



**NATIONAL COMMITTEE
FOR UNIFORM SUCCESSION LAWS**

WILLS: THE ANTI-LAPSE RULE

Supplementary Report
to
the Standing Committee of Attorneys General

Queensland Law Reform Commission
Report No 61
March 2006

The short citation for this Report is QLRC R 61.
Published by the Queensland Law Reform Commission, March 2006.
Copyright is retained by the Queensland Law Reform Commission.

ISBN: 0 7242 7750 1

**NATIONAL COMMITTEE
FOR UNIFORM SUCCESSION LAWS**

WILLS: THE ANTI-LAPSE RULE

Supplementary Report
to
the Standing Committee of Attorneys General

Queensland Law Reform Commission
Report No 61
March 2006

QUEENSLAND LAW REFORM COMMISSION

COMMISSION MEMBERS

Chairperson: **The Hon Justice R G Atkinson**

Full-time member: **Dr B P White**

Part-time members: **Mr J K Bond SC
Ms H A Douglas
Mr B J Herd
Mr G W O'Grady**

SECRETARIAT

Director: **Ms C E Riethmuller**

Acting Secretary: **Mrs K Napa**

Principal Legal Officer: **Mrs C A Green**

Legal Officers: **Ms M T Collier
Ms P L Rogers**

Administrative Officers: **Mrs J Manthey (part-time)
Ms S Porch (part-time)**

Address: 7th Floor, 50 Ann Street, Brisbane, Qld 4000
Postal address: PO Box 13312, George Street Post Shop, Qld 4003
Telephone: (07) 3247 4544
Facsimile: (07) 3247 9045
Email: LawReform.Commission@justice.qld.gov.au
Website: <http://www.qlrc.qld.gov.au>

**MEMBERS OF THE NATIONAL COMMITTEE
FOR UNIFORM SUCCESSION LAWS**

Australian Capital Territory:	ACT Law Reform Commission Professor Charles Rowland
New South Wales:	New South Wales Law Reform Commission Professor Michael Tilbury, Commissioner Mr Peter Hennessy, Executive Director Mr Joseph Waugh, Legal Officer
Northern Territory:	Northern Territory Department of Justice Mr Robert Bradshaw Deputy Director, Policy Division Solicitor for the Northern Territory
Queensland:	Queensland Law Reform Commission (co-ordinating agency for the project) The Hon Justice R G Atkinson, Chairperson Ms Claire Riethmuller, Director
Tasmania:	Tasmania Law Reform Institute Mr Ken Mackie, University of Tasmania
Victoria:	Victorian Law Reform Commission¹
Western Australia:	State Solicitor's Office Ms Ilse Petersen, Senior Assistant State Solicitor
Commonwealth:	Australian Law Reform Commission Associate Professor Les McCrimmon, Commissioner

1

The National Committee acknowledges the contribution to this project of Justice Marcia Neave of the Court of Appeal of the Supreme Court of Victoria who, until her Honour's recent appointment to that Court, was the Chairperson of the Victorian Law Reform Commission and the Victorian representative on the National Committee.

Previous publications in this project:

Issues Paper, *Uniform Succession Laws for Australian States and Territories: The Law of Wills* (QLRC MP 10, July 1994, reissued as QLRC WP 46, June 1995; NSWLRC IP 10, February 1996)

Issues Paper, *Uniform Succession Laws for Australian States and Territories: Family Provision* (QLRC WP 47, June 1995; NSWLRC IP 11, February 1996)

Miscellaneous Paper, *Uniform Succession Laws: Wills* (QLRC MP 15, February 1996)

Miscellaneous Paper, *Uniform Succession Laws: The Effect of the Lex Situs and Mozambique Rules on Succession to Immovable Property* (QLRC MP 16, February 1996)

Consolidated Report to the Standing Committee of Attorneys General on the Law of Wills (QLRC MP 29, December 1997; NSWLRC R 85, April 1998)

Report, *The Law of Wills* (QLRC R 52, December 1997)

Report to the Standing Committee of Attorneys General on Family Provision (QLRC MP 28, December 1997)

Discussion Paper, *Administration of Estates of Deceased Persons* (QLRC MP 37, June 1999; NSWLRC DP 42, October 1999)

Discussion Paper, *Uniform Succession Laws: Recognition of Interstate and Foreign Grants of Probate and Letters of Administration* (QLRC WP 55, December 2001)

Issues Paper, *Uniform Succession Laws: Recognition of interstate and foreign grants of probate and letters of administration* (NSWLRC IP 21, May 2002)

Supplementary Report, *Family Provision: Supplementary Report to the Standing Committee of Attorneys General* (QLRC R 58, July 2004)

Issues Paper, *Uniform succession laws: intestacy* (NSWLRC IP 26, April 2005)

Report, *Uniform succession laws: family provision* (NSWLRC R 110, May 2005).

