

Appendix—Proposed Changes to Title 3B¹

The proposed modifications (shown with *italics* underlining and ~~striketrough~~), are as follows:

Title 3b. Administration of Estates--Decedents and Others

N.J.S. 3B:1-1. Definitions: A to H

As used in this title, unless otherwise defined:

“Administrator” ~~includes general administrators of an intestate and unless restricted by the subject or context, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, temporary administrators and administrators pendente lite.~~

“Beneficiary,” as it relates to trust beneficiaries, ~~includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, and includes any person entitled to enforce the trust.~~

“Child” ~~means any individual, including a natural or adopted child, entitled to take by intestate succession from the parent whose relationship is involved and excludes any individual who is only a stepchild, a resource family child, a grandchild or any more remote descendant.~~

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

“Cofiduciary” ~~means each of two or more fiduciaries jointly serving in a fiduciary capacity.~~

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

“Devise,” when used as a noun, ~~means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.~~

“Devisee” ~~means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.~~

¹ Appendix Key: Underline – reflects the addition of statutory language.

~~Striketrough~~ - denotes the proposed elimination of statutory language.

Italics – indicates that the statute, or language, has been moved to a new location and incorporated into another statutory section. These statutes are shown with ~~striketrough~~ in their original location.

Bold – signifies that the text was an original part of the statute and is used to separate it from statutes or statutory language which has been imported and that appears in *italics*.

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

~~“Domestic partner” means a domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3).~~

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

~~“Estate” means all of the property of a decedent, minor or incapacitated individual, trust or other person whose affairs are subject to this title as the property is originally constituted and as it exists from time to time during administration.~~

~~“Fiduciary” includes executors, general administrators of an intestate estate, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, guardians, substituted guardians, trustees, substituted trustees and, unless restricted by the subject or context, temporary administrators, administrators pendente lite, administrators ad prosequendum, administrators ad litem and other limited fiduciaries.~~

~~“Governing instrument” means a deed, will, trust, insurance or annuity policy, account with the designation “pay on death” (POD) or “transfer on death” (TOD), security registered in beneficiary form with the designation “pay on death” (POD) or “transfer on death” (TOD), pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.~~

~~“Guardian” means a person who has qualified as a guardian of the person or estate of a minor or incapacitated individual pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.~~

~~“Heirs” means those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, who are entitled under the statutes of intestate succession to the property of a decedent.~~

Credits: L.1981, c. 405, § 3B:1-1, eff. May 1, 1982. Amended by L.1997, c. 379, § 2, eff. Jan. 19, 1998; L.2004, c. 130, § 15, eff. Aug. 27, 2004; L.2004, c. 132, § 1, eff. Feb. 27, 2005; L.2005, c. 331, § 1, eff. Jan. 12, 2006.

COMMENT

In its current form, the Title 3B contains 24 separate and distinct definition sections. In addition, there are 14 statutes that define terms without bearing the moniker “definition.” Several terms are defined more than once, in more than one way. The existence of multiple definition sections - N.J.S. 3B:1-1; 3B:1-2; N.J.S. 3B:9-1; N.J.S. 3B:11-9; N.J.S. 3B:11-16.1; N.J.S. 3B:11-22; N.J.S. 3B:12-69; N.J.S. 3B:12a-2; N.J.S. 3B:12b-3; N.J.S. 3B:13-2; N.J.S. 3B:13a-1; N.J.S. 3B:13a-12; N.J.S.

3B:14-8; N.J.S. 3B:14-46; N.J.S. 3B:14-53; N.J.S. 3B:14-61.2; N.J.S. 3B:17-9; N.J.S. 3B:18-8; N.J.S. 3B:18-12; N.J.S. 3B:18-23; N.J.S. 3B:19b-2; N.J.S. 3B:19b-10; N.J.S. 3B:19b-17; N.J.S. 3B:19b-18; N.J.S. 19B-22; N.J.S. 3B:19b-23; N.J.S. 3B:19b-26; N.J.S. 3B:20-1; N.J.S. 3B:20-21; N.J.S. 3B:20-27; N.J.S. 3B:21-2; N.J.S. 3B:22-39; N.J.S. 3B:24-1; N.J.S. 3B:26-1; N.J.S. 3B:30-2; N.J.S. 3B:31-3; N.J.S. 3B:31-11; N.J.S. 3B:31-37 – make the Title cumbersome and difficult to navigate. It may be beneficial to eliminate duplicate definitions and consolidate all definitions into one single section entitled N.J.S. 3B:1-1.

N.J.S. 3B:1-2. Definitions: I to Z

~~“Incapacitated individual” means an individual who is impaired by reason of mental illness or intellectual disability to the extent that the individual lacks sufficient capacity to govern himself and manage his affairs.~~

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

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

~~The term “person subject to guardianship” can be used synonymously with the term “individual subject to guardianship.”~~

~~“Intellectual disability” means a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior which are manifested during the development period.~~

~~“Issue” of an individual means a descendant as defined in N.J.S.3B:1-1.~~

~~“Joint tenants with the right of survivorship” means co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership in which the underlying ownership of each party is in proportion to that party’s contribution.~~

~~“Local administration” means administration by a personal representative appointed in this State.~~

~~“Local fiduciary” means any fiduciary who has received letters in this State and excludes foreign fiduciaries who acquire the power of local fiduciary pursuant to this title.~~

~~“Minor” means an individual who is under 18 years of age.~~

~~“Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his death.~~

~~“Parent” means any person entitled to take or who would be entitled to take if the child, natural or adopted, died without a will, by intestate succession from the child whose relationship is in question and excludes any person who is a stepparent, resource family parent, or grandparent.~~

~~“Per capita.” If a governing instrument requires property to be distributed “per capita,” the property is divided to provide equal shares for each of the takers, without regard to their shares or the right of representation.~~

~~“Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.~~

~~“Person” means an individual or an organization.~~

~~“Per Stirpes.” If a governing instrument requires property to be distributed “per stirpes,” the property is divided into as many equal shares as there are: (1) surviving children of the designated ancestor; and (2) deceased children who left surviving descendants. Each surviving child 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.~~

~~“Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.~~

~~“Representation; Per Capita at Each Generation.” If an applicable statute or a governing instrument requires property to be distributed “by representation” or “per capita at each generation,” the property is divided into as many equal shares as there are: (1) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants; and (2) deceased descendants in the same generation who left surviving descendants, if any. 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 designated ancestor.~~

~~“Resident creditor” means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate.~~

~~“Security” includes any note, stock, treasury stock, bond, mortgage, financing statement, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease, collateral, trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or as a security interest or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.~~

~~“Stepchild” means a child of the surviving, deceased, or former spouse who is not a child of the decedent.~~

~~“Successor personal representative” means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.~~

~~“Successors” means those persons, other than creditors, who are entitled to real and personal property of a decedent under a decedent’s will or the laws governing intestate succession.~~

~~“Testamentary trustee” means a trustee designated by will or appointed to exercise a trust created by will.~~

~~“Testator” includes an individual and means male or female.~~

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

~~“Trustee” includes an original, additional or successor trustee, whether or not appointed or confirmed by court.~~

~~“Ward” means an individual for whom a guardian is appointed or an individual under the protection of the court.~~

~~“Will” means the last will and testament of a testator or testatrix and includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of a person or class to succeed to property of the decedent passing by intestate succession.~~

Credits: L.1981, c. 405, § 3B:1-2, eff. May 1, 1982. Amended by L.1997, c. 379, § 3, eff. Jan. 19, 1998; L.2004, c. 130, § 16, eff. Aug. 27, 2004; L.2004, c. 132, § 2, eff. Feb. 27, 2005; L.2005, c. 160, § 1, eff. Feb. 27, 2005; L.2013, c. 103, § 21, eff. Aug. 7, 2013.

COMMENT

In its current form, Title 3B contains 24 separate and distinct definition sections. In addition, there are 14 statutes that define terms without bearing the moniker “definition.” Several terms are defined more than once, in more than one way. The existence of multiple definition sections - N.J.S. 3B:1-1; 3B:1-2; N.J.S. 3B:9-1; N.J.S. 3B:11-9; N.J.S. 3B:11-16.1; N.J.S. 3B:11-22; N.J.S. 3B:12-69; N.J.S. 3B:12a-2; N.J.S. 3B:12b-3; N.J.S. 3B:13-2; N.J.S. 3B:13a-1; N.J.S. 3B:13a-12; N.J.S. 3B:14-8; N.J.S. 3B:14-46; N.J.S. 3B:14-53; N.J.S. 3B:14-61.2; N.J.S. 3B:17-9; N.J.S. 3B:18-8; N.J.S. 3B:18-12; N.J.S. 3B:18-23; N.J.S. 3B:19b-2; N.J.S. 3B:19b-10; N.J.S. 3B:19b-17; N.J.S. 3B:19b-18; N.J.S. 19B-22; N.J.S. 3B:19b-23; N.J.S. 3B:19b-26; N.J.S. 3B:20-1; N.J.S. 3B:20-21; N.J.S. 3B:20-27; N.J.S. 3B:21-2; N.J.S. 3B:22-39; N.J.S. 3B:24-1; N.J.S. 3B:26-1; N.J.S. 3B:30-2; N.J.S. 3B:31-3; N.J.S. 3B:31-11; N.J.S. 3B:31-37 – make the Title cumbersome and difficult to

navigate. It may be beneficial to eliminate duplicate definitions and consolidate all definitions into one single section entitled N.J.S. 3B:1-1.

N.J.S. 3B:1-1 Definitions

“Absent person” means any person who has disappeared or been confined or detained by a foreign power.

“Account” means an arrangement under a terms-of-service in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

“Accounting period” means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

“Action,” with respect to an act of a trustee, includes a failure to act.

“Administrator” includes general administrators of an intestate and unless restricted by the subject or context, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, temporary administrators and administrators pendente lite.

“Adult” means a person at least 18 years of age or an emancipated individual under 18 years of age.

“Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

“Appointed standby guardian” means a person appointed pursuant to section 6 of P.L.1995, c. 76 (C.3B:12-72) to assume the duties of guardian over the person and, when applicable, the property of a minor child upon the death or a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian.

“Asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 10 or 17 of this act applies.

“Assigned funeral insurance policy” means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

“Attending physician” means the physician who has primary responsibility for the treatment and care for the petitioning parent or legal custodian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this act. When no physician has this responsibility, a physician who is

familiar with the petitioner's medical condition may act as the attending physician pursuant to P.L.1995, c. 76 (C.3B:12-67 et seq.).

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking and any State chartered savings and loan association, or any Federal savings and loan association, having its principal office in this State.

The inclusion of savings and loan associations within the provisions of this article shall not be construed as conferring upon those associations any powers not otherwise conferred by this article, nor as enlarging any powers so conferred.

"Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956 (Act of May 9, 1956, 70 Stat. 1933, 12 U.S.C. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (Act of December 31, 1970, 84 Stat. 1760).

"Banking institution" includes State chartered banks and national banking associations.

"Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

"Beneficiary," means an individual or corporation for whose benefit a fiduciary act or is authorized to act and includes:

(1) an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary in the case of a decedent's estate,

(2) a person who has any present or future interest, vested or contingent; a person who, in a capacity other than that of trustee, holds a power of appointment over trust property; a person who is the owner of an interest by assignment or other transfer in the case of trust beneficiaries, includes a person; and

(3) any person who is entitled to enforce the trust as it relates to a charitable trust.

(4) any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits of the community trust program as provided in P.L.1985, c. 424.²

"Benefits" means moneys payable by the United States to the aforesaid persons or their guardians through a Federal agency.

"Board" means the board of trustees or the group of persons vested with the management of the business and affairs of a corporation, formed to manage a community trust, irrespective of the name by which the group is designated.

"Caregiver" means a person over 18 years of age, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has

² In this case, the term "beneficiary" was originally defined in N.J.S. 3B:1-1, and was also defined in other sections as well. Those definitions were combined to form the definition now contained in this section.

been residing in the caregiver's home, for either the last 12 consecutive months or 15 of the last 22 months. "Caregiver" includes a resource family parent as defined in section 1 of P.L.1962, c. 136 (C.30:4C-26.4).

"Carries" means engages in the transmission of an electronic communication.

"Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection a. of N.J.S.3B:31-22.

"Chief officer" means an officer of a Federal agency, charged by the laws of the United States with the particular duty in connection with which the term is used.

"Child" means a person under 18 years of age, except as otherwise provided in P.L.2001, c. 250 (C.3B:12A-1 et al.) including a natural or adopted child, entitled to take by intestate succession from the parent whose relationship is involved and excludes any individual who is only a stepchild, a resource family child, a grandchild or any more remote descendant.

"Claims" include liabilities whether arising in contract, or in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration, but does not include estate or inheritance taxes, demands or disputes regarding title to specific assets alleged to be included in the estate. The term also includes a claim against an individual or conservatorship estate, whether arising in contract, tort, or otherwise.

"Clearing corporation" means a corporation as defined in N.J.S. 12A:8-102.

"Code" means the Internal Revenue Code of 1954 as amended.

"Co-fiduciary" means each of two or more fiduciaries jointly serving in a fiduciary capacity.

"Commissioner" means the Commissioner of Children and Families.

"Community trust" means a nonprofit organization which offers the following services:

- (1) administration of special trust funds for persons with severe chronic disabilities;*
- (2) follow-along services;*
- (3) guardianship for persons with severe chronic disabilities who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, when no other immediate family member or friend is available for this purpose; and,*
- (4) advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.*

“Consent” means written consent signed by the parent or legal custodian in the presence of two witnesses who shall also sign the document. The written consent shall constitute the terms for the commencement of the duties of the standby guardian.

“Content of an electronic communication” means information concerning the substance or meaning of the communication which:

- (a) has been sent or received by a user;*
- (b) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and*
- (c) is not readily accessible to the public.*

“Conservatee” means, ~~as used in this State,~~ a person who has not been adjudicated incapacitated found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs but who by reason of advanced age, illness, or physical infirmity, is unable to care for or manage his or her property or has become unable to provide self-support or has become unable to provide for himself or herself or support for others who dependent upon him or her for that support.

“Conservator” means a person appointed by the court to administer the property of an ~~adult~~ individual who has not been ~~adjudicated incapacitated~~ found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs including a person appointed, as appropriate, under N.J.S.3B:13A-1 et seq. The term includes a co-conservator.

“Court of this State” means the Superior Court of New Jersey. For purposes of this act, “court” includes the Surrogate’s Court acting within the scope of its authority pursuant to statute or Rules of Court.

“Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

“Debilitation” means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one’s minor child.

“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in P.L.1985, c. 147 (C. 3B:11-16 et al.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

“Department” means the Department of Children and Families.

“Depreciation” means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

“Derivative” means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

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

“Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

“Designated standby guardian” means a person designated pursuant to section 8 of P.L.1995, c. 76 (C.3B:12-74) to assume temporarily the duties of guardianship over the person and, when applicable, the property of a minor child upon the death or a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian.

“Designation” means a written document voluntarily executed by the designator pursuant to P.L.1995, c. 76.

“Designator” means a competent parent or legal custodian of a minor child who makes a designation pursuant to P.L.1995, c. 76.

“Determination of debilitation” means a written determination made by the attending physician which contains the physician’s opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent’s or legal custodian’s debilitation.

“Determination of incapacity” means a written determination made by the attending physician which contains the physician’s opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent’s or legal custodian’s incapacity.

“Devise,” when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

“Devisee” means any person designated in a will to receive a devise a disposition of real or personal property. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

“Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

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

“Division” means the Division of Child Protection and Permanency in the Department of Children and Families.

“Domestic partner” means a domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3).

“Domiciliary foreign fiduciary” means any fiduciary who has received letters, or has been appointed, or is authorized to act as a fiduciary, in the jurisdiction in which the decedent was domiciled at the time of his death, in which the ~~ward~~ individual subject to guardianship is domiciled or in which is located the principal place of the administration of a trust.

“Effective date” is the date on which a property right vests, or a contract right arises, even though the right is subject to divestment.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic communication” has the meaning set forth in 18 U.S.C. s.2510(12).

“Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

“Engaged in war service” means a fiduciary or person named to act as fiduciary shall be deemed to be engaged in war service if in time of war:

a. He or she is a member of the armed forces of the United States or of any of its allies or has been accepted for service and is awaiting induction into the service; or

b. He or she is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross Society or any other body with similar objects; or

c. He or she is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this State.

“Entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 11 of this act applies, a business or activity to which section 12 of this act applies or an asset-backed security to which section 23 of this act applies.

“Environmental law” means a federal, State, or local law, rule, regulation, or ordinance relating to protection of the environment.

“Estate” means all of the property of a decedent, minor or ~~incapacitated~~ individual subject to guardianship, conservatorship or other protective arrangement, trust or other person whose affairs are subject to this title as the property is originally constituted and as it exists from time to time during administration. An “Estate” and “income” shall include ~~only~~ moneys received by the guardian from a Federal agency, and earnings, interest, and profits derived therefrom.

“Family friend” means a person who is connected to a child or the child’s parent by an established positive psychological or emotional relationship that is not a biological or legal relationship.

“Federal agency” means any bureau, office, board, or officer of the United States by whatever name known, now or hereafter charged by Congress:

(1) With payment of pensions, bounties, and allowances to veterans of the military service of the United States, their widows, widowers, children, mothers, and fathers; or

(2) With the administration of the affairs of any of the aforesaid persons who may be minors or persons who are incapacitated or with the management of pensions, bounties, and allowances payable to them.

“Fiduciary” includes the following individuals:

- (1) ad prosequendum administrators,**
- (2) administrators with the will annexed,**
- (3) agent,**
- (4) an individual,**
- (5) any other limited fiduciaries,**
- (6) any other person acting in a fiduciary capacity for any person trust or estate, or**
- (7) assignee for the benefit of creditors,**
- (8) conservators,**
- (9) corporate officer, public or private,**
- (10) corporation that is authorized to act on behalf of another,**
- (11) curator,**

- (12) executors,
- (13) general administrators of an intestate estate,
- (14) guardian ad litem,
- (15) guardians,
- (16) pendente lite administrators
- (17) personal representatives,
- (18) public officer,
- (19) receiver,
- (20) special representative administrators
- (21) substituted administrators with the will annexed,
- (22) substituted administrators,
- (23) substituted guardians,
- (24) successor personal representative,
- (25) temporary administrators,
- (26) trustee in bankruptcy,
- (27) trustees under any trust, express, implied, resulting or constructive, substituted trustees and, unless restricted by the subject or context, and
- (28) trustees.

“Follow-along services” means those services offered by community trusts which are designed to insure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, participation in the development of individualized plans being made by service providers for the beneficiary, and other similar services consistent with the purposes of P.L.1985, c. 424.

“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy.

“Funeral trust” means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c. 182 (C. 2A:102-13 et seq.) or P.L.1985, c. 147 (C. 3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

“Future interest” is one to take effect in possession, use or enjoyment dependent upon the termination of an intervening estate or interest or the happening of any event or thing.

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

“Gross tax estate” means all property of every description required to be included in computing the tax;

“Guardian” means a person who has qualified and is appointed by the court to make decisions regarding the person or estate of an individual who has been found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or a person who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child. The term includes a person who has qualified as a guardian of the person or estate, or both, of an individual subject to guardianship pursuant to court appointment in accordance with N.J.S.3B:12-1 et seq. or its equivalent in a state other than New Jersey. The term includes a co-guardian but does not include a guardian ad litem.

“Guardian ad litem” means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

“Guardianship order” means an order ~~declaring~~ finding a person ~~incapacitated~~ to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child and appointing a guardian.

“Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued ~~to declare a person incapacitated~~ after a court of this State finds a person to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child and to appoint a guardian.

“Heirs” means those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, who are entitled under the statutes of intestate succession to the property of a decedent. Heirs and devisees shall include the heirs and devisees of a deceased debtor and their heirs and devisees of any of them, who shall have died before the commencement of the action, authorized by this article, to whom any of the real or personal property, of which the debtor died seized or possessed, descended or was devised.

“Home review” means the basic review of the information provided by the petitioner and a visit to the petitioner’s home where the child will continue to reside, in accordance with the provisions of P.L.2001, c. 250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

“Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or a protective order; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

“Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

“In good faith” within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not.

“Individual subject to guardianship” means an person who has been found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child. The term includes a person who has qualified as a guardian of the person or estate, or both, of an individual subject to guardianship pursuant to court appointment in accordance with N.J.S.3B:12-1 et seq. or its equivalent in a state other than New Jersey.

“Incapacity” means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one’s minor child, and a consequent inability to make these decisions.

“Income beneficiary” means a person to whom net income of a trust is or may be payable.

“Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

“Income” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 10 through 23 of this act.

“Intellectual disability” means a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior which are manifested during the development period.

“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

“Interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

“Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

“Issue” of an individual means a descendant. ~~as defined in N.J.S.3B:1-1.~~

“Joint property” is property that is owned by two or more persons with rights of survivorship and includes a tenancy by the entirety, a joint tenancy, a joint tenancy with rights of survivorship and a joint life estate with contingent remainder in fee. For purposes of this chapter, joint property is deemed to consist of a present interest and a future interest. The future interest is the right of survivorship.

“Joint tenant” is the co-owner of joint property.

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

“Jurisdiction,” with respect to a geographic area, includes a state or country.

“Kinship caregiver assessment” means a written report prepared in accordance with the provisions of P.L.2001, c. 250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

“Kinship legal guardian” means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c. 250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child’s health, education and maintenance.

“Kinship relationship” means a family friend or a person with a biological or legal relationship with the child.

“Less restrictive alternative” means an approach to meeting an individual’s needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances.

“Liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 17 of this act, resources subject to section 19 of this act, timber subject to section 20 of this act, an activity subject to section 22 of this act, an asset subject to section 23 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 26 of this act.

“Local administration” means administration by a personal representative appointed in this State.

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

“Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

“Military” has reference to the army, navy, marine, air, and coast guard services.

“Minor child” means a child under the age of eighteen years but excludes a child residing in a placement funded or approved by the Division of Child Protection and Permanency in the Department of Children and Families pursuant to either a voluntary placement agreement or court order.

“Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

“Newly issued funeral insurance policy” means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

“Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his death.

“Non-testamentary trustee” means any owner of real or personal property who holds title thereto subject to equitable duties to deal with the property for the benefit of another or others arising from an express intention to create those duties manifested in writing otherwise than by a will or other testamentary disposition of property.

“Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

“Parent” means any person entitled to take or who would be entitled to take if the child, natural or adopted, died without a will, by intestate succession from the child whose relationship is in question and excludes any person who is a stepparent, resource family parent, or grandparent.

“Parent subject to guardianship” an individual who is impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs including being unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child.

“Party” means the respondent, petitioner or plaintiff, as applicable, guardian, conservator or conservatee, or any other person authorized by the court to participate in a guardianship or protective proceeding.

“Payable on death account” or “P.O.D. account” means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

“Payment” means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange

for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer or by another, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

“Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

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

“Per Stirpes.” If a governing instrument requires property to be distributed “per stirpes,” the property is divided into as many equal shares as there are: (1) surviving children of the designated ancestor; and (2) deceased children who left surviving descendants. Each surviving child 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.

“Person” means an individual, agency, instrumentality, corporation, business or nonprofit entity, 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. This term shall also include two or more persons having a joint or common interest.

“Person subject to guardianship” can be used synonymously with the term “individual subject to guardianship.”

“Personal property” as used in this chapter shall include, but without limitation, property or money or any devise or distributive share, interest, trust fund or trust property in the hands of a fiduciary residing or acting in this State, moneys in the hands of a receiver appointed by any court, moneys in the hands of a commissioner, officer, fiduciary or other person constituting the proceeds from the sale of real estate under any judicial proceeding, or pursuant to the provisions of any will or instrument of trust, or awarded as damages for the taking of lands under legislative authority, moneys or funds deposited in any court of this State, whether arising from the sale of lands or otherwise, and moneys or property in the custody or under the control or subject to the directions of any court.

“Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

“Petition” means an initiating court document for proceedings under P.L.2012, c. 36 (C.3B:12B-1 et al.). In New Jersey, a petition shall mean a verified complaint filed with the Superior Court pursuant to the Rules of Court of the State of New Jersey.

“Pooled trust” means a pooled trust account established pursuant to P.L.1985, c. 147 (C. 3B:11-16 et al.).

“Power of attorney” means a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of section 28 of P.L.1948, c. 67 (C.17:9A-28) known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal’s agent.

“Power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

“Preneed funeral arrangements” means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

“Prepaid funeral agreement” means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

“Prepaid funeral goods” means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

“Prepaid funeral services” means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

“Present interest” is one to take effect in immediate possession, use or enjoyment without the intervention of a preceding estate or interest or without being dependent upon the happening of any event or thing.

“Principal” includes

(1) any person to whom a fiduciary ~~as such~~ owes an obligation,
(2) property held in trust for distribution to a remainder beneficiary when the trust terminates,
(3) an individual, at least 18 years of age, who, in a power of attorney, authorizes an agent to act.

“Private foundation trust” means a charitable trust which is a private foundation described in section 509(a) of the code, including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation.

“Process” as used in this Title shall include any summons, ~~subpena~~ subpoena, writ, attachment and levy thereunder, garnishment, rule, order, notice, decision, judgment or execution and levy thereunder, or any other process whatsoever, that may lawfully be issued out of any court of this State against a fiduciary in any proceeding affecting the estate which he may represent or affecting the property or interest of any beneficiary of, or interested in, the estate or against the property or interest of any beneficiary which is held or claimed to be held by the fiduciary for the account or benefit of the beneficiary.

