

**PROBATE, ESTATES
AND FIDUCIARIES CODE**
Proposed Amendments
and Comments—1983

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

Harrisburg, Pennsylvania

October 1983

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Joint State Government Commission, 1983-84

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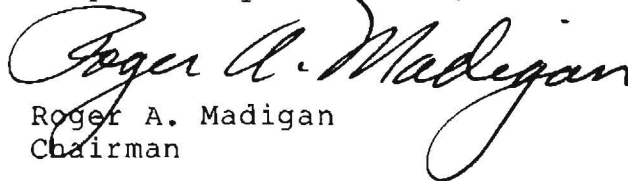
October 10, 1983

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

This report summarizes amendments to the Probate, Estates and Fiduciaries Code recommended by the Task Force and Advisory Committee on Decedents' Estates Laws. Explanatory materials and official comments are included to facilitate review of the legislation introduced by members of the task force.

The Joint State Government Commission is greatly appreciative of the dedicated work of the task force and advisory committee, currently under the capable leadership of Senator Richard A. Snyder and George J. Hauptfuhrer Jr., Esq. Since their organization in 1945, the task force and advisory committee have assisted the General Assembly in maintaining a modern body of law that efficiently serves the needs of the Commonwealth's citizens.

Respectfully submitted,


Roger A. Madigan
Chairman



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I. Introduction

In this sixth biennial report since the codification of the Probate, Estates and Fiduciaries Code as Title 20 of the Pennsylvania Consolidated Statutes, the Task Force and Advisory Committee on Decedents' Estates Laws recommend two bills which would (1) make substantive and technical amendments to Title 20 and (2) make a corresponding amendment to the Banking Code.

Since becoming law on June 30, 1972, Title 20 has been amended by 26 separate acts, 13 of which were proposed by the task force and advisory committee. The most recent of these is Act No. 26 of 1982. A table showing the amendatory acts appears on page 2. The 1981 biennial report provides the official comments to Act No. 26 and to Act No. 255 of 1982, which revised and codified Pennsylvania's inheritance tax laws as Chapter 17 of Title 72 of the Pennsylvania Consolidated Statutes. Chapter 17 is entitled the "Inheritance and Estate Tax Act."

The proposed omnibus bill affects 22 sections of the Probate, Estates and Fiduciaries Code. Five of the sections are added, two are repealed and the remainder are amended. The proposals essentially relate to the following subjects:

- Fiduciaries: affecting the transfer of property to a fiduciary (§ 304; §§ 5163.1 and 5533.1 repealed), investments made by fiduciaries (§§ 7314, 7315 and 7315.1) and compensation paid to a fiduciary from the principal of a trust (§ 7185).
- Disclaimers: providing several amendments to Chapter 62 affecting procedure and the rights of a person disclaiming an interest in property (§§ 6201, 6202, 6204, 6205 and 6206).

ACTS AMENDING THE
 PROBATE, ESTATES AND FIDUCIARIES CODE
 (1972, P.L. 508, No. 164, effective July 1, 1972)
 THROUGH 1981-82 SESSION OF THE GENERAL ASSEMBLY

Citation	Subject
1972, P.L. 1461, No. 331	Change of age of majority
1973, P.L. 62, No. 25	Bank holding companies
1973, P.L. 322, No. 104	Change of age of majority*
1974, P.L. 282, No. 84	Increase monetary limit, § 3101
1974, P.L. 383, No. 130	Increase monetary limit, § 3121*
1974, P.L. 720, No. 242	Deposit of securities; book-entry securities
1974, P.L. 816, No. 271	Editorial change in title designation
1974, P.L. 867, No. 293	Omnibus*
1974, P.L. 896, No. 294	Temporary fiduciaries*
1974, P.L. 899, No. 295	Powers of attorney*
1975, P.L. 598, No. 168	Increase monetary limit, § 3101
1976, P.L. 434, No. 105	Self-proved wills**
1976, P.L. 547, No. 134	Multiple-party bank accounts*
1976, P.L. 551, No. 135	Omnibus*
1976, P.L. 562, No. 136	Disclaimers*
1976, P.L. 836, No. 144	Estate plan for incompetent*
1978, P.L. 42, No. 23	Spouse's election*
1978, P.L. 77, No. 37	Omnibus*
1978, P.L. 202, No. 53	Judiciary Act Repealer Act
1978, P.L. 909, No. 173	Equal Rights Amendment
1978, P.L. 1269, No. 303	Illegitimates
1979, P.L. 255, No. 86	Conforming amendment
1980, P.L. 565, No. 118	Omnibus*
1980, P.L. 693, No. 142	Repealed § 773
1982, P.L. 45, No. 26	Omnibus*
1982, P.L. 682, No. 194	Anatomical gifts

