evidence of indebtedness,
31 certificate of interest or participation in an oil, gas or mining title or
32 lease or in payments out of production under the title or lease,
33 collateral, trust certificate, transferable share, voting trust certificate
34 or, in general, any interest or instrument commonly known as a
35 security or as a security interest or any certificate of interest or
36 participation, any temporary or interim certificate, receipt or certificate
37 of deposit for, or any warrant or right to subscribe to or purchase, any
38 of the foregoing.

39 "Stepchild" means a child of the surviving, deceased, or former
40 spouse of the testator.

41 "Successor personal representative" means a personal
42 representative, other than a special administrator, who is appointed to
43 succeed a previously appointed personal representative.

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

1 "Testamentary trustee" means a trustee designated by will or
2 appointed to exercise a trust created by will.

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

4 "Trust" includes any express trust, private or charitable, with
5 additions thereto, wherever and however created. It also includes a
6 trust created by judgment under which the trust is to be administered
7 in the manner of an express trust. "Trust" excludes other constructive
8 trusts, and it excludes resulting trusts, guardianships, personal
9 representatives, trust accounts created under the "Multiple-party
10 Deposit Account Act," P.L.1979, c.491 [(C.17:161-1 et seq.)]
11 (C.17:161-1 et seq.), gifts to minors under the "New Jersey Uniform
12 Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), or the
13 "New Jersey Uniform Transfers to Minors Act," R.S.46:38A-1 et. seq.
14 business trusts providing for certificates to be issued to beneficiaries,
15 common trusts, security arrangements, liquidation trusts, and trusts for
16 the primary purpose of paying debts, dividends, interest, salaries,
17 wages, profits, pensions or employee benefits of any kind, and any
18 arrangement under which a person is nominee or escrowee for another.

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

21 "Ward" means [a person] an individual for whom a guardian is
22 appointed or [a person] an individual under the protection of the
23 court.

24 "Will" means the last will and testatment of a testator or testatrix
25 and includes any codicil and any testamentary instrument that merely
26 appoints an executor, revokes or revises another will, nominates a
27 guardian, or expressly excludes or limits the right of a person or class
28 to succeed to property of the decedent passing by intestate succession.
29 (cf: P.L.1997, c.379, s.3)

30

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

32 3B:1-3. Devolution of property upon death.

33 Upon the death of [a person] an individual, his real and personal
34 property devolves to the persons to whom it is devised by his will or
35 to those indicated as substitutes for them in cases involving lapse,
36 renunciation, or other circumstances affecting the devolution of testate
37 estates, or in the absence of testamentary disposition, to his heirs, or
38 to those indicated as substitutes for them in cases involving
39 renunciation or other circumstances affecting devolution of intestate
40 estates, subject to rights of creditors and to administration.

41 (cf: P.L.1981, c.405, s.3B:1-3)

42

43 4. N.J.S.3B:2-5 is amended to read as follows:

44 3B:2-5. Disputes or doubts in proceedings before the surrogate.

45 In the event of any dispute or doubt arising before the surrogate or
46 in the surrogate's court, neither [he] the surrogate nor the court shall

1 take any further action therein, except in accordance with the order of
2 the Superior Court.

3 (cf: P.L.1981, c.405, s.3B:2-5)

4

5 5. N.J.S.3B:2-6 is amended to read as follows:

6 3B:2-6. Oath; affidavit; deposition or proof.

7 Any oath, affidavit, deposition or proof required to be made or
8 taken in any proceeding before a surrogate, [his] the surrogate's court
9 or in the Superior Court, or necessary or proper to be used before the
10 surrogate or the court, may be made and taken before the surrogate
11 or before any [person] individual authorized by law to administer
12 oaths. Qualifications of executors and administrators and acceptances
13 of trusteeships and guardianships may be taken as provided by the
14 rules of the Supreme Court.

15 (cf: P.L.1981, c.405, s.3B:2-6)

16

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

18 N.J.S.3B:2-7. Issuance of [subpenas] subpoenas by surrogate.

19 A surrogate may issue process of [subpenas] subpoenas to any
20 person within the State to appear and give evidence in any matter
21 pending before the surrogate's court.

22 (cf: P.L.1981, c.405, s.3B:2-7)

23

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

25 3B:2-8. Penalty for failure to obey [subpena] subpoena.

26 Any person [subpenaed] subpoenaed as a witness by a surrogate,
27 who does not appear pursuant thereto, or appearing refuses to be
28 sworn or give evidence, without reasonable cause assigned, shall, for
29 every such default or refusal, be subject to a fine of not more than
30 \$50.00, as the surrogate's court issuing the [subpena] subpoena shall
31 by judgment determine proper to impose. The fine, when collected,
32 shall be paid to the county.

33 In default of the payment of a fine so imposed, the surrogate's court
34 by its judgment may commit the witness to the county jail of the
35 county until it is paid or he is sooner discharged.

36 The judgment of the surrogate's court imposing a fine or committing
37 a witness to jail shall be reviewable by the Superior Court in the same
38 manner as other judgments of the court are reviewed.

39 (cf: P.L.1981, c.405, s.3B:2-8)

40

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

42 3B:3-1. [Persons] Individuals competent to make a will and
43 appoint a testamentary guardian.

44 Any [person] individual 18 or more years of age who is of sound
45 mind may make a will and may appoint a testamentary guardian.

46 (cf: P.L.1981, c.405, s.3B:3-1)

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

2 3B:3-2. [Formal execution of will] Execution; Witnessed Wills;
3 Writings Intended as Wills.

4 [Except as provided in N.J.S.3B:3-3, every will shall be in writing,
5 signed by the testator or in his name by some other person in his
6 presence and at his direction, and shall be signed by at least two
7 persons each of whom witnessed either the signing or the testator's
8 acknowledgment of the signature or of the will]

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

11 (1) in writing;

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

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

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

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

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

26

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

28 3B:3-3. [Holographic will] Writings intended as wills.

29 [A will which does not comply with N.J.S.3B:3-2 is valid as a
30 holographic will, whether or not witnessed, if the signature and
31 material provisions are in the handwriting of the testator]

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

41 (cf: P.L.1981, c.405, s.3B:3-3)

42

43 11. N.J.S.3B:3-4 is amended to read as follows:

44 3B:3-4. Any will executed on or after September 1, 1978 may be
45 simultaneously executed, attested, and made self-proved, by
46 acknowledgment thereof by the testator and affidavits of the witnesses,

1 each made before an officer authorized pursuant to [R.S.46:14-6,
2 R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take acknowledgments
3 and proofs of instruments entitled to be recorded under the laws of
4 this State, in substantially the following form:

5 I, , the testator, sign my name to this instrument this day
6 of , [19...,] 20.... and being duly sworn, do hereby declare to the
7 undersigned authority that I sign and execute this instrument as my last
8 will and that I sign it willingly (or willingly direct another to sign for
9 me), that I execute it as my free and voluntary act for the purposes
10 therein expressed, and that I am 18 years of age or older, of sound
11 mind, and under no constraint or undue influence.

12
13 Testator

14
15 We,....., the witnesses, sign our names to this instrument, and,
16 being duly sworn, do hereby declare to the undersigned authority that
17 the testator signs and executes this instrument as [his] the testator's
18 last will and that [he] the testator signs it willingly (or willingly
19 directs another to sign for him), and that each of us, in the presence
20 and hearing of the testator, hereby signs this will as witness to the
21 testator's signing, and that to the best of our knowledge the testator
22 is 18 years of age or older, of sound mind, and under no constraint or
23 undue influence.

24
25 Witness

26
27 Witness

28 The State of.....
29 County of.....

30 Subscribed, sworn to and acknowledged before me by ,
31 the testator and subscribed and sworn to before me by and
32 , witnesses, this day of.....

33 (Signed).....
34

35 (Official capacity of officer)
36 (cf: P.L.1991, c.255, s.1)

37

38 12. N.J.S.3B:3-5 is amended to read as follows:

39 3B:3-5. Making will self-proved subsequent to time of execution.

40 A will executed in compliance with N.J.S.3B:3-2 may at any time
41 subsequent to its execution be made self-proved by the
42 acknowledgment thereof by the testator and the affidavits of the
43 witnesses, each made before an officer authorized pursuant to
44 [R.S.46:14-6, R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take
45 acknowledgments and proofs of instruments entitled to be recorded
46 under the laws of this State, attached or annexed to the will in

1 substantially the following form:

2

3 The State of

4

5 County of

6

7 We, , and , the testator and the witnesses,
8 respectively, whose names are signed to the attached or foregoing
9 instrument, being duly sworn, do hereby declare to the undersigned
10 authority that the testator signed and executed the instrument as his
11 last will and that [he] the testator had signed willingly (or willingly
12 directed another to sign for [him] the testator), and that he executed
13 it as [his] the testator's free and voluntary act for the purposes therein
14 expressed, and that each of the witnesses, in the presence and hearing
15 of the testator, signed the will as witness and that to the best of his
16 knowledge the testator was at that time 18 years of age or older, of
17 sound mind and under no constraint or undue influence.

18

19 Testator

20

21 Witness

22

23 Witness

24

25 Subscribed, sworn to and acknowledged before me by ,
26 the testator, and subscribed and sworn to before me by
27 and , witnesses, this day of .

28

29 (Signed)

30

31 (Official capacity of officer)

32 (cf: P.L.1981, c.405, s.3B:3-5)

33

34 13. N.J.S.3B:3-7 is amended to read as follows:

35 3B:3-7. Who may witness a will.

36 Any [person] individual generally competent to be a witness may
37 act as a witness to a will and to testify concerning execution thereof.

38 (cf: P.L.1981, c.405, s.3B:3-7)

39

40 14. N.J.S.3B:3-11 is amended to read as follows:

41 3B:3-11. Identifying devise of tangible personal property by
42 separate writing.

43 A will may refer to a written statement or list to dispose of items of
44 tangible personal property not otherwise specifically disposed of by the
45 will, other than money[, evidences of indebtedness, documents of title,
46 and securities and property used in trade or business]. To be

1 admissible under this section as evidence of the intended disposition,
2 the writing must be either in the handwriting of the testator or be
3 signed by [him] the testator and must describe the items and the
4 devisees with reasonable certainty. The writing may be referred to as
5 one to be in existence at the time of the testator's death; it may be
6 prepared before or after the execution of the will; it may be altered by
7 the testator after its preparation; and it may be a writing which has
8 no significance apart from its effect upon the dispositions made by the
9 will.

10 (cf: P.L.1981, c.405, s.3B:3-11)

11

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

13 3B:3-12. Acts and events of independent significance.

14 A will may dispose of property by reference to acts and events
15 which have significance apart from their effect upon the dispositions
16 made by the will, whether they occur before or after the execution of
17 the will or before or after the testator's death. The execution or
18 revocation of a will of another [person] individual is such an event.

19 (cf: P.L.1981, c.405, s.3B:3-12)

20

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

22 3B:3-13. Revocation by [acts of testator] writing or by act.

23 A will or any part thereof is revoked:

24 [a. By a subsequent will which revokes the former will or part
25 expressly or by inconsistency; or

26 b. By being burned, torn, canceled, obliterated, or destroyed with
27 the intent and for the purpose of revoking by the testator or by another
28 person in his presence and by his direction.]

29 a. By the execution of a subsequent will that revokes the previous
30 will or part expressly or by inconsistency; or

31 b. By the performance of a revocatory act on the will, if the
32 testator performed the act with the intent and for the purpose of
33 revoking the will or part or if another individual performed the act in
34 the testator's conscious presence and by the testator's direction. For
35 purposes of this subsection, "revocatory act on the will" includes
36 burning, tearing canceling, obliterating or destroying the will or any
37 part of it. A burning, tearing or cancelling is a "revocatory act on the
38 will," whether or not the burn, tear, or cancellation touched any of the
39 words on the will.

40 (1) If a subsequent will does not expressly revoke a previous will,
41 the execution of the subsequent will wholly revokes the previous will
42 by inconsistency if the testator intended the subsequent will to replace
43 rather than supplement the previous will.

44 (2) The testator is presumed to have intended a subsequent will to
45 replace rather than supplement a previous will if the subsequent will
46 makes a complete disposition of the testator's estate. If this

1 presumption arises and is not rebutted by clear and convincing
2 evidence, the previous will is revoked; only the subsequent will is
3 operative on the testator's death.

4 (3) The testator is presumed to have intended a subsequent will to
5 supplement rather than replace a previous will if the subsequent will
6 does not make a complete disposition of the testator's estate. If this
7 presumption arises and is not rebutted by clear and convincing
8 evidence, the subsequent will revokes the previous will only to the
9 extent the subsequent will is inconsistent with the previous will; each
10 will is fully operative on the testator's death to the extent they are not
11 inconsistent.

12 (cf: P.L.1981, c.405, s.3B:3-13)

13
14 17. N.J.S.3B:3-14 is amended to read as follows:

15 3B:3-14. Revocation of probate and non-probate transfers by
16 divorce or annulment; revival by remarriage to former spouse.

17 [If after having executed a will the testator is divorced or his
18 marriage annulled, the] a. Except as provided by the express terms
19 of a governing instrument, a court order, or a contract relating to the
20 division of the marital estate made between the divorced individuals
21 before or after the marriage, divorce or annulment, a divorce or
22 annulment :

23 (1) revokes any revocable:

24 (a) dispositions or appointment of property made by a divorced
25 individual [the will] to his [the] former spouse [, any] in a governing
26 instrument and any disposition or appointment created by law or in a
27 governing instrument to a relative of the divorced individual's former
28 spouse;

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

32 (c) [any] nomination in a governing instrument of [the] a divorced
33 individual's former spouse or a relative of the divorced individual's
34 former spouse [as executor, trustee, or guardian, unless the will
35 expressly provides otherwise. Property prevented from passing to a
36 former spouse because of revocation by divorce or annulment passes
37 as if the former spouse failed to survive the decedent, and other
38 provisions conferring some power or office on the former spouse are
39 interpreted as if the spouse failed to survive the decedent] to serve in
40 any fiduciary or representative capacity; and

41 (2) severs the interests of the former spouses in property held by
42 them at the time of the divorce or annulment as joint tenants with the
43 right of survivorship or as tenants by the entireties, transforming the
44 interests of the former spouses into tenancies in common. [A judgment
45 from bed and board is a divorce for the purpose of this section.]

46 In the event of a divorce or annulment, provisions of a governing

1 instrument are given effect as if the former spouse and relatives of the
2 former spouse disclaimed all provisions revoked by this section or, in
3 the case of a revoked nomination in a fiduciary or representative
4 capacity, as if the former spouse and relatives of the former spouse
5 died immediately before the divorce or annulment. If provisions are
6 revoked solely by this section, they are revived by [testator's] the
7 divorced individual's remarriage to the former spouse or by the
8 revocation, [or] suspension [of a judgment of divorce from bed and
9 board] or nullification of the divorce or annulment. No change of
10 circumstances other than as described in this section [revokes a will]
11 and in N.J.S.3B:7-1 effects a revocation or severance.

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

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

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

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

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

43

44 18. N.J.S.3B:3-15 is amended to read as follows:

45 3B:3-15. Revival of revoked will.

46 a. Except as otherwise provided in N.J.S.3B:3-14 or as provided

1 in subsections b., c. and d. of this section, a revoked will or codicil
2 shall not be revived except by reexecution or by a duly executed
3 codicil expressing an intention to revive it.

4 b. If a subsequent will that wholly revoked a previous will is
5 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, the
6 previous will remains revoked unless it is revived. The previous will
7 is revived if there is clear and convincing evidence from the
8 circumstances of the revocation of the subsequent will or from the
9 testator's contemporary or subsequent declarations that the testator
10 intended the previous will to take effect as executed.

11 c. If a subsequent will that partly revoked a previous will is
12 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, a
13 revoked part of the previous will is revived unless there is clear and
14 convincing evidence from the circumstances of the revocation of the
15 subsequent will or from the testator's contemporary or subsequent
16 declarations that the testator did not intend the revoked part to take
17 effect as executed.

18 d. If a subsequent will that revoked a previous will in whole or in
19 part is thereafter revoked by another, later will, the previous will
20 remains revoked in whole or in part, unless it or its revoked part is
21 revived. The previous will or its revoked part is revived to the extent
22 it appears from the terms of the later will that the testator intended the
23 previous will to take effect.

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

25
26 19. N.J.S.3B:3-17 is amended to read as follows:

27 3B:3-17. Probate of will and grant of letters.

28 The surrogates of the several counties or the Superior Court may
29 take depositions to wills [and the surrogates' courts and Superior
30 Court] admit the same to probate, and grant thereon letters
31 testamentary or letters of administration with the will annexed.

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

33
34 20. N.J.S.3B:3-19 is amended to read as follows:

35 3B:3-19. Proof required to probate will.

36 A will executed as provided in N.J.S.3B:3-2 may be admitted to
37 probate [in common form] by the surrogate upon the proof of one of
38 the attesting witnesses or by some other [person] individual having
39 knowledge of the facts relating to the proper execution of the will by
40 the testator and its attestation by one of the witnesses.

41 A will executed and acknowledged in the manner provided in
42 N.J.S.3B:3-4, or N.J.S.3B:3-5 may be admitted to probate [in
43 common form] by the surrogate without further affidavit, deposition
44 or proof.

45 A [holographic] writing intended as a will may be admitted to
46 probate only [in solemn form] in the manner provided by the Rules

1 Governing the Courts of the State of New Jersey.

2 (cf: P.L.1981, c.405, s.3B:3-19)

3

4 21. N.J.S.3B:3-20 is amended to read as follows:

5 N.J.S.3B:3-20. Probate of a will of testator who died in military
6 service or within 2 years of discharge

7 When a resident of this State dies while a member of the armed
8 forces of the United State or within 2 years from the date of his
9 discharge from the armed forces and no witness to his will is available
10 in this State to prove the will, either because of death, incapacity,
11 nonresidence, absence, or for any other reason, the will shall be
12 admitted to probate upon proof of the signature of the testator by any
13 two **[persons]** individuals, provided the will was validly executed as
14 provided in N.J.S.3B:3-9, and the will would have been admitted to
15 probate if the witnesses were dead.

16 (cf: P.L.1981, c.405, s.3B:3-20)

17

18 22. N.J.S.3B:3-24 is amended to read as follows:

19 3B:3-24. Where a will of a resident is to be probated; effect of
20 failure to probate.

21 The will of any **[person]** individual resident within any county of
22 this State at his death may be admitted to probate in the surrogate's
23 court of the county or in the Superior Court. If the will of any
24 **[person]** individual resident within the State at his death is probated
25 **[without]** outside the State, it shall be without effect unless or until
26 probate is granted within the State.

27 (cf: P.L.1981, c.405, s.3B:3-24)

28

29 23. N.J.S.3B:3-26 is amended to read as follows:

30 3B:3-26. Probate of will of nonresident probated in another state
31 or country.

32 When the will of any **[person]** individual not resident in this State
33 at his death shall have been admitted to probate in any state of the
34 United States or other jurisdiction or country, the surrogate's court of
35 any county may admit it to probate for any purpose and issue letters
36 thereon, provided the will is valid under the laws of this State.

37 (cf: P.L.1981, c.405, s.3B:3-26)

38

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

40 3B:3-28. Probate of will of nonresident decedent where property
41 situated in New Jersey.

42 Where the will of any **[person]** individual not resident in this State
43 at his death has not been admitted to probate in the state, jurisdiction
44 or country in which he then resided and no proceeding is there pending
45 for the probate of the will, and he died owning real estate situate in
46 any county of this State or personal property, or evidence of the

1 ownership thereof, situate therein at the time of probate, the Superior
2 Court or the surrogate's court may admit the will to probate and grant
3 letters thereon.

4 (cf: P.L.1997, c.20, s.1)

5

6 25. N.J.S.3B:3-28.1 is amended to read as follows:

7 3B:3-28.1. Probate of will of nonresident where laws of decedent's
8 domicile are discriminatory.

9 Where the will of any [person] individual who is not resident in this
10 State at the time of his death has not been admitted to probate in the
11 state in which he resided and no proceeding is there pending for the
12 probate of the will, the Superior Court may admit the will to probate
13 and grant letters thereon if the laws of that state discriminate against
14 residents of New Jersey either as a beneficiary or as a fiduciary.

15 (cf: P.L.1981, c.405, s.3B:3-28.1)

16

17 26. N.J.S.3B:3-31 is amended to read as follows:

18 3B:3-31. Judgment for probate; conclusive effect on title to real
19 property after 7 years.

20 Where judgment has been or shall be entered by any surrogate's
21 court in this State or Superior Court of the State, admitting to probate
22 the will of any [person] individual whether or not a resident of the
23 State at his death and 7 years have elapsed after the judgment, the
24 judgment unless set aside, shall, as to all matters adjudicated thereby,
25 be conclusive upon the title to real estate.

26 (cf: P.L.1981, c.405, s.3B:3-31)

27

28 27. N.J.S.3B:3-32 is amended to read as follows:

29 3B:3-32. [Requirement that devisee survive testator by 120 hours;
30 exceptions.

31 A devisee who does not survive the testator by 120 hours is treated
32 as if he predeceased the testator, unless the will of decedent contains
33 some language dealing explicitly with simultaneous deaths or deaths
34 in a common disaster, or requiring that the devisee survive the testator
35 or survive the testator for a stated period in order to take under the
36 will. To the extent this section is inconsistent with the "Uniform
37 Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the provision of this
38 section shall apply.]

39 Requirement of survival by 120 hours; exceptions; survivorship with
40 respect to future interests.

41 a. Except as provided in subsections b. and c., for purposes of
42 construing a will, trust agreement, or other governing instrument, an
43 individual who is not established by clear and convincing evidence to
44 have survived an event, including the death of another individual, by
45 120 hours is deemed to have predeceased the event.

46 b. If it is not established by clear and convincing evidence that one

1 of two co-owners with right of survivorship survived the other co-
2 owner by 120 hours, one-half of the property passes as if one had
3 survived by 120 hours and one-half as if the other had survived by 120
4 hours.

5 c. If there are more than two co-owners and it is not established
6 by clear and convincing evidence that at least one of them survived the
7 others by 120 hours, the property passes in the proportion that one
8 bears to the whole number of co-owners.

9 d. The 120 hour survival requirement of subsections a., b. and c.
10 shall not apply if: (1) the will, trust agreement, or other governing
11 instrument, contains some language applicable to the event dealing
12 explicitly with simultaneous deaths or deaths in a common disaster, or
13 requiring survival for a stated time period; (2) application would cause
14 a non-vested property interest or power of appointment to be invalid
15 under a rule against perpetuities concerning an interest created prior
16 to the enactment of P.L. 1999, c. 159 (effective on July 8, 1999); or
17 (3) it is established by clear and convincing evidence that application
18 to multiple governing instruments would result in an unintended failure
19 or duplication of a disposition.

20 e. For purposes of this section, "co-owners with right of
21 survivorship" includes joint tenants, tenants by the entirety, and other
22 co-owners of property or accounts held under circumstances that
23 entitle one or more to the whole of the property or account on the
24 death of the other or others.

25 To the extent this section is inconsistent with the "Uniform
26 Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the provisions of
27 this section shall apply.

28 (cf: P.L.1981, c.405, s.3B:3-32)

29

30 28. (New Section) Testator's intention; settlor's intention; rules of
31 construction applicable to wills, trusts and other governing
32 instruments.

33 a. The intention of a testator as expressed in his will controls the
34 legal effect of his dispositions, and the rules of construction expressed
35 in N.J.S.3B:3-34 through N.J.S.3B:3-48 shall apply unless the
36 probable intention of the testator, as indicated by the will and relevant
37 circumstances, is contrary.

38 b. The intention of a settlor as expressed in a trust, or of an
39 individual as expressed in a governing instrument, controls the legal
40 effect of the dispositions therein and the rules of construction
41 expressed in N.J.S.3B:34 through N.J.S.3B:3-48 shall apply unless the
42 probable intent of such settlor or of such individual, as indicated by the
43 trust or by such governing instrument and relevant circumstances, is
44 contrary. For purposes of this Title, when construing each of these
45 rules of construction the word "testator" shall include but not be
46 limited to a settlor or a creator of any other governing instrument; the

1 word "will" shall include a trust or other governing instrument; the
2 word "devise" shall include any disposition in a trust or other
3 governing instrument; and the word "devisee" shall include a
4 beneficiary of a trust or other governing instrument.

5
6 29. N.J.S.3B:3-33 is amended to read as follows:

7 3B:3-33. Choice of law as to meaning and effect of wills; testator's
8 intention; rules of construction.

9 The meaning and legal effect of a disposition in a will, trust or other
10 governing instrument shall be determined by the local law of a
11 particular state selected in the will, trust or other governing
12 instrument, [by the testator in his instrument] unless the application
13 of that law is contrary to the provisions relating to the elective share
14 described in N.J.S.3B:8-1 et seq. or any other public policy of this
15 State otherwise applicable to the disposition. [The intention of a
16 testator as expressed in his will controls the legal effect of his
17 dispositions, and the rules of construction expressed in N.J.S.3B:3-33
18 through N.J.S.3B:3-48 apply, unless the probable intention of the
19 testator, as indicated by the will and relevant circumstances, is
20 contrary.]

21 (cf: P.L.1981, c.405, s.3B:3-33)

22
23 30. N.J.S.3B:3-34 is amended to read as follows:

24 3B:3-34. Will construed to pass all property of testator including
25 after-acquired property.