“Property” means any property, real or personal, tangible or intangible, or any interest or estate therein, which does not come into the hands of a fiduciary as part of a decedent's estate, and which, by operation of law or otherwise, has been received or is receivable by anyone other than the fiduciary, and which a taxing authority attempts to tax or does tax, as a decedent's taxable estate, or as part of a decedent's taxable estate, for the purposes of Federal estate tax, New Jersey estate tax, other state or foreign estate taxes, or New Jersey or other state or foreign transfer inheritance, legacy or succession taxes.

“Protected person” means a person who is:

(a) an aged, blind, or disabled individual as defined at 42 U.S.C. s.1382c;
(b) developmentally disabled as defined in section 2 of P.L.1979, c. 105 (C.30:1AA-2); or
(c) under age 18, or over age 18 and a full-time student, with serious disabilities that reasonably may prevent the individual from being self-sufficient as an adult.

“Protected person” means an adult for whom a protective order has been issued.

“Protective order,” as used in P.L.2012, c. 36 (C.3B:12B-1 et al.), shall not be construed to conflict with the provisions of N.J.S.3B:12-1 through N.J.S.3B:12-4.

“Protective order” means:

(1) an order related to an ~~adult~~ individual who has been ~~declared incapacitated~~ found by a court to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder or some other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself or manage his or her own affairs including being unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child

or for whom such a declaration is sought, including, but not limited to, an arrangement or order related to management of the ~~incapacitated~~ person's property

(2) An order appointing a conservator, including, but not limited to, an order which is issued pursuant to N.J.S.3B:13A-1 et seq.; or

(3) An order to protect a "vulnerable adult" as that term is defined in section 2 of P.L.1993, c. 249 (C.52:27D-407), including, but not limited to, an order which is issued pursuant to the "Adult Protective Services Act," P.L.1993, c. 249 (C.52:27D-406 et seq.); or

(4) An order or arrangement, pursuant to N.J.S.3B:12-1, for a person for whom a declaration of incapacity is not sought.

"Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," P.L.1952, c. 340 (C. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c. 340 (C. 45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and,

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

"Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"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.

"Register" including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

“Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

“Registration” means a filing in this State of a guardianship or conservatorship order of another state, pursuant to the Rules of Court of the State of New Jersey and in accordance with the provisions of section 19 of P.L.2012, c. 36 (C.3B:12B-19).

“Remainder beneficiary” means a person entitled to receive principal when an income interest ends.

“Remote-computing service” means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. s.2510(14).

“Representation; Per Capita at Each Generation.” If an applicable statute or a governing instrument requires property to be distributed “by representation” or “per capita at each generation,” the property is divided into as many equal shares as there are: (1) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants; and (2) deceased descendants in the same generation who left surviving descendants, if any. 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 designated ancestor.

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

“Respondent” means an adult for whom the appointment of a guardian or the issuance of a protective order is sought.

“Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

“Securities” means instruments which are commonly dealt with on securities exchanges or markets or commonly recognized in any area in which they are issued or dealt with as a medium for investment, and which are subject to the provisions of chapter 8, “Uniform Commercial Code-Investment Securities” (chapter 8, Title 12A of the New Jersey Statutes).

“Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes: a certificated security, an uncertificated security, a security account any note, stock, treasury stock, bond, mortgage, financing statement, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease, collateral, trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or as a security interest or any certificate of interest or participation, any

temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

“Security account” means: a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

“Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

“Severe chronic disability” means a physical or mental impairment which is expected to give rise to a long-term need for specialized health, social, and other services, and which makes the person with that impairment dependent upon others for assistance to secure these services.

“Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

“Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

“Special needs trust” means an OBRA '93 trust, as defined in subsection a. of section 3 of P.L.2000, c. 96 (C.3B:11-37), or trust governed by a written instrument which:

(a) grants a trustee broad discretion to determine whether and when to distribute;

(b) limits distributions during the trust term to distributions to benefit one or more protected persons, although the trust shall have at least one protected person as beneficiary;

(c) provides that the trustee does not have any obligation to pay the protected person's obligations or fund his support;

(d) does not give the protected person any right to require the trustee to distribute at a specific time or for a particular purpose or to assign or encumber interests in the trust; and

(e) evidences the grantor's intent to supplement rather than replace or impair government assistance that the protected person receives or for which he otherwise may be eligible.

“Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

“Split-interest trust” means a nonexempt split-interest trust described in section 4947(a)(2) of the code, but only to the extent that section 508(e) of the code⁴ is applicable to the nonexempt split-interest trust under section 4947(a)(2) of the code.

“State” means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

“Stepchild” means a child of the surviving, deceased, or former spouse who is not a child of the decedent.

“Successor personal representative” means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

“Successors” means those persons, other than creditors, who are entitled to real and personal property of a decedent under a decedent’s will or the laws governing intestate succession.

“Supported decision making” means assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes.

“Surplus trust funds” means funds accumulated in the trust from contributions made on behalf of an individual beneficiary, which, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary’s lifetime, including the beneficiary’s share of administrative costs, and of any amounts provided to a remainderman.

“Terms-of-service agreement” means an agreement that controls the relationship between an account holder and a custodian.

“Terms of a trust” means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

“Testamentary trustee” means a trustee designated by will or appointed to exercise a trust created by will.

“Testator” includes an individual and means male or female.

“The tax” means all taxes finally determined to be due and payable by a fiduciary, under the laws of the United States now or hereafter enacted and under the laws of this State now or hereafter enacted, imposing an estate tax.

“Transferee” means any person to whom the gross tax estate or any part thereof is, or may be, transferred or to whom any benefit therein accrues other than that part of the gross tax estate which

passes under the will of decedent, or, if there be no will, comes into the possession of the fiduciary for administration as a part of the gross tax estate of the decedent. The trustee of any inter vivos trust and the executor of, trustee or other fiduciary under, the will of any other decedent holding property included as a part of the gross estate shall be deemed to be a transferee.

“Triggering event” means an event stated in the designation, petition or decree which empowers the standby guardian to assume the duties of the office, which event may be the death, incapacity or debilitation, with the consent, of the custodial parent or legal custodian, whichever occurs first.

“Trust estate” or “trust assets” means money or other property entrusted to a fiduciary.

“Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including a will, deed, agreement, court order, or other instrument, including any amendments thereto, pursuant to which money or other property is entrusted to a fiduciary, and means the certificate of incorporation of a nonprofit corporation administering a charitable foundation trust.

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

“Trustee” means every fiduciary administering a trust instrument, and includes:

(1) a corporation which is a private charitable foundation administering a private foundation trust;

(2) private foundation trusts and split-interest trusts;

(3) a corporate entity in its capacity as trustee and a co-trustee where two or more are appointed.

(4) an original, additional or successor trustee, whether or not appointed or confirmed by a court.

(5) any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.

“User” means a person that has an account with a custodian.

“Visitor” means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

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

COMMENT

The modification of this statute reflects the consolidation of the original definitions set forth in N.J.S. 3B:1-1 and 1-2 along with twenty 24 additional definitions sections that appear throughout the Title and 14 additional statutes that define terms without bearing the moniker “definition.”³ The terms that were found in the original N.J.S. 3B:1-1 and 1-2 appear in **boldface**. Statutes that have been moved into the proposed consolidated statute entitled N.J.S. 3B:1-1 are shown in *italics* and also appear in this appendix, with ~~strike through~~, in their original location.

N.J.S. 3B:1-10 Attorney for an individual subject guardianship, conservatorship or protective arrangement

a. The court shall appoint an attorney to represent an individual who is the subject of a proceeding under this Title if:

- (1) requested by the minor and the minor is 12 years of age or older;
- (2) recommended by a guardian ad litem; or
- (3) the court determines the individual needs representation.

b. An attorney appointed under subsection a. shall:

- (1) personally interview the individual who is the subject of a proceeding under this title;
- (2) make inquiry of persons having knowledge of the individual’s circumstances, his or her mental state and his or her property;
- (3) make reasonable inquiry to locate any will, powers of attorney, or health care directives previously executed by the respondent or to discover any interests that person may have as a beneficiary to a will or trust;
- (4) make a reasonable effort to ascertain the individual’s wishes;
- (5) advocate for the individual’s wishes to the extent reasonably ascertainable; and
- (6) if the individual’s wishes are not reasonably ascertainable, advocate for that person’s best interest.

c. An individual who is the subject of a proceeding under this Title may retain an attorney to represent him or her in the proceeding.

d. A parent of a minor who is the subject of a proceeding under this Title may retain an attorney to represent him or her in the proceeding.

COMMENT

³ N.J.S. 3B:1-1; 3B:1-2; N.J.S. 3B:9-1; N.J.S. 3B:11-9; N.J.S. 3B:11-16.1; N.J.S. 3B:11-22; N.J.S. 3B:12-69; N.J.S. 3B:12a-2; N.J.S. 3B:12b-3; N.J.S. 3B:13-2; N.J.S. 3B:13a-1; N.J.S. 3B:13a-12; N.J.S. 3B:14-8; N.J.S. 3B:14-46; N.J.S. 3B:14-53; N.J.S. 3B:17-9; N.J.S. 3B:18-8; N.J.S. 3B:18-12; N.J.S. 3B:18-23; N.J.S. 3B:19b-2; N.J.S. 3B:19b-10; N.J.S. 3B:19b-17; N.J.S. 3B:19b-18; N.J.S. 3B:19b-23; N.J.S. 3B:19b-26; N.J.S. 3B:20-1; N.J.S. 3B:20-21; N.J.S. 3B:20-27; N.J.S. 3B:21-2; N.J.S. 3B:22-39; N.J.S. 3B:24-1; N.J.S. 3B:26-1; N.J.S. 3B:30-2; N.J.S. 3B:31-3; N.J.S. 3B:31-11; N.J.S. 3B:31-37.

The proposed language is predicated, in part, on the language found in the UGCOPAA §204.

N.J.S. 3B:1-11 Waiver of notice

a. Except as otherwise provided in subsection b., a person may waive notice under this Title in a record signed by the person or person's attorney and filed in the proceeding.

b. A respondent, individual subject to guardianship, individual subject to conservatorship, or individual subject to a protective arrangement under this Title may not waive notice under this act.

COMMENT

The proposed language is based on the language found in the UGCOPAA §114.

N.J.S. 3B:3-43. Nonademption of specific devise; sale by or payment of condemnation award or insurance proceeds to guardian of testator or agent

If specifically devised property is sold or mortgaged by a guardian for a testator, or by an agent acting within the authority of a durable power of attorney for an ~~incapacitated~~ individual subject to guardianship, or if a condemnation award, insurance proceeds or recovery for injury to the property are paid to a guardian for a testator or such agent as a result of condemnation, fire or casualty, 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. This section does not apply if subsequent to the sale, mortgage, condemnation, casualty, or recovery the guardianship is terminated, or the durable power of attorney is revoked by the testator and the testator survives by 1 year the judgment terminating the guardianship or such revocation. The right of the specific devisee under this section is reduced by any right he has under N.J.S.3B:3-44.

Credits: L.1981, c. 405, § 3B:43, eff. May 1, 1982. Amended by L.2004, c. 132, § 36, eff. Feb. 27, 2005.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:9-1. Definitions

~~As used in this chapter:~~

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

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

~~e. A “devisee” means any person designated in a will to receive a devise, but does not mean a trustee or trust designated in a will to receive a devise;~~

~~d. The “effective date” is the date on which a property right vests, or a contract right arises, even though the right is subject to divestment;~~

~~e. “Joint property” is property that is owned by two or more persons with rights of survivorship and includes a tenancy by the entirety, a joint tenancy, a joint tenancy with rights of survivorship and a joint life estate with contingent remainder in fee. For purposes of this chapter, joint property is deemed to consist of a present interest and a future interest. The future interest is the right of survivorship;~~

~~f. “Joint tenant” is the co-owner of joint property.~~

~~Credits: L.1981, c. 405, § 3B:9-1, eff. May 1, 1982. Amended by L.2004, c. 132, § 63, eff. Feb. 27, 2005.~~

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:9-4. Disclaimer by a fiduciary of an interest in property

a. A fiduciary or agent acting on behalf of a principal within the express, general or implied authority of a power of attorney, may disclaim property or any interest therein.

b. Except as provided in subsection c. of this section, such disclaimer shall not be effective unless, prior thereto, the fiduciary or agent has been authorized to disclaim by the court having jurisdiction over the fiduciary or the principal after finding that such disclaimer is advisable and will not materially prejudice the rights of: (1) creditors, devisees, heirs or beneficiaries of the estate; (2) beneficiaries of the trust; or (3) the minor, the ~~incapacitated~~ individual subject to guardianship, the conservatee or the principal for whom such fiduciary or agent acts.

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

Credits: L.1981, c. 405, § 3B:9-4, eff. May 1, 1982. Amended by L.2004, c. 132, 66, eff. Feb. 27, 2005.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:9-4.1. Disclaimer by a fiduciary of a power of discretion

a. Any fiduciary, including an agent acting on behalf of a principal within the implied or general authority of a power of attorney, may disclaim any power or discretion held by such fiduciary in a fiduciary capacity. Unless the governing instrument specifically authorizes the fiduciary to disclaim such power or discretion without obtaining court authorization to do so, the disclaimer by the fiduciary

shall not be effective unless, prior thereto, such fiduciary has been authorized to disclaim by the court having jurisdiction over the fiduciary after finding that it is advisable and will not materially prejudice the rights of: (1) devisees, heirs, or beneficiaries of the decedent; (2) the minor, the ~~incapacitated~~ individual subject to guardianship, the conservatee, or the principal; or (3) the beneficiaries of the trust.

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

(1) Any disclaimer under this section shall be personal to the fiduciary so disclaiming and shall not constitute a disclaimer by a co-fiduciary or a successor or substituted fiduciary of such power or discretion;

(2) No disclaimer shall affect the rights of: (a) devisees, heirs or beneficiaries of the decedent; (b) the minor, the ~~incapacitated~~ individual subject to guardianship, the conservatee, or the principal; or (c) the beneficiaries of the trust.

Credits: L.2004, c. 132, § 67, eff. Feb. 27, 2005.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:11-4.1. Powers not permitted to trustee; applicability

a. The following powers conferred by a governing instrument upon a trustee in his or her capacity as a trustee shall not be exercised by that trustee:

(1) The power to make discretionary distributions of either principal or income to or for the benefit of the trustee, the trustee's estate, or the creditors of either, unless either:

(a) limited by an ascertainable standard relating to the trustee's health, education, support or maintenance, within the meaning of 26 U.S.C. §§ 2041 and 2514; or

(b) exercisable by the trustee only in conjunction with another person having a substantial interest in the property subject to the power which is adverse to the interest of the trustee within the meaning of 26 U.S.C. § 2041(b)(1)(C)(ii);

If a trustee is prohibited by paragraph (1) of this subsection from exercising a power conferred upon the trustee, the trustee nevertheless may exercise that power but shall be limited to distributions for the trustee's health, education, support or maintenance to the extent otherwise permitted by the terms of the trust.

(2) The power to make discretionary distributions of either principal or income to satisfy any of the trustee's personal legal obligations for support or other purposes;

(3) The power to make discretionary allocations in the trustee's personal favor of receipts or expenses as between income and principal, unless such trustee has no power to enlarge or shift any

beneficial interest except as an incidental consequence of the discharge of such trustee's fiduciary duties;

(4) The power to exercise any of the powers proscribed in this subsection with regard to an individual other than the trustee to the extent that such individual could exercise a similar prohibited power in connection with a trust that benefits the trustee.

b. Unless otherwise prohibited by the provisions of subsection a. of this section, a trustee may exercise a power described in that subsection in favor of someone other than the trustee, the trustee's estate, or the creditors of either.

c. If a governing instrument contains a power proscribed under subsection a. of this section the following shall apply:

(1) If the power is conferred on two or more trustees, it may be exercised by the trustee or trustees who are not so prohibited as if they were the only trustee or trustees; or

(2) If there is no trustee in office who can exercise such power upon application of any interested party, a court of competent jurisdiction shall appoint a trustee to exercise such power or, except as provided in subsection d. of this section, a successor trustee who would not be disqualified shall be appointed to exercise the power that the other trustees cannot exercise in accordance with the provisions of the trust instrument as if the office of trustee were vacant.

d. No beneficiary of a trust, in an individual, trustee or other capacity, may appoint, or remove and appoint, a trustee who is related or subordinate to the beneficiary within the meaning of 26 U.S.C. § 672(c) unless:

(1) the trustee's discretionary power to make distributions to or for such beneficiary is limited by an ascertainable standard relating to the beneficiary's health, education, support or maintenance as set forth in subsection a. of this section;

(2) the trustee's discretionary power may not be exercised to satisfy any of such beneficiary's legal obligations for support or other purposes; and

(3) the trustee's discretionary power may not be exercised to grant to such beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate or the creditors thereof within the meaning of 26 U.S.C. § 2041.

This subsection d. shall not apply if the appointment of the trustee by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the trust, subject to the power, which is adverse to the exercise of the power in favor of the beneficiary within the meaning of 26 U.S.C. § 2041(b)(1)(C)(ii).

e. The provisions of this section shall not apply during the time that a trust remains revocable or amendable by the grantor.

f. This section applies to:

(1) Any trust created under a governing instrument executed 90 days or more after the effective date of this act, unless the governing instrument expressly provides that this act does not apply; and

(2) Any trust created under a governing instrument executed before 90 days after the effective date of this act, unless all interested parties affirmatively elect on or before three years after the effective date by a written declaration signed by or on behalf of each interested party and delivered to the trustee, not to be subject to the application of this act. In the case of a testamentary trust, such declarations shall be filed with the clerk of the court in which the will was admitted to probate.

g. In this section the term “interested party” means:

(1) Each trustee then serving; and

(2) Each person having an interest in income or principal whom it would be necessary to join as a party in a proceeding for the judicial settlement of a trustee’s account or, if such a person has not attained majority or is otherwise ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, the person’s legal representative under applicable law or the person’s agent under a durable power of attorney that is sufficient to grant such authority.

Credits: L.1996, c. 41, § 1, eff. June 26, 1996.

COMMENT

Pejorative term is replaced with person-first language.

N.J.S. 3B:11-9. Definitions

~~As used in this article:~~

~~a. “Code” means the Internal Revenue Code of 1954 as amended;~~

~~b. “Private foundation trust” means a charitable trust which is a private foundation described in section 509(a) of the code, including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation;~~

~~c. “Split interest trust” means a nonexempt split interest trust described in section 4947(a)(2) of the code, but only to the extent that section 508(e) of the code⁴ is applicable to the nonexempt split interest trust under section 4947(a)(2) of the code;~~

~~d. “Trust instrument” means a will, deed, agreement, court order, or other instrument pursuant to which money or other property is entrusted to a fiduciary, and also means the certificate of incorporation of a nonprofit corporation administering a charitable foundation trust;~~

e. ~~“Trustee” means every fiduciary administering a trust instrument, and includes a corporation which is a private charitable foundation administering a private foundation trust;~~

f. ~~“Trust” means private foundation trusts and split interest trusts.~~

Credits: L.1981, c. 405, § 3B:11-9, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:11-16.1. Definitions

~~As used in P.L.1985, c. 147 (C.3B:11-16 et al.):~~

~~“Assigned funeral insurance policy” means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.~~

~~“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:~~

~~(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or~~

~~(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.~~

~~This definition of delivery shall apply to this term as used in P.L.1985, c. 147 (C. 3B:11-16 et al.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.~~

~~“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy.~~

~~“Funeral trust” means a commingled or non commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c. 182 (C. 2A:102-13 et seq.) or P.L.1985, c. 147 (C. 3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.~~

~~“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.~~

~~“Newly issued funeral insurance policy” means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.~~

~~“Payable on death account” or “P.O.D. account” means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.~~

~~“Pooled trust” means a pooled trust account established pursuant to P.L.1985, c. 147 (C. 3B:11-16 et al.).~~

~~“Preneed funeral arrangements” means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.~~

~~“Prepaid funeral agreement” means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.~~

~~“Prepaid funeral goods” means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.~~

~~“Prepaid funeral services” means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the~~

~~provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.~~

~~“Provider” means a person, firm or corporation duly licensed and registered pursuant to the “Mortuary Science Act,” P.L.1952, c. 340 (C. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:~~

~~(1) Operating a duly registered mortuary in accordance with P.L.1952, c. 340 (C. 45:7-32 et seq.) and the regulations promulgated thereunder;~~

~~(2) Having his or its business and practice based within the physical confines of the registered mortuary; and~~

~~(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.~~

~~“Purchaser” means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.~~

Credits: L.1993, c. 147, § 22, eff. Dec. 21, 1993. Amended by L.1994, c. 163, § 4, eff. Dec. 20, 1994.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:11-21. Purposes and policies; liberal construction

This act shall be liberally construed and applied to promote its underlying purposes and policies, which are among others to:

a. encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;

b. ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest, except that an unpaid member of the managing board of a nonprofit corporation provider shall not be deemed to be in conflict as a member of the managing board of a trust;

c. facilitate sound administration of trust funds for persons with severe, chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;

d. provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other

cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or are unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child;

e. help make guardians available for persons with severe, chronic disabilities who are impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or are unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, when no other family member is available for this purpose;

f. encourage the availability of private resources to purchase for persons with severe, chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those which are not available from other sources;

g. encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and

h. remove the disincentives which discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interests of beneficiaries in community trusts are not considered assets or income which would disqualify them from any governmental or charitable entitlement program with an economic means test.

Credits: L.1985, c. 424, § 3, eff. April 13, 1985. Amended by L.1993, c. 224, § 1, eff. Aug. 6, 1993; L.2013, c. 103, § 23, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:11-22. Definitions

~~As used in P.L.1985, c. 424 (C.3B:11-19 et seq.):~~

~~a. “Beneficiary” means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits of the community trust program as provided in P.L.1985, c. 424.~~

~~b. “Board” means the board of trustees or the group of persons vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.~~

~~e. “Community trust” means a nonprofit organization which offers the following services:~~

~~(1) administration of special trust funds for persons with severe chronic disabilities;~~

~~(2) follow along services;~~

~~(3) guardianship for persons with severe chronic disabilities who are when no other immediate family member or friend is available for this purpose; and~~

~~(4) advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.~~

~~d. “Follow along services” means those services offered by community trusts which are designed to insure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, participation in the development of individualized plans being made by service providers for the beneficiary, and other similar services consistent with the purposes of P.L.1985, c. 424.~~

~~e. “Severe chronic disability” means a physical or mental impairment which is expected to give rise to a long term need for specialized health, social, and other services, and which makes the person with that impairment dependent upon others for assistance to secure these services.~~

~~f. “Trustee” means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.~~

~~g. “Surplus trust funds” means funds accumulated in the trust from contributions made on behalf of an individual beneficiary, which, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary’s lifetime, including the beneficiary’s share of administrative costs, and of any amounts provided to a remainderman.~~

Credits: L.1985, c. 424, § 4, eff. April 13, 1985. Amended by L.1993, c. 224, § 2, eff. Aug. 6, 1993; L.2013, c. 103, § 24, eff. Aug. 7, 2013.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:11-37. Establishing OBRA ‘93 trusts; revocability

a. As used in this section “OBRA ‘93 trust” means a trust established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or an account within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C).

b. Upon the request of an interested party, a court may establish an OBRA ‘93 trust for a person who is disabled as defined in section 1614(a)(3) of the federal Social Security Act (42 U.S.C. s.1382c (a)(3)), whether or not the person is ~~an incapacitated person~~ subject to guardianship as defined in N.J.S.3B:1-2, and may direct that the assets of the person with a disability be placed in the OBRA ‘93 trust.

c. Prior to establishing an OBRA ‘93 trust for a person with a disability who is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to

govern him or herself and manage his or her own affairs, or is a person who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, the court shall consider the factors listed in N.J.S.3B:12-3. [N.J.S. 3B:12-1]

d. Prior to establishing an OBRA '93 trust for a person who is a minor, the court shall consider the applicable Rules of Court and State law relating to the handling of funds for a minor, including, but not limited to, the provisions of N.J.S.3B:15-16 and N.J.S.3B:15-17.

e. Nothing in this section shall be construed to preclude an OBRA '93 trust from being created by any person in addition to a court as would be consistent with 42 U.S.C. s.1396p(d)(4).

f. Notwithstanding any provision or principle of law to the contrary, a beneficiary, grantor, trustee or other person shall not have authority to revoke an OBRA '93 trust. This provision shall apply whether or not an OBRA '93 trust instrument designates the trust as irrevocable or whether the OBRA '93 trust was created by a court or otherwise.

Credits: L.2000, c. 96, § 3, eff. Aug. 29, 2000.

COMMENT

Pejorative terms are replaced with person-first language.

