

## 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:*

8

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)

17

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)

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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)

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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)

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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)

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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."

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32 11. This act shall take effect immediately.

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#### STATEMENT

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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."