STATE OF NEW YORK

3364

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. CARROLL -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to establishing a division of the public administrator within the office of the corporation counsel for the city of New York; and to repeal certain provisions of such act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 11 of the surrogate's court procedure act is REPEALED and a new article 11 is added to read as follows:

ARTICLE 11

DIVISION OF THE PUBLIC ADMINISTRATOR FOR THE CITY OF NEW YORK

Section 1101. Definitions.
1102. Division of the public administrator; director; employees.
1103. General powers of the director.
1104. Oath and bond.
1105. Commissions.
1106. Deposit of funds.
1107. Responsibility of the city.
1108. Authority to act.
1109. Reports of deaths and burials.
1110. Inquiry and subpoena.
1111. Letters not required for small estates.
1112. Application for letters; when court may direct probate.
1113. No separate bond or oath.
1114. Powers before issuance of letters.
1115. Notice to consuls.
1116. Appearance by consuls.
1117. Grant of letters to others.

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

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1118. Delivery of estate assets to fiduciary; expenses, costs and commissions.
1119. Appeal; bond.
1120. Property without value where no administration had.
1121. Disposition of records after 10 years.

§ 1101. Definitions

For purposes of this article, the following terms shall have the following meanings:

1. "Division" shall mean the division of public administrator established by section 1102 of this article.

2. "Director" shall mean the director of the division.

§ 1102. Division of the public administrator; director; employees

1. There is hereby created within the office of the corporation counsel for the city of New York, a division of the public administrator to have and exercise the functions, powers and duties provided by the provisions of this article.

2. The head of the office shall be the director, who shall be appointed by the mayor of the city of New York, and shall hold office at the pleasure of the mayor by whom he or she was appointed or until his or her successor is appointed and has qualified.

3. Subject to the provisions of this article and the civil service law, and rules and regulations adopted pursuant thereto, the director may appoint such other officers and employees as may be necessary, prescribe their duties, fix their compensation and provide for payment of their reasonable expenses, all within amounts as may be allowed annually in the budget of the city of New York. The director may transfer officers or employees from their positions to other positions in the division, or abolish or consolidate such positions.

4. The director acting by and through the division shall have powers set forth in section 1103 of this article.

§ 1103. General powers of the director

1. The director shall have all the powers specifically granted pursuant to this article and also the powers given by law to a fiduciary of a decedent's estate.

2. In addition to the foregoing grant of powers and without limitation thereon the director is authorized to:

(a) Sell personal property of the decedent at public auction pursuant to notice appearing for 3 successive days prior to the sale in a newspaper published in the county having jurisdiction over the estate.

(b) Retain marketable securities beyond 4 months after letters have been granted to him or her provided that the court has so permitted by order.

(c) Serve process on creditors, legatees or other persons interested, distributees, domiciled outside the city of New York by certified mail, return receipt requested, whenever directed by the court by order in any proceeding, notwithstanding the provisions of section 308 of this act. Such service shall be valid if made at least 30 days before the return date thereof.

(d) Distribute without an accounting proceeding the assets of any estate defined as a small estate in subdivision 1 of section 1301 of this act and upon distribution to take the costs and commissions ordinarily allowed by the court upon the entry of a decree upon final accounting.

(e) File in the court an informatory account in a form prescribed by rule where the gross value of the assets of the estate accounted for is more than $500 and less than that as defined as a small estate in subdi-

vision 1 of section 1301 of this act and shall serve a copy of such informatory accounting by certified mail on all interested parties at least 30 days prior to filing with the court.

(f) Pay for the use and benefit of an infant distributee or legatee who has no guardian of the property the share of legacy due the infant if not exceeding $5,000 by payment thereof in the discretion of the director to a parent or to an adult competent person with whom the infant resides.

(g) Pay or deliver to the commissioner of finance of the city of New York the balance of any moneys or other assets in his or her hands remaining after settlement of his or her account or the filing of an informatory account, where payable to persons under disability or whose shares are to be deposited pursuant to section 2218 of this act.

