

4693

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. WEINSTEIN -- Multi-Sponsored by -- M. of A.  
CLARK, GLICK, JAFFEE, KAVANAGH -- read once and referred to the  
Committee on Judiciary

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

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

1 Section 1. Subparagraph 2 of paragraph (b) of section 5-1.1-A of the  
2 estates, powers and trusts law, as amended by chapter 515 of the laws of  
3 1993, is amended to read as follows:

4 (2) Transactions described in clause (D) or SUBCLAUSE (I) OF CLAUSE  
5 (E) [(i)] OF SUBPARAGRAPH (1) shall be treated as testamentary substi-  
6 tutes in the proportion that the funds on deposit were the property of  
7 the decedent immediately before the deposit or the consideration for the  
8 property described in SUBCLAUSE (I) OF clause (E) [(i)] OF SUBPARAGRAPH  
9 (1) was furnished by the decedent. The surviving spouse shall have the  
10 burden of establishing the proportion of the decedent's contribution;  
11 provided, however, that where the surviving spouse is the other party to  
12 the transaction, it will be conclusively presumed that the proportion of  
13 the decedent's contribution is one-half. For the purpose of this subpar-  
14 agraph, SECTION FORTY-FIVE HUNDRED NINETEEN OF THE CIVIL PRACTICE LAW  
15 AND RULES SHALL NOT APPLY, AND the court may accept such evidence as is  
16 relevant and competent, whether or not [the person offering such  
17 evidence would otherwise be competent to testify] SUCH EVIDENCE WOULD BE  
18 EXCLUDED PURSUANT TO SECTION FORTY-FIVE HUNDRED NINETEEN OF THE CIVIL  
19 PRACTICE LAW AND RULES.

20 S 2. Paragraph (e) of section 5-1.1-A of the estates, powers and  
21 trusts law is amended by adding a new subparagraph 5 to read as follows:

22 (5) A WAIVER OR RELEASE OF RIGHT OF ELECTION IS NOT ENFORCEABLE  
23 AGAINST THE SURVIVING SPOUSE IF SUCH SPOUSE PROVES, BY A PREPONDERANCE  
24 OF THE EVIDENCE, THAT SUCH SPOUSE WAS NOT PROVIDED A FAIR AND REASONABLE

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

LBD08412-01-1

1 DISCLOSURE OF THE INCOME, ASSETS, AND FINANCIAL OBLIGATIONS OF THE DECE-  
2 DENT PRIOR TO THE EXECUTION OF THE WAIVER OR RELEASE, PROVIDED, HOWEVER,  
3 THAT THIS SUBPARAGRAPH SHALL NOT APPLY IF IT APPEARS THAT (I) THE  
4 SURVIVING SPOUSE VOLUNTARILY AND EXPRESSLY WAIVED OR RELEASED, IN THE  
5 MANNER PROVIDED IN SUBPARAGRAPH (2), ANY RIGHT TO DISCLOSURE BEYOND THE  
6 DISCLOSURE PROVIDED, OR (II) SUCH SPOUSE HAD SUFFICIENT KNOWLEDGE OF THE  
7 INCOME, ASSETS AND FINANCIAL OBLIGATIONS OF THE DECEDENT PRIOR TO THE  
8 EXECUTION OF THE WAIVER OR RELEASE. FOR THE PURPOSES OF THIS SUBPARA-  
9 GRAPH, SECTION FORTY-FIVE HUNDRED NINETEEN OF THE CIVIL PRACTICE LAW AND  
10 RULES SHALL NOT APPLY, AND THE COURT MAY ACCEPT SUCH EVIDENCE AS IS  
11 RELEVANT AND OTHERWISE COMPETENT, WHETHER OR NOT SUCH EVIDENCE WOULD BE  
12 EXCLUDED PURSUANT TO SECTION FORTY-FIVE HUNDRED NINETEEN OF THE CIVIL  
13 PRACTICE LAW AND RULES. THIS SUBPARAGRAPH SHALL NOT PRECLUDE THE  
14 ASSERTION OF ANY COMMON LAW DEFENSES BY SUCH SURVIVING SPOUSE.

15 S 3. This act shall take effect on the first of September next  
16 succeeding the date on which it shall have become a law, provided,  
17 however that section two of this act shall apply only to waivers or  
18 releases, of a spouse's right of election, executed on or after such  
19 effective date.