

# STATE OF NEW YORK

10019

## IN ASSEMBLY

May 1, 2024

Introduced by M. of A. BRAUNSTEIN -- read once and referred 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 Assem-  
bly, do enact as follows:

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

5 § 5-1.2 Disqualification as surviving spouse

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

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

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

21 (3) The marriage was void as incestuous under section five of the  
22 domestic relations law, bigamous under section six thereof, or a prohib-  
23 ited remarriage under section eight thereof.

24 [~~(3)~~] (4) The spouse had procured outside of this state a final decree  
25 or judgment of divorce from the deceased spouse, of annulment or declar-  
26 ing the nullity of the marriage with the deceased spouse or dissolving  
27 such marriage on the ground of absence, not recognized as valid under  
28 the law of this state.

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

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1    [~~(4)~~] (5) A final decree or judgment of separation, recognized as  
2 valid under the law of this state, was rendered against the spouse, and  
3 such decree or judgment was in effect when the deceased spouse died.  
4    [~~(5)~~] (6) The spouse abandoned the deceased spouse, and such abandon-  
5 ment continued until the time of death.  
6    [~~(6)~~] (7) A spouse who, having the duty to support the other spouse,  
7 failed or refused to provide for such spouse though he or she had the  
8 means or ability to do so, unless such marital duty was resumed and  
9 continued until the death of the spouse having the need of support.  
10    § 2. This act shall take effect immediately.