Chapter 12. Minors and ~~Incapacitated persons~~ individuals subject to guardianship

N.J.S. 3B:12-1. Power of the court to order a protective arrangement instead of guardianship; Factors to be considered

~~If it is established that a minor, an incapacitated person or an alleged incapacitated person or a person not yet in being has property or an interest therein which may be wasted or dissipated or that a basis exists for affecting the property or interest and affairs of a minor, an incapacitated person or an alleged incapacitated person or person not yet in being, or that funds are needed for the support, care and welfare of the minor, incapacitated person or alleged incapacitated person or those entitled to be supported by him, the court may, subject to the appointment of a guardian ad litem and upon notice to the guardian ad litem, without appointing a guardian of the estate, authorize, direct or ratify any single or more than one transaction necessary or desirable to achieve any security, service, care or protective arrangement meeting the foreseeable needs of the minor, incapacitated person or alleged incapacitated person or those dependent upon him.~~

a. A Court may order a protective arrangement instead of a guardianship as a less restrictive alternative to guardianship.

b. The following persons may file a complaint seeking a protective arrangement instead of a guardianship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of the property or financial affairs of the individual; and,

(3) the guardian for the individual.

c. A person interested in the welfare an individual who is the subject of a complaint seeking to establish a guardianship or other protective arrangement, including the individual or a conservator, may seek a protective arrangement instead of guardianship where the individual who is the subject of the complaint:

(1) has a property interest which may be wasted or dissipated;

(2) requires funds for his or her support, care and welfare;

(3) requires funds for the support, care and welfare of those entitled to his or her support; or,

(4) where a basis exists for affecting his or her property or interest and affairs.

d. After a hearing on the complaint for guardianship or for a protective arrangement instead of guardianship, the court may issue an order for a protective arrangement instead of guardianship if the court finds by clear and-convincing evidence that:

(1) the individual lacks the ability to meet essential requirements for physical health, safety, or self-care because he or she is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making including being unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child; and

(2) the individual's identified needs cannot be met by a less restrictive alternative.

e. Subject to the appointment of and with notice to a guardian ad litem, and without the necessity of appointing a guardian of the estate, the court may:

(1) authorize, direct or ratify any transaction that is necessary or desirable to achieve any security, service, or care that meets the foreseeable needs of individual subject to the protective order; including:

(A) a particular medical treatment or refusal of a particular medical treatment;

(B) a move to a specified place of dwelling; or

(C) visitation or supervised visitation between the individual subject to the protective order and another person;

(2) restrict access to the individual subject to the protective order by a specified person whose access places the individual subject to the protective arrangement at serious risk of physical, psychological, or financial harm; and

(3) order other arrangements on a limited basis that are appropriate.

f. In deciding whether to issue an order under this section, the court shall consider:

(1) the factors a guardian must consider when making a decision on behalf of an adult subject to guardianship;

(2) the interests of the individual's creditors;

(3) the interests of the individual's dependents;

(4) whether, in view of his or her disability, the individual requires the continuing protection of a guardian.

Credits: L.1981, c. 405, § 3B:12-1, eff. May 1, 1982. Amended by L.2005, c. 304, § 1, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed language is predicated, in part, on the language found in the UGCOPAA.

N.J.S. 3B:12-1.2 Power of the court to order a protective arrangement instead of conservatorship; Factors to be considered

a. A Court may order a protective arrangement as a less restrictive alternative to conservatorship.

b. The following persons may file a complaint seeking a protective arrangement instead of a conservatorship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of the property or financial affairs of the individual; and,

(3) the guardian for the individual.

c. A person interested in the welfare an individual who is the subject of a complaint seeking to establish a guardianship or other protective arrangement, including the individual or a conservator, may seek a protective arrangement instead of guardianship where the individual who is the subject of the complaint:

(1) has a property interest which may be wasted or dissipated;

(2) requires funds for his or her support, care and welfare;

(3) requires funds for the support, care and welfare of those entitled to his or her support; or,

(4) where a basis exists for affecting his or her property or interest and affairs.

d. After a hearing on the complaint for guardianship or for a protective arrangement instead of conservatorship, the court may issue an order for a protective arrangement instead of conservatorship if the court finds by clear and-convincing evidence that:

(1) the person subject to the protective order is unable to manage property or financial affairs because:

(A) of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; or

(B) the person is missing, detained, or unable to return to the United States;

(2) an order is necessary to:

(A) avoid harm to the adult or significant dissipation of the person's property; or

(B) obtain or provide funds or other property needed for the person's support, care, education, health, or welfare of or an individual entitled to that person's support; and

(3) the needs of the person subject to the protective order cannot be met by a less restrictive alternative.

e. After the hearing on a petition under for conservatorship for a minor or under for a protective arrangement instead of conservatorship for a minor, the court may issue an order for a protective arrangement instead of conservatorship for the minor if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest, and:

(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(2) either:

(A) the minor owns money or property requiring management or protection that otherwise cannot be provided;

(B) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(C) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor; and

(3) the order is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(f) If the court makes the findings under subsection (d) or (e), the court, instead of appointing a conservator, may:

(1) authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

(A) an action to establish eligibility for benefits;

(B) payment, delivery, deposit, or retention of funds or property;

(C) sale, mortgage, lease, or other transfer of property;

- (D) purchase of an annuity;
- (E) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;
- (F) addition to or establishment of a trust;
- (G) ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or
- (H) settlement of a claim; or

(2) restrict access to the individual's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

(d) After the hearing the court may, in its discretion, issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence:

(1) through fraud, coercion, duress, or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

f. Before issuing an order, the court shall consider the factors a conservator must consider when making a decision on behalf of an adult subject to conservatorship.

g. Before issuing an order for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is 12 years of age or older.

COMMENT

The proposed language is predicated, in part, on the language found in the UGCOPAA.

N.J.S. 3B:12-2 Matters within a protective arrangement

a. Protective arrangements include, but are not limited to:

- (1) payment, delivery, deposit or retention of funds or property,
- (2) sale, mortgage, lease or other transfer of property,
- (3) entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or
- (4) the addition to, or establishment of, a suitable trust.

b. The court may authorize, direct or ratify any contract trust or other transaction relating to the ~~minor's, incapacitated person's or alleged incapacitated person's or person's not yet in being~~ financial affairs or involving the estate of an individual subject to a protective order, if the court ~~determines~~ finds that the transaction is in the ~~best interest of the minor, incapacitated person, alleged incapacitated person or persons not yet in being~~ individual's best interests or the best interest of those who are dependent upon him or her.

Credits: L.1981, c. 405, § 3B:12-2, eff. May 1, 1982. Amended by L.2005, c. 304, § 2, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include, adding gender-neutral terms and clarifying the existing language.

~~N.J.S. 3B:12-3. Factors to be considered before approving a protective arrangement~~

~~Before approving a protective arrangement or other transaction the court shall consider the interests of creditors and dependents of the minor, incapacitated person or alleged incapacitated person and, in view of his or her disability, whether the minor, incapacitated person or alleged incapacitated person needs the continuing protection of a guardian.~~

~~Credits: L.1981, c. 405, § 3B:12-3, eff. May 1, 1982. Amended by L.2005, c. 304, § 3, eff. Jan. 11, 2006.~~

COMMENT

The language of N.J.S.3B:12-3 is incorporated into N.J.S. 3B:12-1(f)(1) entitled Power of the court to order a protective arrangement instead of guardianship; Factors to be considered.

N.J.S. 3B:12-4. Appointment of special guardian

The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this article who shall have authority conferred by the order and shall serve until discharged by the order after reporting to the court of all matters done pursuant to the order of appointment.

If the court has appointed a special guardian to assist in the accomplishment of a protective arrangement pursuant to this section, the special guardian shall be entitled to receive reasonable fees for his or her services, as well as reimbursement of his or her reasonable expenses, upon application to the court, payable by the estate of the minor, ~~incapacitated person or alleged incapacitated person~~ or the estate of the individual for whom a guardian or a protective arrangement is sought.

Credits: L.1981, c. 405, § 3B:12-4, eff. May 1, 1982. Amended by L.2005, c. 304, § 4, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include, adding gender-neutral terms

N.J.S. 3B:12-5. Right of ~~alleged incapacitated person~~ an individual to a trial on the issue of incapacity

Where application is made to the court for proceedings to affect the property and affairs of an ~~alleged incapacitated person~~ individual, and ~~the alleged incapacitated person~~ that person has not been adjudicated as such, ~~the alleged incapacitated person~~ he or she or someone acting ~~in~~ on his or her behalf may apply for a trial of the issue of incapacity in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of the State of New Jersey.

Credits: L.1981, c. 405, § 3B:12-5, eff. May 1, 1982. Amended by L.2005, c. 304, § 5, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include, adding gender-neutral terms.

Credits: L.1981, c. 405, § 3B:12-12, eff. May 1, 1982.

3B:12-13. Power to designate testamentary guardian

Subject to the provisions of N.J.S.3B:12-14, either parent may, by his or her will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including ~~children en ventre sa mere~~ a person not yet in being, who are under the age of 18 years and unmarried at the death of the parent.

Credits: L.1981, c. 405, § 3B:12-13, eff. May 1, 1982. Amended by L.2005, c. 304, § 8, eff. Jan. 11, 2006.

COMMENT

The proposed changes to this section include, adding gender-neutral terms and the removal of the French phrase “en ventre sa mere” and replacing it with the English language equivalent.

N.J.S. 3B:12-15. Appointment of testamentary guardian by surviving parent

If no guardian has been appointed pursuant to N.J.S.3B:12-13 and N.J.S.3B:12-14, or if the surviving parent was so appointed, the surviving parent may, by his or her will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including ~~children en ventre sa mere~~ a person not yet in being, who are under the age of 18 years and unmarried at the death of the surviving parent.

Credits: L.1981, c. 405, § 3B:12-15, eff. May 1, 1982. Amended by L.2005, c. 304, § 9, eff. Jan. 11, 2006.

COMMENT

The proposed changes to this section include, adding gender-neutral terms and the removal of the French phrase “en ventre sa mere” and replacing it with the English language equivalent.

N.J.S. 3B:12-16. Bond of testamentary guardian

Before receiving his or her letters, a testamentary guardian of a minor shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by direction of the will of the parent appointing the guardian or by order of the court. However, regardless of the direction, the guardian shall, with respect to property to which the ~~ward~~ minor subject to guardianship is or shall be entitled from any source, other than the parent or other than any policy of life insurance upon the life of the parent, give bond in accordance with that section before exercising any authority or control over the property.

The provisions of this section relieving a testamentary guardian of a minor from giving bond by direction of the will of the parent shall not apply to a testamentary guardian of a minor with a developmental disability. Such guardian shall be bonded pursuant to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-1.

Credits: L.1981, c. 405, § 3B:12-16, eff. May 1, 1982. Amended by L.2005, c. 304, § 10, eff. Jan. 11, 2006; L.2009, c. 140, § 2, eff. Dec. 18, 2009.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include, adding gender-neutral terms and clarifying the existing language. This statute falls under Ch. 12, Art. 3 (Appt. of Guard. for Minors), §B (Testamentary Guardians). The substitution of terms was therefore cast as “minor subject to guardianship” to fit the context of the Chapter.

N.J.S. 3B:12-20. Special guardian for consent to enlist; bond; fees

When any minor, who is of an age that the consent of his parent or guardian is necessary to enable him to enlist in the armed forces of the United States, desires to enlist in the armed forces of the United States and has no parent or guardian entitled to his custody and control available to sign the written consent required for the enlistment, letters of special guardianship may be granted by the surrogate’s court of the county in which the minor resides, or the Superior Court, empowering the special guardian to give his or her written consent to the enlistment but limiting his or her authority and duty to that purpose. The guardian shall give consent only if he or she deems the enlistment advisable. A bond shall not be required from the guardian, and neither the clerk of the Superior Court nor the surrogate shall collect any fee or charge in connection with the action for the appointment of the guardian.

Credits: L.1981, c. 405, § 3B:12-20, eff. May 1, 1982.

COMMENT

The proposed changes to this section include the addition of general-neutral terms.

N.J.S. 3B:12-21. Persons entitled to appointment

In an action for the appointment of a guardian of the person, guardian of the estate, or a guardian of the person and estate of a minor, the surrogate’s court of the county wherein he or she resides or, if he or she is a nonresident, where his or her real or personal estate may be, or the Superior Court, upon inquiry into

the circumstances, may appoint the parents or either of them or the survivor of them as the guardian of the person, guardian of the estate or guardian of the person and estate of the minor. If neither parent or the survivor of them will accept the guardianship, then the heirs, or some of them, may be appointed as guardian. If none of the heirs will accept the guardianship, then some other person shall be appointed as the guardian of the person, guardian of the estate or as guardian of the person and estate of the minor. This section shall not be construed to restrict the power of the court to appoint a substitute guardian on the application of the minor or otherwise.

Credits: L.1981, c. 405, § 3B:12-21, eff. May 1, 1982.

COMMENT

The proposed changes to this section include the addition of general-neutral terms.

N.J.S. 3B:12-22. Appointment when heirs are nonresidents

When it ~~shall~~ appears to the Superior Court, or surrogate's court that the heirs of a minor residing in this State do not reside within this State, the court may take any action ~~in respect to~~ regarding the appointment of a guardian of the person, guardian of the estate or as guardian of the person and estate for the minor as shall be to his or her advantage.

Credits: L.1981, c. 405, § 3B:12-22, eff. May 1, 1982.

COMMENT

The proposed changes to this section include, the addition of gender-neutral terms and the clarification of the existing language.

N.J.S. 3B:12-23. Guardian for child of absconding or absent parent

If a resident of this State has or shall abscond or absent ~~himself~~ or herself from the State, leaving a child under the age of 18 without sufficient provision for his or her maintenance and education, the surrogate of the county wherein the child resides, or the Superior Court, may appoint a guardian for his or her person or estate or both. The Superior Court may revoke the appointment when it shall appear proper.

Credits: L.1981, c. 405, § 3B:12-23, eff. May 1, 1982.

COMMENT

The proposed changes to this section include the addition of general-neutral terms.

N.J.S. 3B:12-24. Issue of ~~incapacity~~ triable without jury unless jury is demanded

In civil actions or proceedings for the determination of ~~incapacity~~ or for the appointment of a guardian ~~for an alleged incapacitated person~~, the trial of the issue of ~~incapacity~~ may be had without a jury pursuant to Rules Governing the Courts of the State of New Jersey, unless a trial by jury is demanded by

~~the alleged incapacitated person individual who is the subject of the guardianship complaint or someone on that person's behalf.~~

Credits: L.1981, c. 405, § 3B:12-24, eff. May 1, 1982. Amended by L.2005, c. 304, § 11, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include, adding gender-neutral terms and clarifying the existing language.

N.J.S. 3B:12-24.1. Determination by the court of need for guardianship services; specific services

~~a. General Guardian. If the court finds that an individual is incapacitated as defined in N.J.S.3B:1-2 and is without capacity to govern himself or manage his affairs, the court may appoint a general guardian who shall exercise all rights and powers of the incapacitated person. The general guardian of the estate shall furnish a bond conditioned as required by the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.~~

a. General Guardian.

(1) The court may appoint a general guardian who shall exercise all rights and powers of the individual subject to guardianship if the court finds:

(A) that an individual is: impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, even with appropriate supportive services, technological assistance, or supported decision making; and

(B) that the individual's identified needs cannot be met with a protective arrangement instead of guardianship or a less restrictive alternative.

(2) With appropriate findings the court may:

- (A) treat a petition for guardianship as one for conservatorship or protective arrangement;
- (B) issue any appropriate order; or,
- (C) dismiss the proceeding.

(3) The general guardian of the estate shall furnish a bond conditioned as required by the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

~~b. Limited Guardian. If the court finds that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate. A court, when establishing a limited guardianship shall make specific findings regarding the individual's~~

~~capacity, including, but not limited to which areas, such as residential, educational, medical, legal, vocational and financial decision making, the incapacitated person retains sufficient capacity to manage. A judgment of limited guardianship may specify the limitations upon the authority of the guardian or alternatively the areas of decision making retained by the person. The limited guardian of the estate shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.~~

b. Limited Guardian.

(1) The court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate if the court finds:

(A) that an individual is impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is a person who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, even with appropriate supportive services, technological assistance, or supported decision making.

(2) A court, when establishing a limited guardianship, shall make specific findings regarding the individual's capacity, including, but not limited to which areas, such as residential, educational, medical, legal, vocational and financial decision making, the individual retains sufficient capacity to manage. A judgment of limited guardianship may specify the limitations upon the authority of the guardian or alternatively the areas of decision making retained by the person.

(3) The limited guardian of the estate shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

c. Pendente lite; Temporary Guardian.

(1) Whenever a complaint, seeking an order finding an individual to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child, is filed in the Superior Court ~~to declare a person incapacitated~~ and to appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, pendente lite. Notice of a pendente lite temporary guardian application shall be given to the alleged incapacitated person individual who is the subject of the complaint or alleged incapacitated person's that person's attorney or the attorney appointed by the court to represent the alleged incapacitated person individual who is the subject of the complaint.

(2) Pending a hearing for the appointment of a guardian, the court may enter an order appointing a temporary guardian for good cause shown and upon a finding that there is a critical need or risk of substantial harm, including, but not limited to:

(a) the physical or mental health, safety and well-being of the person may be harmed or jeopardized;

(b) the property or business affairs of the person may be repossessed, wasted, misappropriated, dissipated, lost, damaged or diminished or not appropriately managed;

(c) it is in the best interest of the ~~alleged incapacitated person~~ individual who is the subject of the complaint to have a temporary guardian appointed and such may be dealt with before the hearing to determine ~~incapacity can be held~~, after any notice as the court shall direct, appoint a temporary guardian pendente lite of the person or estate, or both, of the ~~alleged incapacitated person~~ individual who is the subject of the complaint.

(3) A pendente lite temporary guardian appointed pursuant to this section may be granted authority to arrange interim financial, social, medical or mental health services or temporary accommodations for the ~~alleged incapacitated person~~ individual who is the subject of the complaint determined to be necessary to deal with critical needs of or risk of substantial harm to ~~the alleged incapacitated person~~ this individual or the ~~alleged incapacitated~~ that person's property or assets. The pendente lite temporary guardian may be authorized to make arrangements for payment for such services from the estate of the alleged ~~incapacitated person~~ individual who is the subject of the complaint.

(4) A pendente lite temporary guardian appointed hereunder shall be limited to act for the ~~alleged incapacitated person~~ individual who is the subject of the complaint only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to ~~the alleged incapacitated person~~ this person.

(5) The ~~alleged incapacitated person's~~ attorney for the individual who is the subject of a guardianship complaint or the attorney appointed by the court to represent the alleged incapacitated person the individual who is the subject of a guardianship complaint shall be given notice of the appointment of the pendente lite temporary guardian. The pendente lite temporary guardian shall communicate all actions taken on behalf of the ~~alleged incapacitated individual~~ individual who is the subject of the guardianship complaint to ~~the alleged incapacitated~~ that person's attorney or to the attorney appointed by the court to represent the ~~alleged incapacitated person~~ individual who is the subject of the guardianship complaint who shall have the right to object to such actions.

(6) A pendente lite temporary guardian appointment shall not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

(7) If the court enters an order appointing a pendente lite temporary guardian without notice, the ~~alleged incapacitated person~~ the individual who is the subject of the complaint may appear and move for its dissolution or modification on two days' notice to the plaintiff and to the temporary guardian or on such shorter notice as the court prescribes.

(8) Every order appointing a pendente lite temporary guardian granted without notice expires as prescribed by the court, but within a period of not more than 45 days, unless within that time the court extends it for good cause shown for the same period.

(9) The pendente lite temporary guardian, upon application to the court, shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which shall be payable by the estate of the ~~alleged incapacitated person~~ individual who is the subject of the complaint or minor.

(10) The pendente lite temporary guardian shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

d. Disclosure of information. Physicians and psychologists licensed by the State are authorized to disclose medical information, including but not limited to medical, mental health and substance abuse information as permitted by State and federal law, regarding the ~~alleged incapacitated person~~ individual who is the subject of the complaint in affidavits filed pursuant to the Rules Governing the Courts of the State of New Jersey.

e. Court appearance. The ~~alleged incapacitated person~~ individual who is the subject of the complaint shall appear in court unless the plaintiff and the court-appointed attorney certify that the ~~alleged incapacitated person~~ individual who is the subject of the complaint is unable to appear because of physical or mental incapacity.

f. Communication. When a person who is allegedly in need of guardianship services appears to have a receptive or expressive communication deficit, all reasonable means of communication with the person shall be attempted for the purposes of this section, including written, spoken, sign or non-formal language, which includes translation of the person's spoken or written word when the person is unable to communicate in English, and the use of adaptive equipment.

g. Additional subject areas. At the request of the limited guardian, and if the ~~incapacitated person~~ individual who is the subject of the complaint is not represented, after appointment of an attorney for the ~~incapacitated person~~ individual who is the subject of the complaint and with notice to all interested parties, the court may determine that a person is in need of guardian services regarding additional subject areas and may enlarge the powers of the guardian to protect the person from significant harm.

h. Limitations of guardian powers. At the request of the guardian, the ~~incapacitated person~~ individual who is the subject of the complaint or another interested person, and if the ~~incapacitated person~~ individual who is the subject of the complaint is not represented, after appointment of an attorney for the ~~incapacitated person~~ individual who is the subject of the complaint and with notice to all interested parties, the court may limit the powers conferred upon a guardian.

Credits: L.2005, c. 304, § 12, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section includes the addition of selected language from the UGCOPAA.

N.J.S. 3B:12-24.2. Guardianship Training Requirement; exemptions

a. The court shall require that any proposed guardian complete guardianship training as promulgated by the Administrative Director of the Courts.

b. Agencies authorized to act pursuant to P.L. 1985, c. 298 (C. 52:27G-20 et seq.), P.L. 1985, c. 145 (C.30:6-23 et seq.), P.L. 1965, c. 59 (C.30:4-165.1 et seq.) and P.L. 1970, c. 289 (C.30:4 – 165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S. 301-7 shall be exempt from this requirement.

COMMENT

Title 3B currently contains no mandate for the training of guardians. Guardianship training is set forth in the New Jersey Rules of Court. The language of this proposed statute is derived from the New Jersey Rules of Court, *R. 4:86 et seq.*

N.J.S. 3B:12-25. Appointment of guardian

The Superior Court may determine the incapacity of an ~~alleged incapacitated person~~ individual and appoint a guardian for the person, guardian for the estate or a guardian for the person and estate. Letters of guardianship shall be granted to the spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), if the spouse is living with the ~~incapacitated person~~ individual subject to guardianship as man and wife or as a domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26: 8A-3) at the time the incapacitation arose, or to the ~~incapacitated person's~~ individual subject to guardianship's heirs, or friends, or thereafter first consideration shall be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the ~~incapacitated person~~ individual subject to guardianship or the estate, then to any other proper person as will accept the same , and if applicable, in accordance with the professional guardianship requirements of P.L.2005, c. 370 (C.52:27G-32 et al.). Consideration may be given to surrogate decision- makers, if any, chosen by the ~~incapacitated person~~ individual subject to guardianship before the person became ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or a person who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child by way of a durable power of attorney pursuant to section 4 of P.L.2000, c. 109 (C.46:2B-8.4), health care proxy or advance directive.

The Office of the Public Guardian for Elderly Adults shall have the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office.

Credits: L.1981, c. 405, § 3B:12-25, eff. May 1, 1982. Amended by L.2005, c. 304, § 13, eff. Jan. 11, 2006; L.2005, c. 370, § 13, eff. July 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-26. Action against ~~incapacitated person~~ individual subject to guardianship when guardian newly appointed; leave of court required

No action shall be brought or maintained against an ~~incapacitated person~~ individual subject to guardianship within one month after appointment of a guardian except by leave of the court wherein the action is to be brought or maintained.

Credits: L.1981, c. 405, § 3B:12-26, eff. May 1, 1982. Amended by L.2005, c. 304, § 14, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-27. Distribution of property of an ~~incapacitated person~~ as intestate property

If an ~~incapacitated person~~ individual subject to guardianship dies intestate or without any will except one which was executed after commencement of proceedings which ultimately resulted in adjudicating a person incapacitated and before a judgment has been entered adjudicating a return to competency, the person's property shall descend and be distributed as in the case of intestacy.

Credits: L.1981, c. 405, § 3B:12-27, eff. May 1, 1982. Amended by L.2005, c. 304, § 15, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-28. Return to competency; restoration of estate

The Superior Court may, on summary action filed by the person ~~adjudicated incapacitated~~ subject to guardianship or the guardian, adjudicate that the ~~incapacitated~~ person subject to guardianship has returned to full or partial competency and restore to that person's ~~his~~ civil rights and estate as it exists at the time of the return to competency if the court is satisfied that the person has recovered his sound reason and is fit to govern himself and manage his affairs, or, in the case of an ~~incapacitated person~~ individual subject to guardianship ~~determined to be incapacitated~~ by reason of ~~chronic alcoholism~~ an alcohol disorder, that the person has reformed and become habitually sober and has continued so for one year next preceding the commencement of the action, and in the case of an ~~incapacitated person~~ individual subject to guardianship ~~determined to be incapacitated~~ by reason of ~~ehronic use of drugs~~ drug use disorder that the person has reformed and has not been a chronic user of drugs for one year next preceding the commencement of the action.

Credits: L.1981, c. 405, § 3B:12-28, eff. May 1, 1982. Amended by L.2005, c. 304, § 16, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-30. Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment

The parents who have been appointed the guardian of an unmarried ~~incapacitated~~ person or the spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26: 8A-3) who has been appointed the guardian of an ~~incapacitated~~ person may, by will, appoint a testamentary guardian of the person, or a guardian of the estate, or of both the person and estate of the ~~incapacitated person~~ individual subject to guardianship. Before the appointment of a testamentary guardian becomes effective, the person designated as the testamentary guardian shall apply to the court in a summary manner, upon notice to the ~~incapacitated person~~ individual subject to guardianship, to any guardian who may have been appointed for the ~~incapacitated person~~ individual subject to guardianship, to the person or institution having the care of the ~~incapacitated person~~ individual subject to guardianship and to such heirs as the court may direct, for a judgment confirming that appointment under the will.

