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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 13, 2009

Introduced by M. of A. P. RIVERA, SCHROEDER -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to the settlement of final guardianship reports

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

Section 1. The mental hygiene law is amended by adding a new section 81.45 to read as follows:

S 81.45 PROCEEDINGS UPON THE DEATH OF AN INCAPACITATED PERSON.

(A) DEFINITIONS. WHEN USED IN THIS SECTION:

(1) "STATEMENT OF DEATH" MEANS A STATEMENT, IN WRITING AND ACKNOWLEDGED, CONTAINING THE CAPTION AND INDEX NUMBER OF THE GUARDIANSHIP PROCEEDING, AND THE NAME AND ADDRESS OF THE LAST RESIDENCE OF THE DECEASED INCAPACITATED PERSON, THE DATE AND PLACE OF DEATH, AND THE NAMES AND LAST KNOWN ADDRESSES OF ALL PERSONS ENTITLED TO NOTICE OF FURTHER GUARDIANSHIP PROCEEDINGS PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (C) OF SECTION 81.16 OF THIS ARTICLE INCLUDING THE NOMINATED AND/OR APPOINTED PERSONAL REPRESENTATIVE, IF ANY, OF THE DECEASED INCAPACITATED PERSON'S ESTATE.

(2) "PERSONAL REPRESENTATIVE" MEANS A FIDUCIARY AS DEFINED BY SUBDIVISION TWENTY-ONE OF SECTION ONE HUNDRED THREE OF THE SURROGATE'S COURT PROCEDURE ACT TO WHOM LETTERS HAVE ISSUED AND WHO IS AUTHORIZED TO MARSHAL THE ASSETS OF THE DECEDENT'S ESTATE.

(3) "PUBLIC ADMINISTRATOR" MEANS A PUBLIC ADMINISTRATOR WITHIN OR WITHOUT THE CITY OF NEW YORK, AS ESTABLISHED BY ARTICLE ELEVEN OR TWELVE OF THE SURROGATE'S COURT PROCEDURE ACT.

(4) "CHIEF FISCAL OFFICER" MEANS A CHIEF FISCAL OFFICER OF A COUNTY ELIGIBLE TO BE APPOINTED AN ADMINISTRATOR PURSUANT TO SECTION TWELVE HUNDRED NINETEEN OF THE SURROGATE'S COURT PROCEDURE ACT.

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

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(5) "STATEMENT OF ASSETS AND NOTICE OF CLAIM" MEANS A WRITTEN STATEMENT UNDER OATH CONTAINING THE CAPTION AND INDEX NUMBER OF THE GUARDIANSHIP PROCEEDING, THE NAME AND ADDRESS OF THE INCAPACITATED PERSON AT THE TIME OF DEATH, A DESCRIPTION OF THE NATURE AND APPROXIMATE VALUE OF GUARDIANSHIP PROPERTY AT THE TIME OF THE INCAPACITATED PERSON'S DEATH, AND IF CLAIM IS TO BE MADE FOR ADMINISTRATIVE COSTS, AN ITEMIZATION AND APPROXIMATE VALUE OF SUCH COSTS.

(B) SERVICE. UNLESS OTHERWISE DIRECTED BY THE COURT, ALL PAPERS REQUIRED TO BE SERVED BY THIS SECTION SHALL BE SERVED BY CERTIFIED MAIL RETURN RECEIPT REQUESTED.

