

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

700.1216 Governing instrument; substantial gift to drafting attorney; void; exceptions; definitions.

Sec. 1216.

(1) Any part of a governing instrument that directly or indirectly makes a substantial gift to an attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument is void unless the attorney who drafted the governing instrument or the person related to the attorney who drafted the governing instrument is related to the individual making the substantial gift.

(2) This section does not apply to a provision in a governing instrument appointing the attorney who drafted the governing instrument, or a person related to the attorney who drafted the governing instrument, as a fiduciary.

(3) A provision in a governing instrument purporting to waive or otherwise avoid the application of this section is unenforceable.

(4) If a purchaser or lender for value acquires property distributed in kind or a security interest in property from a person that has received a substantial gift pursuant to a part of a governing instrument that is void under subsection (1), the purchaser or lender takes title free of any claims arising under, and incurs no personal liability by reason of, this section. This section does not directly or indirectly impose liability on a person that honors or relies on a part of a governing instrument that is void under subsection (1) and that contains or effectuates a substantial gift, unless the person has knowledge that the part of the governing instrument is void.

(5) If a part of a governing instrument is void under subsection (1), the part that is void is severable and does not affect any other part of the governing instrument that can be given effect, including a term that makes an alternate or substitute gift. If the part of the governing instrument that is void under subsection (1) cannot be severed, the entire governing instrument is void. For a power of appointment, this section does not affect the power to appoint in favor of persons other than the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument.

(6) If the court determines that an attorney who drafted the governing instrument disguised or attempted to disguise a substantial gift, to the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument, as a conveyance for consideration for less than fair market value, the court may find the conveyance void under subsection (1).

(7) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law. A part of a governing instrument that is not void under subsection (1) may be challenged under other legal grounds.

(8) This section applies only to a governing instrument executed after the effective date of the amendatory act that added this section.

(9) For purposes of this section, a person is related to an individual if, at the time the attorney who drafted the governing instrument prepared or supervised the preparation or execution of the governing instrument, the person is any of the following:

- (a) A spouse of the individual.
- (b) A lineal ascendant or descendant of the individual or the individual's spouse.
- (c) A sibling of the individual.
- (d) A spouse of the individual described in subdivision (b) or (c).

(10) For purposes of this section, an organization is related to an attorney if the attorney owns a 50% or greater interest in the organization or otherwise controls the organization.

(11) As used in this section:

(a) "Attorney who drafted the governing instrument" means an individual to whom both of the following apply:

(i) The individual is or was licensed to practice law in this state or any other state, before or at the time the governing instrument was prepared or executed, or both.

(ii) The individual directly or indirectly prepared or supervised the preparation, execution, or both, of the governing instrument. For purposes of this subparagraph, among other ways, the individual is considered to have prepared, or supervised the execution of, the governing instrument if the preparation, or supervision of the execution, of the governing instrument was performed by an employee, subordinate, partner, co-owner, or other person or lawyer employed by the same firm or company as the individual as of the time of preparation or execution, or both.

(b) "Gift" includes an inter vivos gift, a testamentary transfer of property, and the power to make the testamentary transfer regardless of any of the following:

- (i) Whether the gift or testamentary transfer is outright or in trust.
- (ii) When the gift or testamentary transfer is to take effect.
- (iii) Whether the power is held in a fiduciary or nonfiduciary capacity.

(c) "Substantial gift" means a gift, the value of which exceeds \$5,000.00 as a result of a single governing instrument or 2 or more related governing instruments.

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