Credits: L.1981, c. 405, § 3B:12-30, eff. May 1, 1982. Amended by L.2005, c. 304, § 18, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-31. Consent by surviving parent to guardian's appointment

Where an appointment of a testamentary guardian is made by a parent under N.J.S.3B:12-30 and the other parent survives the appointing parent, the appointment shall be effective only when the surviving parent, at or before the issuance of letters, consents to the appointment in writing and signs and acknowledges the consent in the presence of two witnesses present at the same time who subscribe their names as witnesses thereto in the presence of the surviving parent, unless the surviving parent has been ~~adjudged an incapacitated person~~ found to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child.

Credits: L.1981, c. 405, § 3B:12-31, eff. May 1, 1982. Amended by L.2005, c. 304, § 19, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-32. Temporary appointment of guardian if person not ~~adjudicated an incapacitated person~~ subject to guardianship

If the person for whom a testamentary guardian has been appointed under the will of a parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) has not been ~~adjudicated as an incapacitated person~~ found to be impaired by reason of a mental or physical illness, an intellectual or

physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or who is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child in accordance with N.J.S.3B: 12-24 and the Rules Governing the Courts of New Jersey, the person named as the testamentary guardian may apply to the court in the manner provided in N.J.S.3B:12-30 for a judgment designating that person as the temporary guardian of the person or of the estate, or of both the person and estate of the ~~alleged incapacitated person~~ individual subject to guardianship proceedings until the issue of incapacity has been determined. Upon the determination of the issue of ~~incapacity~~, the court shall either enter a judgment confirming the appointment of the testamentary guardian or vacating the appointment of the temporary guardian.

Credits: L.1981, c. 405, § 3B:12-32, eff. May 1, 1982. Amended by L.2005, c. 304, § 20, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-33. Bond of testamentary guardian

Before receiving his letters, a testamentary guardian of an ~~incapacitated person~~ individual subject to guardianship shall give bond in accordance with N.J.S.3B:15-1 unless the guardian is relieved from doing so by direction of the will of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) appointing the guardian. However, regardless of any direction, the guardian shall, with respect to property to which the ~~ward~~ individual subject to guardianship is or shall be entitled from any source, other than the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) or other than any policy of life insurance upon the life of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), give bond in accordance with that section before exercising any authority or control over that property.

The provisions of this section relieving a testamentary guardian of an ~~incapacitated person~~ individual subject to guardianship from giving bond by direction of the will of the parent, spouse or domestic partner shall not apply to a testamentary guardian of a minor with a developmental disability. Such guardian shall be bonded pursuant to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-1.

Credits: L.1981, c. 405, § 3B:12-33, eff. May 1, 1982. Amended by L.2005, c. 304, § 21, eff. Jan. 11, 2006; L.2009, c. 140, § 3, eff. Dec. 18, 2009.

COMMENT

Pejorative terms are replaced with person-first language. This statute falls under Ch. 12, Art. 4 (~~Incapacitated persons~~), §B (Testamentary Guardians). The substitution of terms was therefore cast as “individual subject to guardianship” to fit the context of the Article.

N.J.S. 3B:12-34. Determination into fitness of a testamentary guardian of the person of an ~~incapacitated person~~ individual subject to guardianship

If a will appointing a testamentary guardian of the person of an ~~incapacitated person~~ has been or is to be probated in the Surrogate’s Court of any county or the Superior Court, the Superior Court may, in an

action brought upon notice to the ~~incapacitated person~~ individual subject to guardianship and guardian named in the will, inquire into the present custody of the ~~incapacitated person~~ individual subject to guardianship, and make any order touching the testamentary guardianship as may be for the best interest and welfare of the ~~incapacitated person~~ individual subject to guardianship.

Credits: L.1981, c. 405, § 3B:12-34, eff. May 1, 1982. Amended by L.2005, c. 304, § 22, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. This statute falls under Ch. 12, Art. 4 (~~Incapacitated persons~~), §B (Testamentary Guardians). The substitution of terms was therefore cast as “individual subject to guardianship” to fit the context of the Article.

N.J.S. 3B:12-35. Effect of a testamentary appointment

The appointment of a testamentary guardian of the person of an ~~incapacitated person~~ subject to guardianship, conservatorship or protective arrangement ~~or his estate~~ shall be good and effectual against any other person claiming the guardianship over or custody of the ~~incapacitated person~~ or his estate, as the case may be.

Credits: L.1981, c. 405, § 3B:12-35, eff. May 1, 1982. Amended by L.2005, c. 304, § 23, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-36. Authority of court with respect to ~~ward's person~~ an individual subject to guardianship and estate

a. If a guardian has been appointed as to the person of a minor or an ~~incapacitated person~~ individual subject to guardianship, the court shall have authority over the ~~ward's person~~ of this individual and all matters relating thereto; ~~and~~.

b. ~~if~~ If a guardian has been appointed to the estate of a minor or an ~~incapacitated person~~ individual subject to guardianship, the court shall have authority over the estate of this individual ~~ward's estate~~, and all matters relating thereto.

Credits: L.1981, c. 405, § 3B:12-36, eff. May 1, 1982. Amended by L.2005, c. 304, § 24, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-38. Title to property for an individual subject to guardianship or an individual under the protection of the court vested in guardian as trustee ~~Title to ward's property vested in guardian as trustee~~

The appointment of a guardian of the estate of ~~a minor or an incapacitated person~~ individual subject to guardianship or an individual under the protection of the court vests ~~in him~~ title in the guardian as trustee to all property ~~of his ward~~ presently held or thereafter acquired, including title to any property theretofore held for ~~the ward~~ this individual by attorneys in fact. The appointment of a guardian is not a transfer or alienation within the meaning of general provisions of any Federal or State statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the ~~ward~~ individual subject to guardianship or under the protection of the court of ~~his~~ any rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a guardian.

Credits: L.1981, c. 405, § 3B:12-38, eff. May 1, 1982. Amended by L.2005, c. 304, § 26, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-39. Delegation of parent's or guardian's powers regarding ward's the care, custody or property of an individual subject to guardianship or under the protection of the court; limitations

A parent, other than where custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not ~~an incapacitated person~~ subject to guardianship or a guardian of the person of a minor or an ~~incapacitated person~~ individual subject to guardianship, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ~~ward~~, except ~~his~~ the power to consent to marriage or adoption of a minor ~~ward~~ for whom a guardian has been appointed or an individual who is under the protection of the court.

Credits: L.1981, c. 405, § 3B:12-39, eff. May 1, 1982. Amended by L.2005, c. 304, § 27, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-40. Duty of the guardian of ward's a person to account to guardian of his the estate

If another person has been appointed guardian of the estate, all of the ~~ward's~~ estate received by the guardian of the person in excess of those funds expended to meet current expenses for support, care and education of the ~~ward~~ individual subject to guardianship must be paid to the guardian of the estate, and the guardian of the person must account to the guardian of the estate for funds expended.

Credits: L.1981, c. 405, § 3B:12-40, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-41. Guardian of ~~ward's~~ the person entitled to reimbursement for expenses; payments to third persons

If another person has been appointed guardian of the ~~ward's~~ individual's estate, the guardian of the ~~ward's~~ person is entitled to receive reasonable reimbursement and fees for his or her services and for room and board furnished to the ~~ward~~ individual subject to guardianship or under the protection of the court, provided the same has been agreed upon between the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed upon are reasonable under the circumstances. The guardian of the person may request that the guardian of the estate to expend the ward's disburse payments from the estate by payment to third persons or institutions for the ~~ward's~~ care and maintenance of the individual subject to guardianship or who is under the protection of the court.

COMMENT

Pejorative terms are replaced with person-first language

N.J.S. 3B:12-42. Reporting the condition of the ~~ward's~~ person and property of the individual subject to guardianship, or under the protection of the court, to court

A guardian shall report at time intervals as ordered by the court, unless otherwise waived by the court, the condition of the ~~ward~~ individual subject to guardianship or under the protection of the court and the condition of the ~~ward's~~ individual's estate which has been subject to the guardian's possession or control as ordered by the court.

a. A report by the guardian of the person shall state or contain:

(1) the current mental, physical and social condition of the ~~ward~~ individual subject to guardianship, or under the protection of the court;

(2) the living arrangements for all addresses of the ~~ward~~ individual subject to guardianship, or under the protection of the court, during the reporting period;

(3) a summary of the supported decision making, technological assistance, the medical, educational, vocational and other supports and services provided to the ~~ward~~ individual subject to guardianship, or under the protection of the court, and the guardian's opinions as to the adequacy of the ~~ward's~~ individual's care;

(4) a summary of the guardian's visits with the ~~ward~~ individual subject to guardianship or under the protection of the court, including the dates of the visits; and

(5) the activities on ~~the ward's~~ his or her behalf and the extent to which ~~the ward~~ he or she has participated in decision-making;

~~(5)~~ (6) if the ~~ward~~ individual subject to guardianship or under the protection of the court is institutionalized, and whether or not the guardian considers the current plan for care, treatment or habilitation to be in the ward's his or her best interest;

~~(6)~~ (7) plans for future care; and

(8) anything of more than de minimis value which the guardian, any individual who resides with the guardian, or the spouse, domestic partner, parent, child, or sibling of the guardian has received from an individual providing goods or services to the adult;

(9) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

(10) any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;

(11) a copy of the guardian's most recently approved plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(12) plans for future care and support of the adult;

(13) a recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

(14) whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve.

~~(7)~~ (15) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

b. The court may appoint an ~~individual~~ visitor to review a report, interview the ward or guardian and make any other investigation the court directs.

c. Notice of the filing under this section of a guardian's report, together with a copy of the report, must be given to the adult subject to guardianship, a person entitled to notice under this Title or the New Jersey Rules of Court, a subsequent order of the court, and any other person the court determines. The notice and report must be given not later than 14 days after the filing.

d. The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(1) the report provides sufficient information to establish the guardian has complied with the guardian's duties;

(2) the guardianship should continue; and

(3) the guardian's requested fees, if any, should be approved.

e. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(1) shall notify the adult, the guardian, and any other person entitled to notice under this Title or the New Jersey Rules of Court, or a subsequent order;

(2) may require additional information from the guardian;

(3) may appoint a [visitor] to interview the adult or guardian or investigate any matter involving the guardianship; and

(4) may hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

f. If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

g. A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

e. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this section.

Credits: L.1981, c. 405, § 3B:12-42, eff. May 1, 1982. Amended by L.2005, c. 304, § 29, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed language is based on the language found in the UGCOPAA §316.

N.J.S. 3B:12-42.1 Appointment of a Visitor; Duties

a. The court may appoint a visitor to review a report, interview the individual subject to guardianship, the individual under the protection of the court, or the guardian and make any other investigation the court directs.

b. The visitor shall have the following duties:

(1) To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.

(2) To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.

(3) To interview the person seeking appointment as guardian.

(4) To interview other persons interested in the welfare of the proposed individual subject to guardianship.

(5) To visit the proposed place residence of for the individual subject to guardianship

(6) To discuss an alternative resource plan with the proposed ward, if appropriate.

(7) To obtain other relevant information as directed by the court.

(8) To submit a written report to the court.

c. The visitor's written report must contain:

(1) A description of the nature and degree of any current impairment of the individual's understanding or capacity to make or communicate decisions;

(2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;

(3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative individual or entity that should be appointed as guardian;

(4) Recommendations, if any, on the powers to be granted to the proposed guardian;

(5) An assessment of the capacity of the individual to perform the activities of daily living.

d. The report of the visitor or a professional evaluation is confidential and shall be excluded from public access, but is available to:

(1) the court;

(2) the visitor;

(3) the individual who is the subject of the report or evaluation, without limitation as to use;

(4) the attorney for the individual who is the subject of the report or evaluation;

(5) an agent appointed under a power of attorney for health care or power of attorney for finances in which the individual who is the subject is the principal, unless the court orders otherwise;

(6) any other person specified by the court.

COMMENT

The proposed language is based, in part on the language contained in North Dakota, House Bill 1095, 65th Legislative Assembly, and in part on the language found in the UGCOPAA §304.

N.J.S. 3B:12-42.2 Guardian's plan

a. A guardian shall file a plan for the care of an individual subject to guardianship:

- (1) not later than 60 days after his or her appointment;
- (2) when there is a significant change in circumstances, or
- (3) when the guardian seeks to deviate significantly from the guardian's plan.

b. The guardian's plan must be based on the needs of the individual subject to guardianship and take into account the best interest of the individual as well as that person's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian.

c. The guardian's plan shall include:

- (1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the individual subject to guardianship;
- (2) social and educational activities the guardian expects to facilitate on behalf of the individual;
- (3) any person with whom the individual has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;
- (4) the anticipated nature and frequency of the guardian's visits and communication with the adult;
- (5) goals for the adult, including any goal related to the restoration of the adult's rights, and how the guardian anticipates achieving the goals;
- (6) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and
- (7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

d. A guardian shall give notice of the filing of the guardian's plan under subsection (c), together with a copy of the plan, to the adult subject to guardianship, persons entitled to notice under this title, the New Jersey Rules of Court, a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than 14 days after the filing.

e. An adult subject to guardianship and any person entitled under subsection (d) to receive notice and a copy of the guardian's plan may object to the plan.

f. The court shall review the guardian's plan filed under subsection (a) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under subsection (e) and whether the plan is consistent with the guardian's duties and powers set forth in this title. The court may not approve the plan until [30] days after its filing.

g. After the guardian's plan filed under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, persons entitled to notice under this title, the New Jersey Rules of Court, a subsequent order, and any other person the court determines.

COMMENT

The proposed language is based on the language found in the UGCOPAA §316.

N.J.S. 3B:12-43. Expenditures to be made by guardian out of ward's the estate of an individual subject to guardianship or an individual under the protection of the court

A guardian of the estate of a minor or ~~incapacitated person~~ individual subject to guardianship or under the protection of the court may expend or distribute so much or all of the income or principal ~~of his ward from the estate~~ for the support, maintenance, education, general use and benefit of the ~~ward~~ individual subject to guardianship and his dependents, in the manner, at the time or times and to the extent that the guardian, in an exercise of a reasonable discretion, deems suitable and proper, taking into account the requirements of the "Prudent Investor Act," P.L.1997, c. 36 (C.3B:20-11.1 et seq.), with or without court order, with due regard to the duty and ability of any person to support or provide for the ~~ward~~ individual subject to guardianship if ~~the ward~~ that person is a minor, and without due regard to the duty and ability of any person to support or provide for the ~~ward~~ individual subject to guardianship if ~~the ward~~ he or she is ~~an incapacitated person~~, and with or without regard to any other funds, income or property which may be available for that purpose.

Credits: L.1981, c. 405, § 3B:12-43, eff. May 1, 1982. Amended by L.2005, c. 304, § 30, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section also include, the addition of gender-neutral terms.

N.J.S. 3B:12-44. Recommendations to be considered by guardian of ward's the estate in making expenditures on behalf of the minor, individual subject to guardianship or under the protection of court

In making expenditures under N.J.S. 3B:12-43, the guardian of the estate of a minor, ~~incapacitated person~~ individual subject to guardianship or under the protection of the court shall consider recommendations relating to the appropriate standard of support, education and benefit for the minor, individual subject to guardianship or under the protection of the court ~~ward~~ that are made by a parent or guardian of the person, if any. The guardian of the estate may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the ~~ward~~ minor or individual subject to guardianship pursuant to the recommendations of a parent or guardian of the person unless the guardian knows that the parent or the guardian is deriving personal financial benefit therefrom, or unless the recommendations are clearly not in the best interests of the ~~ward~~ minor, individual subject to guardianship or under the protection of the court.

Credits: L.1981, c. 405, § 3B:12-44, eff. May 1, 1982. Amended by L.2005, c. 304, § 31, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-45. Other factors to be considered by guardian of ward's the estate in making expenditures on behalf of the minor or individual subject to guardianship

In making expenditures under N.J.S.3B:12-43, the guardian of the estate ~~of a minor or incapacitated person~~ shall expend or distribute sums reasonably necessary for the support, education, care or benefit of the ~~ward~~ minor or individual subject to guardianship with due regard to:

- a. The size of the ~~ward~~'s estate;
- b. The probable duration of the guardianship and the likelihood that the ~~ward~~ minor or individual subject to guardianship, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; and
- c. The accustomed standard of living of the ~~ward~~ minor or individual subject to guardianship and members of their ~~ward~~'s household.

Credits: L.1981, c. 405, § 3B:12-45, eff. May 1, 1982. Amended by L.2005, c. 304, § 32, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-46. Persons for whose benefit expenditures may be made by a guardian of the estate ~~ward~~'s of a minor

The guardian of the estate of a minor or ~~incapacitated person~~ of an individual who is impaired by reason of a mental illness, intellectual disability, physical illness, physical disability, chronic use of drugs, chronic alcoholism, or other cause, to the extent the individual lacks sufficient capacity to govern him or herself or his or her affairs, may expend funds of the ~~ward~~'s estate under N.J.S.3B:12-43 for the support of persons legally dependent on the ~~ward~~ this individual and others who are members of the ~~ward~~'s their household who are unable to support themselves, and who are in need of support.

Credits: L.1981, c. 405, § 3B:12-46, eff. May 1, 1982. Amended by L.2005, c. 304, § 33, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-47. Persons to whom funds may be paid

Funds expended by the guardian of the estate of a minor or an ~~incapacitated person~~ individual subject to guardianship under N.J.S.3B:12-43 may be paid by the guardian to any person, including the ~~ward~~, to reimburse for expenditures which the guardian might have made, or in advance for services to be rendered to the ~~ward~~ minor or an individual subject to guardianship when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

Credits: L.1981, c. 405, § 3B:12-47, eff. May 1, 1982. Amended by L.2005, c. 304, § 34, eff. Jan. 11, 2006.

N.J.S. 3B:12-48. Powers conferred upon a guardian

A guardian of the estate of a minor or an ~~incapacitated person~~ individual subject to guardianship has all of the powers conferred upon the guardian by law and the provisions of this chapter except as limited by the judgment. These powers shall specifically include the right to file or defend any litigation on behalf of the ~~ward~~ minor or an individual subject to guardianship, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

Credits: L.1981, c. 405, § 3B:12-48, eff. May 1, 1982. Amended by L.2005, c. 304, § 35, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-49. Powers conferred upon the court

a. The court has, f~~For the benefit of the ward, the ward's dependents and members of his household an individual subject to guardianship, conservatorship or a protective arrangement, his or her dependents and members of his-or-her household, the Court has all the powers over this individual's estate and affairs which he, or she, could exercise if present and not under a disability, except the power to make a will.~~

b. These powers of the Court, on behalf of the individual subject to guardianship, conservatorship or a protective order include, but are not limited to:

(1) the power to convey or release present and contingent and expectant interests in real estate and personal property, including dower and curtesy and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(2) to exercise or release the powers as trustee, personal representative, custodian for minor, guardian, or done of a power of appointment;

(3) to enter into contracts;

(4) to create revocable or irrevocable trusts of property of the estate which may extend beyond the individual subject to guardianship's disability or life;

(5) to exercise the ~~ward's~~ the options to purchase securities or other property;

(6) to exercise the ~~ward's~~ rights to elect options and change beneficiaries under insurance annuity policies and to surrender the policies for their cash value;

(7) to exercise the ~~ward's~~ right to an elective share in the estate the ~~ward's~~ individual's deceased spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) to the extent permitted by law; and,

(8) to renounce any interest by testate or intestate succession or by inter vivos transfer and to engage in planning utilizing public assistance programs consistent with current law.

c. The court may confer any of the powers set for in section a. or b. upon a guardian of the estate.

Credits: L.1981, c. 405, § 3B:12-49, eff. May 1, 1982. Amended by L.2005, c. 304, § 36, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-50. Additional powers which may be exercised by the court

a. ~~The court may~~ If, after notice and a hearing, the court is satisfied that it is in the best interest of an individual who is subject to guardianship, conservatorship or under a protective order, the court may:

(1) exercise, or direct the exercise of, or release the powers of appointment of which the individual is a donee;

(2) to renounce interests;

(3) to make gifts in trust or otherwise; or

(4) to change beneficiaries under insurance and annuity policies.

Credits: L.1981, c. 405, § 3B:12-50, eff. May 1, 1982.

N.J.S. 3B:12-51. Powers and responsibilities of a guardian of the person of a minor generally

A guardian of the person of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child, except that a guardian is not legally obligated to provide for the ~~ward~~ minor subject to guardianship from his own funds.

Credits: L.1981, c. 405, § 3B:12-51, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section include the addition of gender-neutral terms.

N.J.S. 3B:12-52. Powers and duties of a guardian of the person of a minor

a. Except as modified, or limited, by order of the court ~~In particular,~~ and without qualifying the provisions of N.J.S. 3B:12-51, a guardian of the person of a minor, ~~has the following powers and duties, except as modified by order of the court:~~

(1) shall be personally acquainted with the minor and maintain sufficient contact with the minor to know the minor's abilities, limitations, needs, opportunities, and physical and mental health;

(2) shall, as a fiduciary, act in the minor's best interests and exercise reasonable care in performing his or her duties regarding the minor's support, care, education, health, safety and welfare;

(3) ~~a. He must~~ shall take reasonable care of ~~his ward's~~ the minor's personal effects and institute an action for the appointment of a guardian of ~~his ward's~~ the minor's estate if necessary to protect it;

(4) ~~b. d. He~~ may receive ~~periodically~~ periodically money payable to the minor's parents, guardian or custodian for his or her ~~the support of the ward to the ward's parent, guardian or custodian~~ under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. Any sums so received shall be applied to the ~~ward's~~ minor's current needs for support, care, ~~and~~ education, health, safety and welfare in the exercise of a reasonable discretion, with or without court order, with due regard to the duty or ability of any person to support or provide for the ~~ward~~ minor and with or without regard to any other funds, income or property which may be available for that purpose;

(5) ~~He must~~ shall exercise due care to conserve any excess funds for the ~~ward's~~ minor's future needs unless a guardian for the estate has been appointed ~~for the estate of the ward~~, in which case the excess shall be paid over at least annually to that guardian;

(6) ~~He~~ may institute an action to compel the performance by any person of a duty to support the ~~ward~~ minor subject to guardianship or to pay sums for ~~the~~ his or her ~~welfare of the ward~~;

(7) ~~e. He is empowered to~~ shall facilitate the ~~ward's~~ minor's education, social, or other activities and ~~to~~ authorize medical or other professional care, treatment, or advice;

(8) ~~He is not~~ shall not be liable by reason of this consent for injury to the ~~ward~~ minor subject to guardianship resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented.

(9) ~~He~~ may consent to the marriage, ~~or~~ adoption or military service of ~~his ward~~ the minor; ~~or to his ward's military service.~~

(10) shall report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the minor's welfare;

(11) may, unless inconsistent with a court order entitled to recognition in this state, take custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside of this state;

(12) shall take into account the minor's preferences, to the extent actually known or reasonably ascertainable by the guardian, in determining what is in the minor's best interests.

Credits: L.1981, c. 405, § 3B:12-52, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language. The additional language is based on the language contained in the UGCOPAA.

N.J.S. 3B:12-54. Duty of guardian to deliver property when minor attains 18 years of age

Except as provided in section 2 of P.L.2003, c. 258 (C.3B:12-54.1), when a minor who has not been adjudged ~~an incapacitated person~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs attains 18 years of age, his or her guardian, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former ~~ward~~ charge as soon as possible.

Credits: L.1981, c. 405, § 3B:12-54, eff. May 1, 1982. Amended by L.2003, c. 258, § 1, eff. Jan. 14, 2004; L.2005, c. 304, § 37, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-55. When authority and responsibility of guardian terminates

The authority and responsibility of a guardian of the person or estate of a minor terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of 18 years of age, but termination does not affect the guardian's liability for prior acts, nor his or her obligation to account for the funds and the assets of his ward the minor who had been the subject of the guardianship. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.

Credits: L.1981, c. 405, § 3B:12-55, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section also include, the addition of gender-neutral terms.

N.J.S. 3B:12-56. Powers, rights and duties of a guardian of the person of a ward generally

~~a. A guardian of the person of a ward is not legally obligated to provide for the ward from his own funds.~~

~~b. A guardian of the person of a ward is not liable to a third person for acts of the ward solely by reason of the relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian of the ward failed to exercise reasonable care in choosing the provider.~~

~~c. If a ward has previously executed a valid power of attorney for health care or advance directive under P.L.1991, c. 201 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of P.L.1991, c. 201 (C.26:2H-57), a guardian of the ward shall act consistent with the terms of such document unless revoked or altered by the court.~~

~~d. To the extent specifically ordered by the court for good cause shown, the guardian of the person of the ward may initiate the voluntary admission, as defined in section 2 of P.L.1987, c. 116 (C.30:4-27.2), of an ward to a State psychiatric facility, as defined in section 2 of P.L.1987, c. 116 (C.30:4-27.2), or a private psychiatric facility. A ward so admitted shall be entitled to all of the rights of a voluntarily admitted patient, which rights shall be exercised on behalf of the ward by the guardian. The guardian of the ward shall exercise the ward's all rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the wishes of the ward are not ascertainable with reasonable efforts, the guardian of the ward shall exercise the ward's rights in a manner consistent with the best interests of the ward. Notwithstanding the provisions of this section to the contrary, if the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment pursuant to P.L.1987, c. 116 (C.30:4-27.1 et seq.) shall apply. If the ward objects to any other decision of the guardian of the ward pursuant to this section, this objection shall be brought to the attention of the Superior Court, Chancery Division, Probate Part, which may, in its discretion, appoint an attorney or guardian ad litem for the ward and hold a hearing or enter such orders as may be appropriate in the circumstances.~~

Credits: L.1981, c. 405, § 3B:12-56, eff. May 1, 1982. Amended by L.2005, c. 304, § 38, eff. Jan. 11, 2006.

