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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 179

AN ACT TO AMEND TITLE 8, TITLE 10, TITLE 12, AND TITLE 26 OF THE DELAWARE CODE RELATING TO CHANGES TO THE TITLE "MASTER IN CHANCERY".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 227, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 227. Powers of Court in elections of directors.

(b) The Court of Chancery may appoint a ~~Master~~ Magistrate in Chancery to hold any election provided for in § 211, § 215 or § 225 of this title under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than \$5,000.

Section 2. Amend § 348, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 348. Disputes involving deed covenants or restrictions.

(a) Without limiting the jurisdiction of any court of this State, the Court of Chancery shall, through a ~~Master~~ Magistrate in Chancery or such other person as may be appointed that ~~Master~~ Magistrate in Chancery's designee, mediate disputes involving the enforcement of deed covenants or restrictions when:

(c) Upon the filing of an action involving the enforcement of deed covenants or restrictions, the Court shall schedule a mandatory mediation hearing to be held within 60 days of the filing. If the parties fail to resolve the dispute, the Court shall schedule a trial to be held within 120 days of the failed attempt to mediate the dispute, unless for good cause shown the Court in its discretion concludes that a longer period of time is warranted. A ~~Master~~ Magistrate in Chancery shall preside over the trial.

Section 3. Amend § 350, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 350. Voluntary final adjudications before a ~~Master~~ Magistrate in Chancery.

22 The parties in any matter may stipulate to a final adjudication of the matter by a ~~Master~~ Magistrate of the Court of
23 Chancery. In such a stipulation, the parties shall consent that the decision of the ~~Master~~ Magistrate shall have the same
24 effect as a decision of a member of the Court of Chancery. Appeals from decisions of the ~~Master~~ Magistrate in a matter
25 governed by such a stipulation shall be determined in all respects by the same procedural and substantive standards as are
26 applicable to appeals from decisions of members of the Court of Chancery.

27 Section 4. Amend § 351, Title 10 of the Delaware Code by making deletions as shown by strike through and
28 insertions as shown by underline as follows:

29 § 351. Voluntary waiver of appeal by parties.

30 The parties in any matter may stipulate that the decision of the Court of Chancery, or a ~~Master~~ Magistrate of the
31 Court of Chancery if they so choose, shall be final and binding and not subject to appeal.

32 Section 5. Amend § 372, Title 10 of the Delaware Code by making deletions as shown by strike through and
33 insertions as shown by underline as follows:

34 § 372. Power to appoint ~~Masters~~ Magistrates in Chancery.

35 (a) Unless expressly prohibited by a statute pursuant to which a particular cause has been initiated in the Court of
36 Chancery, the Court of Chancery may, in any cause pending in the Court of Chancery of this State, appoint a ~~Master~~
37 Magistrate in Chancery, pro hac vice.

38 (b) The Court may make and promulgate rules regulating the duties and compensation of ~~Masters~~ Magistrates in
39 Chancery appointed under subsection (a) of this section, and regulating the practice in all particulars relating to such
40 ~~Masters~~ Magistrates in Chancery. The compensation of such ~~Masters~~ Magistrates in Chancery shall be paid under the rules
41 of court by the parties to the causes in which they are appointed.

42 Section 6. Amend § 373, Title 10 of the Delaware Code by making deletions as shown by strike through and
43 insertions as shown by underline as follows:

44 § 373. Appointment of ~~Masters~~ Magistrates for purpose of executing certain instruments.

45 In all cases where the Court of Chancery orders the execution of any conveyance, assignment, release, acquittance
46 or other instrument and the party against whom the judgment is made does not comply therewith within the time mentioned
47 in the judgment, the Court may appoint a ~~Master~~ Magistrate for such purpose. Such conveyance, assignment, release,
48 acquittance or other instrument when executed by such ~~Master~~ Magistrate and approved by the Court shall be as valid and
49 effectual as if done by the party required by the judgment to make the same. Any such instrument shall be recorded by the
50 ~~Master~~ Magistrate if it is necessary.

Section 7. Amend § 1921, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1921. Definitions.

As used in this subchapter:

(4) “Judicial officer” includes any active, formerly active, or retired:

b. Chancellor, Vice Chancellor or ~~Master~~ Magistrate of the Court of Chancery.

Section 8. Amend § 1704, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1704. Hearing; competency of witnesses.

At the hearing in either of the cases provided for in §§ 1702 and 1703 of this title, the Court of Chancery shall take such legal evidence as shall be offered, for the purpose of ascertaining whether the presumption of death is established; or it may appoint a ~~master~~ Magistrate to take such testimony, and report the findings thereon. No person shall be disqualified to testify by reason of relationship as husband or wife to the presumed decedent, or of interest in the estate of the presumed decedent.

Section 9. Amend § 1705, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1705. Search for absentee.

The Court of Chancery, on its own motion or upon the application of any party in interest, may appoint a ~~master~~, Magistrate, investigator or appropriate agency to search for the presumed decedent in any manner which the Court shall deem appropriate, and the expenses of such search shall be paid out of the property of the absentee.

Section 10. Amend § 1706, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1706. Decree of presumed death; admission of will to probate and grant of letters.

(a) If satisfied, upon the hearing, or upon the report of a ~~master~~, Magistrate, that the death of the presumed decedent has been established, the Court of Chancery shall so decree, and the Court shall determine in such decree the date of such death.