(h) Apply ex parte or upon such notice as directed by the court for an order or decree in any appropriate proceeding requiring the city of New York to return to the director any money or unliquidated assets theretofore deposited by the director and remaining in the treasury of the city of New York and upon further order of the court to make distribution of such recovered funds to the persons entitled thereto.

(i) Receive process or other notice as a necessary party in the following proceedings:

(1) Any proceeding pending in the court where service of process or notice in behalf of any known or unknown person is directed by the court or where the court by order directs the director to appear therein.

(2) Every proceeding for the appointment of an administrator or for the probate of a will where it does not appear that the persons applying or named in the petition are all the distributees of the decedent or where it appears that such persons are related to the decedent in the fourth degree of consanguinity or are more remotely related.

(3) Ever proceeding to effect distribution of moneys or property deposited for the account of unknown persons or of infants or incompetents, or of known persons whose shares were deposited pursuant to section 2218 of this act. In any such proceeding the director shall be deemed a person interested.

(4) In all such proceedings the director, in his or her discretion, may take any action in behalf of such person or persons as a person interested might.

(j) Designate a designee from within the division to act on his or her behalf.

§ 1104. Oath and bond

The director of the division before entering upon the duties of his or her office shall take and file the constitutional oath of office.

§ 1105. Commissions

1. The director shall retain over and above all necessary expenses upon all moneys which shall come under the control of the division the same commissions as are now or may hereafter be allowed by law to fiduciaries under section 2307 of this act.

2. The value of any real or personal property and the increment thereof received, disbursed or delivered shall be considered as money in computing commissions, except where the real or personal property has been specifically devised or bequeathed.

3. On the settlement of the account of the division in each instance, notwithstanding the provisions of subdivisions 1 and 2 of this section, the court may allow reasonable and necessary expenses and disbursements of the division, and in addition, to be fixed by the court.

4. The commissions and allowances provided for by this section may be retained by the director in preference to any debts or claims except funeral expenses.

5. The director shall pay into the treasury of the city of New York all commissions and allowances received by the division from any source. Such funds shall be used by the city to offset the expenses of the division and the compensation paid to the director, officers and employees of the division.

§ 1106. Deposit of funds

1. The director shall deposit all moneys collected and received by the division within 5 days after receipt in demand, time, thrift or other accounts in one or more banks or trust companies designated by the mayor, comptroller and commissioner of finance of the deposit of moneys of the city of New York. All interest received on such deposits shall be credited to the respective estates. In case of the insolvency or involuntary liquidation of the depository all money so deposited shall be entitled to equal priority of payment with that given by law to deposits of money by the state superintendent of banks.

2. The director shall whenever required exhibit to the city comptroller and the surrogate of the county with jurisdiction over the estate the bank books or statements and all other vouchers and documents relating to the division. The comptroller and surrogate shall examine the bank books and statements showing the deposits and the vouchers on which the check is required to be drawn and shall satisfy himself or herself fully as to the correctness thereof and in case of doubt or difficulty he or she shall report the case to the mayor for his or her direction.

§ 1107. Responsibility of the city

1. The city of New York shall be answerable for the faithful execution by the director of all the duties of the division and for the application by him or her of all moneys and property received by the division and for all moneys and securities and the interest, earnings and dividends thereon actually received by the division or which the division should have collected or received.

2. Any person aggrieved by any act or omission of the division and any person entitled to receive any money or property for which the division may be held to account, shall have each and every remedy against the city of New York as would be available against a fiduciary in like case and may initiate in the surrogate's court having jurisdiction a proceeding for the enforcement of his or her claim or right and shall serve process thereon on the comptroller of the city. The director then in office shall be a necessary party in such proceeding.

§ 1108. Authority to act

The director shall have authority to take possession of, manage and collect the rents of the real property and take charge of the personal property of an intestate:

1. Whenever any person not known to have left him or her surviving a person eligible to receive letters shall die intestate either within this state or elsewhere leaving any real or personal property within a county located within the city of New York.

