JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

Probate, Estates and Fiduciaries Law
Proposed Statutory Amendments to 20 Pa.C.S.

Report of the Advisory Committee on Decedents' Estates Laws

August 2026

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REPORT

Probate, Estates and Fiduciaries Law
Proposed Statutory Amendments to 20 Pa.C.S.

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The report is also available at http://jsg.legis.state.pa.us

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.[1]

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.[2] Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

[1] Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.
[2] Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.[3]

Since its inception, the Commission has published almost 560 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

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[3] 1 Pa.C.S. § 1939.

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August 2026

To the Members of the General Assembly of Pennsylvania:

We are pleased to release ***Probate, Estates and Fiduciaries Law: Proposed Statutory Amendments to 20 Pa.C.S. (Report of the Advisory Committee on Decedents' Estates Laws)***, the latest in the long series of reports of the Decedents' Estates Laws Advisory Committee, which dates to 1945. This report presents five proposals on the disposition remains, in matters of small estates, to harmonize parts of Title 20 with each other, to grant standing in challenges to agents' actions, and to correct a drafting error in existing statute.

The full report is available at http://jsg.legis.state.pa.us.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

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SUMMARY OF PROPOSED AMENDMENTS TO 20 Pa.C.S.

This report contains proposed statutory amendments covering aspects of probate, estates, and fiduciaries law.

The first proposal contains legislation originally proposed by the Advisory Committee in 2017[4] that is being reproposed after reconsideration and redrafting.[5] This would amend 20 Pa.C.S. § 305 (relating to right to dispose of a decedent's remains) by allowing an individual to write how one's own remains should be disposed or by designating another person to decide that. It would add more specific provisions for default decision making and resolution of disputes. It also would add provisions for third party immunity and contains a model form for the individual's written expression of disposal and designation. The proposal reflects extensive collaboration by members of the Advisory Committee who revised the prior proposal with reference to other states' laws on disposition of remains and input from funeral directors and coroners in Pennsylvania.

The second proposal was developed by the Advisory Committee to revise 20 Pa.C.S. ch. 31 subch. A (relating to dispositions of independent letters)[6] in an effort to make the law more practical in dealing with small estates. The proposed amendment would divide § 3101 (relating to payments to family and funeral directors) by making subsection (e) (relating to unclaimed property) a separate section. Since subsections (a) through (d) are proposed to be amended based upon several sections in the Uniform Probate Code, subsection (e) would no longer fit as smoothly in the same section. Instead of statutorily specifying different amounts for different sources as subsections (a) through (d) do now, the proposed revision would rely on the use of an affidavit to obtain a cumulative amount from the several sources and require the affidavit to be filed with the register of wills. As with the *status quo*, this is intended to facilitate the transfer of small estates at low cost. The proposed amendment for § 3102 (relating to settlement of small estates on petition) is a combination of current law and some provisions from the Uniform Probate Code. Under § 3102, this would essentially be summary administration of a small estate.

The third proposal would harmonize the accrual of income in 20 Pa.C.S. § 3543(a) and (c) (relating to income on distributive shares) with 20 Pa.C.S. § 7799(1) (relating to income on distributive shares).[7] Since a cash bequest under a will is the functional equivalent of an outright cash gift under a trust, the two situations should be treated the same and provide the longer one-

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[4] Advisory Comm. on Decedents' Estates Laws, Pa. J. State Gov't Comm'n, Probate, Estates, & Fiduciaries: Proposed Amends. to 15 & 20 Pa.C.S., pp. 5-14 (2017), https://jsg.legis.state.pa.us/resources/documents/ftp/publications/2017-01-03%20WEBSITE%20COPY%20DEL_PEF_JAN%204%202017.pdf.

[5] *Infra* pp. 3-13.

[6] *Infra* pp. 15-24.

[7] *Infra* p. 25-26. Both the 2d and 3d proposals date from the advisory committee's conference in 2023; the remainder of the proposals are from the advisory committee's conference in 2025.

year period. Harmonizing the two recognizes the increasing use of revocable trusts in Pennsylvania as substitutes for or supplements to wills.

The fourth proposal would add a statutory version of the Uniform Power of Attorney Act, § 116 (relating to judicial relief),[8] which grants standing to challenge an agent's actions,[9] to 20 Pa.C.S. ch. 56 (relating to powers of attorney). It was not adopted by Pennsylvania in 2010 due to concerns about preserving the principal's financial privacy. Act no. 95 of 2014 added § 5601.3 (relating to agent's duties), which is derived from Uniform Power of Attorney Act, § 114 (relating to agent's duties), and has narrow categories of persons who may request an agent to account for the agent's actions or inactions. Uniform Power of Attorney Act, § 116, "operates as a check-and-balance on the narrow scope of § 114(h), and provides what, in many circumstances, may be the only means to detect and stop agent abuse of an incapacitated principal."[10] Accordingly, if this proposal is enacted, it would supplement § 5601.3(d) (as § 116 supplements § 114(h)). There are now 41 U.S. jurisdictions that have a statutory version of § 116, leaving the Commonwealth in a small minority of jurisdictions that do not address this issue by statute.

The fifth proposal is to correct a drafting error in 20 Pa.C.S. § 6107.1(b)(3) (relating to applicability of rule against perpetuities).[11] When the rule against perpetuities was abolished in Pennsylvania, exercising a power of appointment had to relate back to the creation of the power and there was and remains risk of what is known as the "Delaware tax trap," with adverse federal tax results. There was a statutory amendment to allow the trap to be sprung intentionally, but the wording refers to the donee rather than the donor of the original power. The proposal would correct this.

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[8] Unif. Law Comm'n, Power of Att'y Act, https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=b1975254-8370-4a7c-947f-e5af0d6cb07c&LibraryFolderKey=&DefaultView=&5a583082-7c67-452b-9777-e4bdf7e1c729=eyJsaWJyYXJ5ZW50cnkiOiJmOGU3ZTBmNi00YzA3LTQ3ZTctYjVmYy1iOTQ4YjJhY2YyNjIifQ%3D%3D (2006).

[9] *Infra* pp. 27-28.

[10] Unif. Law Comm'n, *supra* note 8.

[11] *Infra* pp. 29-31.

This proposal re-writes 20 Pa.C.S. § 305, within the title's existing structure, to provide manner and means for an individual to direct disposition of remains after death, subject to other, applicable provisions relating to anatomical gifts. During lifetime, a competent individual can designate another person to arrange disposition consistent with expressed or known intentions. A priority list of default designees is specified, which parallels those in § 5461(d) (relating to decisions by health care representative). A designee can be disqualified for certain abusive conduct, similar to other recently amended statutes. The proposal authorizes mediation for dispute resolution and provides for Orphans' Court involvement with those parties having standing, including funeral directors. Third-party immunity is granted to funeral directors in situations of reasonable reliance. Similar to Ch. 54 (relating to health care directives), the proposal includes a non-mandatory, suggested form of expression for disposition of one's remains.

