

**ARTICLE 2**

**INTESTACY, WILLS AND DONATIVE TRANSFERS**

**PART 1**

**INTESTATE SUCCESSION**

**SUBPART 1**

**GENERAL PROVISIONS**

**§2-101. Intestate estate**

**1. Intestate succession.** Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Code, except as modified by the decedent's will.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Will expressly excludes or limits.** A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the individual's or member's intestate share.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-102. Share of spouse**

The intestate share of a decedent's surviving spouse is: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. No descendant or parent.** The entire intestate estate if:

A. No descendant or parent of the decedent survives the decedent; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. No descendant but parent survives.** The first \$300,000, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Descendants of both decedent and spouse, just spouse.** The first \$100,000, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent; and

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Descendants of decedent, not spouse.** One-half of the intestate estate, if there are surviving descendants one or more of whom are not descendants of the surviving spouse.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-103. Share of heirs other than surviving spouse

**1. Share of heirs other than surviving spouse; order.** Any part of the intestate estate not passing to a decedent's surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

A. To the decedent's descendants per capita at each generation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent if only one survives; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(1) Half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, to be distributed to the descendants per capita at each generation; and

(2) Half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, to be distributed to the descendants per capita at each generation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph D; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. If there is no surviving descendant, parent or descendant of a parent, grandparent or descendant of a grandparent, but the decedent is survived by one or more great-grandparents or descendants of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the descendants of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as described in section 2-106; and the other half passes to the maternal relatives in the same manner, but if there is no surviving great-grandparent or descendant of a great-grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. No takers under subsection 1.** If there is no taker under subsection 1, but the decedent has:

A. One deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants per capita at each generation; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. More than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants per capita at each generation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-104. Requirement of survival by 120 hours; individual in gestation**

**1. Applicable provisions.** For purposes of intestate succession, homestead allowance and exempt property, and except as otherwise provided in subsection 2, the provisions of this subsection apply.

A. An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, the individual is deemed to have failed to survive for the required period. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, the individual is deemed to have failed to survive for the required period. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Not applicable if results in escheat.** This section does not apply if its application would cause the estate to pass to the State under section 2-105.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-105. No taker**

If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-A. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-106. Per capita at each generation**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Deceased descendant," "deceased parent" or "deceased grandparent" means a descendant, parent or grandparent, respectively, who either predeceased the decedent or is deemed to have predeceased the decedent under section 2-104. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 2-104. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Per capita at each generation; decedent's descendants.** If, under section 2-103, subsection 1, paragraph A, a decedent's intestate estate or a part thereof passes per capita at each generation to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Deceased descendants in the same generation identified in paragraph A who left surviving descendants, if any. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Per capita at each generation; descendants of decedent's parents, grandparents.** If, under section 2-103, subsection 1, paragraph C or D, a decedent's intestate estate or a part thereof passes per capita at each generation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Deceased descendants in the same generation identified in paragraph A who left surviving descendants, if any. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-107. Kindred of half blood

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-108. Advancements**

**1. Gifts treated as advancements.** If an individual dies intestate as to all or a portion of that individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

A. The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Valuation of advanced property.** For purposes of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Recipient's failure to survive decedent.** If the recipient of the property under subsection 1 fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-109. Debts to decedent**

A debt owed to the decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-110. Alienage**

An individual is not disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-111. Dower and curtesy abolished**

The estates of dower and curtesy are abolished. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-112. Individuals related to decedent through 2 lines**

An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share. In cases where such an heir would take equal shares, the individual is entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provisions of this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-113. Parent barred from inheriting**

**1. Parent barred from inheriting through child.** A parent is barred from inheriting through intestate succession from or through a child of the parent if:

A. The parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under the laws of this State other than Articles 1 to 8 on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Treated as predeceased child.** For the purpose of intestate succession from or through a deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**SUBPART 2**

**PARENT-CHILD RELATIONSHIP**

**§2-115. Determination of parentage for purposes of intestate succession**

Unless otherwise provided in this subpart, "parent" for purposes of intestate succession means a person who has established a parent-child relationship with the child under Article 9 or Title 19-A, chapter 61 and whose parental rights have not been terminated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-116. Effect of a pending petition**

If a petition to establish parentage under Title 19-A, chapter 61 or a petition for adoption under Article 9 is pending and has not been finally adjudicated at the time of the petitioner's death, the subject of the petition is considered a child of the petitioner for intestate succession purposes and may inherit from and through the petitioner. If the subject of the petition dies before a final adjudication of parentage is issued, the petitioner may inherit from or through the subject of the petition only if there is a final adjudication of parentage. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-117. Effect of an order granting adoption on adoptee and adoptee's former parents**

An order granting an adoption divests the adoptee's former parents of all legal rights, powers, privileges, immunities, duties and obligations concerning the adoptee, including the right to inherit from or through the adoptee. An adoptee, however, may inherit from the adoptee's former parents if so provided in the adoption decree. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-118. Child born after death of parent**

An individual is a parent of a child who is born after the individual's death, if the child is: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. In utero.** In utero not later than 36 months after the individual's death; or  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Born.** Born not later than 45 months after the individual's death.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

## PART 2

### ELECTIVE SHARE OF SURVIVING SPOUSE

#### **§2-201. Definitions**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Decedent's nonprobate transfers to others.** As used in sections other than section 2-205, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 2-205.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Fractional interest in property held in joint tenancy with the right of survivorship.** "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means a fraction, the numerator of which is one and

the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent or, if the decedent was not a joint tenant, is the number of joint tenants.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Marriage.** "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Nonadverse party.** "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Power; power of appointment.** "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Presently exercisable general power of appointment.** "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Property.** "Property" includes values subject to a beneficiary designation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Right to income.** "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust or a similar arrangement.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2017, c. 417, Pt. B, §14 (AFF).]

