

## No. 1984-182

## AN ACT

SB 1079

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, adding a provision relating to the transfer of property to fiduciaries; changing provisions relating to investments by fiduciaries; clarifying the method of payment when the Commonwealth is intestate heir; authorizing acknowledgments of self-proved wills to be taken before an attorney and then certified by him to a notary; modifying the duty of a personal representative regarding inventories; authorizing the annexation of a copy of certain other accounts to an account of the administration of the estate; making the time for advertisement of accounts four weeks in all cases; providing that the account of the personal representative be filed with the clerk; adding a rule of will interpretation regarding nonademption and attorneys-in-fact; providing that a personal representative is not liable for continued distribution in the same pattern after a change in law; amending provisions relating to disclaimers; and making technical changes and repeals.

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

Section 1. Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

**§ 304. Application of payments made to fiduciaries.**

*A person who, in good faith, pays or transfers to a fiduciary any money or other property, which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary, and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary.*

Section 2. Section 745 of Title 20 is amended to read:

**§ 745. Advertisement of accounts.**

(a) Requirement of notice; contents of notice.—The clerk of the orphans' court division shall give notice by advertisement of the time when accounts filed with him **[and with the register]** will be presented to the division for confirmation, stating in the advertisement the names and capacities of the respective accountants.

(b) Manner of advertisement.—The notice shall be advertised at least once a week during the four weeks immediately preceding the time for presentation of the accounts to the division **[in the case of accounts filed with the register, and at least once a week during the two weeks immediately preceding the time for presentation of the accounts to the division in the case of accounts filed with the clerk]:**

(1) in the legal publication, if any, designated by rule of court for the publication of legal notices; and

(2) in at least one newspaper of general circulation published within the county, and if no such newspaper is published in that county, then in one such newspaper published nearest to that county.

Section 3. Section 2514(16.1) of Title 20 is amended and a paragraph is added to read:

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

\* \* \*

(16.1) Nonademption; incompetency.—If property of an *adjudicated* incompetent specifically devised or bequeathed is sold or exchanged or if a condemnation award or insurance proceeds are paid to the estate of an incompetent as a result of condemnation, fire or casualty, the specific legatee or devisee has the right to the net sale price, the property received in exchange, the condemnation award or the insurance proceeds. This paragraph does not apply if subsequent to the sale, exchange, condemnation, or casualty, the testator has been adjudicated competent and survives the adjudication by one year.

(16.2) *Nonademption; attorney-in-fact.*—*If an attorney-in-fact, during the time that his principal is incompetent within the meaning of section 5501 (relating to meaning of incompetent), sells or exchanges property of the principal which is specifically devised or bequeathed, the specific legatee or devisee has the right to the net sale price or the property received in exchange. For the purposes of this paragraph, a sale or exchange of property made by an attorney-in-fact shall be deemed to have been made during the time that the principal is incompetent, unless shown to the contrary. This paragraph does not apply if it is shown that for a period of at least one year subsequent to the sale or exchange the principal was not incompetent within the meaning of section 5501.*

\* \* \*

Section 4. Sections 3132.1 and 3301 of Title 20 are amended to read:

§ 3132.1. Self-proved wills.

(a) Proof.—Unless there is a contest with respect to the validity of the will, *or unless the will is signed by mark or by another as provided in section 2502 (relating to form and execution of a will)*, an affidavit of witness made in conformity with this section shall be accepted by the register as proof of the facts stated as if it had been made under oath before the register at the time of probate.

(b) Acknowledgment and affidavits.—An attested will may at the time of its execution or at any subsequent date 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 this Commonwealth[, ] or under the laws of the state where execution occurs, *or made before an attorney at law and certified to such an officer as provided in subsection (c)* and evidenced, *in either case*, by the officer's certificate, under official seal, attached or annexed to the will. A separate affidavit may be used for each witness whose affidavit is not taken at the same time as the testator's acknowledgment. The acknowledgment and affidavits shall in form and content be substantially as set forth in the Uniform Probate Code or as follows:

Acknowledgment

Commonwealth of Pennsylvania (or [state] State of \_\_\_\_\_)  
County of \_\_\_\_\_

I, \_\_\_\_\_, [testat—\_\_\_\_\_,] *the testator* whose name is signed to the attached or foregoing instrument, having been duly qualified according to law, do hereby acknowledge that I signed and executed the instrument as my Last Will; *and* that I signed it willingly[;] and [that I signed it] as my free and voluntary act for the purposes therein expressed.

