Report of the Surrogate's Court Advisory Committee

to the Chief Administrative Judge of the Courts of the State of New York

January 2003.

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I. INTRODUCTION

THE SURROGATE'S COURT ADVISORY COMMITTEE IS ONE OF THE COM
ESTABLISHED, PURSUANT TO SECTION 212(1)(Q) OF THE JUDICIARY LAW, BY
ADMINISTRATOR OF THE COURTS TO ASSIST HIM IN THE EXECUTION OF T
OFFICE. THE COMMITTEE ANNUALLY RECOMMENDS TO THE CHIEF ADMIN
RELATED TO THE ESTATES, POWERS AND TRUSTS LAW, THE SURROGATE'S C
AND LEGAL ISSUES INVOLVING THE PRACTICE AND PROCEDURE OF THE SU
THESE RECOMMENDATIONS ARE BASED ON THE COMMITTEE'S OWN STUD
DECISIONAL LAW AND SUGGESTIONS RECEIVED FROM THE BENCH AND BA
RECOMMENDING ITS OWN ANNUAL LEGISLATIVE PROGRAM, THE COMMIT
COMMENTS ON OTHER PENDING LEGISLATIVE MEASURES CONCERNING E
OTHER MATTERS (E.G., ADOPTIONS, GUARDIANSHIPS) THAT ARE WITHIN T
JURISDICTION OF THE SURROGATE'S COURTS.

DURING THE 2002 LEGISLATIVE SESSION, THE COMMITTEE HAD ONE
BILLS ENACTED:

- CHAPTER 457: AMENDS SECTIONS 711, 719, 2205, AND 2206 OF THE
COURT PROCEDURE ACT TO COMBINE THE PROCEDURE FOR COMPULSORY
OTHER STATUTORY REMEDIES INTO A SINGLE PROCEDURAL FRAMEWORK
EXPEDIENT REMEDY WHEN DEALING WITH FIDUCIARIES WHO FAIL TO AC
NOVEMBER 1, 2002.

THE COMMITTEE AS PRESENTLY CONSTITUTED HAS 25 MEMBERS. ITS
THE AREAS OF LEGISLATION, ADOPTION, GUARDIANSHIP, COURT RULES, FO
TECHNOLOGY, WITH THE FOLLOWING FOUR SUBCOMMITTEES OF THE CO
EACH OF THESE SUBJECTS:

SUBCOMMITTEE ON LEGISLATION
CHAIR, GENEVIEVE L. FRAIMAN, ESQ.

SUBCOMMITTEE ON ADOPTIONS
CHAIR, HON. JOSEPH S. MATTINA

SUBCOMMITTEE ON GUARDIANSHIP
CHAIR, HON. ROBERT L. NAHMAN

SUBCOMMITTEE ON RULES, FORMS AND TECHNOLOGY
CHAIR, JOHN SCHAEFER, ESQ.

IN THIS REPORT, THE COMMITTEE SETS FORTH ITS LEGISLATIVE PROPOSAL
PROJECTS THAT ARE BEING UNDERTAKEN.

AS PART OF ITS EFFORT TO FOCUS ITS WORK ON AREAS WHICH WOUL
THE LEGISLATURE, COURTS, BAR AND LITIGANTS, THE COMMITTEE WELCO
SUGGESTIONS. INQUIRIES SHOULD BE SUBMITTED TO:

HON. RENEE R. ROTH, CHAIR
SURROGATE'S COURT ADVISORY COMMITTEE
OFFICE OF COURT ADMINISTRATION
25 BEAVER STREET, SUITE 1170
NEW YORK, NEW YORK 10004

II. LEGISLATION

A. NEW MEASURES

1. JURY TRIALS AND LIFETIME TRUSTS (SCPA 502)

SUBDIVISION 1 OF SECTION 502 OF THE SURROGATE'S COURT PROCED PROVIDES THAT A PARTY TO A PROCEEDING IN SURROGATE'S COURT IS EN ANY CASE PRESENTING A CONTROVERTED QUESTION OF FACT AS TO WHIC PROCEEDING ENJOYS A CONSTITUTIONAL RIGHT TO JURY TRIAL. SUBDIVI RIGHT TO A JURY TRIAL TO PROBATE PROCEEDINGS IN WHICH A CONTRO ARISES.