2. Whenever any personal property of such intestate shall arrive within a county located within the city of New York after his or her death.

3. Whenever all of the surviving relatives are not known the director shall conduct a search for all living distributees of the decedent by reference to bank, postal, and telephone records and inquiry of neigh-

bors, and other reasonable steps under the circumstances. The director shall maintain records of all responses to such notices.

§ 1109. Reports of deaths and burials

1. Every person keeping a hotel, boarding or rooming house in any county located within the city of New York shall report in writing to the director information concerning every person not a member of his or her family who shall die in his or her hotel or house within 12 hours after such death.

2. The chief medical examiner or such similar public officer of any county located within the city of New York within 12 hours after an inquest shall report in writing to the director, such information regarding the decedent which he or she may have.

3. Every undertaker doing business in a county located within the city of New York shall file a report in writing with the director within 12 hours after receiving an order for the burial by him or her of any decedent having no known distributees or having been survived only by cousins or relatives by marriage, such information regarding the decedent which he or she may have.

§ 1110. Inquiry and subpoena

1. The director may institute an inquiry in any case in which he or she is authorized to act as to any matter affecting the estate of the decedent.

2. For the purposes set forth in subdivision 1 of this section, the director may issue a subpoena or subpoena duces tecum either before or after the issuance of letters in the name of the court with the same effect as if either were issued by the court.

3. Failure to comply with the directions of the subpoena or subpoena duces tecum shall be punishable as a contempt of court.

§ 1111. Letters not required for small estates

1. Without the issuance of letters the director by virtue of his or her office shall have all the powers of a fiduciary of a decedent's estate whenever the gross assets of the estate do not exceed the monetary amount defined as a small estate pursuant to subdivision 1 of section 1301 of this act.

2. In the event the aggregate sum of the assets of an estate in which the director commences to act pursuant to subdivision 1 of this section shall exceed the monetary amount defined as a small estate pursuant to subdivision 1 of section 1301 of this act the director shall forthwith apply for letters.

3. The delivery by the director to a debtor, transfer agent or person holding personal property of the decedent of a certificate evidencing his or her authority to act under this section, his or her receipt and the surrender of any evidentiary document shall constitute a complete release and discharge for any payment of money or delivery of property made pursuant to the certificate without such person being required to see to the application thereof and with the same effect as if made to any other fiduciary.

§ 1112. Application for letters; when court may direct probate

1. The director is authorized to apply for and receive letters as defined in this act.

2. The court may direct the director to present a petition for probate of a will at any time after it is filed.

§ 1113. No separate bond or oath

The director or any officer or employee of the division shall not be required to file the designation, separate bond or oath required by section 708 of this act before the issuance of letters to the director.

§ 1114. Powers before issuance of letters

Before letters are issued to the director the director is authorized to:

1. Take possession of, collect and secure the personal property within his or her county of any person who shall die intestate or testate within this state or elsewhere or whose property shall arrive within the county after his or her death whenever there is no person eligible to act as fiduciary of an intestate or of a testator, if the executor named in the will refuses or neglects to act or is dead or his or her whereabouts are unknown or if he or she is not eligible to receive letters.

2. Take possession of, manage and collect the rents of the real property of an intestate whose distributees are unknown or, whose distributees if known, are non-domiciliaries or of a testator if the executor named in the will refuses or neglects to act or is dead or his or her whereabouts are unknown or if he or she is not eligible to receive letters.

3. Pay the funeral expenses of the decedent.

4. Sell as and when authorized by the court perishable property or such other property of the decedent as the preservation of the estate requires.

5. Sell at public auction all property delivered to him or her as the effects of persons whose deaths have been reported to him or her by a hospital, the police department or any other department or person.

6. Defray the expenses of the foregoing activities and the expenses incidental to his or her application for letters.

§ 1115. Notice to consuls

When the estate is that of an alien it shall be the duty of the director when making application for letters to mail a notice to the consular representative of the nation of which the decedent was a citizen or subject if there be any in the city of New York.

