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DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

SENATE BILL NO. 16

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO ISSUANCE OF SMALL ESTATE AFFIDAVITS.

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

1 Section 1. Amend § 2306, Title 12 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as 1 shown by underline as follows: 2

3 (a) The spouse of a decedent or any person who is a grandparent of the decedent, a lineal descendant of a 3  
4 grandparent of the decedent, the personal representative of any of the foregoing who may be deceased, or the guardian or 4  
5 trustee of any of the foregoing who may be incapacitated, or the trustee of a trust created by the decedent, a funeral director  
6 5 licensed in the State, or the named executor or executors in the decedent's will if the named executor or executors satisfies  
7 6 all qualifications set forth in § 1508 of this title, shall be entitled to the personal estate of the decedent for the purpose of 7  
8 making distribution thereof in accordance with the decedent's will or, if there be no will, with Chapter 5 of this title without  
9 8 awaiting the appointment of a personal representative or probate of a will upon executing an affidavit attesting under oath  
10 9 that: 10

11 (6) Decedent did not ~~solely~~ own real estate in Delaware, either solely or as tenants in common; and

SYNOPSIS

This Act amends Section 2306 of Delaware's probate code to clarify that if a decedent owned real estate in Delaware, either solely or as tenants in common, the small estate affidavit authorized by Section 2306 of Delaware's probate code should not be issued, and therefore, the grant of letters for the estate shall be necessary, pursuant to Chapter 15 of Title 12 of the Delaware Code.

Author: Senator Henry