COMMENT

The provisions of N.J.S. 3B:12-56 have been consolidated into a proposed statutory section entitled N.J.S. 3B:12-56.1 *infra*.

N.J.S. 3B:12-57. Powers and duties of a guardian of the person of a ward

- ~~a. (Deleted by amendment, P.L.2005, c. 304.)~~
- ~~b. (Deleted by amendment, P.L.2005, c. 304.)~~
- ~~c. (Deleted by amendment, P.L.2005, c. 304.)~~
- ~~d. (Deleted by amendment, P.L.2005, c. 304.)~~
- ~~e. (Deleted by amendment, P.L.2005, c. 304.)~~

~~f. In accordance with section 12 of P.L.2005, c.304 (C.3B:12-24.1), a guardian of the person of a ward shall exercise authority over matters relating to the rights and best interest of the ward's personal needs, only to the extent adjudicated by a court of competent jurisdiction. In taking or forbearing from any action affecting the personal needs of an ward, a guardian shall give due regard to the individual's preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction, the guardian shall:~~

~~(1) take custody of the ward and establish the ward's place of abode in or outside of this State;~~

~~(2) personally visit the ward or if a public agency which is authorized to act pursuant to P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) or the Office of the Public Guardian pursuant to P.L. 1985, c. 298 (C.52:27G-20 et seq.) or their representatives which may include a private or public agency, visits the ward not less than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;~~

~~(3) provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;~~

~~(4) subject to the provisions of subsection c. of N.J.S.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;~~

~~(5) take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and, where appropriate, sell or dispose of such effects to meet the current needs of the ward;~~

~~(6) institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;~~

~~(7) develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;~~

~~(8) if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties;~~

~~(9) receive money, payable from any source for the current support of the ward, and tangible personal property deliverable to the ward. Any sums so received shall be applied to the ward's individual's current needs for support, health care, education and training in the exercise of the guardian's reasonable discretion, with or without court order, with or without regard to the duty or ability of any person to support or provide for the ward and with or without regard to any other funds, income or property that may be available for that purpose, unless an application is made to the court to establish a supplemental needs trust or other trust arrangement. However, the guardian may not use funds from the ward's estate for room and board, which the guardian, the guardian's spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), parent or child have furnished the ward to him or her, unless agreed to by a guardian of the ward's estate pursuant to N.J.S.3B:12-41, or unless a charge for the service is approved by order of the court made upon notice to at least one of the individual's heirs of the ward, if possible. The guardian shall exercise care to conserve any excess funds for the ward's needs of the; and~~

~~(10) If necessary, institute an action that could be maintained by the ward including but not limited to, actions alleging fraud, abuse, undue influence and exploitation.~~

~~g. In the exercise of the foregoing powers, the guardian shall encourage the ward to participate with the guardian in the decision making process to the maximum extent of the ward's ability in order to encourage the ward to act on his own behalf whenever he is able to do so, and to develop or regain higher capacity to make decisions in those areas in which he is in need of guardianship services, to the maximum extent possible.~~

Credits: L.1981, c. 405, § 3B:12-57, eff. May 1, 1982. Amended by L.2005, c. 304, § 39, eff. Jan. 11, 2006.

COMMENT

The provisions of N.J.S. 3B:12-57 have been consolidated into a proposed statutory section entitled N.J.S. 3B:12-56.1 *infra*.

N.J.S. 3B:12-56.1 Powers, rights and duties of a guardian of the person generally

a. Except as modified, or limited, by order of the court, a guardian of the person:

(1) shall, in accordance with section 12 of P.L.2005, c.304 (C.3B:12-24.1), shall exercise authority over matters relating to ~~the~~ that person's rights and best interests of the ward's personal needs only to the extent adjudicated by a court of competent jurisdiction;

(2) shall, to the extent reasonably feasible, identify the individual's values and preferences and involve that person in the decision-making process, including decisions about his or her care, dwelling, activities and social interactions;

(3) ~~In the exercise of the foregoing powers, the guardian shall encourage the ward~~ individual subject to guardianship to:

(A) participate with the guardian in the decision-making process to the maximum extent of his or her ability;

(B) to act on his or her own behalf whenever he or she is able to do so; and,

(C) to develop or regain higher capacity to make decisions in those areas in which he or she is in need of guardianship services;

(4) shall, ~~in taking or forbearing from any action affecting the personal needs of the ward individual subject to guardianship, a guardian shall~~ give due regard to the individual's preferences ~~of the ward~~, if known to the guardian or otherwise ascertainable upon reasonable inquiry;:

(5) shall take custody of the ~~ward~~ individual subject to guardianship and establish ~~the ward's~~ his or her place of abode in or outside of this State;

(6) shall personally visit the ~~ward~~ individual subject to guardianship, or

(A) confer with each public agency which is authorized to act pursuant to P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) or the Office of the Public Guardian pursuant to P.L. 1985, c. 298 (C.52:27G-20 et seq.) or their representatives which may include a private or public agency, visits with the ~~ward~~ individual not less than once every three months, or as deemed appropriate by the court, and otherwise maintains sufficient contact with the ~~ward~~ individual subject to guardianship to know his or her capacities, limitations, needs, opportunities and physical and mental health;

(7) shall provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ~~ward~~ individual subject to guardianship;

(8) shall, subject to the provisions of subsection c. of N.J.S.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ~~ward~~ individual subject to guardianship to receive medical or other professional care, counsel, treatment or service;

(9) shall take reasonable care of the ~~ward's~~ clothing, furniture, vehicles, pets, service or support animals and other personal effects of an individual subject to guardianship and, where appropriate, sell or dispose of such effects to meet the current needs of the ~~ward~~ individual subject to guardianship;

(10) may institute an action for the appointment of a guardian of the property of the ~~ward~~ individual subject to guardianship, if necessary for the protection of the property;

(11) shall develop and monitor a plan of supportive services for the needs of the ~~ward~~ individual subject to guardianship and a plan to obtain the supportive services;

(12) may ~~if necessary~~ institute an action that could be maintained by the ~~ward~~ individual subject to guardianship including but not limited to, actions alleging fraud, abuse, undue influence and exploitation; and,

(13) ~~If a ward has previously executed~~ shall act consistently with the terms of a valid power of attorney for health care an advanced directive under P.L.1991, c. 201 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of P.L.1991, c. 201 (C.26:2H-57), ~~a guardian of a ward shall act consistent with the terms of such~~ if the individual subject to guardianship previously executed such a document and unless revoked or altered by the court;

(14) may, ~~To the extent specifically ordered by the court for good cause shown,~~ initiate the voluntary admission, as defined in section 2 of P.L.1987, c. 116 (C.30:4-27.2), of the individual subject to guardianship to a State psychiatric facility, as defined in section 2 of P.L.1987, c. 116 (C.30:4-27.2), or a private psychiatric facility.

(A) ~~An~~ ~~ward~~ individual so admitted shall be entitled to all of the rights of a voluntarily admitted patient, which rights shall be exercised on their behalf ~~of the ward~~ by the guardian.

(B) The guardian ~~of the ward~~ shall exercise ~~the ward's~~ all of the individual's rights in a manner consistent with his or her ~~the~~ wishes ~~of the ward~~ except to the extent that compliance with those wishes would create a significant risk to his or her ~~the~~ health or safety ~~of the ward~~.

(C) If the wishes of the ~~ward~~ individual subject to the guardianship are not ascertainable with reasonable efforts, the guardian ~~of the ward~~ shall exercise the ~~ward's~~ rights of the individual subject to guardianship in a manner consistent with his or her ~~the~~ best interests. ~~of the ward~~.

(D) Notwithstanding the provisions of this section to the contrary, if the ~~ward~~ individual subject to guardianship objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment pursuant to P.L.1987, c. 116 (C.30:4-27.1 et seq.) shall apply.

(E) If the ~~ward~~ individual subject to guardianship objects to any other decision of the guardian ~~of the ward~~ pursuant to this section, this objection shall be brought to the attention of the Superior Court, Chancery Division, Probate Part, which may, in its discretion, appoint an attorney or

guardian ad litem for the ~~ward~~ individual subject to guardianship and hold a hearing or enter such orders as may be appropriate in the circumstances.

b. A guardian of the person shall not be legally obligated to provide for the individual subject to guardianship from his or her own funds. A guardian:

(1) ~~may if necessary,~~ institute an action against a person having a duty to support the ~~ward~~ individual subject to guardianship or to pay any sum for ~~the ward's~~ that person's welfare in order to compel the performance of the duties;

(2) may receive money, ~~payable from any source~~ for the current support of the ~~ward~~ individual subject to guardianship. Any sums so received shall be applied to the ~~ward's~~ individual's current needs for support, health care, education and training in the exercise of the guardian's reasonable discretion, with or without court order, with or without regard to the duty or ability of any person to support or provide for the ~~ward~~ individual and with or without regard to any other funds, income or property that may be available for that purpose, unless an application is made to the court to establish a supplemental needs trust or other trust arrangement;

(3) ~~However, the guardian may~~ shall not use funds from the ~~ward's~~ individual's estate for room and board, which the guardian, the guardian's spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), parent or child have furnished ~~the ward~~ him or her, unless agreed to by a guardian of the estate pursuant to N.J.S.3B: 12-41, or unless a charge for the service is approved by order of the court made upon notice to at least one of the individual's heirs ~~of the ward~~, if possible; and,

(4) shall exercise care to conserve any excess funds for the ~~ward's~~ needs of the individual subject to guardianship; and

c. A guardian of the person ~~of a ward~~ is not liable to a third person for acts of the ward individual subject to the guardianship solely by reason of the relationship and is not liable to the ward individual subject to guardianship for any injury resulting from the wrongful conduct of a third person providing medical or other care, treatment or service except to the extent that the guardian failed to exercise reasonable care in choosing the provider.

d. In exercising a guardian's power under subsection (a)(5), to establish a place of dwelling for person subject to guardianship, the guardian shall:

(1) select a residential setting the guardian reasonably believes that the individual subject to guardianship would select if he or she were able, in accordance with the decision-making standard set forth in this chapter. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship would probably choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of that person, the guardian shall choose a residential setting that is consistent with the individual's best interest;

(2) in selecting among residential settings, give priority to a residential setting in a location that will allow the individual subject to guardianship to interact with persons important to the adult and meet

his or her needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in this chapter;

(3) not later than 30 days after a change in the dwelling of the individual subject to guardianship:

(A) give notice of the change to the court, the individual, and any person identified as entitled to notice in the court order appointing the guardian or a subsequent order; and,

(B) include in the notice the address and nature of the new dwelling and state whether the individual subject to guardianship received advance notice of the change and whether the individual objected to the change;

(4) establish or move the permanent place of dwelling of the individual subject to guardianship to a nursing home, mental-health facility, or other facility that places restrictions on that person's ability to leave or have visitors only if:

(A) the establishment or move is in the guardian's plan;

(B) the court authorizes the establishment or move; or,

(C) the guardian gives notice of the establishment or move at least 14 days before the establishment or move to the individual subject to guardianship and all persons entitled to notice, or a subsequent order, and no objection is filed;

(5) establish or move the place of dwelling of an adult outside this state only if consistent with the guardian's plan and authorized by the court by specific order; and,

(6) take action that would result in the sale or surrender of the lease to the primary dwelling of an individual subject to guardianship only if:

(A) the action is specifically included in the guardian's plan;

(B) the court authorizes the action by specific order; or

(C) notice of the action was given to the individual subject to guardianship and all persons entitled to notice at least 14 days before the action or a subsequent order and no objection was filed.

e. In exercising a guardian's power under subsection (a)(13) to make health-care decisions, the guardian shall:

(1) involve the individual subject in the decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the individual in understanding the risks and benefits of health-care options;

(2) defer to a decision of an agent under a power of attorney for health are executed by the adult and cooperate to the extent feasible with the agent making the decision; and

(3) take into account:

(A) the risks and benefits of treatment options; and,

(B) the current and previous wishes and values of the individual subject to guardianship; if known or reasonably ascertainable by the guardian.

f. A guardian shall report the condition of the individual subject to guardianship and account for that person's funds and other property in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the individual's welfare.

COMMENT

The proposed statutory section reflects the provisions contained in N.J.S. 3B:12-56 and 12-57.

N.J.S. 3B:12-56.1(a)(1) & (2) contains language originally set forth in N.J.S. 3B:12-57(f);
N.J.S. 3B:12-56.1(a)(3) & (4) contains language originally set forth in N.J.S. 3B:12-57(g);
N.J.S. 3B:12-56.1(a)(5) contains language originally set forth in N.J.S. 3B:12-57(f)(1);
N.J.S. 3B:12-56.1(a)(6) contains language originally set forth in N.J.S. 3B:12-57(f)(2);
N.J.S. 3B:12-56.1(a)(7) contains language originally set forth in N.J.S. 3B:12-57(f)(3);
N.J.S. 3B:12-56.1(a)(8) contains language originally set forth in N.J.S. 3B:12-57(f)(4);
N.J.S. 3B:12-56.1(a)(9) contains language originally set forth in N.J.S. 3B:12-57(f)(5);
N.J.S. 3B:12-56.1(a)(10) contains language originally set forth in N.J.S. 3B:12-57(f)(6);
N.J.S. 3B:12-56.1(a)(11) contains language originally set forth in N.J.S. 3B:12-57(f)(7);
N.J.S. 3B:12-56.1(a)(12) contains language originally set forth in N.J.S. 3B:12-57(f)(10);
N.J.S. 3B:12-56.1(a)(13) contains language originally set forth in N.J.S. 3B:12-56(c);
N.J.S. 3B:12-56.1(a)(14)(A)-(E) contains language originally set forth in N.J.S. 3B:12-57(d);
N.J.S. 3B:12-56.1(b) contains language originally set forth in N.J.S. 3B:12-56(a);
N.J.S. 3B:12-56.1(b)(1) contains language originally set forth in N.J.S. 3B:12-57(f)(8);
N.J.S. 3B:12-56.1(b)(2) – (4) contains language originally set forth in N.J.S. 3B:12-57(f)(9);
N.J.S. 3B:12-56.1(c) contains language originally set forth in N.J.S. 3B:12-56(b);
N.J.S. 3B:12-56.1(d) – (f) contains language set forth in UGCOPAA.

The pejorative terms that appeared in these statutes were removed and gender neutral language was added.

N.J.S. 3B:12-58. Gifts to charities and other objects

If the estate is ample to provide for the purposes implicit in the distributions authorized by this article, a guardian for the estate of an ~~incapacitated person~~ individual subject to guardianship may apply to the court for authority to make gifts to charity and other objects as the ~~ward~~ individual subject to guardianship might have been expected to make.

Credits: L.1981, c. 405, § 3B:12-58, eff. May 1, 1982. Amended by L.2005, c. 304, § 40, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-59. Purchase of real property for use of an ~~incapacitated person~~ individual subject to guardianship and his dependents

When it shall appear to the court that it would be advantageous to the ~~incapacitated person~~ individual subject to guardianship and to those legally dependent upon him or her for their support or are members of ~~the incapacitated person's~~ his or her household, or any of them, if a dwelling house and a lot of land were purchased or a lot of land were purchased and a dwelling house built thereon, for the use of the ~~incapacitated person~~ individual subject to guardianship and to those legally dependent upon him or her for their support or who are members of ~~the incapacitated person's~~ his or her household, or any of them, the court may direct the guardian of ~~his~~ the estate to purchase a house and lot or to purchase a lot and build a dwelling house thereon and to enter into contracts therefor as the court shall deem advisable, and to expend all necessary funds from the ~~ward's~~ individual's estate for that purpose.

Credits: L.1981, c. 405, § 3B:12-59, eff. May 1, 1982. Amended by L.2005, c. 304, § 41, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-60. Guardian's duty with respect to will of deceased ~~incapacitated person~~ individual subject to guardianship

Upon the death of an ~~incapacitated person~~ individual subject to guardianship, the guardian shall deliver to the Surrogate of the county where the ~~incapacitated person~~ deceased resided prior to death for safekeeping any will of the deceased person which may have come into the guardian's possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.

Credits: L.1981, c. 405, § 3B:12-60, eff. May 1, 1982. Amended by L.2005, c. 304, § 42, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-61. Power of guardian to act as personal representative of the estate of a deceased ~~incapacitated person~~ individual subject to guardianship

If within 40 days after the death of an ~~incapacitated person~~ individual subject to guardianship, no other person has been appointed personal representative and no action for an appointment is pending in the Superior Court or Surrogate's court of the county where the ~~incapacitated person~~ deceased individual resided at the time of his or her death, the guardian may apply to the Superior Court for authority to exercise the powers and duties of a personal representative so that he or she may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a guardian, after notice to all persons interested in the ~~incapacitated person's~~ estate of the individual subject to guardianship either as heirs or devisees

and including any person nominated executor in any will of which the applicant is aware, the court may order the conferral of those powers, upon determining that there is no objection, and may enter judgment that the guardian has all of the powers and duties of a personal representative. The making and entry of a judgment under this section shall have the effect of an order of appointment of a personal representative, except that the estate in the name of the guardian, after administration, may be distributed to persons entitled to the decedent's estate under his will or the laws of intestacy without prior retransfer to the guardian as personal representative.

Credits: L.1981, c. 405, § 3B:12-61, eff. May 1, 1982. Amended by L.2005, c. 304, § 43, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section also include, the addition of gender-neutral terms.

3B:12-62. Factors to be considered by the court or guardian in exercising certain powers

In investing the estate, and in selecting assets of the estate for distribution under this article, in utilizing powers of revocation or withdrawal available for the support of the ~~ward~~ individual subject to guardianship, conservatorship or a protective arrangement, and other powers exercisable by the guardian or a court, the guardian or the court should take into account any known estate plan of the ~~ward~~ individual subject to guardianship, conservatorship or a protective arrangement, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The guardian may examine the will of the ~~ward~~ individual subject to guardianship, conservatorship or a protective arrangement.

Credits: L.1981, c. 405, § 3B:12-62, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-63. Guardian's final account and delivery of property upon termination of guardianship

In accordance with the order of the court and Upon the termination of the guardianship pursuant to N.J.S. 3B:12-64, the guardian shall pay over and distribute all funds and properties ~~of the former ward~~ to the individual formerly the subject of the guardianship, or to their estate ~~of the former ward~~, after the allowance of his or her final account.

Credits: L.1981, c. 405, § 3B:12-63, eff. May 1, 1982. Amended by L.2005, c. 304, § 44, eff. Jan. 11, 2006.

Pejorative terms are replaced with person-first language. The structure of the statute was amended for purposes of clarity.

N.J.S. 3B:12-64. When authority and responsibility of guardian terminate

a. The authority and responsibility of a guardian of the person or estate of an ~~incapacitated person~~ individual subject to guardianship terminate upon:

(1) the death, resignation or removal of the guardian;

(2) upon the death of the ~~incapacitated person~~ individual subject to guardianship; or

(3) upon the entry of a judgment adjudicating the restoration of competency or termination of guardianship for other reasons.

b. However, termination does not affect the guardian's liability for prior acts, nor the guardian's obligation to account for funds and assets of the ~~ward~~ individual subject to guardianship.

c. Notwithstanding the termination of the guardianship, the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for burial and funeral costs, Surrogate fees of administration, probate and bond from the guardianship account. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.

d. Upon the death of an ~~incapacitated person~~ individual subject to guardianship the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

Credits: L.1981, c. 405, § 3B:12-64, eff. May 1, 1982. Amended by L.2005, c. 304, § 45, eff. Jan. 11, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-66.1. Removal from New Jersey after appointment of guardian

a. A guardian appointed in this State desiring to move to another state with ~~his ward~~ a minor subject to guardianship ~~who is a minor~~ shall obtain an order from the Superior Court of this State consenting to the minor's removal and if applicable, the guardian's discharge. The Superior Court may transfer the guardianship to another state if the court is satisfied that a transfer will serve the best interest of the minor.

b. The minor's removal and discharge of the guardian shall be on such terms as the Superior Court deems necessary, including requiring filing and settlement of the guardian's account and filing of an exemplified copy of the order evidencing the other state court's acceptance of jurisdiction over the guardianship and the guardian.

Credits: L.2005, c. 304, § 48, eff. Jan. 11, 2006. Amended by L.2012, c. 36, § 22, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

3B:12-69. Definitions

As used in P.L.1995, c. 76 (C.3B:12-67 et seq.):

~~“Appointed standby guardian” means a person appointed pursuant to section 6 of P.L.1995, c. 76 (C.3B:12-72) to assume the duties of guardian over the person and, when applicable, the property of a minor child upon the death or a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian.~~

~~“Attending physician” means the physician who has primary responsibility for the treatment and care for the petitioning parent or legal custodian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician’s behalf, any such physician may act as the attending physician pursuant to this act. When no physician has this responsibility, a physician who is familiar with the petitioner’s medical condition may act as the attending physician pursuant to P.L.1995, c. 76 (C.3B:12-67 et seq.).~~

~~“Consent” means written consent signed by the parent or legal custodian in the presence of two witnesses who shall also sign the document. The written consent shall constitute the terms for the commencement of the duties of the standby guardian.~~

~~“Debilitation” means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one’s minor child.~~

~~“Designated standby guardian” means a person designated pursuant to section 8 of P.L.1995, c. 76 (C.3B:12-74) to assume temporarily the duties of guardianship over the person and, when applicable, the property of a minor child upon the death or a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian.~~

~~“Designation” means a written document voluntarily executed by the designator pursuant to P.L.1995, c. 76.~~

~~“Designator” means a competent parent or legal custodian of a minor child who makes a designation pursuant to P.L.1995, c. 76.~~

~~“Determination of debilitation” means a written determination made by the attending physician which contains the physician’s opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent’s or legal custodian’s debilitation.~~

~~“Determination of incapacity” means a written determination made by the attending physician which contains the physician’s opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent’s or legal custodian’s incapacity.~~

~~“Incapacity” means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one’s minor child, and a consequent inability to make these decisions.~~

~~“Minor child” means a child under the age of eighteen years but excludes a child residing in a placement funded or approved by the Division of Child Protection and Permanency in the Department of Children and Families pursuant to either a voluntary placement agreement or court order.~~

~~“Triggering event” means an event stated in the designation, petition or decree which empowers the standby guardian to assume the duties of the office, which event may be the death, incapacity or debilitation, with the consent, of the custodial parent or legal custodian, whichever occurs first.~~

Credits: L.1995, c. 76, § 3, eff. April 11, 1995. Amended by L.2006, c. 47, § 30, eff. July 1, 2006; L.2012, c. 16, § 12, eff. June 29, 2012.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

3B:12-74. Designation of standby guardian by parent or legal custodian; form and content

a. When the consent of a parent or legal custodian for the execution of a power of attorney delegating another person to exercise the parent’s or legal custodian’s powers is not appropriate or is unavailable pursuant to N.J.S. 3B:12-39, the other parent or legal custodian may execute a written statement to designate a standby guardian, as follows:

(1) The parent or legal custodian may choose a standby guardian by means of a written designation that names the standby guardian in the event of the designator’s death, incapacity or debilitation. The written designation shall reasonably identify the designator, the minor child and the standby guardian.

(2) A written designation pursuant to this section shall be signed by the designator in the presence of two witnesses who shall also sign the designation. Another person may sign the written designation on the parent’s or legal custodian’s behalf if the parent or legal custodian is physically unable to do so, provided the designation is signed at the express request of the parent or legal custodian and in the presence of the parent or legal custodian and two witnesses.

(3) The designation shall state the triggering event by which the parent or legal custodian intends the designated standby guardianship of the minor child to be activated.

(4) A parent or legal custodian may designate an alternate standby guardian in the same document, and by the same manner, as the designation of a standby guardian.

b. A designation may, but need not, be in the following form:

DESIGNATION OF STANDBY GUARDIAN

I, (name of parent or legal custodian) hereby name (name, home address and telephone number of standby guardian) as designated standby guardian of (name of child(ren)), my child(ren).

By this consent and designation, I am providing that the designated standby guardian's authority shall take effect if and when the following event or events occur: (choose as follows):

(1) my attending physician concludes that I am mentally incapacitated, and thus unable to care for my child(ren); or

(2) my attending physician concludes that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing before two witnesses to the designated standby guardian's authority taking effect; or

(3) upon my death.

In the event that the person designated above is unable or unwilling to act as guardian to my child(ren), I hereby name (name, address and telephone number of alternate designated standby guardian), as alternate designated standby guardian of my child(ren).

I understand that this designation will expire six months from the date of this designation, and that the authority of the designated standby guardian, if any, will cease, unless by that date either I or the designated standby guardian petitions the court for appointment as standby guardian pursuant to section 6 of P.L. 1995, c. 76 (C. 3B:12-72).

I hereby authorize that the person designated standby guardian as set forth above shall be provided with a copy of the attending physician's statement.

In the event that I am ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the I lack sufficient capacity to govern myself and manage my own affairs or am unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child or debilitated and a designated standby guardianship is activated pursuant to this statement, I declare that it is my intention to retain full parental rights to the extent consistent with my condition and, further, that I retain the authority to revoke the designated standby guardianship consistent with my rights herein at any time.

Designator's Signature:

Witness' Signature:

Address:

Date:

Witness' Signature:

Address:

Date:

c. Nothing in this section shall be construed to involuntarily deprive any parent of parental rights.