**9. Transfer.** "Transfer," as it relates to a transfer by or of the decedent, includes:

A. An exercise or release of a presently exercisable general power of appointment held by the decedent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A lapse at death of a presently exercisable general power of appointment held by the decedent; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An exercise, release or lapse of a general power of appointment that the decedent created in the decedent and of a power described in section 2-205, subsection 2, paragraph B that the decedent conferred on a nonadverse party. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### §2-202. Elective share

**1. Elective-share amount.** The surviving spouse of a decedent who dies domiciled in this State has a right of election, under the limitations and conditions stated in this Part, to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]



**2. Effect of election on statutory benefits.** If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property and family allowance, if any, are not charged against but are in addition to the elective share. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Nondomiciliary.** The right, if any, of the surviving spouse of a decedent who dies domiciled outside this State to take an elective share in property in this State is governed by the law of the decedent's domicile at death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-203. Composition of the augmented estate; marital-property portion

**1. Value of augmented estate.** Subject to section 2-208, the value of the augmented estate, to the extent provided in sections 2-204, 2-205, 2-206 and 2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute:

A. The decedent's net probate estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The decedent's nonprobate transfers to others; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The decedent's nonprobate transfers to the surviving spouse; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The surviving spouse's property and nonprobate transfers to others. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Value of marital-property portion.** The value of the marital-property portion of the augmented estate consists of the sum of the values of the 4 components of the augmented estate as determined under subsection 1 multiplied by a percentage as follows.

If the decedent and the spouse were married to each other:

A. Less than one year, the percentage is 3%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. One year but less than 2 years, the percentage is 6%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Two years but less than 3 years, the percentage is 12%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Three years but less than 4 years, the percentage is 18%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Four years but less than 5 years, the percentage is 24%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Five years but less than 6 years, the percentage is 30%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Six years but less than 7 years, the percentage is 36%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Seven years but less than 8 years, the percentage is 42%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Eight years but less than 9 years, the percentage is 48%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Nine years but less than 10 years, the percentage is 54%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

K. Ten years but less than 11 years, the percentage is 60%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

L. Eleven years but less than 12 years, the percentage is 68%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

M. Twelve years but less than 13 years, the percentage is 76%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

N. Thirteen years but less than 14 years, the percentage is 84%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

O. Fourteen years but less than 15 years, the percentage is 92%; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

P. Fifteen years or more, the percentage is 100%. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-204. Decedent's net probate estate**

The value of the augmented estate includes the value of the decedent's probate estate reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property and enforceable claims. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-205. Decedent's nonprobate transfers to others**

The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under section 2-204, of any of the following types, in the amount provided respectively for each type of transfer: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Passed outside probate at death.** Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property is included under this category only if it consists of any of the following types:

A. Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The decedent's fractional interest in property held in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The decedent's ownership interest in property or accounts held in POD, TOD or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Transferred during marriage.** Property transferred in any of the following forms by the decedent during marriage:

A. Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Passed during marriage within 2 years before death.** Property that passed during marriage and during the 2-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

A. Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection 1, paragraph A, B or C, or under subsection 2, if the right, interest or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person

other than the decedent or the decedent's estate, spouse or surviving spouse. For purposes of this paragraph, termination, with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default or otherwise, but, with respect to a power described in subsection 1, paragraph A, termination occurs when the power terminated by exercise or release, but not otherwise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under subsection 1, paragraph D had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the 2 years exceeded 50% of the amount excludable from taxable gifts under 26 United States Code, Section 2503(b) or its successor on the date next preceding the date of the decedent's death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-206. Decedent's nonprobate transfers to the surviving spouse

Excluding property passing to the surviving spouse under the federal Social Security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Joint tenancy.** The decedent's fractional interest in property held in joint tenancy with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Co-ownership registration.** The decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Other nonprobate transfers.** All other property that would have been included in the augmented estate under section 2-205, subsection 1 or 2 had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent or the decedent's creditors, estate or estate creditors.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-207. Surviving spouse's property and nonprobate transfers to others

**1. Included property.** Except to the extent included in the augmented estate under section 2-204 or 2-206, the value of the augmented estate includes the value of:

A. Property that was owned by the decedent's surviving spouse at the decedent's death, including:

- (1) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
- (2) The surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and
- (3) Property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property or payments under the federal Social Security system; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection 1, paragraph A, subparagraph (1) or (2), had the spouse been the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Time of valuation.** Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection 1, paragraph A, subparagraphs (1) and (2), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of subsection 1, paragraph B, proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under section 2-205, subsection 1, paragraph D are not valued as if the spouse were deceased.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Reduction for enforceable claims.** The value of property included under this section is reduced by enforceable claims against the surviving spouse.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-208. Exclusions, valuation and overlapping application

**1. Exclusions.** The value of any property is excluded from the decedent's nonprobate transfers to others:

A. To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Valuation.** The value of property is determined as follows.

A. The value of property included in the augmented estate under section 2-205, 2-206 or 2-207 is reduced in each category by enforceable claims against the included property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, except as provided in paragraph C, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan or any similar arrangement, exclusive of the federal Social Security system. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, regardless of whether that discretion is expressed in the form of a standard of distribution, is presumed to be 1/2 of the total value of the trust estate unless a different value is established by proof; except that the value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, without an ascertainable standard, is presumed to be the full value of the trust estate if the spouse is the sole trustee of the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Overlapping application; no double exclusion.** In case of overlapping application to the same property of the provisions of section 2-205, 2-206 or 2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-209. Sources from which elective share payable

