

S T A T E O F N E W Y O R K

S. 3528--A
Cal. No. 357

A. 7132--A
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2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

March 23, 2009

IN SENATE -- Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, substituted by Assembly Bill No. 7132, substitution reconsidered and vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. LAVINE, WEINSTEIN -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the estates, powers and trusts law, the general obligations law and the mental hygiene law, in relation to the renunciation of property interests

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 2-1.11 of the estates, powers and trusts law, as
2 amended by chapter 570 of the laws of 1980, subparagraph 1 of paragraph
3 (a) as amended by chapter 325 of the laws of 2005, paragraph (c) as
4 added by chapter 589 of the laws of 2003, paragraph (d) as amended by
5 chapter 515 of the laws of 1993 and paragraph (j) as separately amended
6 by chapter 417 of the laws of 1980, is amended to read as follows:
7 S 2-1.11 Renunciation of property interests
8 (a) A RENUNCIATION MADE IN COMPLIANCE WITH THE PROVISIONS OF THIS
9 SECTION SHALL NOT NECESSARILY CONSTITUTE A QUALIFIED DISCLAIMER WITHIN
10 THE MEANING OF SECTION 2518 OF THE INTERNAL REVENUE CODE OF 1986, AS
11 AMENDED, OR FOR THE PURPOSES OF THE TAXES IMPOSED BY ARTICLE TWENTY-SIX
12 OF THE TAX LAW.
13 (B) For purposes of this section:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (1) The term "disposition" shall include a disposition created under a
2 will or trust agreement including, without limitation, the granting of a
3 power of appointment, a disposition created by the exercise or nonexer-
4 cise of a power of appointment, a distributive share under 4-1.1, a
5 transfer created by a trust account as defined in 7-5.1, a transfer
6 created by a life insurance or annuity contract, a transfer [created by]
7 RESULTING FROM THE CREATION OF a joint tenancy or tenancy by the entire-
8 ty, A TRANSFER CREATED BY THE DEATH OF A JOINT TENANT OR TENANT BY THE
9 ENTIRETY, a transfer under an employee benefit plan (including, without
10 limitation, any pension, retirement, death benefit, stock bonus or
11 profit-sharing plan, system or trust), a transfer of a security to a
12 beneficiary pursuant to part 4 of article 13 of this chapter, any other
13 disposition or transfer created by any testamentary or nontestamentary
14 instrument, or by operation of law, and any of the foregoing created or
15 increased by reason of a renunciation made by another person.

16 (2) The effective date of the disposition for purposes of this section
17 shall be:

18 A. If the disposition is created by will, the exercise or nonexercise
19 of a testamentary power of appointment, a distribution pursuant to
20 4-1.1, the deposit of money in a trust account as defined in 7-5.1, THE
21 REGISTRATION OF A SECURITY IN BENEFICIARY FORM PURSUANT TO PART 4 OF
22 ARTICLE 13 OF THIS CHAPTER, a life insurance or annuity contract, THE
23 DEATH OF a joint [tenancy] TENANT or [tenancy] TENANT by the entirety,
24 or an employee benefit plan, the date of death of the deceased testator,
25 holder of the power of appointment, intestate, creator of the trust
26 account, REGISTERED OWNER OF THE SECURITY, insured, annuitant, other
27 joint tenant or tenant by the entirety, or employee, as the case may be;

28 B. If the disposition is created by trust agreement, the exercise of a
29 presently exercisable power of appointment, THE CREATION OF A JOINT
30 TENANCY OR TENANCY BY THE ENTIRETY, or the renunciation of a disposition
31 created by another, the date [of the trust agreement,] AS OF WHICH THE
32 TRANSFER IN TRUST IS IRREVOCABLE AND IS A COMPLETED GIFT FOR FEDERAL
33 GIFT TAX PURPOSES (REGARDLESS OF WHETHER A GIFT TAX IS IMPOSED ON THE
34 COMPLETED GIFT), THE DATE OF THE exercise of the power of appointment,
35 THE CREATION OF A JOINT TENANCY OR TENANCY BY THE ENTIRETY, or renuncia-
36 tion, as the case may be; and

37 C. If the disposition is created by any other testamentary or nontes-
38 tamentary instrument, or by operation of law, the date of the event by
39 which the beneficiary is finally ascertained.

40 Notwithstanding the foregoing, the effective date of a disposition which
41 is of a future estate shall be the date on which it becomes an estate in
42 possession.

