



Ohio Revised Code

Section 2107.52 Deceased devisee; class gifts.

Effective: April 3, 2023

Legislation: Senate Bill 202

(A) As used in this section:

(1) "Class member" means an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(2) "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under either of the following:

(a) The rules of construction applicable to a class gift created in the testator's will if the devise or the exercise of the power of appointment is in the form of a class gift;

(b) The rules for intestate succession if the devise or the exercise of the power of appointment is not in the form of a class gift.

(3)(a) "Devise" includes a primary devise, an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(b) Except as otherwise provided in this division, the amendment to division (A)(3)(a) of this section in this act shall be given retroactive effect to the fullest extent permitted under Ohio Constitution, Article II, Section 28. The amendment shall not be given retroactive effect in those instances where doing so would invalidate or supersede any instrument that conveys real property or any interest in the real property, recorded in the office of the county recorder in which that real property is situated.

(4) "Devisee" means any of the following:

(a) A class member if the devise is in the form of a class gift;

(b) An individual or class member who was deceased at the time the testator executed the testator's



will or an individual or class member who was then living but who failed to survive the testator;

(c) An appointee under a power of appointment exercised by the testator's will.

(5) "Per stirpes" means that the shares of the descendants of a devisee who does not survive the testator are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the devisee had died intestate and unmarried on the date of the testator's death.

(6) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor.

(7) "Surviving devisee" or "surviving descendant" means a devisee or descendant, whichever is applicable, who survives the testator by at least one hundred twenty hours.

(8) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(B)(1) As used in "surviving descendants" in divisions (B)(2)(a) and (b) of this section, "descendants" means the descendants of a deceased devisee or class member under the applicable division who would take under a class gift created in the testator's will.

(2) Unless a contrary intent appears in the will, if a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, either of the following applies:

(a) If the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take, per stirpes, the property to which the devisee would have been entitled had the devisee survived the testator.

(b) If the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar



import that includes more than one generation, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take, per stirpes, the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of division (B)(2)(b) of this section, "deceased devisee" means a class member who failed to survive the testator by at least one hundred twenty hours and left one or more surviving descendants.

(C) For purposes of this section, each of the following applies:

(1) Attaching the word "surviving" or "living" to a devise, such as a gift "to my surviving (or living) children," is not, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

(2) Attaching other words of survivorship to a devise, such as "to my child, if my child survives me," is, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

(3) A residuary clause is not a sufficient indication of an intent to negate the application of division (B) of this section unless the will specifically provides that upon lapse or failure the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(4) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power of appointment.

(D) Except as provided in division (A), (B), or (C) of this section, each of the following applies:

(1) A devise, other than a residuary devise, that fails for any reason becomes a part of the residue.



- (2) If the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.
- (3) If a residuary devise fails for any reason in its entirety, the residue passes by intestate succession.
- (E) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to section 5808.19 of the Revised Code.
- (F) This section applies to wills of decedents who die on or after March 22, 2012.