

[Second Reprint]
SENATE, No. 550

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY
District 3 (Salem, Cumberland and Gloucester)
Senator PAUL A. SARLO
District 36 (Bergen, Essex and Passaic)
Assemblyman JOHN J. BURZICHELLI
District 3 (Salem, Cumberland and Gloucester)

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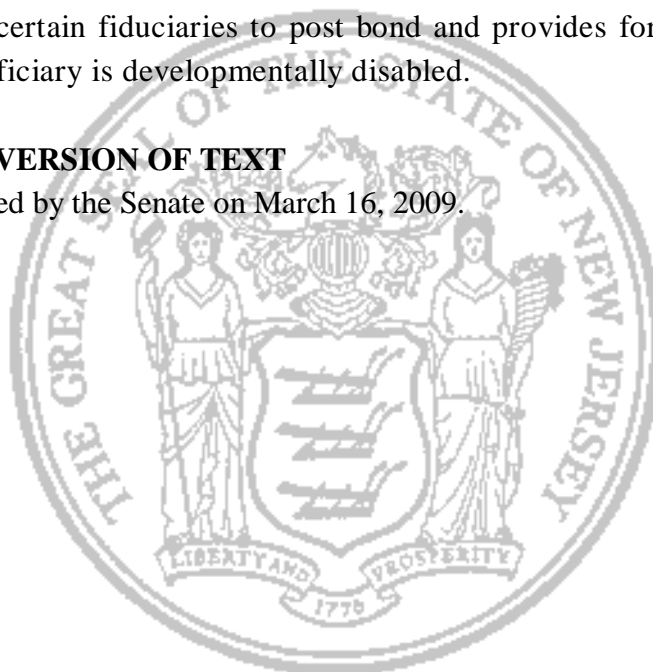
Senator Ruiz

SYNOPSIS

Requires certain fiduciaries to post bond and provides for accounting to court if beneficiary is developmentally disabled.

CURRENT VERSION OF TEXT

As amended by the Senate on March 16, 2009.



(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning certain ¹**[executors,] fiduciaries and**¹ amending
2 ¹**[N.J.S.3B:3-17 and supplementing Title 3B of the New Jersey**
3 **Statutes] N.J.S.3B:15-1^{1 2}, N.J.S.3B:12-16 and N.J.S.3B:12-33² .**

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ¹**[1. N.J.S.3B:3-17 is amended to read as follows:**
9 3B:3-17. Probate of will and grant of letters.

10 a. The surrogates of the several counties or the Superior Court
11 may take depositions to wills, admit the same to probate, and grant
12 thereon letters testamentary or letters of administration with the will
13 annexed.

14 b. No person nominated as executor in a will where a
15 beneficiary to the will has a developmental disability shall be
16 granted letters testamentary unless the person furnishes bond to the
17 Superior Court in a sum and with proper conditions and sureties,
18 having due regard to the value of the estate in his charge and the
19 extent of his authority, as the court shall approve. If such executor
20 fails to furnish an appropriate bond approved by the court, the court
21 shall appoint an administrator in the place of the executor who shall
22 furnish bond in accordance with the provisions of N.J.S.3B:15-1.

23 As used in this subsection, "developmental disability" means a
24 severe, chronic disability of a person which: (1) is attributable to a
25 mental or physical impairment or combination of mental or physical
26 impairments; (2) is manifest before age 22; (3) is likely to continue
27 indefinitely; (4) results in substantial functional limitations in three
28 or more of the following areas of major life activity, that is, self-
29 care, receptive and expressive language, learning, mobility, self-
30 direction and capacity for independent living or economic self-
31 sufficiency; and (5) reflects the need for a combination and
32 sequence of special interdisciplinary or generic care, treatment or
33 other services which are of lifelong or extended duration and are
34 individually planned and coordinated. Developmental disability
35 includes but is not limited to severe disabilities attributable to
36 mental retardation, autism, cerebral palsy, epilepsy, spina bifida and
37 other neurological impairments where the above criteria are met.
38 (cf: P.L.2004, c.132, s.19)¹

39
40 ¹1. N.J.S.3B:15-1 is amended to read as follows:

41 3B:15-1. The court or surrogate appointing a fiduciary in any of
42 the instances enumerated below shall secure faithful performance of
43 the duties of his office by requiring the fiduciary thereby authorized

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted February 9, 2009.