Section 11. Amend § 1709, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1709. Security given by beneficiaries.

80 (c) If the Court of Chancery shall be satisfied, from the evidence at the hearing to ascertain whether the
81 presumption of death is established, or from the report of the ~~master~~Magistrate, that there is no likelihood of the presumed
82 decedent's being still alive, then the Court may accept refunding bonds from the distributees of the presumed decedent's
83 estate without requiring sureties thereon.

84 Section 12. Amend § 2337, Title 12 of the Delaware Code by making deletions as shown by strike through and
85 insertions as shown by underline as follows:

86 § 2337. Appointment of ~~master~~Magistrate; exceptions to ~~master's~~Magistrate's report.

87 The Court of Chancery, instead of hearing in the first instance an application for a decree of distribution under this
88 subchapter, may appoint a ~~master~~Magistrate to hear the same who shall thereafter proceed in accordance with this
89 subchapter, and thereupon the ~~master~~Magistrate shall make a report to the Court recommending the decree to be entered in
90 the proceeding. Such report shall be subject to exceptions by the personal representative of the estate or any person
91 claiming to have an interest therein and such exceptions shall be heard by the Court and thereafter a decree shall be entered
92 by the Court in the proceeding.

93 Section 13. Amend § 2339, Title 12 of the Delaware Code by making deletions as shown by strike through and
94 insertions as shown by underline as follows:

95 § 2339. Rule-making power of Court of Chancery.

96 The Court of Chancery may make all necessary rules of procedure before the ~~master~~Magistrate and other rules
97 governing the proceeding not inconsistent with this subchapter.

98 Section 14. Amend § 3562, Title 12 of the Delaware Code by making deletions as shown by strike through and
99 insertions as shown by underline as follows:

100 § 3562. Judicial review of trustees' allowances.

101 (b) Upon the filing of any such petition, the Court of Chancery may appoint a disinterested third person to act as
102 ~~master~~Magistrate to hear and determine the matters raised by such petition and any answer thereto. Proceedings before
103 such ~~master~~Magistrate shall be in conformance with the Rules of the Court of Chancery. The final report of the ~~master~~
104 Magistrate shall be in the form of findings of fact, conclusions of law and recommended decree, and shall be filed with the
105 Register in Chancery. Findings of fact made by the ~~master~~Magistrate, if supported by substantial evidence, shall be
106 conclusive. The Court of Chancery shall thereafter enter its decree determining the matter in issue. Costs of the proceeding,
107 including the reasonable fee of the ~~master~~Magistrate, shall be assessed against the trust in question if the petition is denied
108 in its entirety and shall be assessed against the trustee in its individual capacity if it is granted in whole. In other instances,
109 costs shall be apportioned equitably.

Section 15. Amend § 606, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 606. Termination of franchise for failing to comply with its terms.

A franchise granted pursuant to the terms of this subchapter may be revoked or terminated in whole or in part but only for failure of the franchisee to comply with the terms of the franchise, and only if the following procedure is observed:

(2) Following the public hearing, the Commission by a majority vote of its members, by order, a copy of which shall be mailed by certified mail to the franchisee, may direct the franchisee to perform specific acts to bring itself into compliance with the terms of its franchise and may fix a reasonable time in which the franchisee may perform such acts. The franchisee either may comply with the foregoing compliance order or, within 30 days from the date of mailing of the order to it, may institute proceedings to review the compliance order by the filing of a complaint in the Court of Chancery for any county in which the franchise is located. Such proceedings shall be in accordance with the rules of procedure of the Court of Chancery. The Commission shall be the defendant in such proceedings. The filing of the complaint shall not act as a stay of the compliance order, but the Court of Chancery may, on application with notice to the Commission, and on due cause shown, grant such a stay. If, upon a hearing, it shall appear to the Court of Chancery that testimony is necessary for the proper disposition of the proceedings, it may take evidence or appoint a ~~master~~ Magistrate to take such evidence as it may direct and report the same to the Court of Chancery, together with findings of fact and conclusions of law which shall constitute a part of the proceedings upon which the determination of the Court of Chancery shall be made. The Court of Chancery may reverse or affirm, wholly or in part, or may modify the order brought up for review.

SYNOPSIS

This Act replaces references to “Masters” in the Court of Chancery with “Magistrate”.

The Court of Chancery, as Delaware’s court of equity, “traces its jurisdiction and powers to the High Court of Chancery in Great Britain at the time of the American Revolution.” DiGiacobbe v. Sestak, 743 A.2d 180, 182 (Del. 1999). At that time in British history, the High Court appointed persons bearing the title “Masters in Chancery” to examine witnesses and prepare reports of their factual findings in causes referred to them. On its formation, the Court of Chancery inherited the power to appoint judicial officers for similar purposes. The General Assembly later adopted laws, and the Court of Chancery adopted rules, expressly memorializing this power. Following the tradition of the High Court, those laws and rules referred to judicial officers appointed to serve at the pleasure of the Chancellor as “Masters in Chancery”.

The title of “master” carries negative connotations due to the use of the term as the title of owners of slaves. Although the title “Master in Chancery” has no link to that historical context, the Court of Chancery is sensitive to the title’s negative connotations and so has proposed a new title, “Magistrate in Chancery”.

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware General Corporation Law.

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