**1. Elective-share amount only.** In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

A. Amounts included in the augmented estate under section 2-204 that pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 2-206; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The marital-property portion of amounts included in the augmented estate under section 2-207. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Marital-property portion.** The marital-property portion under subsection 1, paragraph B is computed by multiplying the value of the amounts included in the augmented estate under section 2-207 by the percentage of the augmented estate set forth in the schedule in section 2-203, subsection 2 appropriate to the length of time the spouse and the decedent were married to each other.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Unsatisfied balance of elective-share amount; net probate estate.** If, after the application of subsection 1, the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under section 2-205, subsections 1 and 2 and section 2-205, subsection 3, paragraph B are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the

recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Unsatisfied balance of elective share; nonprobate transfers.** If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Unsatisfied balance treated as general pecuniary devise.** The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection 3 or 4 is treated as a general pecuniary devise for purposes of section 3-904.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-210. Personal liability of recipients

**1. Original recipients; satisfaction of elective-share amount.** Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share amount. A person liable to make a contribution may choose to give up the proportional part of the decedent's nonprobate transfers to that person or to pay the value of the amount for which that person is liable.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Preemption; obligated and personally liable.** If any section or part of any section of this Part is preempted by federal law with respect to a payment, an item of property or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property or any other benefit is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-211. Proceeding for elective share; time limit

**1. Time of election.** Except as provided in subsection 2, the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney must make the election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. Notice of the time and place set for the hearing must be given to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection 2, the decedent's nonprobate transfers to others are not included within the

augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Extension.** Within 9 months after the decedent's death, a petition for an extension of time for making an election may be filed by the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney. If, within 9 months after the decedent's death, notice is given of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown may extend the time for election. If the court grants the petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share amount, if the election is made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Withdrawal of demand.** A demand for an elective share may be withdrawn at any time before entry of a final determination by the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Court determination.** After notice and hearing, the court shall determine the elective-share amount, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 2-209 and 2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but a person is not subject to contribution in any greater amount than the person would have been under sections 2-209 and 2-210 had relief been secured against all persons subject to contribution.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Enforcement.** An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-212. Right of election personal to surviving spouse

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under section 2-211, subsection 1. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator or agent under authority of a power of attorney. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-213. Waiver of right to elect and of other rights

**1. Waiver of election and statutory benefits.** The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the surviving spouse.



[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Waiver not enforceable.** A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

A. The surviving spouse did not execute the waiver voluntarily; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Unconscionability.** An issue of unconscionability of a waiver is for decision by the court as a matter of law.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Waiver of "all rights."** Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-214. Protection of payors and other 3rd parties

**1. Liability of payors and other 3rd parties.** Although under section 2-205 a payment, item of property or other benefit is included in the decedent's nonprobate transfers to others, a payor or other 3rd party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other 3rd party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other 3rd party is liable for payments made or other actions taken after the payor or other 3rd party received written notice that a petition for the elective share has been filed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Notice to payors and other 3rd parties.** A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the

decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under section 2-211, subsection 4, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 2-211, subsection 1 or, if filed, the demand for an elective share is withdrawn under section 2-211, subsection 3, the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other 3rd party from all claims for amounts so paid or the value of property so transferred or deposited.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Petition by beneficiary; court order.** Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### PART 3

#### SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

##### §2-301. Entitlement of spouse; premarital will

**1. Entitlement of spouse.** If a testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 2-603 or 2-604 to such a child or to a descendant of such a child, unless:

A. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Devises by will to spouse; others abate.** In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 2-603 or 2-604 to a descendant of such a child, abate as provided in section 3-902.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### §2-302. Omitted children

**1. Omitted children shares.** Except as provided in subsection 2, if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

A. If a testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If a testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(1) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;

(2) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (1), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(3) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this paragraph must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(4) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. No shares for omitted children.** Neither subsection 1, paragraph A nor subsection 1, paragraph B applies if:

A. It appears from the will that the omission was intentional; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Child believed to be dead.** If at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Shares abate.** In satisfying a share provided by subsection 1, paragraph A, devises made by the will abate under section 3-902.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**PART 4****EXEMPT PROPERTY AND ALLOWANCES****§2-401. Applicable law**

This Part applies to the estate of the decedent who dies domiciled in this State. Rights to homestead allowance, exempt property and family allowance for a decedent who dies not domiciled in this State are governed by the law of the decedent's domicile at death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-402. Homestead allowance**

A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the decedent's will unless otherwise provided by intestate succession or by way of elective share. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-403. Exempt property**

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests in the estate of tangible personal property, including, but not limited to, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value; however, the decedent, by will, may exclude one or more adult children from the receipt of exempt property. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-404. Family allowance**

**1. Family allowance during administration.** In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Not chargeable against benefit or share; right terminates on death.** The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share. The death of any person entitled to family allowance terminates that person's right to allowance not yet paid.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-405. Source, determination and documentation**

If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$27,000 or periodic installments not exceeding \$2,250 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which relief may include a family allowance other than that which the personal representative determined or could have determined. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

## PART 5

## WILLS

**§2-501. Who may make a will**

An individual of sound mind who is 18 or more years of age or a legally emancipated minor may make a will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-502. Execution; holographic wills**

**1. Witnessed wills.** Except as otherwise provided in subsection 2 and in sections 2-505 and 2-512, a will must be:

- A. In writing; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. Signed by at least 2 individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph B or the testator's acknowledgment of that signature or acknowledgment of the will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Holographic wills.** A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Extrinsic evidence.** Intent that a document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-503. Self-proved will**

**1. Self-proved at execution.** Any will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate in substantially the following form:

I, ....., the testator, on this ..... day of ....., 20.., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older or am a legally emancipated minor, of sound mind, and under no constraint or undue influence.

