

State of New Jersey

NJLRC

New Jersey Law Revision Commission

FINAL REPORT

relating to

PROBATE CODE REVISIONS

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NEW JERSEY LAW REVISION COMMISSION

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INTRODUCTION

The Commission began this project in response to a problem regarding the Probate Code. As originally stated, the problem was that the father of a person who dies intestate and without issue takes a share of the estate even if the identity of the father is not known. However, research indicated that the real problem was broader and was caused by the failure of the statutes to provide clearly for what should be done when we do not know whether heirs of a particular class exist or when we cannot find particular persons who should inherit. A number of statutes bear on the subject. One set of statutes, 3B:23-19 and 20, provides for advertisement, and if there is no response the missing heirs have waived the inheritance and the other heirs divide the property. However, other sections, 3B:5-5 and 3B:23-21 provide that the property should be held for the missing heir, in perpetuity, by the State Unclaimed Property Administrator.

The issue was raised in a recent case, Matter of Estate of Peterson, 316 N.J. Super. 549 (Ch.Div. 1998), which concerns an intestate estate that was to be divided among 31 heirs. One heir, a first cousin, could not be located. There was no proof that the cousin was still alive, or that he had issue. The court examined the statutes on the subject and found that they conflict, but found 3B:23-21 controlling and ordered a missing heir's share paid to the Unclaimed Property Administrator.

While the result in the Peterson case may be correct as a matter of law, it is not good policy. In most cases, forwarding property to the Unclaimed Property Administrator is not the first step in getting the property to the rightful heir; it is a final disposition of the property to the State. It is unlikely that the unknown father of an illegitimate child will ever come forward to claim an inheritance. Payment to the Unclaimed Property Administrator in such a case just takes money from the child's mother and gives it to the State. The law of intestate succession is intended to mirror the presumed intention of the average decedent. For that reason, the law identifies certain close relatives to inherit the property of a person who dies without a will. It is not likely that a person who dies without a will would have wanted his property to pass to the State. That result should be avoided.

However, the approach of 3B:23-19 and 20, a legal advertisement and a short waiting period after which it is presumed that the missing heir does not exist, seems equally wrong. If the law provides that a relative is to inherit, we should really look for him before we decide that he cannot be found. As a result, the Commission recommends that reasonable efforts be used to look for an heir and that the missing heir's share be held for two years to give him a chance to be found or come forward. Only after that process, should we assume that the missing heir will probably not be found and his share be divided among heirs whom we can find.

To achieve these results, the Commission recommends amendments to the Probate Code.

~~3B:5-5. Intestate estate without known heirs~~

~~If there are no known heirs who may inherit an intestate estate that estate shall be treated as provided in this section.~~

~~Within a reasonable time after qualifying as a fiduciary of an intestate estate (or, in the case of fiduciaries so qualifying prior to the adoption of this act, within a reasonable time after said adoption, the fiduciary shall publish a notice inviting all heirs of the decedent as determined pursuant to N.J.S. 3B-5 and N.J.S. 3B-4 to claim their shares of the intestate estate, in a newspaper of general circulation in Mercer County and in the county where the intestate resided at death, if other than Mercer County, once a week for two successive weeks. The notice shall set forth, to the extent known by the fiduciary after inspection of the decedent's personal effects, the name and last address of the decedent; the decedent's date of death; the name, mailing address and telephone number of the fiduciary; the names and last known addresses of all family members who, if they survived the decedent, would qualify as the decedent's heirs, and any other information the fiduciary reasonably believes to be useful to establish the identity of the heirs of the decedent. If within 90 days after the last publication of the notice no person has established entitlement as an heir of the decedent by providing the fiduciary with substantial credible evidence of heirship, the fiduciary shall treat the intestate estate as abandoned property and comply with the provisions of the "Uniform Unclaimed Property Act (1981)" R.S. 46:30B-1 et seq.~~

~~If at least one person provides the fiduciary with substantial credible evidence of heirship before the intestate estate is paid or delivered to the administrator of unclaimed property, the fiduciary shall conduct a diligent investigation to locate all heirs of the decedent and, upon the conclusion of the investigation, shall distribute the intestate estate in shares determined pursuant to this chapter.~~

~~Nothing in this section affects the power and duty of the fiduciary to allow and settle the debts of the decedent or other claims against the intestate estate other than claims by heirs in accordance with the terms of applicable law.~~

COMMENT

The Commission proposes deleting this section and substituting a new section, 3B:5-5.1. See comment to that section.