§ 1116. Appearance by consuls

1. In any action or proceeding brought by or against the director in which a non-domiciliary alien is a necessary or proper party the consular representative of the country of which the alien is a citizen or subject may appear in person or by attorney in behalf of the alien if the latter shall default in appearance.

2. No power of attorney or other specific authority from the alien shall be required as a condition to such appearance.

3. Service upon an alien pursuant to paragraph (e) of subdivision 3 of section 307 of this act may be made without prior service of process personally or otherwise upon the alien.

4. The interests of alien persons under disability shall, however, be represented in all such proceedings by their guardians of the property, committee of the property or conservators of the property, or by guardians ad litem appointed by the court.

§ 1117. Grant of letters to others

If any eligible distributee of the decedent shall petition to supersede the director within 4 months after the director has become vested with the powers of a fiduciary on the estate, letters shall be granted to him or her upon proof that the petitioner did not receive notice of the application by the director and upon the further showing that all persons prior or equal in right have been served and have defaulted or waived; but the court may refuse to supersede the director if 6 months have elapsed since he or she became vested with the powers of a fiduciary.

§ 1118. Delivery of estate assets to fiduciary; expenses, costs and commissions

When the director has been superseded he or she shall account and deliver to the fiduciary superseding him or her all the personal property belonging to the estate which he or she has in his or her possession or control after deducting his or her expenses, costs and commissions as provided by law.

§ 1119. Appeal; bond

1. The director is authorized to appeal from any order, decree or judgment affecting an estate in the charge of the division or in which he or she is a party.

2. On such an appeal no bond on the part of the director shall be required to stay execution of the order, decree or judgment appealed from.

§ 1120. Property without value where no administration had

Whenever the director shall receive papers or property of a decedent upon whose estate no letters have been issued or whose property is not sufficient to require administration, the director is authorized to abandon or destroy all such papers and property in the possession of the division after 5 years have elapsed from the death of the decedent and upon proof satisfactory to the director that they are without value. The director, the division and the city of New York shall not be liable or held to account for such property.

§ 1121. Disposition of records after 10 years

The director is authorized to destroy the file and all of the papers relating to a decedent after the lapse of 10 years from the completion of the administration of his or her estate. The director, the division and the city of New York shall not be liable or held to account for such action.

§ 2. The surrogate's court procedure act is amended by adding a new section 1220 to read as follows:

§ 1220. Administrative board for the offices of the public administrators

1. An administrative board for the offices of the public administrators of the state of New York is hereby created. The board shall consist of 13 members of whom 5 shall be surrogate court judges, 1 each selected by the presiding justice of the appellate divisions of the first, third and fourth departments and 2 selected by the presiding justice of the appellate division of the second department of whom 1 shall be a surrogate from a county within the city of New York and 1 shall be a surrogate from a county outside the city of New York, 3 members shall be selected by the chief administrative judge of the state of New York, 2 members shall be selected by the president of the New York state bar association of whom 1 shall be a resident of the city of New York and 1 member each shall be selected by the state comptroller, the attorney general and the president of the New York state surrogates' association. The 3 members selected by the chief administrative judge of the state of New York, and the members selected by the state comptroller, the attorney general, and the president of the New York state bar association, shall not be surrogate court judges or employees of the surrogates court. Each member shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of his or her official duties for the board from the moneys appropriated to the office of court administration. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state or any public corporation, as defined in

article 2-A of the general construction law, shall be deemed to have forfeited or shall forfeit his or her office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of his or her being a member of the board.

2. The board shall establish guidelines and uniform fee schedules for the operation of the offices of public administrators. These guidelines shall include but are not limited to rules for the initial inspection of the decedent's premises and guidelines for the selection and compensation of investigators, appraisers, accountants, warehouses, auctioneers and procedures for the disposal of personal property. With respect to real property the board shall be responsible for preparing uniform procedures for sale; fixing a schedule of approved expenses attendant to such a sale; appraisals, title fees and broker's commissions.

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