.....  
Testator

We, ....., the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his) (her) last will and that (he) (she) signed it willingly (or willingly directed another to sign for (him)

(her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....  
Witness

.....  
Witness

The State of .....

County of .....

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

(Signed) .....

.....  
(Official capacity of officer)

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Self-proved subsequent to execution.** An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, attached or annexed to the will in substantially the following form:

The State of .....

County of .....

We, ....., ..... and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as (his) (her) last will and that (he) (she) had signed willingly (or willingly directed another to sign for (him) (her)), as (his) (her) free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of (his) (her) knowledge the testator was at that time eighteen years of age or older or a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....  
Testator

.....  
Witness

.....  
Witness

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

(Signed) .....

.....  
(Official capacity of officer)

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Affidavit sufficient.** A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-504. Who may witness a will

**1. Witness.** An individual generally competent to be a witness may act as a witness to a will.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Interested witness.** The signing of a will by an interested witness does not invalidate the will or any portion of it.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-505. Choice of law as to execution

A written will is valid if executed in compliance with section 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-506. Revocation by writing or by act

**1. Revocation.** A will or any part thereof is revoked:

A. By the execution of a subsequent will that revokes the previous will or part expressly or by inconsistency; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. By the performance of a revocatory act on the will, if the testator performs the act with the intent and for the purpose of revoking the will or part or if another individual performs the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning, tearing or canceling is a revocatory act on the will, whether or not the burn, tear or cancellation touched any of the words on the will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Intent to replace previous will.** If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Presumption of intent to replace.** The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.



[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-507. Revocation by change of circumstances

Except as provided in sections 2-802, 2-803 and 2-804, a change of circumstances does not revoke a will or any part of it. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-508. Revival of revoked will

**1. Subsequent will revoked by revocatory act; wholly revoked previous will.** If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 2-506, subsection 1, paragraph B, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Subsequent will revoked by revocatory act; partly revoked previous will.** If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 2-506, subsection 1, paragraph B, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Subsequent will revoked by later will.** If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-509. Incorporation by reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-510. Uniform Testamentary Additions to Trusts Act**

**1. Devise to a trust.** A will may validly devise property to the trustee of a trust established or to be established:

A. During the testator's lifetime by the testator, by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size or character of the corpus of the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Not held under testamentary trust.** Unless the testator's will provides otherwise, property devised to a trust described in subsection 1 is not held under a testamentary trust of the testator but becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Revocation or termination before death.** Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-511. Events of independent significance**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-512. Separate writing identifying devise of certain types of tangible personal property**

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be in the handwriting of the testator or be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to

be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect upon the dispositions made by the will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-513. Contracts concerning succession

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after September 1, 2019, can be established only by: [PL 2019, c. 417, Pt. B, §2 (AMD).]

**1. Material provisions.** Provisions of a will stating material provisions of the contract; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Express reference, extrinsic evidence.** An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Writing evidencing the contract.** A writing signed by the decedent evidencing the contract. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §2 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-514. Disposition of will deposited with court

A will deposited for safekeeping with the court in the office of the register before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a will for safekeeping after September 19, 1997. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-515. Duty of custodian of will; liability

After the death of a testator, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate or, if no such person is known, to an appropriate court for filing and recording until probate is sought. A person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. A person who willfully fails to deliver a will or who willfully defaces or destroys any will of a deceased person is liable to any person aggrieved for the damages that may be sustained by such failure to deliver or by such defacement or destruction. A person who willfully refuses or fails to deliver a will, or who defaces or destroys it, after being ordered

by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-516. Penalty clause for contest

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-517. Statutory wills

**1. Form.** Any person may execute a will on the following form, and the will must be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

#### Maine Statutory Will

#### NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK THE LAWYER TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY THAT PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS THAT YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

.....

(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS. I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made.

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A," "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B," or after each individual distribution in clause "C." If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I

fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

Property Disposition Clauses. (select one)

\_\_\_ A. I leave all my remaining property to my spouse, if living. If my spouse is not living, then in equal shares to my children and the descendants of any deceased child.

\_\_\_\_\_ (signature).

\_\_\_ B. I leave the following stated amount to my spouse and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

\_\_\_\_\_ (signature).

\_\_\_ C. I leave the following stated amounts to the persons named:

_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)

2.5 UNDISTRIBUTED PROPERTY. If I have any property that, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

\_\_\_\_\_ (this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST GUARDIAN	_____	_____
		(signature)
SECOND GUARDIAN	_____	_____
		(signature)
THIRD GUARDIAN	_____	_____
		(signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST CONSERVATOR \_\_\_\_\_ (signature)  
 SECOND CONSERVATOR \_\_\_\_\_ (signature)  
 THIRD CONSERVATOR \_\_\_\_\_ (signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL REPRESENTATIVE \_\_\_\_\_ (signature)  
 SECOND PERSONAL REPRESENTATIVE \_\_\_\_\_ (signature)  
 THIRD PERSONAL REPRESENTATIVE \_\_\_\_\_ (signature)

I sign my name to this Maine Statutory Will on \_\_\_\_\_ (date) at \_\_\_\_\_ (city) in the State of \_\_\_\_\_.