The drafting subcommittee began with the Advisory Committee's prior proposal published in 2017, which was not enacted. The subcommittee reviewed statutes of other states (since there is no uniform law regarding disposition of remains). In updating the proposal, consultations occurred with representatives of the Pennsylvania Funeral Directors Association and the Pennsylvania State Coroners' Association for their input. A summary of the proposed amendment follows below.

- Subsection (a): General rule.
  - Provides funeral directors with more authority to make final disposition of remains, based on the procedures in this section.

- Subsection (b.1): When written expression exists.
  - If the decedent makes a written expression to dispose or authorize another person to dispose of his or her remains, the decedent's written expression controls.

- Subsection (b.2): Priority of written expression.
  - In the event of multiple written expressions, the latest in time controls, unless the latest in time is not properly executed in conformity with subsection (b.1), in which case the latest properly executed expression controls.

- Subsection (b.3): Written expression executed in another jurisdiction.
  - When executed in conformity with another jurisdiction's law, a written expression executed in that jurisdiction is valid within the Commonwealth.

- Subsection (b.4): Absence of written expression.
  - Absent a written expression, persons defined by relationship to the decedent are ordered in priority to decide on disposition. The broad concept of granting "next of kin" in the absence of an "enduring estrangement" the final decision-making

  authority is removed in favor of a particular hierarchy of persons who are reasonably available. This is defined as "[r]eadily able to be contacted without undue effort and willing and able to act in a timely manner."
  - A majority of those with equal priority prevail if there is a disagreement among them.
  - If there is a deadlock among those with equal priority, it can be resolved by a written agreement among them or by mediation or judicially.

- Subsection (d.1): Petition and notice.
  - This subsection identifies who may petition the judiciary to resolve disputes and identifies those required to be notified of the petition.

- Subsection (d.2): Judicial determination.
  - The court shall make the final determination in disputed situations, under the following principles:
    - The court shall take into account the decedent's preferences and values, including religious and moral beliefs to the extent presented.
    - The court may appoint a mediator
    - The standard of proof is clear and convincing evidence

- Subsection (f): Forfeiture.
  - This subsection identifies the circumstances under which a person otherwise authorized to dispose of remains forfeits that authority.

- Subsection (g): Third party immunity.
  - Immunizes a third party who relies in good faith on written information and instructions for disposition.

- Subsection (h): Model form.
  - This contains a model form to designate a person to dispose of one's remains.
  - The model form is optional.

- Subsection (i): Definitions.
  - Adds new definitions of "funeral director," "funeral establishment," "reasonably available," "timely manner" and "written expression"
  - Deletes definition of "contrary intent".
  - Amends the definitions of "enduring estrangement" and "next of kin."

- Another amendment harmonizes the section with provisions relating to anatomical gifts and health care agents' authority in 20 Pa.C.S. § 5456(a) (relating to authority of health care agent).

AN ACT[12]

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in ownership of property; legal title and equitable estate, further providing for the right to dispose of a decedent's remains.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 305 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 305. Right to dispose of a decedent's remains.

(a) General rule.—[Except as specified in subsection (a.1), the**] The** determination of the final disposition of a decedent's remains **whether by burial, entombment, cremation or other disposition,** shall be as set forth in this section **[**unless otherwise specifically provided by waiver and agreement of the person entitled to make such determination under this section,**]** subject to **[**the provisions of a valid will executed by the decedent and**]** sections 8611(a) (relating to persons who may execute anatomical gift) and 8654(1) (relating to requirement of explicit, specific and separate authorization). **Absent a judicial order to the contrary, authority to carry out the disposition of a decedent's remains in accordance with this section is primarily with the funeral director.**

(a.1) Exception for members of the armed forces.--The determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise specifically provided by a DD Form 93 executed later in time than a **[**valid will**]** **written expression** executed by the decedent **[**or a waiver and agreement of the person entitled to make such determination under this section**]**, subject to the provisions of sections 8611(a) and 8654(1).

(b) Disposition of the remains of a deceased spouse.--Absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, a surviving spouse shall have the sole authority in all matters pertaining to the disposition of the remains of the decedent.**]**

(b.1) When written expression exists.—An individual of sound mind who is at least 18 years of age or an emancipated minor may make a written expression that is dated, signed and witnessed by two individuals, neither of whom are expected to provide the funeral services, as to:

(1) The disposition of the individual's remains.

(2) The designation of another individual who shall be authorized to decide the disposition.

(b.2) Priority of written expression.—

(1) Subject to section 8613(b) (relating to manner of executing anatomical gifts), a written expression made under subsection (b.1) shall control the disposition of the decedent's remains. If the written expression is in a will, that expression is valid whether it is submitted for probate, subject to paragraph (2).

(2) If more than one written expression exists for an individual under subsection (b.1), the written expression executed later in time shall control. Unless it appears that a later

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[12] "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

written expression was intended to modify a previously designated anatomical gift under sections 8611 or 8654(1) or to permit another individual to do so, the later written expression shall apply only to the portion of the decedent's remains not subject to the anatomical gift.

(b.3) Written expression executed in another jurisdiction.—A written expression executed in another state or jurisdiction in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth.

(b.4) Absence of written expression.—

(1) Absent a written expression made under subsection (b.1) or if the individual authorized to decide disposition is subject to forfeiture in subsection (f) and there is no successor designee, a member of the following classes, in descending order of priority, who is reasonably available may determine the disposition and direct the funeral director accordingly:

(i) The spouse of the decedent, unless an action for divorce was pending at the time of death, and the adult children of the decedent who are not the children of the spouse.

(ii) The decedent's adult children.

(iii) The decedent's parents.

(iv) The decedent's adult siblings.

(v) The decedent's adult grandchildren.

(vi) An adult individual who has knowledge of the decedent's preferences and values, including but not limited to, religious and moral beliefs, to assess how the decedent would have decided.

(2) An individual under paragraph (1) may waive priority in writing.

(3) If more than two individuals with equal priority under paragraph (1) disagree on the disposition of the decedent's remains, the funeral director may rely on the decision of a majority of the members of that class who have communicated their directions to the funeral director.