(C) FILING STATEMENT OF DEATH; SERVICE; PROOF OF SERVICE. WITHIN TWENTY DAYS OF THE DEATH OF AN INCAPACITATED PERSON, THE GUARDIAN SHALL:

(1) SERVE A COPY OF THE STATEMENT OF DEATH UPON THE COURT EXAMINER AND EITHER THE DULY APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, OR, IF NO PERSONAL REPRESENTATIVE HAS BEEN APPOINTED, UPON THE PERSONAL REPRESENTATIVE NAMED IN THE DECEDENT'S WILL IF KNOWN, AND UPON THE PUBLIC ADMINISTRATOR OR THE CHIEF FISCAL OFFICER OF THE COUNTY IN WHICH THE GUARDIAN WAS APPOINTED, AND

(2) FILE THE ORIGINAL STATEMENT OF DEATH, TOGETHER WITH PROOF OF SERVICE, UPON THE PERSONAL REPRESENTATIVE AND/OR PUBLIC ADMINISTRATOR OR CHIEF FISCAL OFFICER, AS THE CASE MAY BE, WITH THE COURT THAT ISSUED LETTERS OF GUARDIANSHIP.

(D) DELIVERY OF GUARDIANSHIP PROPERTY. WITHIN SIXTY DAYS OF THE DEATH OF THE INCAPACITATED PERSON, THE GUARDIAN SHALL SERVE UPON THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, OR WHERE THERE IS NO PERSONAL REPRESENTATIVE, UPON THE PUBLIC ADMINISTRATOR OR CHIEF FISCAL OFFICER, A STATEMENT OF ASSETS AND NOTICE OF CLAIM AND, EXCEPT FOR PROPERTY RETAINED TO SECURE ADMINISTRATIVE COSTS OF THE GUARDIANSHIP PURSUANT TO SUBDIVISION (E) OF THIS SECTION, SHALL DELIVER ALL GUARDIANSHIP PROPERTY TO:

(1) THE DULY-APPOINTED PERSONAL REPRESENTATIVE OF THE DECEASED INCAPACITATED PERSON'S ESTATE, OR

(2) THE PUBLIC ADMINISTRATOR OR CHIEF FISCAL OFFICER GIVEN NOTICE OF THE FILING OF THE STATEMENT OF DEATH, WHERE THERE IS NO PERSONAL REPRESENTATIVE.

(E) PROPERTY RETAINED BY GUARDIAN TO SECURE CLAIM FOR ADMINISTRATIVE COSTS. THE GUARDIAN MAY RETAIN, PENDING THE SETTLEMENT OF HIS OR HER FINAL REPORT, GUARDIANSHIP PROPERTY EQUAL IN VALUE TO THE CLAIM FOR ADMINISTRATIVE COSTS, UNLESS OTHERWISE ORDERED BY THE COURT UPON MOTION BY THE GUARDIAN ON NOTICE TO THE PERSON OR ENTITY TO WHOM GUARDIANSHIP PROPERTY IS DELIVERABLE AND THE COURT EXAMINER.

(F) JUDICIAL SETTLEMENT OF GUARDIAN'S FINAL REPORT. WITHIN NINETY DAYS OF THE INCAPACITATED PERSON'S DEATH, THE GUARDIAN SHALL FILE HIS OR HER FINAL REPORT WITH THE CLERK OF THE COURT OF THE COUNTY IN WHICH ANNUAL REPORTS ARE FILED, AND THEREUPON PROCEED TO JUDICIALLY SETTLE THE FINAL REPORT UPON SUCH NOTICE AS REQUIRED BY SUBDIVISION (C) OF SECTION 81.33 OF THIS ARTICLE, INCLUDING NOTICE TO THE PERSON OR ENTITY TO WHOM THE GUARDIANSHIP PROPERTY WAS DELIVERED. THERE SHALL BE NO EXTENSION OF THE TIME TO FILE A FINAL REPORT EXCEPT BY ORDER OF THE COURT.

(G) COMPULSORY ACCOUNTING AND RELATED RELIEF. UPON FAILURE OF THE GUARDIAN TO COMPLY WITH SUBDIVISION (D) OR (F) OF THIS SECTION, ANY INTERESTED PERSON MAY FILE A PETITION TO COMPEL THE GUARDIAN TO ACCOUNT, TO SUSPEND AND/OR TO REMOVE THE GUARDIAN, AND TO TAKE AND STATE THE GUARDIAN'S ACCOUNT.

S 2. This act shall take effect immediately.