*Drafted by the advisory committee and approved and introduced by the Task Force on Decedents' Estates Laws.

**Drafted by the advisory committee without official action of the advisory committee or task force.

- Distributions: protecting fiduciaries where there has been a change in the law during distribution (§§ 3539 and 7183) and providing for distribution to the Commonwealth as intestate heir where there may be an absentee or additional distributee (§ 3540).
- Inventories and accounts: amending several sections relating to the procedure for filing inventories and accounts (§§ 745, 3301, 3501.2 and 3502).
- Multiple-party bank accounts: requiring banks to provide a single account form with three alternative types of joint accounts (§ 6305.1).
- Wills: authorizing acknowledgments of self-proved wills to be taken before an attorney and then certified by him to a notary (§ 3132.1) and adding a rule of will interpretation relating to nonademption and attorneys-in-fact (§ 2514).

The introduction of these bills is the latest stage in a continuing effort by the task force and advisory committee to ensure that Pennsylvania probate law retains its viability and effectiveness. Any comments or suggestions for revision of the Probate, Estates and Fiduciaries Code or the Inheritance and Estate Tax Act should be forwarded to the Commission offices for consideration by the task force and advisory committee.



II. Proposed Amendments and Comments

This part provides explanatory material for the proposed legislation amending the Probate, Estates and Fiduciaries Code and the Banking Code. The official comments of the advisory committee are included and may be utilized in determining the intent of the General Assembly: 1 Pa.C.S. § 1939; Martin Estate, 365 Pa. 280, 74 A.2d 120 (1950).

PROBATE, ESTATES AND FIDUCIARIES CODE

Section 304. APPLICATION OF PAYMENTS MADE TO FIDUCIARIES

This section is added to relieve from responsibility any person who pays or transfers money or property to a fiduciary which the fiduciary is authorized to receive.

Comment: This section is derived from Section 2 of the Uniform Fiduciaries Act, adopted in Pennsylvania May 31, 1923 (P.L. 468, No. 256). While added to the probate code because of its broad application, the section is not repealed from the 1923 act.

Section 745. ADVERTISEMENT OF ACCOUNTS

This section is amended to provide four weeks for advertisement of accounts in all cases. Presently, accounts filed with the register of wills are advertised for four weeks and those filed with the clerk of the orphans' court division for two weeks. A related amendment has been made to section 3502 (see page 7).

Comment: The time for advertisement of accounts filed with the clerk of the orphans' court division is four weeks in all cases. With the corresponding amendment to Section 3502, the accounts of all fiduciaries subject to the jurisdiction of the orphans' court division are filed with the clerk of that division.

Section 2514. RULES OF INTERPRETATION

This section provides rules for interpreting wills. Paragraph (16.1) is amended by inserting "adjudicated" before incompetent.

Comment: The amendment to paragraph (16.1) is clarifying in nature; no substantive change in the meaning of the provision is intended.

Paragraph (16.2) is added.

Comment: Paragraph (16.2) provides that if an attorney-in-fact sells or exchanges property of the principal which is specifically devised or bequeathed in the will, the specific devisee or legatee has the right to the net sale price or the property received in exchange unless the testator is shown to have been competent either at the time of the sale or exchange or for a period of at least one year subsequent to the sale or exchange.