26 [A will] Unless a will expressly provides otherwise, it is construed
27 to pass all property [which] the testator owns at [his] death including
28 property acquired after the execution of the will, and all property
29 acquired by the estate after the testator's death.

30 (cf: P.L.1981, c.405, s.3B:3-34)

31
32 31. N.J.S.3B:3-35 is amended to read as follows:

33 3B:3-35. Anti-lapse; deceased devisee; class gifts.

34 If a devisee who is a grandparent, stepchild or a lineal descendant
35 of a grandparent of the testator is dead at the time of the execution of
36 the will, [or] fails to survive the testator, or is treated as if he
37 predeceased the testator, [the] any [issue] descendants of the
38 deceased devisee who [survive] survives the testator by 120 hours
39 [take] take by representation in place of the deceased devisee [and
40 if they are all of the same degree of kinship to the devisee they take
41 equally, but if of unequal degree then those of more remote degree
42 take by representation]. One who would have been a devisee under a
43 class gift if he had survived the testator is treated as a devisee for
44 purposes of this section whether his death occurred before or after the
45 execution of the will. For purposes of this section, a "stepchild" means

1 a child of the surviving, deceased or former spouse of the testator.
2 (cf: P.L.1981, c.405, s.3B:3-35)

3
4 32. N.J.S.3B:3-36 is amended to read as follows:

5 3B:3-36. Failure of testamentary provision; residuary devise to two
6 or more residuary devisees; death of one or more before testator.

7 Except as provided in N.J.S.3B:3-35 [if a devise other than a
8 residuary devise fails for any reason, it becomes a part of the residue];

9 a. a devise, other than a residuary devise, that fails for any reason
10 becomes a part of the residue.

11 b. if the residue is devised to two or more persons, unless a
12 contrary intention shall appear by the will, the share of a residuary
13 devise that fails for any reason passes to the other residuary devisee,
14 or to other residuary devisees in proportion to the interest of each in
15 the remaining part of the residue.

16 (cf: P.L.1981, c.405, s.3B:3-36)

17
18 33. N.J.S.3B:3-38 is amended to read as follows:

19 3B:3-38. Construction of words "die without issue" or "die without
20 descendants".

21 In a devise of real or personal property the words "die without
22 issue" or "die without descendants" or "die without lawful issue" or
23 "die without lawful descendants" or "have no issue" or "have no
24 descendants" or other words which may import a want or failure of
25 issue or descendants of [a person] an individual in his lifetime, or at
26 his death, or an indefinite failure of his issue or descendants, shall be
27 construed to mean a failure of issue or descendants at the death of the
28 [person] individual, unless a contrary intention shall otherwise appear
29 by the will.

30 (cf: P.L.1981, c.405, s.3B:3-38)

31
32 34. N.J.S.3B:3-41 is amended to read as follows:

33 3B:3-41. Issue and descendants to take [per stirpes] by
34 representation.

35 Where under any will or trust provision is made for the benefit of
36 issue and descendants and no contrary intention is expressed, the issue
37 or descendants shall take [per stirpes] by representation.

38 (cf: P.L.1981, c.405, s.3B:3-41)

39
40 35. N.J.S.3B:3-42 is amended to read as follows:

41 3B:3-42. [Specific devise of securities; change; accessions;
42 nonademption] Increase in securities, accessions.

43 [a. If the testator intended a specific devise of certain securities
44 rather than the equivalent value thereof, the specific devisee is entitled
45 only to:

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

3 (2) Any additional or other securities of the same entity owned by
4 the testator by reason of action initiated by the entity and attributable
5 to the securities devised excluding any acquired by exercise of
6 purchase options;

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

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

13 b. Distributions prior to death with respect to a specifically devised
14 security not provided for in subsection a. are not part of the specific
15 devise.]

16 a. If a testator executes a will that devises securities and the
17 testator then owned securities that meet the description in the will, the
18 devise includes additional securities owned by the testator at death to
19 the extent the additional securities were acquired by the testator after
20 the will was executed as a result of the testator's ownership of the
21 described securities and are securities of any of the following types:

22 (1) securities of the same organization acquired by reason of action
23 initiated by the organization or any successor, related, or acquiring
24 organization, excluding any acquired by exercise of purchase options;

25 (2) securities of another organization acquired as a result of a
26 merger, consolidation, reorganization, or other distribution by the
27 organization or any successor, related, or acquiring organization; or

28 (3) securities of the same organization acquired as a result of a plan
29 of reinvestment.

30 b. Distributions in cash declared and payable as of a record date
31 before death with respect to a described security, whether paid before
32 or after death, are not part of the devise.

33 (cf: P.L.1981, c.405, s.3B:3-42)

34

35 36. N.J.S.3B:3-43 is amended to read as follows:

36 3B:3-43. **[Specific]** Nonademption of specific devise; sale by or
37 payment of condemnation award or insurance proceeds to guardian of
38 testator or agent.

39 If specifically devised property is sold or mortgaged by a guardian
40 for a testator, or by an agent acting within the authority of a durable
41 power of attorney for an incapacitated individual, or if a
42 condemnation award [or], insurance proceeds or recovery for injury
43 to the property are paid to a guardian for a testator or such agent as
44 a result of condemnation, fire or casualty, the specific devisee has the
45 right to a general pecuniary devise equal to the net sale price, the
46 amount of the unpaid loan, the condemnation award,[or] the

1 insurance proceeds or the recovery. This section does not apply if
2 subsequent to the sale, mortgage, condemnation [or], casualty, or
3 recovery the guardianship is terminated or the durable power of
4 attorney is revoked by the testator and the testator survives by 1 year
5 the judgment terminating the guardianship or such revocation. The
6 right of the specific devisee under this section is reduced by any right
7 he has under N.J.S.3B:3-44.

8 (cf: P.L.1981, c.405, s.3B:3-43)

9

10 37. N.J.S.3B:3-44 is amended to read as follows:

11 3B:3-44. Specific devise; right of devisee after sale, condemnation,
12 casualty loss or foreclosure.

13 A specific devisee has the right to the remaining specifically devised
14 property in the testator's estate at death and:

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

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

20 c. Any proceeds unpaid at death on fire or casualty insurance on ,
21 or other recovery for injury to, the property; and

22 d. Property owned by testator at his death as a result of
23 foreclosure, or obtained in lieu of foreclosure, of the security for a
24 specifically devised obligation.

25 (cf: P.L.1981, c.405, s.3B:3-44)

26

27 38. N.J.S.3B:3-46 is amended to read as follows:

28 3B:3-46. Ademption by satisfaction.

29 a. Property which a testator gave in his lifetime to a person is
30 treated as a satisfaction of a devise to that person in whole or in part,
31 only if the will provides for deduction of the lifetime gift, or the
32 testator declares in a contemporaneous writing that the value of the
33 gift is to be deducted from the value of the devise or is in satisfaction
34 of the devise, or the devisee acknowledges in writing that the gift is in
35 satisfaction of the devise or that its value is to be deducted from the
36 value of the devise.

37 b. For purpose of partial satisfaction, property given during lifetime
38 is valued as of the time the devisee came into possession or enjoyment
39 of the property or as of the time of death of the testator, whichever
40 occurs first.

41 c. If the devisee fails to survive the testator, in the case of a
42 substituted devise or a devise saved from lapse, the gift is treated as
43 a full or partial satisfaction of the devise, as appropriate, unless the
44 testator's contemporaneous writing provides otherwise.

45 (cf: P.L.1981, c.405, s.3B:3-46)

1 39. N.J.S.3B:3-48 is amended to read as follows:

2 3B:3-48. Construction of generic terms included in class gift
3 terminology.

4 [Halfbloods, adopted persons and persons born out of wedlock are
5 included in class gift terminology and terms of relationship in
6 accordance with rules for determining relationships for purposes of
7 intestate succession.]

8 a. Adopted individuals and individuals born out of wedlock, and
9 their respective descendants if appropriate to the class, are included in
10 class gifts and other terms of relationship in accordance with the rules
11 for intestate succession. Terms of relationship that do not differentiate
12 relationships by the half blood from those by the whole blood, such as
13 "brothers," "sisters," "nieces," or "nephews," are construed to include
14 both types of relationships.

15 b. In addition to the requirements of subsection a., in construing a
16 donative disposition by a transferor who is not the natural parent, an
17 individual born to the natural parent is not considered the child of that
18 parent unless the individual lived while a minor as a regular member
19 of the household of that natural parent or of that parent's parent,
20 brother, sister, spouse or surviving spouse.

21 c. In addition to the requirements of subsection a., in construing a
22 dispositive provision by a transferor who is not the adoptive parent, an
23 adopted individual is not considered the child of the adoptive parent
24 unless the adopted individual lived while a minor, either before or after
25 the adoption, as a regular member of the household of the adoptive
26 parent.

27 (cf: P.L.1981, c.405, s.3B:3-48)

28

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

30 3B:4-2. [Devise to trustee of trust created other than by testator's
31 will] Devise to trustee of trust created other than by testator's will.

32 A [devise] will may [be made by a will] validly devise property to
33 the trustee [or trustees] of a trust established or a trust which will be
34 established: (1) during the testator's lifetime by [a] the testator, or by
35 [a] the testator and some other person [or persons], or by some other
36 person [or persons] including a funded or unfunded life insurance
37 trust, although the settlor has reserved any or all rights of ownership
38 of the insurance contracts, or (2) at the testator's death by the
39 testator's devise to the trustee, if the trust is identified in the testator's
40 will, and its terms are set forth in a written instrument, other than a
41 will, executed before [or], concurrently with, or after the execution
42 of the testator's will [, or in the valid last will and testament of a
43 person who] or in another individual's will, executed before,
44 concurrently with or after the execution of the testator's will, if that
45 other individual has predeceased the testator, regardless of the

1 existence, size, or character of the corpus of the trust. [A devise so
2 made shall be valid and enforceable to the same extent as if the trust
3 had been created by the testator by his will, and as if the terms of the
4 trust, as contained in the will or other instrument creating or
5 evidencing it, had been set out in full in the will of the testator. The
6 existence, size or character of the trust property shall not affect the
7 validity of the devise, nor shall any devise be invalid because the trust
8 is a funded or unfunded life insurance trust, although the creator of the
9 trust has reserved any or all rights of ownership of the insurance
10 contracts.]

11 (cf: P.L.1981, c.405, s.3B:4-2)

12

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

14 3B:4-3. [Devise not invalidated because trust is amendable or
15 revocable] Devise not invalidated because trust is amendable or
16 revocable.

17 A devise [made as provided in N.J.S.3B:4-2] made as provided in
18 N.J.S.3B:4-2 shall not be invalid because the trust is amendable or
19 revocable, [or both,] or because the trust was amended after the
20 execution of the will or [after the death of the testator] the testator's
21 death.

22 (cf: P.L.1981, c.405, s.3B:4-3)

23

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

25 3B:4-4. Administration of trust.

26 Unless the testator's will provides otherwise, [the] property devised
27 to a trust described [as provided] in N.J.S.3B:4-2 shall not be
28 deemed to be held under a testamentary trust of the testator, but shall
29 become a part of the trust to which it is [given] devised and shall be
30 administered and disposed of in accordance with the provisions of the
31 [will or other] governing instrument setting forth the terms of the
32 trust, including any amendments thereto made before or after the
33 [death of the testator] testator's death[, whether made before or after
34 the execution of the testator's will, and, if the testator's will so
35 provides, including any amendments of the trust made after the death
36 of the testator].

37 (cf: P.L.1981, c.405, s.3B:4-4)

38

39 43. N.J.S.3B:4-5 is amended to read as follows:

40 3B:4-5. Lapse of devise.

41 [A] Unless the testator's will provides otherwise, a revocation or
42 termination of the trust before the [death of the testator shall cause]
43 testator's death causes the devise to lapse.

44 (cf: P.L.1981, c.405, s.3B:4-5)

1 44. N.J.S.3B:5-1 is amended to read as follows:

2 3B:5-1. Requirement that heir survive decedent by 120 hours.

3 ~~Any person who fails to survive the decedent by 120 hours is~~
4 ~~deemed to have predeceased the decedent for]~~ For the purposes of
5 intestate succession[, and the decedent's heirs are determined
6 accordingly. If the time of death of the decedent or of the person who
7 would otherwise be an heir, or the times of death of both, cannot be
8 determined, and it cannot be established that the person who would
9 otherwise be an heir has] an individual who is not established by clear
10 and convincing evidence to have survived the decedent by 120
11 hours[,it] is deemed [that the person failed to survive for the required
12 period] to have predeceased the decedent. This section is not to be
13 applied where its application would result in a taking of intestate
14 estate by the State under [N.J.S.3B:5-6] N.J.S.3B:5-5.

15 (cf: P.L.1981, c.405, s.3B:5-1)

16

17 45. N.J.S.3B:5-2 is amended to read as follows:

18 3B:5-2. Intestate estate.

19 a. Any part of the decedent's estate [of a decedent] not effectively
20 disposed of by his will passes by intestate succession to [his] the
21 decedent's heirs as prescribed in N.J.S.3B:5-3 through N.J.S.3B:5-14,
22 except as modified by the decedent's will.

23 b. A decedent by will may expressly exclude or limit the right of an
24 individual or class to succeed to property of the decedent passing by
25 intestate succession. If that individual or member of that class
26 survives the decedent, the share of the decedent's intestate estate to
27 which that individual or class would have succeeded passes as if that
28 individual or each member of that class had disclaimed his intestate
29 share.

30 (cf: P.L.1981, c.405, s.3B:5-2)

31

32 46. N.J.S.3B:5-3 is amended to read as follows:

33 3B:5-3. Intestate share of decedent's surviving spouse. The
34 intestate share of the surviving spouse is:

35 a. [If there is no surviving issue or parent of the decedent, the]
36 The entire intestate estate if;

37 (1) No descendant or parent of the decedent survives the
38 decedent;or

39 (2) All of the decedent's surviving descendants are also descendants
40 of the surviving spouse and there is no other descendant of the
41 surviving spouse who survives the decedent;

42 b. [If there is no surviving issue but the decedent is survived by a
43 parent or parents, the] The first 25% of the intestate estate, but not
44 less than \$50,000.00 nor more than \$200,000.00, plus [one-half of
45 the] three-fourths of any balance of the intestate estate, if no

1 descendant of the decedent survives the decedent, but a parent of the
2 decedent survives the decedent;

3 c. [If there are surviving issue all of whom are issue of the
4 surviving spouse also, the] The first 25% of the intestate estate, but
5 not less than \$50,000.00 nor more than \$200,000.00, plus one-half of
6 the balance of the intestate estate[;]:

7 (1) If all of the decedent's surviving descendants are also
8 descendants of the surviving spouse and the surviving spouse has one
9 or more surviving descendants who are not descendants of the
10 decedent; or

11 (2) If one or more of the decedent's surviving descendants is not a
12 descendant of the surviving spouse.

13 [d. If there are surviving issue one or more of whom are not issue
14 of the surviving spouse, one-half of the intestate estate.]

15 (cf: P.L.1981, c.405, s.3B:5-3)

16

17 47. N.J.S.3B:5-4 is amended to read as follows:

18 3B:5-4. Intestate shares of heirs other than surviving spouse.

19 [The] Any part of the intestate estate not passing to the decedent's
20 surviving spouse under N.J.S.3B:5-3, or the entire intestate estate if
21 there is no surviving spouse, passes [as follows] in the following
22 order to the individuals designated below who survive the decedent:

23 a. To the [issue of the decedent; if they are all of the same degree
24 of kinship to the decedent they take equally, but if of unequal degree,
25 then those of more remote degree take by representation] decedent's
26 descendants by representation;

27 b. If there is no surviving [issue] descendants, to [his parent or]
28 the descendant's parents equally if both survive, or to the surviving
29 parent;

30 c. If there is no surviving [issue] descendants or parent, to the
31 [issue] descendants of the decedent's parents or either of them by
32 representation;

33 d. If there is no surviving [issue] descendant, parent or [issue]
34 descendant of a parent, but the decedent is survived by one or more
35 grandparents[:

36 (1) Half of the estate passes to the paternal grandparents equally
37 if both survive, or to the surviving paternal grandparent; or if both are
38 deceased and the decedent is survived by maternal grandparents or
39 grandparent, then to the issue of the paternal grandparents, the issue
40 taking equally if they are all of the same degree of kinship to the
41 decedent, but if of unequal degree those of more remote degree take
42 by representation;

43 (2) The other half passes to the maternal grandparents equally if
44 both survive, or to the surviving maternal grandparent; or if both are
45 deceased and the decedent is survived by paternal grandparents or

1 grandparent, then to the issue of the maternal grandparents, the issue
2 taking equally if they are all of the same degree of kinship to the
3 decedent, but if of unequal degree, those more remote take by
4 representation;

5 (3) If the decedent is survived by a grandparent or grandparents
6 only on the paternal side or only on the maternal side and by no issue
7 of the grandparents on the other side, the entire estate passes to the
8 surviving grandparent or grandparents equally;], half of the estate
9 passes to the decedent's paternal grandparents equally if both survive,
10 or to the surviving paternal grandparent, or to the descendants of the
11 decedent's paternal grandparents or either of them if both are
12 deceased, the descendants taking by representation; and the other half
13 passes to the decedent's maternal relatives in the same manner; but if
14 there is no surviving grandparent, or descendant of a grandparent on
15 either the paternal or the maternal side, the entire estate passes to the
16 decedent's relatives on the other side in the same manner as the half.

17 e. If there is no surviving [issue] descendant, parent, [issue]
18 descendant of a parent [no surviving grandparent], or grandparent,
19 but the decedent is survived by [the issue of] one or more descendants
20 of grandparents, the [issue taking] descendants take equally if they
21 are all of the same degree of kinship to the decedent, but if of unequal
22 degree those of more remote degree take by representation.

23 f. If there are no surviving descendants of grandparents, then the
24 decedent's step-children or their descendants by representation.

25 (cf: P.L.1981, c.405, s.3B:5-4)

26

27 48. Section 1 of P.L. 2001, c. 109 (C.3B5-5.1) is amended to read
28 as follows:

29 1. If it appears to a fiduciary administering an intestate estate that
30 there may be [persons] individuals whose names or addresses are
31 unknown who may be entitled to participate in the distribution of the
32 estate, the fiduciary shall make a diligent inquiry, under the
33 circumstances, to identify and locate the [persons] individuals. The
34 actions taken by a fiduciary shall be those that have some reasonable
35 likelihood of finding the [persons] individuals and are reasonable in
36 cost compared with the amount of the distribution involved.

37 (cf: P.L.2001, c.109, s.1)

38

39 49. N.J.S.3B:5-6 is amended to read as follows:

40 3B:5-6. Determining representation.

41 [When representation is required to effect disposition of an estate,
42 the estate is divided into as many shares as there are surviving heirs in
43 the nearest degree of kinship and deceased persons in the same degree
44 who left issue who survive the decedent, each surviving heir in the
45 nearest degree receiving one share and the share of each deceased

1 person in the same degree being divided among his issue in the same
2 manner.]

3 a. As used in this section:

4 (1) "Deceased descendant," "deceased parent," or "deceased
5 grandparent" means a descendant, parent or grandparent who either
6 predeceased the decedent or is deemed to have predeceased the
7 decedent under N.J.S.3B:5-1.

8 (2) "Surviving descendant" means a descendant who neither
9 predeceased the decedent nor is deemed to have predeceased the
10 decedent under N.J.S.3B:5-1.

11 b. If, under N.J.S.3B:5-4, a decedent's intestate estate or part
12 thereof passes "by representation" to the decedent's descendants, the
13 estate or part thereof is divided into as many equal shares as there are:

14 (1) surviving descendants in the generation nearest to the decedent
15 which contains one or more surviving descendants; and (2) deceased
16 descendants in the same generation who left surviving descendants, if
17 any. Each surviving descendant in the nearest generation is allocated
18 one share. The remaining shares, if any, are combined and then
19 divided in the same manner among the surviving descendants of the
20 deceased descendants as if the surviving descendants who were
21 allocated a share and their surviving descendants had predeceased the
22 decedent.

23 c. If, under sections c. or d. of N.J.S.3B:5-4, a decedent's intestate
24 estate or a part thereof passes "by representation" to the descendants
25 of the decedent's deceased parents or either of them or to the
26 descendants of the decedent's deceased paternal or maternal
27 grandparents or either of them, the estate or part thereof is divided
28 into as many equal shares as there are: (1) surviving descendants in the
29 generation nearest the deceased parents or either of them, or the
30 deceased grandparents or either of them, that contains one or more
31 surviving descendants; and (2) deceased descendants in the same
32 generation who left surviving descendants, if any. Each surviving
33 descendant in the nearest generation is allocated one share. The
34 remaining share, if any, are combined and then divided in the same
35 manner among the surviving descendants of the deceased descendants
36 as if the surviving descendants who were allocated a share, and their
37 surviving descendants had predeceased the decedent.

38 (cf: P.L.1981, c.405, s.3B:5-6)

39

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

41 3B:5-8. After born heirs.

42 [Relatives of the decedent conceived before his death but born
43 thereafter inherit as if they had been born in the lifetime of the
44 decedent.] An individual in gestation at a particular time is treated as
45 living at that time if the person lives 120 hours or more after birth.

46 (cf: P.L.1981, c.405, s.3B:5-8)

1 51. N.J.S.3B:5-9 is amended to read as follows:

2 3B:5-9. Adopted child.

3 If, for the purposes of intestate succession, a relationship of parent
4 and child must be established to determine succession by, through or
5 from [a person] an individual, the relationships and rights of a minor
6 adopted child shall be those as provided in section 14 of P.L.1977,
7 c.367 (C.9:3-50), and the relationships and rights of an adopted adult
8 shall be as provided in N.J.S.2A:22-3.

9 (cf: P.L.1981, c.405, s.3B:5-9)

10

11 52. N.J.S.3B:5-10 is amended to read as follows:

12 3B:5-10. Establishment of Parent-Child Relationship.

13 If, for the purposes of intestate succession, a relationship of parent
14 and child must be established to determine succession by, through, or
15 from [a person] an individual, in cases not covered by N.J.S.3B:5-9,
16 [a person] an individual is the child of the [person's] individual's
17 parents regardless of the marital state of the [person's] individual's
18 parents, and the parent and child relationship may be established as
19 provided by the "New Jersey Parentage Act," P.L.1983, c.17
20 (C.9:17-38 et seq.). The parent and child relationship may be
21 established for purposes of this section regardless of the time
22 limitations set forth in subsection b. of section 8 of P.L.1983, c.17
23 (C.9:17-45).

24 (cf: P.L. 1997, c.376, s.1)

25

26 53. N.J.S.3B:5-11 is amended to read as follows:

27 3B:5-11. Debt [owed by heir] to decedent.

28 A debt owed to[the] a decedent [by an heir] is not charged against
29 the intestate share of any [person] individual except [that heir] the
30 debtor. If the debtor fails to survive the decedent, the debt is not
31 taken into account in computing the intestate share of the debtor's
32 [issue] descendants.

33 (cf: P.L.1981, c.405, s.3B:5-11)

34

35 54. N.J.S.3B:5-12 is amended to read as follows:

36 3B:5-12. Aliens not disqualified; individuals related to descendant
37 through two lines.

38 [A person is not disqualified to take as an heir because he or a
39 person through whom he claims is or has been an alien] a. An
40 individual is not disqualified to take as an heir because he or an
41 individual through whom he claims is or has been an alien.

42 b. An individual who is related to the decedent through two lines
43 of relationship is entitled to only a single share based on the
44 relationship that would entitle the individual to the larger share.

45 (cf: P.L.1981, c.405, s.3B:5-12)

1 55. N.J.S.3B:5-13 is amended to read as follows:

2 3B:5-13. **[Advancement to heir]** Advancements.

3 [Property given by a decedent during his lifetime to a person
4 entitled under this article to the property as an heir of the decedent
5 shall be treated as an advancement against that person's share of the
6 estate only if so declared in a contemporaneous writing by the
7 decedent or acknowledged in writing as such by the recipient. The
8 property advanced shall be valued as of the time the recipient came
9 into possession or enjoyment of the property or as of the time of the
10 death of the decedent, whichever occurs first. If the recipient fails to
11 survive the decedent the value of the property shall not be taken into
12 account in computing the intestate share to be received by his issue
13 unless the declaration or acknowledgment provides otherwise.]

14 a. If an individual dies intestate as to all or a portion of his estate,
15 property the decedent gave during the decedent's lifetime to an
16 individual who, at the decedent's death, is an heir is treated as an
17 advancement against the heir's intestate share only if: (1) the decedent
18 declared in a contemporaneous writing or the heir acknowledged in
19 writing that the gift is an advancement; or (2) the decedent's
20 contemporaneous writing or the heir's written acknowledgment
21 otherwise indicates that the gift is to be taken into account in
22 computing the division and distribution of the decedent's intestate
23 estate.

24 b. For purposes of subsection a., property advanced is valued as of
25 the time the heir came into possession or enjoyment of the property or
26 as of the time of the decedent's death, whichever occurs first.

27 c. If the recipient of the property fails to survive the decedent, the
28 property is not taken into account in computing the division and
29 distribution of the decedent's intestate estate, unless the decedent's
30 contemporaneous writing or the heirs' written acknowledgment
31 provides otherwise.