²Senate floor amendments adopted March 16, 2009.

- 1 to act to furnish bond to the Superior Court in a sum and with
2 proper conditions and sureties, having due regard to the value of the
3 estate in his charge and the extent of his authority, as the court shall
4 approve:
- 5 a. When an appointment is made upon failure of the will, or
6 other instrument creating or continuing a fiduciary relationship, to
7 name a fiduciary;
- 8 b. When a person is appointed in the place of the person named
9 as fiduciary in the will, or other instrument creating or continuing
10 the fiduciary relationship;
- 11 c. When the office to which the person is appointed is any form
12 of administration, except (1) administration ad litem which may be
13 granted with or without bond; or (2) administration granted to a
14 surviving spouse where the decedent's entire estate is payable to the
15 surviving spouse;
- 16 d. When the office to which the person is appointed is any form
17 of guardianship of a minor or ²~~mental incompetent~~ incapacitated
18 person², except as otherwise provided in N.J.S. 3B:12-16 or N.J.S.
19 3B:12-33 with respect to a guardian appointed by will;
- 20 e. When letters are granted to a nonresident executor, except in
21 cases where the will provides that no security shall be required of
22 the person named as executor therein;
- 23 f. When an additional or substituted fiduciary is appointed;
- 24 g. When an appointment is made under chapter 26 of this title,
25 of a fiduciary for the estate or property, or any part thereof, of an
26 absentee; **[or]**
- 27 h. When a fiduciary moves from the State, the court may
28 require him to give such security as it may determine; or
- 29 i. (1) When an appointment is made, regardless of any
30 direction in a last will and testament relieving a personal
31 representative, testamentary guardian or testamentary trustee or
32 their successors from giving bond, that person shall, before
33 receiving letters or exercising any authority or control over the
34 property, provide bond to secure performance of his duties with
35 respect to property to which a developmentally disabled person as
36 defined in section 3 of P.L.1985, c.145 (C.30:6D-25) is, or shall be
37 entitled, if:
- 38 (a) the testator has identified that a devisee or beneficiary of
39 property of the decedent's estate is such a developmentally disabled
40 person; or
- 41 (b) the person seeking appointment has ²actual² knowledge that
42 a devisee or beneficiary of property of the decedent's estate is such
43 a developmentally disabled person.
- 44 (2) No bond shall be required pursuant to paragraph (1) of this
45 subsection if:

1 (a) the court has appointed another person as guardian of the
2 person or guardian of the estate for the developmentally disabled
3 person;

4 (b) the person seeking the appointment is a family member
5 within the third degree of consanguinity of the developmentally
6 disabled person; or

7 (c) the total value of the real and personal assets of the estate or
8 trust does not exceed \$25,000.

9 (3) A personal representative, testamentary guardian or
10 testamentary trustee who is required to provide bond pursuant to
11 paragraph (1) of this subsection shall file with the ²[court] Superior
12 Court² an initial inventory and a final accounting of the estate in his
13 charge containing a true account of all assets of the estate. ²Such
14 person shall file an interim accounting every five years, or a lesser
15 period of time if so ordered by the Superior Court, in the case of an
16 extended estate or trust administration.² A copy of the accountings
17 shall be ²[submitted to] served on² the ²[Department of the]²
18 Public Advocate. ²The Public Advocate, on behalf of the
19 developmentally disabled person or that person's estate, may file
20 exceptions and objections to interim or final accountings and may
21 initiate an action to compel the person to file an accounting of the
22 trust or estate. ²

23 (4) A personal representative, testamentary guardian or
24 testamentary trustee who is required to provide bond pursuant to
25 paragraph (1) of this subsection may make application to the court
26 to waive the bond or reduce the amount of bond for good cause
27 shown, including the need to preserve assets of the estate.