Section 3132.1. SELF-PROVED WILLS

Subsection (a) is amended to make clear that wills signed by mark or by a person other than the testator do not qualify as self-proved wills. The amendments to subsection (b) and the addition of subsection (c) are intended to parallel changes in the Uniform Acknowledgment Act, July 24, 1941 (P.L. 490, No. 188), as amended July 10, 1981 (P.L. 226, No. 71), which permit other types of acknowledgments taken before an attorney to be certified by him to a notary.

Section 3301. DUTY OF PERSONAL REPRESENTATIVE

This section is amended to eliminate the requirement that an inventory of all real and personal property of the decedent be filed by the personal representative within three

months of his appointment. As amended, the section requires the personal representative to file his inventory when he files his account or the due date for the filing of the inheritance tax return for the estate, whichever is earlier, or whenever he is ordered to do so.

Section 3501.2. ANNEXATION OF ACCOUNT OF TERMINATED TRUST,
GUARDIANSHIP OR AGENCY

This section is added to authorize the piggybacking or annexation of a copy of certain other accounts to an account of the administration of the estate.

Comment: This section parallels Section 7188 and covers the case of a trust that terminated in favor of the decedent's estate, a guardianship for a deceased incompetent or ward, and a power of attorney under which the agent held funds at the death of the principal. Although agents do not often file accounts, Section 3501.2 provides a possibly useful procedure if an agent desires to do so. Section 3501.2 relieves the fiduciary of the piggybacked account from liability to persons who are entitled to notice of the filing of the account of the personal representative and who receive notice of the annexation, to the same extent as if the piggybacked account had been filed and confirmed separately.

Section 3502. WHERE FILED

This section is amended to require that the accounts of all fiduciaries subject to the jurisdiction of the orphans' court division be filed with the clerk of that division.

Section 3539. CHANGE IN LAW AFTER PATTERN OF DISTRIBUTION
ESTABLISHED

A corresponding amendment to section 7183 makes this rule applicable to trusts as well (see page 14).

Comment: Changes in the position of adopted and illegitimate children have created problems about the extent to which a fiduciary should be expected to disrupt the ongoing administration of a fund to protect himself against possible liability to unknown

claimants. Estate of Sewell, 487 Pa. 379, 409 A.2d 401 (1979), suggests the further difficulty a fiduciary may face if his file contains information about the possible existence of such persons that was irrelevant when received but would have been perceived as important after the law changed.

Section 3540. ABSENTEE AND ADDITIONAL DISTRIBUTEES

This section is amended to resolve the question of whether the Commonwealth, as intestate heir, is entitled to distribution when there is a possibility of additional existing distributees. If the court is satisfied that all reasonable steps have been taken to determine whether any additional distributees exist, the court may award distribution of the estate to the person who would be entitled to the estate if no additional distributee were in existence. The person so entitled could be the Commonwealth as intestate heir.

Comment: The amendment to subsection (b) is clarifying in nature and is not intended to change existing law. The Commonwealth is a possible distributee under subsection (b) and in such a case the procedure under subsection (a) applies without the necessity of the Commonwealth posting bond.

Section 5163.1. DISTRIBUTION TO PERSONAL REPRESENTATIVE

Section 5533.1. ACCOUNT OF PERSONAL REPRESENTATIVE OF DECEASED INCOMPETENT

These sections, which provide protection to a guardian who distributed property to the personal representative, are repealed as no longer necessary in light of the other proposed amendments.

Comment: Sections 5163.1 and 5533.1 are repealed. Their substance is covered in Sections 304 and 3533 insofar as they relate to responsibility for administration of the distributed property after it is turned over to the receiving fiduciary. It is arguable that the repealed sections would also provide protection for prior acts of administration even though no disclosure of the facts was made. This result seems undesirable. A fiduciary who wishes such protection may file his account or piggyback it onto the account of the receiving fiduciary under Sections 7188 or 3501.2.

