

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.2723 Will, trust, or beneficiary designation of decedent who dies after December 31, 2009 and before January 1, 2011; presumption; retroactive effective date; "2010 federal tax relief act" defined.

Sec. 2723.

(1) Except as provided in subsection (3), for purposes of interpreting a will, trust, or beneficiary designation of or by a decedent who dies after December 31, 2009 and before January 1, 2011, a will, trust, or beneficiary designation is presumed to refer to the federal estate tax and federal generation-skipping transfer tax laws as they apply to estates of decedents who die on January 1, 2010, in accordance with section 302(c) of the 2010 federal tax relief act without regard to the election permitted by section 301(c) of that act, if either of the following applies to the will, trust, or beneficiary designation:

(a) The will, trust, or beneficiary designation contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, taxable estate, gross estate, estate tax value, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the internal revenue code of 1986, 26 USC 1 to 9834, relating to the federal estate tax or generation-skipping transfer tax.

(b) The will, trust, or beneficiary designation measures a share of an estate, trust, or contractual benefit subject to a beneficiary designation based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax or based on a similar provision of federal estate tax or federal generation-skipping transfer tax law.

(2) A presumption that arises under subsection (1) is a rebuttable presumption that the decedent intended that the formula be construed as provided in subsection (1). A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption is applicable shall give notice to each beneficiary whose interest is affected by the presumption. A presumption that arises under subsection (1) does not preclude a fiduciary from making any available election, including an election under section 301(c) of the 2010 federal tax relief act. A fiduciary who has made an election under section 301(c) of the 2010 federal tax relief act may commence a proceeding to determine whether the decedent would not have intended the formula to be construed as provided in subsection (1). All interested persons affected by a presumption that arises under subsection (1) may enter into a nonjudicial settlement under section 7111 that the decedent intended the formula to be construed in a different manner from the presumption under subsection (1). A beneficiary whose interest is affected by the presumption or a fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation may commence a proceeding to determine whether the decedent intended that the formula be construed as provided under subsection (1). Solely for the purpose of determining the intent of the decedent regarding the formula under this section, the court may consider the surrounding circumstances and the rules of construction. A person who commences a proceeding under this section has the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in subsection (1). A proceeding under this subsection shall be commenced or a nonjudicial settlement under this subsection shall be executed within whichever of the following is earlier:

(a) Two years after the decedent's death.

(b) Six months after the fiduciary sent the beneficiary a notice of the presumption under this subsection or the due date for filing the federal estate tax return of the decedent, if later.

(3) A presumption under subsection (1) does not apply with respect to a will, trust, or beneficiary designation that is executed or amended after December 31, 2010, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date when no federal estate or generation-skipping transfer tax would apply.

(4) This section is a remedial response to changes in the federal estate tax and generation-skipping transfer tax and takes effect retroactively on January 1, 2010.

(5) As used in this section, "2010 federal tax relief act" means the tax relief, unemployment insurance reauthorization, and job creation act of 2010, Public Law 111-312.

History: Add. 2010, Act 224, Eff. Jan. 1, 2010 ;-- Am. 2012, Act 303, Imd. Eff. Sept. 25, 2012

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