Credits: L.1995, c. 76, § 8, eff. April 11, 1995.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12-77. Service of notice of petition or designation upon minor child

Notice of a petition or designation filed with the court pursuant to this act shall be served upon the minor child for whom the standby guardianship is sought if the minor is ~~44~~ 12 years of age or older. Notice to a minor child less than ~~44~~ 12 years of age shall be served at the discretion of the court. The court may appoint a guardian ad litem or counsel to represent the child. The court shall consider the preferences of the minor child in the appointment of a standby guardian pursuant to this act.

Credits: L.1995, c. 76, § 11, eff. April 11, 1995.

COMMENT

The amendment of the age of an individual who may be served with notice of a petition is based on the language found in the UGCOPAA §114.

N.J.S. 3B:12A-2. Definitions

~~As used in sections 1 through 6 of P.L.2001, c. 250 (C.3B:12A-1 et seq.):~~

~~“Caregiver” means a person over 18 years of age, other than a child’s parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver’s home, for either the last 12 consecutive months or 15 of the last 22 months. “Caregiver” includes a resource family parent as defined in section 1 of P.L.1962, c. 136 (C.30:4C-26.4).~~

~~“Child” means a person under 18 years of age, except as otherwise provided in P.L.2001, c. 250 (C.3B:12A-1 et al.).~~

~~“Commissioner” means the Commissioner of Children and Families.~~

~~“Court” means the Superior Court, Chancery Division, Family Part.~~

~~“Department” means the Department of Children and Families.~~

~~“Division” means the Division of Child Protection and Permanency in the Department of Children and Families.~~

~~“Family friend” means a person who is connected to a child or the child’s parent by an established positive psychological or emotional relationship that is not a biological or legal relationship.~~

~~“Home review” means the basic review of the information provided by the petitioner and a visit to the petitioner’s home where the child will continue to reside, in accordance with the provisions of P.L.2001, c. 250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.~~

~~“Kinship caregiver assessment” means a written report prepared in accordance with the provisions of P.L.2001, c. 250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.~~

~~“Kinship legal guardian” means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c. 250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child’s health, education and maintenance.~~

~~“Kinship relationship” means a family friend or a person with a biological or legal relationship with the child.~~

~~“Parental incapacity” means incapacity of such a serious nature as to demonstrate that the parent is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of the child.~~

Credits: L.2001, c. 250, § 2, eff. Jan. 1, 2002. Amended by L.2006, c. 47, § 31, eff. July 1, 2006; L.2012, c. 16, § 13, eff. June 29, 2012.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:12A-5. Petition for appointment of kinship legal guardian

a. Upon petition of a caregiver, the court may appoint the caregiver as kinship legal guardian of a child residing in the caregiver’s home pursuant to the provisions of P.L.2001, c. 250 (C.3B:12A-1 et al.).

b. A petition for the appointment of a kinship legal guardian shall include a kinship caregiver assessment, which shall contain:

- (1) the full name and address of the person seeking to become the kinship legal guardian;
- (2) the circumstances of the kinship relationship;
- (3) the whereabouts of the child’s parents, if known;
- (4) the nature of the ~~parents’ incapacity~~ parental impairment, if known;

(5) the wishes of the parents, if known;

(6) the ability of the kinship caregiver family to assume permanent care of the child;

(7) the child's property and assets, if known;

(8) the wishes of the child, if appropriate;

(9) any current involvement of a child with the division if the child has an open division case and is actively receiving services;

(10) certification from the caregiver that the caregiver has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months;

(11) the results from a criminal history record background check and a domestic violence central registry check of the caregiver and any adult residing in the caregiver's household conducted pursuant to section 9 of P.L.2001, c. 250 (C.30:4C-86);

(12) the results from a child abuse record check arranged for and coordinated by the division pursuant to section 9 of P.L.2001, c. 250 (C.30:4C-86); and

(13) the results of the caregiver's home review.

Credits: L.2001, c. 250, § 5, eff. Jan. 1, 2002.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12A-6. Appointment of caregiver as kinship legal guardian

a. In making its determination about whether to appoint the caregiver as kinship legal guardian, the court shall consider:

(1) if proper notice was provided to the child's parents;

(2) the best interests of the child;

(3) the kinship caregiver assessment;

(4) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c. 250 (C.30:4C-85), the recommendation of the division, including any parenting time or visitation restrictions;

(5) the potential kinship legal guardian's ability to provide a safe and permanent home for the child;

(6) the wishes of the child's parents, if known to the court;

(7) the wishes of the child if the child is 12 years of age or older, unless unique circumstances exist that make the child's age irrelevant;

(8) the suitability of the kinship caregiver and the caregiver's family to raise the child;

(9) the ability of the kinship caregiver to assume full legal responsibility for the child;

(10) the commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood;

(11) the results from the child abuse record check conducted pursuant to section 9 of P.L.2001, c. 250 (C.30:4C-86); and

(12) the results from the criminal history record background check and domestic violence check conducted pursuant to section 9 of P.L.2001, c. 250 (C.30:4C-86). In any case in which the caregiver petitioning for kinship legal guardianship, or any adult residing in the prospective caregiver's home, has a record of criminal history or a record of being subjected to a final domestic violence restraining order under P.L.1991, c. 261 (C.2C:25-17 et seq.), the court shall review the record with respect to the type and date of the criminal offense or the provisions and date of the final domestic violence restraining order and make a determination as to the suitability of the person to become a kinship legal guardian. For the purposes of this paragraph, with respect to criminal history, the court shall consider convictions for offenses specified in subsections c., d. and e. of section 1 of P.L.1985, c. 396 (C.30:4C-26.8).

b. The court shall not award kinship legal guardianship of the child unless proper notice was served upon the parents of the child and any other party to whom the court has awarded custody or parenting time for that child, in accordance with the Rules of Court.

c. The court shall not award kinship legal guardianship of the child solely because of parental ~~incapacity~~ impairment.

d. The court shall appoint the caregiver as a kinship legal guardian if, based upon clear and convincing evidence, the court finds that:

(1) each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;

(2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;

(3) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c. 250 (C.30:4C-85), (a) the division exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and (b) adoption of the child is neither feasible nor likely; and

(4) awarding kinship legal guardianship is in the child's best interests.

e. The court order appointing the kinship legal guardian shall specify, as appropriate, that:

(1) a kinship legal guardian shall have the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: making decisions concerning the child's care and well-being; consenting to routine and emergency medical and mental health needs; arranging and consenting to educational plans for the child; applying for financial assistance and social services for which the child is eligible; applying for a motor vehicle operator's license; applying for admission to college; responsibility for activities necessary to ensure the child's safety, permanency and well-being; and ensuring the maintenance and protection of the child; except that a kinship legal guardian may not consent to the adoption of the child or a name change for the child;

(2) the birth parent of the child retains the authority to consent to the adoption of the child or a name change for the child;

(3) the birth parent of the child retains the obligation to pay child support;

(4) the birth parent of the child retains the right to visitation or parenting time with the child, as determined by the court;

(5) the appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance; and

(6) kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

f. An order or judgment awarding kinship legal guardianship may be vacated by the court prior to the child's 18th birthday if the court finds that the kinship legal guardianship is no longer in the best interests of the child or, in cases where there is an application to return the child to the parent, based upon clear and convincing evidence, the court finds that the parental incapacity or inability to care for the child that led to the original award of kinship legal guardianship is no longer the case and termination of kinship legal guardianship is in the child's best interests.

In cases in which the division was involved, when determining whether a child should be returned to a parent, the court may refer a parent for an assessment prepared by the division, in accordance with regulations adopted by the commissioner.

g. An order or judgment awarding kinship legal guardianship may be vacated by the court if, based upon clear and convincing evidence, the court finds that the guardian failed or is unable, unavailable or unwilling to provide proper care and custody of the child, or that the guardianship is no longer in the child's best interests.

Credits: L.2001, c. 250, § 6, eff. Jan. 1, 2002. Amended by L.2006, c. 47, § 32, eff. July 1, 2006.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-3. Definitions

~~As used in P.L.2012, c. 36 (C.3B:12B-1 et al.), unless otherwise defined:~~

~~a. "Adult" means a person at least 18 years of age.~~

~~b. "Conservatee" means, as used in this State, a person who has not been adjudicated incapacitated but who by reason of advanced age, illness, or physical infirmity, is unable to care for or manage his property or has become unable to provide for him or others dependent upon him for support.~~

~~c. "Conservator" means a person appointed by the court to administer the property of an adult who has not been adjudicated incapacitated including a person appointed, as appropriate, under N.J.S.3B:13A-1 et seq.~~

~~d. "Court of this State" means the Superior Court of New Jersey.~~

~~e. "Guardian" means a person appointed by the court to make decisions regarding the person or estate of an incapacitated adult, including a person who has qualified as a guardian of the person or estate, or both, of an incapacitated person pursuant to court appointment in accordance with N.J.S.3B:12-1 et seq. or its equivalent in a state other than New Jersey.~~

~~f. "Guardianship order" means an order declaring a person incapacitated and appointing a guardian.~~

~~g. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued to declare a person incapacitated and to appoint a guardian.~~

~~h. "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or a protective order; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.~~

~~i. "Incapacitated person" means an adult declared incapacitated and for whom a guardian has been appointed.~~

~~j. “Party” means the respondent, petitioner or plaintiff, as applicable, guardian, conservator or conservatee, or any other person authorized by the court to participate in a guardianship or protective proceeding.~~

~~k. “Petition” means an initiating court document for proceedings under P.L.2012, c. 36 (C.3B:12B-1 et al.). In New Jersey, a petition shall mean a verified complaint filed with the Superior Court pursuant to the Rules of Court of the State of New Jersey.~~

~~l. “Protected person” means an adult for whom a protective order has been issued.~~

~~m. “Protective order” means:~~

~~(1) An order related to an adult who has been declared incapacitated by a court or for whom such a declaration is sought, including, but not limited to, an arrangement or order related to management of the incapacitated person’s property, which is issued pursuant to N.J.S.3B:12-1 and N.J.S.3B:12-2; or~~

~~(2) An order appointing a conservator, including, but not limited to, an order which is issued pursuant to N.J.S.3B:13A-1 et seq.; or~~

~~(3) An order to protect a “vulnerable adult” as that term is defined in section 2 of P.L.1993, c. 249 (C.52:27D-407), including, but not limited to, an order which is issued pursuant to the “Adult Protective Services Act,” P.L.1993, c. 249 (C.52:27D-406 et seq.); or~~

~~(4) An order or arrangement, pursuant to N.J.S.3B:12-1, for a person for whom a declaration of incapacity is not sought.~~

~~The term “protective order,” as used in P.L.2012, c. 36 (C.3B:12B-1 et al.), shall not be construed to conflict with the provisions of N.J.S.3B:12-1 through N.J.S.3B:12-4.~~

~~n. “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.~~

~~o. “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.~~

~~p. “Registration” means a filing in this State of a guardianship or conservatorship order of another state, pursuant to the Rules of Court of the State of New Jersey and in accordance with the provisions of section 19 of P.L.2012, c. 36 (C.3B:12B-19).~~

~~q. “Respondent” means an adult for whom the appointment of a guardian or the issuance of a protective order is sought.~~

~~r. “Significant connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.~~

s. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Credits: L.2012, c. 36, § 3, eff. Dec. 5, 2012.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:12B-7. Cooperation between courts

a. In a guardianship or protective proceeding, a court of this State may request the appropriate court of another state to do any of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order any appropriate investigation of a person involved in a proceeding;

(5) forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent ~~or~~ the ~~incapacitated~~ individual subject to guardianship or the protected person; and

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information which meets federal and state laws.

b. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection a., a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Credits: L.2012, c. 36, § 7, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-9. Jurisdiction; determination

a. A court of this State has jurisdiction to ~~declare~~ find a person ~~incapacitated~~ to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs and to appoint a guardian or issue a protective order for a respondent if:

(1) This State is the respondent's home state as defined in section 3 of P.L.2012, c. 36 (C.3B:12B-3); or

(2) On the date the petition is filed, this State is a significant-connection state, as defined in section 3 of P.L.2012, c. 36 (C.3B:12B-3) and determined in accordance with section 10 of P.L.2012, c. 36 (C.3B:12B-10), and:

(a) the respondent either does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; or

(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of another state or another significant-connection state, and, before this State's court acts:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court concludes that it is an appropriate forum under the factors set forth in section 13 of P.L.2012, c. 36 (C.3B:12B-13);

(3) Although this State does not have jurisdiction under either subsection a. or b. of this section, the home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the New Jersey and United States Constitutions; or

b. A court of this State may assume emergency jurisdiction under section 11 of P.L.2012, c. 36 (C.3B:12B-11).

Credits: L.2012, c. 36, § 9, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-11. Emergency jurisdiction

a. A court of this State lacking jurisdiction under section 9 of P.L.2012, c. 36 (C.3B:12B-9) has emergency jurisdiction to do any of the following:

(1) appoint a guardian or issue a protective order in an emergency, in accordance with subsection c. of section 12 of P.L.2005, c. 304 (C.3B:12-24.1) and this section, for a respondent who is physically present in this State;

(2) appoint a guardian of real or tangible personal property located in this State for which the respondent has an ownership interest;

(3) issue a protective order with respect to real or tangible personal property in this State; or

(4) appoint, under procedures similar to section 17 of P.L.2012, c. 36 (C. 3B:12B-17), a guardian or conservator for an ~~incapacitated~~ individual found to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or own affairs or for a protected person for whom a provisional order to transfer the proceeding from another state has been issued.

b. If a petition for the appointment of a guardian or issuance of a protective order in an emergency in accordance with subsection c. of section 12 of P.L.2005, c. 304 (C.3B:12-24.1) and this section is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Credits: L.2012, c. 36, § 11, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-13. Appropriate forum

a. A court of this State having jurisdiction under section 9 of P.L.2012, c. 36 (C.3B:12B-9) to ~~declare~~ find a person to be incapacitated, appoint a guardian, or issue a protective order, may decline to exercise jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

b. If a court of this State declines to exercise jurisdiction under subsection a. of this section, it shall either dismiss or stay the proceeding. The court may impose any condition it deems just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

c. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court of each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were to be made, the court's ability to monitor the conduct of the guardian or the conservator.

Credits: L.2012, c. 36, § 13, eff. Dec. 5, 2012.

N.J.S. 3B:12B-14. Jurisdiction declined by reason of conduct

a. If, at any time, a court of this State determines that it acquired jurisdiction to ~~declare~~ rule on an individual's capacity, appoint a guardian, or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(a) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection c. of section 13 of P.L.2012, c. 36 (C.3B:12B-13); and

(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 9 of P.L.2012, c. 36 (C.3B:12B-9).

b. If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than P.L.2012, c. 36 (C.3B:12B-1 et al.).

Credits: L.2012, c. 36, § 14, eff. Dec. 5, 2012.

N.J.S. 3B:12B-15. Notice of proceeding

If this State was not the respondent's home state on the date a petition ~~to declare a person incapacitated concerning his or her capacity is filed in this State or on the date that~~ issuance of a protective order is filed in this State, notice of the petition shall be given, in the same manner as notice is required to be given in this State, to the respondent and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or a conservator under the Rules Governing the Courts of the State of New Jersey were applicable.

Credits: L.2012, c. 36, § 15, eff. Dec. 5, 2012.

N.J.S. 3B:12B-17. Transfer of guardianship or conservatorship to another state

a. A guardian or conservator appointed, or a conservatee, in this State may petition the court to transfer the guardianship or conservatorship to another state.

b. Notice of a petition for transfer shall be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

c. On the court's own motion or upon request of the guardian or conservator or conservatee, or other person required to be notified of the petition, the court shall hold a hearing on a petition to transfer.

d. The court shall issue an order provisionally granting a petition to transfer a guardianship and direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court of the other state and the court finds that:

(1) in the case of a guardianship of the person, the ~~incapacitated person~~ individual subject to guardianship is physically present in or is reasonably expected to move permanently to the other state, or in the case of a guardianship of estate, the ~~incapacitated person~~ individual subject to guardianship is

physically present in or is reasonably expected to move permanently to, or has a significant connection to, the other state; and

(2) an objection to the transfer has not been made or, that the transfer would not be contrary to the interests of the ~~incapacitated person~~ individual subject to guardianship; and

(3) in the case of a guardianship of the person, plans for care and services for the ~~incapacitated person~~ individual subject to guardianship in the other state are reasonable and sufficient, or in the case of a guardianship of the estate, adequate arrangements are made for management of the ~~incapacitated person's~~ individual's property.

e. The court shall issue a provisional order granting a transfer of a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 10 of P.L.2012, c. 36 (C.3B:12B-10);

(2) an objection to the transfer has not been made or, that the transfer would not be contrary to the interests of the ~~incapacitated person~~ individual subject to guardianship; and

(3) adequate arrangements will be made for management of the protected person's property.

f. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon receipt of:

(1) a provisional order accepting the guardianship or conservatorship from the court to which the guardianship or conservatorship is to be transferred under provisions similar to section 18 of P.L.2012, c. 36 (C.3B:12B-18); and

(2) the documents required to terminate a guardianship or conservatorship in this State.

Credits: L.2012, c. 36, § 17, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-18. Accepting guardianship or conservatorship transferred from another state

a. To confirm transfer of a guardianship or conservatorship to this State under provisions similar to section 17 of P.L.2012, c. 36 (C.3B:12B-17), the guardian or conservator in the other state shall file a petition in the court of this State to accept the guardianship of the person or the person's estate, or both, or the conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

b. Notice of a petition under this section shall be given, in the same manner as notice is required to be given in this State, to those persons that would be entitled to notice if the petition were for the appointment of a guardian or issuance of a protective order in both the transferring state and this State.

c. On the court's own motion or upon request of the guardian or of the conservator or conservatee, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to this section.

d. The court shall issue an order provisionally granting relief under this section unless:

(1) an objection is made and the court determines that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person or conservatee; or

(2) the guardian or conservator is ineligible for appointment in this State.

e. The final order accepting the proceeding and appointing the guardian or conservator from the other state as guardian of the person or estate, or both, or conservator in this State shall be issued upon the receipt by this State's court of a final order issued under provisions similar to section 17 of P.L.2012, c. 36 (C.3B:12B-17) transferring the proceeding to this State.

f. Upon application of a party or upon the court's own motion, the court shall determine whether the guardianship of the person or estate, or both, or the conservatorship needs to be modified to conform to the law of this State.

g. In granting an application under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the finding of ~~determination of the incapacitated person's~~ incapacity and the appointment of the guardian of the person or estate, or both, or of the conservator.

h. The denial by a court of this State of an application to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian of the person or estate, or both, in this State under N.J.S.3B:12-25 or as conservator under N.J.S.3B:13A-1 et seq., if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Credits: L.2012, c. 36, § 18, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:12B-19. Registration of guardianship or conservatorship orders

If a guardian has been appointed in another state and an application for the appointment of a guardian of the person or estate, or both, is not pending in this State, or if a conservator has been appointed in another state and an application for the appointment of a conservator is not pending in this State, the guardian or conservator appointed in the other state, after giving notice to the appointing court of an

intent to register, may register the guardianship or conservatorship order in this State with the Surrogate, as Deputy Clerk of the Superior Court, Chancery Division, Probate Part, in an appropriate county of this State, pursuant to the Rules of Court of the State of New Jersey, by filing certified copies of the order and letters of office, and of any bond, as appropriate. For purposes of a guardian of the person, an appropriate county is any county where the guardian seeks to maintain an action or proceeding on behalf of the ~~incapacitated person individual~~ subject to guardianship; for purposes of a guardian of the property or of a conservatorship, an appropriate county is the county where the property belonging to the ~~incapacitated person individual~~ subject to guardianship or conservatee is located.

Credits: L.2012, c. 36, § 19, eff. Dec. 5, 2012.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-2. Definitions

~~As used in this chapter:~~

a. ~~“Federal agency” means any bureau, office, board, or officer of the United States by whatever name known, now or hereafter charged by Congress:~~

~~(1) With payment of pensions, bounties, and allowances to veterans of the military service of the United States, their widows, widowers, children, mothers, and fathers; or~~

~~(2) With the administration of the affairs of any of the aforesaid persons who may be minors or persons who are incapacitated or with the management of pensions, bounties, and allowances payable to them.~~

b. ~~“Military” has reference to the army, navy, marine, air, and coast guard services.~~

c. ~~“Estate” and “income” include only moneys received by the guardian from a Federal agency and earnings, interest, and profits derived therefrom.~~

d. ~~“Benefits” means moneys payable by the United States to the aforesaid persons or their guardians through a Federal agency.~~

e. ~~“Chief officer” means an officer of a Federal agency, charged by the laws of the United States with the particular duty in connection with which the term is used.~~

f. ~~“Ward” means a beneficiary of a Federal agency.~~

g. ~~“Guardian” means a person acting as fiduciary for a ward.~~

Credits: L.1981, c. 405, § 3B:13-2, eff. May 1, 1982. Amended by L.2013, c. 103, § 25, eff. Aug. 7, 2013.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:13-6. Determination of incapacity of beneficiary by Superior Court

For the purpose of appointing a guardian pursuant to this chapter, the ~~incapacity~~ of a beneficiary of a Federal agency shall be determined by the Superior Court.

Credits: L.1981, c. 405, § 3B:13-6, eff. May 1, 1982. Amended by L.2013, c. 103, § 26, eff. Aug. 7, 2013.

N.J.S. 3B:13-7. Guardians; when and how appointed

When, pursuant to any law of the United States or regulation of a Federal agency, the chief officer of the agency requires, prior to payment of benefits, that a guardian be appointed for an ~~ward individual subject to guardianship~~, the appointment for a person who is incapacitated shall be made in the Superior Court, and the appointment for a minor shall be made in the Superior Court or in the surrogate's court.

Credits: L.1981, c. 405, § 3B:13-7, eff. May 1, 1982. Amended by L.2013, c. 103, § 27, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-8. Guardian to have no more than five ~~wards~~; exceptions

Except as provided in this section, no person shall accept appointment as guardian of ~~a ward if acting as guardian for five wards~~ more than five individuals.

In an action brought by an attorney of a Federal agency, establishing that a guardian is acting in a fiduciary capacity for more than five ~~wards~~ individuals, the Superior Court shall require a final accounting forthwith from the guardian and shall discharge the guardian.

The limitation of this section shall not apply where the guardian is a bank or trust company or a public guardian of veterans who are incapacitated, and an individual may be guardian of more than five ~~wards~~ individuals if they are all members of the same family.

Credits: L.1981, c. 405, § 3B:13-8, eff. May 1, 1982. Amended by L.2013, c. 103, § 28, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are removed from the statute.

N.J.S. 3B:13-9. Filing account with the court

Every guardian appointed by the surrogate of any county or by the Superior Court, who receives any moneys from a Federal agency for the benefit of ~~his ward~~ an individual subject to guardianship or under the protection of the court shall, at intervals as the court may require, render to the Superior Court a true

account of all moneys received by him, as guardian, by way of pension, bounty or other allowance from the United States. The account shall be submitted in duplicate.

Credits: L.1981, c. 405, § 3B:13-9, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-14. Removal of guardian for failure to account; costs

If the Federal agency, the sureties on the guardian's bond, any person interested in the benefits in the hands of the guardian or any person as next friend of the ~~ward~~ individual subject to guardianship or under the protection of the court serves notice upon the guardian that his or her account has not been filed in accordance with this article, and if the guardian fails to render his account within 30 days from the date of mailing of the notice or from the time of service or within the time as the court may otherwise provide, the court shall remove him. The notice may be mailed to the guardian's last known address.

The cost of the proceedings, as well as the cost incident to an order to show cause when it is necessary to obtain an accounting, shall be paid by the guardian out of his own estate, unless the court shall otherwise order.

Credits: L.1981, c. 405, § 3B:13-14, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-16. Support of dependents

When directed in writing by the proper Federal agency, the guardian shall apply that portion of the estate to the ~~ward's~~ spouse, child, father or mother of the individual subject to guardianship or under the protection of the court ~~as may be set forth in the direction~~. The direction shall be submitted to the Superior Court when an account is filed as proof of the guardian's authority for those payments.

Except as permitted by this section, a guardian shall not apply any of the estate of his ~~ward~~ to the support of any person other than his ~~ward~~.

Credits: L.1981, c. 405, § 3B:13-16, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-17. Compensation of guardian

Compensation payable to a guardian shall not exceed 5% of the income of the ~~ward~~ individual subject to guardianship, conservatorship or under a protective arrangement ordered by the court during any year.

For extraordinary services rendered by the guardian, the Superior Court may, after hearing upon the settlement of his account, authorize additional compensation payable from the estate of the ~~ward~~ individual subject to guardianship, conservatorship or under a protective arrangement ordered by the court, but no compensation shall be allowed on the corpus of an estate received from a preceding guardian.

The guardian may be allowed from the estate of ~~his ward~~ an individual individual subject to guardianship, conservatorship or under a protective arrangement ordered by the court reasonable premiums paid by him or her to a corporate surety ~~upon his~~ for the issuance of a bond.

COMMENT

Pejorative terms are replaced with person-first language.

Credits: L.1981, c. 405, § 3B:13-17, eff. May 1, 1982.

N.J.S. 3B:13-18. Authorization for guardian of incapacitated ~~ward~~ to receive additional personal property not exceeding \$10,000.00

When a ~~ward~~ individual for whom a guardian has been appointed is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs and becomes entitled to personal property amounting to not more than \$10,000.00 from any source other than the United States Government, the court may authorize the guardian to receive the personal property for conservation and administrative care. On payment of any money or delivery of property to the guardian, a release executed by the guardian to the person or persons paying the money or delivering the property shall be valid and effective.

