

CHAPTER 426  
FORMERLY  
HOUSE BILL NO. 410  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO DIVORCE AND ANNULMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend §1509(a)(1), Title 13 of the Delaware Code by inserting the following after semicolon “;” at the end of the paragraph: “provided, however, that:

A. Subject to the provisions of subsection (a)(1), this section shall not preclude a party from taking any action which will affect the disposition of property as a result of such party’s death. Such action shall be effective upon written notice (hereinafter the “Notice”) to the other party to the divorce or annulment proceeding.

B. If a party dies before entry of a final decree of divorce or annulment, any action affecting the disposition of property as a result of the party’s death, which was taken by the party after a preliminary injunction under this section was issued, shall be voidable, to the extent deemed appropriate, in the discretion of a court of competent jurisdiction, unless the parties have otherwise agreed in writing.

C. If any party to a divorce or annulment proceeding dies between the time of entry of the final decree of divorce or annulment and the final resolution of all pending ancillary issues, then:

1. In the case of “marital property,” as that term is defined in subsection (b) of §1513 of this Title, there shall be a rebuttable presumption that the interests of a former spouse in such property shall be superior to the interests of any third-party claimant, payee or beneficiary in such property; and

2. In the case of property that is not “marital property,” as that term is defined in subsection (b) of §1513 of this Title, there shall be a rebuttable presumption that the interests of any third party claimant, payee or beneficiary in such property shall be superior to the interests of the former spouse in such property.

D. For purposes of this subsection:

1. The Notice shall include a description of all property that will be affected in the event of the party’s death, including specific contact information for the individuals or entities who will administer any property that will be affected, including, but not limited to, any trustees, individuals, or other entities administering insurance, accounts or property interests governed by transfer on death provisions, annuities, individual retirement accounts, stock options and qualified or non-qualified employee benefit plans;

2. The Notice shall include language similar to the following: “This Notice is being given to you as required under subsection (a)(1) of Section 1509 of Title 13 of the Delaware Code”; and

3. The Notice shall be delivered to the other party in any manner, including, but not limited to, certified or registered mail, to the last known address of the other party or the other party’s attorney in the divorce or annulment proceeding. Said notice shall be effective on the first to occur of the date of delivery or, in the case of delivery by certified or registered mail, the date of the first attempted delivery;

E. Notice shall be required under this subsection for the purpose of allowing the party receiving the Notice an opportunity to:

1. Protect his or her rights under subparagraphs (1)A. and (1)C. of this subsection in the event of the death of the other party to the divorce or annulment proceeding.

2. Take action to dispose of property under such party’s control as a result of his or her death as authorized under this section.”.

Section 2. Amend §1509(a), Title 13 of the Delaware Code by striking the last sentence thereof in its entirety and substituting the following in lieu thereof: “The preliminary injunction shall be effective against the petitioner upon the filing of the petition for divorce or annulment. The preliminary injunction shall be effective against the respondent upon the first to occur of the following: service of a copy of the petition; the entry of appearance by the respondent or an attorney for the respondent; the filing of a responsive pleading in the action by the respondent or an attorney for the respondent; or any other written acknowledgment of the filing of the petition for divorce or annulment by the respondent or the respondent’s attorney.”.

Section 3. Amend §1509(b), Title 13 of the Delaware Code by striking paragraph (2) thereof in its entirety and substituting a new paragraph “(2)” in lieu thereof as follows:

“(2) Restraining a party from transferring, encumbering, concealing, or in any way disposing of any property except in the usual course of business, for the necessities of life, or as authorized under subsection (a)(1) and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the order is issued;”.

Approved July 23, 2010