

No. 1978-23

AN ACT

SB 1000

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for the rights of certain persons in estates of certain decedents and the rules of interpretation of wills and conveyances.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 2101, 2102, 2103, 2104 and 2105 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are amended to read:

§ 2101. Intestate [~~descent~~] *estate*.

[The real and personal estate of a decedent, whether male or female, subject to payment of debts and charges, and not disposed of by will or otherwise, shall descend as hereinafter provided.]

All or any part of the estate of a decedent not effectively disposed of by will or otherwise passes to his heirs as prescribed in this chapter.

§ 2102. Share of surviving spouse.

[The surviving spouse shall be entitled to the following share or shares:

(1) More than one child.—One-third if the decedent is survived by more than one child, or by one or more children and the issue of a deceased child or children, or by the issue of more than one deceased child; or

(2) One child.—One-half if the decedent is survived by one child only, or by no child, but by the issue of one deceased child; or

(3) No issue.—The first \$20,000 in value and one-half of the balance of the estate, if the decedent is survived by no issue. In case of partial intestacy, any amount received by the surviving spouse under the will shall satisfy pro tanto the \$20,000 allowance; or

(4) No issue or other designated person.—All of the estate if the decedent is survived by no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle, or aunt.]

The intestate share of a decedent's surviving spouse is:

(1) *If there is no surviving issue or parent of the decedent, the entire intestate estate.*

(2) *If there is no surviving issue of the decedent but he is survived by a parent or parents, the first \$20,000 plus one-half of the balance of the intestate estate.*

(3) *If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first \$20,000 plus one-half of the balance of the intestate estate.*

(4) *If there are surviving issue of the decedent one or more of whom*

are not issue of the surviving spouse, one-half of the intestate estate.

(5) In case of partial intestacy any property received by the surviving spouse under the will shall satisfy pro tanto the \$20,000 allowance under paragraphs (2) and (3).

§ 2103. Shares of others than surviving spouse.

The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall **[descend] pass** in the following order:

(1) Issue.—To the issue of the decedent.

(2) Parents.—If no issue survives the decedent, then to the parents or parent of the decedent.

(3) Brothers, sisters, or their issue.—If no parent survives the decedent, then to the issue of each of the decedent's parents.

(4) Grandparents.—If no issue of either of the decedent's parents but at least one grandparent survives the decedent, then half to the **[parental] paternal** grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparents or grandparent *or to their children and grandchildren* on the other side.

(5) Uncles, aunts and their children, and grandchildren.—If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in section 2104(1) (relating to taking in different degrees).

(6) Commonwealth.—In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

§ 2104. Rules of succession.

The provisions of this chapter shall be applied to both real and personal estate in accordance with the following rules:

(1) Taking in different degrees.—The shares **[descending] passing** under this chapter to the issue of the decedent, to the issue of his parents or grandparents or to his uncles or aunts or to their children, or grandchildren, shall **[descend] pass** to them as follows: The part of the estate **[descending] passing** to any such persons shall be divided into as many equal shares as there shall be persons in the nearest degree of consanguinity to the decedent living and taking shares therein and persons in that degree who have died before the decedent and have left issue to survive him who take shares therein. One equal share shall **[descend] pass** to each such living person in the nearest degree and one equal share shall **[descend] pass** by representation to the issue of each such deceased person, except that no issue of a child of an uncle or aunt

of the decedent shall be entitled to any share of the estate unless there be no relatives as close as a child of an uncle or aunt living and taking a share therein, in which case the grandchildren of uncles and aunts of the decedent shall be entitled to share, but no issue of a grandchild of an uncle or aunt shall be entitled to any share of the estate.

(2) Taking in same degree.—When *the* persons entitled to take under this chapter other than as a surviving spouse are all in the same degree of consanguinity to the decedent, they shall take in equal shares.

(3) Whole and half blood.—Persons taking under this chapter shall take without distinction between those of the whole and those of the half blood.

(4) After-born persons; time of determining relationships.—Persons begotten before the decedent's death but born thereafter, shall take as if they had been born in his lifetime.

(5) Source of ownership.—Real estate shall **[descend] pass** under this chapter without regard to the ancestor or other relation from whom it has come.

(6) Quantity of estate.—Any person taking real or personal estate under this chapter shall take such interest as the decedent had therein.

(7) Tenancy in estate.—When real or personal estate or shares therein shall **[descend] pass** to two or more persons, they shall take it as tenants in common, except that if it shall **[descend] pass** to a husband and wife they shall take it as tenants by the entireties.

(8) Alienage.—Real and personal estate shall **[descend] pass** without regard to whether the decedent or any person otherwise entitled to take under this chapter is or has been an alien.

(9) Person related to decedent through two lines.—A person related to the decedent through two lines of relationship shall take one share only which shall be the larger share.

