

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

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with respect to a devise for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.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

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