THE COMMITTEE RECOMMENDS THAT SUBDIVISION 1 BE AMENDED T RIGHT AS WELL TO PROCEEDINGS TO CONTEST THE VALIDITY OF A REVOC WHERE SUCH PROCEEDINGS ARE COMMENCED AFTER THE DEATH OF THE PROCEEDINGS RAISE A CONTROVERTED QUESTION OF FACT.

IN RECENT YEARS, NEW YORKERS HAVE UTILIZED THE REVOCABLE LIF SUBSTITUTE IN ORDER TO AVOID PROBATE AND TO MAINTAIN PRIVACY O COUNTERPART RECEPTACLE TO A POUR-OVER WILL PURSUANT TO SECTION POWERS AND TRUSTS LAW. MORE OFTEN THAN NOT, SUCH A TRUST IS CRE SAME TIME THE WILL IS EXECUTED, SO THAT PROOF PRESENTED TO PROVE TO MAKE THE WILL OR TO PROVE THE EXERCISE OF UNDUE INFLUENCE ON SIMILAR, OR EVEN IDENTICAL, TO THE PROOF OFFERED WHERE THE TRUST PUT IN QUESTION OR UNDUE INFLUENCE IS ALLEGED IN A COMPANION P THE VALIDITY OF THE CONTEMPORANEOUSLY-CREATED REVOCABLE LIFET HOWEVER, WHILE THERE IS A STATUTORY RIGHT TO A JURY TRIAL IN THE V COMPANION STATUTORY RIGHT IN THE CHALLENGE TO THE TRUST.

THE TRIAL COURTS HAVE DIVIDED ON THE QUESTION WHETHER SUC OTHERWISE EXISTS.

IN *MATTER OF ARONOFF* (171 MISC. 2D 172 (SUR. CT. NY COUNTY, 1996)) OBJECTANTS TO PROBATE OF A WILL ALSO SOUGHT TO INVALIDATE A REVO DEMAND FOR A JURY TRIAL WAS MADE IN BOTH PROCEEDINGS. HOWEVER HELD THAT THE CONTESTANT OF A REVOCABLE TRUST HAS NO RIGHT TO

THAT SUCH A RIGHT EXISTS ONLY "WHERE [IT] IS PROVIDED BY STATUTE O
CONSTITUTION (SCPA 502(L); CPLR 4101)." WHILE A PARTY TO A PROBATE PR
THE RIGHT TO DEMAND A JURY TRIAL BY SCPA 502(L), THERE IS NO EQUIVA
PROCEEDING TO INVALIDATE A LIFETIME TRUST. MOREOVER, A PROCEEDI
LIFETIME TRUST IS EQUITABLE IN NATURE, WAS TRIABLE HISTORICALLY BY
WAS THEREFORE ACCORDED NEITHER A CONSTITUTIONAL RIGHT NOR A S
JURY TRIAL. ALTHOUGH THE OBJECTANT'S DEMAND FOR A JURY TRIAL IN *A*
SINCE THE ISSUES AS TO CAPACITY AND UNDUE INFLUENCE IN THE PROCE
INSTRUMENTS (EXECUTED WITHIN A YEAR OF THE WILL'S EXECUTION) WE
RAISED IN THE PROBATE PROCEEDING, THE SURROGATE RULED THAT THE
PROCEEDING WOULD SERVE AS AN *ADVISORY JURY* PURSUANT TO SCPA 502
EQUITABLE CLAIMS IN THE TRUST PROCEEDING WHICH HAD BEEN CONSO
OBSERVED THAT LEGISLATION WOULD BE REQUIRED TO GRANT A RIGHT T
PROCEEDINGS BROUGHT TO INVALIDATE A LIFETIME TRUST.[1]

BY CONTRAST, IN *MATTER OF TISDALE* (171 MISC. 2D 716 (SUR. CT. NY C
1997)), AND *MATTER OF SOLOMON* (NYLJ, SEPT. 9, 1997, P.28, COL. 3 (SUR. CT.
COUNTY, 1997)), THE TRIAL COURTS, RECOGNIZING THE SIMILARITY OF WI
LIFETIME TRUSTS USED AS WILL SUBSTITUTES OR RECEPTACLES FOR POUR-
RIGHT TO A TRIAL BY JURY IN THE PROCEEDINGS TO INVALIDATE A REVOC
TISDALE, THE DECEDENT'S DISTRIBUTEES FILED OBJECTIONS TO PROBATE
POURED THE PROBATE ESTATE INTO A REVOCABLE TRUST EXECUTED ON TH
BOTH INSTRUMENTS WERE DRAFTED BY THE SAME ATTORNEY WHO WAS N
UNDER BOTH INSTRUMENTS. THUS, BOTH PROCEEDINGS RAISED EXACTLY
TRIAL, NAMELY, DUE EXECUTION, CAPACITY, UNDUE INFLUENCE AND FRAU
SOLOMON, THESE COGENT REASONS LED THE SURROGATES TO RECOGNIZ
RIGHT TO A JURY TRIAL:

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[1] TO THE SAME EFFECT (EXCEPT THAT THE JURY IN THE PROBATE PROC
AS AN ADVISORY JURY IN THE PROCEEDINGS TO INVALIDATE THE LIVING T
OF STRALEM, NYLJ, JULY 14, 1997, P. 30, COL. 5; MOD. NYLJ, DEC. 10, 1997, P. 36,
NASSAU COUNTY); *MATTER OF EDSON,* NYLJ, JULY 14, 1997, P. 31, COL. 1 (SUR.
COUNTY); *MATTER OF RICARDINO,* NYLJ, OCT. 1, 1997, P. 30, COL. 3 (SUR. CT.
COUNTY); *MATTER OF BUSCHER,* NYLJ, JULY 10, 1998, P. 35, COL. 5 (SUR. CT. R
COUNTY).

- BOTH REVOCABLE LIFETIME TRUSTS AND WILLS ARE AMBULATO "THAT [SPEAK] AT DEATH TO DETERMINE THE DISPOSITION OF T PROPERTY";

- BOTH PROCEEDINGS BROUGHT AFTER THE TESTATOR'S OR CR SIMILAR OR IDENTICAL ISSUES. SEPARATE PROCEEDINGS WOULD AWKWARD.

- SCPA 502(L) PERMITS JURY TRIALS IN PROBATE PROCEEDINGS E RELIEF REQUESTED IS EQUITABLE IN NATURE.

- IN PROCEEDINGS BY FIDUCIARIES TO RECLAIM PROPERTY ON A RIGHT TO A JURY TRIAL EXISTS BY CONSTITUTIONAL GUARANT *WILSON* (252 NY 155 (1929) ["DISCOVERY PROCEEDING"]); *MATTER RICHMAN* (NYLJ, APR. 26, 2000, P.31, COL. 6 (SUR. CT. QUEENS COU [GRANTING THE DECEDENT'S ESTATE ITS CONSTITUTIONAL RIG A DISCOVERY PROCEEDING TO RECOVER POSSESSION OF THE AS IRREVOCABLE TRUST, WHICH NECESSITATED A DETERMINATION VALIDITY]). *SEE ALSO, MATTER OF SCHNEIER* (74 AD2D 22 (4TH DEP'T, 1980) ["REVERSE DISCOVERY PROCEEDING", A PROCEDURA OBJECTANTS COULD UTILIZE TO RECLAIM ASSETS BELONGING T THE FIDUCIARY IS UNWILLING TO DO SO.])

TO RESOLVE THE CONFLICT AMONG THE COURTS, SCPA 502(L) SHOUL GRANT A STATUTORY RIGHT TO A JURY TRIAL, IF DULY DEMANDED, IN A P AFTER THE CREATOR'S DEATH TO CHALLENGE THE VALIDITY OF A REVOCA

PROPOSAL:

AN ACT TO AMEND THE SURROGATE'S COURT PROCEDURE ACT, IN RELATI PROCEEDINGS TO DETERMINE THE VALIDITY OF REVOCABLE LIFETIM

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE A

ENACT AS FOLLOWS:

SECTION 1. SUBDIVISION 1 OF SECTION 502 OF THE SURROGATE'S CO
IS AMENDED TO READ AS FOLLOWS:

1. RIGHT TO JURY TRIAL. A PARTY IS ENTITLED TO TRIAL BY JURY, IF DU
ANY PROCEEDING IN WHICH ANY CONTROVERTED QUESTION OF FACT AR
PARTY HAS A CONSTITUTIONAL RIGHT OF TRIAL BY JURY [AND], IN ANY PR
PROBATE OF A WILL IN WHICH [SUCH] A CONTROVERTED QUESTION OF FA
DEMANDED] AND IN ANY PROCEEDING COMMENCED AFTER THE DEATH O
REVOCABLE LIFETIME TRUST TO CONTEST THE VALIDITY OF SUCH TRUST I
CONTROVERTED QUESTION OF FACT ARISES.

