

CHAPTER 302
FORMERLY
HOUSE BILL NO. 296

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES.

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

Section 1. Amend §2306, Title 12 of the Delaware Code by striking subsections (a), (b), and (c) in their entirety and substituting in lieu thereof the following:

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

- (1) No petition for the appointment of a personal representative is pending or has been granted;
- (2) Thirty days have elapsed since the death of the decedent;
- (3) The value of the personal estate of the decedent other than property described in §1901(b) and (c) of this title and other than jointly owned property, does not exceed \$30,000;
- (4) All known debts of the decedent are paid or provided for;
- (5) The surviving spouse's allowance, pursuant to §2308 of this title, has been paid, provided for, waived or has expired by lapse of time pursuant to §2308(b) of this title;
- (6) Decedent did not own solely owned real estate located in Delaware; and
- (7) There is furnished to any person owing any money, having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent an affidavit showing the existence of the foregoing conditions and the right of the affiant to receive such money or property or to have such evidence transferred for the purpose set forth in this subsection.

(b) Preference for receiving the personal estate of the decedent under this section for the purpose of making distribution thereof shall be given to the named executor in the decedent’s will who is not disqualified by the provisions set forth in §1508 of this title, the spouse, any child, any parent, any sibling, any grandchild or any grandparent of the decedent, or to a funeral director licensed in the State, in that order. There shall be no order of preference among the remaining persons or entities entitled to receive the personal estate pursuant to subsection (a) of this section.

(c) The named executor in the decedent’s will who is not disqualified by the provisions set forth in §1508 of this title and next of kin of a decedent shall have the right upon the death of the decedent:

- (1) To take possession of the decedent's motor vehicle or vehicles; and
- (2) To enter any premises for the sole and exclusive purpose of removing from the premises clothing belonging to the decedent to be used for the burial or viewing of the decedent.

The executor shall have preference over the next of kin to carry out the actions set forth in this subsection. If the decedent did not leave a will that names a qualified executor and no next of kin is available, a funeral director may have access to enter the premises for the aforementioned purpose of securing clothes only. The Register of Wills shall provide a form limited to facilitating action taken pursuant to this subsection. Such a form must be obtained prior to any person acting pursuant to this subsection.”.

Section 2. This Act shall become effective as of its date of enactment.

Approved June 22, 2010