32 (cf: P.L.1981, c.405, s.3B:5-13)

33
34 56. N.J.S.3B:5-15 is amended to read as follows:

35 3B:5-15. **[Inheritance by]** Entitlement of spouse **[not provided for**
36 **in];** Premarital will.

37 a. If a **[testator fails to provide by will for his]** testator's surviving
38 spouse **[who]** married the testator after the **[execution of the]**
39 testator executed his will, the **[omitted spouse shall receive the same**
40 **share of the estate he would have received if the decedent left no will]**
41 surviving spouse is entitled to receive, as an intestate share, no less
42 than the value of the share of the estate he would have received if the
43 testator had died intestate, unless;

44 (1) it appears from the will or other evidence that **[the omission**
45 **was intentional or]** the will was made in contemplation of the

- 1 testator's marriage to the surviving spouse;
2 (2) the will expresses the intention that it is to be effective
3 notwithstanding any subsequent marriage; or
4 (3) the testator provided for the spouse by transfer outside the will
5 and the intent that the transfer be in lieu of a testamentary provision
6 is shown by the testator's statements [of the testator] or is reasonably
7 inferred from the amount of the transfer or other evidence.
8 b. [The] In satisfying the share [of the spouse shall be taken from
9 devisees under the will] provided by this section, devises made by the
10 will to the testator's surviving spouse, if any, are applied first, and
11 other devises shall abate ratably and in proportion to their respective
12 interests therein.
13 c. Notwithstanding any other provision of law to the contrary, this
14 section shall apply only to wills executed on or after September 1,
15 1978.

16 (cf: P.L.1981, c.405, s.3B:5-15)

17

18 57. N.J.S.3B:5-16 is amended to read as follows:

19 3B:5-16. [Inheritance by] Omitted children [not provided for in
20 will].

21 a. [If] Except as provided in subsection b., if a testator fails to
22 provide in his will for any of his children born or adopted after the
23 execution of his will, the omitted after-born or after-adopted child
24 receives a share in the estate [equal in value to that which he would
25 have received if the testator had died intestate unless] as follows:

26 (1) If the testator had no child living when he executed the will, an
27 omitted after-born or after-adopted child receives a share in the estate
28 equal in value to that which the child would have received had the
29 testator died intestate, unless the will devised all or substantially all of
30 the estate to the other parent of the omitted child or to a trust
31 primarily for the benefit of that other parent and that other parent
32 survives the testator and is entitled to take under the will.

33 (2) If the testator had one or more children living when he
34 executed the will, and the will devised property or an interest in
35 property to one or more of the then-living children, an omitted after-
36 born or after-adopted child is entitled to share in the testator's estate
37 as follows:

38 (a) the portion of the testator's estate in which the omitted after-
39 born or after-adopted child is entitled to share is limited to devises
40 made to the testator's then-living children under the will.

41 (b) the omitted after-born or after-adopted child is entitled to
42 receive the share of the testator's estate, as limited in subparagraph (a),
43 that the child would have received had the testator included all omitted
44 after-born and after-adopted children with the children to whom
45 devises were made under the will and had given an equal share of the
46 estate to each child.

1 (c) to the extent feasible, the interest granted an omitted after-born
2 or after-adopted child under this section must be of the same
3 character, whether equitable or legal, present or future, as that devised
4 to the testator's then-living children under the will.

5 (d) in satisfying a share provided by this paragraph, devises to the
6 testator's children who were living when the will was executed abate
7 ratably. In abating the devises of the then-living children, the court
8 shall preserve to the maximum extent possible the character of the
9 testamentary plan adopted by the testator.

10 b. Neither subsection a. (1) nor subsection a. (2) applies if:

11 (1) [It] it appears from the will that the omission was intentional;

12 [(2) When the will was executed the testator had one or more
13 children and devised substantially all his estate to the other parent of
14 the omitted child;] or

15 [(3)] (2) [The] the testator provided for the omitted after-born
16 or after-adopted child by transfer outside the will and the intent that
17 the transfer be in lieu of a testamentary provision is shown by the
18 testator's statements or is reasonably inferred from the amount of the
19 [testator or from the amount of the] transfer or other evidence.

20 [b.] c. If at the time of execution of the will the testator fails to
21 provide in his will for a living child solely because he believes the child
22 to be dead, the child [receives] is entitled to a share in the estate
23 [equal in value to that which he would have received if the testator
24 had died intestate] as if the child were an omitted after-born or after-
25 adopted child.

26 [c.] d. The share [of the child] provided by subsection a. (1) shall
27 be taken from devisees under the will ratably and in proportion to their
28 respective interests therein.

29 (cf: P.L.1981, c.405, s.3B:5-16)

30
31 58. (New section) Effect of intentional killing on intestate
32 succession, wills, trusts, joint assets, life insurance and beneficiary
33 designations.

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

40 b. The intentional killing of the decedent:

41 (1) revokes any revocable (a) disposition or appointment of
42 property made by decedent to the killer in a governing instrument and
43 any disposition or appointment created by law or in a governing
44 instrument to a relative of the killer, (b) provision in a governing
45 instrument conferring a general or special power of appointment on

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

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

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

14

15 59. (New section). Effect of Revocation. Provisions of a
16 governing instrument are given effect as if the killer or relative of the
17 killer disclaimed all provisions revoked by this chapter or, in the case
18 of a revoked nomination in a fiduciary or representative capacity, as
19 if the killer or relative of the killer predeceased the decedent.

20

21 60. N.J.S.3B:7-5 is amended to read as follows:

22 3B:7-5. Other acquisitions of property by decedent's killer.

23 Any other acquisition of property or interest by the decedent's killer
24 or by a relative of the killer not covered by this chapter shall be treated
25 in accordance with the [principles of this chapter] principle that a
26 killer or a relative of a killer cannot profit from the killer's
27 wrongdoing.

28 (cf: P.L.1981, c.405, s.3B:7-5)

29

30 61. N.J.S.3B:7-6 is amended to read as follows:

31 3B:7-6. Effect of final judgment of conviction.

32 A final judgment of conviction [of] establishing responsibility for
33 the intentional killing of the decedent is conclusive for purposes of
34 this chapter. In the absence of such a conviction [of intentional
35 killing] the court may determine by a preponderance of evidence
36 whether the [killing was intentional] individual was responsible for the
37 intentional killing of the decedent for purposes of this chapter.

38 (cf: P.L.1981, c.405, s.3B:7-6)

39

40 62. N.J.S.3B:7-7. is amended to read as follows:

41 3B:7-7. Rights of purchasers; [payments made by insurance
42 company, bank or other obligor] protection of payors and other third
43 parties.

44 This chapter does not affect the rights of any person who, before
45 rights under this chapter have been adjudicated, purchases from the
46 killer for value and without notice [property] or receives a payment

1 or other item of property in partial or full satisfaction of a legally
2 enforceable obligation which the killer would have acquired except for
3 this chapter, but the killer is liable for the amount of the proceeds or
4 the value of the property. [Any insurance company, bank, or other
5 obligor] A payor or other third party making payment or transferring
6 an item of property or other benefit according to the terms of [its
7 policy or obligation] a governing instrument affected by an intentional
8 killing is not liable by reason of this chapter unless prior to such
9 payment or transfer it has received at its home office or principal
10 address written notice of a [claim] claimed forfeiture or revocation
11 under this chapter.

12 (cf: P.L.1981, c.405, s.3B:7-7)

13

14 63. N.J.S.3B:9-1 is amended to read as follows:

15 3B:9-1. Definitions.

16 As used in this chapter:

17 a. A "present interest" is one to take effect in immediate
18 possession, use or enjoyment without the intervention of a preceding
19 estate or interest or without being dependent upon the happening of
20 any event or thing;

21 b. A "future interest" is one to take effect in possession, use or
22 enjoyment dependent upon the termination of an intervening estate or
23 interest or the happening of any event or thing;

24 c. A "devisee" means any person designated in a will to receive a
25 devise, but does not mean a trustee or trust designated in a will to
26 receive a devise;

27 d. The "effective date" is the date on which a property right vests,
28 or a contract right arises, even though the right is subject to
29 divestment;

30 e. "Joint property" is property that is owned by two or more
31 persons with rights of survivorship and includes a tenancy by the
32 entirety, a joint tenancy, a joint tenancy with rights of survivorship and
33 a joint life estate with contingent remainder in fee. For purposes of
34 this chapter, joint property is deemed to consist of a present interest
35 and a future interest. The future interest is the right of survivorship.

36 f. "Joint tenant" is the co-owner of joint property.

37 (cf: P.L.1981, c.405, s.3B:9-1).

38

39 64. N.J.S.3B:9-2 is amended to read as follows:

40 3B:9-2. [Right to disclaim] Disclaimer of an interested party.

41 a. Any person who is an heir, or a devisee or beneficiary under a
42 will or testamentary [instrument] trust, or appointee under a power
43 of appointment exercised by a will or testamentary [instrument] trust,
44 including a person succeeding to a disclaimed interest, [or an heir]
45 may disclaim in whole or in part [the right of succession to] any

1 property or interest therein, including a future interest, by delivering
2 and filing a disclaimer under this chapter.

3 b. Any person who is a grantee, donee, surviving joint tenant,
4 surviving party to a P.O.D. account or a trust deposit account, person
5 succeeding to a disclaimed interest, beneficiary under a
6 nontestamentary instrument or contract, appointee under a power of
7 appointment exercised by a nontestamentary instrument, or a
8 beneficiary under an insurance policy, may disclaim in whole or in part
9 any such property or interest therein by delivering, and if required by
10 N.J.S.9-7, by filing, a written disclaimer under this chapter.

11 c. A surviving joint tenant may disclaim as a separate interest any
12 property or interest therein devolving to him by right of survivorship
13 without regard to the extent, if any, the surviving joint tenant
14 contributed to the creation of the joint property interest.

15 d. A disclaimer may be of a pecuniary or a fractional share,
16 expressed as either a percentage or dollar amount, specific property or
17 any limited interest or estate.

18 (cf: P.L.1981, c.405, s.3B:9-2).

19

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

21 3B:9-3. [Form and contents of instrument disclaiming]
22 Requirements of a disclaimer.

23 [The instrument disclaiming] a. A disclaimer shall be in writing,
24 signed and acknowledged by the person disclaiming, and shall:

25 [a.] (1) Describe the property [or], interest, power or discretion
26 disclaimed;

27 [b.] (2) If the property [or] interest disclaimed is real property,
28 identify the municipality and county in which the real property is
29 situated; and

30 [c.] (3) Declare the disclaimer and the extent thereof.

31 b. The disclaimer shall be made within the time prescribed by
32 section 68 of P.L. , c. (C.)(now pending before the Legislature as
33 section 68 of this bill).

34 (cf: P.L.1981, c.405, s.3B:9-3).

35

36 66. N.J.S.3B:9-4 is amended to read as follows:

37 3B:9-4. Disclaimer [on behalf of decedent, minor or mentally
38 incompetent person] by a fiduciary of an interest in property.

39 a. A [disclaimer] fiduciary or agent acting on behalf of a
40 [decedent, minor or mentally incompetent person may be made by the
41 personal representative of the decedent or the guardian of the estate
42 of the minor or mentally incompetent person. The] principal within the
43 express, general or implied authority of a power of attorney, may
44 disclaim property or any interest therein.

45 b. Except as provided in subsection c. of this section, such

1 disclaimer shall not be effective unless, prior thereto, [the personal
2 representative or guardian] fiduciary or agent has been authorized to
3 disclaim by the court having jurisdiction [of the estate of the decedent,
4 minor or mentally incompetent person,] over the fiduciary or the
5 principal after finding that [it] such disclaimer is advisable and will
6 not materially prejudice the rights of: (1) creditors, devisees, heirs or
7 beneficiaries of the [decedent,] estate; (2) beneficiaries of the trust;
8 or (3) the minor [or mentally incompetent person or his creditors, as
9 the case may be] the incapacitated individual, the conservatee or the
10 principal for whom such fiduciary or agent acts.

11 c. If the governing instrument expressly authorizes the fiduciary or
12 the agent to disclaim, the disclaimer by the fiduciary or agent shall be
13 effective without court authorization.

14 (cf: P.L.1981, c.405, s.3B:9-4).

15

16 67. (New section) Disclaimer by a fiduciary of a power of
17 discretion.

18 a. Any fiduciary, including an agent acting on behalf of a principal
19 within the implied or general authority of a power of attorney, may
20 disclaim any power or discretion held by such fiduciary in a fiduciary
21 capacity. Unless the governing instrument specifically authorizes the
22 fiduciary to disclaim such power or discretion without obtaining court
23 authorization to do so, the disclaimer by the fiduciary shall not be
24 effective unless, prior thereto, such fiduciary has been authorized to
25 disclaim by the court having jurisdiction over the fiduciary after
26 finding that it is advisable and will not materially prejudice the rights
27 of: (1) devisees, heirs, or beneficiaries of the decedent; (2) the minor,
28 the incapacitated individual, the conservatee, or the principal; or (3)
29 the beneficiaries of the trust.

30 b. Unless expressly authorized by the court or by the governing
31 instrument:

32 (1) Any disclaimer under this section shall be personal to the
33 fiduciary so disclaiming and shall not constitute a disclaimer by a co-
34 fiduciary or a successor or substituted fiduciary of such power or
35 discretion;

36 (2) No disclaimer shall affect the rights of: (a) devisees, heirs or
37 beneficiaries of the decedent; (b) the minor, the incapacitated
38 individual, the conservatee, or the principal; or (c) the beneficiaries of
39 the trust.

40

41 68. (New section) . Time for disclaiming.

42 a. The disclaimer of an interest in property may be delivered, and
43 if required by this chapter filed, at any time after the effective date of
44 the governing instrument, or in the case of an intestacy, at any time
45 after the death of the intestate decedent, and must be delivered, and if
46 required by this chapter filed, before the right to disclaim is barred by

1 N.J.S.3B:9-10. With respect to joint property, the barring of the right
2 to disclaim the present interest does not bar the right to disclaim the
3 future interest.

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

8

9 69. N.J.S.3B:9-6 is amended to read as follows:

10 3B:9-6. Delivering and Filing disclaimer[; service of copy].

11 a. The disclaimer of an interest by an intestate heir, or a person
12 who is a devisee or beneficiary under will or a testamentary trust or
13 who is an appointee under a power of appointment exercised by a will
14 or testamentary trust, including a person succeeding to a disclaimed
15 interest, shall be filed in the office of the surrogate or clerk of the
16 Superior Court in which proceedings have been commenced or will be
17 commenced for the administration of the estate of the decedent or
18 deceased donee of the power of appointment. A copy of the disclaimer
19 shall also be delivered [in person or mailed by registered or certified
20 mail] to any personal representative, or other fiduciary of the decedent
21 or to the donee of the power or to the holder of the legal title to which
22 the interest relates. The fiduciary shall promptly notify the person or
23 persons who take the disclaimed interest, although any such failure to
24 provide the notice required herein shall not affect the validity of the
25 disclaimer.

26 b. The disclaimer of an interest in property, other than property
27 passing under or pursuant to a will or testamentary trust shall be
28 delivered to the fiduciary, payor or other person having legal title to
29 or possession of the property or interest disclaimed or who is entitled
30 thereto in the event of disclaimer. Any fiduciary, payor or other
31 person having title to or possession of the property or interest
32 disclaimed or who is entitled thereto in the event of disclaimer. Any
33 fiduciary, payor or other person having title to or possession of the
34 property or interest who receives such disclaimer shall promptly notify
35 the person or persons who take the disclaimed interest, although any
36 such failure to provide the notice required herein shall not affect the
37 validity of the disclaimer.

38 c. In the case of a disclaimer by a fiduciary of a power or
39 discretion:

40 (1) If such disclaimer is made after court authorization, the
41 fiduciary shall deliver a copy to such person or persons and in such
42 manner as shall be directed by the court; or

43 (2) If such disclaimer is made without court authorization pursuant
44 N.J.S.3B:9-4(a), the fiduciary shall deliver a copy to all co-fiduciaries,
45 but if there are none, then to all person whose property interests are
46 affected by the disclaimer.

1 d. In the case of a will or testamentary trust or power of
2 appointment under a will or testamentary trust, if real property or any
3 interest therein is disclaimed, the surrogate or clerk of the Superior
4 Court, as the case may be, shall forthwith forward a copy of the
5 disclaimer for filing in the office of the clerk or register of deeds and
6 mortgages of the county in which the real property is situated. In the
7 case of a nontestamentary instrument or contract, if real property or
8 any interest therein is disclaimed, the original thereof shall be filed in
9 the office of the clerk or register of deeds and mortgages of the county
10 in which the real property is situated.

11 e. For the purposes of this section, delivery may be effected: (1) in
12 person; (2) by registered or certified mail; or (3) by another means
13 which is reasonably likely to accomplish delivery.

14 (cf: P.L.1981, c.405, s.3B:9-6).

15

16 70. N.J.S.3B:9-7 is amended to read as follows:

17 3B:9-7. **[Additional filing]** Recording of disclaimer where real
18 property or interest therein is disclaimed.

19 [If real property or any interest therein is disclaimed, the surrogate
20 or clerk of the Superior Court, as the case may be, shall forthwith
21 forward a copy of the disclaimer for filing in the office of the clerk or
22 register of deeds and mortgages of the county in which the real
23 property is situated.] Each county clerk or register of deeds and
24 mortgages shall provide a book to be entitled "Disclaimers," so
25 arranged that he may record therein:

26 a. The name of the disclaimant;

27 b. The name of the decedent or the name of the donee of the power
28 of appointment, the name of the trustee or other person having legal
29 title to, or possession of, the property or interest disclaimed or
30 entitled thereto in the event of disclaimer or the name of the donee of
31 the power of appointment ;

32 c. The location of the property;

33 d. The file number of the county clerk's office or the office of
34 register of deeds and mortgages indorsed upon each disclaimer filed;

35 e. The date of filing the disclaimer.

36 The county clerk or the register of deeds and mortgages shall
37 maintain in the record an alphabetical index of the names of all
38 disclaimants stated in any disclaimer file, and also keep in his office for
39 public inspection, all disclaimers so filed therein.

40 (cf: P.L.1981, c.405, s.3B:9-7).

41

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

43 3B:9-8. **[Manner in which property or interest disclaimed**
44 **devolves]** Effect of disclaimer.

45 A disclaimer acts as a nonacceptance of the disclaimed interest,
46 rather than as a transfer of the disclaimed interest. The disclaimant is

1 treated as never having received the disclaimed interest. Unless [the
2 decedent or donee of the power has] a governing instrument
3 otherwise provided, the property or interest disclaimed devolves:

4 a. As to a present interest[,]:

5 (1) in the case of an intestacy, a will, a testamentary trust or a
6 power of appointment exercised by a will or testamentary trust, as if
7 the disclaimant had predeceased the decedent or, if the disclaimant is
8 designated to take under a power of appointment exercised by a will
9 or testamentary instrument, as if the disclaimant had predeceased the
10 donee of the power [;]. If by law or under the will or testamentary
11 trust the descendants of the disclaimant would take the disclaimant's
12 share by representation were the disclaimant to predecease the
13 disclaimant, then the disclaimed interest devolves by representation to
14 the descendants of the disclaimant who survive the decedent; and

15 (2) in the case of a nontestamentary instrument or contract, other
16 than a joint property interest, as if the disclaimant had died before the
17 effective date of the instrument or contract. If by law or under the
18 nontestamentary instrument or contract the descendants of the
19 disclaimant would take the disclaimant's share by representation were
20 the disclaimant to predecease the effective date of the instrument, then
21 the disclaimed interest devolves by representation to the descendants
22 of the disclaimant who survive the effective date of the instrument.

23 (3) in the case of joint property created by a will, testamentary
24 trust or non-testamentary instrument: (a) if the disclaimant is the only
25 living owner, the disclaimed interest devolves to the estate of the last
26 to die of the other joint owners; or (b) if the disclaimant is not the only
27 living owner, the disclaimed interest devolves equally to the living
28 joint owners, or all to the other living owner, if there is only one living
29 owner.

30 b. As to a future interest:

31 (1) In the case of a will or testamentary trust or a power of
32 appointment exercised by a will or testamentary trust, as if the
33 disclaimant had died before the event determining that the taker of the
34 property or interest is finally ascertained and his interest is
35 [indefeasibly] vested; and

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

40 (3) Notwithstanding the foregoing, a future interest that is held by
41 the disclaimant who also holds the present interest and which takes
42 effect at a time certain, such as a fixed calendar date or the
43 disclaimant's attainment of a certain age, is not accelerated by the
44 disclaimer and continue to take effect at the time certain.

45 c. [A] Except as provided in subsection d. of this section, a
46 disclaimer relates back for all purposes to the date of death of the

1 decedent or the donee of the power or the effective date of the
2 nontestamentary instrument or contract.

3 (cf: P.L.1981, c.405, s.3B:9-8)

4

5 72. N.J.S.3B:9-9 is amended to read as follows:

6 3B:9-9. **[When right to disclaim is barred]** Bar of right to disclaim.

7 a. The right of a person to disclaim property or any interest therein
8 is barred[, if before the expiration of the period of time in which he is
9 permitted to disclaim:

10 a. The] by:

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

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

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

16 (4) a sale of the property or interest is seized under judicial process
17 issued against him; or

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

20 [b. He accepts or exercises control as beneficial owner over all or
21 any part of the property or interest; or

22 c. He voluntarily transfers or encumbers or contracts to transfer or
23 encumber all or any part of the property or interest; or

24 d. He disclaims or attempts to disclaim all or any part of the
25 property or interest in fraud of his]

26 (6) a fraud on the person's creditors as set forth in the "Uniform
27 Fraudulent Transfer Act" (R.S.25:2-20 et seq.)]; or

28 e. He executes a written waiver of his right to disclaim].

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

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

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

37 (cf: P.L.1988, c.74, s.2).

38

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

40 3B:9-10. Binding effect of disclaimer or waiver.

41 The disclaimer or [the] written waiver of the right to disclaim a
42 property interest shall be binding upon the disclaimant or the person
43 waiving and all persons claiming by, through or under him.

44 (cf: P.L.1981, c.405).

45

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

1 3B:9-11. Spendthrift provision not to affect right to disclaim.

2 The right to disclaim a property interest exists notwithstanding any
3 limitation on the interest of the disclaimant in the nature of a
4 spendthrift provision or similar restriction or any restriction or
5 limitation on the right to disclaim a property interest contained in the
6 governing instrument.

7 (cf: P.L.1981, c.405, s.2B:9-11).

8

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

10 3B:9-12. Right to disclaim, etc.; under other law not abridged.

11 This chapter does not abridge the right of a person to waive,
12 release, disclaim or renounce property or an interest therein under any
13 other statute or law.

14 (cf: P.L.1981, c.405, s.3B:9-12).

15

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

17 3B:9-13. Extension of time to disclaim interest existing on
18 February 28, 1980.

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

24 An interest in property existing on the effective date of this chapter
25 as amended and supplemented by P.L. , c. (C.)(now pending
26 before the Legislature as this bill) as to which the right to disclaim has
27 not been barred by prior law may be disclaimed at any time before the
28 right to disclaim is barred by N.J.S.3B:9-10.

29 (cf: P.L.1981, c.405, s.3B:9-13).

30

31 77. N.J.S.3B:10-3 is amended to read as follows:

32 3B:10-3. When spouse entitled to assets without administration

33 Where the total value of the real and personal assets of the estate
34 of an intestate will not exceed ~~[\$10,000.00]~~ \$20,000.00, the surviving
35 spouse upon the execution of an affidavit before the surrogate of the
36 county where the intestate resided at his death, or, if then nonresident
37 in this State, where any of the assets are located, or before the
38 Superior Court, shall be entitled absolutely to all the real and personal
39 assets without administration, and the assets of the estate up to
40 \$5,000.00 shall be free from all debts of the intestate. Upon the
41 execution and filing of the affidavit as provided in this section, the
42 surviving spouse shall have all of the rights, powers and duties of an
43 administrator duly appointed for the estate. The surviving spouse may
44 be sued and required to account as if he had been appointed
45 administrator by the surrogate or the Superior Court. The affidavit
46 shall state that the affiant is the surviving spouse of the intestate and

1 that the value of the intestate's real and personal assets will not exceed
2 ~~[\$10,000.00]~~ \$20,000.00, and shall set forth the residence of the
3 intestate at his death, and specifically the nature, location and value of
4 the intestate's real and personal assets. The affidavit shall be filed and
5 recorded in the office of such surrogate or, if the proceeding is before
6 the Superior Court, then in the office of the clerk of that court. Where
7 the affiant is domiciled outside this State, the surrogate may authorize
8 in writing that the affidavit be executed in the affiant's domicile before
9 any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
10 acknowledgments or proofs.

11 (cf: P.L.1983, c.246, s.1)

12

13 78. N.J.S.3B:10-4 is amended to read as follows:

14 3B:10-4. When heirs entitled to assets without administration

15 Where the total value of the real and personal assets of the estate
16 of an intestate will not exceed ~~[\$5,000.00]~~ \$10,000.00 and the
17 intestate leaves no surviving spouse, and one of his heirs shall have
18 obtained the consent in writing of the remaining heirs, if any, and shall
19 have executed before the surrogate of the county where the intestate
20 resided at his death, or, if then nonresident in this State, where any of
21 the intestate's assets are located, or before the Superior Court, the
22 affidavit herein provided for, shall be entitled to receive the assets of
23 the intestate of the benefit of all the heirs and creditors without
24 administration or entering into a bond. Upon executing the affidavit,
25 and upon filing it and the consent, he shall have all the rights, powers
26 and duties of an administrator duly appointed for the estate and may
27 be sued and required to account as if he had been appointed
28 administrator by the surrogate or the Superior Court.

29 The affidavit shall set forth the residence of the intestate at his
30 death, the names, residences and relationships of all of the heirs and
31 specifically the nature, location and value of the real and personal
32 assets and also a statement that the value of the intestate's real and
33 personal assets will not exceed ~~[\$5,000.00]~~ \$10,000.00.

34 The consent and the affidavit shall be filed and recorded, in the
35 office of the surrogate or, if the proceeding is before the Superior
36 Court, then in the office of the clerk of that court. Where the affiant
37 is domiciled outside this State, the surrogate may authorize in writing
38 that the affidavit be executed in the affiant's domicile before any of the
39 officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
40 acknowledgments or proofs.

41 (cf: P.L.1983, c.246, s.2)

42

43 79. (New section) Federal Law. The provisions of this chapter, as
44 amended and supplemented by P.L. , c. (C.)(now pending before
45 this Legislature as this bill) are not intended to enlarge, limit, modify
46 or otherwise affect the federal requirements for a qualified disclaimer

1 under 26 U.S.C. section 2518 or 26 U.S.C. section 2046.

2

3 80. N.J.S.3B:14-24 is amended to read as follow:

4 3B:14-24 Authorization to exercise other powers.

5 The court having jurisdiction of the estate or trust may authorize
6 the fiduciary to exercise any other power or to disclaim any power, if
7 the court determines such exercise or disclaimer is necessary or
8 advisable which in the judgment of the court is necessary for the
9 proper administration of the estate or trust.

10 (cf: P.L.1981, c.405, s.3B:14-24)

11

12 81. (New section) Effect of nonjudicial settlement or waiver of
13 account.

14 Unless the governing instrument expressly provides otherwise, an
15 instrument settling or waiving an account, executed by all persons
16 whom it would be necessary to join as parties in a proceeding for the
17 judicial settlement of the account, shall be binding and conclusive on
18 all other persons who may have a future interest in the property to the
19 same extent as that instrument binds the person who executed it.

20

21 82. N.J.S.3B:22-2 is amended to read as follows:

22 3B:22-2. Order of priority of claims when assets insufficient. If the
23 applicable assets of the estate are insufficient to pay all claims in full,
24 the personal representative shall make payment in the following order:

25 a. Reasonable funeral expenses;

26 b. Costs and expenses of administration;

27 c. Debts and taxes with preference under federal law or the laws of
28 this State, including debts for the reasonable value of services rendered
29 to the decedent by the Office of the Public Guardian for Elderly
30 Adults;

31 d. Reasonable medical and hospital expenses of the last illness of
32 the decedent, including compensation of persons attending him;

33 e. Judgments entered against the decedent according to the
34 priorities of their entries respectively;

35 f. All other claims.

36 No preference shall be given in the payment of any claim over any
37 other claim of the same class, and a claim due and payable shall not be
38 entitled to a preference over claims not due. The commencement of
39 an action against the personal representative for the recovery of a debt
40 or claim or the entry of a judgment thereon against the personal
41 representative shall not entitle such debt or claim to preference over
42 others of the same class.

43 (cf: P.L.1989, c.248, s.8)

44

45 83. N.J.S.3B:22-3 is amended to read as follows:

46 3B:22-3. Abatement for purpose of paying claims and debts.

1 [Except as otherwise provided in a decedent's will, the] The
2 property of a decedent's estate shall abate for the purposes of paying
3 debts and claims [, without any preference or priority as between real
4 and personal property, in the following order:

5 a. Property passing by intestacy;

6 b. Residuary devises;

7 c. General devises; and

8 d. Specific devises] in the order prescribed in N.J.S.3B:23-12.

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

10

11 84. N.J.S.3B:22-4 is amended to read as follows:

12 3B:22-4. Limitation of time to present claims of creditors to
13 personal representative; discharge of personal representative where
14 claim is not duly presented before distribution.

15 [At any time after granting letters testamentary or of
16 administration, the Superior Court, or surrogate, as the case may be,
17 may, whether the estate be solvent or not, order the personal
18 representative to give public notice to creditors] Creditors of the
19 decedent [to] shall present [to him] their claims to the personal
20 representative of the decedent's estate in writing and under oath,
21 specifying the amount claimed and the particulars of the claim, within
22 [6] nine months from the date of the [order] decedent's death. If a
23 claim is not so presented to the personal representative within nine
24 months from the date of the decedent's death, the personal
25 representative shall not be liable to the creditor with respect to any
26 assets which the personal representative may have delivered or paid in
27 satisfaction of any lawful claims, devises or distributive shares, before
28 the presentation of the claim.

29 (cf: P.L.1981, c.405, s.3B:22-4)

30

31 85. N.J.S.3B:22-39 is amended to read as follows:

32 3B:22-39. "Heirs and devisees" defined.

33 As used in this article, heirs and devisees shall include the heirs and
34 devisees of a deceased debtor and the heirs and devisees of any of
35 them, who shall have died before the commencement of the action,
36 authorized by this article, to whom any of the real [estate] or personal
37 property, of which the debtor died seized or possessed, descended or
38 was devised.

39 (cf: P.L.1981, c.405, s.3B:22-39)

40

41 86. N.J.S.3B:23-12 is amended to read as follows:

42 3B:23-12. Abatement generally.

43 Except as provided in N.J.S.3B:23-14 and except as provided in
44 connection with the share of a surviving spouse who elects to take an
45 elective share, shares of distributees abate, without any preference or
46 priority as between real and personal property, in the following order:

- 1 a. Property passing by intestacy;
 - 2 b. Residuary devises;
 - 3 c. General devises;
 - 4 d. Specific devises; and
 - 5 e. Abatement within each classification is in proportion to the
 - 6 amount of property each of the beneficiaries would have received if
 - 7 full distribution of the property had been made in accordance with the
 - 8 terms of the will.
- 9 (cf: P.L.1981, c.405, s.3B:23-12)

10

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

12 3B:24-4. Apportionment of tax to transferees in absence of
13 directions to contrary.

14 In the absence of directions to the contrary:

15 a. That part of the tax shall be apportioned to each of the
16 transferees as bears the same ratio to the total tax as the ratio which
17 each of the transferees' property included in the gross tax estate bears
18 to the total property entering into the net estate for [tax before the
19 specific exemption] purposes of that tax, and the balance of the tax
20 shall be apportioned to the fiduciary, the values as finally determined
21 in the respective tax proceedings being the values to be used as the
22 basis for apportionment of the respective taxes;

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

28 c. Any deduction for property previously taxed and any credit for
29 gift taxes paid by the decedent shall inure to the benefit of all
30 transferees and the fiduciary and the tax to be apportioned shall be the
31 tax after allowance of the deduction and credit; and

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

36 (cf: P.L.1981, c.405, s.3B:24-4)

37

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

39 3B:25-1. Nonexoneration of property subject to mortgage or
40 security interest; exception.

41 When property subject to a mortgage or security interest descends
42 to an heir or passes to a devisee, the heir or devisee shall not be
43 entitled to have the mortgage or security interest discharged out of any
44 other property of the ancestor or testator, but the property so
45 descending or passing to him shall be primarily liable for the mortgage
46 or secured debt, unless the will of the testator shall [expressly or

1 impliedly] direct that the mortgage or security interest be otherwise
2 paid. A general direction in the will to pay debts shall not be deemed
3 a direction to pay the mortgage or security interest.

4 (cf: P.L.1981, c.405, s.3B:25-1)

5

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

7 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

8 The widow or widower, whether alien or not, of a person dying
9 intestate or otherwise, shall be endowed for the term of her or his
10 [natural] life of [the] one [full and equal] half [part] of all real
11 property of which the decedent, or another to the decedent's use, was
12 seized of an estate of inheritance at any time during [coverture]
13 marriage prior to May 28, 1980, [to which] unless the widow or
14 widower shall [not] have relinquished her right of dower or his right
15 of curtesy [by deed duly executed and acknowledged] in the manner
16 provided by [law to record deeds] P.L.1953, c.352 (C.37:2-18.1) or
17 such right of dower or such right of curtesy otherwise shall have been
18 extinguished by law.

19 [The widower's right of curtesy shall be enforced, admeasured and
20 determined in the same manner and subject to the same limitations as
21 is provided by law in the case of dower.]

22 (cf: P.L.1981, c.405, s.3B:28-1)

23

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

25 3B:28-2. [Rights] No right of dower [and] or curtesy [abolished]
26 created on [and] or after May 28, 1980.

27 [All rights] No right of dower [and] or curtesy [are abolished as
28 to the] in real property [of which a married person, or another to his
29 or her use,] shall arise if, on or after May 20, 1980, a person shall
30 become married, or such person or another to his or her use, shall [,
31 on or after May 28, 1980,] become seized[, during coverture,] of an
32 estate of inheritance.

33 (cf: P.L.1981, c.405, s.3B:28-2)

34

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

36 3B:28-3. [Joint occupancy] Right of joint possession of principal
37 matrimonial residence where no dower or curtesy applies; alienation.

38 [As to real property occupied jointly by a married person with his
39 or her spouse acquired on or after May 28, 1980, as their principal
40 matrimonial residence,] a. During life every married person shall be
41 entitled to joint possession [thereof] with his or her spouse [during
42 their marriage, which right of possession may not be released,
43 extinguished or alienated without the consent of both spouses except
44 by judgment of a court of competent jurisdiction.] of any real property
45 which they occupy jointly as their principal matrimonial residence and

1 to which neither dower nor curtesy applies. [All other real property
2 owned by either spouse which is not the principal matrimonial
3 residence may be alienated without the consent of both spouses.] One
4 who acquires an estate or interest in real property from a person
5 whose spouse is entitled to joint possession thereof does so subject to
6 such right of possession, unless such right of possession has been
7 released, extinguished or subordinated by such spouse or has been
8 terminated by order or judgment of a court of competent jurisdiction
9 or otherwise.

10 b. Nothing contained herein shall be construed to prevent the
11 release, subordination or extinguishment of the right of joint
12 possession by either spouse, by premarital agreement, separation
13 agreement or other written instrument.

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

19 (cf: P.L.1981, c.405, s.3B:28-3)

20
21 92. N.J.S.3B:28-3.1 is amended to read as follows:

22 3B:28-3.1. Joint occupancy of principal matrimonial residence;
23 mortgage lien.

24 The right of joint possession to the principal matrimonial residence
25 as provided in N.J.S.3B:28-3 is subject to the lien of a mortgage,
26 irrespective of the date when the mortgage is recorded, provided:

27 a. The mortgage is placed upon the matrimonial residence prior to
28 the time that title to the residence was acquired by the married person;
29 or

30 b. The mortgage is placed upon the matrimonial residence prior to
31 the marriage; or

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

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

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

36 (cf: P.L.1981, c.405, s.3B:28-3.1)

37
38 93. (New section). Disclaimer of interests previously governed by
39 P.L.1979, c.492 (C.46:2E-1 to 46:2E-13).

40 A disclaimer of an interest by any person who is a grantee, donee,
41 surviving joint tenant, surviving tenant by the entirety, surviving party
42 to a joint deposit account, a P.O.D. account or a trust deposit account,
43 person succeeding to a disclaimed interest, beneficiary under a
44 nontestamentary instrument or contract, appointee under a power of
45 appointment exercised by a nontestamentary instrument or a beneficiary
46 under an insurance policy is governed by N.J.S.3B:9-1 et. seq., as

1 amended and supplemented by P.L. , c. (C.)(now pending before
2 the Legislature as this bill).

3
4 94. The following are hereby repealed:

5 N.J.S.3B:4-6;

6 N.J.S.3B:7-1 through 3B:7-4, inclusive;

7 N.J.S.3B:9-5;

8 N.J.S.3B:22-9; and

9 Laws of P.L.1979, c.492 (C.46:2E-1 to 46:2E-13 both inclusive).

10
11 95. This act shall take effect on the 180th day after enactment.

12 13 14 STATEMENT

15
16 This bill makes a number of substantial changes to the provisions
17 governing the administration of estates and trusts in the State of New
18 Jersey and makes the affected provisions gender neutral. The current
19 statute, effective in New Jersey on May 1, 1982, was modeled upon
20 the 1969 version of the Uniform Probate Code. This bill is modeled
21 upon the 1990 version of the Uniform Probate Code. Among other
22 significant changes, the 1990 Uniform Probate Code attempts to bring
23 greater uniformity to the rules governing testamentary and non-
24 testamentary transfers in response to the significant number of non-
25 testamentary transfers that occur at the time of the decedent's death.
26 For example, a new term, "governing instrument" has been
27 incorporated as a definition in the substitute to include deeds, trusts,
28 insurance and annuity policies, POD (pay on death) accounts,
29 securities registered in beneficiary form (TOD), pension, profit
30 sharing, retirement and similar benefit plans, and other wealth transfer
31 instruments. The bill, however, does vary from the 1990 version of
32 the Uniform Probate Code due to the unique elective share law that
33 continues to exist in the State of New Jersey, which has been left for
34 separate consideration.

35 The bill clarifies the definitions of "descendant," "heirs,"
36 "incapacitated individual," "joint tenants with right of survivorship,"
37 "per capita distribution," "per stripes" distribution and distribution of
38 estates "by representation."

39 The bill also clarifies situations where writings that are intended as
40 wills would be allowed, but requires that the burden of proof on the
41 proponent would be by clear and convincing evidence.

42 The bill provides that divorce or annulment of a marriage, under
43 certain circumstances, would revoke not only provisions of the former
44 spouse's will, but also non-probate transfers occurring by reason of the
45 decedent's death to the former spouse.

46 The bill expands the provisions requiring survival of a beneficiary

1 by 120 hours to succeed to an interest of a decedent in non-probate
2 transfers.

3 The bill also makes substantial revisions to the laws governing
4 intestate succession. For example, the substitute provides that the
5 intestate share of a surviving spouse would be 100% of the intestate
6 estate where all of the surviving descendants of the decedent are also
7 the descendants of the surviving spouse and the surviving spouse has
8 no other descendants. Currently, such a surviving spouse receives the
9 first \$50,000 plus 50% of the intestate estate. Further, the surviving
10 spouse would now be entitled to a larger share of the estate in the
11 event that either a parent of the decedent survives a decedent who has
12 no descendants, or there are descendants of the surviving spouse who
13 are not descendants of the decedent. Finally, stepchildren of a
14 decedent would be added as a final class of takers.

15 The bill expands the law with respect to disinheritance of a person
16 who criminally and intentionally kills the decedent to include
17 revocation of non-testamentary dispositions.

18 The bill consolidates the law concerning disclaimers of probate and
19 non-probate property. The bill clarifies that a fiduciary may, with
20 court approval, disclaim any power or discretion held by such
21 fiduciary, and may disclaim without court approval if the governing
22 instrument so permits.

23 This bill would also make some changes with regard to small
24 estates. Under current law, upon filing an affidavit with the surrogate
25 the surviving spouse is entitled to the assets of an estate without
26 administration if the assets do not exceed \$10,000; similarly, in
27 situations where there is no surviving spouse and the assets of the
28 estate do not exceed \$5,000, the heirs are entitled to the assets
29 without administration if one of the heirs files an affidavit with the
30 consent of the remaining heirs. This bill would amend N.J.S.A.3B:10-
31 3 and 3B:10-4 to increase these amounts to \$20,000 and to \$10,000,
32 respectively.

33 Finally, the bill expands the rules of construction formerly
34 applicable only to wills to other donative transfers.

35 The bill provides a statute of limitations with respect to creditor
36 claims against a decedent's estate.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 708

STATE OF NEW JERSEY

DATED: JANUARY 26, 2004

The Senate Judiciary Committee reports favorably Senate Bill No. 708.

This bill makes a number of substantial changes to the provisions governing the administration of estates and trusts in New Jersey and makes the affected provisions gender neutral. The current statute, effective in New Jersey on May 1, 1982, was modeled on the 1969 version of the Uniform Probate Code. This bill is modeled on the 1990 version of the Uniform Probate Code. Among other significant changes, the 1990 Uniform Probate Code attempts to bring greater uniformity to the rules governing testamentary and non-testamentary transfers in response to the significant number of non-testamentary transfers that occur at the time of the decedent's death. For example, a new term, "governing instrument" has been incorporated as a definition in the substitute to include deeds, trusts, insurance and annuity policies, POD (pay on death) accounts, securities registered in beneficiary form (TOD), pension, profit sharing, retirement and similar benefit plans, and other wealth transfer instruments. This bill, however, does vary from the 1990 version of the Uniform Probate Code due to the elective share law that continues to exist in New Jersey.

The bill clarifies the definitions of "descendant," "heirs," "incapacitated individual," "joint tenants with right of survivorship," "per capita distribution," "per stripes" distribution and distribution of estates "by representation."

The bill also clarifies situations where writings that are intended as wills would be allowed, but requires that the burden of proof on the proponent would be by clear and convincing evidence.

The bill provides that divorce or annulment of a marriage, under certain circumstances, would revoke not only provisions of the former spouse's will, but also non-probate transfers occurring by reason of the decedent's death to the former spouse.

The bill expands the provisions requiring survival of a beneficiary by 120 hours to succeed to an interest of a decedent in non-probate transfers.

The bill also makes substantial revisions to the laws governing intestate succession. For example, the substitute provides that the intestate share of a surviving spouse would be 100% of the intestate

estate where all of the surviving descendants of the decedent are also the descendants of the surviving spouse and the surviving spouse has no other descendants. Currently, such a surviving spouse receives the first \$50,000 plus 50% of the intestate estate. Further, the surviving spouse would now be entitled to a larger share of the estate in the event that either a parent of the decedent survives a decedent who has no descendants, or there are descendants of the surviving spouse who are not descendants of the decedent. Finally, stepchildren of a decedent would be added as a final class of takers.

The bill expands the law with respect to disinheritance of a person who criminally and intentionally kills the decedent to include revocation of non-testamentary dispositions.

The bill consolidates the law concerning disclaimers of probate and non-probate property. The bill clarifies that a fiduciary may, with court approval, disclaim any power or discretion held by such fiduciary, and may disclaim without court approval if the governing instrument so permits.

This bill would also make some changes with regard to small estates. Under current law, upon filing an affidavit with the surrogate the surviving spouse is entitled to the assets of an estate without administration if the assets do not exceed \$10,000; similarly, in situations where there is no surviving spouse and the assets of the estate do not exceed \$5,000, the heirs are entitled to the assets without administration if one of the heirs files an affidavit with the consent of the remaining heirs. This bill would amend N.J.S.A.3B:10-3 and 3B:10-4 to increase these amounts to \$20,000 and to \$10,000, respectively.

Finally, the bill expands the rules of construction formerly applicable only to wills to other donative transfers.

The bill provides a statute of limitations with respect to creditor claims against a decedent's estate.

This bill is identical to Assembly Bill No. 822.

STATEMENT TO
SENATE, No. 708

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: FEBRUARY 23, 2004

This bill, which is modeled on the 1990 version of the Uniform Probate Code, makes a number of changes to the provisions governing the administration of estates and trusts in New Jersey.

These floor amendments make technical changes to the bill and do not affect its substantive provisions. The amendments correct certain internal citations and make other technical corrections in sections 44, 64, 69 and 71 of the bill.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 708
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: MARCH 25, 2004

SUMMARY

Synopsis: Revises wills and estates
Type of Impact: No State or local impact
Agencies Affected: Judiciary, County Surrogates

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State & Local Cost	No Cost at State or Local level		

- * The bill makes a number of substantial changes to the provisions governing the administration of estates and trusts in the State of New Jersey and makes the affected provisions gender neutral.
- * The Administrative Office of the Courts notes that while the bill implements a number of changes to the administration of estates and trusts in the State of New Jersey, these changes would require no increased State expenditures.
- * Information obtained from county surrogates indicates that enactment of this bill would generate no increased costs for the County Surrogate offices.

BILL DESCRIPTION

Senate Bill No. 708 of 2004 makes a number of substantial changes to the provisions governing the administration of estates and trusts in the State of New Jersey and makes the affected provisions gender neutral.

The current statute, effective in New Jersey on May 1, 1982, was modeled upon the 1969 version of the Uniform Probate Code. This bill is modeled upon the 1990 version of the Uniform Probate Code. Among other significant changes, the 1990 Uniform Probate Code attempts to bring greater uniformity to the rules governing testamentary and non-testamentary transfers in response to the significant number of non-testamentary transfers that occur at the time of the decedent's death. For example, a new term, "governing instrument" has been incorporated as a definition in the bill to include deeds, trusts, insurance and annuity policies, POD (pay on

death) accounts, securities registered in beneficiary form (TOD), pension, profit sharing, retirement and similar benefit plans, and other wealth transfer instruments. The bill, however, does vary from the 1990 version of the Uniform Probate Code due to the unique elective share law that continues to exist in the State of New Jersey, which has been left for separate consideration. The bill clarifies the definitions of "descendant," "heirs," "incapacitated individual," "joint tenants with right of survivorship," "per capita distribution," "per stripes" distribution and distribution of estates "by representation."

The bill also clarifies situations where writings that are intended as wills would be allowed, but requires that the burden of proof on the proponent would be by clear and convincing evidence. The bill provides that divorce or annulment of a marriage, under certain circumstances, would revoke not only provisions of the former spouse's will, but also non-probate transfers occurring by reason of the decedent's death to the former spouse. The bill expands the provisions requiring survival of a beneficiary by 120 hours to succeed to an interest of a decedent in non-probate transfers.

The bill also makes substantial revisions to the laws governing intestate succession. For example, the bill provides that the intestate share of a surviving spouse would be 100 percent of the intestate estate where all of the surviving descendants of the decedent are also the descendants of the surviving spouse and the surviving spouse has no other descendants. Currently, such a surviving spouse receives the first \$50,000 plus 50 percent of the intestate estate. Further, the surviving spouse would now be entitled to a larger share of the estate in the event that either a parent of the decedent survives a decedent who has no descendants, or there are descendants of the surviving spouse who are not descendants of the decedent. Finally, stepchildren of a decedent would be added as a final class of takers. The bill expands the law with respect to disinheritance of a person who criminally and intentionally kills the decedent to include revocation of non-testamentary dispositions.

The bill consolidates the law concerning disclaimers of probate and non-probate property. The bill clarifies that a fiduciary may, with court approval, disclaim any power or discretion held by such fiduciary, and may disclaim without court approval if the governing instrument so permits.

Finally, the bill expands the rules of construction formerly applicable only to wills to other donative transfers. The bill provides a statute of limitations with respect to creditor claims against a decedent's estate.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Information provided informally by the Administrative Office of the Courts (AOC) in a prior legislative session noted that while the bill implemented a number of changes to the administration of estates and trusts in the State of New Jersey, these changes would require no increased State expenditures.

Information obtained from county surrogates in a prior legislative session indicated that enactment of this bill would generate no increased costs for the County Surrogate offices.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Judiciary and Surrogate estimates.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 2046

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED FEBRUARY 5, 2004

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Revises wills and estates.

CURRENT VERSION OF TEXT

As introduced.



A2046 GREENSTEIN

2

1 AN ACT concerning wills and estates and revising various sections of
2 the statutory law.

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:1-1 is amended to read as follows:

8 3B:1-1. As used in this title, unless otherwise defined:

9 "Administrator" includes general administrators of an intestate and
10 unless restricted by the subject or context, administrators with the will
11 annexed, substituted administrators, substituted administrators with
12 the will annexed, temporary administrators and administrators
13 pendente lite.

14 "Beneficiary," as it relates to trust beneficiaries, includes a person
15 who has any present or future interest, vested or contingent, and also
16 includes the owner of an interest by assignment or other transfer and
17 as it relates to a charitable trust, and includes any person entitled to
18 enforce the trust.

19 "Child" means any individual, including a natural or adopted child,
20 entitled to take by intestate succession from the parent whose
21 relationship is involved and excludes any [person] individual who is
22 only a stepchild, a foster child, a grandchild or any more remote
23 descendant.

24 "Claims" include liabilities whether arising in contract, or in tort or
25 otherwise, and liabilities of the estate which arise at or after the death
26 of the decedent, including funeral expenses and expenses of
27 administration, but does not include estate or inheritance taxes,
28 demands or disputes regarding title to specific assets alleged to be
29 included in the estate.

30 "Cofiduciary" means each of two or more fiduciaries jointly serving
31 in a fiduciary capacity.

32 "Descendant" of an individual means all of his progeny of all
33 generations, with the relationship of parent and child at each
34 generation being determined by the definition of child contained in this
35 section and parent contained in N.J.S.3B:1-2.

36 "Devise," when used as a noun, means a testamentary disposition
37 of real or personal property and when used as a verb, means to
38 dispose of real or personal property by will.

39 "Devisee" means any person designated in a will to receive a
40 devise. In the case of a devise to an existing trust or trustee, or to a
41 trustee [on] of a trust described by will, the trust or trustee is the
42 devisee and the beneficiaries are not devisees.

43 "Distributee" means any person who has received property of a

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 decedent from his personal representative other than as a creditor or
2 purchaser. A trustee is a distributee only to the extent of a distributed
3 asset or increment thereto remaining in his hands. A beneficiary of a
4 trust to whom the trustee has distributed property received from a
5 personal representative is a distributee of the personal representative.