\_\_\_\_\_  
 Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature \_\_\_\_\_  
 Printed name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Printed name \_\_\_\_\_  
 Address \_\_\_\_\_

Completing the following section and having all signatures acknowledged by a notary public or other individual authorized to take acknowledgments is optional but if completed will simplify the submission of your will to the probate court after your death.

I, \_\_\_\_\_, the testator, on this \_\_\_\_\_ day of \_\_\_\_\_, 20.., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me) as my free and voluntary act and that I am 18 years of age or older or am a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....  
 Testator

We, ....., the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his)(her) last will and that (he)(she) signed it willingly (or willingly directed another to sign for (him)(her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....  
Witness

.....  
Witness

The State of .....

County of .....

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

(Signed) .....

.....  
(Official capacity of officer)

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Forms provided.** Forms for executing a statutory will must be provided at all probate courts for a cost equivalent to the reasonable cost of printing and storing the forms. The probate courts shall make the statutory will form available via the Internet for free printing by anyone choosing to use the form. A statutory will is deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will does not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature invalidates only the part not signed, except as specifically provided in paragraph 2.4.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**PART 6**

**RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS**

**§2-601. Scope**

In the absence of a finding of a contrary intention, the rules of construction in this Part control the construction of a will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-602. Will may pass all property and after-acquired property**



A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-603. Antilapse; deceased devisee; class gifts

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative devise" means a devise that is expressly created by a will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(1) Rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(2) Rules for intestate succession if the devise or exercise of the power is not in the form of a class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Devisee" includes:

(1) A class member if the devise is in the form of a class gift;

(2) An individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(3) An appointee under a power of appointment exercised by the testator's will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. "Surviving devisee" or "surviving descendant" means a devisee or descendant, respectively, who neither predeceased the testator nor is deemed to have predeceased the testator under section 2-702. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Substitute gift.** If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply.

A. Except as provided in paragraph D, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take per capita at each generation the property to which the devisee would have been entitled had the devisee survived the testator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Except as provided in paragraph D, if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisee survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. For the purposes of section 2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph A or B, the substitute gift is superseded by the alternative devise if:

- (1) The alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or
- (2) The alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

"Descendant," in the phrase "surviving descendant," used in reference to a deceased devisee or class member, means the descendant of a deceased devisee or class member in paragraphs A and B who would take under a class gift created in the testator's will.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. More than one substitute gift; which one takes effect.** If, under subsection 2, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the devised property passes under the primary substitute gift except that if there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Primary substitute gift" means the substitute gift created with respect to the primary devise. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Younger-generation devise" means a devise that:

- (1) Is to a descendant of a devisee of the primary devise;
- (2) Is an alternative devise with respect to the primary devise;
- (3) Is a devise for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-604. Failure of testamentary provision

**1. Failed devise becomes part of residue.** Except as provided in section 2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Failed residuary devise passes in proportion.** Except as provided in section 2-603, if the residue is devised to 2 or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-605. Increase in securities; accessions

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

A. Securities of the same organization acquired by reason of action initiated by the organization or any successor, related or acquiring organization, excluding any acquired by exercise of purchase options; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Securities of another organization acquired as a result of a merger, consolidation, reorganization or other distribution by the organization or any successor, related or acquiring organization; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Securities of the same organization acquired as a result of a plan of reinvestment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Distributions in cash.** Distributions in cash before death with respect to a described security are not part of the devise under subsection 1.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-606. Nonademption of specific devises; unpaid proceeds of sale, condemnation or insurance; sale by conservator or agent**

**1. Specifically devised property.** A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and to:

A. Any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Any amount of a condemnation award for the taking of the property unpaid at death; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Any real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. If not covered by paragraphs A to E, a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. General pecuniary devise from specifically devised property.** If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or a condemnation award, insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Reduction of right to general pecuniary devise.** The right of a specific devisee under subsection 2 is reduced by any right the devisee has under subsection 1.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Survival of testator; incapacity ceased.** For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if, after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication for at least one year.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Durable power of attorney.** For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

A. "Incapacitated principal" means a principal who is an incapacitated person; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An adjudication of incapacity before death is not necessary; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-607. Nonexoneration

A specific devise passes subject to any mortgage interest existing at the date of death without right of exoneration, regardless of a general directive in the will to pay debts. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-608. Exercise power of appointment

In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. General power.** The power is a general power exercisable in favor of the powerholder's estate and the creating instrument does not contain an effective gift if the power is not exercised; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Intention to include property subject to the power.** The testator's will manifests an intention to include the property subject to the power.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-609. Ademption by satisfaction

**1. Property given during testator's lifetime.** Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

A. The will provides for deduction of the gift; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Partial satisfaction; value.** For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Devisee fails to survive testator.** If the devisee fails to survive the testator, the gift described in subsection 1 is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

## PART 7

### RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

#### §2-701. Scope

In the absence of a finding of a contrary intention, the rules of construction in this Part control the construction of a governing instrument. The rules of construction in this Part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-702. Requirement of survival by 120 hours

**1. Requirement of survival by 120 hours under Code.** For the purposes of this Code, except as provided in subsection 4, an individual who has not been established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Requirement of survival by 120 hours under governing instrument.** Except as provided in subsection 4, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who has not been

established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Co-owners with right of survivorship; requirement of survival by 120 hours.** Except as provided in subsection 4, if:

A. It is not established by clear and convincing evidence that one of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. There are more than 2 co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Exceptions.** Survival by 120 hours is not required if:

A. The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. Survival of the event and the specified period must be established by clear and convincing evidence; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under Title 33, section 111, subsection 1, paragraph A, subsection 2, paragraph A or subsection 3, paragraph A or to become invalid under Title 33, section 111, subsection 1, paragraph B, subsection 2, paragraph B or subsection 3, paragraph B. Survival must be established by clear and convincing evidence; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. Survival must be established by clear and convincing evidence. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Protection of payors and other 3rd parties.** This subsection governs liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the payor or other 3rd party received written notice of a claimed lack of entitlement under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received

written notice of a claimed lack of entitlement under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Written notice of a claimed lack of entitlement under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Protection of bona fide purchaser; personal liability of recipient.** This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, and item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-703. Choice of law as to meaning and effect of governing instrument

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).



