

SENATE, No. 1168

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

Clarifies procedures for resignation, removal, and succession of fiduciaries.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning fiduciaries, amending various parts of the
 2 statutory law, and supplementing Title 3B of the New Jersey
 3 Statutes.

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

7
 8 1. N.J.S.3B:14-18 is amended to read as follows:

9 3B:14-18. Discharge, resignation and removal from office of
 10 fiduciary; account; allowances.

11 a. A fiduciary acting under a governing instrument, including a
 12 fiduciary appointed under a will to perform a particular trust, may
 13 resign from office at any time and for any reason if the governing
 14 instrument expressly authorizes such resignation. Such resignation
 15 shall be effective upon:

16 (1) compliance with the terms, if any, set forth in the governing
 17 instrument;

18 (2) delivery of written notice of resignation to each cofiduciary;

19 (3) compliance with the procedures set forth in section 6 of
 20 P.L. , c. (C.) (pending before the Legislature as this bill)
 21 if the fiduciary was appointed by a Surrogate of this State; and

22 (4) the appointment and acceptance of a successor fiduciary if
 23 no cofiduciary has authority to continue with the administration or
 24 the governing instrument requires the appointment of a successor
 25 fiduciary.

26 The resigning fiduciary shall be entitled to commissions for the
 27 period of the fiduciary's service in accordance with the provisions
 28 of this Title. Nothing in this subsection shall be deemed to preclude
 29 a fiduciary from applying to the Superior Court for discharge from
 30 office in accordance with subsection c. of this section.

31 b. A fiduciary acting under a governing instrument, including a
 32 fiduciary appointed by a will to perform a particular trust, may be
 33 removed from office without leave of court at any time and for any
 34 reason if the governing instrument expressly authorizes such
 35 removal. Such removal shall be effective upon:

36 (1) compliance with the terms, if any, set forth in the governing
 37 instrument;

38 (2) delivery of written notice of removal to the fiduciary and to
 39 any cofiduciary;

40 (3) compliance with the procedures set forth in section 6 of
 41 P.L. , c. (C.) (pending before the Legislature as this bill)
 42 if the fiduciary was appointed by a Surrogate of this State; and

43 (4) the appointment and acceptance of a successor fiduciary if
 44 no cofiduciary has authority to continue with the administration or

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 the governing instrument requires the appointment of a successor
2 fiduciary.

3 The removed fiduciary shall be entitled to commissions for the
4 period of the fiduciary's service in accordance with the provisions
5 of this Title. Nothing in this subsection shall be deemed to preclude
6 a fiduciary from applying to the Superior Court for discharge from
7 office in accordance with subsection c. of this section.

8 c. A fiduciary may be discharged from the further duties of
9 **【his】** the fiduciary's office by the court.

10 The court shall examine into the matter and if sufficient cause
11 appears, the court may grant the discharge unless it will be
12 prejudicial to the estate, trust, or persons interested therein or for
13 any other reason the discharge ought not to be granted. If the
14 fiduciary is discharged, the court shall make orders respecting the
15 fiduciary's commissions as may be just and equitable.

16 d. A **【discharge so granted shall discharge the】** fiduciary who
17 resigns or is removed in accordance with the provisions of the
18 governing instrument, or a fiduciary who is discharged by the court,
19 shall be discharged 【of】 from all the further duties of **【his】** the
20 fiduciary's office except accounting for and paying over the money
21 and assets with which **【he】** the fiduciary is chargeable by virtue of
22 **【his】** the fiduciary's office. Nothing in this section shall be deemed
23 to require the filing of a judicial accounting if an instrument settling
24 or waiving an account is permitted by and executed in accordance
25 with the provisions of N.J.S.3B:17-13.

26 **【If the fiduciary is discharged, the court shall make orders**
27 **respecting his commissions as may be just and equitable.】**
28 (cf: N.J.S.3B:14-18)
29

30 2. N.J.S.3B:14-19 is amended to read as follows:

31 3B:14-19. Discharge from particular trust; effect. Where a
32 fiduciary is appointed by a will to perform a particular trust
33 thereunder, **【he】** the fiduciary may be discharged from the
34 performance thereof by the court as provided in subsection c. of
35 N.J.S.3B:14-18.

36 The court may grant the discharge and the fiduciary shall be
37 relieved of all further duties and liabilities with respect to the trust
38 **【,** except accounting for and paying over to his successor all
39 moneys or assets pertaining to the trust, for which he is
40 accountable**】** as provided in subsection d. of N.J.S.3B:14-18.

41 (cf: N.J.S.3B:14-19)
42

43 3. N.J.S.3B:14-20 is amended to read as follows:

44 3B:14-20. Discharge of one or more joint fiduciaries. When
45 there is more than one fiduciary they may all, or any one or more of
46 them, resign, be removed, or be discharged in accordance with the

1 provisions of N.J.S.3B:14-18.

2 (cf: N.J.S.3B:14-20)

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4 4. N.J.S.3B:14-21 is amended to read as follows:

5 3B:14-21. The court may remove a fiduciary from office when
6 the fiduciary:

7 a. After due notice of an order or judgment of the court so
8 directing, neglects or refuses, within the time fixed by the court, to
9 file an inventory, render an account, or give security or additional
10 security;

11 b. After due notice of any other order or judgment of the court
12 made under its proper authority, neglects or refuses to perform or
13 obey the order or judgment within the time fixed by the court;

14 c. Embezzles, wastes, or misapplies any part of the estate for
15 which the fiduciary is responsible, or abuses the trust and
16 confidence reposed in the fiduciary;

17 d. No longer resides nor has an office in the State and neglects
18 or refuses to proceed with the administration of the estate and
19 perform the duties required;

20 e. Is incapacitated for the transaction of business; or

21 f. Neglects or refuses, as one of two or more fiduciaries, to
22 perform the required duties or to join with the other fiduciary or
23 fiduciaries in the administration of the estate or trust for which they
24 are responsible whereby the proper administration and settlement of
25 the estate or trust is or may be hindered or prevented.