Chapter 62. DISCLAIMERS

The chapter sets forth the procedure for a person to disclaim an interest in property which would have devolved to him by any means, including as a beneficiary of a will. Sections 6201, 6202, 6204, 6205 and 6206 are amended.

Section 6202. DISCLAIMERS BY FIDUCIARIES OR ATTORNEYS-IN-FACT

Comment: This section is amended to permit a testator to authorize his executor to disclaim without court approval.

Section 6204. FILING, DELIVERY AND RECORDING

Comment: Subsection (b.1) is added to provide a procedure by which a person who is a beneficiary of a third party contract, for example, an insurance policy, may disclaim.

Section 6205. EFFECT OF DISCLAIMER

This section clarifies that if, as a result of a disclaimer, property passes into a fund in which the person disclaiming has an interest, he does not lose his interest in the augmented fund.

Comment: This change is intended to obviate the need to insert into marital trust/residuary trust wills a clause such as: "A disclaimed portion of the marital trust shall pass to the residuary trust, and be held thereunder as if my wife were living."

Section 6305.1. ACCOUNT FORM

This section is added to Chapter 63 (Multiple-party Accounts) to require banks to provide a single account form with three alternative types of joint accounts. The persons opening the account are to select one of the types of accounts. This proposal is in response to the recurring bank signature card problem.

The act of July 9, 1976 (P.L. 547, No. 134) added Chapter 63 to the probate code. This was a necessary step in clarifying an unduly complicated situation which arises upon the death of a co-owner of a joint account in a financial institution (see Fiduc. Rev., September 1976).

An important concept embodied in Chapter 63 is the section 6304(a) presumption that the sum remaining at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent. The estate of the decedent who created the account has the burden of proving by "clear, precise and convincing evidence" that the decedent did not intend to make an inter vivos gift to the other parties when the account was created. Estate of Houck, 94 York Legal Record 87, 90 (1980).

This presumption does not eliminate the need for uniform wording on signature cards. It is settled law that "the creation of a joint interest in a bank account with rights of survivorship, evidenced by signatures of both parties, is prima facie evidence of the intent of the party funding the account to make an inter vivos gift to the other joint tenant." Estate of Gladowski, 483 Pa. 258, 262, 396 A.2d 631, 633 (1979). According to a Carbon County court, "the only significant change wrought by Chapter 63 in existing Pennsylvania law concerning the effect of signature cards is that joint accounts and accompanying signature cards are not required to carry words of survivorship in order to create a right of survivorship. In other words, where there is a duly established joint account, even though no survivorship language appears in the signature card or certificate, the law now presumes a right of survivorship." Estate of Miller, 7 Carbon Co. L.J. 407, 410-411 (1981).

The next step is to require financial institutions to follow uniform statutory wording for contracts creating multi-party accounts (see Fiduc. Rev., October 1968 and January 1973). Although a co-owner of a joint account often intends to create a right of survivorship, he may include the other party merely for convenience or the other party may be an equal co-owner. Since names are entered on signature cards for various reasons, many of which are apparent only to the account owner, different contracts should be available to carry out the wishes of the depositor, as well as protect the bank in its relationship with its patrons.

Without clear options available to the account owner, results unintended by the parties may occur. In Miller, supra, two parties held a checking account and two certificates of deposit in joint names. After the one party's death, the other party claimed ownership of the assets of the three accounts. Signature cards for two of the accounts were signed by both parties, but the card for the other account was signed by only one party. The court held that the presumption of a right of survivorship could be established only for the accounts with both signatures. The court's distinction might have been what the parties intended; however, the availability of alternative signature cards with uniform language would have made the intent of the parties much clearer.