(4) If a majority decision is not reached under paragraph (3) or if an individual under paragraph (1) is not reasonably available and the funeral director is so informed, no determination may be deemed made until the disagreement is resolved by written agreement among the parties or judicially or mediation under subsection (d.2). The costs and expenses of storing and handling the decedent's remains and any additional expenses caused by the delay in reaching a determination of disposition may be assessed by the court against the appropriate party with the presumption that the unsuccessful party pays and shall be collectible from the party whether or not there is a probate estate. Unless ordered otherwise, the costs and expenses shall be reimbursed to the prevailing party as an administrative expense under section 3392(1) (relating to classification and order of payment).

[**(c) Disposition of the remains of others.--**If there is not a surviving spouse, absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, the next of kin shall have sole authority in all matters pertaining to the disposition of the remains of the decedent.

(d) Procedure.--Where a petition alleging enduring estrangement, incompetence, contrary intent or waiver and agreement is made within 48 hours of the death or discovery of the body of the decedent, whichever is later, a court may order that no final disposition of the decedent's remains take place until a final determination is made on the petition. Notice to each person with equal or higher precedence than the petitioner to the right to dispose of the decedent's remains and to his attorney if known and to the funeral home or other institution where the body is being held must be provided concurrently with the filing of the petition. A suitable bond may be required by the court.

(1) If the court determines that clear and convincing evidence establishes enduring estrangement, incompetence, contrary intent or waiver and agreement, the court shall enter an appropriate order regarding the final disposition which may include appointing an attorney in fact to arrange the final disposition, with reasonable costs chargeable to the estate.

(2) If two persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the court, with preference given to the person who had the closest relationship with the deceased. If more than two persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the majority. Where two or more persons with equal standing cannot reach a majority decision, the court shall make a final determination on disposition of the decedent's remains.

(3) If the court determines that the petition is not supported by a clear and convincing evidence, the court may award attorney fees. An award of attorney fees shall constitute a setoff against any claim by the petitioner against the estate.**]**

(d.1) Petition and notice.-- -

(1) Within 14 calendar days after the death of a decedent or the discovery of the decedent's remains or a disqualification, whichever is later, an individual in a class authorized to make disposition of a decedent's remains under subsection (b.4), a designated individual under subsections (b.1) or (b.3) or the funeral director may file an expedited petition in the county of the decedent's death or residence, as appropriate:

(i) Challenging a written expression under subsection (b.1) or (b.3), the priority of written expression under subsection (b.2) or a determination under subsection (b.4).

(ii) Requesting the court to resolve the disagreement under subsection (b.4)(4).

(iii) Challenging the decision by the funeral director in carrying out the disposition.

(iv) Asserting forfeiture under subsection (f).

(2) Notice of the petition under this subsection shall be provided to:

(i) Each individual under subsection (b.4) with equal or higher priority than the petitioner.

(ii) If known, the attorney for each individual under subparagraph (i).

(iii) The funeral director.

(iv) The personal representative of the estate, if one has been appointed.

(v) The person designated under subsection (b.1)(2) or (b.3), if applicable.

(vi) A guardian of the person of the decedent.

(vii) An agent for the decedent.

(viii) A health care agent for the decedent.

(d.2) Judicial determination.—

(1) Absent a finding of enduring estrangement, if two or more individuals with equal priority under subsection (b.4), disagree resulting in a deadlock on the disposition of the decedent's remains, the court shall determine the authority to dispose of the remains taking

into account the decedent's preferences and values, including but not limited to religious and moral beliefs to the extent presented to the court.

(2) A judicial order may delay final disposition of the decedent's remains until a final judicial determination is made. The court is authorized to appoint a mediator as authorized by law. If the court determines by clear and convincing evidence to grant the petition under this subsection, it shall enter an appropriate order regarding the disposition of the decedent's remains.

[(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Armed forces." The armed forces of the United States, including a reserve component or the National Guard.

"Contrary intent." An explicit and sincere expression, either verbal or written, of a decedent adult or emancipated minor prior to death and not subsequently revoked that a person other than the one authorized by this section determine the final disposition of his remains.

"DD Form 93." A valid document or a successor form provided by the Department of Defense that is signed by a member of the armed forces and designates a person to direct the disposition of the remains of the person who signed the form.

"Enduring estrangement." A physical and emotional separation from the deceased at the time of death of the person authorized by this section to determine the final disposition of the decedent's remains, which has existed for a period of time that clearly demonstrates an absence of due affection, trust and regard for the deceased.

"Next of kin." The spouse and relatives by blood of the deceased in order that they be authorized to succeed to the deceased's estate under Chapter 21 (relating to intestate succession) as long as the person is an adult or an emancipated minor.**]**

(f) Forfeiture.—A person authorized under subsections (b.1)(2), (b.3) or (b.4) to determine disposition forfeits that authority if:

(1) incapacitated;

(2) criminally charged in connection with the causation of the decedent's death and the charge is not dismissed or is tried and convicted;

(3) criminally charged with elder abuse as defined by section 8801(relating to definitions) or neglect of the decedent and the charge is not dismissed or is tried and convicted;

(4) the person does not proceed to exercise or arrange the disposition within 72 hours of notification of the decedent's death or within five days of the identified decedent's death (or discovery of remains), whichever is earlier;

(5) there was an enduring estrangement with the decedent at the time of death;

(6) the person was subject to a valid protection from abuse order that was issued to protect the decedent at the time of the decedent's death.

(g) Third-party immunity.

(1) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral establishment shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person whom the funeral establishment reasonably believes holds the right of

disposition. No funeral establishment is responsible for contacting or independently investigating the existence of any next of kin or relative of the decedent.

(2) A funeral director may rely on written information provided under penalty from the individual acting as informant in the preparation of the death certificate as to the identities of the members of the classes under subsection (b.4). A funeral director's determination that a member of a class under subsection (b.4) is not reasonably available is conclusive absent a judicial proceeding.

(3) A funeral establishment or funeral director who relies reasonably in good faith upon the instructions of a person claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions unless the funeral establishment or funeral director knew or had reason to know that the person did not have the right of disposition. This section does not reduce or eliminate liability for gross negligence or willful acts

(h) Model form.—The following form may be used under subsection (b.1)(2):

Appointment of Designee to Control the Funeral and Disposition of Remains

I, ____

[Name]

____

[Address]

am at least age 18 and in sound mind. I designate the following individual(s):

____

[Name of designee]

____

[Name of successor designee] (OPTIONAL)

Prior Arrangements:

I [ ] have [ ] have not entered into a pre-need agreement for funeral services and/or merchandise.