26 (cf: P.L.2013, c.103, s.44)

27

28 5. N.J.S.3B:14-22 is amended to read as follows:

29 3B:14-22. Discharge or removal not to release fiduciary or
30 sureties from certain liabilities. The resignation, discharge or
31 removal of a fiduciary for any cause authorized by this article,
32 including a fiduciary who resigns or is removed in the manner set
33 forth in the governing instrument, shall not release or discharge
34 **【him】** the fiduciary or **【his】** the fiduciary's surety or sureties, or
35 any of them, from liability for the estate or trust, or any part thereof,
36 which has been received or ought to have been received by **【him or**
37 **them】** the fiduciary, or for any neglect, default, miscarriage or
38 breach of trust in the execution of **【his】** the fiduciary's office.

39 (cf: N.J.S.3B:14-22)

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41 6. (New section) a. If the fiduciary seeking to resign pursuant
42 to subsection a. of N.J.S.3B:14-18, or the fiduciary sought to be
43 removed pursuant to subsection b. of N.J.S.3B:14-18, was
44 appointed by the Surrogate, there shall be filed with the Surrogate:

45 (1) a copy of the will or other governing instrument which
46 expressly authorized resignation or removal of the fiduciary;

47 (2) proof of compliance with the terms, if any, set forth in the
48 governing instrument; and

1 (3) proof that written notice of the removal or the intent to
2 resign has been served on all interested persons at least 20 days
3 prior to filing with the Surrogate.

4 b. The Surrogate shall discharge the resigning or removed
5 fiduciary if the Surrogate determines:

6 (1) there is compliance with the terms set forth in the governing
7 instrument;

8 (2) either written consent has been obtained from each
9 interested person or notice has been properly served on each
10 interested person and no opposition has been filed; and

11 (3) either there is no need to appoint a successor fiduciary or a
12 successor fiduciary has accepted appointment and is being
13 appointed by the Surrogate simultaneously with the discharge of the
14 resigning or removed fiduciary.

15 c. The written notice required under subsection a. of this
16 section shall be served by certified or registered mail, return receipt
17 requested, upon all interested persons. Such notice shall advise the
18 interested person of the fiduciary's removal or intent to resign and
19 that any opposition to the resignation or removal must be provided
20 to the Surrogate in writing within 20 days of the mailing of the
21 notice.

22 d. As used in this section "interested person" means:

23 (1) each fiduciary then serving, and the proposed successor
24 fiduciary, if any, to the fiduciary sought to be discharged; and

25 (2) each person having an interest in income or principal whom
26 it would be necessary to join as a party in a proceeding for the
27 judicial settlement of the fiduciary's account. If such person has
28 not attained the age of majority or is otherwise incapacitated, notice
29 shall be served on the person's legal representative, agent under a
30 durable power of attorney or, in the case of a minor with no legal
31 representative or agent under a durable power of attorney, the
32 minor's parent.

33

34 7. This act shall take effect immediately.

35

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37 STATEMENT

38

39 This bill would clarify the procedures for the resignation or
40 removal of a fiduciary when such action is expressly permitted by a
41 governing instrument, such as a will. The bill would additionally
42 clarify that Surrogates may grant such applications under certain
43 circumstances.

44 Many governing instruments are currently drafted to include a
45 specific provision permitting fiduciaries to resign from office or
46 establishing the authority to discharge a fiduciary and appoint a
47 successor. Under current law, procedures for processing
48 applications for resignation or removal pursuant to such provisions

1 may be unclear. This bill would establish certain standards for such
2 applications by providing that the resignation or removal would
3 become effective when any relevant terms in the governing
4 instrument have been complied with, written notice is delivered to
5 any cofiduciaries, and a successor is appointed if there is no
6 cofiduciary authorized to continue the administration or if the
7 governing instrument requires appointment of a successor.

8 Additionally, the bill would expressly permit Surrogates to
9 accept resignations and effectuate removals of fiduciaries appointed
10 by the Surrogate when the action is authorized by the governing
11 instrument and there is no opposition to the application by any
12 interested person. The bill would require that certain documents be
13 filed with the Surrogate, including a copy of the governing
14 instrument, proof of compliance with any relevant terms in the
15 governing instrument, and proof that notice of the intended action
16 was sent to all interested parties by certified or registered mail at
17 least 20 days prior to filing the action. The notice would advise the
18 interested person of the intended action and that any objections
19 must be provided to the Surrogate in writing within 20 days of the
20 mailing.

21 As used in the bill, “interested person” includes all serving
22 fiduciaries, any successors, and any person having an interest in
23 income or principal whom it would be necessary to join as a party
24 in a proceeding for the judicial settlement of the fiduciary’s
25 account.

26 Nothing in the bill would preclude a fiduciary from applying to
27 the Superior Court for discharge as provided under current law.

28 It is the sponsor’s belief that this bill will help reduce the costs
29 of administering estates and testamentary trusts.