Sworn *to* or affirmed [to] and acknowledged before me[,] by \_\_\_\_\_, the [testat—\_\_\_\_\_] *testator*, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
*(Testator)*

[(SEAL)]

\_\_\_\_\_  
[[Official capacity of officer]]  
*(Signature of officer or attorney)*  
*(Seal and official capacity of officer or state of admission of attorney)*

Affidavit

Commonwealth of Pennsylvania (or [state] State of \_\_\_\_\_)  
County of \_\_\_\_\_

We (or I), \_\_\_\_\_ and \_\_\_\_\_, the [witnesses] *witness(es)* whose [names] *name(s)* are (*is*) signed to the attached or foregoing instrument, being duly qualified according to law, do depose and say that we were (*I was*) present and saw [testat—\_\_\_\_\_] *the testator* sign and execute the instrument as his Last Will; that [\_\_\_\_\_] *the testator* signed willingly and [that \_\_\_\_\_] executed it as [\_\_\_\_\_] *his* free and voluntary act for the purposes therein expressed; that each [of us] *subscribing witness* in the hearing and sight of the [testat—\_\_\_\_\_] *testator* signed the will as [witnesses] *a witness*; and that to the best of our (*my*) knowledge the [testat—\_\_\_\_\_] *testator* was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Sworn *to* or affirmed [to] and subscribed to before me by \_\_\_\_\_ and \_\_\_\_\_, [witnesses] *witness(es)*, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

[(SEAL)]

\_\_\_\_\_  
[[Official capacity of officer]]  
*(Signature of officer or attorney)*

*(Seal and official capacity of  
officer or state of admission of  
attorney)*

*(c) Acknowledgment and affidavit taken before an attorney at law.—The acknowledgment of the testator and the affidavit of a witness required by subsection (b) may be made before a member of the bar of the Supreme Court of Pennsylvania or of the highest court of the state in which execution of the will occurs who certifies to an officer authorized to administer oaths that the acknowledgment and affidavit was made before him. In such case, in addition to the acknowledgment and affidavit required by subsection (b), the attorney's certification shall be evidenced by the officer before whom it was made substantially as follows:*

*Commonwealth of Pennsylvania (or State of \_\_\_\_\_)  
County of \_\_\_\_\_*

*On this, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be a member of the bar of the highest court of (Pennsylvania or the state in which execution of the will took place), and certified that he was personally present when the foregoing acknowledgment and affidavit were signed by the testator and witnesses.*

*In witness whereof, I hereunto set my hand and official seal.*

*\_\_\_\_\_  
(Signature, seal and official  
capacity of officer)*

§ 3301. Duty of personal representative.

(a) General assets.—**[Within three months after his appointment, every] Every** personal representative shall file with the register **[an] a verified** inventory**[, verified by his affidavit,]** of all real and personal estate of the decedent, except real estate outside of **[the] this** Commonwealth**[: Provided, That an].** An ancillary personal representative shall include **[therein] in the inventory** only assets for which he is responsible.

(b) Real estate outside of Commonwealth.—The inventory shall include at the end a memorandum of real estate outside of **[the] this** Commonwealth. The memorandum, at the election of the personal representative, may indicate the value of each item of real estate included therein, but the values so fixed shall not be extended into the total of the inventory or included as real estate in subsequent accountings.

(c) Time for filing.—*The personal representative shall file his inventory no later than the date he files his account or the due date, including any extension, for the filing of the inheritance tax return for the estate, whichever is earlier. Any party in interest in the estate may request the filing of an inventory at an earlier date by writing delivered to the personal representative or his attorney in which event an inventory shall be filed within three months after the appointment of the personal representative or within 30 days after the request, whichever is later. The court, upon cause shown, may direct the filing of an inventory at any time.*

Section 5. Title 20 is amended by adding a section to read:

§ 3501.2. *Annexation of account of terminated trust, guardianship or agency.*

*A personal representative who has received property from a trustee, guardian or agent following the decedent's death may annex a copy of an account of the administration of the trust, guardianship or agency to an account filed by the personal representative covering the administration of the estate. If notice of the annexation of the account of the trust, guardianship or agency is given to the persons required to be notified of the filing of the account of the estate, confirmation of the account of the estate shall relieve both the personal representative and the trustee, guardian or agent of all liability to the persons so notified for transactions shown in the accounts so annexed to the same extent as if the annexed account had been separately filed and confirmed.*

Section 6. Sections 3502, 3539 and 3540 of Title 20 are amended to read:

§ 3502. Where filed.

The account of the personal representative shall be filed in the office of the [register] clerk.