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY AND SHALL APPLY TO P
CONTEST THE VALIDITY OF A REVOCABLE LIFETIME TRUST PENDING ON O
SUCH EFFECTIVE DATE.

2. HARMONIZING INCONSISTENT DISTRIBUTIONS (EPTL 3-3.3)

THE COMMITTEE RECOMMENDS THIS MEASURE TO ELIMINATE THE C
3-3.3 AND EPTL 2-1.2 WITH RESPECT TO TESTAMENTARY CLASS GIFTS TO THI
BROTHERS, OR SISTERS, AND TO HARMONIZE THE TREATMENT OF SUCH G
WOULD OCCUR IN INTESTACY UNDER EPTL 4-1.1. THIS MEASURE WOULD E
OF EPTL 3-3.3 WHICH TREATS TESTAMENTARY CLASS GIFTS TO THE TESTATO
SISTERS AS THOUGH SUCH GIFTS WERE MADE TO SPECIFICALLY NAMED IN
GIFTS WOULD BE SUBJECT TO THE PRINCIPLE OF "BY REPRESENTATION" FO
THE RESULT THAT EACH SURVIVING MEMBER OF THE CLASS WOULD RECEI
OTHER SURVIVING MEMBERS OF THE SAME GENERATION, *I.E.*, THE SAME RE
INTESTACY UNDER EPTL 4-1.1.

UNDER PROVISIONS OF EPTL 3-3.3 AND 2-1.2, A CONFLICT CAN ARISE W
OF PROPERTY TO THE TESTATOR'S "ISSUE" OR TO THE TESTATOR'S "BROTHE
"BROTHERS AND SISTERS."

SUPPOSE, FOR EXAMPLE, A TESTATOR'S WILL DISPOSED OF HIS OR HER
"ISSUE," AND THE TESTATOR WAS SURVIVED BY ONE CHILD, A, BY A GRANDC
THE TESTATOR'S PREDECEASED CHILD, B), AND BY GRANDCHILDREN, GC2,
CHILDREN OF THE TESTATOR'S PREDECEASED CHILD, C). IN SUCH A CASE,
TAKE 1/3, GC1 WOULD TAKE 1/3, AND GC2, GC3, AND GC4 WOULD EACH TAK
EPTL 2-1.2, A WOULD TAKE 1/3, AND ALL THE GRANDCHILDREN WOULD SHA
GC3 AND GC4 WOULD EACH TAKE 1/6. THIS RESULT UNDER EPTL 2-1.2 IS AL
WOULD OCCUR UNDER EPTL 4-1.1, IF SUCH TESTATOR HAD DIED INTESTAT

SIMILAR DISPARITIES BETWEEN THE RESULT UNDER EPTL 3-3.3, AND TH
AND 4-1.1, CAN ARISE WHERE A DECEDENT IS SURVIVED ONLY BY GRANDCH
HYPOTHETICAL, THE TESTATOR WERE SURVIVED ONLY BY GC1, GC2, GC3, AN
EPTL 3-3.3 WOULD BE 1/2 TO GC1 (AS THE ONLY CHILD OF PREDECEASED B),
GC3, AND GC4, WHEREAS UNDER EPTL 2-1.2 (OR UNDER 4-1.1, IF THE TESTAT
GC1, GC2, GC3, AND GC4 WOULD EACH TAKE 1/4.

THE SAME DISPARITIES CAN OCCUR WHEN THE TESTAMENTARY DISP
OF BROTHERS OR SISTERS, RATHER THAN TO ISSUE.

THESE DISPARITIES ARE NOT JUSTIFIED BY ANY DELIBERATE LEGISLAT
CONTRARY, SINCE ALL THREE STATUTORY PROVISIONS (EPTL 2-1.2, 3-3.3, 4-1.
I.E., CAPABLE OF BEING OVERRIDDEN BY THE TESTATOR'S WILL, THE RESULT
SINCE, AS STATED BY SURROGATE HOLZMAN IN ESTATE OF LAMBIASE, NYLJ
BRONX COUNTY), IN ENACTING SUCH STATUTES "THE LEGISLATURE STEPS
DISPOSITION BASED UPON THE PRESUMPTION THAT THIS IS THE DISTRIBU
WOULD WANT UNDER THE CIRCUMSTANCES."

