

ASSEMBLY, No. 2185

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblymen ASSELTA and GIBSON

1 ANACT concerning mental incompetents and amending N.J.S.3A:36-
2 2, N.J.S.3B:1-1, P.L.1970, c.289, P.L.1985, c.133, P.L.1976,
3 c.120, and P.L.1977, c.239, and amending and supplementing
4 N.J.S.3B:1-2.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. N.J.S.3A:36-2 is amended to read as follows:

10 3A:36-2. A widow or widower entitled to dower or curtesy in real
11 estate whereof her or his spouse died seized, an heir, devisee, or
12 guardian of a minor or **[mental incompetent]** incapacitated person
13 entitled to an estate in the real estate, or a purchaser thereof, may
14 institute an action in the Superior Court for the assignment to the
15 widow or widower of her or his dower or curtesy therein.
16 (cf: P.L.1991, c.91, s.149)

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18 2. N.J.S.3B:1-1 is amended to read as follows:

19 3B:1-1. As used in this title, unless otherwise defined:

20 "Administrator" includes general administrators of an intestate and
21 unless restricted by the subject or context, administrators with the will
22 annexed, substituted administrators, substituted administrators with
23 the will annexed, temporary administrators and administrators
24 pendente lite.

25 "Beneficiary," as it relates to trust beneficiaries, includes a person
26 who has any present or future interest, vested or contingent, and also
27 includes the owner of an interest by assignment or other transfer and
28 as it relates to a charitable trust, includes any person entitled to
29 enforce the trust.

30 "Child" means any individual, including a natural or adopted child,
31 entitled to take by intestate succession from the parent whose
32 relationship is involved and excludes any person who is only a
33 stepchild, a foster child, a grandchild or any more remote descendant.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

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

7 "Cofiduciary" means each of two or more fiduciaries jointly serving
8 in a fiduciary capacity.

9 "Devise," when used as a noun, means a testamentary disposition
10 of real or personal property and when used as a verb, means to
11 dispose of real or personal property by will.

12 "Devisee" means any person designated in a will to receive a
13 devise. In the case of a devise to an existing trust or trustee, or to a
14 trustee on trust described by will, trust or trustee is the devisee and the
15 beneficiaries are not devisees.

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

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

27 "Estate" means all of the property of a decedent, minor or [mental
28 incompetent] incapacitated person, trust or other person whose affairs
29 are subject to this title as the property is originally constituted and as
30 it exists from time to time during administration.

31 "Fiduciary" includes executors, general administrators of an
32 intestate, administrators with the will annexed, substituted
33 administrators, substituted administrators with the will annexed,
34 guardians, substituted guardians, trustees, substituted trustees and,
35 unless restricted by the subject or context, temporary administrators,
36 administrators pendente lite, administrators ad prosequendum,
37 administrators ad litem and other limited fiduciaries.

38 "Guardian" means a person who has qualified as a guardian of the
39 person or estate of a minor or [mental incompetent] incapacitated
40 person pursuant to testamentary or court appointment, but excludes
41 one who is merely a guardian ad litem.

42 "Heirs" means those persons, including the surviving spouse, who
43 are entitled under the statutes of intestate succession to the property
44 of a decedent.

45 (cf: N.J.S.3B:1-1)

1 3. N.J.S.3B:1-2 is amended to read as follows:

2 3B:1-2. "Issue" of a person includes all of his lineal descendants,
3 natural or adopted, of all generations, with the relationship of parent
4 and child at each generation being determined by the definition of child
5 and parent.

6 "Local administration" means administration by a personal
7 representative appointed in this State.

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

11 ["Mental incompetent"] "Incapacitated person" means a person who
12 is impaired by reason of mental illness or mental deficiency to the
13 extent that he lacks sufficient capacity to govern himself and manage
14 his affairs.

15 The term ["mental incompetent"] incapacitated person is also used
16 to designate a person who is impaired by reason of physical illness or
17 disability, chronic use of drugs, chronic alcoholism or other cause
18 (except minority) to the extent that he lacks sufficient capacity to
19 govern himself and manage his affairs.

20 The terms [mental incompetency] incapacity and ["mental
21 incompetent"] incapacitated person refer to the state or condition of
22 [a "mental incompetent"] an incapacitated person as hereinbefore
23 defined.