6 "Domiciliary foreign fiduciary" means any fiduciary who has
7 received letters, or has been appointed, or is authorized to act as a
8 fiduciary, in the jurisdiction in which the decedent was domiciled at the
9 time of his death, in which the ward is domiciled or in which is located
10 the principal place of the administration of a trust.

11 "Estate" means all of the property of a decedent, minor or
12 incapacitated [person] individual, trust or other person whose affairs
13 are subject to this title as the property is originally constituted and as
14 it exists from time to time during administration.

15 "Fiduciary" includes executors, general administrators of an
16 intestate estate, administrators with the will annexed, substituted
17 administrators, substituted administrators with the will annexed,
18 guardians, substituted guardians, trustees, substituted trustees and,
19 unless restricted by the subject or context, temporary administrators,
20 administrators pendente lite, administrators ad prosequendum,
21 administrators ad litem and other limited fiduciaries.

22 "Governing instrument" means a deed, will, trust, insurance or
23 annuity policy, account with the designation "pay on death" (POD) or
24 "transfer on death" (TOD), security registered in beneficiary form with
25 the designation "pay on death" (POD) or "transfer on death" (TOD),
26 pension, profit-sharing, retirement or similar benefit plan, instrument
27 creating or exercising a power of appointment or a power of attorney,
28 or a dispositive, appointive, or nominative instrument of any similar
29 type.

30 "Guardian" means a person who has qualified as a guardian of the
31 person or estate of a minor or incapacitated [person] individual
32 pursuant to testamentary or court appointment, but excludes one who
33 is merely a guardian ad litem.

34 "Heirs" means those persons, including, but not limited to, the
35 surviving spouse and the descendants of the decedent, who are entitled
36 under the statutes of intestate succession to the property of a
37 decedent.

38 (cf: P.L.1997, c.379, s.2.)

39

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

41 3B:1-2. "Incapacitated individual" means an individual who is
42 impaired by reason of mental illness or mental deficiency to the extent
43 that he lacks sufficient capacity to govern himself and manage his
44 affairs.

45 The term incapacitated individual is also used to designate an
46 individual who is impaired by reason of physical illness or disability.

1 chronic use of drugs, chronic alcoholism or other cause (except
2 minority) to the extent that he lacks sufficient capacity to govern
3 himself and manage his affairs.

4 The terms incapacity and incapacitated individual refer to the
5 state or condition of an incapacitated individual as hereinbefore
6 defined.

7 "Issue" of [a person includes all of his lineal descendants, natural
8 or adopted, of all generations, with the relationship of parent and child
9 at each generation being determined by the definition of child and
10 parent] an individual means a descendant as defined in N.J.S.3B:1-1.

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

16 "Local administration" means administration by a personal
17 representative appointed in this State.

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

21 ["Incapacitated person" means a person who is impaired by reason
22 of mental illness or mental deficiency to the extent that he lacks
23 sufficient capacity to govern himself and manage his affairs.

24 The term incapacitated person is also used to designate a person
25 who is impaired by reason of physical illness or disability, chronic use
26 of drugs, chronic alcoholism or other cause (except minority) to the
27 extent that he lacks sufficient capacity to govern himself and manage
28 his affairs.

29 The terms incapacity and incapacitated person refer to the state
30 or condition of an incapacitated person as hereinbefore defined.]

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

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

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

39 "Per capita" If a governing instrument requires property to be
40 distributed "per capita," the property is divided to provide equal shares
41 for each of the takers, without regard to their shares or the right of
42 representation.

43 "Payor" means a trustee, insurer, business entity, employer,
44 government, governmental agency or subdivision, or any other person
45 authorized or obligated by law or a governing instrument to make
46 payments.

1 "Person" means an individual or an organization.

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

10 "Personal representative" includes executor, administrator,
11 successor personal representative, special administrator, and persons
12 who perform substantially the same function under the law governing
13 their status. "General personal representative" excludes special
14 administrator.

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

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

30 "Security" includes any note, stock, treasury stock, bond,
31 mortgage, financing statement, debenture, evidence of indebtedness,
32 certificate of interest or participation in an oil, gas or mining title or
33 lease or in payments out of production under the title or lease,
34 collateral, trust certificate, transferable share, voting trust certificate
35 or, in general, any interest or instrument commonly known as a
36 security or as a security interest or any certificate of interest or
37 participation, any temporary or interim certificate, receipt or certificate
38 of deposit for, or any warrant or right to subscribe to or purchase, any
39 of the foregoing.

40 "Stepchild" means a child of the surviving, deceased, or former
41 spouse of the testator.

42 "Successor personal representative" means a personal
43 representative, other than a special administrator, who is appointed to
44 succeed a previously appointed personal representative.

45 "Successors" means those persons, other than creditors, who are
46 entitled to real and personal property of a decedent under his will or

1 the laws governing intestate succession.

2 "Testamentary trustee" means a trustee designated by will or
3 appointed to exercise a trust created by will.

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

5 "Trust" includes any express trust, private or charitable, with
6 additions thereto, wherever and however created. It also includes a
7 trust created by judgment under which the trust is to be administered
8 in the manner of an express trust. "Trust" excludes other
9 constructive trusts, and it excludes resulting trusts, guardianships,
10 personal representatives, trust accounts created under the
11 "Multiple-party Deposit Account Act," P.L.1979, c.491 [(C.17:161-1
12 et seq.)] (C.17:161-1 et seq.), gifts to minors under the "New Jersey
13 Uniform Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.),
14 or the "New Jersey Uniform Transfers to Minors Act," R.S.46:38A-1
15 et. seq. business trusts providing for certificates to be issued to
16 beneficiaries, common trusts, security arrangements, liquidation trusts,
17 and trusts for the primary purpose of paying debts, dividends, interest,
18 salaries, wages, profits, pensions or employee benefits of any kind,
19 and any arrangement under which a person is nominee or escrowee for
20 another.

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

23 "Ward" means [a person] an individual for whom a guardian is
24 appointed or [a person] an individual under the protection of the
25 court.

26 "Will" means the last will and testatment of a testator or testatrix
27 and includes any codicil and any testamentary instrument that merely
28 appoints an executor, revokes or revises another will, nominates a
29 guardian, or expressly excludes or limits the right of a person or class
30 to succeed to property of the decedent passing by intestate succession.
31 (cf: P.L.1997, c.379, s.3)

32

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

34 3B:1-3. Devolution of property upon death.

35 Upon the death of [a person] an individual, his real and personal
36 property devolves to the persons to whom it is devised by his will or
37 to those indicated as substitutes for them in cases involving lapse,
38 renunciation, or other circumstances affecting the devolution of testate
39 estates, or in the absence of testamentary disposition, to his heirs, or
40 to those indicated as substitutes for them in cases involving
41 renunciation or other circumstances affecting devolution of intestate
42 estates, subject to rights of creditors and to administration.

43 (cf: P.L.1981, c.405, s.3B:1-3)

44

45 4. N.J.S.3B:2-5 is amended to read as follows:

46 3B:2-5. Disputes or doubts in proceedings before the surrogate.

1 In the event of any dispute or doubt arising before the surrogate or
2 in the surrogate's court, neither [he] the surrogate nor the court shall
3 take any further action therein, except in accordance with the order of
4 the Superior Court.

5 (cf: P.L.1981, c.405, s.3B:2-5)

6

7 5. N.J.S.3B:2-6 is amended to read as follows:

8 3B:2-6. Oath; affidavit; deposition or proof.

9 Any oath, affidavit, deposition or proof required to be made or
10 taken in any proceeding before a surrogate, [his] the surrogate's
11 court or in the Superior Court, or necessary or proper to be used
12 before the surrogate or the court, may be made and taken before the
13 surrogate or before any [person] individual authorized by law to
14 administer oaths. Qualifications of executors and administrators and
15 acceptances of trusteeships and guardianships may be taken as
16 provided by the rules of the Supreme Court.

17 (cf: P.L.1981, c.405, s.3B:2-6)

18

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

20 N.J.S.3B:2-7. Issuance of [subpenas] subpoenas by surrogate.

21 A surrogate may issue process of [subpenas] subpoenas to any
22 person within the State to appear and give evidence in any matter
23 pending before the surrogate's court.

24 (cf: P.L.1981, c.405, s.3B:2-7)

25

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

27 3B:2-8. Penalty for failure to obey [subpena] subpoena.

28 Any person [subpenaed] subpoenaed as a witness by a surrogate,
29 who does not appear pursuant thereto, or appearing refuses to be
30 sworn or give evidence, without reasonable cause assigned, shall, for
31 every such default or refusal, be subject to a fine of not more than
32 \$50.00, as the surrogate's court issuing the [subpena] subpoena shall
33 by judgment determine proper to impose. The fine, when collected,
34 shall be paid to the county.

35 In default of the payment of a fine so imposed, the surrogate's court
36 by its judgment may commit the witness to the county jail of the
37 county until it is paid or he is sooner discharged.

38 The judgment of the surrogate's court imposing a fine or committing
39 a witness to jail shall be reviewable by the Superior Court in the same
40 manner as other judgments of the court are reviewed.

41 (cf: P.L.1981, c.405, s.3B:2-8)

42

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

44 3B:3-1. [Persons] Individuals competent to make a will and
45 appoint a testamentary guardian.

1 Any [person] individual 18 or more years of age who is of sound
2 mind may make a will and may appoint a testamentary guardian.
3 (cf: P.L.1981, c.405, s.3B:3-1)

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

6 3B:3-2. [Formal execution of will] Execution; Witnessed Wills;
7 Writings Intended as Wills.

8 [Except as provided in N.J.S.3B:3-3, every will shall be in writing,
9 signed by the testator or in his name by some other person in his
10 presence and at his direction, and shall be signed by at least two
11 persons each of whom witnessed either the signing or the testator's
12 acknowledgment of the signature or of the will]

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

15 (1) in writing;

16 (2) signed by the testator or in the testator's name by some other
17 individual in the testator's conscious presence and at the testator's
18 direction; and

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

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

26 c. Intent that the document constitutes the testator's will can be
27 established by extrinsic evidence, including writings intended as wills,
28 portions of the document that are not in the testator's handwriting.

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

30
31 10. N.J.S.3B:3-3 is amended to read as follows:

32 3B:3-3. [Holographic will] Writings intended as wills.

33 [A will which does not comply with N.J.S.3B:3-2 is valid as a
34 holographic will, whether or not witnessed, if the signature and
35 material provisions are in the handwriting of the testator]

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

45 (cf: P.L.1981, c.405, s.3B:3-3)

1 11. N.J.S.3B:3-4 is amended to read as follows:

2 3B:3-4. Any will executed on or after September 1, 1978 may be
3 simultaneously executed, attested, and made self-proved, by
4 acknowledgment thereof by the testator and affidavits of the witnesses,
5 each made before an officer authorized pursuant to [R.S.46:14-6,
6 R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take acknowledgments
7 and proofs of instruments entitled to be recorded under the laws of
8 this State, in substantially the following form:

9 I, , the testator, sign my name to this instrument this day
10 of , [19...,] 20... and being duly sworn, do hereby declare to the
11 undersigned authority that I sign and execute this instrument as my last
12 will and that I sign it willingly (or willingly direct another to sign for
13 me), that I execute it as my free and voluntary act for the purposes
14 therein expressed, and that I am 18 years of age or older, of sound
15 mind, and under no constraint or undue influence.

16
17 Testator

18
19 We,....., the witnesses, sign our names to this instrument, and,
20 being duly sworn, do hereby declare to the undersigned authority that
21 the testator signs and executes this instrument as [his] the testator's
22 last will and that [he] the testator signs it willingly (or willingly
23 directs another to sign for him), and that each of us, in the presence
24 and hearing of the testator, hereby signs this will as witness to the
25 testator's signing, and that to the best of our knowledge the testator
26 is 18 years of age or older, of sound mind, and under no constraint or
27 undue influence.

28
29 Witness

30
31 Witness

32 The State of.....
33 County of.....

34 Subscribed, sworn to and acknowledged before me by ,
35 the testator and subscribed and sworn to before me by and
36 , witnesses, this day of.....

37 (Signed).....

38
39 (Official capacity of officer)

40 (cf: P.L.1991, c.255, s.1)

41
42 12. N.J.S.3B:3-5 is amended to read as follows:

43 3B:3-5. Making will self-proved subsequent to time of execution.

44 A will executed in compliance with N.J.S.3B:3-2 may at any time
45 subsequent to its execution be made self-proved by the
46 acknowledgment thereof by the testator and the affidavits of the

1 witnesses, each made before an officer authorized pursuant to
2 [R.S.46:14-6, R.S.46:14-7 or R.S.46:14-8] R.S.46:14-6.1 to take
3 acknowledgments and proofs of instruments entitled to be recorded
4 under the laws of this State, attached or annexed to the will in
5 substantially the following form:

6

7 The State of

8

9 County of

10

11 We, , and , the testator and the witnesses,
12 respectively, whose names are signed to the attached or foregoing
13 instrument, being duly sworn, do hereby declare to the undersigned
14 authority that the testator signed and executed the instrument as his
15 last will and that [he] the testator had signed willingly (or willingly
16 directed another to sign for [him] the testator), and that he executed
17 it as [his] the testator's free and voluntary act for the purposes therein
18 expressed, and that each of the witnesses, in the presence and hearing
19 of the testator, signed the will as witness and that to the best of his
20 knowledge the testator was at that time 18 years of age or older, of
21 sound mind and under no constraint or undue influence.

22

23 Testator

24

25 Witness

26

27 Witness

28

29 Subscribed, sworn to and acknowledged before me by ,
30 the testator, and subscribed and sworn to before me by
31 and , witnesses, this day of .

32

33 (Signed)

34

35 (Official capacity of officer)

36 (cf: P.L.1981, c.405, s.3B:3-5)

37

38 13. N.J.S.3B:3-7 is amended to read as follows:

39 3B:3-7. Who may witness a will.

40 Any [person] individual generally competent to be a witness may
41 act as a witness to a will and to testify concerning execution thereof.
42 (cf: P.L.1981, c.405, s.3B:3-7)

43

44 14. N.J.S.3B:3-11 is amended to read as follows:

45 3B:3-11. Identifying devise of tangible personal property by
46 separate writing.

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

14 (cf: P.L.1981, c.405, s.3B:3-11)

15

16 15. N.J.S.3B:3-12 is amended to read as follows:

17 3B:3-12. Acts and events of independent significance.

18 A will may dispose of property by reference to acts and events
19 which have significance apart from their effect upon the dispositions
20 made by the will, whether they occur before or after the execution of
21 the will or before or after the testator's death. The execution or
22 revocation of a will of another [person] individual is such an event.

23 (cf: P.L.1981, c.405, s.3B:3-12)

24

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

26 3B:3-13. Revocation by [acts of testator] writing or by act.

27 A will or any part thereof is revoked:

28 [a. By a subsequent will which revokes the former will or part
29 expressly or by inconsistency; or

30 b. By being burned, torn, canceled, obliterated, or destroyed with
31 the intent and for the purpose of revoking by the testator or by another
32 person in his presence and by his direction.]

33 a. By the execution of a subsequent will that revokes the previous
34 will or part expressly or by inconsistency; or

35 b. By the performance of a revocatory act on the will, if the
36 testator performed the act with the intent and for the purpose of
37 revoking the will or part or if another individual performed the act in
38 the testator's conscious presence and by the testator's direction. For
39 purposes of this subsection, "revocatory act on the will" includes
40 burning, tearing canceling, obliterating or destroying the will or any
41 part of it. A burning, tearing or cancelling is a "revocatory act on the
42 will," whether or not the burn, tear, or cancellation touched any of the
43 words on the will.

44 (1) If a subsequent will does not expressly revoke a previous will,
45 the execution of the subsequent will wholly revokes the previous will
46 by inconsistency if the testator intended the subsequent will to replace

1 rather than supplement the previous will.

2 (2) The testator is presumed to have intended a subsequent will to
3 replace rather than supplement a previous will if the subsequent will
4 makes a complete disposition of the testator's estate. If this
5 presumption arises and is not rebutted by clear and convincing
6 evidence, the previous will is revoked; only the subsequent will is
7 operative on the testator's death.

8 (3) The testator is presumed to have intended a subsequent will to
9 supplement rather than replace a previous will if the subsequent will
10 does not make a complete disposition of the testator's estate. If this
11 presumption arises and is not rebutted by clear and convincing
12 evidence, the subsequent will revokes the previous will only to the
13 extent the subsequent will is inconsistent with the previous will; each
14 will is fully operative on the testator's death to the extent they are not
15 inconsistent.

16 (cf: P.L.1981, c.405, s.3B:3-13)

17

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

19 3B:3-14. Revocation of probate and non-probate transfers by
20 divorce or annulment; revival by remarriage to former spouse.

21 [If after having executed a will the testator is divorced or his
22 marriage annulled, the] a. Except as provided by the express terms
23 of a governing instrument, a court order, or a contract relating to the
24 division of the marital estate made between the divorced individuals
25 before or after the marriage, divorce or annulment, a divorce or
26 annulment :

27 (1) revokes any revocable:

28 (a) dispositions or appointment of property made by a divorced
29 individual [the will] to his [the] former spouse [, any] in a governing
30 instrument and any disposition or appointment created by law or in a
31 governing instrument to a relative of the divorced individual's former
32 spouse;

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

36 (c) [any] nomination in a governing instrument of [the] a divorced
37 individual's former spouse or a relative of the divorced individual's
38 former spouse [as executor, trustee, or guardian, unless the will
39 expressly provides otherwise. Property prevented from passing to a
40 former spouse because of revocation by divorce or annulment passes
41 as if the former spouse failed to survive the decedent, and other
42 provisions conferring some power or office on the former spouse are
43 interpreted as if the spouse failed to survive the decedent] to serve in
44 any fiduciary or representative capacity; and

45 (2) severs the interests of the former spouses in property held by
46 them at the time of the divorce or annulment as joint tenants with the

1 right of survivorship or as tenants by the entireties, transforming the
2 interests of the former spouses into tenancies in common. [A judgment
3 from bed and board is a divorce for the purpose of this section.]

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

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

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

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

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

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

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

2 3B:3-15. Revival of revoked will.

3 a. Except as otherwise provided in N.J.S.3B:3-14 or as provided
4 in subsections b., c. and d. of this section, a revoked will or codicil
5 shall not be revived except by reexecution or by a duly executed
6 codicil expressing an intention to revive it.

7 b. If a subsequent will that wholly revoked a previous will is
8 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, the
9 previous will remains revoked unless it is revived. The previous will
10 is revived if there is clear and convincing evidence from the
11 circumstances of the revocation of the subsequent will or from the
12 testator's contemporary or subsequent declarations that the testator
13 intended the previous will to take effect as executed.

14 c. If a subsequent will that partly revoked a previous will is
15 thereafter revoked by a revocatory act described in N.J.S.3B:3-13, a
16 revoked part of the previous will is revived unless there is clear and
17 convincing evidence from the circumstances of the revocation of the
18 subsequent will or from the testator's contemporary or subsequent
19 declarations that the testator did not intend the revoked part to take
20 effect as executed.

21 d. If a subsequent will that revoked a previous will in whole or in
22 part is thereafter revoked by another, later will, the previous will
23 remains revoked in whole or in part, unless it or its revoked part is
24 revived. The previous will or its revoked part is revived to the extent
25 it appears from the terms of the later will that the testator intended the
26 previous will to take effect.

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

28

29 19. N.J.S.3B:3-17 is amended to read as follows:

30 3B:3-17. Probate of will and grant of letters.

31 The surrogates of the several counties or the Superior Court may
32 take depositions to wills [and the surrogates' courts and Superior
33 Court] admit the same to probate, and grant thereon letters
34 testamentary or letters of administration with the will annexed.

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

36

37 20. N.J.S.3B:3-19 is amended to read as follows:

38 3B:3-19. Proof required to probate will.

39 A will executed as provided in N.J.S.3B:3-2 may be admitted to
40 probate [in common form] by the surrogate upon the proof of one of
41 the attesting witnesses or by some other [person] individual having
42 knowledge of the facts relating to the proper execution of the will by
43 the testator and its attestation by one of the witnesses.

44 A will executed and acknowledged in the manner provided in
45 N.J.S.3B:3-4, or N.J.S.3B:3-5 may be admitted to probate [in
46 common form] by the surrogate without further affidavit, deposition

1 or proof.

2 A [holographic] writing intended as a will may be admitted to
3 probate only [in solemn form] in the manner provided by the Rules
4 Governing the Courts of the State of New Jersey.

5 (cf: P.L.1981, c.405, s.3B:3-19)

6

7 21. N.J.S.3B:3-20 is amended to read as follows:

8 N.J.S.3B:3-20. Probate of a will of testator who died in military
9 service or within 2 years of discharge

10 When a resident of this State dies while a member of the armed
11 forces of the United State or within 2 years from the date of his
12 discharge from the armed forces and no witness to his will is available
13 in this State to prove the will, either because of death, incapacity,
14 nonresidence, absence, or for any other reason, the will shall be
15 admitted to probate upon proof of the signature of the testator by any
16 two [persons] individuals, provided the will was validly executed as
17 provided in N.J.S.3B:3-9, and the will would have been admitted to
18 probate if the witnesses were dead.

19 (cf: P.L.1981, c.405, s.3B:3-20)

20

21 22. N.J.S.3B:3-24 is amended to read as follows:

22 3B:3-24. Where a will of a resident is to be probated; effect of
23 failure to probate.

24 The will of any [person] individual resident within any county of
25 this State at his death may be admitted to probate in the surrogate's
26 court of the county or in the Superior Court. If the will of any
27 [person] individual resident within the State at his death is probated
28 [without] outside the State, it shall be without effect unless or until
29 probate is granted within the State.

30 (cf: P.L.1981, c.405, s.3B:3-24)

31

32 23. N.J.S.3B:3-26 is amended to read as follows:

33 3B:3-26. Probate of will of nonresident probated in another state
34 or country.

35 When the will of any [person] individual not resident in this State
36 at his death shall have been admitted to probate in any state of the
37 United States or other jurisdiction or country, the surrogate's court of
38 any county may admit it to probate for any purpose and issue letters
39 thereon, provided the will is valid under the laws of this State.

40 (cf: P.L.1981, c.405, s.3B:3-26)

41

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

43 3B:3-28. Probate of will of nonresident decedent where property
44 situated in New Jersey.

45 Where the will of any [person] individual not resident in this State
46 at his death has not been admitted to probate in the state, jurisdiction

1 or country in which he then resided and no proceeding is there pending
2 for the probate of the will, and he died owning real estate situate in
3 any county of this State or personal property, or evidence of the
4 ownership thereof, situate therein at the time of probate, the Superior
5 Court or the surrogate's court may admit the will to probate and grant
6 letters thereon.

7 (cf: P.L.1997, c.20, s.1)

8

9 25. N.J.S.3B:3-28.1 is amended to read as follows:

10 3B:3-28.1. Probate of will of nonresident where laws of decedent's
11 domicile are discriminatory.

12 Where the will of any [person] individual who is not resident in this
13 State at the time of his death has not been admitted to probate in the
14 state in which he resided and no proceeding is there pending for the
15 probate of the will, the Superior Court may admit the will to probate
16 and grant letters thereon if the laws of that state discriminate against
17 residents of New Jersey either as a beneficiary or as a fiduciary.

18 (cf: P.L.1981, c.405, s.3B:3-28.1)

19

20 26. N.J.S.3B:3-31 is amended to read as follows:

21 3B:3-31. Judgment for probate; conclusive effect on title to real
22 property after 7 years.

23 Where judgment has been or shall be entered by any surrogate's
24 court in this State or Superior Court of the State, admitting to probate
25 the will of any [person] individual whether or not a resident of the
26 State at his death and 7 years have elapsed after the judgment, the
27 judgment unless set aside, shall, as to all matters adjudicated thereby,
28 be conclusive upon the title to real estate.

29 (cf: P.L.1981, c.405, s.3B:3-31)

30

31 27. N.J.S.3B:3-32 is amended to read as follows:

32 3B:3-32. [Requirement that devisee survive testator by 120 hours;
33 exceptions.

34 A devisee who does not survive the testator by 120 hours is treated
35 as if he predeceased the testator, unless the will of decedent contains
36 some language dealing explicitly with simultaneous deaths or deaths
37 in a common disaster, or requiring that the devisee survive the
38 testator or survive the testator for a stated period in order to take
39 under the will. To the extent this section is inconsistent with the
40 "Uniform Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the
41 provision of this section shall apply.]

42 Requirement of survival by 120 hours; exceptions; survivorship with
43 respect to future interests.

44 a. Except as provided in subsections b. and c., for purposes of
45 construing a will, trust agreement, or other governing instrument, an
46 individual who is not established by clear and convincing evidence to

1 have survived an event, including the death of another individual, by
2 120 hours is deemed to have predeceased the event.

3 b. If it is not established by clear and convincing evidence that one
4 of two co-owners with right of survivorship survived the other co-
5 owner by 120 hours, one-half of the property passes as if one had
6 survived by 120 hours and one-half as if the other had survived by 120
7 hours.

8 c. If there are more than two co-owners and it is not established
9 by clear and convincing evidence that at least one of them survived the
10 others by 120 hours, the property passes in the proportion that one
11 bears to the whole number of co-owners.