**§2-704. Power of appointment; compliance with specific reference requirement**

A powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Knows of and intends to exercise power.** The powerholder knows of and intends to exercise the power; and  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Does not impair a material purpose.** The powerholder's manner of attempted exercise does not impair a material purpose of the donor in imposing the requirement.  
[RR 2019, c. 1, Pt. A, §16 (COR).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). RR 2019, c. 1, Pt. A, §16 (COR).

**§2-705. Class gifts construed to accord with intestate succession; exceptions**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Relative" means a grandparent or the descendant of a grandparent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Terms of relationship.** A class gift that uses a term of relationship to identify the class members includes in the class a child of parents regardless of their marital status, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Relatives by marriage.** Terms of relationship in a governing instrument that do not differentiate relationships by parentage, including relatives of parents, from those by marriage, such as uncles, aunts, nieces or nephews, are construed to exclude relatives by marriage, unless:

A. When the governing instrument was executed, the class was then and foreseeably would be empty; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The language or circumstances otherwise establish that relatives by marriage were intended to be included. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Relatives of shared parentage.** Terms of relationship in a governing instrument that do not differentiate relationships by whether all parents are shared, such as brothers, sisters, nieces or nephews, are construed to include all types of relationships regardless of whether relatives share all parents.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Transferor not parent.** In construing a dispositive provision of a transferor who is not the parent, the transferor or a relative of the transferor must have established a parent-child relationship with the child before the child reached 18 years of age.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Class-closing rules.** The following provisions apply for purposes of the class-closing rules.

A. A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the distribution date is the date of the deceased parent's death, a child in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death is treated as living at that time if the child lives 120 hours after birth. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An individual who is in the process of being adopted when the class closes is treated as a child of the parent when the class closes if the adoption is subsequently granted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-706. Life insurance; retirement plan; account with POD designation; TOD designation; deceased beneficiary**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent or any other form. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(1) A class member if the beneficiary designation is in the form of a class gift; and

(2) An individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

"Beneficiary" excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint survivorship account. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(1) Rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(2) Rules for intestate succession if the beneficiary designation is not in the form of a class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Stepchild" means a child of the decedent's surviving, deceased or former spouse and not of the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants, respectively, who neither predeceased the decedent nor are deemed to have predeceased the decedent under section 2-702. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Substitute gift.** If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent or a stepchild of the decedent, the following apply.

A. Except as provided in paragraph D, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Except as provided in paragraph D, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which that beneficiary would have been entitled had the deceased beneficiary survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. For the purposes of section 2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or "if she survives me," or in a beneficiary designation to "my surviving children," are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created under paragraph A or B, the substitute gift is superseded by the alternative beneficiary designation if:

(1) The alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(2) The alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

"Descendants," in the phrase "surviving descendants," used in reference to a deceased beneficiary or class member in paragraphs A and B, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. More than one substitute gift; which one takes effect.** If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the property passes under the primary substitute gift except that if there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Younger-generation beneficiary designation" means a beneficiary designation that:

- (1) Is to a descendant of a beneficiary of the primary beneficiary designation;
- (2) Is an alternative beneficiary designation with respect to the primary beneficiary designation;
- (3) Is a beneficiary designation for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Protection of payors.** This subsection governs the liability of payors.

A. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The written notice of the claim under paragraph A must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by the payor or other 3rd party to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2017, c. 402, Pt. F, §1 (AFF).]

**5. Protection of bona fide purchaser; personal liability of recipient.** This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-707. Survivorship with respect to future interests under terms of trust; substitute takers

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether the event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Distribution date," with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Future interest" includes an alternative future interest and a future interest in the form of a class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust or creating a trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants, respectively, who neither predeceased the distribution date nor are deemed to have predeceased the distribution date under section 2-702. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Survivorship required; substitute gift.** A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply.

A. Except as provided in paragraph D, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Except as provided in paragraph D, if the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which that beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. For the purposes of section 2-701, words of survivorship attached to a future interest are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. As used in this paragraph, "words of survivorship" includes words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent or any other form. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If the governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created under paragraph A or B, the substitute gift is superseded by the alternative future interest if:

- (1) The alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or
- (2) The alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

"Descendants," in the phrase "surviving descendants," used in reference to a deceased beneficiary or class member in paragraphs A and B, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. More than one substitute gift; which one takes effect.** If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the property passes under the primary substitute gift, except that if there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Primary substitute gift" means the substitute gift created with respect to the primary future interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Younger-generation future interest" means a future interest that:

- (1) Is to a descendant of a beneficiary of the primary future interest;
- (2) Is an alternative future interest with respect to the primary future interest;
- (3) Is a future interest for which a substitute gift is created; and
- (4) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. If no other taker, property passes under residuary clause or to transferor's heirs.** Except as provided in subsection 5, if, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order.

A. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If a taker is not produced by the application of paragraph A, the property passes to the transferor's heirs under section 2-711. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

For purposes of this subsection, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. No other taker and future interest created by exercise of power of appointment.** If, after the application of subsections 2 and 3, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

A. The property passes under the donor's gift-in-default clause, if any. The donor's gift-in-default clause is treated as creating a future interest under the terms of a trust; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no taker is produced by the application of paragraph A, the property passes as provided in subsection 4. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-708. Class gifts to "descendants," "issue" or "heirs of the body"; form of distribution if none specified**

If a class gift in favor of "descendants," "issue" or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-709. Per capita at each generation; per stirpes or by representation**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Deceased child" or "deceased descendant" means a child or a descendant, respectively, who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to section 2-702. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Distribution date," with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Surviving ancestor," "surviving child" or "surviving descendant" means an ancestor, a child or a descendant, respectively, who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to section 2-702. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Per capita at each generation.** If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation," the property is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Deceased descendants in the same generation who left surviving descendants, if any. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.



[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Per stirpes or by representation.** If a governing instrument calls for property to be distributed "per stirpes" or "by representation," the property is divided into as many equal shares as there are:

A. Surviving children of the designated ancestor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Deceased children who left surviving descendants. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Deceased descendant with no surviving descendant disregarded.** For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-710. Worthier-title doctrine abolished

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives" or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-711. Interests in "heirs" and like

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives" or "family," or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

## PART 8

## GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

### §2-801. Effect of divorce, annulment and decree of separation

**1. Divorce; annulment; separation.** An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Not a surviving spouse.** For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:

A. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if that decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as spouses; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### §2-802. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Governing instrument" means a governing instrument executed by the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer and whether or not the decedent then had capacity to exercise the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Forfeiture of statutory benefits.** An individual who feloniously and intentionally kills the decedent forfeits all benefits under this Article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt

property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Revocation of benefits under governing instruments.** The felonious and intentional killing of the decedent:

A. Revokes any revocable:

(1) Disposition or appointment of property made by the decedent to the killer in a governing instrument;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(3) Nomination of the killer in a governing instrument nominating or appointing the killer to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee or agent; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Effect of severance.** A severance under subsection 3, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Effect of revocation.** Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Wrongful acquisition of property.** A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer may not profit from the killer's wrong.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Felonious and intentional killing; how determined.** After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Protection of payors and other 3rd parties.** This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Written notice of a claimed forfeiture or revocation under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**9. Protection of bona fide purchaser; personal liability of recipient.** This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property for value and without notice, or who receives a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A person who, not for value, receives a payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§2-803. Effect of criminal conviction on intestate succession, wills, joint assets, beneficiary designations and other property acquisition when restitution is owed to the decedent**

A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Decedent's will or this Article.** Any benefits under the decedent's will or under this Article; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Jointly owned property.** Any property owned jointly with the decedent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Bond, life insurance policy or other contractual arrangement.** Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Acquisition of property.** Any benefit from any acquisition of property in which the decedent had an interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2-801. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Divorced individual" includes an individual whose marriage has been annulled. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse or relative of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse or in place of the relative of the divorced individual's former

spouse and whether or not the divorced individual then had the capacity to exercise the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Revocation upon divorce.** Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

A. Revokes any revocable:

(1) Disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(3) Nomination in a governing instrument nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent or guardian; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Effect of severance.** A severance under subsection 2, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Effect of revocation.** Provisions of a governing instrument are given effect as if the divorced individual's former spouse and relatives of the divorced individual's former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the divorced individual's former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Revival if divorce nullified.** Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. No revocation for other change of circumstances.** A change of circumstances other than as described in this section or in section 2-802 does not effect a revocation pursuant to this section.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Protection of payors and other 3rd parties.** This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a

remarriage, divorce or annulment or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument before the payor or other 3rd party received written notice of the remarriage, divorce or annulment. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed remarriage, divorce or annulment under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Written notice of the remarriage, divorce or annulment under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of the remarriage, divorce or annulment, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Protection of bona fide purchaser; personal liability of recipient.** This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person for value and without notice, or who receives from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A divorced individual's former spouse, relative of a divorced individual's former spouse or other person who, not for value, receives a payment, item of property or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a divorced individual's former spouse, relative of the divorced individual's former spouse or any other person who, not for value, receives the payment, item of property or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-805. Reformation to correct mistakes

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-806. Modification to achieve transferor's tax objectives**

To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-807. Actions for wrongful death**

**1. Liability notwithstanding death.** Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued is liable for damages as provided in this section, notwithstanding the death of the person injured and although the death was caused under circumstances that amount to a felony.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Wrongful death action; damages; limitations.** Every wrongful death action must be brought by and in the name of the personal representative or special administrator of the deceased person, and is distributable, after payment for funeral expenses and the costs of recovery including attorney's fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided in this subsection. The amount recovered in every wrongful death action, except as specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and in the proportions as provided under the intestacy laws of this State in sections 2-101 to 2-113. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death. Damages are payable to the estate of the deceased person only if the jury specifically makes an award payable to the estate for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses or, in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same. In addition, the jury may give damages not exceeding \$750,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative or special administrator of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.



[PL 2019, c. 198, §1 (AMD); PL 2019, c. 417, Pt. A, §3 (AMD).]