THIS MEASURE WOULD AMEND EPTL 3-3.3 SO THAT THE RESULTS OF IT
SAME AS THEY WOULD BE UNDER 2-1.2 (OR 4-1.1 IN CASE OF INTESTACY). TH
IS TO HARMONIZE THE RESULTS THROUGH THE USE OF THE EPTL 1-2.16 PR
REPRESENTATION," A PRINCIPLE WHICH CURRENTLY IS PRESENT IN ALL TH
PROVISIONS AND WHICH REFLECTS THE LEGISLATIVE DETERMINATION TH
PREFER THAT RELATIVES OF THE SAME GENERATION SHARE EQUALLY.

PROPOSAL:

AN ACT TO AMEND THE ESTATES, POWERS AND TRUSTS LAW, IN RELATION
DISTRIBUTIONS TO ISSUE OR BROTHERS OR SISTERS OF TESTATOR

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

AS FOLLOWS:

SECTION 1. SUBDIVISION (A) OF SECTION 3-3.3 OF THE ESTATES, POWE

AMENDED TO READ AS FOLLOWS:

(A) UNLESS THE WILL WHENEVER EXECUTED PROVIDES OTHERWISE:

(1) INSTRUMENTS EXECUTED PRIOR TO SEPTEMBER FIRST, NINETEEN H

WHENEVER A TESTAMENTARY DISPOSITION IS MADE TO THE ISSUE OR TO A

THE TESTATOR, AND SUCH BENEFICIARY DIES DURING THE LIFETIME OF T

SURVIVING SUCH TESTATOR, SUCH DISPOSITION DOES NOT LAPSE BUT VES

ISSUE, PER STIRPES. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO
ISSUE, BROTHERS OR SISTERS AS A CLASS, AND SUCH ISSUE, BROTHERS OR S
STIRPES.

(2) INSTRUMENTS EXECUTED ON OR AFTER SEPTEMBER FIRST, NINETE
TWO. WHENEVER A TESTAMENTARY DISPOSITION IS MADE TO THE ISSUE O
OF THE TESTATOR, AND SUCH BENEFICIARY DIES DURING THE LIFETIME O
ISSUE SURVIVING SUCH TESTATOR, SUCH DISPOSITION DOES NOT LAPSE B
SURVIVING ISSUE, BY REPRESENTATION. THE PROVISIONS OF THIS PARAGR
DISPOSITION MADE TO ISSUE, BROTHERS OR SISTERS AS A CLASS, AND SUCH
SISTERS SHALL TAKE BY REPRESENTATION.

[(3) THE PROVISIONS OF SUBPARAGRAPHS (1) AND (2) APPLY TO A DISPO
BROTHERS OR SISTERS AS A CLASS AS IF THE DISPOSITION WERE MADE TO T
INDIVIDUAL NAMES, EXCEPT THAT NO BENEFIT SHALL BE CONFERRED HER
SURVIVING ISSUE OF AN ANCESTOR WHO DIED BEFORE THE EXECUTION O
DISPOSITION TO THE CLASS WAS MADE.]

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

B. MODIFIED MEASURES

1. DISQUALIFICATION OF A TENANT BY THE ENTIRETY (EPTL 4-1.7)

MODIFIED SLIGHTLY TO CLARIFY THE NATURE OF THE EXCLUDED PR
WOULD ADD A NEW SECTION 4-1.7 TO THE ESTATES, POWERS AND TRUSTS
PERSON WHO HOLDS PROPERTY AS A TENANT BY THE ENTIRETY WITH HIS
RECEIVING ANY SHARE IN SUCH PROPERTY OR MONIES DERIVED THEREFR
CONVICTED OF MURDER IN THE FIRST OR SECOND DEGREE, OR MANSLAU
SECOND DEGREE, OF HIS OR HER SPOUSE. HE OR SHE MAY, HOWEVER, REC
PORTION OF PROPERTY CONTRIBUTED BY HIM OR HER FROM HIS OR HER
EXCEPT THAT SUCH CONVICTED SPOUSE SHALL NOT BE ENTITLED TO MOR
LIFE ESTATE IN ONE-HALF OF SUCH PROPERTY HELD AS TENANT BY THE EN

IN NEW YORK, IT HAS BEEN LONG HELD THAT ONE WHO WRONGFUL
ANOTHER IS NOT PERMITTED TO PROFIT THEREBY *(SEE, RIGGS V. PALMER,*
A CONVICTION OF A PERSON FOR ANY CRIME, HOWEVER, DOES NOT WORK
PROPERTY, REAL OR PERSONAL, OR ANY RIGHT OR INTEREST THEREIN. CIV