Table of contents

CHAPTER 1	1
INTRODUCTION	1
BACKGROUND.....	1
THE PURPOSE OF THIS REPORT.....	1
THE STRUCTURE OF THIS REPORT	2
CHAPTER 2	3
THE ANTI-LAPSE RULE	3
INTRODUCTION.....	3
THE CURRENT ANTI-LAPSE PROVISIONS	3
CHAPTER 3	5
THE MODEL ANTI-LAPSE PROVISION	5
THE DEVELOPMENT OF THE NATIONAL COMMITTEE'S ORIGINAL MODEL PROVISION.....	5
THE DRAFTING PROBLEM	7
A NEW MODEL PROVISION.....	8
THE NATIONAL COMMITTEE'S VIEW	9
RECOMMENDATION	10

Chapter 1

Introduction

BACKGROUND

1.1 The Uniform Succession Laws Project, which is an initiative of the Standing Committee of Attorneys General, is being undertaken by the National Committee for Uniform Succession Laws. The National Committee is presently comprised of representatives from all Australian jurisdictions except South Australia.²

1.2 At the outset of the project, the National Committee decided that the project would be divided into four stages:³

- wills;
- family provision;
- administration of estates; and
- intestacy.

1.3 In December 1997, the National Committee provided its final report on the law of wills to the Standing Committee of Attorneys General.⁴ That Report contained the National Committee's recommendations for uniform wills legislation for the Australian States and Territories, together with model legislation that gave effect to the National Committee's recommendations.

THE PURPOSE OF THIS REPORT

1.4 Since completing its work on the law of wills, the National Committee has identified a problem with the drafting of the provision in the model wills legislation that deals with the anti-lapse rule.

1.5 The purpose of this Report is to explain the nature of the problem and to recommend a new model provision that can be implemented in the Australian States and Territories.

² Although South Australia does not have a representative on the National Committee, an officer of the South Australian Attorney-General's Department holds a watching brief in relation to the project.

³ A list of the publications that have been released throughout the course of this project is set out at the beginning of this Report.

⁴ National Committee for Uniform Succession Laws, *Consolidated Report to the Standing Committee of Attorneys General on the Law of Wills* (QLRC MP 29, 1997; NSWLRC R 85, 1998), which is referred to in this Report as the *Wills Report* (1997).

THE STRUCTURE OF THIS REPORT

1.6 Chapter 2 of this Report briefly outlines the doctrine of lapse and the purpose of including an anti-lapse provision in wills legislation.

1.7 Chapter 3 explains the problem with the National Committee's original model anti-lapse provision and proposes a new provision to avoid this problem.

Chapter 2

The anti-lapse rule

INTRODUCTION

2.1 Broadly speaking, the effect of the anti-lapse rule is to modify the circumstances in which the doctrine of lapse applies.

2.2 At common law, if a person is a beneficiary under a will, but does not survive the testator, the gift fails. This is known as the doctrine of lapse.⁵ The doctrine is said to be 'founded on the view that a testator intends those who are named as beneficiaries under the will to take their benefits personally, so that if they predecease the testator their benefits pass back to the testator's estate and are said to lapse'.⁶

2.3 In four Australian jurisdictions (the Australian Capital Territory, the Northern Territory, Queensland and Victoria), the survivorship requirement that forms the basis of the doctrine of lapse has been extended by statute. As a result, it is no longer sufficient that a beneficiary simply survive the testator; the beneficiary must survive the testator for a period of 30 days, failing which the disposition takes effect as if the beneficiary died before the testator.⁷

THE CURRENT ANTI-LAPSE PROVISIONS

2.4 All Australian jurisdictions include in their wills legislation a provision that to some extent counteracts the effect of the doctrine of lapse.⁸ The various provisions apply where the beneficiary under a will is a child or other issue of the testator who dies before the testator, but leaves children or issue who survive the testator.⁹ In these circumstances, the disposition does not lapse and fall into the testator's residuary estate. Instead, the various anti-lapse

5 WA Lee and AA Preece, *Lee's Manual of Queensland Succession Law* (5th ed, 2001) [1027].

6 Ibid [1028].

7 *Wills Act 1968* (ACT) s 31C; *Wills Act* (NT) s 34; *Succession Act 1981* (Qld) s 32; *Wills Act 1997* (Vic) s 39. In its Report on the law of wills, the National Committee recommended that a provision to this effect be included in the model wills legislation for the Australian States and Territories: see *Wills Report* (1997) QLRC 76; NSWLRC 129 and draft *Wills Bill 1997* cl 34.