____

[Name of funeral home with my pre-need agreement]

____

[Address of funeral home with my pre-need agreement]

I [ ] do [ ] do not have an interment space within a cemetery. Title to the internment space is currently located at:

[Location of my title]

[Name of cemetery where I have an internment space]

[Address of cemetery where I have an internment space]

Preferences:

Set forth below are my preferences regarding funeral arrangements and the disposition of my remains. Subject to reasonably available resources and reasonable practicality, my designee is bound by the preferences stated below:

I [ ] do [ ] do not want to be cremated. [ ] not applicable
I [ ] do [ ] do not want to be embalmed. [ ] not applicable

Preferred Funeral Arrangements:
(In the absence of a designation, those acting under 20 Pa.C.S. § 305(b.4)(1) (relating to right to dispose of a decedent's remains) remain bound.)

Preferred Disposition of Remains:

Designee:

[Name]

[Mailing address]

[Phone no. & email address]

Successor designee (OPTIONAL):

[Name]

[Mailing address]

[Phone no. & email address]

[ ] I choose not to name a successor designee. I understand that if my designee is unable or unwilling to act, the right to control my funeral and the disposition of my remains is governed by 20 Pa.C.S. § 305(b.4).

Authorization:

This appointment becomes effective upon the completion of this document (signed, dated and witnessed by two individuals, neither of whom are expected to provide the funeral services as to the disposition of the individual's remains, or the power to designate who shall be authorized to decide the disposition of the individual's remains as stated in 20 Pa.C.S. § 305(b.1)). Any previous designation of an individual to control my funeral and the disposition of my remains is hereby revoked.

In executing this form appointing a designee, I warrant that all representations and statements contained in this document are true and correct and that all of the statements and signatures are made to appoint a designee. I understand that this appointment supersedes all other priority classes in 20 Pa.C.S. § 305(b.4).

Signature of individual appointing the designee:

____

Date: ______________________________

Witnesses:

I declare that the individual who executed this document above is personally known to me and appears to be of sound mind acting freely and voluntarily. The designating individual signed this document in my presence.

____

[Witness name]

____

____

[Witness address]

Date: ____

____

[Witness name]

____

____

[Witness address]

Date: ____

NOTARIZATION (OPTIONAL)

(Notarization of document is not required by Pennsylvania law, but if the document is both witnessed and notarized, it is more likely to be honored by the laws of some other states.)

On this..........day of ...., 20...., before me personally appeared the aforesaid individual, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in

the County of............., Commonwealth of............. the day and year first above written.

....
Notary Public   My commission expires

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Armed forces." The armed forces of the United States, including a reserve component or the National Guard.

"DD Form 93." A valid document or a successor form provided by the U.S. Department of Defense that is signed by a member of the armed forces and designates a person to direct the disposition of the remains of the person who signed the form.

"Enduring estrangement." A physical and emotional separation from the decedent at the time of death of the individual authorized by this section to determine the final disposition of the decedent's remains, which has existed for at least one year that clearly demonstrates a loss or absence of due affection, communication, trust and regard for the deceased.

“Funeral director.” As defined by section two of the act of January 14, 1952 (P.L.1898, No.522 (1951)), known as the Funeral Director Law.

"Funeral establishment." As defined by section two of the act of January 14, 1952 (P.L.1898, No.522 (1951)), known as the Funeral Director Law.

"Next of kin." The individuals in subsection (b.4)(1).

"Reasonably available." Readily able to be contacted without undue effort and willing and able to act in a timely manner.

"Timely manner." Within 72 hours of notification of the decedent's death or within five days of the identified decedent's death (or discovery of remains), whichever is earlier.

"Written expression." Written instructions of intent by an individual regarding the disposition of the decedent's remains of that individual, which may be contained in a will, DD Form 93, contract with a funeral director, an advance health care directive, an anatomical gift designation, or any other writing.

Section 2. Section 5456 of Title 20 is amended to read:

§ 5456. Authority of health care agent.

(a) Extent of authority.--Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and section 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. The foregoing power shall include the power to authorize admission to a medical, nursing, residential or similar facility, or to enter into agreements for the principal's care. The health care agent's authority may extend beyond the principal's death to make anatomical gifts **subject to sections 8611(a) (relating to persons who may execute anatomical gift) and 8654(1) (relating to requirement of explicit, specific and separate authorization)**, dispose of the remains **subject to section 305 (relating to right to dispose of a decedent's remains)** and consent to autopsies.

* * *

Section 3. Effective Date. This act shall take effect immediately.

The small estates statute was enacted because it was too difficult and expensive to administer a small estate. In prior years, the advisory committee studied statutes from a number of other states and the uniform acts to come up with the current, recommended amendment.[13] It is expected to be more practical than the *status quo*.

Since its enactment in 1972 as a section in the consolidated 20 Pa.C.S. (relating to decedents, estates & fiduciaries), § 3101 (relating to payments to family and funeral directors) has been amended 12 times to change dollar amounts, add one or more subsections and revise the text in particular subsections. *E.g.*, the most recent amendment occurred in 2025 to double the amount in subsection (b) and almost double the amount in subsection (e)(1)(i). Similarly but less frequently amended, § 3102 (relating to settlement of small estates on petition) was enacted in 20 Pa.C.S. in 1972 and amended four times since with the most recent amendments changing the dollar amount.

The proposed amendment would divide § 3101 by making subsection (e) (relating to unclaimed property) a separate section. Subsection (e) was added in 2002 and applies to the state treasurer. Since subsections (a) through (d) are proposed to be amended based upon several sections in Uniform Probate Code, subsection (e) would no longer fit as smoothly in the same section.

Instead of statutorily specifying different amounts for different sources as subsections (a) through (d) do now, the proposed revision would rely on the use of an affidavit to obtain a cumulative amount from the several sources and require the affidavit to be filed with the register of wills. As with the *status quo*, this is intended to facilitate the transfer of small estates. Accumulation of amounts from different sources gets to the point of establishing as a matter of policy how much wealth may be disposed of without requiring administration under the supervision of the register of wills and court.

Subsection (e) for unclaimed property, would be a separate section and hardly differ from current law.

The proposed amendment for § 3102, governing what are known as "small estates petitions," is a combination of current law and some provisions from Uniform Probate Code. A petition would still be filed with the court and then be used to gather assets unless the court prohibits its use. Afterwards, the small estate would be closed by the filing of a sworn statement disclosing the distribution and then finalized four months later if no impropriety surfaced. This

[13] This recommendation dates from the advisory committee's conference in 2023. It was not published previously because Orphans' Court Rule 5.50(b)(5) needed to be amended first so that the proposed amendment to 20 Pa.C.S. § 3102 would not create an incompatibility with the rule of court. The rule of court was amended in 2024.

section could be used in conjunction with § 3101.1 (replacing current § 3101(a)-(d)), which would allow as much as $85,000 ($35,000 under the new § 3101.1 & $50,000 under this section) to be disposed of under both provisions together. Under § 3102, this would essentially be summary administration of a small estate.

