

ASSEMBLY, No. 1529

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman WILLIAM W. SPEARMAN

District 5 (Camden and Gloucester)

SYNOPSIS

Provides that application for voluntary discharge of personal representative for estate need not be consented to by parties in interest if governing document indicates successor representative; authorizes possible payment of commission.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the voluntary discharge of personal
2 representatives for estates and amending P.L.2017, c.208.

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

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7 1. Section 1 of P.L.2017, c.208 (C.3B:10-30.1) is amended to
8 read as follows:

9 1. a. (1) Following appointment by the Surrogate's Court,
10 whenever a personal representative for an estate is unwilling or
11 unable to perform the duties and powers of a personal
12 representative, that personal representative may seek to be
13 voluntarily discharged from the further performance of the duties
14 and powers of the office by filing for voluntary discharge with the
15 Surrogate's Court of the county which granted the personal
16 representative's letters. **Any** If the governing document does not
17 indicate a successor personal representative, an application for
18 voluntary discharge shall be consented to by all parties in interest to
19 the estate that is under the administration of the personal
20 representative seeking to be discharged. If the governing document
21 indicates a successor personal representative, an application for
22 voluntary discharge shall be accompanied by notice to all parties in
23 interest to the estate.

24 (2) Nothing in this section concerning the voluntary discharge
25 of a personal representative through an application filed with the
26 Surrogate's Court shall prohibit a personal representative from
27 instead filing a discharge action with the Superior Court pursuant to
28 N.J.S.3B:14-18 et seq.

29 b. The voluntary discharge filing shall include the following:

30 (1) A request for discharge, made in accordance with Rules of
31 Court adopted by the Supreme Court, which contains the following
32 information:

33 (a) the name of the personal representative seeking to be
34 discharged, and the representative's address where future pleadings
35 involving the estate can be served;

36 (b) the name and address of every party in interest to the estate,
37 and a description of that party's interest;

38 (c) an affirmation by the personal representative that every party
39 in interest to the estate listed in the form pursuant to subparagraph
40 (b) of this paragraph has consented to the voluntary discharge of the
41 personal representative, accompanied by the written, notarized
42 consent of every party in interest, or that of any party in interest
43 under disability whose consent is provided by the party's guardian
44 or other legal representative;

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.

1 (d) an affirmation by the personal representative, if applicable,
2 that every party in interest to the estate listed in the form pursuant
3 to subparagraph (b) of this paragraph has consented to waiving the
4 additional requirement, set forth in subsection c. of this section, that
5 the personal representative file a verified final account with the
6 Chancery Division, Probate Part for adjudication, showing the true
7 condition of the estate, in order to release any sureties on the
8 personal representative's bond, accompanied by the written,
9 notarized consent of every party in interest, or that of any party in
10 interest under disability whose consent is provided by the party's
11 guardian or other legal representative. This consent and the consent
12 presented pursuant to subparagraph (c) of this paragraph, whereby
13 every party in interest has agreed to the voluntary discharge of the
14 personal representative, may be included in the same notarized
15 document; and

16 (e) a statement that the personal representative's voluntary
17 discharge is not intended to impair the rights of any party in interest
18 or creditor of the estate; and

19 (2) Along with the request for discharge and any accompanying
20 documents, an application completed by another person to be
21 appointed a successor or substitute personal representative for the
22 estate.

23 c. (1) The personal representative filing for voluntary discharge
24 with the Surrogate's Court shall also file a verified final account
25 showing the true condition of the estate with a verified complaint in
26 the Chancery Division, Probate Part for adjudication, unless every
27 party in interest to the estate listed in the Personal Representative
28 Voluntary Discharge Form pursuant to subparagraph (b) of
29 paragraph (1) of subsection b. of this section has consented in a
30 written, notarized document to waiving this additional requirement
31 and this consent accompanies the discharge form in lieu of any
32 filing for a final account of the estate with the Chancery Division,
33 Probate Part.

34 (2) Any sureties on the bond of a personal representative who
35 files for voluntary discharge with the Surrogate's Court shall not be
36 released until a final judgment has been rendered on the verified
37 final account of the estate, unless the additional requirement for the
38 final account was waived by the consent of every party in interest.

39 (3) Notwithstanding any consent by every party in interest to
40 waive the requirement of a verified final account of an estate, a
41 creditor of that estate whose interest has not been satisfied may
42 petition the Superior Court for an accounting of the estate.

43 d. (1) A personal representative shall be discharged from the
44 further performance of the duties and powers of the office, and the
45 personal representative's letters revoked, upon the approval of the
46 personal representative's voluntary discharge filing by the
47 Surrogate's Court ; except the personal representative shall account
48 for and pay over the money and assets with which the personal

1 representative is chargeable by virtue of the office to the successor
2 or substitute personal representative.

3 (2) A personal representative who is voluntarily discharged
4 from the office pursuant to an approved voluntary discharge filing
5 shall **【not】** be entitled to any statutory commissions relating to the
6 performance of the duties and powers of that office as are
7 commensurate with any such duties and powers actually performed
8 prior to discharge.

9 (cf: P.L.2017, c.208, s.1)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 P.L.2017, c.208, codified as N.J.S.A. 3B:10-30.1, authorizes a
17 voluntary discharge process for personal representatives overseeing
18 the administration of estates. As defined by N.J.S.A. 3B:1-2, the
19 term “personal representatives” includes executors, administrators,
20 special administrators, and other persons who perform substantially
21 the same function. Under the enactment, a personal representative
22 appointed by the Surrogate’s Court who is unwilling or unable to
23 perform the duties and powers of a personal representative may file
24 for voluntary discharge with the Surrogate’s Court of the county
25 that appointed him.

26 The enactment also provides that any application for voluntary
27 discharge must be consented to by all parties in interest to the
28 estate. This bill relaxes the requirement, in certain instances, for
29 consent of the parties in interest. The bill provides that such
30 consent would be required only if the governing document does not
31 indicate a successor personal representative. If, however, the
32 governing document does indicate a successor, the application for
33 voluntary discharge would need to be accompanied only by notice
34 to the parties in interest.

35 In addition, P.L.2017, c.208 provides that a personal
36 representative who is voluntarily discharged would not be entitled
37 to any statutory commissions relating to the duties and powers of
38 the office. This bill provides that the personal representative would
39 be entitled to any statutory commissions relating to the performance
40 of the duties and powers of that office as are commensurate with
41 any such duties and powers actually performed prior to discharge.