IN THE CASE OF *MATTER OF HAWKIN'S ESTATE,* 213 NYS2D 188 (SUR. CT
QUEENS COUNTY 1961), THE COURT RECOGNIZED THAT A SURVIVING TENA
SPOUSE MAY NOT ENLARGE HER INTEREST IN THE PROPERTY HELD AS TENA
RESULT OF THE HOMICIDE. HOWEVER, IT FURTHER DECIDED THAT THE SU
ENTITLED TO THE COMMUTED VALUE OF THE NET INCOME OF ONE-HALF
LIFE-EXPECTANCY, BASED UPON FORMER SECTION 512 OF THE PENAL LAW,
FORFEITURE STATUTE. THIS HOLDING WAS CONTINUED IN THE CASES *MA*
PINNOCK, 83 MISC.2D 233 (SUR. CT. BRONX COUNTY 1975), *MATTER OF BUSA*
MISC.2D 567 (SUR. CT. NASSAU COUNTY 1980) AND *MATTER OF NICPON'S ES*
MISC.2D 619 (SUR. CT. ERIE COUNTY 1980).

THIS HOLDING WAS HELD TO BE A 'LEGAL FICTION" AND WAS REJECT
CITIBANK V. GOLDBERG, 178 MISC.2D 287 (SUP. CT. NASSAU COUNTY 1998). T
HELD THAT THE INTENTIONAL SLAYING OF A SPOUSE BY THE OTHER ACTS
REPUDIATION OF THE ESSENCE OF AN OWNERSHIP BY THE ENTIRENESS, TH
SURVIVING SPOUSE FROM ANY INTEREST IN THE PROPERTY. THE COURT F
SECTION 79-B OF THE CIVIL RIGHTS LAW NEVER ADDRESSED SHARED INTE

CREATION OF NEW AND DIFFERENT INTERESTS FROM THOSE THAT EXISTE
CRIME.

THE ROCKLAND COUNTY SURROGATE'S COURT IN THE *MATTER OF TI*
OF MARY MATHEW, NYLJ, APRIL 26, 1999, P. 32, COL. 5, *REVERSED* 270 AD2D 41
ADOPTED THE HOLDING REACHED BY THE COURT IN *CITIBANK V. GOLDB*
DISAGREED WITH THE CONCLUSION REACHED BY THE COURTS IN *MATTE*
AND THE SUBSEQUENT DECISIONS UPHOLDING THE GRANTING TO THE S
KILLED THE OTHER SPOUSE, A LIFE ESTATE IN ONE-HALF OF THE PROCEEDS
LIFE EXPECTANCY.

THIS PROPOSED ADDITION TO THE EPTL WOULD NOT ALLOW ANYON
SUCCEED TO PROPERTY AS THE RESULT OF HIS OR HER OWN WRONGFUL A
THE CONVICTED SPOUSE TO HIS OR HER FRACTIONAL PORTION OF SEPAR
CONTRIBUTED BY HIM OR HER. FURTHERMORE, THIS IS CONSISTENT WIT
1.6 OF THE EPTL, WHICH PROVIDES THAT IF ONE JOINT TENANT OF A BANK
OF MURDER OF THE OTHER JOINT TENANT, THE MURDERER FORFEITS ALL
EXCEPT THOSE MONIES HE OR SHE CONTRIBUTED TO THE ACCOUNT.

PROPOSAL:

AN ACT TO AMEND THE ESTATES, POWERS AND TRUSTS LAW, IN RELATION
DISQUALIFICATION OF TENANTS BY THE ENTIRETY IN CERTAIN INSTA

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

ENACT AS FOLLOWS:

SECTION 1. THE ESTATES, POWERS AND TRUSTS LAW IS AMENDED BY A

SECTION 4-1.7 TO READ AS FOLLOWS:

4-1.7. DISQUALIFICATION OF TENANT BY THE ENTIRETY IN CERTAIN

NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,

ENTIRETY IN REAL PROPERTY, OR IN A COOPERATIVE APARTMENT AS DEFIN

SECTION 6-2.2 OF THIS CHAPTER, WHERE THE SPOUSES RESIDED OR ANY R
SPOUSES, WHO IS CONVICTED OF MURDER IN THE SECOND DEGREE AS DE
OF THE PENAL LAW, OR MURDER IN THE FIRST DEGREE AS DEFINED IN SEC
PENAL LAW, OR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SUB
OF SECTION 125.20 OF THE PENAL LAW OR MANSLAUGHTER IN THE SECON
SUBDIVISION ONE OF SECTION 125.15 OF THE PENAL LAW OF THE OTHER S
ENTITLED TO ANY SHARE IN SUCH REAL PROPERTY OR MONIES DERIVED T
ANY FRACTIONAL PORTION THEREOF CONTRIBUTED BY THE CONVICTED
HER SEPARATE PROPERTY AS DEFINED BY PARAGRAPH D OF SUBDIVISION O
SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW,
CONVICTED SPOUSE SHALL NOT BE ENTITLED TO MORE THAN THE VALUE
HALF OF SUCH PROPERTY HELD AS TENANT BY THE ENTIRETY OR MONIES

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

C. PREVIOUSLY ENDORSED MEASURES

1. NOMINATED FIDUCIARY'S STANDING TO FILE OBJECTIONS (SCPA 709)

SECTION 709 OF THE SURROGATE'S COURT PROCEDURE ACT PROVIDE MAY FILE OBJECTIONS TO THE ISSUANCE OF LETTERS OR THE APPOINTMEN TRUSTEE. AT PRESENT, SECTION 709 PROVIDES THAT "ANY PERSON INTERE OBJECTIONS. UNDER SECTION 103(39) OF THE ACT, A "PERSON INTERESTED INCLUDE ANY PERSON "ENTITLED OR ALLEGEDLY ENTITLED TO SHARE AS A ESTATE...". A LITERAL READING OF THE STATUTE PRECLUDES A CO-FIDUCIA OBJECTIONS TO THE QUALIFICATIONS OF HIS OR HER CO-FIDUCIARY.

HOWEVER, THAT INTERPRETATION IS INCONSISTENT WITH OTHER SE WHICH PERMIT A CO-FIDUCIARY TO SEEK TO REMOVE A CO-FIDUCIARY (SE FIDUCIARY THE RIGHT TO FILE OBJECTIONS TO PROBATE UPON OBTAININ THE COURT (SECTION 1410). RECENTLY, IN *MATTER OF PATTERSON*, NYLJ, J 2001, P. 32, COL. 3 (SUR. CT. WESTCHESTER COUNTY), THE COURT, NOTING S HELD THAT A NOMINATED CO-EXECUTOR UNDER A PROPOUNDED WILL H OBJECTIONS TO THE ISSUANCE OF LETTERS TO ANOTHER NOMINATED CO

THE COMMITTEE RECOMMENDS THAT SECTION 709 BE AMENDED TO NOMINATED CO-FIDUCIARY HAS STANDING TO FILE OBJECTIONS TO THE CO-FIDUCIARY.

THE PROPOSED AMENDMENT SIMPLY ADDS A NOMINATED FIDUCIAR MAKE SEEK RELIEF UNDER SECTION 709. THE AMENDMENT WOULD CONFO FOR OBJECTION OF ELIGIBILITY TO THE 1995 AMENDMENT OF SECTION 711 STANDING TO A CO-FIDUCIARY TO COMMENCE A REMOVAL PROCEEDING. THAT A CO-FIDUCIARY CAN COMMENCE A PROCEEDING TO REMOVE A CO- FIDUCIARY HAS BEEN APPOINTED, BUT MAY LACK STANDING TO OPPOSE SU IN THE FIRST PLACE, WOULD BE ELIMINATED.

PROPOSAL:

AN ACT TO AMEND THE SURROGATE'S COURT PROCEDURE ACT, IN RELATIO
OBJECTION TO THE GRANT OF LETTERS TO A FIDUCIARY OR TO THE A
LIFETIME TRUSTEE.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

ENACT AS FOLLOWS:

SECTION 1. SECTION 709 OF THE SURROGATE'S COURT PROCEDURE AC

CHAPTER 514 OF THE LAWS OF 1993, IS AMENDED TO READ AS FOLLOWS:

709. OBJECTION TO GRANT OF LETTERS OR APPOINTMENT OF LIFETI

PERSON INTERESTED, INCLUDING A NOMINATED FIDUCIARY, BEFORE LETT

ANOTHER FIDUCIARY OR THE SURROGATE'S COURT APPOINTS A TRUSTEE O

MAY FILE OBJECTIONS SHOWING HIS OR HER INTEREST IN THE ESTATE AN

MORE OF THE LEGAL OBJECTIONS SET FORTH IN SECTION 707 TO GRANTIN

THE APPOINTMENT OF ONE OR MORE OF THE PERSONS ABOUT TO RECEIV

APPOINTED. WHERE SUCH OBJECTIONS ARE FILED THE COURT MAY STAY T

LETTERS TO OR THE APPOINTMENT OF THE PERSON AGAINST WHOM THE O

UNTIL THE MATTER IS DETERMINED.