12 d. The 120 hour survival requirement of subsections a., b. and c.
13 shall not apply if: (1) the will, trust agreement, or other governing
14 instrument, contains some language applicable to the event dealing
15 explicitly with simultaneous deaths or deaths in a common disaster, or
16 requiring survival for a stated time period; (2) application would cause
17 a non-vested property interest or power of appointment to be invalid
18 under a rule against perpetuities concerning an interest created prior
19 to the enactment of P.L. 1999, c. 159 (effective on July 8, 1999); or
20 (3) it is established by clear and convincing evidence that application
21 to multiple governing instruments would result in an unintended failure
22 or duplication of a disposition.

23 e. For purposes of this section, "co-owners with right of
24 survivorship" includes joint tenants, tenants by the entireties, and other
25 co-owners of property or accounts held under circumstances that
26 entitle one or more to the whole of the property or account on the
27 death of the other or others.

28 To the extent this section is inconsistent with the "Uniform
29 Simultaneous Death Law" (N.J.S.3B:6-1 et seq.), the provisions of
30 this section shall apply.

31 (cf: P.L.1981, c.405, s.3B:3-32)

32

33 28. (New Section) Testator's intention; settlor's intention; rules of
34 construction applicable to wills, trusts and other governing
35 instruments.

36 a. The intention of a testator as expressed in his will controls the
37 legal effect of his dispositions, and the rules of construction expressed
38 in N.J.S.3B:3-34 through N.J.S.3B:3-48 shall apply unless the
39 probable intention of the testator, as indicated by the will and relevant
40 circumstances, is contrary.

41 b. The intention of a settlor as expressed in a trust, or of an
42 individual as expressed in a governing instrument, controls the legal
43 effect of the dispositions therein and the rules of construction
44 expressed in N.J.S.3B:34 through N.J.S.3B:3-48 shall apply unless the
45 probable intent of such settlor or of such individual, as indicated by the
46 trust or by such governing instrument and relevant circumstances, is

1 contrary. For purposes of this Title, when construing each of these
2 rules of construction the word "testator" shall include but not be
3 limited to a settlor or a creator of any other governing instrument; the
4 word "will" shall include a trust or other governing instrument; the
5 word "devise" shall include any disposition in a trust or other
6 governing instrument; and the word "devisee" shall include a
7 beneficiary of a trust or other governing instrument.

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

10 3B:3-33. Choice of law as to meaning and effect of wills; testator's
11 intention; rules of construction.

12 The meaning and legal effect of a disposition in a will, trust or other
13 governing instrument shall be determined by the local law of a
14 particular state selected in the will, trust or other governing
15 instrument, [by the testator in his instrument] unless the application
16 of that law is contrary to the provisions relating to the elective share
17 described in N.J.S.3B:8-1 et seq. or any other public policy of this
18 State otherwise applicable to the disposition. [The intention of a
19 testator as expressed in his will controls the legal effect of his
20 dispositions, and the rules of construction expressed in N.J.S.3B:3-33
21 through N.J.S.3B:3-48 apply, unless the probable intention of the
22 testator, as indicated by the will and relevant circumstances, is
23 contrary.]

24 (cf: P.L.1981, c.405, s.3B:3-33)

25
26 30. N.J.S.3B:3-34 is amended to read as follows:

27 3B:3-34. Will construed to pass all property of testator including
28 after-acquired property.

29 [A will] Unless a will expressly provides otherwise, it is construed
30 to pass all property [which] the testator owns at [his] death including
31 property acquired after the execution of the will, and all property
32 acquired by the estate after the testator's death.

33 (cf: P.L.1981, c.405, s.3B:3-34)

34
35 31. N.J.S.3B:3-35 is amended to read as follows:

36 3B:3-35. Anti-lapse; deceased devisee; class gifts.

37 If a devisee who is a grandparent, stepchild or a lineal descendant
38 of a grandparent of the testator is dead at the time of the execution of
39 the will, [or] fails to survive the testator, or is treated as if he
40 predeceased the testator, [the] any [issue] descendants of the
41 deceased devisee who [survive] survives the testator by 120 hours
42 [take] take by representation in place of the deceased devisee [and
43 if they are all of the same degree of kinship to the devisee they take
44 equally, but if of unequal degree then those of more remote degree
45 take by representation]. One who would have been a devisee under

1 a class gift if he had survived the testator is treated as a devisee for
2 purposes of this section whether his death occurred before or after the
3 execution of the will. For purposes of this section, a "stepchild" means
4 a child of the surviving, deceased or former spouse of the testator.
5 (cf: P.L.1981, c.405, s.3B:3-35)

6

7 32. N.J.S.3B:3-36 is amended to read as follows:

8 3B:3-36. Failure of testamentary provision; residuary devise to two
9 or more residuary devisees; death of one or more before testator.

10 Except as provided in N.J.S.3B:3-35 [if a devise other than a
11 residuary devise fails for any reason, it becomes a part of the residue]:

12 a. a devise, other than a residuary devise, that fails for any reason
13 becomes a part of the residue.

14 b. if the residue is devised to two or more persons, unless a
15 contrary intention shall appear by the will, the share of a residuary
16 devise that fails for any reason passes to the other residuary devisee,
17 or to other residuary devisees in proportion to the interest of each in
18 the remaining part of the residue.

19 (cf: P.L.1981, c.405, s.3B:3-36)

20

21 33. N.J.S.3B:3-38 is amended to read as follows:

22 3B:3-38. Construction of words "die without issue" or "die
23 without descendants".

24 In a devise of real or personal property the words "die without
25 issue" or "die without descendants" or "die without lawful issue" or
26 "die without lawful descendants" or "have no issue" or "have no
27 descendants" or other words which may import a want or failure of
28 issue or descendants of [a person] an individual in his lifetime, or at
29 his death, or an indefinite failure of his issue or descendants, shall be
30 construed to mean a failure of issue or descendants at the death of the
31 [person] individual, unless a contrary intention shall otherwise appear
32 by the will.

33 (cf: P.L.1981, c.405, s.3B:3-38)

34

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

36 3B:3-41. Issue and descendants to take [per stirpes] by
37 representation.

38 Where under any will or trust provision is made for the benefit of
39 issue and descendants and no contrary intention is expressed, the issue
40 or descendants shall take [per stirpes] by representation.

41 (cf: P.L.1981, c.405, s.3B:3-41)

42

43 35. N.J.S.3B:3-42 is amended to read as follows:

44 3B:3-42. [Specific devise of securities; change; accessions;
45 nonademption] Increase in securities, accessions.

1 [a. If the testator intended a specific devise of certain securities
2 rather than the equivalent value thereof, the specific devisee is entitled
3 only to:

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

6 (2) Any additional or other securities of the same entity owned by
7 the testator by reason of action initiated by the entity and attributable
8 to the securities devised excluding any acquired by exercise of
9 purchase options;

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

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

16 b. Distributions prior to death with respect to a specifically devised
17 security not provided for in subsection a. are not part of the specific
18 devise.]

19 a. If a testator executes a will that devises securities and the
20 testator then owned securities that meet the description in the will, the
21 devise includes additional securities owned by the testator at death to
22 the extent the additional securities were acquired by the testator after
23 the will was executed as a result of the testator's ownership of the
24 described securities and are securities of any of the following types:

25 (1) securities of the same organization acquired by reason of action
26 initiated by the organization or any successor, related, or acquiring
27 organization, excluding any acquired by exercise of purchase options;

28 (2) securities of another organization acquired as a result of a
29 merger, consolidation, reorganization, or other distribution by the
30 organization or any successor, related, or acquiring organization; or

31 (3) securities of the same organization acquired as a result of a plan
32 of reinvestment.

33 b. Distributions in cash declared and payable as of a record date
34 before death with respect to a described security, whether paid before
35 or after death, are not part of the devise.

36 (cf: P.L.1981, c.405, s.3B:3-42)

37

38 36. N.J.S.3B:3-43 is amended to read as follows:

39 3B:3-43. [Specific] Nonademption of specific devise; sale by or
40 payment of condemnation award or insurance proceeds to guardian of
41 testator or agent.

42 If specifically devised property is sold or mortgaged by a guardian
43 for a testator, or by an agent acting within the authority of a durable
44 power of attorney for an incapacitated individual, or if a
45 condemnation award [or], insurance proceeds or recovery for injury
46 to the property are paid to a guardian for a testator or such agent as

1 a result of condemnation, fire or casualty, the specific devisee has the
2 right to a general pecuniary devise equal to the net sale price, the
3 amount of the unpaid loan, the condemnation award, [or] the
4 insurance proceeds or the recovery. This section does not apply if
5 subsequent to the sale, mortgage, condemnation [or], casualty, or
6 recovery the guardianship is terminated or the durable power of
7 attorney is revoked by the testator and the testator survives by 1 year
8 the judgment terminating the guardianship or such revocation. The
9 right of the specific devisee under this section is reduced by any right
10 he has under N.J.S.3B:3-44.

11 (cf: P.L.1981, c.405, s.3B:3-43)

12

13 37. N.J.S.3B:3-44 is amended to read as follows:

14 3B:3-44. Specific devise; right of devisee after sale, condemnation,
15 casualty loss or foreclosure.

16 A specific devisee has the right to the remaining specifically devised
17 property in the testator's estate at death and:

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

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

23 c. Any proceeds unpaid at death on fire or casualty insurance on ,
24 or other recovery for injury to, the property; and

25 d. Property owned by testator at his death as a result of
26 foreclosure, or obtained in lieu of foreclosure, of the security for a
27 specifically devised obligation.

28 (cf: P.L.1981, c.405, s.3B:3-44)

29

30 38. N.J.S.3B:3-46 is amended to read as follows:

31 3B:3-46. Ademption by satisfaction.

32 a. Property which a testator gave in his lifetime to a person is
33 treated as a satisfaction of a devise to that person in whole or in part,
34 only if the will provides for deduction of the lifetime gift, or the
35 testator declares in a contemporaneous writing that the value of the
36 gift is to be deducted from the value of the devise or is in satisfaction
37 of the devise, or the devisee acknowledges in writing that the gift is in
38 satisfaction of the devise or that its value is to be deducted from the
39 value of the devise.

40 b. For purpose of partial satisfaction, property given during lifetime
41 is valued as of the time the devisee came into possession or enjoyment
42 of the property or as of the time of death of the testator, whichever
43 occurs first.

44 c. If the devisee fails to survive the testator, in the case of a
45 substituted devise or a devise saved from lapse, the gift is treated as
46 a full or partial satisfaction of the devise, as appropriate, unless the

1 testator's contemporaneous writing provides otherwise.

2 (cf: P.L.1981, c.405, s.3B:3-46)

3

4 39. N.J.S.3B:3-48 is amended to read as follows:

5 3B:3-48. Construction of generic terms included in class gift
6 terminology.

7 [Halfbloods, adopted persons and persons born out of wedlock are
8 included in class gift terminology and terms of relationship in
9 accordance with rules for determining relationships for purposes of
10 intestate succession.]

11 a. Adopted individuals and individuals born out of wedlock, and
12 their respective descendants if appropriate to the class, are included in
13 class gifts and other terms of relationship in accordance with the rules
14 for intestate succession. Terms of relationship that do not differentiate
15 relationships by the half blood from those by the whole blood, such
16 as "brothers," "sisters," "nieces," or "nephews," are construed to
17 include both types of relationships.

18 b. In addition to the requirements of subsection a., in construing a
19 donative disposition by a transferor who is not the natural parent, an
20 individual born to the natural parent is not considered the child of that
21 parent unless the individual lived while a minor as a regular member
22 of the household of that natural parent or of that parent's parent,
23 brother, sister, spouse or surviving spouse.

24 c. In addition to the requirements of subsection a., in construing a
25 dispositive provision by a transferor who is not the adoptive parent, an
26 adopted individual is not considered the child of the adoptive parent
27 unless the adopted individual lived while a minor, either before or after
28 the adoption, as a regular member of the household of the adoptive
29 parent.

30 (cf: P.L.1981, c.405, s.3B:3-48)

31

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

33 3B:4-2. [Devise to trustee of trust created other than by testator's
34 will] Devise to trustee of trust created other than by testator's will.

35 A [devise] will may [be made by a will] validly devise property to
36 the trustee [or trustees] of a trust established or a trust which will be
37 established: (1) during the testator's lifetime by [a] the testator, or by
38 [a] the testator and some other person [or persons], or by some other
39 person [or persons] including a funded or unfunded life insurance
40 trust, although the settlor has reserved any or all rights of ownership
41 of the insurance contracts, or (2) at the testator's death by the
42 testator's devise to the trustee, if the trust is identified in the testator's
43 will, and its terms are set forth in a written instrument, other than a
44 will, executed before [or], concurrently with, or after the execution
45 of the testator's will [, or in the valid last will and testament of a

1 person who] or in another individual's will, executed before,
2 concurrently with or after the execution of the testator's will, if that
3 other individual has predeceased the testator, regardless of the
4 existence, size, or character of the corpus of the trust. [A devise so
5 made shall be valid and enforceable to the same extent as if the trust
6 had been created by the testator by his will, and as if the terms of the
7 trust, as contained in the will or other instrument creating or
8 evidencing it, had been set out in full in the will of the testator. The
9 existence, size or character of the trust property shall not affect the
10 validity of the devise, nor shall any devise be invalid because the trust
11 is a funded or unfunded life insurance trust, although the creator of the
12 trust has reserved any or all rights of ownership of the insurance
13 contracts.]

14 (cf: P.L.1981, c.405, s.3B:4-2)

15

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

17 3B:4-3. [Devise not invalidated because trust is amendable or
18 revocable] Devise not invalidated because trust is amendable or
19 revocable.

20 A devise [made as provided in N.J.S.3B:4-2] made as provided in
21 N.J.S.3B:4-2 shall not be invalid because the trust is amendable or
22 revocable, [or both,] or because the trust was amended after the
23 execution of the will or [after the death of the testator] the testator's
24 death.

25 (cf: P.L.1981, c.405, s.3B:4-3)

26

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

28 3B:4-4. Administration of trust.

29 Unless the testator's will provides otherwise, [the] property devised
30 to a trust described [as provided] in N.J.S.3B:4-2 shall not be
31 deemed to be held under a testamentary trust of the testator, but shall
32 become a part of the trust to which it is [given] devised and shall be
33 administered and disposed of in accordance with the provisions of the
34 [will or other] governing instrument setting forth the terms of the
35 trust, including any amendments thereto made before or after the
36 [death of the testator] testator's death[, whether made before or after
37 the execution of the testator's will, and, if the testator's will so
38 provides, including any amendments of the trust made after the death
39 of the testator].

40 (cf: P.L.1981, c.405, s.3B:4-4)

41

42 43. N.J.S.3B:4-5 is amended to read as follows:

43 3B:4-5. Lapse of devise.

44 [A] Unless the testator's will provides otherwise, a revocation or
45 termination of the trust before the [death of the testator shall cause]

1 testator's death causes the devise to lapse.

2 (cf: P.L.1981, c.405, s.3B:4-5)

3

4 44. N.J.S.3B:5-1 is amended to read as follows:

5 3B:5-1. Requirement that heir survive decedent by 120 hours.

6 [Any person who fails to survive the decedent by 120 hours is
7 deemed to have predeceased the decedent for] For the purposes of
8 intestate succession[, and the decedent's heirs are determined
9 accordingly. If the time of death of the decedent or of the person who
10 would otherwise be an heir, or the times of death of both, cannot be
11 determined, and it cannot be established that the person who would
12 otherwise be an heir has] an individual who is not established by clear
13 and convincing evidence to have survived the decedent by 120
14 hours[,it] is deemed [that the person failed to survive for the
15 required period] to have predeceased the decedent. This section is not
16 to be applied where its application would result in a taking of intestate
17 estate by the State under [N.J.S.3B:5-6] N.J.S.3B:5-5.

18 (cf: P.L.1981, c.405, s.3B:5-1)

19

20 45. N.J.S.3B:5-2 is amended to read as follows:

21 3B:5-2. Intestate estate.

22 a. Any part of the decedent's estate [of a decedent] not effectively
23 disposed of by his will passes by intestate succession to [his] the
24 decedent's heirs as prescribed in N.J.S.3B:5-3 through N.J.S.3B:5-14,
25 except as modified by the decedent's will.

26 b. A decedent by will may expressly exclude or limit the right of an
27 individual or class to succeed to property of the decedent passing by
28 intestate succession. If that individual or member of that class
29 survives the decedent, the share of the decedent's intestate estate to
30 which that individual or class would have succeeded passes as if that
31 individual or each member of that class had disclaimed his intestate
32 share.

33 (cf: P.L.1981, c.405, s.3B:5-2)

34

35 46. N.J.S.3B:5-3 is amended to read as follows:

36 3B:5-3. Intestate share of decedent's surviving spouse. The
37 intestate share of the surviving spouse is:

38 a. [If there is no surviving issue or parent of the decedent, the]
39 The entire intestate estate if:

40 (1) No descendant or parent of the decedent survives the
41 decedent;or

42 (2) All of the decedent's surviving descendants are also descendants
43 of the surviving spouse and there is no other descendant of the
44 surviving spouse who survives the decedent;

45 b. [If there is no surviving issue but the decedent is survived by a

1 parent or parents, the] The first 25% of the intestate estate, but not
2 less than \$50,000.00 nor more than \$200,000.00, plus [one-half of
3 the] three-fourths of any balance of the intestate estate, if no
4 descendant of the decedent survives the decedent, but a parent of the
5 decedent survives the decedent;

6 c. [If there are surviving issue all of whom are issue of the
7 surviving spouse also, the] The first 25% of the intestate estate, but
8 not less than \$50,000.00 nor more than \$200,000.00, plus one-half of
9 the balance of the intestate estate[;]:

10 (1) If all of the decedent's surviving descendants are also
11 descendants of the surviving spouse and the surviving spouse has one
12 or more surviving descendants who are not descendants of the
13 decedent; or

14 (2) If one or more of the decedent's surviving descendants is not a
15 descendant of the surviving spouse.

16 [d. If there are surviving issue one or more of whom are not issue
17 of the surviving spouse, one-half of the intestate estate.]

18 (cf: P.L.1981, c.405, s.3B:5-3)

19

20 47. N.J.S.3B:5-4 is amended to read as follows:

21 3B:5-4. Intestate shares of heirs other than surviving spouse.

22 [The] Any part of the intestate estate not passing to the decedent's
23 surviving spouse under N.J.S.3B:5-3, or the entire intestate estate if
24 there is no surviving spouse, passes [as follows] in the following
25 order to the individuals designated below who survive the decedent:

26 a. To the [issue of the decedent; if they are all of the same degree
27 of kinship to the decedent they take equally, but if of unequal degree,
28 then those of more remote degree take by representation] decedent's
29 descendants by representation;

30 b. If there is no surviving [issue] descendants, to [his parent or]
31 the descendant's parents equally if both survive, or to the surviving
32 parent;

33 c. If there is no surviving [issue] descendants or parent, to the
34 [issue] descendants of the decedent's parents or either of them by
35 representation;

36 d. If there is no surviving [issue] descendant, parent or [issue]
37 descendant of a parent, but the decedent is survived by one or more
38 grandparents[;

39 (1) Half of the estate passes to the paternal grandparents equally if
40 both survive, or to the surviving paternal grandparent; or if both are
41 deceased and the decedent is survived by maternal grandparents or
42 grandparent, then to the issue of the paternal grandparents, the issue
43 taking equally if they are all of the same degree of kinship to the
44 decedent, but if of unequal degree those of more remote degree take
45 by representation;

1 (2) The other half passes to the maternal grandparents equally if
2 both survive, or to the surviving maternal grandparent; or if both are
3 deceased and the decedent is survived by paternal grandparents or
4 grandparent, then to the issue of the maternal grandparents, the issue
5 taking equally if they are all of the same degree of kinship to the
6 decedent, but if of unequal degree, those more remote take by
7 representation;

8 (3) If the decedent is survived by a grandparent or grandparents
9 only on the paternal side or only on the maternal side and by no issue
10 of the grandparents on the other side, the entire estate passes to the
11 surviving grandparent or grandparents equally;], half of the estate
12 passes to the decedent's paternal grandparents equally if both survive,
13 or to the surviving paternal grandparent, or to the descendants of the
14 decedent's paternal grandparents or either of them if both are
15 deceased, the descendants taking by representation; and the other half
16 passes to the decedent's maternal relatives in the same manner; but if
17 there is no surviving grandparent, or descendant of a grandparent on
18 either the paternal or the maternal side, the entire estate passes to the
19 decedent's relatives on the other side in the same manner as the half.

20 e. If there is no surviving [issue] descendant, parent, [issue]
21 descendant of a parent [no surviving grandparent], or grandparent,
22 but the decedent is survived by [the issue of] one or more descendants
23 of grandparents, the [issue taking] descendants take equally if they
24 are all of the same degree of kinship to the decedent, but if of unequal
25 degree those of more remote degree take by representation.

26 f. If there are no surviving descendants of grandparents, then the
27 decedent's step-children or their descendants by representation.

28 (cf: P.L.1981, c.405, s.3B:5-4)

29

30 48. Section 1 of P.L. 2001, c. 109 (C.3B5-5.1) is amended to read
31 as follows:

32 1. If it appears to a fiduciary administering an intestate estate that
33 there may be [persons] individuals whose names or addresses are
34 unknown who may be entitled to participate in the distribution of the
35 estate, the fiduciary shall make a diligent inquiry, under the
36 circumstances, to identify and locate the [persons] individuals. The
37 actions taken by a fiduciary shall be those that have some reasonable
38 likelihood of finding the [persons] individuals and are reasonable in
39 cost compared with the amount of the distribution involved.

40 (cf: P.L.2001, c.109, s.1)

41

42 49. N.J.S.3B:5-6 is amended to read as follows:

43 3B:5-6. Determining representation.

44 [When representation is required to effect disposition of an estate,
45 the estate is divided into as many shares as there are surviving heirs in

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

6 a. As used in this section:

7 (1) "Deceased descendant," "deceased parent," or "deceased
8 grandparent" means a descendant, parent or grandparent who either
9 predeceased the decedent or is deemed to have predeceased the
10 decedent under N.J.S.3B:5-1.

11 (2) "Surviving descendant" means a descendant who neither
12 predeceased the decedent nor is deemed to have predeceased the
13 decedent under N.J.S.3B:5-1.

14 b. If, under N.J.S.3B:5-4, a decedent's intestate estate or part
15 thereof passes "by representation" to the decedent's descendants, the
16 estate or part thereof is divided into as many equal shares as there are:
17 (1) surviving descendants in the generation nearest to the decedent
18 which contains one or more surviving descendants; and (2) deceased
19 descendants in the same generation who left surviving descendants, if
20 any. Each surviving descendant in the nearest generation is allocated
21 one share. The remaining shares, if any, are combined and then
22 divided in the same manner among the surviving descendants of the
23 deceased descendants as if the surviving descendants who were
24 allocated a share and their surviving descendants had predeceased the
25 decedent.

26 c. If, under sections c. or d. of N.J.S.3B:5-4, a decedent's intestate
27 estate or a part thereof passes "by representation" to the descendants
28 of the decedent's deceased parents or either of them or to the
29 descendants of the decedent's deceased paternal or maternal
30 grandparents or either of them, the estate or part thereof is divided
31 into as many equal shares as there are: (1) surviving descendants in
32 the generation nearest the deceased parents or either of them, or the
33 deceased grandparents or either of them, that contains one or more
34 surviving descendants; and (2) deceased descendants in the same
35 generation who left surviving descendants, if any. Each surviving
36 descendant in the nearest generation is allocated one share. The
37 remaining share, if any, are combined and then divided in the same
38 manner among the surviving descendants of the deceased descendants
39 as if the surviving descendants who were allocated a share, and their
40 surviving descendants had predeceased the decedent.

41 (cf: P.L.1981, c.405, s.3B:5-6)

42

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

44 3B:5-8. After born heirs.

45 [Relatives of the decedent conceived before his death but born
46 thereafter inherit as if they had been born in the lifetime of the

1 decedent.] An individual in gestation at a particular time is treated as
2 living at that time if the person lives 120 hours or more after birth.
3 (cf: P.L.1981, c.405, s.3B:5-8)

4
5 51. N.J.S.3B:5-9 is amended to read as follows:

6 3B:5-9. Adopted child.

7 If, for the purposes of intestate succession, a relationship of parent
8 and child must be established to determine succession by, through or
9 from [a person] an individual, the relationships and rights of a minor
10 adopted child shall be those as provided in section 14 of P.L.1977,
11 c.367 (C. 9:3-50), and the relationships and rights of an adopted adult
12 shall be as provided in N.J.S. 2A:22-3.
13 (cf: P.L.1981, c. 405, s. 3B:5-9)

14
15 52. N.J.S.3B:5-10 is amended to read as follows:

16 3B:5-10. Establishment of Parent-Child Relationship.

17 If, for the purposes of intestate succession, a relationship of parent
18 and child must be established to determine succession by, through, or
19 from [a person] an individual, in cases not covered by N.J.S.3B:5-9,
20 [a person] an individual is the child of the [person's] individual's
21 parents regardless of the marital state of the [person's] individual's
22 parents, and the parent and child relationship may be established as
23 provided by the "New Jersey Parentage Act," P.L.1983, c.17
24 (C.9:17-38 et seq.). The parent and child relationship may be
25 established for purposes of this section regardless of the time
26 limitations set forth in subsection b. of section 8 of P.L.1983, c.17
27 (C.9:17-45).