24 "Minor" means a person who is under 18 years of age.

25 "Nonresident decedent" means a decedent who was domiciled in
26 another jurisdiction at the time of his death.

27 "Parent" means any person entitled to take or would be entitled to
28 take if the child, natural or adopted, died without a will, by intestate
29 succession from the child whose relationship is in question and
30 excludes any person who is a stepparent, foster parent or grandparent.

31 "Personal representative" includes executor, administrator,
32 successor personal representative, special administrator, and persons
33 who perform substantially the same function under the law governing
34 their status. "General personal representative" excludes special
35 administrator.

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

38 "Security" includes any note, stock, treasury stock, bond,
39 mortgage, financing statement, debenture, evidence of indebtedness,
40 certificate of interest or participation in an oil, gas or mining title or
41 lease or in payments out of production under the title or lease,
42 collateral, trust certificate, transferable share, voting trust certificate
43 or, in general, any interest or instrument commonly known as a
44 security or as a security interest or any certificate of interest or
45 participation, any temporary or interim certificate, receipt or certificate

1 of deposit for, or any warrant or right to subscribe to or purchase, any
2 of the foregoing.

3 "Successor personal representative" means a personal
4 representative, other than a special administrator, who is appointed to
5 succeed a previously appointed personal representative.

6 "Successors" means those persons, other than creditors, who are
7 entitled to real and personal property of a decedent under his will or
8 the laws governing intestate succession.

9 "Testamentary trustee" means a trustee designated by will or
10 appointed to exercise a trust created by will.

11 "Trust" includes any express trust, private or charitable, with
12 additions thereto, wherever and however created. It also includes a
13 trust created by judgment under which the trust is to be administered
14 in the manner of an express trust. "Trust" excludes other
15 constructive trusts, and it excludes resulting trusts, guardianships,
16 personal representatives, trust accounts created under the
17 "Multiple-party Deposit Account Act," P.L.1979, c. 491 (C. 17:161-1
18 et seq.), gifts to minors under the "New Jersey Uniform Gifts to
19 Minors Act," P.L.1963, c. 177 (C. 46:38-13 et seq.), business trusts
20 providing for certificates to be issued to beneficiaries, common trusts,
21 security arrangements, liquidation trusts, and trusts for the primary
22 purpose of paying debts, dividends, interest, salaries, wages, profits,
23 pensions or employee benefits of any kind, and any arrangement under
24 which a person is nominee or escrowee for another.

25 "Ward" means a person for whom a guardian is appointed or a
26 person under the protection of the court.

27 "Will" means the last will and testament of a testator or testatrix
28 and includes any codicil.

29 (cf: N.J.S.3B:1-2)

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31 4. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read
32 as follows:

33 1. The commissioner or any parent, spouse, relative, or interested
34 party, on behalf of an alleged [mental incompetent] incapacitated
35 person who is receiving functional or other services and is over 18
36 years of age, may file a complaint upon notice to the alleged [mental
37 incompetent]incapacitated person with the Superior Court in the
38 county furnishing the services or in which such parent, spouse,
39 relative, or interested party resides, for a judgment designating a
40 guardian. The county of settlement shall be served with a copy of the
41 moving papers, however, the county may waive service of the moving
42 papers if it has no reason to oppose the action. If the county elects to
43 oppose the action it shall do so within 30 days after being served with
44 a copy of the moving papers.

45 (cf: P.L.1995, c.155, s.25)

1 5. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to
2 read as follows:

3 2. The moving papers shall include a verified complaint, an
4 affidavit from a practicing physician or a psychologist licensed
5 pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit
6 from the chief executive officer, medical director or other officer
7 having administrative control over the program from which the
8 individual is receiving functional or other services provided by the
9 Division of Mental Retardation. The affidavits shall set forth with
10 particularity the facts supporting the affiant's belief that the alleged
11 **[mental incompetent]** incapacitated person suffers from a significant
12 chronic functional impairment to such a degree that the person either
13 lacks the cognitive capacity to make decisions for himself or to
14 communicate, in any way, decisions to others. For the purposes of
15 this section, "significant chronic functional impairment" includes, but
16 is not limited to, a lack of comprehension of concepts related to
17 personal care, health care or medical treatment.
18 (cf: P.L.1990, c.50, s.1)