8 *Wills Act 1968* (ACT) s 31; *Wills, Probate and Administration Act 1898* (NSW) s 29, *Conveyancing Act 1919* (NSW) s 37; *Wills Act* (NT) s 40; *Succession Act 1981* (Qld) s 33; *Wills Act 1936* (SA) s 36; *Wills Act 1992* (Tas) s 41; *Wills Act 1997* (Vic) s 45; *Wills Act 1970* (WA) s 27. These provisions all apply subject to the expression of a contrary intention by the testator.

9 In the Australian Capital Territory, the Northern Territory, Queensland and Victoria, the issue of the deceased issue must survive the testator by 30 days: *Wills Act 1968* (ACT) s 31(1)(c); *Wills Act* (NT) s 40(1)(d); *Succession Act 1981* (Qld) s 33(1); *Wills Act 1997* (Vic) s 45(1)(b). This is consistent with the provisions in these jurisdictions that a disposition fails if the beneficiary does not survive the testator by 30 days: see para 2.3 of this Report.

provisions state how the property that was the subject of the disposition in favour of the original beneficiary is to be distributed.

2.5 Under the modern form of the anti-lapse rule – which applies in all Australian jurisdictions except New South Wales and South Australia – the property that was the subject of the original disposition passes to those issue of the deceased issue who survive the testator (or, in some jurisdictions, who survive the testator by 30 days).¹⁰ The rationale underlying the anti-lapse rule is that:¹¹

... the anti-lapse rule corrects testaments that have failed to express the reasonably predictable intention of testators in the unforeseen event of their children predeceasing them leaving issue surviving them. Parents ordinarily assume, even when making a will, and particularly if they make a will without legal advice, that their children will survive them. It is not improper for the law to consider what should be done if it appears that the testator has not contemplated the possibility that he or she is not survived by his or her children.

2.6 In New South Wales and South Australia, the relevant provisions still follow the form of the original anti-lapse provision that was introduced by section 33 of the *Wills Act 1837* (UK),¹² and provide that the disposition takes effect as if the deceased issue died immediately *after* the testator.¹³ As a result, the property that is the subject of the disposition forms part of the deceased issue's estate. Where the deceased issue leaves a will under which persons other than his or her issue are the beneficiaries, the issue of the deceased issue will have no entitlement to the property, even though it is only the fact that they survived the testator that prevents the disposition from lapsing.

¹⁰ *Wills Act 1968* (ACT) s 31; *Wills Act* (NT) s 40; *Succession Act 1981* (Qld) s 33; *Wills Act 1992* (Tas) s 41; *Wills Act 1997* (Vic) s 45; *Wills Act 1970* (WA) s 27. The Western Australian anti-lapse provision is more restrictive than the other provisions. It applies where the beneficiary is a child (rather than issue) of the testator and provides that the property passes to the children (rather than issue) of the deceased child.

Note also that the Victorian provision suffers from the ambiguity discussed at para 3.6–3.11 of this Report.

¹¹ *Wills Report* (1997) QLRC 84; NSWLRC para 6.69.

¹² Section 33 of the *Wills Act 1837* (UK) was substituted in 1982 (see *Administration of Justice Act 1982* (UK) s 19) and now provides that a devise or bequest to issue who do not survive the testator takes effect as a devise or bequest to the issue of the deceased issue who are living at the testator's death.

¹³ *Wills, Probate and Administration Act 1898* (NSW) s 29, *Conveyancing Act 1919* (NSW) s 37; *Wills Act 1936* (SA) s 36.