The $50,000 amount in § 3102 dates from 2013. Adjusted for inflation, the amount now would be $71,473.40. Both proposed §§ 3101.1 and 3102 exclude real estate. Under current law, the personal property payable under these sections could combine to total a maximum of $101,000, omitting unclaimed property.[14]

At least 32 other jurisdictions have similar statutes but they vary considerably in detail. At least seven of these jurisdictions are likely modeled on the same Uniform Probate Code provisions on which the proposal is. The National Conference of Commissioners on Uniform State Laws identifies 19 jurisdictions as having enacted a version of Uniform Probate Code. This code dates from 1969, but it has been amended and revised since then. The states that have enacted it did so at different times and probably do not have precisely the same version.

AN ACT[15]

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in dispositions independent of letters, family exemption, probate of wills and grant of letters, providing for collection of personal property by affidavit, providing for collection of unclaimed property, further providing for settlement of small estates on petition and repealing provisions relating to payments to family and funeral directors.

Section 1. Section 3101 of Title 20 of the Pennsylvania Consolidate Statutes is repealed:

[§ 3101. Payments to family and funeral directors.

(a) Wages, salary or employee benefits.--Any employer of a person dying domiciled in this Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay wages, salary or any employee benefits due the deceased in an amount not exceeding $10,000 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(b) Deposit account**.--**Any bank, savings association, savings and loan association, building and loan association, credit union or other savings organization, at any time after the death of a depositor, member or certificate holder, shall pay the amount on deposit or represented by the certificate, when the total standing to the credit of the decedent in that institution does not exceed $20,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased depositor, member or certificate holder, provided that a

[14] Current law could add $20,000 of unclaimed property so that the $101,000 payable could amount up to $121,000.
[15] "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

receipted funeral bill or an affidavit, executed by a licensed funeral director which sets forth that satisfactory arrangements for payment of funeral services have been made, is presented. Any bank, association, credit union or other savings organization making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(c) Patient's care account.--When the decedent was a qualified recipient of medical assistance from the Department of Public Welfare, the facility in which he was a patient may make payment of funds, if any, remaining in the patient's care account, for the decedent's burial expenses to a licensed funeral director in an amount not exceeding $10,000 whether or not a personal representative has been appointed. After the payment of decedent's burial expenses, the facility may pay the balance of decedent's patient's care account, as long as the payments, including the payment for burial expenses, does not exceed $10,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased patient. Any facility making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any licensed funeral director or other person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(d) Life insurance payable to estate.--Any insurance company which upon the death of an individual residing in this Commonwealth owes his estate a total amount of $11,000 or less under any policy of life, endowment, accident or health insurance, or under any annuity or pure endowment contract, may at any time after 60 days following his death pay all or any part of that amount to the spouse, any child, the father or mother or any sister or brother of the decedent (preference being given in the order named) provided that at the time of the payment no written claim for that money has been received at the office of the company specified in the policy or contract for the receipt of claims from any duly appointed personal representative of the decedent. Any insurance company making any payment in accordance with this section to an adult may rely on the affidavit of any of the persons named in this subsection concerning the existence and relationship of these persons and shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and the insurance company shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(e) Unclaimed property.--

(1) In any case where property or funds owned by an individual who has died a resident of this Commonwealth have been reported to the Commonwealth and are in the custody of the State Treasurer as unclaimed or abandoned property, the State Treasurer, at any time after the death of the individual, shall only be authorized under this section to distribute the property or to pay the amount being held in custody where all of the following conditions are present:

(i) The amount of the funds or the value of the property is $20,000 or less.

(ii) The person claiming the property or the funds is the surviving spouse or a member of the class of people as specified in section 2103(1), (2), (3) or (4) (relating to shares of others than surviving spouse), with preference given in that order.

(iii) A personal representative of the decedent has not been appointed or five years have lapsed since the appointment of a personal representative of the decedent.

(2) Upon being presented with a claim under paragraph (1) for property owned by a decedent, the State Treasurer shall require the person claiming the property to provide all of the following prior to distributing the property or paying the amount held in custody:

(i) A certified death certificate of the owner.

(ii) A sworn affidavit under the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) setting forth the relationship of the claimant to the decedent, the existence or nonexistence of a duly appointed personal representative of the decedent, any other persons that may be entitled under this section to make a claim to the decedent's property and a statement that the person is the surviving spouse or the person or a member of the class of people with the strongest claim to the property or funds under paragraph (1)(ii).

(iii) Other information determined by the State Treasurer to be necessary in order to distribute property or pay funds under this section to the proper person.

(3) If the State Treasurer determines the claimant to be a person entitled to claim property of a decedent owner, the State Treasurer shall pay or distribute such property to the claimant and shall thereby be released to the same extent as if payment or distribution had been made to a duly appointed personal representative of the decedent and shall not be required to oversee the application of the payments made. Any claimant to whom payment is made shall be answerable therefore to anyone prejudiced by an improper distribution or payment.**]**

Section 2. Title 20 is amended by adding sections to read:

<u>§ 3101.1. Collection of personal property by affidavit.</u>

<u>(a) Affidavit.--Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented a certified death certificate of the decedent and an affidavit made by or on behalf of the successor stating that:</u>

<u>(1) the value of the entire estate subject to probate but excluding real estate, wherever located, does not exceed $35,000;</u>

<u>(2) 30 days have elapsed since the death of the decedent;</u>

<u>(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and</u>

<u>(4) the claiming successor is entitled to payment or delivery of the property.</u>

NOTE

Subsection (a) is largely based upon Unif. Probate Code § 3-1201(a). The 2010 uniform revision uses a $25,000; however, a cpi inflation calculator would adjust this amount to $38,291.42 now.

<u>(b) Security.--A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).</u>

NOTE

Subsection (b) is based upon Unif. Probate Code § 3-1201(b).

(c) Further applicability.—Subject to the same facts averred in the affidavit under subsection (a) when presented with a certified death certificate, it may also be used for the payment of:

(1) wages, salary or any employee benefits due the deceased.

(2) amounts on deposit or represented by a certificate from a broker or financial institution.

(3) funds remaining in the patient's care account when the decedent was a qualified recipient of medical assistance from the Department of Human Services.

(4) amounts owed the estate under any policy of life, endowment, accident or health insurance, or under any annuity or pure endowment contract.

NOTE

Subsection (c) is based upon 20 Pa.C.S. § 3101(a), (b), (c) & (d).