(10) Requirement that heir survive decedent for five days.—Any person who fails to survive the decedent by five days shall be deemed to have predeceased the decedent for purposes of intestate succession and the decedent's heirs shall be determined accordingly. If the time of death of the decedent or of a person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir survived the decedent by five days, that person shall be deemed to have failed to survive for the required period. This section shall not be applied where its application would result in a taking by the Commonwealth under section 2103(6) (relating to shares of others than surviving spouse).

§ 2105. Spouse's rights.

(a) Widow.—The **[shares] share** of the estate to which **[the] a** widow is entitled *under this title* shall be in lieu and full satisfaction of her dower at common law **[, so far as relates to real estate of which the husband dies seised; and her share in real estate aliened by the husband in his lifetime, without her joining in the conveyance shall be the same as her share in real**

estate of which the husband dies seized. The widow shall receive the same share in a future estate owned by the husband as in an estate of which he dies seized, although the particular estate shall not terminate before the death of the husband].

(b) Surviving husband.—The [shares] *share* of the estate to which [the] *a* surviving husband is entitled *under this title* shall be in lieu and full satisfaction of his curtesy at common law [so far as relates to real estate of which the wife dies seized, and his share in real estate aliened by the wife in her lifetime without his joining in the conveyance shall be the same as his share in real estate of which the wife dies seized. The surviving husband shall receive the same share in a future estate owned by the wife as in an estate of which she dies seized, although the particular estate shall not terminate before the death of the wife].

Section 2. Section 2111 of Title 20 is repealed.

Section 3. Title 20 is amended by adding a chapter to read:

CHAPTER 22 ELECTIVE SHARE OF SURVIVING SPOUSE

Sec.

- 2201. Definition of conveyance.
- 2202. Right of election; nonresident decedent.
- 2203. Right of election; resident decedent.
- 2204. Disclaimers, releases and charges against elective share.
- 2205. Transfers for value excluded.
- 2206. Right of election personal to surviving spouse.
- 2207. Waiver of right to elect.
- 2208. Forfeiture of right of election.
- 2209. Surviving spouse as witness.
- 2210. Procedure for election; time limit.
- 2211. Determination of effect of election; enforcement.

§ 2201. Definition of conveyance.

As used in this chapter, unless the context clearly indicates otherwise, “conveyance” means an act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation.

§ 2202. Right of election; nonresident decedent.

When a married person not domiciled in this Commonwealth dies, the rights, if any, of his surviving spouse to an elective share in property in this Commonwealth are governed by the laws of the decedent’s domicile at death, but the rights of the electing spouse shall be subject to the rights of fiduciaries, custodians and obligors within this Commonwealth and transferees for value of and holders of liens for value on real estate or tangible personal property located in this Commonwealth under section 2211 (relating to determination of effect of election; enforcement).

§ 2203. Right of election; resident decedent.

(a) Property subject to election.—When a married person domiciled in

this Commonwealth dies, his surviving spouse has a right to an elective share of one-third of the following property:

(1) Property passing from the decedent by will or intestacy.

(2) Income or use for the remaining life of the spouse of property conveyed by the decedent during the marriage to the extent that the decedent at the time of his death had the use of the property or an interest in or power to withdraw the income thereof.

(3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.

(4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee.

(5) Survivorship rights conveyed to a beneficiary of an annuity contract to the extent it was purchased by the decedent during the marriage and the decedent was receiving annuity payments therefrom at the time of his death.

(6) Property in excess of \$3,000 in value conveyed to any one donee by the decedent during the marriage within one year of his death.

In construing this subsection, a power in the decedent to withdraw income or principal, or a power in any person whose interest is not adverse to the decedent to distribute to or use for the benefit of the decedent any income or principal, shall be deemed to be a power in the decedent to withdraw so much of the income or principal as is subject to such power, even though such income or principal may be distributed only for support or other particular purpose or only in limited periodic amounts.

(b) Property not subject to election.—The provisions of subsection (a) shall not be construed to include any of the following except to the extent that they pass as part of the decedent's estate to his personal representative, heirs, legatees or devisees:

(1) Any conveyance made with the express consent or joinder of the surviving spouse.

(2) The proceeds of insurance, including accidental death benefits, on the life of the decedent.

(3) Interests under any broad-based nondiscriminatory pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other such plan established by an employer for the benefit of its employees and their beneficiaries.

(4) Property passing by the decedent's exercise or nonexercise of any power of appointment given by someone other than the decedent.

§ 2204. Disclaimers, releases and charges against elective share.