Credits: L.1981, c. 405, § 3B:13-18, eff. May 1, 1982. Amended by L.2013, c. 103, § 29, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-21. Appointment of public guardian for veterans

There may be appointed in each county a person to be known as “public guardian of veterans ~~who are incapacitated~~ subject to guardianship for the county of (naming county)”, who shall be appointed by the Assignment Judge of the Superior Court in the county. The person appointed shall hold office for the term of five years from the date of appointment and until a successor is appointed and qualified.

Credits: L.1981, c. 405, § 3B:13-21, eff. May 1, 1982. Amended by L.2013, c. 103, § 30, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-22. Guardian’s bond

Before entering upon the duties of office, a public guardian of veterans who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs shall execute a bond to the Superior Court in an amount and with sureties as shall be approved by the Superior Court, conditioned for the faithful discharge of all duties imposed by law upon the person appointed public guardian.

The bond shall be renewed annually and shall, from time to time, be increased or reduced as the court may direct.

The expense of procuring the bond shall be paid by the county treasurer upon presentation of a proper voucher approved by the Assignment Judge of the Superior Court in the county.

Credits: L.1981, c. 405, § 3B:13-22, eff. May 1, 1982. Amended by L.2013, c. 103, § 31, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-23. Salary of public guardian

A public guardian of veterans who are ~~incapacitated~~ subject to guardianship shall receive an annual salary to be fixed by the Assignment Judge of the Superior Court of the county for which the guardian is appointed, with the approval of the board of freeholders or governing body of the county.

The salary shall be paid by the county treasurer in semimonthly payments and shall be in lieu of all other charges, compensation, and commissions. A guardian shall not accept any other money whatsoever by way of fee, compensation, gratuity, or present for any services provided by the guardian.

Credits: L.1981, c. 405, § 3B:13-23, eff. May 1, 1982. Amended by L.2013, c. 103, § 32, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-24. Duties of public guardian as adviser of other guardians

The public guardian of veterans who are ~~incapacitated~~ subject to guardianship shall, in each county, assist, supervise, advise, and otherwise aid the duly appointed guardians of these veterans and give help as may be necessary in preparing and drawing papers and documents, and also help them to work in conjunction with the United States Department of Veterans Affairs, so that ~~their wards~~ for whom they serve as fiduciaries may be fully protected.

Credits: L.1981, c. 405, § 3B:13-24, eff. May 1, 1982. Amended by L.2013, c. 103, § 33, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-25. Discharge and removal of public guardian

The public guardian of veterans who are ~~incapacitated~~ subject to guardianship shall be subject to discharge or removal, by the court, on the grounds and in the manner in which other guardians of persons who are ~~incapacitated~~ subject to a guardianship are discharged or removed.

Credits: L.1981, c. 405, § 3B:13-25, eff. May 1, 1982. Amended by L.2013, c. 103, § 34, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-26. Public guardian may be appointed general guardian for veteran

Where an action is brought in the Superior Court for the appointment of a guardian for a person who, while in the military, naval, marine, air, or coast guard service of the United States, or after discharge therefrom, is determined to be ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the person lacks sufficient capacity to govern him or herself and manage his or her own affairs, whether or not committed or confined to an institution ~~for the care of persons who are incapacitated~~, and the heirs of the person are unwilling, unable, or unqualified for the appointment, or if the best interests of the person require it, the Superior Court may appoint the public guardian of the county in which the person resides as guardian of the person.

Credits: L.1981, c. 405, § 3B:13-26, eff. May 1, 1982. Amended by L.2013, c. 103, § 35, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-27. Powers of public guardian as guardian of veterans' estates

The public guardian of veterans ~~who are incapacitated~~ as set forth in this chapter shall have, in respect of any veteran and the estate of any veteran for whom the public guardian is appointed, the same power and authority as any other duly appointed guardian of a person who is incapacitated impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the person lacks sufficient capacity to govern him or herself and manage his or her own affairs including being unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child.

Credits: L.1981, c. 405, § 3B:13-27, eff. May 1, 1982. Amended by L.2013, c. 103, § 36, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-28. Settlement of accounts

The public guardian shall settle accounts in each estate in which the guardian is appointed at the times and in the same manner as other guardians of persons who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the person lacks sufficient capacity to govern him or herself and manage his or her own affairs including being unable, unavailable, or unwilling to perform the regular and expected functions of care and support of a child.

Credits: L.1981, c. 405, § 3B:13-28, eff. May 1, 1982. Amended by L.2013, c. 103, § 37, eff. Aug. 7, 2013.

COMMENT

Pejorative term is replaced with person-first language.

N.J.S. 3B:13-29. Termination of guardianship; settlement of account

Upon the termination of a guardianship, by death of the ~~ward~~ individual subject to guardianship or otherwise, the public guardian shall settle the account in the same manner as other guardians of persons who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the extent that the person lacks sufficient capacity to govern him or herself and manage his or her own affairs.

Credits: L.1981, c. 405, § 3B:13-29, eff. May 1, 1982. Amended by L.2013, c. 103, § 38, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13-31. Counsel to represent public guardian; compensation

The public guardian of veterans who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause to the

extent that the person lacks sufficient capacity to govern him or herself and manage his or her own affairs may, when authorized by the Superior Court, employ counsel to represent the public guardian.

The compensation of counsel shall be fixed by the court and paid from moneys in the guardian's control belonging to the estate involved in litigation.

Credits: L.1981, c. 405, § 3B:13-31, eff. May 1, 1982. Amended by L.2013, c. 103, § 39, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13A-1. Definitions

As used in this chapter:

a. "Conservatee" means a person who has not been ~~adjudicated incapacitated~~ found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs but who by reason of advanced age, illness, or physical infirmity, is unable to care for or manage his or her property or has become unable to provide self-support or support for others who depend upon that support.

b. "Conservator" means a person appointed by the court to manage the estate of an individual who has not been adjudicated incapacitated found by a court of this State to be impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs including a person appointed, as appropriate, under N.J.S.3B:13A-1 et seq. The term includes a co-conservator.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983. Amended by L.2013, c. 103, § 40, eff. Aug. 7, 2013.

N.J.S. 3B:13A-2. Civil action to appoint conservator

a. On filing of a petition for the appointment of a conservator, the court shall set a date, time, and place for a hearing on the petition.

b. A copy of a complaint and notice of a hearing on the petition must be served on the individual subject to conservatorship in accordance with the terms of this title and the New Jersey Rules of Court. The notice must inform the individual his or her rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition. The court shall not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the respondent.

c. In a proceeding on a complaint for conservatorship, the notice shall be served on the persons set forth in N.J.S. 3B:13A-6.

d. After the appointment of a conservator, notice of a hearing on a complaint for an order under this title, together with a copy of the petition, must be given to:

(1) the individual subject to conservatorship, if the individual is 12 years of age or older and not missing, detained, or unable to return to the United States;

(2) the conservator; and

(3) any other person the court determines.

e. While an action for conservatorship is pending, after a preliminary hearing and without notice to others, the court may issue an order preserving and apply property of the individual who is the subject of the complaint as required for the individual's support or an individual who is dependent on that person.

f. The Superior Court may, in a civil action brought by the conservatee or some other person in his behalf, appoint a conservator to manage the estate of a conservatee, except that if the conservatee objects to the imposition of a conservatorship, a conservator shall not be appointed.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983.

COMMENT

Pejorative terms are replaced with person-first language. The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-3. Appointment of counsel to represent conservatee; role

a. The court shall have the right to appoint counsel for the proposed conservatee if it believes that counsel is necessary to adequately protect the interests of the conservatee.

b. An attorney representing an individual in a proceeding for the appointment of a conservator shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and

(3) if the individual's wishes are not reasonably ascertainable, advocate for the result that is the least-restrictive in type, duration, and scope, consistent with the interests of the individual subject to conservatorship.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983.

COMMENT

Pejorative terms are replaced with person-first language. The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-4. Conservatee to be present at hearing; court ordered investigation if conservatee unable to attend

a. The conservatee shall be present at the hearing unless he or she is unable to attend by reason of physical or other inability, and that inability is established to the satisfaction of the court.

b. If the conservatee is found to be unable to attend, the court shall, subject to rules of court, order an investigation to be conducted to assure the conservatee does not object to the conservatorship unless the court believes, in its discretion, that the interests of the conservatee are adequately protected by counsel representing the conservatee.

c. If it is not reasonably feasible for the individual subject to conservatorship to attend a hearing at the location where such a court proceeding is typically held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

d. A hearing may proceed without the individual subject to conservatorship if the court finds by clear-and-convincing evidence that:

(1) the individual subject to guardianship consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(2) there is no practicable way for the individual subject to guardianship to attend and participate in the hearing even with appropriate supportive services or technological assistance; or

(3) the individual subject to guardianship is a minor who has received proper notice and attendance would be harmful to the minor.

e. The individual subject to guardianship may be assisted in a hearing by a person or persons of his or her own choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the individual's participation in the hearing but is not otherwise available to the individual subject to guardianship, the court shall make reasonable efforts to provide it.

f. The individual subject to conservatorship has a right to choose an attorney to represent him or herself at a hearing.

g. At a hearing individual subject to guardianship may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any appointed by the court; and

(3) otherwise participate in the hearing.

h. Unless excused by the court for good cause, a proposed conservator shall attend the hearing.

i. A hearing must be closed to the public on request of the individual subject to guardianship and a showing of good cause.

h. Any person may request to participate in a hearing under Section 403. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983.

COMMENT

Pejorative terms are replaced with person-first language. The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-12. "Process" defined

~~The word "process" as used in N.J.S. 3B:13A-10 and N.J.S. 3B:13A-11 shall have the same meaning as set forth in N.J.S. 3B:14-46.~~

Credits: L.1983, c. 192, § 1, eff. May 12, 1983.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:13A-13. Bond

~~a. The court may, upon appointing require a conservator to secure the faithful performance of the duties of his or her office, require him to furnish bond to the Superior Court in a sum and with proper conditions and sureties having due regard to the value of the estate in his charge and the extent of his authority, as the court shall approve to furnish a bond to the Superior Court, in a sum and with proper conditions and sureties having due regard to the value of the estate in the conservator's charge and to the extent of his or her authority, as the court shall approve. This bond shall be conditioned on the faithful discharge of all of the duties of the conservator.~~

b. A proceeding may not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.

c. If a bond is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the individual subject to conservatorship.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983

N.J.S. 3B:13A-14. Conditions of bond

If a bond is required of a conservator, it shall be conditioned ~~substantially~~ as follows:

a. To well and truly take care of the estate of the conservatee and all writings and evidences concerning this person's real estate and to deliver them to the person or persons who by law are or may be entitled to receive them;

b. The surety and the conservator shall be jointly and severally liable;

c. The surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice.

~~b. d.~~ To improve the real estate to the best advantage and to commit no waste or destruction thereof or thereon;

~~e. e.~~ To make a just and true account of the rents, issues and profits of the real estate and of the proceeds of the sale of any real estate that may be ordered to be sold;

~~d. f.~~ To make a just and true account of the expenditures and disbursements of the goods, chattels and personal estate of the conservatee that shall come into his hands; and

g. On petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond.

h. A proceeding against the bond may be brought until liability under the bond is exhausted.

~~e. i.~~ If required by court, to settle those accounts therein within the time so required.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983.

N.J.S. 3B:13A-17.1 Conservator's Plan

a. A conservator shall file a plan for protecting, managing, expending, and distributing the assets of the conservatorship estate:

(1) not later than 60 days after his or her appointment;

(2) when there is a significant change in circumstances, or

(3) when the conservator seeks to deviate significantly from his or her plan.

b. The conservator's plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as that person's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the conservator.

c. The conservator's plan shall include:

(1) a budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;

(2) how the conservator will involve the individual in decisions about management of the conservatorship estate;

(3) any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and

(4) an estimate of the duration of the conservatorship.

d. A conservator shall give notice of the filing of the conservator's plan under subsection (a), together with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under N.J.S. 3B:13A-6 and N.J.S. 3B:13A-7 or a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than 14 days after the filing.

e. An individual subject to conservatorship and any person entitled to receive notice and a copy of the conservator's plan may object to the plan.

f. The court shall review the conservator's plan and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection to the plan and whether the plan is consistent with the conservator's duties and powers. The court may not approve the plan until 30 days after its filing.

g. After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of the plan to the individual subject to conservatorship, person's entitled to notice under N.J.S. 3B:13A-6 and N.J.S. 3B:13A-7 or a subsequent order, and any other person the court determines.

COMMENT

The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-24.1 Administrative powers of conservator not requiring court approval

a. Except as otherwise qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional power granted to a trustee by law of this state other than in this title.

b. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:

(1) collect, hold, and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(2) receive additions to the conservatorship estate;

(3) continue or participate in the operation of a business or other enterprise;

(4) acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;

(5) invest assets;

(6) deposit funds or other property in a financial institution, including one operated by the conservator;

(7) acquire or dispose of property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;

(8) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new party wall or building;

(9) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(10) enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

(12) grant an option involving disposition of property or accept or exercise an option for the acquisition of property;

(13) vote a security, in person or by general or limited proxy;

(14) pay a call, assessment, or other sum chargeable or accruing against or on account of a security;

(15) sell or exercise a stock subscription or conversion right;

(16) consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(18) insure:

(A) the conservatorship estate, in whole or in part, against damage or loss; and

(B) the conservator against liability with respect to a third person;

(19) borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;

(20) advance funds for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses, and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;

(21) pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

(22) pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration, and protection of the conservatorship estate;

(23) pay a sum distributable to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(A) to the guardian for the distributee;

(B) to the custodian of the distributee under the Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act; or

(C) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(24) bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(25) structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

(26) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator.

COMMENT

The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-27. Annual informal report or accounting

a. The conservator shall present to the conservatee an annual informal report or accounting setting forth the collection and disposition of income and other assets within the conservator's control. The annual informal report or accounting shall be filed with the court and available for inspection by any party set forth in N.J.S. 3B:13A-6.

b. ~~In addition,~~ The court may order, upon a showing of good cause by the conservatee, a full accounting by the conservator of all the conservatee's assets within the conservator's control.

c. A report under subsection (b) must state or contain:

(1) an accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

(2) a list of the services provided to the individual subject to conservatorship;

(3) a copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how the conservator has deviated and why;

(4) a recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to conservatorship with all but the last four digits of the account numbers and Social Security number redacted;

(6) anything of more than de minimis value which the conservator, any individual who resides with the conservator, or the spouse, [domestic partner,] parent, child, or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

(7) any business relation the conservator has with a person the conservator has paid or that has benefited from the property of the individual subject to conservatorship; and

(8) whether any co-conservator or successor conservator appointed to serve when a designated event occurs is alive and able to serve.

c. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

d. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, a person entitled to notice under this Title or a subsequent order, and other persons the court determines. The notice and report must be given not later than 14 days after filing.

e. The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(1) the reports provide sufficient information to establish the conservator has complied with the conservator's duties;

(2) the conservatorship should continue; and

(3) the conservator's requested fees, if any, should be approved.

f. If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

(1) shall notify the individual subject to conservatorship, the conservator, and any other person entitled to notice under Section 411(e) or a subsequent order;

(2) may require additional information from the conservator;

(3) may appoint a [visitor] to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and

(4) may hold a hearing to consider removal of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.

g. If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

h. A conservator may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

i. An order, after notice and hearing, approving an interim report of a conservator filed under this Section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the report or accounting.

j. An order, after notice and hearing, approving a final report filed under this Section discharges the conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983.

COMMENT

The proposed language is based on the language found in the UGCOPAA.

N.J.S. 3B:13A-34. Termination of conservatorship upon death or judicial determination

A conservatorship shall terminate upon the death of the conservatee or upon adjudication of the conservatee to be ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manager his or her own affairs as provided by law, but the termination shall not affect the conservator's liability for prior acts nor obligation to account funds and property of the conservatee.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983. Amended by L.2013, c. 103, § 42, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:13A-36. Conservator's compensation

A conservator shall be compensated for services in the same manner as a guardian for a minor or for a person who is ~~incapacitated~~ subject to guardianship.

Credits: L.1983, c. 192, § 1, eff. May 23, 1983. Amended by L.2013, c. 103, § 43, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-8. "Engaged in war service" defined

~~For the purposes of this article, a fiduciary or person named to act as fiduciary shall be deemed to be engaged in war service if in time of war:~~

- ~~a. He or she is a member of the armed forces of the United States or of any of its allies or has been accepted for service and is awaiting induction into the service; or~~
- ~~b. He or she is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross Society or any other body with similar objects; or~~
- ~~c. He or she is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this State.~~

Credits: L.1981, c. 405, § 3B:14-8, eff. May 1, 1982.

COMMENT

Gender-neutral terms have been added to the statute. The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:14-21. Removal for cause

The court may remove a fiduciary from office when the fiduciary:

- a. After due notice of an order or judgment of the court so directing, neglects or refuses, within the time fixed by the court, to file an inventory, render an account, or give security or additional security;
- b. After due notice of any other order or judgment of the court made under its proper authority, neglects or refuses to perform or obey the order or judgment within the time fixed by the court;
- c. Embezzles, wastes, or misapplies any part of the estate for which the fiduciary is responsible, or abuses the trust and confidence reposed in the fiduciary;
- d. No longer resides nor has an office in the State and neglects or refuses to proceed with the administration of the estate and perform the duties required;
- e. Is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs or the business of others for the transaction of business; or
- f. Neglects or refuses, as one of two or more fiduciaries, to perform the required duties or to join with the other fiduciary or fiduciaries in the administration of the estate for which they are responsible whereby the proper administration and settlement of the estate is or may be hindered or prevented.

Credits: L.1981, c. 405, § 3B:14-21, eff. May 1, 1982. Amended by L.2013, c. 103, § 44, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-23. Powers

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

- a. To accept additions to any estate or trust from sources other than the estate of the decedent, the minor, the person who is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or the settlor of a trust;

[...]

Credits: L.1981, c. 405, § 3B:14-23, eff. May 1, 1982. Amended by L.1991, c. 503, § 2, eff. Jan. 18, 1992; L.1993, c. 360, § 1, eff. Dec. 30, 1993; L.1997, c. 250, § 1, eff. Sept. 9, 1997; L.2003, c. 33, § 1, eff. March 24, 2003; L.2013, c. 103, § 45, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-28. Filing proof of domiciliary foreign fiduciary's authority

If letters have not issued in this State or an action therefor is not pending in this State, a domiciliary foreign fiduciary or any other person may file in the office of the Clerk of the Superior Court, or if the decedent, ~~ward~~ individual subject to guardianship or under the protection of the court, or trust has an interest in real estate in any county of this State, then either in that office or in the office of the surrogate of that county, authenticated copies of the letters of appointment of the fiduciary and of any official bond he has given.

Credits: L.1981, c. 405, § 3B:14-28, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-29. Exercise of powers by domiciliary foreign fiduciary; security for costs

Upon compliance with N.J.S. 3B:14-28, a domiciliary foreign fiduciary may exercise as to assets in this State all powers he would have had if he had received letters or been appointed in this State, including the power to release and discharge real or personal estate from a mortgage, judgment or other lien or encumbrance held by his decedent, ~~ward~~ individual subject to guardianship or under the protection of the court or trust. Whether N.J.S. 3B:14-28 is complied with prior to, pending, or subsequent to the action, a domiciliary foreign fiduciary may maintain, or be made a party defendant or otherwise, to any action in any court of this State as if letters had been granted to him in this State, subject to any conditions generally imposed upon nonresident parties. Security for costs may be required of him.

Credits: L.1981, c. 405, § 3B:14-29, eff. May 1, 1982.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section also include, the addition of gender-neutral terms.

N.J.S. 3B:14-44. Discovery of assets in action by fiduciary

Upon application by a fiduciary, the court may require any person to appear before and make discovery of his or her possession of, or knowledge of the existence or whereabouts of personal property of the fiduciary's decedent, ~~ward~~ individual subject to guardianship, conservatorship, a protective order or trust by the production of books, papers or securities relating to the estate, guardianship or trusteeship or by the examination of the person and other witnesses.

Credits: L.1981, c. 405, § 3B:14-44, eff. May 1, 1982.

N.J.S. 3B:14-46. “Process” defined

~~The word “process” as used in this subarticle shall include any summons, subpoena, writ, attachment and levy thereunder, garnishment, rule, order, notice, decision, judgment or execution and levy thereunder, or any other process whatsoever, that may lawfully be issued out of any court of this State against a fiduciary in any proceeding affecting the estate which he may represent or affecting the property or interest of any beneficiary of, or interested in, the estate or against the property or interest of any beneficiary which is held or claimed to be held by the fiduciary for the account or benefit of the beneficiary.~~

Credits: L.1981, c. 405, § 3B:14-46, eff. May 1, 1982.

N.J.S. 3B:14-53. Definitions

~~As used in this article:~~

~~a. “Bank” includes any person or association of persons, whether incorporated or not, carrying on the business of banking and any State chartered savings and loan association, or any Federal savings and loan association, having its principal office in this State;~~

~~The inclusion of savings and loan associations within the provisions of this article shall not be construed as conferring upon those associations any powers not otherwise conferred by this article, nor as enlarging any powers so conferred;~~

~~b. “Fiduciary” includes a trustee under any trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate;~~

~~c. “Person” includes two or more persons having a joint or common interest;~~

~~d. “Principal” includes any person to whom a fiduciary as such owes an obligation;~~

~~e. A thing is done “in good faith” within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not.~~

Credits: L.1981, c. 405, § 3B:14-53, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:14-61.2. Definitions

~~Definitions. As used in this act:~~

~~“Account” means an arrangement under a terms of service in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.~~

~~“Agent” means an attorney in fact granted authority under a durable or nondurable power of attorney.~~

~~“Carries” means engages in the transmission of an electronic communication.~~

~~“Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.~~

~~“Content of an electronic communication” means information concerning the substance or meaning of the communication which:~~

~~(a) has been sent or received by a user;~~

~~(b) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and~~

~~(c) is not readily accessible to the public.~~

~~“Court” means the Probate Part of the Chancery Division of the Superior Court. For the purposes of this act, “court” includes the Surrogate’s Court acting within the scope of its authority pursuant to statute or the Rules of Court.~~

~~“Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.~~

~~“Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.~~

~~“Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.~~

~~“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.~~

~~“Electronic communication” has the meaning set forth in 18 U.S.C. s.2510(12).~~

~~“Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.~~

~~“Fiduciary” means an original, additional, or successor personal representative, guardian, agent, or trustee.~~

~~“Guardian” means a person appointed by the court to make decisions regarding the property of an incapacitated adult, including a person appointed in accordance with N.J.S.3B:12-1 et seq. or its equivalent in a state other than New Jersey.~~

~~“Incapacitated person” means an incapacitated individual, as defined in N.J.S.3B:1-2, for whom a guardian has been appointed.~~

~~“Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.~~

~~“Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms of service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.~~

~~“Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.~~

~~“Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under the law of this State other than this act.~~

~~“Power of attorney” means a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of section 28 of P.L.1948, c. 67 (C.17:9A-28) known as the attorney in fact to perform specified acts on behalf of the principal as the principal’s agent.~~

~~“Principal” means an individual, at least 18 years of age, who, in a power of attorney, authorizes an agent to act.~~

~~“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.~~

~~“Remote computing service” means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. s.2510(14).~~

~~“Terms of service agreement” means an agreement that controls the relationship between an account holder and a custodian.~~

~~“Trustee” means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another. “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.~~

~~“User” means a person that has an account with a custodian.~~

~~“Will” means the last will and testament of a testator or testatrix and includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of a person or class to succeed to property of the decedent passing by intestate succession.~~

Credits: L.2017, c. 237, § 2, eff. Dec. 12, 2017.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:14-61.14. Disclosure of digital assets to guardian of ~~incapacitated person~~; request to suspend or terminate account

Disclosure of Digital Assets to Guardian of ~~incapacitated person~~ individual subject to guardianship.

a. After an opportunity for a hearing under N.J.S.3B:12-1 et seq., the court may grant a guardian access to the digital assets of an ~~incapacitated person~~ individual subject to guardianship.

b. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by the ~~incapacitated person~~ individual subject to guardianship and any digital assets, other than the content of electronic communications, in which the ~~incapacitated person~~ individual subject to guardianship has a right or interest if the guardian gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a copy of the court order that gives the guardian authority over the digital assets of the ~~incapacitated person~~ individual subject to guardianship; and

(3) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ~~incapacitated person~~ individual subject to guardianship; or

(b) evidence linking the account to the ~~incapacitated person~~ individual subject to guardianship.

c. A guardian with general authority to manage the assets of an ~~incapacitated person~~ individual subject to guardianship may request a custodian of the digital assets of the ~~incapacitated person~~ individual subject to guardianship to suspend or terminate an account of the ~~incapacitated person~~ individual subject to guardianship for good cause. A request made under this section shall be accompanied by a copy of the court order giving the guardian authority over the ~~incapacitated person's~~ individual subject to guardianship's property.