28 This subsection shall not apply to qualified financial institutions
29 pursuant to section 30 of P.L. 1948, c. 67 (C.17:9A-30) ²or to non-
30 profit community trusts organized pursuant to P.L.1985, c.424
31 (C.3B:11-19 et seq.)² .

32 Nothing contained in this section shall be construed to require a
33 bond in any case where it is specifically provided by law that a
34 bond need not be required.¹

35 (cf: P.L.1985, c. 34, s. 1)

36
37 ¹[2. (New section) a. Where a beneficiary to a will is
38 developmentally disabled as defined in subsection b. of N.J.S.3B:3-
39 17:

40 (1) Within two months after receiving letters testamentary or
41 letters of administration, the fiduciary shall file with the clerk of the
42 court, under oath, an inventory of all property of the decedent, duly
43 appraised, with the Superior Court. The court may, for good cause
44 shown, extend the time for the filing of such inventory to not more
45 than four months after the grant of letters testamentary or letters of
46 administration.

1 (2) The fiduciary shall render to the Superior Court at six-month
2 intervals, until the final accounting of the estate, a true account of
3 all the assets of the estate in his charge.

4 b. Nothing in this act shall be deemed to preclude the authority
5 of the court to require the fiduciary to render an account of the
6 performance of his office upon application by the surety pursuant to
7 N.J.S.3B:15-10.]¹

8
9 ²2. N.J.S.3B:12-16 is amended to read as follows:

10 3B:12-16. Bond of testamentary guardian.

11 Before receiving his letters, a testamentary guardian of a minor
12 shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the
13 guardian is relieved from doing so by direction of the will of the
14 parent appointing the guardian or by order of the court. However,
15 regardless of the direction, the guardian shall, with respect to
16 property to which the ward is or shall be entitled from any source,
17 other than the parent or other than any policy of life insurance upon
18 the life of the parent, give bond in accordance with that section
19 before exercising any authority or control over the property.

20 The provisions of this section relieving a testamentary guardian
21 of a minor from giving bond by direction of the will of the parent
22 shall not apply to a testamentary guardian of a minor with a
23 developmental disability. Such guardian shall be bonded pursuant
24 to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the
25 guardian is relieved from doing so pursuant to paragraph (2) of
26 subsection i. of N.J.S.3B:15-1. ²

27 (cf: P.L.2005, c.304, s.10)

28
29 ²3. N.J.S.3B:12-33 is amended to read as follows:

30 3B:12-33. Bond of testamentary guardian.

31 Before receiving his letters, a testamentary guardian of an
32 incapacitated person shall give bond in accordance with
33 N.J.S.3B:15-1 unless the guardian is relieved from doing so by
34 direction of the will of the parent, spouse or domestic partner as
35 defined in section 3 of P.L. 2003, c.246 (C.26:8A-3) appointing the
36 guardian. However, regardless of any direction, the guardian shall,
37 with respect to property to which the ward is or shall be entitled
38 from any source, other than the parent, spouse or domestic partner
39 as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) or other
40 than any policy of life insurance upon the life of the parent, spouse
41 or domestic partner as defined in section 3 of P.L. 2003, c. 246
42 (C.26:8A-3), give bond in accordance with that section before
43 exercising any authority or control over that property.

44 The provisions of this section relieving a testamentary guardian
45 of an incapacitated person from giving bond by direction of the will
46 of the parent, spouse or domestic partner shall not apply to a
47 testamentary guardian of a minor with a developmental disability.

1 Such guardian shall be bonded pursuant to paragraph (1) of
2 subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from
3 doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-
4 1.²
5 (cf: P.L.2005, c.304, s.21)
6
7 ¹[3.] ²[2.¹] ^{4.}² This act shall take effect on the 60th day
8 following enactment.