

2038

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to the
disposition of property when persons die simultaneously and to repeal
section 2-1.6 of such law relating thereto

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

1 Section 1. Section 2-1.6 of the estates, powers and trusts law is
2 REPEALED and a new section 2-1.6 is added to read as follows:
3 S 2-1.6 DISPOSITION OF PROPERTY WHERE A PERSON DIES WITHIN ONE HUNDRED
4 TWENTY HOURS OF ANOTHER PERSON OR ANY OTHER EVENT
5 (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SECTION:
6 (1) WHERE, UNDER ARTICLES 4 AND 5 OF THIS CHAPTER, THE TITLE TO PROP-
7 ERTY OR THE DEVOLUTION OF PROPERTY DEPENDS UPON AN INDIVIDUAL'S SURVI-
8 VORSHIP OF THE DEATH OF ANOTHER INDIVIDUAL, AN INDIVIDUAL WHO IS NOT
9 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO HAVE SURVIVED THE OTHER
10 INDIVIDUAL BY ONE HUNDRED TWENTY HOURS IS DEEMED TO HAVE PREDECEASED THE
11 OTHER INDIVIDUAL.
12 (2) FOR PURPOSES OF A PROVISION OF A GOVERNING INSTRUMENT THAT RELATES
13 TO AN INDIVIDUAL SURVIVING AN EVENT, INCLUDING THE DEATH OF ANOTHER
14 INDIVIDUAL, AN INDIVIDUAL WHO IS NOT ESTABLISHED BY CLEAR AND CONVINCING
15 EVIDENCE TO HAVE SURVIVED THE EVENT BY ONE HUNDRED TWENTY HOURS IS
16 DEEMED TO HAVE PREDECEASED THE EVENT.
17 (3) WHERE A DISPOSITION OF PROPERTY UNDER A GOVERNING INSTRUMENT (I)
18 DEPENDS UPON THE TIME OF DEATH OF TWO OR MORE BENEFICIARIES DESIGNATED
19 TO TAKE ALTERNATIVELY BY REASON OF SURVIVING AN EVENT, INCLUDING THE
20 DEATH OF ANOTHER INDIVIDUAL, AND (II) IT IS NOT ESTABLISHED BY CLEAR AND
21 CONVINCING EVIDENCE THAT SUCH BENEFICIARIES HAVE SURVIVED THE EVENT BY
22 ONE HUNDRED TWENTY HOURS, THE PROPERTY THUS DISPOSED OF SHALL BE DIVIDED
23 INTO AS MANY EQUAL PORTIONS AS THERE ARE ALTERNATIVE BENEFICIARIES AND
24 SUCH PORTIONS SHALL BE DISTRIBUTED RESPECTIVELY TO THOSE WHO WOULD HAVE

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

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1 TAKEN THE WHOLE PROPERTY IN THE EVENT THAT THE DESIGNATED BENEFICIARY
2 THROUGH WHOM THEY TAKE HAD SURVIVED.

3 (4) WHERE IT IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT
4 ONE OF TWO CO-OWNERS WITH RIGHT OF SURVIVORSHIP SURVIVED THE OTHER
5 CO-OWNER BY ONE HUNDRED TWENTY HOURS, ONE-HALF OF THE PROPERTY PASSES AS
6 IF ONE HAD SURVIVED BY ONE HUNDRED TWENTY HOURS AND ONE-HALF AS IF THE
7 OTHER HAD SURVIVED BY ONE HUNDRED TWENTY HOURS. WHERE THERE ARE MORE
8 THAN TWO CO-OWNERS AND IT IS NOT ESTABLISHED BY CLEAR AND CONVINCING
9 EVIDENCE THAT AT LEAST ONE OF THEM SURVIVED THE OTHERS BY ONE HUNDRED
10 TWENTY HOURS, THE PROPERTY PASSES IN THE PROPORTION THAT ONE BEARS TO
11 THE WHOLE NUMBER OF CO-OWNERS.

12 (B) THE SURVIVAL REQUIREMENTS OF PARAGRAPH (A) OF THIS SECTION SHALL
13 NOT APPLY IF:

14 (1) THE GOVERNING INSTRUMENT CONTAINS LANGUAGE DEALING EXPLICITLY WITH
15 SIMULTANEOUS DEATHS OR DEATHS IN A COMMON DISASTER AND THAT LANGUAGE IS
16 OPERABLE UNDER THE FACTS OF THE CASE.

17 (2) THE GOVERNING INSTRUMENT EXPRESSLY INDICATES THAT AN INDIVIDUAL IS
18 NOT REQUIRED TO SURVIVE AN EVENT, INCLUDING THE DEATH OF ANOTHER INDIVIDUAL,
19 BY ANY SPECIFIED PERIOD OR EXPRESSLY REQUIRES THE INDIVIDUAL TO
20 SURVIVE THE EVENT FOR A SPECIFIED PERIOD. HOWEVER, SURVIVAL OF THE EVENT
21 OR THE SPECIFIED PERIOD MUST BE ESTABLISHED BY CLEAR AND CONVINCING
22 EVIDENCE.

23 (3) THE IMPOSITION OF A ONE HUNDRED TWENTY-HOUR REQUIREMENT OF
24 SURVIVAL WOULD CAUSE A NONVESTED PROPERTY INTEREST OR A POWER OF
25 APPOINTMENT TO BE INVALID UNDER SECTION 9-1.1 OF THIS CHAPTER. HOWEVER,
26 SURVIVAL MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

27 (4) THE APPLICATION OF A ONE HUNDRED TWENTY-HOUR REQUIREMENT OF
28 SURVIVAL TO MULTIPLE GOVERNING INSTRUMENTS WOULD RESULT IN AN UNINTENDED
29 FAILURE OR DUPLICATION OF A DISPOSITION. HOWEVER, SURVIVAL MUST BE
30 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

31 (5) ITS APPLICATION WOULD RESULT IN A TAKING OF THE INTESTATE ESTATE
32 BY THE STATE.

33 (6) THE SURVIVING SPOUSE EXERCISED THE RIGHT OF ELECTION UNDER SECTION
34 5-1.1-A OF THIS CHAPTER, BUT DIED LESS THAN ONE HUNDRED TWENTY HOURS
35 AFTER THE DEATH OF THE DECEASED SPOUSE.

36 (C) FOR PURPOSES OF THIS SECTION, "GOVERNING INSTRUMENT" MEANS A DEED,
37 WILL, TRUST, INSURANCE OR ANNUITY POLICY, BANK ACCOUNT IN TRUST FORM,
38 SECURITY REGISTRATION IN BENEFICIARY FORM (TOD), PENSION, PROFIT-SHARING,
39 RETIREMENT, OR SIMILAR BENEFIT PLAN, INSTRUMENT CREATING OR EXERCISING
40 A POWER OF APPOINTMENT OR A POWER OF ATTORNEY, OR A DISPOSITIVE,
41 APPOINTIVE, OR NOMINATIVE INSTRUMENT OF ANY SIMILAR TYPE.

42 S 2. This act shall take effect immediately, provided that:

43 (1) any action or proceeding commenced prior to the effective date of
44 this act shall not be impaired by this act. If a right is acquired,
45 extinguished, or barred upon the expiration of a prescribed period of
46 time that has commenced pursuant to the provisions of any statute prior
47 to the effective date of this act, such provisions shall remain in force
48 with respect to such right; and

49 (2) any rule of construction or presumption provided by this act shall
50 apply to governing instruments executed, including bank accounts opened,
51 before the effective date of this act unless there is a clear indication
52 of a contrary intent.