28 (cf: P.L. 1997, c.376, s.1)

29
30 53. N.J.S.3B:5-11 is amended to read as follows:

31 3B:5-11. Debt [owed by heir] to decedent.

32 A debt owed to[the] a decedent [by an heir] is not charged against
33 the intestate share of any [person] individual except [that heir] the
34 debtor. If the debtor fails to survive the decedent, the debt is not
35 taken into account in computing the intestate share of the debtor's
36 [issue] descendants.

37 (cf: P.L.1981, c.405, s.3B:5-11)

38
39 54. N.J.S.3B:5-12 is amended to read as follows:

40 3B:5-12. Aliens not disqualified; individuals related to descendant
41 through two lines.

42 [A person is not disqualified to take as an heir because he or a
43 person through whom he claims is or has been an alien] a. An
44 individual is not disqualified to take as an heir because he or an
45 individual through whom he claims is or has been an alien.

1 b. An individual who is related to the decedent through two lines
2 of relationship is entitled to only a single share based on the
3 relationship that would entitle the individual to the larger share.

4 (cf: P.L.1981, c.405, s.3B:5-12)

5
6 55. N.J.S.3B:5-13 is amended to read as follows:

7 3B:5-13. **[Advancement to heir]** Advancements.

8 **[Property given by a decedent during his lifetime to a person**
9 **entitled under this article to the property as an heir of the decedent**
10 **shall be treated as an advancement against that person's share of the**
11 **estate only if so declared in a contemporaneous writing by the**
12 **decedent or acknowledged in writing as such by the recipient. The**
13 **property advanced shall be valued as of the time the recipient came**
14 **into possession or enjoyment of the property or as of the time of the**
15 **death of the decedent, whichever occurs first. If the recipient fails to**
16 **survive the decedent the value of the property shall not be taken into**
17 **account in computing the intestate share to be received by his issue**
18 **unless the declaration or acknowledgment provides otherwise.]**

19 a. If an individual dies intestate as to all or a portion of his estate,
20 property the decedent gave during the decedent's lifetime to an
21 individual who, at the decedent's death, is an heir is treated as an
22 advancement against the heir's intestate share only if: (1) the decedent
23 declared in a contemporaneous writing or the heir acknowledged in
24 writing that the gift is an advancement; or (2) the decedent's
25 contemporaneous writing or the heir's written acknowledgment
26 otherwise indicates that the gift is to be taken into account in
27 computing the division and distribution of the decedent's intestate
28 estate.

29 b. For purposes of subsection a., property advanced is valued as of
30 the time the heir came into possession or enjoyment of the property or
31 as of the time of the decedent's death, whichever occurs first.

32 c. If the recipient of the property fails to survive the decedent, the
33 property is not taken into account in computing the division and
34 distribution of the decedent's intestate estate, unless the decedent's
35 contemporaneous writing or the heirs' written acknowledgment
36 provides otherwise.

37 (cf: P.L.1981, c.405, s.3B:5-13)

38
39 56. N.J.S.3B:5-15 is amended to read as follows:

40 3B:5-15. **[Inheritance by]** Entitlement of spouse **[not provided for**
41 **in];** Premarital will.

42 a. If a **[testator fails to provide by will for his]** testator's surviving
43 spouse **[who]** married the testator after the **[execution of the]**
44 testator executed his will, the **[omitted spouse shall receive the same**
45 **share of the estate he would have received if the decedent left no will]**

1 surviving spouse is entitled to receive, as an intestate share, no less
2 than the value of the share of the estate he would have received if the
3 testator had died intestate, unless:

4 (1) it appears from the will or other evidence that [the omission
5 was intentional or] the will was made in contemplation of the
6 testator's marriage to the surviving spouse;

7 (2) the will expresses the intention that it is to be effective
8 notwithstanding any subsequent marriage; or

9 (3) the testator provided for the spouse by transfer outside the will
10 and the intent that the transfer be in lieu of a testamentary provision
11 is shown by the testator's statements [of the testator] or is reasonably
12 inferred from the amount of the transfer or other evidence.

13 b. [The] In satisfying the share [of the spouse shall be taken from
14 devisees under the will] provided by this section, devises made by the
15 will to the testator's surviving spouse, if any, are applied first, and
16 other devises shall abate ratably and in proportion to their respective
17 interests therein.

18 c. Notwithstanding any other provision of law to the contrary, this
19 section shall apply only to wills executed on or after September 1,
20 1978.

21 (cf: P.L.1981, c.405, s.3B:5-15)

22

23 57. N.J.S.3B:5-16 is amended to read as follows:

24 3B:5-16. [Inheritance by] Omitted children [not provided for in
25 will].

26 a. [If] Except as provided in subsection b., if a testator fails to
27 provide in his will for any of his children born or adopted after the
28 execution of his will, the omitted after-born or after-adopted child
29 receives a share in the estate [equal in value to that which he would
30 have received if the testator had died intestate unless] as follows:

31 (1) If the testator had no child living when he executed the will, an
32 omitted after-born or after-adopted child receives a share in the estate
33 equal in value to that which the child would have received had the
34 testator died intestate, unless the will devised all or substantially all of
35 the estate to the other parent of the omitted child or to a trust
36 primarily for the benefit of that other parent and that other parent
37 survives the testator and is entitled to take under the will.

38 (2) If the testator had one or more children living when he executed
39 the will, and the will devised property or an interest in property to one
40 or more of the then-living children, an omitted after-born or after-
41 adopted child is entitled to share in the testator's estate as follows:

42 (a) the portion of the testator's estate in which the omitted after-
43 born or after-adopted child is entitled to share is limited to devises
44 made to the testator's then-living children under the will.

45 (b) the omitted after-born or after-adopted child is entitled to

1 receive the share of the testator's estate, as limited in subparagraph (a),
2 that the child would have received had the testator included all omitted
3 after-born and after-adopted children with the children to whom
4 devises were made under the will and had given an equal share of the
5 estate to each child.

6 (c) to the extent feasible, the interest granted an omitted after-born
7 or after-adopted child under this section must be of the same
8 character, whether equitable or legal, present or future, as that devised
9 to the testator's then-living children under the will.

10 (d) in satisfying a share provided by this paragraph, devises to the
11 testator's children who were living when the will was executed abate
12 ratably. In abating the devises of the then-living children, the court
13 shall preserve to the maximum extent possible the character of the
14 testamentary plan adopted by the testator.

15 b. Neither subsection a. (1) nor subsection a. (2) applies if:

16 (1) [It] it appears from the will that the omission was intentional;

17 [(2) When the will was executed the testator had one or more
18 children and devised substantially all his estate to the other parent of
19 the omitted child;] or

20 [(3)] (2) [The] the testator provided for the omitted after-born
21 or after-adopted child by transfer outside the will and the intent that
22 the transfer be in lieu of a testamentary provision is shown by the
23 testator's statements or is reasonably inferred from the amount of the
24 [testator or from the amount of the] transfer or other evidence.

25 [b.] c. If at the time of execution of the will the testator fails to
26 provide in his will for a living child solely because he believes the
27 child to be dead, the child [receives] is entitled to a share in the
28 estate [equal in value to that which he would have received if the
29 testator had died intestate] as if the child were an omitted after-born
30 or after-adopted child.

31 [c.] d. The share [of the child] provided by subsection a. (1) shall
32 be taken from devisees under the will ratably and in proportion to their
33 respective interests therein.

34 (cf: P.L.1981, c.405, s.3B:5-16)

35

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

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

45 b. The intentional killing of the decedent:

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

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

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

19

20 59. (New section). Effect of Revocation. Provisions of a
21 governing instrument are given effect as if the killer or relative of the
22 killer disclaimed all provisions revoked by this chapter or, in the case
23 of a revoked nomination in a fiduciary or representative capacity, as
24 if the killer or relative of the killer predeceased the decedent.

25

26 60. N.J.S.3B:7-5 is amended to read as follows:

27 3B:7-5. Other acquisitions of property by decedent's killer.

28 Any other acquisition of property or interest by the decedent's killer
29 or by a relative of the killer not covered by this chapter shall be
30 treated in accordance with the [principles of this chapter] principle
31 that a killer or a relative of a killer cannot profit from the killer's
32 wrongdoing.

33 (cf: P.L.1981, c.405, s.3B:7-5)

34

35 61. N.J.S.3B:7-6 is amended to read as follows:

36 3B:7-6. Effect of final judgment of conviction.

37 A final judgment of conviction [of] establishing responsibility for
38 the intentional killing of the decedent is conclusive for purposes of
39 this chapter. In the absence of such a conviction [of intentional
40 killing] the court may determine by a preponderance of evidence
41 whether the [killing was intentional] individual was responsible for the
42 intentional killing of the decedent for purposes of this chapter.

43 (cf: P.L.1981, c.405, s.3B:7-6)

44

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

46 3B:7-7. Rights of purchasers; [payments made by insurance

1 company, bank or other obligor] protection of payors and other third
2 parties.

3 This chapter does not affect the rights of any person who, before
4 rights under this chapter have been adjudicated, purchases from the
5 killer for value and without notice [property] or receives a payment
6 or other item of property in partial or full satisfaction of a legally
7 enforceable obligation which the killer would have acquired except for
8 this chapter, but the killer is liable for the amount of the proceeds or
9 the value of the property. [Any insurance company, bank, or other
10 obligor] A payor or other third party making payment or transferring
11 an item of property or other benefit according to the terms of [its
12 policy or obligation] a governing instrument affected by an intentional
13 killing is not liable by reason of this chapter unless prior to such
14 payment or transfer it has received at its home office or principal
15 address written notice of a [claim] claimed forfeiture or revocation
16 under this chapter.
17 (cf: P.L.1981, c.405, s.3B:7-7)

18

19 63. N.J.S.3B:9-1 is amended to read as follows:

20 3B:9-1. Definitions.

21 As used in this chapter:

22 a. A "present interest" is one to take effect in immediate
23 possession, use or enjoyment without the intervention of a preceding
24 estate or interest or without being dependent upon the happening of
25 any event or thing;

26 b. A "future interest" is one to take effect in possession, use or
27 enjoyment dependent upon the termination of an intervening estate or
28 interest or the happening of any event or thing;

29 c. A "devisee" means any person designated in a will to receive a
30 devise, but does not mean a trustee or trust designated in a will to
31 receive a devise;

32 d. The "effective date" is the date on which a property right vests,
33 or a contract right arises, even though the right is subject to
34 divestment;

35 e. "Joint property" is property that is owned by two or more
36 persons with rights of survivorship and includes a tenancy by the
37 entirety, a joint tenancy, a joint tenancy with rights of survivorship and
38 a joint life estate with contingent remainder in fee. For purposes of
39 this chapter, joint property is deemed to consist of a present interest
40 and a future interest. The future interest is the right of survivorship.

41 f. "Joint tenant" is the co-owner of joint property.

42 (cf: P.L.1981, c.405, s.3B:9-1).

43

44 64. N.J.S.3B:9-2 is amended to read as follows:

45 3B:9-2. [Right to disclaim] Disclaimer of an interested party.

46 a. Any person who is an heir, or a devisee or beneficiary under a

1 will or testamentary [instrument] trust, or appointee under a power
2 of appointment exercised by a will or testamentary [instrument] trust,
3 including a person succeeding to a disclaimed interest, [or an heir]
4 may disclaim in whole or in part [the right of succession to] any
5 property or interest therein, including a future interest, by delivering
6 and filing a disclaimer under this chapter.

7 b. Any person who is a grantee, donee, surviving joint tenant,
8 surviving party to a P.O.D. account or a trust deposit account, person
9 succeeding to a disclaimed interest, beneficiary under a
10 nontestamentary instrument or contract, appointee under a power of
11 appointment exercised by a nontestamentary instrument, or a
12 beneficiary under an insurance policy, may disclaim in whole or in part
13 any such property or interest therein by delivering, and if required by
14 N.J.S.9-7, by filing, a written disclaimer under this chapter.

15 c. A surviving joint tenant may disclaim as a separate interest any
16 property or interest therein devolving to him by right of survivorship
17 without regard to the extent, if any, the surviving joint tenant
18 contributed to the creation of the joint property interest.

19 d. A disclaimer may be of a pecuniary or a fractional share,
20 expressed as either a percentage or dollar amount, specific property
21 or any limited interest or estate.
22 (cf: P.L.1981, c.405, s.3B:9-2).

23

24 65. N.J.S.3B:9-3 is amended to read as follows:

25 3B:9-3. [Form and contents of instrument disclaiming]
26 Requirements of a disclaimer.

27 [The instrument disclaiming] a. A disclaimer shall be in writing,
28 signed and acknowledged by the person disclaiming, and shall:

29 [a.] (1) Describe the property [or], interest, power or discretion
30 disclaimed;

31 [b.] (2) If the property [or] interest disclaimed is real property,
32 identify the municipality and county in which the real property is
33 situated; and

34 [c.] (3) Declare the disclaimer and the extent thereof.

35 b. The disclaimer shall be made within the time prescribed by
36 section 68 of P.L. , c. (C.)(now pending before the Legislature as
37 section 68 of this bill).

38 (cf: P.L.1981, c.405, s.3B:9-3).

39

40 66. N.J.S.3B:9-4 is amended to read as follows:

41 3B:9-4. Disclaimer [on behalf of decedent, minor or mentally
42 incompetent person] by a fiduciary of an interest in property.

43 a. A [disclaimer] fiduciary or agent acting on behalf of a
44 [decedent, minor or mentally incompetent person may be made by the
45 personal representative of the decedent or the guardian of the estate

1 of the minor or mentally incompetent person. The] principal within the
2 express, general or implied authority of a power of attorney, may
3 disclaim property or any interest therein.

4 b. Except as provided in subsection c. of this section, such
5 disclaimer shall not be effective unless, prior thereto, [the personal
6 representative or guardian] fiduciary or agent has been authorized to
7 disclaim by the court having jurisdiction [of the estate of the
8 decedent, minor or mentally incompetent person,] over the fiduciary
9 or the principal after finding that [it] such disclaimer is advisable and
10 will not materially prejudice the rights of: (1) creditors, devisees, heirs
11 or beneficiaries of the [decedent,] estate; (2) beneficiaries of the trust;
12 or (3) the minor [or mentally incompetent person or his creditors, as
13 the case may be] the incapacitated individual, the conservatee or the
14 principal for whom such fiduciary or agent acts.

15 c. If the governing instrument expressly authorizes the fiduciary or
16 the agent to disclaim, the disclaimer by the fiduciary or agent shall be
17 effective without court authorization.

18 (cf: P.L.1981, c.405, s.3B:9-4).

19

20 67. (New section) Disclaimer by a fiduciary of a power of
21 discretion.

22 a. Any fiduciary, including an agent acting on behalf of a principal
23 within the implied or general authority of a power of attorney, may
24 disclaim any power or discretion held by such fiduciary in a fiduciary
25 capacity. Unless the governing instrument specifically authorizes the
26 fiduciary to disclaim such power or discretion without obtaining court
27 authorization to do so, the disclaimer by the fiduciary shall not be
28 effective unless, prior thereto, such fiduciary has been authorized to
29 disclaim by the court having jurisdiction over the fiduciary after
30 finding that it is advisable and will not materially prejudice the rights
31 of: (1) devisees, heirs, or beneficiaries of the decedent; (2) the minor,
32 the incapacitated individual, the conservatee, or the principal; or (3)
33 the beneficiaries of the trust.

34 b. Unless expressly authorized by the court or by the governing
35 instrument:

36 (1) Any disclaimer under this section shall be personal to the
37 fiduciary so disclaiming and shall not constitute a disclaimer by a co-
38 fiduciary or a successor or substituted fiduciary of such power or
39 discretion;

40 (2) No disclaimer shall affect the rights of: (a) devisees, heirs or
41 beneficiaries of the decedent; (b) the minor, the incapacitated
42 individual, the conservatee, or the principal; or (c) the beneficiaries of
43 the trust.

44

45 68. (New section) . Time for disclaiming.

1 a. The disclaimer of an interest in property may be delivered, and
2 if required by this chapter filed, at any time after the effective date of
3 the governing instrument, or in the case of an intestacy, at any time
4 after the death of the intestate decedent, and must be delivered, and if
5 required by this chapter filed, before the right to disclaim is barred by
6 N.J.S.3B:9-10. With respect to joint property, the barring of the right
7 to disclaim the present interest does not bar the right to disclaim the
8 future interest.

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

13
14 69. N.J.S.3B:9-6 is amended to read as follows:

15 3B:9-6. Delivering and Filing disclaimer[; service of copy].

16 a. The disclaimer of an interest by an intestate heir, or a person who
17 is a devisee or beneficiary under will or a testamentary trust or who is
18 an appointee under a power of appointment exercised by a will or
19 testamentary trust, including a person succeeding to a disclaimed
20 interest, shall be filed in the office of the surrogate or clerk of the
21 Superior Court in which proceedings have been commenced or will be
22 commenced for the administration of the estate of the decedent or
23 deceased donee of the power of appointment. A copy of the disclaimer
24 shall also be delivered [in person or mailed by registered or certified
25 mail] to any personal representative, or other fiduciary of the
26 decedent or to the donee of the power or to the holder of the legal title
27 to which the interest relates. The fiduciary shall promptly notify the
28 person or persons who take the disclaimed interest, although any such
29 failure to provide the notice required herein shall not affect the validity
30 of the disclaimer.

31 b. The disclaimer of an interest in property, other than property
32 passing under or pursuant to a will or testamentary trust shall be
33 delivered to the fiduciary, payor or other person having legal title to
34 or possession of the property or interest disclaimed or who is entitled
35 thereto in the event of disclaimer. Any fiduciary, payor or other
36 person having title to or possession of the property or interest
37 disclaimed or who is entitled thereto in the event of disclaimer. Any
38 fiduciary, payor or other person having title to or possession of the
39 property or interest who receives such disclaimer shall promptly notify
40 the person or persons who take the disclaimed interest, although any
41 such failure to provide the notice required herein shall not affect the
42 validity of the disclaimer.

43 c. In the case of a disclaimer by a fiduciary of a power or
44 discretion:

45 (1) If such disclaimer is made after court authorization, the fiduciary
46 shall deliver a copy to such person or persons and in such manner as

1 shall be directed by the court; or

2 (2) If such disclaimer is made without court authorization pursuant
3 N.J.S.3B:9-4(a), the fiduciary shall deliver a copy to all co-fiduciaries,
4 but if there are none, then to all person whose property interests are
5 affected by the disclaimer.

6 d. In the case of a will or testamentary trust or power of
7 appointment under a will or testamentary trust, if real property or any
8 interest therein is disclaimed, the surrogate or clerk of the Superior
9 Court, as the case may be, shall forthwith forward a copy of the
10 disclaimer for filing in the office of the clerk or register of deeds and
11 mortgages of the county in which the real property is situated. In the
12 case of a nontestamentary instrument or contract, if real property or
13 any interest therein is disclaimed, the original thereof shall be filed in
14 the office of the clerk or register of deeds and mortgages of the county
15 in which the real property is situated.

16 e. For the purposes of this section, delivery may be effected: (1) in
17 person; (2) by registered or certified mail; or (3) by another means
18 which is reasonably likely to accomplish delivery.

19 (cf: P.L.1981, c.405, s.3B:9-6).

20

21 70. N.J.S.3B:9-7 is amended to read as follows:

22 3B:9-7. **[Additional filing]** Recording of disclaimer where real
23 property or interest therein is disclaimed.

24 [If real property or any interest therein is disclaimed, the surrogate
25 or clerk of the Superior Court, as the case may be, shall forthwith
26 forward a copy of the disclaimer for filing in the office of the clerk or
27 register of deeds and mortgages of the county in which the real
28 property is situated.] Each county clerk or register of deeds and
29 mortgages shall provide a book to be entitled "Disclaimers," so
30 arranged that he may record therein:

31 a. The name of the disclaimant;

32 b. The name of the decedent or the name of the donee of the power
33 of appointment, the name of the trustee or other person having legal
34 title to, or possession of , the property or interest disclaimed or
35 entitled thereto in the event of disclaimer or the name of the donee of
36 the power of appointment ;

37 c. The location of the property;

38 d. The file number of the county clerk's office or the office of
39 register of deeds and mortgages indorsed upon each disclaimer filed;

40 e. The date of filing the disclaimer.

41 The county clerk or the register of deeds and mortgages shall
42 maintain in the record an alphabetical index of the names of all
43 disclaimants stated in any disclaimer file, and also keep in his office
44 for public inspection, all disclaimers so filed therein.

45 (cf: P.L.1981, c.405, s.3B:9-7).

46

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

2 3B:9-8. [Manner in which property or interest disclaimed devolves]
3 Effect of disclaimer.

4 A disclaimer acts as a nonacceptance of the disclaimed interest,
5 rather than as a transfer of the disclaimed interest. The disclaimant is
6 treated as never having received the disclaimed interest. Unless [the
7 decedent or donee of the power has] a governing instrument
8 otherwise provided, the property or interest disclaimed devolves:

9 a. As to a present interest[,];

10 (1) in the case of an intestacy, a will, a testamentary trust or a
11 power of appointment exercised by a will or testamentary trust, as if
12 the disclaimant had predeceased the decedent or, if the disclaimant is
13 designated to take under a power of appointment exercised by a will
14 or testamentary instrument, as if the disclaimant had predeceased the
15 donee of the power [;]. If by law or under the will or testamentary
16 trust the descendants of the disclaimant would take the disclaimant's
17 share by representation were the disclaimant to predecease the
18 disclaimant, then the disclaimed interest devolves by representation to
19 the descendants of the disclaimant who survive the decedent; and

20 (2) in the case of a nontestamentary instrument or contract, other
21 than a joint property interest, as if the disclaimant had died before the
22 effective date of the instrument or contract. If by law or under the
23 nontestamentary instrument or contract the descendants of the
24 disclaimant would take the disclaimant's share by representation were
25 the disclaimant to predecease the effective date of the instrument, then
26 the disclaimed interest devolves by representation to the descendants
27 of the disclaimant who survive the effective date of the instrument.

28 (3) in the case of joint property created by a will, testamentary trust
29 or non-testamentary instrument: (a) if the disclaimant is the only living
30 owner, the disclaimed interest devolves to the estate of the last to die
31 of the other joint owners; or (b) if the disclaimant is not the only
32 living owner, the disclaimed interest devolves equally to the living
33 joint owners, or all to the other living owner, if there is only one living
34 owner.

35 b. As to a future interest;

36 (1) In the case of a will or testamentary trust or a power of
37 appointment exercised by a will or testamentary trust, as if the
38 disclaimant had died before the event determining that the taker of the
39 property or interest is finally ascertained and his interest is
40 [indefeasibly] vested; and

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

45 (3) Notwithstanding the foregoing, a future interest that is held by
46 the disclaimant who also holds the present interest and which takes

1 effect at a time certain, such as a fixed calendar date or the
2 disclaimant's attainment of a certain age, is not accelerated by the
3 disclaimer and continue to take effect at the time certain.

4 c. [A] Except as provided in subsection d. of this section, a
5 disclaimer relates back for all purposes to the date of death of the
6 decedent or the donee of the power or the effective date of the
7 nontestamentary instrument or contract.

8 (cf: P.L.1981, c.405, s.3B:9-8)

9

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

11 3B:9-9. [When right to disclaim] Bar of right to disclaim.

12 a. The right of a person to disclaim property or any interest therein
13 is barred[, if before the expiration of the period of time in which he is
14 permitted to disclaim:

15 a. The] by:

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

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

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

21 (4) a sale of the property or interest is seized under judicial process
22 issued against him; or

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

24 [b. He accepts or exercises control as beneficial owner over all or
25 any part of the property or interest; or

26 c. He voluntarily transfers or encumbers or contracts to transfer or
27 encumber all or any part of the property or interest; or

28 d. He disclaims or attempts to disclaim all or any part of the
29 property or interest in fraud of his]

30 (6) a fraud on the person's creditors as set forth in the "Uniform
31 Fraudulent Transfer Act" (R.S.25:2-20 et seq.)[; or

32 e. He executes a written waiver of his right to disclaim].

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

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

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

41 (cf: P.L.1988, c.74, s.2).

42

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

44 3B:9-10. Binding effect of disclaimer or waiver.

45 The disclaimer or [the] written waiver of the right to disclaim a

1 property interest shall be binding upon the disclaimant or the person
2 waiving and all persons claiming by, through or under him.
3 (cf: P.L.1981, c.405).

4
5 74. N.J.S.3B:9-11 is amended to read as follows:

6 3B:9-11. Spendthrift provision not to affect right to disclaim.

7 The right to disclaim a property interest exists notwithstanding any
8 limitation on the interest of the disclaimant in the nature of a
9 spendthrift provision or similar restriction or any restriction or
10 limitation on the right to disclaim a property interest contained in the
11 governing instrument.

12 (cf: P.L.1981, c.405, s.2B:9-11).

13
14 75. N.J.S.3B:9-12 is amended to read as follows:

15 3B:9-12. Right to disclaim, etc.; under other law not abridged.

16 This chapter does not abridge the right of a person to waive,
17 release, disclaim or renounce property or an interest therein under any
18 other statute or law.

19 (cf: P.L.1981, c.405, s.3B:9-12).

