

11255

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:

1 Section 1. Subparagraphs 1 and 2 of paragraph (d) of section 5-1.1-a  
2 of the estates, powers and trusts law, as amended by chapter 515 of the  
3 laws of 1993, are amended to read as follows:  
4 (1) An election under this section must be made within six months from  
5 the date of issuance of letters testamentary or of administration, as  
6 the case may be, but in no event later than two years after the date of  
7 decedent's death, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 2 OF THIS  
8 PARAGRAPH. Written notice of such election shall be served upon any  
9 personal representative in the manner herein provided, or upon a person  
10 named as executor in a will on file in the surrogate's court in a case  
11 where such will has not yet been admitted to probate, and the original  
12 thereof shall be filed and recorded, with proof of service, in the  
13 surrogate's court in which such letters were issued within six months  
14 from the date of the issuance of letters but in no event later than two  
15 years from the date of decedent's death, EXCEPT AS OTHERWISE PROVIDED IN  
16 SUBPARAGRAPH 2 OF THIS PARAGRAPH. Such notice may be served by mailing  
17 a copy thereof, addressed to any personal representative, or to the  
18 nominated executor, as the case may be, at the place of residence stated  
19 in the designation required by [SCPA] SECTION 708 OF THE SURROGATE'S  
20 COURT PROCEDURE ACT or in such other manner as the surrogate may direct.  
21 (2) The time to make such election may be extended before expiration  
22 by an order of the surrogate's court from which such letters issued for  
23 a further period not exceeding six months upon any one application. If  
24 the spouse defaults in filing such election within the time provided in  
25 subparagraph [(d)] (1) OF THIS PARAGRAPH, the surrogate's court may  
26 relieve the spouse from such default and authorize the making of an  
27 election within the period fixed by the order, provided that no decree  
28 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.

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

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