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

8969

2009-2010 Regular Sessions

I N A S S E M B L Y

June 17, 2009

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (a) of section 5-3.1 of the estates, powers and trusts law, as amended by chapter 595 of the laws of 1992, is amended to read as follows:

(a) If a person dies, leaving a surviving spouse or children under the age of twenty-one years, the following items of property are not assets of the estate but vest in, and shall be set off to such surviving spouse, unless disqualified, under 5-1.2, from taking an elective or distributive share of the decedent's estate. In case there is no surviving spouse or such spouse, if surviving, is disqualified, such items of property vest in, and shall be set off to the decedent's children under the age of twenty-one years:

(1) All housekeeping utensils, musical instruments, sewing machine, JEWELRY UNLESS DISPOSED OF IN THE WILL, CLOTHING OF THE DECEDENT, household furniture and appliances, [including but not limited to computers and electronic devices, used in and about the house,] ELECTRONIC AND PHOTOGRAPHIC DEVICES, AND fuel[, provisions and clothing of the decedent] FOR PERSONAL USE, not exceeding in aggregate value [ten] TWENTY thousand dollars. THIS SUBPARAGRAPH SHALL NOT INCLUDE ITEMS USED EXCLUSIVELY FOR BUSINESS PURPOSES.

(2) The family bible OR OTHER RELIGIOUS BOOKS, family pictures, [video tapes, and] BOOKS, computer tapes, discs[,] and software [used by such family, and books], DVDS, CDS, AUDIO TAPES, RECORD ALBUMS, AND OTHER ELECTRONIC STORAGE DEVICES, INCLUDING BUT NOT LIMITED TO VIDEOTAPES, USED BY SUCH FAMILY, not exceeding in value [one] TWO thousand FIVE HUNDRED dollars.

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

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

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

(5) One motor vehicle not exceeding in value [fifteen] TWENTY-FIVE thousand dollars. In the alternative, if the decedent shall have been the owner of one or more motor vehicles each of which exceed [fifteen] TWENTY-FIVE thousand dollars in value, the surviving spouse or decedent's children may acquire one such motor vehicle from the estate, regardless of the fact that the decedent may also have been the owner of another motor vehicle of lesser value than [fifteen] TWENTY-FIVE thousand dollars, by payment to the estate of the amount by which the value of the motor vehicle exceeds [fifteen] TWENTY-FIVE thousand dollars; in lieu of receiving such motor vehicle, the surviving spouse or children may elect to receive in cash an amount equal to the value of the motor vehicle, not to exceed [fifteen] TWENTY-FIVE thousand dollars. If any motor vehicle so acquired by the spouse or children of the decedent was a specific legacy in decedent's will, the payment to the estate of the amount by which the value of the motor vehicle exceeds [fifteen] TWENTY-FIVE thousand dollars shall vest in the specific legatee.

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

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

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

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.