**3. Damages for conscious suffering.** Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death is, in addition to the action at common law and damages recoverable therein, liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection 2, separately found, but in such cases there is only one recovery for the same injury. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Maine Tort Claims Act.** Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118 is limited as provided in those sections. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 198, §1 (AMD). PL 2019, c. 417, Pt. A, §3 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

## PART 9

### UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

#### §2-901. Short title

This Part may be known and cited as "the Uniform Disclaimer of Property Interests Act." [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-902. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Disclaimant.** "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Disclaimed interest.** "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Disclaimer.** "Disclaimer" means the refusal to accept an interest in or power over property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Fiduciary.** "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Jointly held property.** "Jointly held property" means property held in the name of 2 or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. State.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band or Alaskan native village recognized by federal law or formally acknowledged by a state. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Trust.** "Trust" means:

A. An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A trust created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-903. Scope

This Part applies to disclaimers of any interest in or power over property, whenever created. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-904. Part supplemented by other law

**1. Principles of law and equity.** Unless displaced by a provision of this Part, the principles of law and equity supplement this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Right to waive, release, disclaim or renounce property interest.** This Part does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-905. Power to disclaim; general requirements; when irrevocable

**1. Power to disclaim.** A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Fiduciary authority to disclaim.** Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary

relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. General requirements.** To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer and be delivered or filed in the manner provided in section 2-912. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Sign" means, with present intent to authenticate or adopt a record, to:

(1) Execute or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic sound, symbol or process.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Partial disclaimer.** A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. When irrevocable.** A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 2-912 or when it becomes effective as provided in sections 2-906 to 2-911, whichever occurs later.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Disclaimer not a transfer, assignment or release.** A disclaimer made under this Part is not a transfer, assignment or release.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

## SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### §2-906. Disclaimer of interest in property

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. General provisions governing disclaimers.** Except for a disclaimer governed by section 2-907 or 2-908, the following provisions apply to a disclaimer of an interest in property.

A. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If the instrument does not contain a provision described in paragraph B, the following provisions apply.

(1) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(2) If the disclaimant is an individual, except as otherwise provided in subparagraphs (3) and (4), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(3) If by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(4) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the State but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-907. Disclaimer of rights of survivorship in jointly held property**

**1. Disclaimer by surviving holder of jointly held property.** Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

A. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Effective date of disclaimer.** A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Disposition of disclaimed property.** An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-908. Disclaimer of interest by trustee

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-909. Disclaimer of power of appointment or other power not held in fiduciary capacity

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following provisions apply. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Disclaimer of unexercised power.** If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Disclaimer of exercised power.** If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Construction of instrument creating the power.** The instrument creating the power is construed as if the power expired when the disclaimer became effective.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-910. Disclaimer by appointee, object or taker in default of exercise of power of appointment

**1. Disclaimer by appointee.** A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Disclaimer by object or taker in default.** A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### **§2-911. Disclaimer of power held in fiduciary capacity**

**1. Disclaimer of unexercised power.** If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Disclaimer of exercised power.** If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Effect of disclaimer by fiduciary.** A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

### **§2-912. Delivery or filing**

**1. Beneficiary designation.** As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

A. An annuity or insurance policy; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An account with a designation for payment; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A security registered in beneficiary form; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A pension, profit-sharing, retirement or other employment-related benefit plan; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Any other nonprobate transfer at death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Delivery of disclaimer; generally.** Subject to subsections 3 to 12, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Disclaimer of interest from intestate succession or will.** In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

A. A disclaimer must be delivered to the personal representative of the decedent's estate or the special administrator of the decedent's estate; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no personal representative is then serving, a disclaimer must be filed with the court having jurisdiction to appoint the personal representative. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Disclaimer of interest in a testamentary trust.** In the case of an interest in a testamentary trust:

A. A disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no trustee or personal representative is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Disclaimer of interest in inter vivos trust.** In the case of an interest in an inter vivos trust:

A. A disclaimer must be delivered to the trustee then serving; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no trustee is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Disclaimer of interest created by beneficiary designation.** In the case of an interest created by a beneficiary designation that is disclaimed before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Disclaimer of interest created by irrevocable beneficiary designation.** In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

A. The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The disclaimer of an interest in real property must be recorded in the registry of deeds of the county where the real property that is the subject of the disclaimer is located. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Disclaimer by surviving holder of jointly held property.** In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**9. Disclaimer by object or taker in default.** In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

A. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**10. Disclaimer by appointee.** In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

A. The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**11. Disclaimer by fiduciary.** In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4 or 5 as if the power disclaimed were an interest in property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**12. Disclaimer of a power by an agent.** In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §2-913. When disclaimer barred or limited

**1. Bar pursuant to written waiver.** A disclaimer is barred by a written waiver of the right to disclaim.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Bar pursuant to events.** A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

A. The disclaimant accepts the interest sought to be disclaimed; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A judicial sale of the interest sought to be disclaimed occurs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Previous exercise not a bar to disclaimer of power held in fiduciary capacity.** A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Previous exercise not a bar to disclaimer of power not held in fiduciary capacity; exception.** A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Bar pursuant to law.** A disclaimer is barred or limited if so provided by law other than this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]



**6. Effect of bar.** A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this Part had the disclaimer not been barred.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-914. Tax qualified disclaimer**

Notwithstanding any other provision of this Part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated, pursuant to the provisions of 26 United States Code, as amended, or any successor statute, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-915. Recording of disclaimer**

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Except as otherwise provided in section 2-912, subsection 7, paragraph B, failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-916. Application to existing relationships**

Except as otherwise provided in section 2-913, an interest in or power over property existing on September 1, 2019 as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after September 1, 2019. [PL 2019, c. 417, Pt. B, §3 (AMD).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §3 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

#### **§2-917. Relation to Electronic Signatures in Global and National Commerce Act**

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b). [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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