Chapter 3

The model anti-lapse provision

THE DEVELOPMENT OF THE NATIONAL COMMITTEE'S ORIGINAL MODEL PROVISION

3.1 In its Report on the law of wills, the National Committee proposed that the model wills legislation include an anti-lapse provision in the modern form.¹⁴

3.2 Subject to certain modifications that are not relevant for present purposes, the National Committee recommended that the model anti-lapse provision be based on clause 32 of the draft *Wills Act 1994* (Vic),¹⁵ which was the anti-lapse provision recommended by the Victorian Parliamentary Law Reform Committee in its Report, *Reforming the Law of Wills*.¹⁶

3.3 Clause 32 of the draft *Wills Act 1994* (Vic) provided, so far as is relevant:

32 Dispositions not to fail because issue have died before the testator

(1) If a person makes a disposition to any of his or her issue, where the disposition is not a disposition to which section 30 applies, and where the interest in the property disposed is not determinable at or before the death of the issue, and the issue does not survive the testator for thirty days, the issue of that issue who survive the testator for thirty days take that disposition in the shares they would have taken of the residuary estate of the testator if the testator had died intestate leaving only issue surviving.

...

3.4 The National Committee's final wills report contained model wills legislation to give effect to the National Committee's recommendations. Clause 40 of the model legislation, which was the model anti-lapse provision, provided:

¹⁴ See *Wills Report* (1997) QLRC 83–90; NSWLRC 139–49.

¹⁵ *Wills Report* (1997) QLRC 89–90; NSWLRC 148. In developing the model wills legislation, the National Committee agreed generally that the draft *Wills Act 1994* (Vic), which had been prepared by the Victorian Parliamentary Law Reform Committee, would be used as the basis for its discussions: see *Wills Report* (1997) QLRC (v); NSWLRC 13–14.

¹⁶ Law Reform Committee, Parliament of Victoria, *Reforming the Law of Wills* (1994) 149.

Dispositions not to fail because issue have died before testator

- (1) If a person makes a disposition¹⁷ to any of his or her issue and:
- (a) the disposition is not a disposition to which section 38¹⁸ applies, and
 - (b) the interest in the property disposed is not determinable at or before the death of the issue, and
 - (c) the issue does not survive the testator for 30 days,
- the disposition is held on trust for the issue of that issue who survive the testator for 30 days in the shares they would have taken of the residuary estate of the testator if the testator had died intestate leaving only issue surviving.
- (2) Subsection (1) applies to dispositions to issue either as individuals or as members of a class.
- (3) This section does not apply if a contrary intention appears in the will.
- (4) A general requirement or condition that issue survive the testator or attain a specified age does not indicate a contrary intention for the purposes of this section and a gift of a joint tenancy will not on its own indicate a contrary intention.
- (5) If a condition is imposed on an original beneficiary and that beneficiary fails to survive the testator for 30 days, the issue of that beneficiary may not take under this section unless the original beneficiary has fulfilled the condition. [notes and emphasis added]

3.5 The Victorian wills legislation includes a provision in these terms.¹⁹

¹⁷ The term 'disposition' was defined in cl 4(1) of the model wills legislation to include:

- (a) any gift, devise or bequest of property under a will, and
- (b) the creation by will of a power of appointment affecting property, and
- (c) the exercise by will of a power of appointment affecting property.

¹⁸ Under the model wills legislation, the anti-lapse provision does not apply if the disposition made by the testator is one to which cl 38 applies. Clause 38 deals with dispositions to a person's issue without limitation as to remoteness, and provides:

How dispositions to issue operate

- (1) A disposition to a person's issue without limitation as to remoteness must be distributed to that person's issue in the same way as that person's estate would be distributed if that person had died intestate leaving only issue surviving.
- (2) This section does not apply if a contrary intention appears in the will.

¹⁹ *Wills Act 1997* (Vic) s 45. A provision in these terms was also originally enacted in the Northern Territory wills legislation (see *Wills Act 2000* (NT) s 40), but that provision has since been amended. The amended provision is set out at note 22 of this Report.

THE DRAFTING PROBLEM

3.6 In the course of its work on the current stage of the Uniform Succession Laws Project dealing with the administration of estates, the National Committee identified a problem with the drafting of clause 40(1) of the model wills legislation.

3.7 The problem arises as a result of the two references to 'testator' that appear in the last paragraph of subclause (1).²⁰ This results in a misdescription of the shares in which the issue of the deceased issue are to take the property that is the subject of the disposition in favour of the deceased issue. This is illustrated by the following example.

3.8 Suppose a testator has two children, A and B, and makes a will leaving certain property to A. A predeceases the testator, but leaves two children, A1 and A2, both of whom survive the testator by 30 days. B also survives the testator by 30 days.