19

20 6. Section 5 of P.L.1970, c. 289 (C.30:4-165.11) is amended to
21 read as follows:

22 5. As used in P.L. 1970, c. 289 (C. 30:4-165.7 et seq.) the term
23 **["mental incompetent"]**incapacitated person has the same meaning as
24 defined in N.J.S. 3B:1-2.
25 (cf: P.L.1985, c. 133, s. 6)

26

27 7. Section 8 of P.L.1985, c.133 (C.30:4-165.13) is amended to
28 read as follows:

29 8. The commissioner shall review the case of every person who
30 received guardianship services without prior judicial review before the
31 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for
32 a guardian appears to continue, the commissioner shall apply to the
33 Superior Court upon notice to the alleged **[mental incompetent]**
34 incapacitated person for the appointment of a guardian of the person
35 in the same manner as provided in section 1 of P.L.1970, c.289
36 (C.30:4-165.7), unless another application is pending. If, as a result of
37 the commissioner's review, it appears that the person is no longer in
38 need of a guardian, the provision of guardianship services shall be
39 discontinued, and this disposition shall be documented in the records
40 of the Division of Developmental Disabilities. For those persons who
41 received guardianship services without prior judicial review before the
42 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.), the division
43 shall continue to provide these services until final disposition resulting
44 from the commissioner's review, either through a court determination
45 regarding the commissioner's application for appointment of a
46 guardian or an administrative termination of guardianship services; and

1 this interim provision of services shall be equivalent to exercising the
2 same responsibility and authority as a guardian of the person, in
3 accordance with the provisions of section 1 of P.L.1985, c.133
4 (C.30:4-165.4).

5 Upon the receipt of a complaint for the appointment of a guardian,
6 the court shall appoint an attorney where the alleged [mental
7 incompetent] incapacitated person is not represented by an attorney.
8 The attorney, after conducting an investigation into the matter, which
9 shall include an interview with the alleged [mental incompetent]
10 incapacitated person, an interview with the proposed guardian, and, if
11 there is cause to question the alleged [incompetent's] incapacitated
12 person's level of functioning and need for a guardian, the report of an
13 independent expert professionally qualified to render an opinion on
14 issues pertaining to [incompetency] incapacity, shall advise the court
15 by way of a report in affidavit form whether there is cause to dispute
16 either the contention of the commissioner that the appointment of a
17 guardian is necessary or the commissioner's recommendation as to
18 whom that guardian should be. If the alleged [mental incompetent]
19 incapacitated person expresses an opinion on the subject, the attorney
20 shall advise the court of that opinion. The facts contained in the
21 report of the attorney shall be sworn to or verified in a manner as
22 prescribed by the court.

23 If, after reviewing the report of the attorney, there appears to be no
24 difference between the position of the commissioner and the findings
25 of the attorney, the court may proceed in a summary fashion to
26 appoint a guardian. A plenary hearing shall be held if requested by the
27 alleged [mental incompetent] incapacitated person, his attorney, or
28 anyone acting on his behalf.

29 (cf: P.L.1995, c.324, s.1)

30

31 8. Section 2 of P.L.1976, c.120 (C.30:13-2) is amended to read as
32 follows:

33 2. For the purposes of this act:

34 a. "Administrator" means any individual who is charged with the
35 general administration or supervision of a nursing home whether or not
36 such individual has an ownership interest in such home and whether or
37 not his function and duties are shared with one or more other
38 individuals.

39 b. "Guardian" means a person, appointed by a court of competent
40 jurisdiction, who shall have the right to manage the financial affairs
41 and protect the rights of any nursing home resident who has been
42 declared [a mental incompetent] an incapacitated person. In no case
43 shall the guardian of a nursing home resident be affiliated with a
44 nursing home, its operations, its staff personnel or a nursing home
45 administrator in any manner whatsoever.

46 c. "Nursing home" means any institution, whether operated for

1 profit or not, which maintains and operates facilities for extended
2 medical and nursing treatment or care for two or more nonrelated
3 individuals who are suffering from acute or chronic illness or injury,
4 or are crippled, convalescent or infirm and are in need of such
5 treatment or care on a continuing basis. Infirm is construed to mean
6 that an individual is in need of assistance in bathing, dressing or some
7 type of supervision.

8 d. "Reasonable hour" means any time between the hours of 8 a.
9 m. and 8 p. m. daily.

10 e. "Resident" means any individual receiving extended medical or
11 nursing treatment or care at a nursing home.

12 (cf: P.L.1976, c. 120, s. 2)

13
14 9. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to read
15 as follows:

16 2. As used in this act, unless the context clearly indicates
17 otherwise:

18 a. "Abuse" means the willful infliction of physical pain, injury or
19 mental anguish; unreasonable confinement; or the willful deprivation
20 of services which are necessary to maintain a person's physical and
21 mental health. However, no person shall be deemed to be abused for
22 the sole reason he is being furnished nonmedical remedial treatment
23 by spiritual means through prayer alone, in accordance with a
24 recognized religious method of healing, in lieu of medical treatment;

25 b. An "act" of any facility or government agency shall be deemed
26 to include any failure or refusal to act by such facility or government
27 agency;

28 c. "Administrator" means any person who is charged with the
29 general administration or supervision of a facility, whether or not such
30 person has an ownership interest in such facility, and whether or not
31 such person's functions and duties are shared with one or more other
32 persons;

33 d. "Caretaker" means a person employed by a facility to provide
34 care or services to an elderly person, and includes, but is not limited
35 to, the administrator of a facility;

36 e. "Exploitation" means the act or process of using a person or his
37 resources for another person's profit or advantage without legal
38 entitlement to do so;

39 f. "Facility" means any facility or institution, whether public or
40 private, offering health or health related services for the
41 institutionalized elderly, and which is subject to regulation, visitation,
42 inspection, or supervision by any government agency. Facilities
43 include, but are not limited to, nursing homes, skilled nursing homes,
44 intermediate care facilities, extended care facilities, convalescent
45 homes, rehabilitation centers, residential health care facilities, special
46 hospitals, veterans' hospitals, chronic disease hospitals, psychiatric

1 hospitals, mental hospitals, mental retardation centers or facilities, day
2 care facilities for the elderly and medical day care centers;

3 g. "Government agency" means any department, division, office,
4 bureau, board, commission, authority, or any other agency or
5 instrumentality created by the State or to which the State is a party,
6 or by any county or municipality, which is responsible for the
7 regulation, visitation, inspection or supervision of facilities, or which
8 provides services to patients, residents or clients of facilities;

9 h. "Guardian" means any person with the legal right to manage
10 the financial affairs and protect the rights of any patient, resident or
11 client of a facility, who has been declared [a mental incompetent] an
12 incapacitated person by a court of competent jurisdiction;

13 i. "Institutionalized elderly," "elderly" or "elderly person" means
14 any person 60 years of age or older, who is a patient, resident or client
15 of any facility;

16 j. "Office" means the Office of the Ombudsman for the
17 Institutionalized Elderly established herein;

18 k. "Ombudsman" means the administrator and chief executive
19 officer of the Office of the Ombudsman for the Institutionalized
20 Elderly;

21 l. "Patient, resident or client" means any elderly person who is
22 receiving treatment or care in any facility in all its aspects, including,
23 but not limited to, admission, retention, confinement, commitment,
24 period of residence, transfer, discharge and any instances directly
25 related to such status.

26 (cf: P.L. 1983, c. 43, s. 1)

27
28 10. (New section) Whenever in any law, rule, regulation or
29 document, reference is made to the term "mental incompetent," that
30 term shall mean and refer to "incapacitated person."

31
32 11. This act shall take effect immediately.

33 34 35 STATEMENT

36
37 This bill changes the designation of "mental incompetent" to the
38 designation "incapacitated person," in the definition sections of Title
39 3B, P.L.1976, c.120, and P.L.1977, c.239, and in the texts of Title 3A
40 and P.L.1970, c.289. In addition, the bill includes a provision that
41 whenever in any law, rule, regulation or document, reference is made
42 to the term "mental incompetent," that term shall mean and refer to
43 "incapacitated person."

44 The term "mental incompetent" has a demeaning connotation,
45 whereas the designation "incapacitated person" is a more respectful

1 term which would be more descriptive of persons, usually elderly, who
2 suffer from senile dementia, Alzheimer's disease and other mental
3 illnesses.

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8 Changes designation of "mental incompetent" to "incapacitated
9 person."