Credits: L.2017, c. 237, § 14, eff. Dec. 12, 2017.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-61.15. Duties and authority of fiduciaries and designated recipients

Fiduciary and Designated Recipient Duty and Authority.

a. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality.

b. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- (1) except as otherwise provided in section 4 of this act, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- (4) may not be used to impersonate the user.

c. A fiduciary with authority over the property of a decedent, ~~incapacitated person~~, individual subject to guardianship, principal, or settlor has the right to access any digital asset in which the decedent, ~~incapacitated person~~ individual subject to guardianship, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

d. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ~~incapacitated person~~ individual subject to guardianship, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including but not limited to the provisions of P.L.1984, c. 184 (C.2C:20-23 et seq.) and N.J.S.2C:20-2.

e. A fiduciary with authority over the tangible, personal property of a decedent, ~~incapacitated person~~ individual subject to guardianship, principal, or settlor:

- (1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including but not limited to the provisions of P.L.1984, c. 184 (C.2C:20-23 et seq.) and N.J.S.2C:20-2.

f. A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

g. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a copy of the death certificate of the user;

(2) a copy of the letters testamentary or letters of administration, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (a) of this paragraph.

Credits: L.2017, c. 237, § 15, eff. Dec. 12, 2017.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:14-61.16. Duties of custodian relating to compliance with act; immunity

Custodian Compliance and Immunity.

a. Not later than 60 days after receipt of the information required under sections 7 through 15 of this act,¹ a custodian shall comply with a request under this act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

b. An order under subsection a. of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. s.2702.

c. A custodian may notify the user that a request for disclosure or to terminate an account was made under this act.

d. A custodian may deny a request under this act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

e. This act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this act to obtain a court order which:

(1) specifies that an account belongs to the ~~incapacitated person~~ individual subject to guardianship or principal;

(2) specifies that there is sufficient consent from the ~~incapacitated person~~ individual subject to guardianship or principal to support the requested disclosure; and

(3) contains a finding required by law other than this act.

f. A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this act.

Credits: L.2017, c. 237, § 16, eff. Dec. 12, 2017.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:15-1. Bonds of fiduciaries

The court or surrogate appointing a fiduciary in any of the instances enumerated below shall secure faithful performance of the duties of the office by requiring the fiduciary thereby authorized to act to furnish bond to the Superior Court in a sum and with proper conditions and sureties, having due regard to the value of the estate and the extent of the fiduciary's authority, as the court shall approve:

a. When an appointment is made upon failure of the will, or other instrument creating or continuing a fiduciary relationship, to name a fiduciary;

b. When a person is appointed in the place of the person named as fiduciary in the will, or other instrument creating or continuing the fiduciary relationship;

c. When the office to which the person is appointed is any form of administration, except: (1) administration ad litem which may be granted with or without bond; or (2) administration granted to a surviving spouse where the decedent's entire estate is payable to the surviving spouse;

d. When the office to which the person is appointed is any form of guardianship of a minor or a person who is ~~incapacitated~~ subject to guardianship, except as otherwise provided in N.J.S.3B:12-16 or N.J.S.3B:12-33 with respect to a guardian appointed by will;

e. When letters are granted to a nonresident executor, except in cases where the will provides that no security shall be required of the person named as executor therein;

f. When an additional or substituted fiduciary is appointed;

g. When an appointment is made under chapter 26 of this title, of a fiduciary for the estate or property, or any part thereof, of an absentee;

h. When a fiduciary moves from the State, in which case the court may require the fiduciary to give such security as the court determines; or

i. When an appointment is made, regardless of any direction in a last will and testament relieving a personal representative, testamentary guardian, or testamentary trustee or their successors from giving bond, that person shall, before receiving letters or exercising any authority or control over the property, provide bond to secure performance of the person's duties with respect to property to which a person with a developmental disability as defined in section 3 of P.L.1985, c. 145 (C.30:6D-25) is, or shall be entitled, if:

(a) the testator has identified that a devisee or beneficiary of property of the decedent's estate is a person with a developmental disability; or

(b) the person seeking appointment has actual knowledge that a devisee or beneficiary of property of the decedent's estate is a person with a developmental disability.

(2) No bond shall be required pursuant to paragraph (1) of this subsection if:

(a) the court has appointed another person as guardian of the person or guardian of the estate for the person with a developmental disability;

(b) the person seeking the appointment is a family member within the third degree of consanguinity of the person with a developmental disability; or

(c) the total value of the real and personal assets of the estate or trust does not exceed \$25,000.

(3) A personal representative, testamentary guardian, or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection shall file with the Superior Court an initial inventory and a final accounting of the estate in that person's charge containing a true account of all assets of the estate. That person shall file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court, in the case of an extended estate or trust administration.

(4) A personal representative, testamentary guardian, or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection may make application to the court to waive the bond or reduce the amount of bond for good cause shown, including the need to preserve assets of the estate.

This subsection shall not apply to qualified financial institutions pursuant to section 30 of P.L.1948, c. 67 (C.17:9A-30) or to non-profit community trusts organized pursuant to P.L.1985, c. 424 (C.3B:11-19 et seq.).

Nothing contained in this section shall be construed to require a bond in any case where it is specifically provided by law that a bond need not be required.

Credits: L.1981, c. 405, § 3B:15-1, eff. May 1, 1982. Amended by L.1985, c. 34, § 1, eff. Feb. 1, 1985; L.2009, c. 140, § 1, eff. Dec. 18, 2009; L.2010, c. 34, § 3, eff. June 29, 2010; L.2013, c. 103, § 46, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:15-7. Conditions of bonds of guardians of minors and ~~incapacitated~~ individuals subject to guardianship

The bond required of a guardian of a minor or a person who is ~~incapacitated~~ subject to guardianship shall be conditioned substantially as follows:

- a. To administer the ~~ward's~~ estate of an individual subject to guardianship to the best of the guardian's ability, and to take proper care of the ~~ward~~ individual subject to guardianship if the guardian is the guardian of the ~~ward's~~ person subject to guardianship;
- b. To make a just and true account of the administration of the guardianship, and, if required by the court, to settle the accounts therein within the time so required.

Credits: L.1981, c. 405, § 3B:15-7, eff. May 1, 1982. Amended by L.2013, c. 103, § 47, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:15-17.1. Estate of minor consisting of judgment proceeds; payment

Where the estate of a minor consists of the proceeds of a judgment recovered in favor of the minor in any court of this State and the funds recovered are placed under the control of the county surrogate, the funds shall be paid over to the person when the person reaches the age of 18 years, unless the court finds the person to be ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs.

Credits: L.1987, c. 28, § 1, eff. Jan. 27, 1987. Amended by L.2013, c. 103, § 48, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:16-8. Inventory of guardian of the estate of a minor or ~~incapacitated~~ person

Every guardian of the estate of a minor or a person who is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs may, and if required by the court shall, file with the surrogate of the proper county or the clerk of the Superior Court an inventory, under oath, of all the real and personal property which is in the control, possession, or knowledge of the guardian or any other person on the guardian's behalf. The court shall not require an inventory and appraisal to be filed until three months have elapsed after the grant of letters.

Credits: L.1981, c. 405, § 3B:16-8, eff. May 1, 1982. Amended by L.2013, c. 103, § 49, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:17-1. Fiduciary filing release by ~~ward~~ individual for whom a guardian has been appointed or an individual under the protection of the court to or cestui que trust

A fiduciary need not render or settle an account if the fiduciary files with the court a release or discharge from the beneficiary, ~~ward~~, individual for whom a guardian has been appointed or an individual under the protection of the court or cestui que trust who has reached majority and is not incapacitated.

The release or discharge shall be executed and acknowledged as provided for deeds of real estate to be recorded.

Credits: L.1981, c. 405, § 3B:17-1, eff. May 1, 1982. Amended by L.2013, c. 103, § 50, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:17-9. Nontestamentary trustee defined

~~As used in this article, "nontestamentary trustee" means any owner of real or personal property who holds title thereto subject to equitable duties to deal with the property for the benefit of another or others arising from an express intention to create those duties manifested in writing otherwise than by a will or other testamentary disposition of property.~~

Credits: L.1981, c. 405, § 3B:17-9, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:18-8. Definitions

As used in this article:

a. ~~“Fiduciary” means executor, administrator with the will annexed, substituted administrator with the will annexed, administrator, substituted administrator, or trustee or substituted trustee under a will of a decedent;~~

b. ~~“Property” means any property, real or personal, tangible or intangible, or any interest or estate therein, which does not come into the hands of a fiduciary as part of a decedent's estate, and which, by operation of law or otherwise, has been received or is receivable by anyone other than the fiduciary, and which a taxing authority attempts to tax or does tax, as a decedent's taxable estate, or as part of a decedent's taxable estate, for the purposes of Federal estate tax, New Jersey estate tax, other state or foreign estate taxes, or New Jersey or other state or foreign transfer inheritance, legacy or succession taxes.~~

Credits: L.1981, c. 405, § 3B:18-8, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:18-12. Definition of fiduciary

~~As used in this article “fiduciary” means personal representative and fiduciaries appointed under chapter 26 of this title for absentees.~~

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:18-23. Definition of fiduciary

~~As used in this article “fiduciary” means a trustee acting under a will, a nontestamentary trustee as defined in N.J.S. 3B:17-9 or a guardian.~~

Credits: L.1981, c. 405, § 3B:18-23, eff. May 1, 1982. Amended by L.1985, c. 434, § 1, eff. Jan. 13, 1986.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-2. Definitions

~~As used in this act:~~

~~“Accounting period” means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.~~

~~“Beneficiary” includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.~~

~~“Fiduciary” means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.~~

~~“Income” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 10 through 23 of this act.~~

~~“Income beneficiary” means a person to whom net income of a trust is or may be payable.~~

~~“Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.~~

~~“Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.~~

~~“Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.~~

~~“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.~~

~~“Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.~~

~~“Remainder beneficiary” means a person entitled to receive principal when an income interest ends.~~

~~“Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.~~

~~“Trustee” includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.~~

Credits: L.2001, c. 212, § 2, eff. Jan. 1, 2002.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-10. Receipts from entities

~~a. As used in this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 11 of this act applies, a business or activity to which section 12 of this act applies or an asset backed security to which section 23 of this act applies. [...]~~

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-17. Payments from annuities, individual retirement accounts, and pension, profit-sharing, stock-bonus, or stock-ownership plans

~~a. As used in this section, “payment” means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer or by another, including a private or commercial annuity, an individual retirement account and a pension, profit sharing, stock bonus, or stock ownership plan. [...]~~

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-18. Receipts from liquidating assets

~~a. As used in this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 17 of this act, resources subject to section 19 of this act, timber subject to section 20 of this act, an activity subject to section 22 of this act, an asset subject to section 23 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 26 of this act. [...]~~

Credits: L.2001, c. 212, § 18, eff. Jan. 1, 2002.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-22. Derivatives; options

~~a. As used in this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets. [...]~~

Credits: L.2001, c. 212, § 22, eff. Jan. 1, 2002.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-23. Asset-backed securities

~~a. As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 10 or 17 of this act applies [...]~~

Credits: L.2001, c. 212, § 23, eff. Jan. 1, 2002.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:19B-26. Depreciation; transfers from income to principal

~~a. As used in this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year. [...]~~

Credits: L.2001, c. 212, § 26, eff. Jan. 1, 2002.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:20-1. Definitions

~~As used in this chapter:~~

~~a. “Trust instrument” means and includes a will, deed, agreement, court order or other instrument pursuant to which money or other property is entrusted to a fiduciary;~~

~~b. “Fiduciary” means an individual or corporation that is authorized to act as or acts as a trustee, personal representative, conservator, guardian, and every other individual or corporation charged with the duty of administering a trust estate;~~

~~c. “Trust estate” or “trust assets” means money or other property entrusted to a fiduciary;~~

d. ~~(Deleted by amendment, P.L. 1997, c. 26.)~~

e. ~~“Beneficiary” means an individual or corporation for whose benefit a fiduciary acts or is authorized to act.~~

Credits: L.1981, c. 405, § 3B:20-1, eff. May 1, 1982. Amended by L.1983, c. 192, § 2, eff. May 23, 1983; L.1995, c. 48, § 1, eff. March 17, 1995; L.1997, c. 26, § 13, eff. June 5, 1997.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section

N.J.S. 3B:20-21. Definitions

As used in this article:

a. ~~“Banking institution” includes State chartered banks and national banking associations;~~

b. ~~“Bank holding company” means a bank holding company as defined in the Bank Holding Company Act of 1956 (Act of May 9, 1956, 70 Stat. 1933, 12 U.S.C. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (Act of December 31, 1970, 84 Stat. 1760).~~

Credits: L.1981, c. 405, § 3B:20-21, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:20-27. Definitions

As used in this article:

a. ~~(Deleted by amendment, P.L.1997, c. 26).~~

b. ~~“Securities” means instruments which are commonly dealt with on securities exchanges or markets or commonly recognized in any area in which they are issued or dealt with as a medium for investment, and which are subject to the provisions of chapter 8, “Uniform Commercial Code Investment Securities” (chapter 8, Title 12A of the New Jersey Statutes);~~

c. ~~“Clearing corporation” means a corporation as defined in N.J.S. 12A:8-102.~~

Credits: L.1981, c. 405, § 3B:20-27, eff. May 1, 1982. Amended by L.1997, c. 26, § 22, eff. June 5, 1997.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section

N.J.S. 3B:21-1. Removal of property from the State

When a ~~ward~~ individual for whom a guardian has been appointed or an individual under the protection of the court or a cestui que trust, or all the cestuis que trustent in esse, is or, all of them, are nonresidents of this State and is or are entitled to personal or real property in this State and the guardian or trustee received his letters from, or is subject to the jurisdiction of, a court of another state or country, the Superior Court may authorize the guardian or trustee, if it is in the interest of the persons in interest, to demand, collect, sue for, receive and remove from this State all or any part of the personal property and the rents, issues and profits of the real property, or authorize the personal property, and the rents, issues and profits of the real property to be transferred to the custody of the proper court of that state, jurisdiction or country.

Credits: L.1981, c. 405, § 3B:21-1, eff. May 1, 1982.

COMMENT

Pejorative term are replaced with person-first language.

N.J.S. 3B:21-2. Meaning of term “personal property”

~~The term “personal property” as used in this chapter shall include, but without limitation, property or money or any devise or distributive share, interest, trust fund or trust property in the hands of a fiduciary residing or acting in this State, moneys in the hands of a receiver appointed by any court, moneys in the hands of a commissioner, officer, fiduciary or other person constituting the proceeds from the sale of real estate under any judicial proceeding, or pursuant to the provisions of any will or instrument of trust, or awarded as damages for the taking of lands under legislative authority, moneys or funds deposited in any court of this State, whether arising from the sale of lands or otherwise, and moneys or property in the custody or under the control or subject to the directions of any court.~~

Credits: L.1981, c. 405, § 3B:21-2, eff. May 1, 1982.

N.J.S. 3B:21-4. When removal will be denied

Property belonging to any cestui que trust or ~~ward~~ individual for whom a guardian has been appointed or an individual under the protection of the court shall not be removed or transferred where it would conflict with the terms, limitations or conditions attending his right to the property, whether they are created by will, trust or any other instrument, or where the interests of a citizen of this State with respect to the property would thereby be prejudiced.

Credits: L.1981, c. 405, § 3B:21-4, eff. May 1, 1982.

COMMENT

Pejorative term replaced with person-first language.

N.J.S. 3B:22-39. “Heirs and devisees” defined

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

Credits: L.1981, c. 405, § 3B:22-39, eff. May 1, 1982. Amended by L.2004, c. 132, § 85, eff. Feb. 27, 2005.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:23-21. Unclaimed estate assets

When a fiduciary states a final account and there remains in the fiduciary’s control a balance, devise, distributive share, dividend, or sum of money to be paid to a person and the person, or that person’s guardian, if a minor or a person who is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, fails to claim the balance, devise, distributive share, dividend, or sum of money within the period of time set forth in R.S.46:30B-37.1, then the property shall be disposed of as provided in N.J.S.3B:23-19 if it is part of an intestate estate or otherwise presumed abandoned and handled in accordance with the “Uniform Unclaimed Property Act (1981),” R.S.46:30B-1 et seq.

Credits: L.1981, c. 405, § 3B:23-21, eff. May 1, 1982. Amended by L.1989, c. 58, § 3, eff. April 14, 1989; L.2001, c. 109, § 3, eff. June 21, 2001; L.2013, c. 103, § 51, eff. Aug. 7, 2013.

COMMENT

Pejorative term replaced with person-first language.

N.J.S. 3B:23-34. Conditions precedent to suit for devise

An action to recover a devise may not be maintained until:

- a. The devise becomes due and payable;
- b. Reasonable demand for payment is made upon the personal representative; and
- c. A refunding bond in substantially the form prescribed in N.J.S.3B:23-26 is tendered to the personal representative by the devisee, or, if the devisee is a minor or a person who is ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, by the guardian of the devisee’s estate , and, if not accepted by the personal representative, the refunding bond is filed with the clerk of the court, prior to the commencement of the action.

Credits: L.1981, c. 405, § 3B:23-34, eff. May 1, 1982. Amended by L.2013, c. 103, § 52, eff. Aug. 7, 2013.

COMMENT

Pejorative term are replaced with person-first language.

N.J.S. 3B:23-39. Deposit with court; effect

When a devise charged by will upon real estate is wholly or in part limited over:

a. To minors, persons who are ~~incapacitated~~ impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or persons not ~~in esse~~ in being; or

b. To persons who cannot be ascertained until the happening of an event named in the will; or

c. In a manner that the vesting of the devise may be contingent--

The Superior Court may, in a summary or other action by the executor, or a person interested in the real estate, direct the devise paid into court together with any additional sums as the court may deem reasonable to cover the expense of investing and taking charge of the devise. Upon payment into court, the real estate shall be wholly clear and discharged from the lien created by the will.

Credits: L.1981, c. 405, § 3B:23-39, eff. May 1, 1982. Amended by L.2013, c. 103, § 53, eff. Aug. 7, 2013.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:24-1. Definitions

As used in this chapter:

a. ~~“The tax” means all taxes finally determined to be due and payable by a fiduciary, under the laws of the United States now or hereafter enacted and under the laws of this State now or hereafter enacted, imposing an estate tax;~~

b. ~~“Gross tax estate” means all property of every description required to be included in computing the tax;~~

c. ~~“Fiduciary” means any person acting in a fiduciary capacity who is required to pay the tax;~~

d. ~~“Transferee” means any person to whom the gross tax estate or any part thereof is, or may be, transferred or to whom any benefit therein accrues other than that part of the gross tax estate which~~

~~passes under the will of decedent, or, if there be no will, comes into the possession of the fiduciary for administration as a part of the gross tax estate of the decedent. The trustee of any inter vivos trust and the executor of, trustee or other fiduciary under, the will of any other decedent holding property included as a part of the gross estate shall be deemed to be a transferee.~~

Credits: L.1981, c. 405, § 3B:24-1, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:26-1. Definition of absent person

~~As used in this chapter, an absent person means any person who has disappeared, or been confined or detained by a foreign power.~~

Credits: L.1981, c. 405, § 3B:26-1, eff. May 1, 1982.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:30-2. Definitions

~~As used in the act:~~

~~“Beneficiary form” means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.~~

~~“Devisee” means any person designated in a will to receive a disposition of real or personal property.~~

~~“Heirs” means those persons, including the surviving spouse or domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.~~

~~“Person” means an individual, a corporation, an organization or other legal entity.~~

~~“Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.~~

~~“Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.~~

~~“Register” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.~~

~~“Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.~~

~~“Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.~~

~~“Security account” means: a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.~~

~~“State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.~~

Credits: L.1995, c. 130, § 2, eff. Sept. 20, 1995. Amended by L.2005, c. 331, § 26, eff. Jan. 12, 2006.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:31-3. Definitions

~~Definitions:~~

~~As used in this act:~~

~~“Action,” with respect to an act of a trustee, includes a failure to act.~~

~~“Beneficiary,” as it relates to trust beneficiaries, includes a person:~~

- ~~(1) who has any present or future interest, vested or contingent;~~
- ~~(2) who, in a capacity other than that of trustee, holds a power of appointment over trust property;~~
- ~~(3) who is the owner of an interest by assignment or other transfer; and~~
- ~~(4) as it relates to a charitable trust, any person who is entitled to enforce the trust.~~

~~“Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection a. of N.J.S.3B:31-22.~~

~~“Environmental law” means a federal, State, or local law, rule, regulation, or ordinance relating to protection of the environment.~~

~~“Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.~~

~~“Jurisdiction,” with respect to a geographic area, includes a state or country.~~

~~“Power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.~~

~~“Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.~~

~~“Qualified beneficiary” means a beneficiary who, on the date the beneficiary's qualification is determined:~~

~~(1) is a distributee or permissible distributee of trust income or principal;~~

~~(2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date; or~~

~~(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.~~

~~“Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.~~

~~“Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.~~

~~“Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.~~

~~“State” means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.~~

~~“Terms of a trust” means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.~~

~~“Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.~~

~~“Trustee,” in addition to the definition contained in N.J.S.3B:1-2, includes a corporate entity in its capacity as trustee and a co-trustee where two or more are appointed.~~

Credits: L.2015, c. 276, § 1, eff. July 17, 2016.

COMMENT

The terms contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:31-11. Nonjudicial settlement agreements

Nonjudicial Settlement Agreements.

a. For purposes of this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. [...]

COMMENT

The term contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.

N.J.S. 3B:31-15. Guardian of the property; guardian of the person; agent; trustee; personal representative of decedent’s estate; parent

Representation by Fiduciaries and Parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- a. a guardian of the property may represent and bind the estate that the guardian of the property controls;
- b. a guardian of the person may represent and bind the ~~ward~~ individual from whom a guardian has been appointed or an individual under the protection of the court if no guardian of the property has been appointed;
- c. an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- d. a trustee may represent and bind the beneficiaries of the trust;
- e. a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- f. a parent may represent and bind the parent's minor or unborn child if a guardian for the child has not been appointed.

Credits: L.2015, c. 276, § 1, eff. July 17, 2016.

COMMENT

Pejorative terms replaced with person-first language.

N.J.S. 3B:31-16. Persons with substantially identical interest regarding particular question or dispute

Representation by Person Having Substantially Identical Interest.

Unless otherwise represented, an unborn individual, a minor, or incapacitated an individual impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Credits: L.2015, c. 276, § 1, eff. July 17, 2016.

COMMENT

Pejorative terms are replaced with person-first language.

N.J.S. 3B:31-17. Appointment of guardian ad litem or other representative by court

Appointment of Representative.

a. If the court determines that an interest is not represented under this article or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of an unborn individual, a minor, or incapacitated an individual impaired by reason of a mental or physical illness, an intellectual or physical disability, or an alcohol or drug use disorder, or other cause (except minority) to the extent that the individual lacks sufficient capacity to govern him or herself and manage his or her own affairs, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.

b. A guardian ad litem or other representative may act on behalf of the individual or person represented with respect to any matter arising under this act, whether or not a judicial proceeding concerning the trust is pending.

c. A guardian ad litem or other representative may consider the benefit accruing to the living members of the individual's family.

Credits: L.2015, c. 276, § 1, eff. July 17, 2016.

COMMENT

Pejorative terms are replaced with person-first language. The proposed changes to this section also include the addition of gender-neutral terms

N.J.S. 3B:31-37. Special needs trusts

~~Special Needs Trusts.~~

~~Even if a trust contains a spendthrift provision, the following shall apply:~~

~~a. Special Needs~~

(1) “Protected person” means a person who is:

- (a) ~~an aged, blind, or disabled individual as defined at 42 U.S.C. s.1382c;~~
- (b) ~~developmentally disabled as defined in section 2 of P.L.1979, c. 105 (C.30:1AA-2);~~

~~or~~

~~(c) under age 18, or over age 18 and a full time student, with serious disabilities that reasonably may prevent the individual from being self sufficient as an adult.~~

(2) “Special needs trust” means ~~an OBRA '93 trust, as defined in subsection a. of section 3 of P.L.2000, c. 96 (C.3B:11-37), or trust governed by a written instrument which:~~

- (a) ~~grants a trustee broad discretion to determine whether and when to distribute;~~
- (b) ~~limits distributions during the trust term to distributions to benefit one or more protected persons, although the trust shall have at least one protected person as beneficiary;~~
- (c) ~~provides that the trustee does not have any obligation to pay the protected person's obligations or fund his support;~~
- (d) ~~does not give the protected person any right to require the trustee to distribute at a specific time or for a particular purpose or to assign or encumber interests in the trust; and~~
- (e) ~~evidences the grantor's intent to supplement rather than replace or impair government assistance that the protected person receives or for which he otherwise may be eligible.~~

b. Notwithstanding any other provision of this act or other law:

- (1) ~~trustees of a special needs trust have broad discretion over distributions;~~
- (2) ~~no creditor of a protected person may reach or attach a protected person's interest in a special needs trust and no creditor may require the trustees to distribute to satisfy a protected person's creditor's claim; and~~
- (3) ~~a special needs trust shall terminate at such time as provided in its governing instrument.~~

~~e. A special needs trust shall not be required to repay government aid provided to a protected person unless the aid was provided on the basis that the special needs trust would repay the aid when the protected person dies, or the special needs trust terminates sooner and the special needs trust instrument expressly calls for such repayment. This provision does not apply to a first party, self settled OBRA '93 trust as defined in subsection a. of section 3 of P.L.2000, c. 96 (C.3B:11-37).~~

~~d. Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36, trustees of a special needs trust shall exercise their discretion in good faith to further trust purposes and courts may exercise their equity authority to remedy trustee abuses of discretion.~~

Credits: L.2015, c. 276, § 1, eff. July 17, 2016.

COMMENT

The term contained in this statute were moved to N.J.S. 3B:1-1 to establish one comprehensive definition section.