

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

2762--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. WEINSTEIN -- read once and referred to the
Committee on Judiciary -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

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2 REPEALED and a new section 2-1.6 is added to read as follows: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

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

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1 SUCH PORTIONS SHALL BE DISTRIBUTED RESPECTIVELY TO THOSE WHO WOULD HAVE
2 TAKEN THE WHOLE PROPERTY IN THE EVENT THAT THE DESIGNATED BENEFICIARY
3 THROUGH WHOM THEY TAKE HAD SURVIVED.

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

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

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

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

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

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

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

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

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

43 S 2. This act shall take effect on the tenth day after it shall have
44 become a law, provided that:

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

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