(d) Effect of affidavit.

(1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to good faith reliance on the affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

(2) Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. Proper charges and claims must be paid in the order of priority under section 3392 (relating to classification and order of payment).

NOTE

Subsection (d) is based upon Unif. Probate Code § 3-1202. Paragraph (1) adds a good faith reliance to the uniform provision. Paragraph (2) adds the last sentence to the uniform provision.

(e) Record of payment.—An affiant collecting payment under this section and the payer or transferor shall retain complete and accurate records of payments and distributions for six years.

(f) Affidavit.—An affiant shall file the affidavit with each payer or transferor and the register of wills. If there is a will, it or its facsimile must be attached to the affidavit. If there is more than one payer or transferor, more than one of them may be included in one affidavit. The affidavit used under this section must be notarized and be substantially in the following form:

AFFIDAVIT FOR PAYMENT OR DISTRIBUTION OF DECEDENT'S PROPERTY

A: Decedent's information

Name:____

Social Security no.:____

Date of death:____

B: PERSONAL REPRESENTATIVE OF THE DECEDENT.

Has a Personal Representative (Executor or Administrator) of the Decedent been appointed, or is one expected to be appointed? YES ___ NO ___

If one has been appointed, state that person's name and address:_______________

____

____

C. Claiming successor's (affiant's) information

Name:____

Address:____

____

Phone no. ____

Relationship to the decedent:__________________________________

NOTE: If the decedent is survived by a spouse, only the surviving spouse may be the claiming successor (affiant). If the decedent was not survived by a spouse but was by a child, only a surviving child may be the affiant. If the decedent was survived by neither a spouse nor a child but was by a parent, only a surviving parent may be the affiant. If the decedent was not survived by a spouse, a child or a parent but was survived by a sibling, only a surviving sibling may be the affiant. If there is more than one claiming successor, attach a separate sheet specifying the name, address and telephone number of the additional claiming successor(s) along with the relationship of the claiming successor(s) to the decedent.

D. Nature of requested payment or distribution

1. Payor:____

2. Payment or distribution requested:______________________

3. Other specific directions regarding the payment or distribution:

____

E. AFFIRMATIONS.

By signing this affidavit I, as a claiming successor, affirm all the following:

a. I qualify as a claiming successor based on my relationship with the Decedent, as set forth in 20 Pa.C.S. § 3lO1.1 and explained by the Note in item (C) of this affidavit.

b. The information contained herein is true and complete to the best of my knowledge and belief. I understand that I am subject to the penalties of law if I have provided false information under oath.

c. I understand that unlawfully obtaining and retaining a payment or distribution of the Decedent's property may be theft and I am subject to applicable criminal penalties.

d. I understand that this affidavit applies to payments and distributions under 20 Pa.C.S. § 3101.1 and that the total amount of the payments and distributions to be made from all sources combined will not exceed $35,000.

e. I understand that I am personally responsible to properly apply the payments and distribution that I receive under 20 Pa.C.S. § 3101.1 and this affidavit and may be liable to anyone prejudiced by any improper application or distribution.

f. If there are creditors of the Decedent, the proceeds resulting from the payments or distributions that I receive under 20 Pa.C.S. § 3101.1 and this affidavit will be used to pay the proper charges and claims with respect to the Decedent's estate in the order of priority established by 20 Pa.C.S. § 3392.

g. I shall file any required inheritance tax returns and pay the inheritance
taxes due as a result of the payments and distributions that I receive under 20 Pa.C.S. § 3101.1 and this affidavit.

h. I shall provide and maintain complete and accurate records regarding payments and distributions that I receive under 20 Pa.C.S. § 3101.1 and this affidavit for six years.

F. EXECUTION AND NOTARIZATION.

Signature of claiming successor(s)/AFFIANT(S):______________

Date:____

(Notarization}

(g) Definitions.—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Financial institution." Includes a hank, credit union, brokerage firm and other savings organization that is chartered or regulated by the Federal or state government.

"Person claiming to be the successor of the decedent" or "claiming successor." The surviving spouse, any child, the parent or any sibling of the decedent, with preference given in that order, who requests a payment or distribution under this section.

"Security." As defined in § 6401 (relating to definitions).

§ 3101.2. Collection of unclaimed property.

(a) Applicability.--In any case where property or funds owned by an individual who has died a resident of this Commonwealth have been reported to the Commonwealth and are in the custody of the State Treasurer as unclaimed or abandoned property, the State Treasurer, at any time after the death of the individual, shall be authorized under this section to distribute the property or to pay the amount being held in custody where all of the following conditions are present:

(1) The amount of the funds or the value of the property is $20,000 or less.

(2) The person claiming the property or the funds is the surviving spouse or a member of the class of people as specified in section 2103(1), (2), (3) or (4) (relating to shares of others than surviving spouse), with preference given in that order.

(3) A personal representative of the decedent has not been and is not expected to be appointed or five years have lapsed since the appointment of a personal representative of the decedent.

(b) Requirements for distribution.--Upon being presented with a claim for property owned by a decedent, the State Treasurer shall require the person claiming the property to provide all of the following prior to distributing the property or paying the amount held in custody:

(1) A certified death certificate of the owner.

(2) A sworn affidavit under the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) setting forth:

(i) the relationship of the claimant to the decedent;

(ii) the existence or nonexistence of a duly appointed personal representative of the decedent;

(iii) any other persons that may be entitled under this section to claim the decedent's property; and

(iv) a statement that the person is the surviving spouse or the person or a member of the class of people with the strongest claim to the property or funds under subsection (a)(2).

(3) Other information determined by the State Treasurer to be necessary in order to distribute property or pay funds under this section to the proper person.

(c) Distribution.--If the State Treasurer determines the claimant to be a person entitled to claim property of a deceased owner, the State Treasurer shall pay or distribute such property to the claimant and shall thereby be released to the same extent as if payment or distribution had been made to a duly appointed personal representative of the decedent and shall not be required to oversee the application of the payments made. Any claimant to whom payment is made shall be answerable therefore to anyone prejudiced by an improper distribution or payment.

NOTE

This section is based on 20 Pa.C.S. § 3101(e).

Section 3. Section 3102 of Title 20 is amended to read:

§ 3102. Settlement of small estates on petition.