3.9 The anti-lapse rule was intended to apply so that, if A1 and A2 survived the testator by 30 days, they would take, in equal shares, the property that the testator intended for A.

3.10 However, as presently drafted, clause 40(1) provides that the property left by will to A is to be held on trust for A1 and A2 'in the shares they would have taken of the residuary estate of the *testator* if the *testator* had died intestate leaving only issue surviving'. If the testator had, in fact, died intestate leaving only issue, A1 and A2 would each take one quarter of the testator's residuary estate, as B would be entitled to the other half.²¹ Because clause 40(1) provides that it is the issue of the deceased issue who take the property in particular shares, B does not, as a result of clause 40(1), acquire any interest in the property that was left to A. The other half would arguably fall into residue or, if this were a residuary clause, pass on intestacy.

3.11 It may be that a court would construe clause 40(1) to mean that, as A1 and A2 would, as between themselves, have an equal interest in the testator's estate if the testator had died intestate, they are to take, in equal shares, the property intended for A. However, it is obviously desirable for clause 40(1) to be redrafted so that it does not give rise to any ambiguity.

²⁰ The same problem arises in relation to cl 32(1) of the draft *Wills Act 1994* (Vic), which is set out at para 3.3 of this Report, and in relation to s 45 of the *Wills Act 1997* (Vic).

²¹ Where a person dies intestate leaving issue but no spouse or partner, the legislation in all jurisdictions provides for the whole of the intestate's estate to be divided among the intestate's issue: *Administration and Probate Act 1929* (ACT) ss 49(1), 49B, Sch 6 Pt 6.2 Item 1; *Wills, Probate and Administration Act 1898* (NSW) ss 61B(1), (4), 61C; *Administration and Probate Act* (NT) ss 66(1), 68, Sch 6 Pt IV Item 1; *Succession Act 1981* (Qld) ss 35(1), 36A, Sch 2 Pt 2 Item 1; *Administration and Probate Act 1919* (SA) ss 72G(c), 72I; *Administration and Probate Act 1935* (Tas) ss 44(5), 46(1); *Administration and Probate Act 1958* (Vic) s 52(1)(f); *Administration Act 1903* (WA) s 14(1) Table Item 5, (2a), (2b). These provisions are presently being reviewed by the National Committee: see New South Wales Law Reform Commission, Issues Paper, *Uniform succession laws: intestacy* (IP 26, April 2005) para 5.33–5.34.

3.12 This drafting problem can be corrected by modifying the model anti-lapse provision so that the final paragraph of clause 40(1) refers to the manner in which the residuary estate of the deceased issue would be distributed if he or she had died intestate leaving only issue. This would have the effect of ensuring that A1 and A2 are entitled to the entire property that was intended for A.

A NEW MODEL PROVISION

3.13 The problem identified in relation to clause 40(1) of the model provision has been overcome by the drafting of the anti-lapse provision contained in the *Succession Amendment Act 2006* (Qld).²² That Act, which gives effect to the National Committee's recommendations in relation to the law of wills, amends the *Succession Act 1981* (Qld) by inserting a new section 33N:²³

33N Dispositions not to fail because issue have died before testator

- (1) This section applies if—
- (a) a testator makes a disposition of property to a person, whether as an individual or as a member of a class, who is issue of the testator (an **original beneficiary**); and
 - (b) under the will, the interest of the original beneficiary in the property does not come to an end at or before the original beneficiary's death; and
 - (c) the disposition is not a disposition of property to the testator's issue, without limitation as to remoteness; and

²²

The *Succession Amendment Act 2006* (Qld) received Royal Assent on 22 February 2006, but has not yet commenced.

The drafting problem identified in the model anti-lapse provision has recently been corrected in the Northern Territory. As explained at note 19, s 40 of the *Wills Act* (NT) was originally in the same terms as cl 40 of the model wills legislation. However, the Northern Territory provision has since been amended by s 33 of the *Statute Law Revision Act 2005* (NT) and, although the amended s 40(1) of the *Wills Act* (NT) is expressed in slightly different terms from the new s 33N(1) of the *Succession Act 1981* (Qld), it has the same effect as the new Queensland provision. Section 40(1) of the *Wills Act* (NT) now provides:

Subject to this section, if—

- (a) a person makes a disposition to an issue of the person;
- (b) the disposition is not a disposition to which section 38 applies;
- (c) the interest in property disposed is not determinable at or before the death of the issue; and
- (d) the issue does not survive the testator for 30 days,

the disposition is to be held on trust for the issue of the first-mentioned issue who survive the testator for 30 days in the shares they would have taken of the residuary estate of the first-mentioned issue if the first-mentioned issue had died intestate leaving only issue surviving. [emphasis added]

The amendment to s 40(1) of the *Wills Act* (NT) has retrospective operation. Section 2(1) of the *Statute Law Revision Act 2005* (NT) provides that s 33 of that Act (which amends s 40(1) of the *Wills Act* (NT)) 'is taken to have come into operation on the day on which, but immediately after, the *Wills Act 2000* commenced'.

²³

Succession Amendment Act 2006 (Qld) s 6 (Replacement of pt 2 (Wills)).

- (d) the original beneficiary does not survive the testator for 30 days.
- (2) The issue of the original beneficiary who survive the testator for 30 days take the original beneficiary's share of the property in place of the original beneficiary as if the original beneficiary had died intestate leaving only issue surviving.
- (3) Subsection (2) does not apply if—
 - (a) the original beneficiary did not fulfil a condition imposed on the original beneficiary in the will; or
 - (b) a contrary intention appears in the will.
- (4) A general requirement or condition that issue survive the testator or reach a specified age does not show a contrary intention for subsection (3)(b).
- (5) A disposition of property to issue as joint tenants does not, of itself, show a contrary intention for subsection (3)(b). [emphasis added]

3.14 The new section 33N(2) makes it clear that the issue of the original beneficiary who survive the testator by 30 days take the property intended for the original beneficiary, and that they take in the shares they would take if the original beneficiary, rather than the testator, had died intestate leaving only issue surviving.

3.15 In the scenario set out at paragraph 3.8, A1 and A2 would each be entitled to a one half share of the property left to A, as those are the shares in which they would be entitled to A's residuary estate if A had died intestate leaving only issue surviving.²⁴

THE NATIONAL COMMITTEE'S VIEW

3.16 In the National Committee's view, clause 40 of the model wills legislation should be replaced with a provision in the terms of the new section 33N of the *Succession Act 1981* (Qld). Although that provision contains a redraft of more than just clause 40(1) of the model provision, this has largely been necessitated by the use of the term 'original beneficiary' in subclauses (1), (2) and (3) of the new section.

3.17 In the National Committee's view, the use of the term 'original beneficiary', which was used in clause 40(5) of the model provision but not in the balance of the provision, adds to the clarity of the new Queensland provision. It avoids the need to refer in clause 40 to two different categories of 'issue' – the issue who was the intended beneficiary, but who predeceased the testator, and the issue of the deceased issue who survive the testator.

24

See note 21 of this Report.

3.18 Further, the reference in subclause (5) of the new Queensland provision to ‘a disposition of property to issue as joint tenants’ is a more accurate description of the nature of the disposition than the reference in clause 40(4) of the model legislation to ‘a gift of a joint tenancy’.

3.19 For these reasons, the National Committee considers it preferable to adopt the entire new Queensland provision, rather than simply modify clause 40(1) of the model legislation.

RECOMMENDATION

Clause 40 of the model wills legislation should be replaced with a provision in the following terms:

Dispositions not to fail because issue have died before testator

- (1) This section applies if—
 - (a) a testator makes a disposition of property to a person, whether as an individual or as a member of a class, who is issue of the testator (an *original beneficiary*); and
 - (b) under the will, the interest of the original beneficiary in the property does not come to an end at or before the original beneficiary’s death; and
 - (c) the disposition is not a disposition of property to the testator’s issue, without limitation as to remoteness; and
 - (d) the original beneficiary does not survive the testator for 30 days.
- (2) The issue of the original beneficiary who survive the testator for 30 days take the original beneficiary’s share of the property in place of the original beneficiary as if the original beneficiary had died intestate leaving only issue surviving.
- (3) Subsection (2) does not apply if—
 - (a) the original beneficiary did not fulfil a condition imposed on the original beneficiary in the will; or
 - (b) a contrary intention appears in the will.
- (4) A general requirement or condition that issue survive the testator or reach a specified age does not show a contrary intention for subsection (3)(b).
- (5) A disposition of property to issue as joint tenants does not, of itself, show a contrary intention for subsection (3)(b).