§ 3539. [(Reserved)] *Change in law after pattern of distribution established.*

*A personal representative shall have no liability for continued distribution of real or personal property in accordance with a pattern of distribution that conformed to the law in effect when distribution began, notwithstanding any intervening change in law that would require a different pattern of distribution, unless he is actually aware, after the law is changed, of information relevant to the change in the rights of interested parties or otherwise fails to act reasonably in ascertaining such rights. Nothing in this section shall in any way affect any cause of action which the parties in interest may have among themselves.*

§ 3540. Absentee and additional distributees.

(a) Distributions due absentees.—

(1) If the continued existence or whereabouts of an heir, devisee or legatee who once existed cannot be ascertained at the time of the audit of the personal representative's account, the court, unless it finds pursuant to section 5701 (relating to proof of death) that the absentee's death has disqualified him as a distributee of the estate, or unless a trustee has been appointed for such absentee pursuant to section 5702 (relating to trustee for absentee), shall direct that any property distributable to the absentee shall be converted into money that shall be paid into the State Treasury, through the Department of Revenue. The moneys shall be held in a custodial capacity subject to refund, without appropriation, pursuant to section 24 of Article III of the Constitution of Pennsylvania.

(2) The court shall retain jurisdiction with respect to any claim to such moneys. Upon further findings and order of court that a claimant is entitled to all or a part of the moneys, the [Board of Finance and] Department of Revenue, upon petition, shall refund such moneys pursuant to the order of court.

(b) Possibility of additional distributees.—If the existence of a person or persons would affect the distribution of an estate but there is no proof that such a person ever existed, and the court is satisfied that all reasonable steps have been taken to determine whether such a person existed, the court may award distribution of the estate to those who would be entitled if no such person existed, with or without refunding bonds. Any such bond shall be without security, shall be in such form and amount as the court directs, shall be executed by each distributee and filed with the clerk, and shall provide that if, within seven years or any shorter period fixed by the court, it is later established that there is an additional person or persons entitled to share in the distribution of the estate, the distributee upon demand will return such portion or all of the property received by him as the court may direct or, if it has been disposed of, will make such restitution as the court deems equitable. *In the case of distribution under this subsection to the Commonwealth as intestate heir, in lieu of bond, payment shall be as provided in subsection (a).*

Section 7. Sections 5163.1 and 5533.1 of Title 20 are repealed.

Section 8. Sections 6201 and 6202 of Title 20 are amended to read:

§ 6201. Right to disclaim.

A person to whom an interest in property would have devolved by whatever means, including a beneficiary under a will, an appointee under the exercise of a power of appointment, a person entitled to take by intestacy, a donee of an inter vivos transfer, *a donee under a third-party beneficiary contract (including beneficiaries of life insurance and annuity policies and pension, profit-sharing and other employee benefit plans)*, and a person entitled to a disclaimed interest, may disclaim it in whole or in part by a written disclaimer which shall:

- (1) describe the interest disclaimed;
- (2) declare the disclaimer and extent thereof; and
- (3) be signed by the disclaimant.

The right to disclaim shall exist notwithstanding any limitation on the interest in the nature of a spendthrift provision or similar restriction.

§ 6202. Disclaimers by fiduciaries or attorneys-in-fact.

A disclaimer on behalf of a decedent, a minor or an incompetent may be made by his personal representative, the guardian of his estate or in the case of an incompetent who executed a power of attorney which confers the authority to disclaim upon his attorney-in-fact and which qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney) by such attorney-in-fact, if, in each case, the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the incompetent or his creditors, as the case may be. *A personal representative may make a disclaimer on behalf of his decedent without court authorization if the will of the decedent so authorizes him.*

Section 9. Section 6204 of Title 20 is amended by adding a subsection to read:

§ 6204. Filing, delivery and recording.

\* \* \*

**(b.1) Third-party disclaimer.**—*If the interest would have devolved to the disclaimant by a third-party beneficiary contract (including life insurance and annuity policies and pension, profit-sharing and other employee benefit plans), the disclaimer or copy thereof shall be delivered to the insurance company, employer or other obligor, as the case may be, and to the person who is entitled to the interest by reason of the disclaimer.*

\* \* \*

Section 10. Sections 6205(a) and (b) and 6206(b) of Title 20 are amended to read:

§ 6205. Effect of disclaimer.

(a) In general.—A disclaimer relates back for all purposes to the date of the death of the decedent or the effective date of the inter vivos transfer *or third-party beneficiary contract* as the case may be. The disclaimer shall be binding upon the disclaimant and all persons claiming through or under him.

