

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

700.2714 Survivorship required for gift under trust; substitute gift; applicability of subsection (1).

Sec. 2714. (1) Subject to subsection (2), a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in subdivision (d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subdivision (d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. As used in this subdivision, "deceased beneficiary" means a class member who fails to survive the distribution date and leaves 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or another form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(2) Subsection (1) does not apply to a future interest if the beneficiary of the interest died or irrevocably transferred the interest before April 1, 2000.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC