

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998
Part 6
RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

700.2601 Definitions.

Sec. 2601.

As used in this part:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of 1 or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or another form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes, but is not limited to, an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.

(c) "Devise" includes, but is not limited to, an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes, but is not limited to, the following:

(i) A class member if the devise is in the form of a class gift.

(ii) The beneficiary of a trust, but not the trustee.

(iii) An individual or class member who was deceased at the time the testator executed his or her will or an individual or class member who was living at that time, but fails to survive the testator.

(iv) An appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under section 2702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2602 Scope; passage of property and after-acquired property.

Sec. 2602.

(1) In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

(2) A will may provide for the passage of all property that the testator owns at death and all property acquired by the estate after the testator's death.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2603 Substitute gift.

Sec. 2603.

(1) If a devisee fails to survive the testator and is a grandparent, a grandparent's descendant, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subdivision (d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. Those surviving descendants take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subdivision (d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or to a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased devisee. The property to which the devisee would have been entitled had all class members survived the testator passes to the surviving devisees and the deceased devisees' surviving descendants. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who fails to survive the testator and leaves 1 or more surviving descendants.

(c) For the purposes of section 2602(1), words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the appointee's descendants for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(2) If, under subsection (1), substitute gifts are created and not superseded with respect to more than 1 devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts take effect is resolved as follows:

(a) Except as provided in subdivision (b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) As used in this section:

(a) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(c) "Younger-generation devise" means a devise for which all of the following are true:

(i) Is to a descendant of a devisee of the primary devise.

(ii) Is an alternative devise with respect to the primary devise.

(iii) Is a devise for which a substitute gift is created.

(iv) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2604 Failure of testamentary provision.

Sec. 2604.

(1) Except as provided in section 2603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in section 2603, if the residue is devised to 2 or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2605 Increase in securities; accessions.

Sec. 2605.

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

(a) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

(b) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(c) Securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2606 Nonademption of specific devises; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or agent.

Sec. 2606.

(1) A specific devisee has a right to the specifically devised property in the testator's estate at death and all of the following:

(a) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property.

(b) Any amount of a condemnation award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on, or other recovery for, injury to the property.

(d) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(e) Real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property.

(f) Unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subdivisions (a) to (e).

(2) If an agent acting within the authority of a durable power of attorney for an incapacitated principal or a conservator sells or mortgages specifically devised property, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to an agent acting within the authority of a durable power of attorney for an incapacitated principal or to a conservator, 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.

(3) The right of a specific devisee under subsection (2) is reduced by a right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's disability ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, an incapacitated principal is a principal who is an incapacitated individual, an adjudication of the individual's incapacity before death is not necessary, and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2607 Nonexoneration.

Sec. 2607.

A specific devise and a transfer under an exercise of a power of appointment that is equivalent to a specific devise, including the exercise of a right to withdraw specific property, passes subject to any mortgage or other security interest existing on the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

700.2608 Ademption by satisfaction.

Sec. 2608.

(1) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part only if any of the following are true:

- (a) The will provides for a deduction of the gift.
 - (b) The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.
 - (c) The devisee acknowledges in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.
- (2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.
- (3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2603 and 2604, unless the testator's contemporaneous writing provides otherwise.

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