(b) Rights of other parties.—Unless a testator or donor has provided for another disposition, the disclaimer shall, for purposes of determining the rights of other parties, be equivalent to the disclaimant's having died before the decedent in the case of a devolution by will or intestacy or before the effective date of an inter vivos transfer *or third-party beneficiary contract*, except that, when applying section 2104(1) (relating to rules of succession) or analogous provisions of a governing instrument, the fact that the disclaimant actually survived shall be recognized in determining whether other parties take equally or by representation, *and except that if, as a result of a disclaimer, property passes to a fund in which the disclaimant has an interest or power which he has not disclaimed, the disclaimant shall retain his interest or power in the fund as augmented by the disclaimed property.*

\* \* \*

§ 6206. Bar to disclaimer.

\* \* \*

(b) Partial acceptance within six months.—The acceptance of part of a single interest shall be considered as only a partial acceptance and will not be a bar to a subsequent disclaimer of any part or all of the balance of the interest if the part of the interest is accepted before the expiration of six months from:

(1) the death of the decedent in the case of an interest that would have devolved by will or intestacy; or

(2) the effective date of the transfer in the case of an interest that would have devolved by an inter vivos transfer *or third-party beneficiary contract*.

In applying this subsection to an interest that would have devolved by reason of the exercise of a power of appointment, the person exercising the power shall be regarded as the decedent or the transferor, as the case may be.

\* \* \*

Section 11. Sections 7183, 7314(1) and 7315(3) of Title 20 are amended to read:

§ 7183. Notice, audits, reviews, and distribution.

The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to at risk of personal representative).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

*Section 3539 (relating to change in law after pattern of distribution established).*

Section 3540 (relating to absentee and additional distributees).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

§ 7314. Common trust fund and mortgage investment fund.

Any corporate fiduciary and its co-fiduciary, if any, may invest in:

(1) Common trust fund.—A common trust fund containing only investments authorized for fiduciaries, established and maintained by the corporate fiduciary *or by any affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code and otherwise* in conformity with the laws of the Commonwealth and of the United States; and

\* \* \*

§ 7315. Retention of investments.

A fiduciary, if he exercises the same care and prudence as he would in the case of an authorized investment, may retain without liability for resulting loss:

\* \* \*

(3) shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the Federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of a bank *or*



*a holding company subject to the Federal Bank Holding Company Act of 1956, as amended, which the fiduciary was directed or authorized to retain, in the instrument establishing the trust or otherwise.*

Section 12. Title 20 is amended by adding a section to read:

§ 7315.1. *Retention of cash; temporary investments.*

(a) *Uninvested cash.*—*A fiduciary may hold cash uninvested:*

(1) *which he reasonably expects to:*

(i) *distribute to beneficiaries as income on a quarterly or more frequent basis;*

(ii) *use for payment of debts, taxes, expenses of administration or reinvestment within the next 90 days; or*

(2) *when the amount available for investment does not justify the administrative burden of making the investment determined in the light of the facilities available to the fiduciary.*

*A corporate fiduciary may deposit uninvested funds in its own commercial department.*

(b) *Temporary investments.*—*A fiduciary may make temporary investment of funds which he is entitled to hold uninvested under subsection (a) or which he wishes to hold in liquid form in short-term interest-bearing obligations or deposits, or other short-term liquid investments, selected in each case in compliance with the standards of section 7302(b) (relating to authorized investments; in general), but without regard to any investment restrictions imposed by the governing instrument and may make a reasonable charge, in addition to all other compensation to which he is entitled, for services rendered in making the temporary investment.*

Section 13. Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed insofar as it is inconsistent with the amendment to 20 Pa.C.S. § 3540 (relating to absentee and additional distributees).

Section 14. Section 7185 (relating to compensation), as amended by the act of February 18, 1982 (P.L.45, No.26), shall apply to all trusts regardless of whether the trust was created before, on or after February 18, 1982.

Section 15. (a) The amendments to sections 3539 (relating to change in law after pattern of distribution established) and 7183 (relating to notice, audits, reviews, and distribution) shall take effect immediately and shall apply to distributions begun and changes in law occurring before, on or after the effective date of this act.

(b) The amendments to sections 3501.2 (relating to annexation of account of terminated trust, guardianship or agency), 3540 (relating to absentee and additional distributees), 7314 (relating to common trust fund and mortgage investment fund), 7315 (relating to retention of investments) and 7315.1 (relating to retention of cash; temporary investments) shall take effect immediately and shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of this act, as well as to funds presently held by the clerks.

(c) The remainder of this act shall take effect immediately and shall apply to the estates of all decedents dying on or after the effective date.

APPROVED—The 12th day of October, A. D. 1984.

DICK THORNBURGH