(a) Petition.--When any person dies domiciled in the Commonwealth owning property (exclusive of real estate and of property payable under section**s** 3101**.1** (relating to **[**payments to family and funeral directors**]** **collection of personal property by affidavit**) **and 3101.2 (relating to collection of unclaimed property)**, but including personal property claimed as the family exemption) of a gross value not exceeding $50,000, **a petition may be filed in** the orphans' court division of the county wherein the decedent was domiciled at the time of his death**.[**, upon petition of any party in interest, in its discretion, with or without appraisement, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including property not paid under section 3101) to the parties entitled thereto.] **If there is a will, it or its facsimile must be attached to the petition.**

NOTE

Subsection (a) is based upon current Pa. law. The $50,000 amount dates from 2013. Adjusted for inflation, the amount now would be $71,473.40. Both proposed §§ 3101.1 & 3102 exclude real estate, but the personal property payable under these sections could combine to total a maximum of $85,000, omitting unclaimed property. (Adding the $20,000 of unclaimed property, the $85,000 could amount up to $105,000.) Under current law, the personal property payable under these sections could combine to total a maximum of $101,000, omitting unclaimed property. (Current law could add $20,000 of unclaimed property so that the $101,000 payable could amount up to $121,000).

(b) Distribution.--The **[**authority of the court to award**]** distribution of personal property under this section shall not be restricted because of the decedent's ownership of real estate, regardless of its value. [The decree of] **Unless prohibited by order of the court,** distribution **[**so made**]** **by copy of the petition** shall constitute sufficient authority to all transfer agents, registrars and others dealing with the property of the estate to recognize the persons named therein as entitled to receive the property to be distributed without administration, and shall in all respects have the same effect as a decree of distribution after an accounting by a personal representative **when the court has had the petition for 60 days and not prohibited the distribution by petition**.

NOTE

Subsection (b) is based upon current Pa. law.

(c) Closing by sworn statement.-- Unless prohibited by order of the court, a personal representative may close an estate administered under the summary procedures in this section by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, and excluding real estate and property payable under sections 3101.1 and 3101.2 but including personal property claimed as the family exemption, did not exceed $50,000;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto;

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred, and has furnished a full account in writing of his administration to the distributees whose interests are affected; and

(4) the closing statement and full account given to all distributees of the estate and all creditors or other claimants under paragraph (3) included a notice that these recipients have four months to object to the estate's administration.

NOTE

Subsection (c) is based upon Unif. Probate Code § 3-1204.

(d) Revocation of distribution.--Within **[**one year**]** **four months** after **[**such a decree of distribution**]** **the filing of the sworn statement under subsection (c)** has been made, any party in interest may file a petition to revoke it because an improper distribution has been **[**ordered**]** **made**. If the court shall find that an improper distribution has been **[**ordered**]** **made**, it shall revoke the **[**decree**]** **distribution** and **[**shall**]** direct restitution as equity and justice shall require.

NOTE

Subsection (d) is based upon current Pa. law.

(e) Approved distribution.--If no actions or proceedings involving the personal representative are pending in the court four months after the closing statement is filed under subsection (c), the appointment of the personal representative terminates and the closing statement filed under this section has the same effect as one filed under section 3531 (relating to estates not exceeding $50,000).

NOTE

Subsection (e) is based upon Unif. Probate Code § 3-1204.

If a will contains a cash bequest (for example, "$10,000 to my brother John"), under 20 Pa.C.S. § 3543 (relating to income on distributive shares), the personal representative has one year to satisfy the bequest before interest accrues. If the estate plan instead includes the same cash gift payable by a trust the decedent established, under 20 Pa.C.S. § 7799 (relating to income on distributive shares) interest begins to accrue three months from date of death. With the widespread use of revocable trusts as will substitutes and will supplements, the two situations should be treated the same. The longer one-year period is appropriate to both and particularly helpful if the estate or trust consists largely of real estate or other illiquid assets.

The proposed amendment harmonizes the accrual of income in § 3543(a) and (c) with § 7799(1). Additionally, it would reduce the rate of income from 5% *per annum* to 4%.

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in accounts and distribution, further providing for income on distributive shares; and, in trusts, further providing for income on distributive shares.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3543 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3543. Income on distributive shares.

(a) Pecuniary legacy.--A pecuniary legacy bequeathed in trust shall be entitled to income at the rate of **[**5**]**<u>**4**</u>% per annum from the death of the decedent until the payment of the legacy, and when not in trust from one year after the death of the decedent until the payment of the legacy.

* * *

(c) Demonstrative legacy.--A demonstrative legacy shall be entitled to income from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid from that source, at the rate of **[**5**]**<u>**4**</u>% per annum from one year after the death of the decedent until the payment of the legacy.

* * *

Section 2. Section 7799 of Title 20 is amended to read:

§ 7799. Income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to income on distributive shares):

(1) If a sum of money is directed to be set aside at a specified time as a separate trust, it shall be entitled to income at the annual rate of **[**5**]**<u>**4**</u>% from the date it was to be set aside until it

is set aside. If a sum of money is directed to be paid outright, it shall be entitled to income at the annual rate of **[**5**]**__**4**__% from **[**three months**]** __**one year**__ after it became payable until it is paid.

* * *

Uniform Power of Attorney Act, § 116 (relating to judicial relief),[16] which grants standing to challenge an agent's actions, was not adopted by Pennsylvania in 2010 due to concerns about preserving the principal's financial privacy. Act no. 95 of 2014 added § 5601.3 (relating to agent's duties), which is derived from Uniform Power of Attorney Act, § 114 (relating to agent's duties), and has narrow categories of persons that may request an agent to account. Uniform Power of Attorney Act, § 116, "operates as a check-and-balance on the narrow scope of § 114(h), and provides what, in many circumstances, may be the only means to detect and stop agent abuse of an incapacitated principal."[17] Accordingly, if this proposal is enacted, it would supplement § 5601.3(d) (as § 116 supplements § 114(h)).

Formed by the Pennsylvania Supreme Court in 2013, the Elder Law Task Force recommended enacting "a statute consistent with" Uniform Power of Attorney Act, § 116.[18] "The Advisory Council" on Elder Justice in the Courts "endorsed the recommendations . . . regarding the adoption of" § 116.[19]

There are now 41 U.S. jurisdictions that have a statutory version of § 116, leaving the Commonwealth in the minority in not statutorily addressing the issue. Reflecting the work of states that modified their adoption of § 116, some broader categories of standing are eliminated, limiting it to those with an interest in the matter and adding a catch-all of having demonstrated interest in the principal's welfare or estate and entertaining a good faith belief that judicial intervention is necessary. Recommended for addition are a nominated, successor agent, as well as health care agents and representatives if health care is affected by the agent's action. Neither the successor nominee-agent nor the condition of the health care affected by the agent's action are in the uniform provision. This proposal would guide the judiciary in its consideration of standing. Frivolous actions would be discouraged by the ability to recover attorney fees and costs, which is inspired by Florida law.