(a) Disclaimers.—Except as provided in subsections (b) and (c), an election by a spouse to take his elective share shall be deemed a disclaimer of any beneficial interest of the spouse in the following, to the extent that

such interest would otherwise be payable to or enjoyed by the spouse after the decedent's death:

(1) Property subject to the spouse's election not awarded to the spouse as part of his elective share.

(2) Property appointed by the decedent's exercise of a general or special power of appointment, and property passing in default of appointment to the extent that the decedent had power to exclude his spouse from any interest therein.

(3) Property in any trust created by the decedent during his lifetime.

(4) Proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, his employer, partner or creditor.

(5) Any annuity contract purchased by the decedent, his employer, partner or creditor.

(6) Any pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other plan established by an employer for the benefit of its employees and their beneficiaries, exclusive of the Federal social security system and railroad retirement system, by reason of services performed or disabilities incurred by the decedent.

(7) Community property in the proportion that it represents the decedent's earnings or contributions.

(8) All intangible personal property and all real property owned by the decedent and his spouse by the entirety or jointly with right of survivorship, in the proportion that such property represents contributions by the decedent.

(9) All intangible personal property and all real property given to his spouse by the decedent during his lifetime which, or the proceeds of which, are still owned by his spouse at the time of the decedent's death.

(b) Conveyances and releases.—Except as provided in subsection (c), if any of the foregoing beneficial interests has already been accepted or cannot be disclaimed for any other reason, the spouse shall be entitled to an elective share only if the spouse conveys or releases such interest to those who would take it if the spouse had disclaimed it, and such conveyance or release shall be valid regardless of any spendthrift or similar provision.

(c) Charges against elective share.—Notwithstanding the provisions of subsections (a) and (b), the spouse may elect to retain any beneficial interest described in subsection (a) which immediately after the decedent's death consists of property owned by the spouse outright or in fee simple absolute, and have the value thereof at the time of the decedent's death charged against the elective share. The value at the time of the decedent's death of any beneficial interest described in subsection (a), regardless of its form, shall also be so charged against the elective share to the extent that it cannot be disclaimed, conveyed or released.

(d) Definition of "beneficial interest".—The term "beneficial interest" as used in this section shall include any power of appointment or power of

consumption and any benefit arising from a direction by the decedent regarding the source of payment of inheritance or estate taxes.

(e) Conditional decree.—Any award to the electing spouse shall be conditioned upon:

(1) the spouse's delivery, in recordable form in the case of real estate, of such disclaimers, releases or conveyances as may be appropriate to insure protection to the person or persons entitled to disclaimed, released or conveyed property; and

(2) the filing with the court of proof of compliance with the condition.

§ 2205. Transfers for value excluded.

Conveyances and contracts made by the decedent are excluded from the provisions of section 2203 (relating to right of election; resident decedent) and section 2204 (relating to disclaimers, releases and charges against elective share), to the extent that the decedent received adequate consideration therefor in money or money's worth.

§ 2206. Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a minor or an incompetent spouse, the right of election may be exercised in whole or in part only by the spouse's guardian upon order of the court having jurisdiction of the minor's or the incompetent's estate, after finding that exercise of the right is advisable.

§ 2207. Waiver of right to elect.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage or before or after the death of the decedent.

§ 2208. Forfeiture of right of election.

A surviving spouse who under the provisions of section 2106 (relating to forfeiture) would not be entitled to a share of the decedent's estate had he died intestate shall have no right of election.

§ 2209. Surviving spouse as witness.

The surviving spouse shall be a competent witness as to all matters pertinent to his rights under this chapter.

§ 2210. Procedure for election; time limit.

(a) How election made.—A surviving spouse's election to take or not to take his elective share shall be by a writing signed by him and filed with the clerk of the orphans' court division of the county where the decedent died domiciled. Notice of the election shall be given, to the decedent's personal representative, if any.

(b) Time limit.—The election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later. The court may extend the time for election for such period and upon such terms and conditions as the court shall deem proper under the circumstances on application of the surviving spouse filed with the clerk within the foregoing

time limit. Failure to file an election in the manner and within the time limit set forth in this section shall be deemed a waiver of the right of election.

§ 2211. Determination of effect of election; enforcement.

(a) Power of court of domicile.—After notice and hearing, the orphans' court division of the county of the decedent's domicile shall determine all matters concerning the spouse's election, including the interests and liabilities of the spouse and others in or with respect to all property, regardless of its situs, which is subject to the election or which must be disclaimed, released or conveyed by the spouse or charged against the elective share.

