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

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I N A S S E M B L Y

May 25, 2010

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

AN ACT to amend the estates, powers and trusts law, in relation to the right of election by surviving spouse

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

Section 1. Subparagraphs 1 and 2 of paragraph (d) of section 5-1.1-a of the estates, powers and trusts law, as amended by chapter 515 of the laws of 1993, are amended to read as follows:

(1) An election under this section must be made within six months from the date of issuance of letters testamentary or of administration, as the case may be, but in no event later than two years after the date of decedent's death, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 2 OF THIS PARAGRAPH. Written notice of such election shall be served upon any personal representative in the manner herein provided, or upon a person named as executor in a will on file in the surrogate's court in a case where such will has not yet been admitted to probate, and the original thereof shall be filed and recorded, with proof of service, in the surrogate's court in which such letters were issued within six months from the date of the issuance of letters but in no event later than two years from the date of decedent's death, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 2 OF THIS PARAGRAPH. Such notice may be served by mailing a copy thereof, addressed to any personal representative, or to the nominated executor, as the case may be, at the place of residence stated in the designation required by [SCPA] SECTION 708 OF THE SURROGATE'S COURT PROCEDURE ACT or in such other manner as the surrogate may direct.

(2) The time to make such election may be extended before expiration by an order of the surrogate's court from which such letters issued for a further period not exceeding six months upon any one application. If the spouse defaults in filing such election within the time provided in subparagraph [(d)] (1) OF THIS PARAGRAPH, the surrogate's court may relieve the spouse from such default and authorize the making of an election within the period fixed by the order, provided that no decree settling the account of the personal representative has been made and

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

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that twelve months have not elapsed since the issuance of the letters, AND TWO YEARS HAVE NOT ELAPSED SINCE THE DECEDENT'S DATE OF DEATH, IN THE CASE OF INITIAL APPLICATION; EXCEPT THAT THE COURT MAY, IN ITS DISCRETION FOR GOOD CAUSE SHOWN, EXTEND THE TIME TO MAKE SUCH ELECTION BEYOND SUCH PERIOD OF TWO YEARS. An application for relief from the default and for an extension of time to elect shall be made upon a petition showing reasonable cause and on notice to such persons and in such manner as the surrogate may direct. A certified copy of such order shall be indexed and recorded in the same manner as a notice of pendency of an action in the office of the clerk of each county in which real property of the decedent is situated.

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