43 [(b)] (C) (1) Any beneficiary of a disposition may renounce all or
44 part of [his] SUCH BENEFICIARY'S interest; provided, however, that a
45 surviving joint tenant or tenant by the entirety [may not renounce that
46 portion of an interest in joint property or property held by the entire-
47 ty which is allocable to amounts contributed by him to the interest in
48 such property] MAY RENOUNCE THE INTEREST TO WHICH SUCH TENANT SUCCEEDS,
49 BY OPERATION OF LAW UPON THE DEATH OF ANOTHER JOINT TENANT OR TENANT BY
50 THE ENTIRETY, TO THE EXTENT SUCH INTEREST COULD BE THE SUBJECT OF A
51 QUALIFIED DISCLAIMER UNDER SECTION 2518 OF THE UNITED STATES INTERNAL
52 REVENUE CODE OF 1986, AS AMENDED.

53 (2) Such renunciation shall be in writing, signed and acknowledged by
54 the person renouncing, and shall be filed in the office of the clerk of
55 the court having jurisdiction over the will or trust agreement governing
56 the property of which the disposition would otherwise be made or the

1 court which issued letters of administration, or if there is no probate
2 or administration, then in a surrogate's court provided by law as the
3 place of probate or administration of the decedent's estate, within nine
4 months after the effective date of the disposition. Such renunciation
5 shall be accompanied by an affidavit of the renouncing party that [he]
6 SUCH PARTY has not received and is not to receive any consideration in
7 money or money's worth for such renunciation from a person or persons
8 whose interest is to be accelerated, unless payment of such consider-
9 ation has been authorized by the court. Notice of such renunciation,
10 which shall include a copy of the renunciation, shall be served
11 personally or in such manner as the court may direct upon the fiduciary
12 directed by the will or trust agreement to make the disposition or upon
13 the administrator or such other person who was directed to make the
14 disposition or upon any other person having custody or possession of or
15 legal title to the property, an interest in which is being renounced,
16 and by mail or in such manner as the court may direct upon all persons
17 whose interest may be created or increased by reason of such renuncia-
18 tion. The time to file and serve such renunciation may be extended, in
19 the discretion of the court, on a petition showing reasonable cause and
20 on notice to such persons and in such manner as the court may direct.
21 The time limited in this section for filing and serving such renuncia-
22 tion is exclusive, and shall not be suspended or otherwise affected by
23 any other provision of law; such renunciation shall be effective as of
24 the date of such filing, notwithstanding that notice thereof may there-
25 after be required by the court.

26 [(c)] (D) A renunciation may be made by:

27 (1) The guardian of the property of an infant, when so authorized by
28 the court having jurisdiction of the estate of the infant.

29 (2) The committee of an incompetent when so authorized by the court
30 that appointed the committee.

31 (3) The conservator of a conservatee, when so authorized by the court
32 that appointed the conservator.

33 (4) A guardian appointed under article eighty-one of the mental
34 hygiene law, when so authorized by the court that appointed the guardi-
35 an.

36 (5) The personal representative of a decedent, when so authorized by
37 the court having jurisdiction of the estate of the decedent.

38 (6) An attorney-in-fact, when so authorized under a duly executed
39 power of attorney, provided, however, that any renunciation by an attor-
40 ney-in-fact of a person under disability shall not be effective unless
41 it is further authorized by the court with which the renunciation must
42 be filed under subparagraph two of paragraph [(b)] (C) of this section,
43 and provided, further, that a renunciation by an attorney-in-fact of a
44 person not under disability may be made without court authorization,
45 unless the property which would have passed under said renunciation is,
46 by reason of said renunciation, disposed of in favor of such attorney-
47 in-fact or the spouse or issue of such attorney-in-fact, in which case
48 such renunciation shall not be effective unless either (A) the instru-
49 ment appointing such attorney-in-fact expressly authorizes a renuncia-
50 tion in favor of such attorney-in-fact or the spouse or issue of such
51 attorney-in-fact, or (B) such renunciation has been authorized by the
52 court with which the renunciation must be filed under subparagraph two
53 of paragraph [(b)] (C) OF THIS SECTION.

