§2-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2-801. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Divorced individual" includes an individual whose marriage has been annulled. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse or relative of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse or in place of the relative of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Revocation upon divorce. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

A. Revokes any revocable:

(1) Disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(3) Nomination in a governing instrument nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent or guardian; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Effect of severance. A severance under subsection 2, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Effect of revocation. Provisions of a governing instrument are given effect as if the divorced individual's former spouse and relatives of the divorced individual's former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the divorced individual's former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Revival if divorce nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. No revocation for other change of circumstances. A change of circumstances other than as described in this section or in section 2-802 does not effect a revocation pursuant to this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Protection of payors and other 3rd parties. This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a remarriage, divorce or annulment or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument before the payor or other 3rd party received written notice of the remarriage, divorce or annulment. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed remarriage, divorce or annulment under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Written notice of the remarriage, divorce or annulment under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of the remarriage, divorce or annulment, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person for value and without notice, or who receives from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A divorced individual's former spouse, relative of a divorced individual's former spouse or other person who, not for value, receives a payment, item of property or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a divorced individual's former spouse, relative of the divorced individual's former spouse or any other person who, not for value, receives the payment, item of property or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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