In Estate of Rishel, 60 Wash. Co. Reps. 174, 16 D. & C.3d 267 (1979), aff'd per curiam 491 Pa. 433, 421 A.2d 215 (1980), the decedent consolidated several accounts and placed the assets in two accounts held jointly with his granddaughter. The administrator of the decedent's estate, who had held one of the predecessor accounts jointly with the decedent, petitioned the court to direct the granddaughter to return the assets from the two accounts to the estate. A major source of confusion in this case was created by the transference of funds from a convenience account the decedent held with a neighbor to a joint account with his granddaughter. Since there were no alternative signature cards setting forth the provisions of the different types of accounts when the account was established, the court had difficulty in determining whether the decedent intended to perpetuate the convenience account by adding a different party or to make an inter vivos gift to the party by establishing a joint account with a right of survivorship. This situation could have been avoided if different signature cards had been available for each of these options.

Houck, supra, also presented the question of whether the decedent intended a convenience account or a joint account with a right of survivorship. The court recited the presumption in section 6304(a) and found there was not enough evidence to establish the accounts as convenience accounts. Once again the availability of specific signature cards for different types of multi-party accounts would have aided the court in determining the intent of the decedent.

Imrisik Estate, 30 Ches. Co. Reps. 470, 2 Fiduc. Rep.2d 406 (1982) provides an interesting and recent example of the problem. Appellant acting on a suggestion by a bank employee opened a joint account with her retarded sister. The funds deposited were from the appellant, her husband and son.

Appellant had been advised that if she put her sister's name and social security number on the account with her own she would shift the income tax on the interest generated by the deposited funds to her sister who had no income. When her sister died, appellant was notified by the Department of Revenue that she owed 15 percent inheritance tax on one-half of the funds in the account. Appellant attempted to show that she never intended to open a joint account and that her sister had not contributed any of the funds and had no control over the account. The court found that "[n]one of the above facts, however, vitiates the legal effect of the unambiguous language of the signature card creating a joint tenancy" Imrisik, at 473, 2 Fiduc. Rep.2d at 408, and appellant was required to pay the tax.

Justice Roberts in his concurring opinion in Estate of Gillespie, 462 Pa. 455, 462, 341 A.2d 471, 474-475 (1975) stated his concern and suggested that the ultimate responsibility lies with the banks.

I am disturbed at the wide divergence of form and substance in these cases. The orphans' court found in both cases that the survivors did not intend to transfer any ownership interests to the decedents, but sought merely to empower the decedents to deal with the accounts for the benefit and convenience of the survivors. Since transfers made without donative intent are not completed gifts effective to transfer any interests in property, the clear implication of the orphans' court's findings is that the decedents owned no interests in the accounts as against the survivors. While this conclusion does not affect the incidence of taxation, it does raise a question why the transactions assumed forms that were so divergent from the parties' intentions.

I suspect that responsibility lies with the bank. Here the parties knew precisely what they wanted--to empower the decedents to transact business for the convenience of the survivors. Because people ordinarily do not consult attorneys when they open savings accounts, the only source of advice on how to structure their transactions is the bank or savings institution. The reason why the form the transactions took did not coincide with the definite intentions of the parties would seem to be that advice. (Justice Robert's opinion was discussed in Fiduc. Rev., September, 1975).

Justice Roberts reiterated his stance in Estate of Brant, 463 Pa. 230, 232, 344 A.2d 806, 807 (1975); writing for the court he stated:

This is another inheritance tax appeal, consuming judicial time and the litigants' resources, which might have been avoided had there been adequate explanation of the alternatives to and consequences of a joint tenancy savings account to a depositor who sought merely a convenience account.

More recently Judge Appel, a member of the advisory committee, wrote in King Estate, 68 Lanc. L.R. 500, 507, 3 Fiduc. Rep.2d 229, 234 (1983):

We are impressed by the discussion of the Multiple Party Accounts in the September 1976 Fiduciary Review. Suggestions which appear to have great merit are therein made. It is there proposed that the legislature establish uniformity of cards for each type of ownership and that they be made clear by the use of colors. It would be anticipated that adoption of the suggestions would obviate "the tragic intra-family squabbles frequently occasioned by the existence of joint accounts at death of a co-owner."