54 [(d)] (E) Unless the creator of the disposition has otherwise
55 provided, the filing of a renunciation, as provided in this section, has
56 the same effect with respect to the renounced interest as though the

1 renouncing person had predeceased the creator or the decedent or, if the
2 renounced interest is a future estate, as though the renouncing person
3 had died at the time of filing or just prior to its becoming an estate
4 in possession, whichever is earlier in time, and shall have the effect
5 of accelerating the possession and enjoyment of subsequent interests,
6 but shall have no effect upon the vesting of a future estate which by
7 the terms of the disposition is limited upon a preceding estate other
8 than the renounced interest. If, pursuant to the preceding sentence,
9 there would occur a per stirpes disposition of the renounced interest or
10 a disposition or distribution of the renounced interest by represen-
11 tation, then solely for purposes of applying 1-2.14 or 1-2.16, as the
12 case may be, the renouncing person shall be treated as having died on
13 the same date as, but immediately after, the creator or decedent or, if
14 the renounced interest is a future estate, as having died on the same
15 date as, but immediately after, its becoming an estate in possession or,
16 if the time of filing is earlier in time, on the same date as, but imme-
17 diately after, such filing. Such renunciation is retroactive to the
18 creation of the disposition. A person who has a present and a future
19 interest in property and renounces the present interest in whole or in
20 part shall be deemed to have renounced the future interest to the same
21 extent.

22 [(e)] (F) A beneficiary may accept one disposition and renounce another,
23 may renounce a disposition in whole or in part, or with reference to
24 specific amounts, parts, fractional shares or assets thereof. Notwith-
25 standing the provisions of paragraph [(d)] (E) of this section, a renun-
26 ciation by a surviving spouse of a decedent of a disposition created by
27 said decedent shall not be deemed to be a renunciation by such spouse of
28 all or any part of any other disposition to or in favor of such spouse,
29 regardless of whether the property which would have passed under said
30 renounced disposition is by reason of said renunciation disposed of to
31 or in favor of such spouse. Unless a renouncing person has provided
32 otherwise in his renunciation, the effect of a renunciation of a frac-
33 tional part of a disposition is to renounce such fraction of all proper-
34 ty to which the renouncing person is entitled under the disposition.

35 [(f)] (G) A renunciation may not be made under this section with
36 respect to any property which a renouncing person has accepted, except
37 that an acceptance does not preclude a person from renouncing all or
38 part of any property to which [he] SUCH PERSON becomes entitled when
39 another person renounces after such acceptance. For purposes of this
40 paragraph, a person accepts an interest in property if [he] SUCH PERSON
41 voluntarily transfers or encumbers, or contracts to transfer or encumber
42 all or part of such interest, or accepts delivery or payment of, or
43 exercises control as beneficial owner over all or part thereof, or
44 executes a written waiver of the right to renounce, or otherwise indi-
45 cates acceptance of all or part of such interest. A written waiver of
46 the right to renounce shall be binding on the person waiving and all
47 parties claiming by, through or under [him] SUCH PERSON.

48 [(g)] (H) A renunciation filed under this section is irrevocable.

49 [(h)] (I) This section shall not abridge the right of any beneficiary
50 or any other person to assign, convey, release or renounce any property
51 or interest therein arising under any other section of this chapter or
52 other statute or under common law.

53 [(i)] (J) Except as specifically provided in the trust instrument, the
54 will, any other instrument creating the disposition, or in this section,
55 this section shall apply to each disposition the effective date of which
56 (as defined in this section) is on or after the effective date of this

1 section, except that with respect to the renunciation of a future inter-
2 est this section shall apply as well to dispositions created or
3 increased prior to the effective date of this section.

4 [(j) In determining whether or not a valid disclaimer has been made
5 for the purposes of the taxes imposed by articles twenty-six and twen-
6 ty-six-A of the tax law, the provisions of such law shall be applicable
7 to such determination, notwithstanding any provisions to the contrary
8 contained in this section or any other section of this chapter.]

9 S 2. Subdivision 3 of section 5-1502G of the general obligations law,
10 as amended by chapter 589 of the laws of 2003, is amended to read as
11 follows:

12 3. Subject to the provisions of paragraph [(c)] (D) of section 2-1.11
13 of the estates, powers and trusts law, to accept, to reject, to receive,
14 to receipt for, to sell, to assign, to release, to pledge, to exchange,
15 or to consent to a reduction in or modification of, any share in or
16 payment from any estate, trust or other fund;

17 S 3. Paragraph 10 of subdivision (a) of section 81.21 of the mental
18 hygiene law, as amended by chapter 32 of the laws of 1993, is amended to
19 read as follows:

20 10. renounce or disclaim any interest by testate or intestate
21 succession or by inter vivos transfer consistent with paragraph [(c)]
22 (D) of section 2-1.11 of the estates, powers and trusts law;

23 S 4. This act shall take effect on the first of January next succeed-
24 ing the date on which it shall have become a law.