20
21 76. N.J.S.3B:9-13 is amended to read as follows:

22 3B:9-13. Extension of time to disclaim interest existing on
23 February 28, 1980.

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

29 An interest in property existing on the effective date of this chapter
30 as amended and supplemented by P.L. , c. (C.)(now pending
31 before the Legislature as this bill) as to which the right to disclaim has
32 not been barred by prior law may be disclaimed at any time before the
33 right to disclaim is barred by N.J.S.3B:9-10.

34 (cf: P.L.1981, c.405, s.3B:9-13).

35
36 77. N.J.S.3B:10-3 is amended to read as follows:

37 3B:10-3. When spouse entitled to assets without administration

38 Where the total value of the real and personal assets of the estate
39 of an intestate will not exceed ~~[\$10,000.00]~~ \$20,000.00, the surviving
40 spouse upon the execution of an affidavit before the surrogate of the
41 county where the intestate resided at his death, or, if then nonresident
42 in this State, where any of the assets are located, or before the
43 Superior Court, shall be entitled absolutely to all the real and personal
44 assets without administration, and the assets of the estate up to
45 \$5,000.00 shall be free from all debts of the intestate. Upon the
46 execution and filing of the affidavit as provided in this section, the

1 surviving spouse shall have all of the rights, powers and duties of an
2 administrator duly appointed for the estate. The surviving spouse may
3 be sued and required to account as if he had been appointed
4 administrator by the surrogate or the Superior Court. The affidavit
5 shall state that the affiant is the surviving spouse of the intestate and
6 that the value of the intestate's real and personal assets will not exceed
7 ~~[\$10,000.00]~~ \$20,000.00, and shall set forth the residence of the
8 intestate at his death, and specifically the nature, location and value of
9 the intestate's real and personal assets. The affidavit shall be filed and
10 recorded in the office of such surrogate or, if the proceeding is before
11 the Superior Court, then in the office of the clerk of that court. Where
12 the affiant is domiciled outside this State, the surrogate may authorize
13 in writing that the affidavit be executed in the affiant's domicile before
14 any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
15 acknowledgments or proofs.
16 (cf: P.L.1983, c.246, s.1)

17

18 78. N.J.S.3B:10-4 is amended to read as follows:

19 3B:10-4. When heirs entitled to assets without administration

20 Where the total value of the real and personal assets of the estate
21 of an intestate will not exceed ~~[\$5,000.00]~~ \$10,000.00 and the
22 intestate leaves no surviving spouse, and one of his heirs shall have
23 obtained the consent in writing of the remaining heirs, if any, and shall
24 have executed before the surrogate of the county where the intestate
25 resided at his death, or, if then nonresident in this State, where any of
26 the intestate's assets are located, or before the Superior Court, the
27 affidavit herein provided for, shall be entitled to receive the assets of
28 the intestate of the benefit of all the heirs and creditors without
29 administration or entering into a bond. Upon executing the affidavit,
30 and upon filing it and the consent, he shall have all the rights, powers
31 and duties of an administrator duly appointed for the estate and may
32 be sued and required to account as if he had been appointed
33 administrator by the surrogate or the Superior Court.

34 The affidavit shall set forth the residence of the intestate at his
35 death, the names, residences and relationships of all of the heirs and
36 specifically the nature, location and value of the real and personal
37 assets and also a statement that the value of the intestate's real and
38 personal assets will not exceed ~~[\$5,000.00]~~ \$10,000.00.

39 The consent and the affidavit shall be filed and recorded, in the
40 office of the surrogate or, if the proceeding is before the Superior
41 Court, then in the office of the clerk of that court. Where the affiant
42 is domiciled outside this State, the surrogate may authorize in writing
43 that the affidavit be executed in the affiant's domicile before any of the
44 officers authorized by R.S.46:14-7 and R.S.46:14-8 to take
45 acknowledgments or proofs.

46 (cf: P.L.1983, c. 246, s. 2)

1 79. (New section) Federal Law. The provisions of this chapter, as
2 amended and supplemented by P.L. , c. (C.)(now pending before
3 this Legislature as this bill) are not intended to enlarge, limit, modify
4 or otherwise affect the federal requirements for a qualified disclaimer
5 under 26 U.S.C. section 2518 or 26 U.S.C. section 2046.

6
7 80. N.J.S.3B:14-24 is amended to read as follow:

8 3B:14-24 Authorization to exercise other powers.

9 The court having jurisdiction of the estate or trust may authorize
10 the fiduciary to exercise any other power or to disclaim any power, if
11 the court determines such exercise or disclaimer is necessary or
12 advisable which in the judgment of the court is necessary for the
13 proper administration of the estate or trust.

14 (cf: P.L.1981, c.405, s.3B:14-24)

15
16 81. (New section) Effect of nonjudicial settlement or waiver of
17 account.

18 Unless the governing instrument expressly provides otherwise, an
19 instrument settling or waiving an account, executed by all persons
20 whom it would be necessary to join as parties in a proceeding for the
21 judicial settlement of the account, shall be binding and conclusive on
22 all other persons who may have a future interest in the property to the
23 same extent as that instrument binds the person who executed it.

24
25 82. N.J.S.3B:22-2 is amended to read as follows:

26 3B:22-2. Order of priority of claims when assets insufficient. If the
27 applicable assets of the estate are insufficient to pay all claims in full,
28 the personal representative shall make payment in the following order:

29 a. Reasonable funeral expenses;

30 b. Costs and expenses of administration;

31 c. Debts and taxes with preference under federal law or the laws of
32 this State, including debts for the reasonable value of services rendered
33 to the decedent by the Office of the Public Guardian for Elderly
34 Adults;

35 d. Reasonable medical and hospital expenses of the last illness of
36 the decedent, including compensation of persons attending him;

37 e. Judgments entered against the decedent according to the
38 priorities of their entries respectively;

39 f. All other claims.

40 No preference shall be given in the payment of any claim over any
41 other claim of the same class, and a claim due and payable shall not be
42 entitled to a preference over claims not due. The commencement of
43 an action against the personal representative for the recovery of a debt
44 or claim or the entry of a judgment thereon against the personal
45 representative shall not entitle such debt or claim to preference over
46 others of the same class.

1 (cf: P.L.1989, c.248, s.8)

2

3 83. N.J.S.3B:22-3 is amended to read as follows:

4 3B:22-3. Abatement for purpose of paying claims and debts.

5 [Except as otherwise provided in a decedent's will, the] The
6 property of a decedent's estate shall abate for the purposes of paying
7 debts and claims [, without any preference or priority as between real
8 and personal property, in the following order:

9 a. Property passing by intestacy;

10 b. Residuary devises;

11 c. General devises; and

12 d. Specific devises] in the order prescribed in N.J.S.3B:23-12.

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

14

15 84. N.J.S.3B:22-4 is amended to read as follows:

16 3B:22-4. Limitation of time to present claims of creditors to
17 personal representative; discharge of personal representative where
18 claim is not duly presented before distribution.

19 [At any time after granting letters testamentary or of
20 administration, the Superior Court, or surrogate, as the case may be,
21 may, whether the estate be solvent or not, order the personal
22 representative to give public notice to creditors] Creditors of the
23 decedent [to] shall present [to him] their claims to the personal
24 representative of the decedent's estate in writing and under oath,
25 specifying the amount claimed and the particulars of the claim, within
26 [6] nine months from the date of the [order] decedent's death. If a
27 claim is not so presented to the personal representative within nine
28 months from the date of the decedent's death, the personal
29 representative shall not be liable to the creditor with respect to any
30 assets which the personal representative may have delivered or paid in
31 satisfaction of any lawful claims, devises or distributive shares, before
32 the presentation of the claim.

33 (cf: P.L.1981, c.405, s.3B:22-4)

34

35 85. N.J.S.3B:22-39 is amended to read as follows:

36 3B:22-39. "Heirs and devisees" defined.

37 As used in this article, heirs and devisees shall include the heirs and
38 devisees of a deceased debtor and the heirs and devisees of any of
39 them, who shall have died before the commencement of the action,
40 authorized by this article, to whom any of the real [estate] or personal
41 property, of which the debtor died seized or possessed, descended or
42 was devised.

43 (cf: P.L.1981, c.405, s.3B:22-39)

44

45 86. N.J.S.3B:23-12 is amended to read as follows:

46 3B:23-12. Abatement generally.

1 Except as provided in N.J.S.3B:23-14 and except as provided in
2 connection with the share of a surviving spouse who elects to take an
3 elective share, shares of distributees abate, without any preference or
4 priority as between real and personal property, in the following order:

5 a. Property passing by intestacy;

6 b. Residuary devises;

7 c. General devises;

8 d. Specific devises; and

9 e. Abatement within each classification is in proportion to the
10 amount of property each of the beneficiaries would have received if
11 full distribution of the property had been made in accordance with the
12 terms of the will.

13 (cf: P.L.1981, c.405, s.3B:23-12)

14
15 87. N.J.S.3B:24-4 is amended to read as follows:

16 3B:24-4. Apportionment of tax to transferees in absence of
17 directions to contrary.

18 In the absence of directions to the contrary:

19 a. That part of the tax shall be apportioned to each of the
20 transferees as bears the same ratio to the total tax as the ratio which
21 each of the transferees' property included in the gross tax estate bears
22 to the total property entering into the net estate for [tax before the
23 specific exemption] purposes of that tax, and the balance of the tax
24 shall be apportioned to the fiduciary, the values as finally determined
25 in the respective tax proceedings being the values to be used as the
26 basis for apportionment of the respective taxes;

27 b. Any deduction allowed under the law imposing the tax by reason
28 of the relationship of any person to the decedent or by reason of the
29 charitable purposes of the gift shall inure to the benefit of the fiduciary
30 or transferee, as the case may be, subject nonetheless to the
31 provisions of N.J.S.3B:24-3;

32 c. Any deduction for property previously taxed and any credit for
33 gift taxes paid by the decedent shall inure to the benefit of all
34 transferees and the fiduciary and the tax to be apportioned shall be the
35 tax after allowance of the deduction and credit; and

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

40 (cf: P.L.1981, c.405, s.3B:24-4)

41
42 88. N.J.S.3B:25-1 is amended to read as follows:

43 3B:25-1. Nonexoneration of property subject to mortgage or
44 security interest; exception.

45 When property subject to a mortgage or security interest descends
46 to an heir or passes to a devisee, the heir or devisee shall not be

1 entitled to have the mortgage or security interest discharged out of
2 any other property of the ancestor or testator, but the property so
3 descending or passing to him shall be primarily liable for the mortgage
4 or secured debt, unless the will of the testator shall [expressly or
5 impliedly] direct that the mortgage or security interest be otherwise
6 paid. A general direction in the will to pay debts shall not be deemed
7 a direction to pay the mortgage or security interest.

8 (cf: P.L.1981, c.405, s.3B:25-1)

9

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

11 3B:28-1. Estates of dower and curtesy prior to May 28, 1980.

12 The widow or widower, whether alien or not, of a person dying
13 intestate or otherwise, shall be endowed for the term of her or his
14 [natural] life of [the] one [full and equal] half [part] of all real
15 property of which the decedent, or another to the decedent's use, was
16 seized of an estate of inheritance at any time during [coverture]
17 marriage prior to May 28, 1980, [to which] unless the widow or
18 widower shall [not] have relinquished her right of dower or his right
19 of curtesy [by deed duly executed and acknowledged] in the manner
20 provided by [law to record deeds] P.L.1953, c.352 (C.37:2-18.1) or
21 such right of dower or such right of curtesy otherwise shall have been
22 extinguished by law.

23 [The widower's right of curtesy shall be enforced, admeasured and
24 determined in the same manner and subject to the same limitations as
25 is provided by law in the case of dower.]

26 (cf: P.L.1981, c.405, s.3B:28-1)

27

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

29 3B:28-2. [Rights] No right of dower [and] or curtesy [abolished]
30 created on [and] or after May 28, 1980.

31 [All rights] No right of dower [and] or curtesy [are abolished as
32 to the] in real property [of which a married person, or another to his
33 or her use,] shall arise if, on or after May 20, 1980, a person shall
34 become married, or such person or another to his or her use, shall [,
35 on or after May 28, 1980,] become seized[, during coverture,] of an
36 estate of inheritance.

37 (cf: P.L.1981, c.405, s.3B:28-2)

38

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

40 3B:28-3. [Joint occupancy] Right of joint possession of principal
41 matrimonial residence where no dower or curtesy applies; alienation.

42 [As to real property occupied jointly by a married person with his
43 or her spouse acquired on or after May 28, 1980, as their principal
44 matrimonial residence,] a. During life every married person shall be
45 entitled to joint possession [thereof] with his or her spouse [during

1 their marriage, which right of possession may not be released,
2 extinguished or alienated without the consent of both spouses except
3 by judgment of a court of competent jurisdiction.] of any real property
4 which they occupy jointly as their principal matrimonial residence and
5 to which neither dower nor curtesy applies. [All other real property
6 owned by either spouse which is not the principal matrimonial
7 residence may be alienated without the consent of both spouses.] One
8 who acquires an estate or interest in real property from a person
9 whose spouse is entitled to joint possession thereof does so subject to
10 such right of possession, unless such right of possession has been
11 released, extinguished or subordinated by such spouse or has been
12 terminated by order or judgment of a court of competent jurisdiction
13 or otherwise.

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

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

23 (cf: P.L.1981, c.405, s.3B:28-3)

24

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

26 3B:28-3.1. Joint occupancy of principal matrimonial residence;
27 mortgage lien.

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

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

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

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

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

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

40 (cf: P.L.1981, c.405, s.3B:28-3.1)

41

42 93. (New section) Disclaimer of interests previously governed by
43 P.L.1979, c.492 (C.46:2E-1 to 46:2E-13).

44 A disclaimer of an interest by any person who is a grantee, donee,
45 surviving joint tenant, surviving tenant by the entirety, surviving party
46 to a joint deposit account, a P.O.D. account or a trust deposit account,

1 person succeeding to a disclaimed interest, beneficiary under a
2 nontestamentary instrument or contract, appointee under a power of
3 appointment exercised by a nontestamentary instrument or a beneficiary
4 under an insurance policy is governed by N.J.S.3B:9-1 et. seq., as
5 amended and supplemented by P.L. , c. (C.)(now pending before
6 the Legislature as this bill).

7
8 94. The following are hereby repealed:

9 N.J.S.3B:4-6;

10 N.J.S.3B:7-1 through 3B:7-4, inclusive;

11 N.J.S.3B:9-5;

12 N.J.S.3B:22-9; and

13 Laws of P.L.1979, c.492 (C.46:2E-1 to 46:2E-13 both inclusive).

14
15 95. This act shall take effect on the 180th day after enactment.

16
17
18 STATEMENT

19
20 This bill makes a number of substantial changes to the provisions
21 governing the administration of estates and trusts in the State of New
22 Jersey and makes the affected provisions gender neutral. The current
23 statute, effective in New Jersey on May 1, 1982, was modeled upon
24 the 1969 version of the Uniform Probate Code. This bill is modeled
25 upon the 1990 version of the Uniform Probate Code. Among other
26 significant changes, the 1990 Uniform Probate Code attempts to bring
27 greater uniformity to the rules governing testamentary and non-
28 testamentary transfers in response to the significant number of non-
29 testamentary transfers that occur at the time of the decedent's death.
30 For example, a new term, "governing instrument" has been
31 incorporated as a definition in the substitute to include deeds, trusts,
32 insurance and annuity policies, POD (pay on death) accounts,
33 securities registered in beneficiary form (TOD), pension, profit
34 sharing, retirement and similar benefit plans, and other wealth transfer
35 instruments. The bill, however, does vary from the 1990 version of
36 the Uniform Probate Code due to the unique elective share law that
37 continues to exist in the State of New Jersey, which has been left for
38 separate consideration.

39 The bill clarifies the definitions of "descendant," "heirs,"
40 "incapacitated individual," "joint tenants with right of survivorship,"
41 "per capita distribution," "per stripes" distribution and distribution of
42 estates "by representation."

43 The bill also clarifies situations where writings that are intended as
44 wills would be allowed, but requires that the burden of proof on the
45 proponent would be by clear and convincing evidence.

46 The bill provides that divorce or annulment of a marriage, under

1 certain circumstances, would revoke not only provisions of the former
2 spouse's will, but also non-probate transfers occurring by reason of the
3 decedent's death to the former spouse.

4 The bill expands the provisions requiring survival of a beneficiary
5 by 120 hours to succeed to an interest of a decedent in non-probate
6 transfers.

7 The bill also makes substantial revisions to the laws governing
8 intestate succession. For example, the substitute provides that the
9 intestate share of a surviving spouse would be 100% of the intestate
10 estate where all of the surviving descendants of the decedent are also
11 the descendants of the surviving spouse and the surviving spouse has
12 no other descendants. Currently, such a surviving spouse receives the
13 first \$50,000 plus 50% of the intestate estate. Further, the surviving
14 spouse would now be entitled to a larger share of the estate in the
15 event that either a parent of the decedent survives a decedent who has
16 no descendants, or there are descendants of the surviving spouse who
17 are not descendants of the decedent. Finally, stepchildren of a
18 decedent would be added as a final class of takers.

19 The bill expands the law with respect to disinheritance of a person
20 who criminally and intentionally kills the decedent to include
21 revocation of non-testamentary dispositions.

22 The bill consolidates the law concerning disclaimers of probate and
23 non-probate property. The bill clarifies that a fiduciary may, with
24 court approval, disclaim any power or discretion held by such
25 fiduciary, and may disclaim without court approval if the governing
26 instrument so permits.

27 This bill would also make some changes with regard to small
28 estates. Under current law, upon filing an affidavit with the surrogate
29 the surviving spouse is entitled to the assets of an estate without
30 administration if the assets do not exceed \$10,000; similarly, in
31 situations where there is no surviving spouse and the assets of the
32 estate do not exceed \$5,000, the heirs are entitled to the assets
33 without administration if one of the heirs files an affidavit with the
34 consent of the remaining heirs. This bill would amend N.J.S.A.3B:10-
35 3 and 3B:10-4 to increase these amounts to \$20,000 and to \$10,000,
36 respectively.

37 Finally, the bill expands the rules of construction formerly
38 applicable only to wills to other donative transfers.

39 The bill provides a statute of limitations with respect to creditor
40 claims against a decedent's estate.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2046

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 2004

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2046.

This bill makes a number of substantial changes to the provisions governing the administration of estates and trusts in New Jersey and makes the affected provisions gender neutral. The current statute, effective in New Jersey on May 1, 1982, was modeled on the 1969 version of the Uniform Probate Code. This bill is modeled on the 1990 version of the Uniform Probate Code. Among other significant changes, the 1990 Uniform Probate Code attempts to bring greater uniformity to the rules governing testamentary and non-testamentary transfers in response to the significant number of non-testamentary transfers that occur at the time of the decedent's death. For example, a new term, "governing instrument" has been incorporated as a definition in the bill to include deeds, trusts, insurance and annuity policies, POD (pay on death) accounts, securities registered in beneficiary form (TOD), pension, profit sharing, retirement and similar benefit plans, and other wealth transfer instruments. This bill, however, does vary from the 1990 version of the Uniform Probate Code due to the elective share law that continues to exist in New Jersey.

The bill clarifies the definitions of "descendant," "heirs," "incapacitated individual," "joint tenants with right of survivorship," "per capita distribution," "per stripes" distribution and distribution of estates "by representation."

The bill also clarifies situations where writings that are intended as wills would be allowed, but requires that the burden of proof on the proponent would be by clear and convincing evidence.

The bill provides that divorce or annulment of a marriage, under certain circumstances, would revoke not only provisions of the former spouse's will, but also non-probate transfers occurring by reason of the decedent's death to the former spouse.

The bill expands the provisions requiring survival of a beneficiary by 120 hours to succeed to an interest of a decedent in non-probate transfers.

The bill also makes substantial revisions to the laws governing

intestate succession. For example, the bill provides that the intestate share of a surviving spouse would be 100% of the intestate estate where all of the surviving descendants of the decedent are also the descendants of the surviving spouse and the surviving spouse has no other descendants. Currently, such a surviving spouse receives the first \$50,000 plus 50% of the intestate estate. Further, the surviving spouse would now be entitled to a larger share of the estate in the event that either a parent of the decedent survives a decedent who has no descendants, or there are descendants of the surviving spouse who are not descendants of the decedent. Finally, stepchildren of a decedent would be added as a final class of takers.

The bill expands the law with respect to disinheritance of a person who criminally and intentionally kills the decedent to include revocation of non-testamentary dispositions.

The bill consolidates the law concerning disclaimers of probate and non-probate property. The bill clarifies that a fiduciary may, with court approval, disclaim any power or discretion held by such fiduciary, and may disclaim without court approval if the governing instrument so permits.

This bill would also make some changes with regard to small estates. Under current law, upon filing an affidavit with the surrogate the surviving spouse is entitled to the assets of an estate without administration if the assets do not exceed \$10,000; similarly, in situations where there is no surviving spouse and the assets of the estate do not exceed \$5,000, the heirs are entitled to the assets without administration if one of the heirs files an affidavit with the consent of the remaining heirs. This bill would amend N.J.S.A.3B:10-3 and 3B:10-4 to increase these amounts to \$20,000 and to \$10,000, respectively.

The bill expands the rules of construction formerly applicable only to wills to other donative transfers. It also provides a statute of limitations with respect to creditor claims against a decedent's estate.

Finally, the bill would take effect 180 days after enactment.

The committee amended the bill to correct internal citations and make other technical corrections.

This bill is identical to Senate Bill No. 708.

COMMITTEE AMENDMENTS

These committee amendments make technical changes to the bill and do not affect its substantive provisions. The amendments correct certain internal citations and make other technical corrections in sections 44, 64, 69 and 71 of the bill.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2046
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: MARCH 22, 2004

SUMMARY

Synopsis: Revises wills and estates
Type of Impact: No State or local impact
Agencies Affected: Judiciary, County Surrogates

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State & Local Cost	No Cost at State or Local level		

- * The bill makes a number of substantial changes to the provisions governing the administration of estates and trusts in the State of New Jersey and makes the affected provisions gender neutral.
- * The Administrative Office of the Courts notes that while the bill implements a number of changes to the administration of estates and trusts in the State of New Jersey, these changes would require no increased State expenditures.
- * Information obtained from county surrogates indicates that enactment of this bill would generate no increased costs for the County Surrogate offices.

BILL DESCRIPTION

Assembly Bill No. 2046 of 2004 makes a number of substantial changes to the provisions governing the administration of estates and trusts in the State of New Jersey and makes the affected provisions gender neutral.

The current statute, effective in New Jersey on May 1, 1982, was modeled upon the 1969 version of the Uniform Probate Code. This bill is modeled upon the 1990 version of the Uniform Probate Code. Among other significant changes, the 1990 Uniform Probate Code attempts to bring greater uniformity to the rules governing testamentary and non-testamentary transfers in response to the significant number of non-testamentary transfers that occur at the time of the decedent's death. For example, a new term, "governing instrument" has been incorporated as a definition in the bill to include deeds, trusts, insurance and annuity policies, POD (pay on death)

accounts, securities registered in beneficiary form (TOD), pension, profit sharing, retirement and similar benefit plans, and other wealth transfer instruments. The bill, however, does vary from the 1990 version of the Uniform Probate Code due to the unique elective share law that continues to exist in the State of New Jersey, which has been left for separate consideration. The bill clarifies the definitions of "descendant," "heirs," "incapacitated individual," "joint tenants with right of survivorship," "per capita distribution," "per stripes" distribution and distribution of estates "by representation."

The bill also clarifies situations where writings that are intended as wills would be allowed, but requires that the burden of proof on the proponent would be by clear and convincing evidence. The bill provides that divorce or annulment of a marriage, under certain circumstances, would revoke not only provisions of the former spouse's will, but also non-probate transfers occurring by reason of the decedent's death to the former spouse. The bill expands the provisions requiring survival of a beneficiary by 120 hours to succeed to an interest of a decedent in non-probate transfers.

The bill also makes substantial revisions to the laws governing intestate succession. For example, the bill provides that the intestate share of a surviving spouse would be 100 percent of the intestate estate where all of the surviving descendants of the decedent are also the descendants of the surviving spouse and the surviving spouse has no other descendants. Currently, such a surviving spouse receives the first \$50,000 plus 50 percent of the intestate estate. Further, the surviving spouse would now be entitled to a larger share of the estate in the event that either a parent of the decedent survives a decedent who has no descendants, or there are descendants of the surviving spouse who are not descendants of the decedent. Finally, stepchildren of a decedent would be added as a final class of takers. The bill expands the law with respect to disinheritance of a person who criminally and intentionally kills the decedent to include revocation of non-testamentary dispositions.

The bill consolidates the law concerning disclaimers of probate and non-probate property. The bill clarifies that a fiduciary may, with court approval, disclaim any power or discretion held by such fiduciary, and may disclaim without court approval if the governing instrument so permits.

Finally, the bill expands the rules of construction formerly applicable only to wills to other donative transfers. The bill provides a statute of limitations with respect to creditor claims against a decedent's estate.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Information provided informally by the Administrative Office of the Courts (AOC) in a prior legislative session noted that while the bill implemented a number of changes to the administration of estates and trusts in the State of New Jersey, these changes would require no increased State expenditures.

Information obtained from county surrogates in a prior legislative session indicated that enactment of this bill would generate no increased costs for the County Surrogate offices.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Judiciary and Surrogate estimates.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.