It must be the aim of law to provide certainty. The distinction between convenience accounts and "gifted survivorship accounts" has continued to provide troublesome situations. It would be desirable to have legislative action to produce greater certainty than has been obtained by the Act of 1976.

Comment: This section is in response to the recurring bank signature card problem. In opening joint accounts, names are entered on signature cards for various reasons, many of which are apparent only to the account owners. Different contracts should be available to carry out the wishes of the depositors, as well as protect the bank in its relationship with its customers.

Section 7183. NOTICE, AUDITS, REVIEWS, AND DISTRIBUTION

This section is amended by inserting a reference to section 3539, entitled "Change in law after pattern of distribution established" (see page 7). Section 7183 provides that probate code provisions concerning the administration of trust estates shall be the same as for decedents' estates.

Section 7314. COMMON TRUST FUND AND MORTGAGE INVESTMENT FUND

This section is amended to make clear that affiliated banks under the common ownership of a single holding company may invest funds which they hold as a fiduciary in each other's common trust fund. This amendment results from a change in Pennsylvania banking law allowing statewide banking. The stock of several separate banks is acquired and held by a single holding company. This amendment authorizes the use by one bank of the common trust fund of another bank under a single holding company. With the amendment, it is clear that such action would not be an unauthorized commingling of fiduciary assets. A companion amendment is recommended for section 404 of the Banking Code (see page 16).

Section 7315. RETENTION OF INVESTMENTS

Comment: The amendment to this section is intended to clarify paragraph (3) to reflect more accurately the intention of authorizing a fiduciary to retain shares or other securities of a holding company received upon conversion, or in exchange for, shares of stock or other securities of a bank which the fiduciary was directed or authorized to retain, whether there be a single conversion or exchange or successive conversions or exchanges, including shares of stock or securities received in the merger or other consolidation of one holding company with another, provided the resulting shares of stock or other securities received by the fiduciary are those of a holding company subject to the Federal Bank Holding Company Act of 1956, as amended.

Section 7315.1. RETENTION OF CASH; TEMPORARY INVESTMENTS

This section is added to provide when a fiduciary need not invest funds on hand and how he may make temporary investments of funds he is not required to invest.

TRANSITIONAL PROVISIONS

The legislation recommended by the task force and advisory committee contains several important provisions that are not substantive in nature.

The Disposition of Abandoned and Unclaimed Property Act, now Article XIII.1 of The Fiscal Code, is repealed insofar as it is inconsistent with the amendment to section 3540 (Absentee and additional distributees) which provides for distribution to the Commonwealth as intestate heir.

Section 7185 (Compensation) was amended by the act of February 18, 1982 (P.L. 45, No. 26) to allow a fiduciary's compensation to be paid from the principal of the trust even if it is a perpetual charitable trust. The legislation makes that amendment retroactive to clarify that it applies to trusts created before the effective date of the 1982 act.

With the following exceptions, the legislation takes effect immediately upon enactment and applies to the estates of all decedents dying on or after the date of enactment. The amendments to sections 3539 and 7183, relating to a change in law after a pattern of distribution is established, also take effect immediately but apply to distributions begun and changes in law occurring before, on or after the date of enactment. Along the same lines, the amendment to section 3540 takes effect immediately and applies to trusts and estates of decedents whether the trust was created or decedent died before, on or after the date of enactment. The amendment also applies to funds presently held by the clerks of the orphans' court divisions. On the other hand, the amendment adding section 6305.1 takes effect 180 days after the legislation is enacted and applies to any account created after the effective date and to any existing account when a contract of deposit concerning it is executed after the effective date.

BANKING CODE

Section 404. COLLECTIVE INVESTMENT FUNDS

This section is amended to make clear that affiliated banks under the common ownership of a single holding company may invest funds which they hold as a fiduciary in each other's common trust fund. This proposal is a companion amendment to the proposed change to 20 Pa.C.S. § 7314 (see page 14).