There are many reasons to avoid guardianships in favor of less expensive and less intrusive approaches to incapacity, primarily the use of powers of attorney. To police use of powers of attorney, it is appropriate that a broader class of persons close to the person affected by use of the power of attorney be allowed to question an agent's actions and inactions.

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[16] Unif. Law Comm'n, Power of Att'y Act, https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=b1975254-8370-4a7c-947f-e5af0d6cb07c&LibraryFolderKey=&DefaultView=&5a583082-7c67-452b-9777-e4bdf7e1c729=eyJsaWJyYXJ5ZW50cnkiOiJmOGU3ZTBmNi00YzA3LTQ3ZTctYjVmYy1iOTQ4YjJhY2YyNjIifQ%3D%3D (2006).

[17] *Id.*

[18] Pa. Sup. Ct., Rep. & Recommendations of the Elder Law Task Force 242, https://www.pacourts.us/Storage/media/pdfs/20210516/222807-eltf-report.pdf (2014).

[19] *Id.*, Advisory Council on Elder Just. in the Cts., 2d Progress Rep. 51, https://www.pacourts.us/Storage/media/pdfs/20220915/155613-elacreportfor2021_web.pdf (2019-21).

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in powers of attorney, providing for judicial relief.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapter 56 of Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 5609.1. Judicial relief.

(a) Authority.—A court may:

(1) construe or enforce a power of attorney;

(2) review the agent's conduct;

(3) terminate the agent's authority;

(4) remove the agent; and

(5) grant other appropriate relief.

(b) Petition.—The following persons may petition a court to exercise its authority under subsection (a), but not request an agent to account:

(1) The principal or agent, including any nominated, successor agent.

(2) A guardian, conservator, trustee, or other fiduciary acting for the principal or the principal's estate.

(3) A person authorized to make health care decisions for the principal if the petition involves conduct by the agent that affects the principal's health care.

(4) A person who demonstrates to the court sufficient interest in the principal's welfare or estate and who has a good faith belief that the court's intervention is necessary.

(5) A governmental agency having the regulatory authority to protect the welfare of the principal.

(6) A person asked to accept the power of attorney.

(c) Principal.—Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

(d) Award.—In any proceeding commenced by filing a petition under this section, including, but unlimited to, the unreasonable refusal of a third person to allow an agent to act pursuant to a power of attorney, and in challenges to the proper exercise of authority by the agent, the court shall award reasonable attorney fees and costs as the court deems appropriate.

This amendment is proposed to correct a drafting error. It substitutes the word "original" for "new" and avoids ambiguity in the implementation of powers of appointment that add flexibility to estate plans. It also clarifies that the 360-year period now limiting perpetuities in Pennsylvania would be measured by actual rather than possible events.

Liberalizing the rule against perpetuities and having the exercise of a power of appointment relate back to the time the power was created creates challenges under federal tax law where the power is exercised to create a further power of appointment, thereby extending the period of time during which future interests are not yet vested. The problem is known as the "Delaware tax trap" and, if not carefully managed, can create exposure to federal transfer tax.

There was a statutory amendment to allow the trap to be sprung intentionally, but the wording applies to the donee rather than the donor of the power. To correct this, the statute should reference the original rather than the new power.

A law review article was published about Pennsylvania's statutory mistake,[20] and the author was consulted for the preparation of this corrective amendment. The comment is intended to clarify that the savings language for an anti-Delaware tax trap can apply pre-2007 and post 2006.

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in estates, further providing for applicability of rule against perpetuities.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6107.1(b)(3) of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 6107.1. Applicability of rule against perpetuities.

* * *

(b) Modern rule.--All of the following apply to every interest created after December 31, 2006:

* * *

(3) If a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest

[20] James P. Spica, *Another Trap for the Wary: What We Can Learn about the Relation-Back Doctrine from Pa.'s Anti-Del.-Tax-Trap Statute*, 66 Wayne L. Rev. 483-521 (2021).

within 360 years of the creation of the original power of appointment **as measured by actual rather than possible events**, unless the exercise of the **[**new**]** **original** power of appointment expressly states that this provision shall not apply to the interests created by the exercise.
* * *

Section 2. The amendment of 20 Pa.C.S. § 6107.1(b)(3) shall be retroactive to January 1, 2007.

Section 3. This act shall take effect immediately.

Comment

The amendment of subsection (b)(3) effects a technical correction required by its original intent (as noted in a report published by Joint State Government Commission in 2007), which is to avoid an inadvertent springing of the so-called Delaware Tax Trap under Sections 2041(a)(3) and 2514(d) of the Internal Revenue Code of 1986, as amended, while preserving the ability of a person holding a power of appointment to intentionally spring the Trap. Consistent with long-standing Pennsylvania law, the amendment clarifies that the validity of an interest under subsection (b)(3) is determined in consideration of actual rather than possible events (*i.e.*, by what happens *during* the so-called "wait-and-see period"). The amendment also clarifies that consistent with the intent to avoid an inadvertent springing of the Trap, any expression that the provision not apply (so as to spring the Trap on purpose, thereby declining the statute's anti-trap protection) is exclusively within the election of the holder of the "original power."

Subsection (b)(3) does not apply to future interests that are subject to the traditional rule, which itself avoids an inadvertent springing of the Trap and preserves the ability of a person holding a special power to spring the Trap. Application of what is traditionally known as the "relation back doctrine" applies to interests created by exercise of a special power. For example:

> **Prior to January 1, 2007, A creates an irrevocable trust that gives B a testamentary special power of appointment (the first power), which limits permissible appointees to the class consisting of B's descendants. After January 1, 2007, B, in B's Will, exercises the first power by granting a second power, which is a special power to C, a descendant of B. C, in C's Will, exercises the second power to grant a third power, which is a special power, to D, also a descendant of B.**

Creation of the second and third powers relates back to A's creation of the irrevocable trust. The period during which the vesting of a future interest in property may be postponed by exercise of the second power, the third power, or any subsequent power in a similar chain, is subject to the traditional rule,

by reference to the time of A's creation of the first power in the irrevocable trust. If A had created the irrevocable trust after December 31, 2006, the modern rule would apply and any interest created by the exercise of the second power (including the third power and any subsequent power), is invalid if it does not vest within 360 years of A's creation of the first power, as measured by actual rather than possible events (unless B's exercise of the first power expressly states that subsection (b)(3) does not apply to the interests created by the exercise of the first power). A person holding a power that is subject to the traditional rule can spring the trap intentionally by exercising it to create a presently exercisable general power because the relation back doctrine does not apply to presently exercisable general powers.