STATE OF NEW YORK

720

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to disqualification as a surviving spouse

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

Section 1. Section 5-1.2 of the estates, powers and trusts law, the opening paragraph of paragraph (a) as amended by chapter 515 of the laws of 1993, subparagraph 6 of paragraph (a) as amended by chapter 300 of the laws of 1981, is amended to read as follows:

§ 5-1.2 Disqualification as surviving spouse

(a) A husband or wife is a surviving spouse within the meaning, and for the purposes of 4-1.1, 5-1.1, 5-1.1-A, 5-1.3, 5-3.1 and 5-4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:

(1) A final decree or judgment of divorce, [~~of annulment or declaring the nullity of a marriage or dissolving such marriage on the ground of absence,~~] recognized as valid under the law of this state, was in effect when the deceased spouse died.

(2) **A final decree or judgment of annulment or declaring the nullity of a void marriage or dissolving such marriage, recognized as valid under the law of this state, is issued before or after the deceased spouse died. For the purposes of this section, in the event any such decree or judgment is issued after the deceased spouse died, the marriage shall be deemed a nullity immediately prior to the death of such spouse.**

(3) The marriage was void as incestuous under section five of the domestic relations law, bigamous under section six thereof, or a prohibited remarriage under section eight thereof.

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

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[~~(3)~~] **(4)** The spouse had procured outside of this state a final decree or judgment of divorce from the deceased spouse, of annulment or declaring the nullity of the marriage with the deceased spouse or dissolving such marriage on the ground of absence, not recognized as valid under the law of this state.

[~~(4)~~] **(5)** A final decree or judgment of separation, recognized as valid under the law of this state, was rendered against the spouse, and such decree or judgment was in effect when the deceased spouse died.

[~~(5)~~] **(6)** The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.

[~~(6)~~] **(7)** A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support.

§ 2. This act shall take effect immediately.