(b) Effect of election.—In exercising its powers under subsection (a), the court shall honor any provision in the decedent's will or other conveyance concerning interests of those other than his spouse in the event of an election. Subject to any such provision, the court shall be guided by the following rules but shall have the power to supplement or to depart from them if, in its opinion, a different determination of the rights of the spouse and others would more nearly carry out what would have been the particular decedent's intention had he known of the election:

(1) In general.—Property which otherwise would pass by intestacy shall first be applied toward satisfaction of the spouse's elective share. The balance of the elective share shall then be charged separately against each conveyance subject to the election, the passing of property by will to be treated as a conveyance for this purpose, but the spouse shall have no right to share in any particular item of property within each conveyance. After the value of the electing spouse's fractional interest in each conveyance at the time of distribution is determined, items of property within the conveyance may be allocated disproportionately at distribution values between the elective and nonelective shares in order to give maximum effect to the decedent's intention with respect to the disposition of particular items or kinds of property. Property in the nonelective share shall be distributed among the beneficiaries of each conveyance in accordance with the rules of abatement or by analogy thereto.

(2) Disclaimed interests contingent on survival.—If a surviving spouse has disclaimed an interest which would have terminated at the spouse's death or was contingent upon the spouse surviving the decedent, the interests of others shall be as they would have been if the spouse had predeceased the decedent.

(3) Other disclaimed interests.—Except as above provided, disclaimed interests shall pass to other beneficiaries of the conveyance according to section 2514 (relating to rules of interpretation), which may be applied by analogy to inter vivos conveyances or, where those provisions cannot be applied, by way of reversion to the personal representative of the decedent's estate.

(4) Windfalls.—If the election and disclaimers, releases and conveyances by a surviving spouse in connection therewith result in an

increase in the value of the interest of a beneficiary, the court may require contributions from such a beneficiary, directly or by sequestering the disclaimed, released or conveyed interests, in relief of other beneficiaries, so that no beneficiary will receive more value than he would have received in the absence of the election.

(c) Enforcement.—The rights of the electing spouse may be enforced, as the court considers appropriate, by orders, decrees or judgments requiring the performance of specific acts by, or imposing personal liability on:

- (1) any fiduciary, custodian or obligor to the extent that he is in possession of property subject to the spouse's election or its proceeds; or
- (2) the original beneficial recipient of such property or the donee of that recipient, including successive donees, to the extent that each donee is in possession of such property or its proceeds.

Any such order, decree or judgment of the orphans' court division of the county of the decedent's domicile under this section may be further enforced as necessary by suits in other courts. The liabilities as determined by the court may be enforced against fewer than all persons against whom relief could be sought but no person shall be subject to contribution in any greater amount than he would have been if full relief had been secured against all persons subject to contribution.

(d) Restraining orders.—The court on petition of a surviving spouse may restrain any person from making a payment or transfer of property which may be subject to the spouse's election, either before or after an election is made.

(e) Protection of fiduciaries, custodians and obligors.—Unless restrained by court decree, no fiduciary, custodian or obligor, other than the personal representative of the decedent's estate, shall be liable for making such payments or distributions of property subject to the spouse's election as would have been required by the terms of the conveyance or contract in the absence of an election.

(f) Transferees and lienholders for value.—No transferee of or holder of a lien against property subject to a spouse's election shall be liable to a surviving spouse if the transferee or lienholder has given a bona fide consideration, unless a certified copy of an order or decree of court providing to the contrary with respect to real property has been recorded in the office for the recording of deeds of the county where the real estate lies prior to the recording of the transfer or the entry of the lien of record. The recording of any such order or decree shall be indexed in the grantor's index under the name of the decedent.

Section 4. Sections 2508, 2509, 2510, 2511, 2512 and 2513 of Title 20 are repealed.

Section 5. Section 3174 of Title 20 is amended by adding a subsection to read:

§ 3174. When not required.

* * *

(d) Estates under \$5,000.—No bond shall be required of a personal representative of an estate having a value of less than \$5,000 unless a person having an interest in the estate requests that a bond be required.

Section 6. The definition of the term “conveyance” and the introductory paragraph of section 6101 of Title 20 are amended to read: § 6101. Definitions.

The following words and phrases, when used in this chapter, unless the context clearly indicates otherwise, shall have *the* meanings ascribed to them in this section:

* * *

“Conveyance.” [Means an] *An* act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation. [Except as used in section 6111 (relating to conveyances to defeat marital rights), it] *It* shall include an act by which a power of appointment whenever given is exercised.

Section 7. Section 6111 of Title 20 is repealed.

Section 8. Title 20 is amended by adding a section to read:

§ 6111.1. *Modification by divorce.*

If the conveyor is divorced from the bonds of matrimony after making a conveyance, all provisions in the conveyance which were revocable by him at the time of his death and which were to take effect at or after his death in favor of or relating to his spouse so divorced shall thereby become ineffective for all purposes.

Section 9. This act shall take effect in 60 days and shall apply only to decedents dying after the effective date.

APPROVED—The 18th day of April, A. D. 1978.

MILTON J. SHAPP