3B:5-5.1. Intestate estate with unknown heirs

If it appears to a fiduciary administering an intestate estate that there may be persons whose names or addresses are unknown who may be entitled to participate in the distribution of the estate, the fiduciary shall make reasonable efforts to identify and locate the persons. The actions taken by a fiduciary shall be those that have some reasonable likelihood of finding the persons and are reasonable in cost compared with the amount of the distribution involved. The fiduciary may take any reasonable action including:

- a. inquiries to relatives and associates of the deceased;
- b. inquiries to public or private agencies that may have information about the persons;

- c. examination of directories for locations where the persons may reside; and
- d. advertisement in publications that may be read by the persons.

COMMENT

The Commission proposes substituting a new section, 3B:5-5.1 for 3B:5-5. The new section directs an administrator to make reasonable efforts to locate all heirs to an intestate estate. The particular efforts may depend on the amount of the inheritance involved. It is not reasonable to spend \$1000 in an attempt to find a person entitled to receive a \$500 distribution from an estate. The actions taken will also depend on what is known about the missing heir. If a name is known along with some kind of other information, examination of directories or inquiry to an agency might be productive. However, if the administrator is looking for possible issue of a woman who moved to southern California forty years ago, advertising may be the only recourse. Section 3B:5-5 is deleted since section 3B:23-19, amended as proposed, specifies what is to be done if, after reasonable efforts, some or all heirs cannot be located.

3B:23-19. Order for filing claims of unknown distributees

a. When it appears in an action for the distribution of the property of which a decedent dies intestate that no heirs to the property can be found, or in addition to persons known to have an interest in the estate, any other person or persons there may be others whose names or addresses are unknown who may be entitled to participate in the distribution, the court may order additional actions to identify and locate heirs. require all those persons whose names or addresses are unknown, to appear or file their claims with the personal representative within a reasonable time and after reasonable notice by publication or otherwise, as may be prescribed by the court.

b. If no heirs to the property can be found, the property shall be presumed abandoned and handled in accordance with the “Uniform Unclaimed Property Act (1981),” C. 46:3B-1 et seq.

c. If, in addition to persons known to have an interest in the estate, others whose names or addresses are unknown may be entitled to participate in the distribution, the court shall order the part of the estate to which they may be entitled held for a specific period. The court shall set that period as two years beginning at the date of death unless good cause is shown to set another period. If the others cannot be located within the period, the court shall order the property divided among the known heirs in proportions as if the unknown heirs did not exist.

COMMENT

With the proposed amendment, section 3B:23-19 specifies what is to be done if, after reasonable efforts, some or all heirs cannot be located. At present, sections 3B:5-5, 3B:23-20, and 3B:23-21 all deal with that subject. Section 3B:23-20 bars missing heirs from participating in the estate and thereby gives their share to heirs who can be found. The other two sections treat any share due to missing heirs as abandoned property to be held by the State until the heirs come forward. The Commission sought to resolve this conflict, but could not accept either course absolutely. As redrafted, the section provides that property be held for two years for missing heirs. After that time, it is to be divided among known heirs. Unlike present 3B:23-20, the section allows a substantial period of time for potential heirs to make their claims. In addition, real efforts to find heirs are required by the proposed amendments to 3B:5-5 and this section.

The Commission rejected the course taken by current 3B:5-5 and 3B:23-21 as unfair to known heirs. Property may be sent to the Unclaimed Property Fund because there is information indicating that a relative once existed. However, it may be impossible to know whether that relative has died without issue.

For example, in Matter of Estate of Peterson, 316 N.J. Super. 549 (Ch.Div. 1998), the court found that the decedent had had a first cousin who could not be found. Nothing in the court's opinion indicates whether there was any reason to believe that the cousin or his issue were alive. Nevertheless, the court forwarded a portion of the estate to the State to hold for relatives who might not exist at all. To hold property for heirs who do not exist or whose identity can never be determined is really to give the property to the State. This result should be avoided if possible. Intestate succession is intended to mirror the presumed intention of the average decedent. No decedent who has relatives who can be found is likely to have wanted his estate to pass to the State. As a result, the Commission proposal would send property from an intestate estate only where no relatives can be found.

~~3B:23-20. Failure to file claim debars unknown distributee~~

~~A person who fails to appear or file his claim within the time prescribed by the court pursuant to N.J.S. 3B:23-19, shall be forever thereafter debarred from all right, title or claim to the decedent's estate.~~

COMMENT

The Commission recommends deletion of this section. See the comment to 3B:23-19, above.

3B:23-21. Unclaimed estate assets

When a fiduciary states his final account and there remains in his hands a balance, devise, distributive share, dividend or sum of money to be paid to a person and the person, or his guardian, if he be an infant or mental incompetent, fails to claim the balance, devise, distributive share, dividend or sum of money within the period of time set forth in R.S. 46:3B-37.1, then the property shall be disposed of as provided in 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. 46:3B-1 et seq.

COMMENT

The amendment to this section adds a reference to 3B:23-19 which provides that if some heirs to an intestate estate can be found but others are missing, the estate is divided among the heirs who can be found.