

8969

2009-2010 Regular Sessions

I N   A S S E M B L Y

June 17, 2009

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Introduced by M. of A. WEINSTEIN -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to  
exempt assets for the benefit of the family of a decedent

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

1     Section 1. Paragraph (a) of section 5-3.1 of the estates, powers and  
2     trusts law, as amended by chapter 595 of the laws of 1992, is amended to  
3     read as follows:  
4     (a) If a person dies, leaving a surviving spouse or children under the  
5     age of twenty-one years, the following items of property are not assets  
6     of the estate but vest in, and shall be set off to such surviving  
7     spouse, unless disqualified, under 5-1.2, from taking an elective or  
8     distributive share of the decedent's estate. In case there is no surviv-  
9     ing spouse or such spouse, if surviving, is disqualified, such items of  
10    property vest in, and shall be set off to the decedent's children under  
11    the age of twenty-one years:  
12    (1) All housekeeping utensils, musical instruments, sewing machine,  
13    JEWELRY UNLESS DISPOSED OF IN THE WILL, CLOTHING OF THE DECEDENT, house-  
14    hold furniture and appliances, [including but not limited to computers  
15    and electronic devices, used in and about the house,] ELECTRONIC AND  
16    PHOTOGRAPHIC DEVICES, AND fuel[, provisions and clothing of the dece-  
17    dent] FOR PERSONAL USE, not exceeding in aggregate value [ten] TWENTY  
18    thousand dollars. THIS SUBPARAGRAPH SHALL NOT INCLUDE ITEMS USED EXCLU-  
19    SIVELY FOR BUSINESS PURPOSES.  
20    (2) The family bible OR OTHER RELIGIOUS BOOKS, family pictures, [video  
21    tapes, and] BOOKS, computer tapes, discs[, ] and software [used by such  
22    family, and books], DVDS, CDS, AUDIO TAPES, RECORD ALBUMS, AND OTHER  
23    ELECTRONIC STORAGE DEVICES, INCLUDING BUT NOT LIMITED TO VIDEOTAPES,  
24    USED BY SUCH FAMILY, not exceeding in value [one] TWO thousand FIVE  
25    HUNDRED dollars.

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

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1 (3) Domestic AND FARM animals with their necessary food for sixty  
2 days, farm machinery, one tractor and one lawn tractor, not exceeding in  
3 aggregate value [fifteen] TWENTY thousand dollars.

4 (4) THE SURVIVING SPOUSE OR DECEDENT'S CHILDREN MAY ACQUIRE ITEMS  
5 REFERRED TO IN SUBPARAGRAPHS (1), (2) AND (3) OF THIS PARAGRAPH, IN  
6 EXCESS OF THE VALUES SET FORTH IN SUCH SUBPARAGRAPHS BY PAYMENT TO THE  
7 ESTATE OF THE AMOUNT BY WHICH THE VALUE OF THE ITEMS ACQUIRED EXCEEDS  
8 THE AMOUNTS SET FORTH IN SUCH SUBPARAGRAPHS. IF ANY ITEM SO ACQUIRED BY  
9 THE SPOUSE OR CHILDREN OF THE DECEDENT WAS A SPECIFIC LEGACY IN  
10 DECEDENT'S WILL, THE PAYMENT TO THE ESTATE FOR SUCH ITEM SHALL VEST IN  
11 THE SPECIFIC LEGATEE.

12 (5) One motor vehicle not exceeding in value [fifteen] TWENTY-FIVE  
13 thousand dollars. In the alternative, if the decedent shall have been  
14 the owner of one or more motor vehicles each of which exceed [fifteen]  
15 TWENTY-FIVE thousand dollars in value, the surviving spouse or  
16 decedent's children may acquire one such motor vehicle from the estate,  
17 regardless of the fact that the decedent may also have been the owner of  
18 another motor vehicle of lesser value than [fifteen] TWENTY-FIVE thou-  
19 sand dollars, by payment to the estate of the amount by which the value  
20 of the motor vehicle exceeds [fifteen] TWENTY-FIVE thousand dollars; in  
21 lieu of receiving such motor vehicle, the surviving spouse or children  
22 may elect to receive in cash an amount equal to the value of the motor  
23 vehicle, not to exceed [fifteen] TWENTY-FIVE thousand dollars. If any  
24 motor vehicle so acquired by the spouse or children of the decedent was  
25 a specific legacy in decedent's will, the payment to the estate of the  
26 amount by which the value of the motor vehicle exceeds [fifteen] TWEN-  
27 TY-FIVE thousand dollars shall vest in the specific legatee.

28 [(5)] (6) Money [or other personal property] INCLUDING BUT NOT LIMITED  
29 TO CASH, CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS, CERTIFICATES OF  
30 DEPOSIT OR EQUIVALENTS THEREOF, not exceeding in value [fifteen] TWEN-  
31 TY-FIVE thousand dollars, [except that] REDUCED BY THE EXCESS VALUE, IF  
32 ANY, OF ACQUIRED ITEMS REFERRED TO IN SUBPARAGRAPHS (1), (2), (3) AND  
33 (5) OF THIS PARAGRAPH. HOWEVER, where assets are insufficient to pay  
34 the reasonable funeral expenses of the decedent, the personal represen-  
35 tative must FIRST apply such money [or other personal property] to  
36 defray any deficiency in such expenses.

37 (7) ANY SET OFF TO A CHILD UNDER THE AGE OF TWENTY-ONE YEARS NOT  
38 EXCEEDING TEN THOUSAND DOLLARS SHALL BE COVERED BY THE PROVISIONS OF  
39 SECTION TWENTY-TWO HUNDRED TWENTY OF THE SURROGATE'S COURT PROCEDURE ACT  
40 AS IF THE CHILD WERE A BENEFICIARY OF THE ESTATE. ANY EXCESS AMOUNTS  
41 SHALL BE GOVERNED BY THE GUARDIANSHIP STATUTE, IF APPLICABLE.

42 (8) THE COURT SHALL HAVE THE AUTHORITY TO ISSUE SUCH DOCUMENTATION AS  
43 NECESSARY TO EFFECTUATE THE TRANSFER OF ANY ITEMS UNDER THIS SECTION.

44 S 2. This act shall take effect on the first of January next succeed-  
45 ing the date on which it shall have become a law.