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

2. DISQUALIFICATION OF A SURVIVING SPOUSE (EPTL 5-1.2(A))

THE COMMITTEE RECOMMENDS THAT SECTION 5-1.2(A) OF THE ESTAT
TRUSTS LAW BE AMENDED TO DISQUALIFY AS SURVIVING SPOUSES PERSON
PERIOD PRIOR TO A DECEDENT'S DEATH WERE MARRIED TO THE DECEDEN

THIS MEASURE WOULD AMEND SECTION 5-1.2(A) OF THE ESTATES, POW
ADDING A SUBDIVISION 7 TO PROVIDE FOR THE DISQUALIFICATION OF A
SURVIVING SPOUSE IF THE DECEDENT AND THE SURVIVOR HAD LIVED SEP
PERIOD OF AT LEAST ONE YEAR PRIOR TO THE DECEDENT'S DEATH AND TH
LIVED SEPARATE AND APART EXCEEDED THE TOTAL TIME THAT THEY COHA
DISQUALIFICATION UNDER SUCH CIRCUMSTANCES WILL NOT OCCUR, HO
CAN SHOW ANY ONE OF THE FOLLOWING: THE REASON THAT THE COUPLE
APART WAS DUE TO AN ILLNESS OR INJURY WHICH REQUIRED THAT ONE C
FOR IN A FACILITY; OR THAT THE SURVIVOR DEPARTED FROM THE MARITA
DECEDENT HAD ABUSED THE SURVIVOR OR ANOTHER MEMBER OF THE MA
THAT, AS A RESULT OF VOLUNTARY, CONTRACTUAL OR COURT-ORDERED S
RELATIONSHIP CONTINUED BETWEEN THE SPOUSES NOTWITHSTANDING
SURVIVOR WILL BE ALLOWED TO TESTIFY ABOUT COMMUNICATIONS OR TI
DECEDENT EVEN THOUGH SUCH TESTIMONY WOULD OTHERWISE BE BARR
THE SURVIVOR MIGHT BE THE ONLY PERSON WHO CAN ESTABLISH THAT T
CAUSED BY ABUSE OR THAT THE DECEDENT VOLUNTARILY PROVIDED SUPI

THIS MEASURE IS INTENDED TO PRECLUDE "LAUGHING" SURVIVING S
FOR A PROLONGED PERIOD OF TIME PRIOR TO THE DECEDENT'S DEATH W
DECEDENT IN NAME ONLY, FROM BEING UNJUSTLY ENRICHED BY HAVING
INTESTATE SHARE OF THE DECEDENT'S ESTATE UNDER SECTION 4-1.1 OF TH
SHARE UNDER SECTIONS 5-1.1 OR 5-1.1-A OF THE EPTL. AS IS THE CASE WITH
DISQUALIFICATIONS UNDER SECTION 5-1.2, THESE "LAUGHING" SPOUSES W
DISQUALIFIED UNDER SECTIONS 5-1.3, 5-3.1 AND 5-4.4.

UNDER PRESENT LAW, A SPOUSE WOULD NOT BE DISQUALIFIED UNDE
SPOUSES HAD CONSENTED TO THEIR SEPARATION ONE WEEK AFTER THEIR
CONTINUED TO LIVE SEPARATE AND APART UNTIL THE DECEDENT DIED 70
SEPARATED. THE REASON THAT THIS WOULD NOT CONSTITUTE A DISQUA
GROUNDS OF ABANDONMENT UNDER SUBDIVISION 5 IS BECAUSE THERE C
IF THE DEPARTURE WAS WITH THE CONSENT OF THE OTHER SPOUSE (*SCH*

N.Y.2D 113; *SOLOMON V. SOLOMON*, 290 N.Y. 337; *MATTER OF MAIDEN*, 284 N.Y. 429). FURTHERMORE, IT IS VERY DIFFICULT FOR THE ESTATE TO PROVE OTHER THAN CONSENSUAL BECAUSE DEATH HAS SEALED THE DECEDENT'S FREQUENTLY IS NO ONE ELSE WHO WITNESSED THE EVENTS LEADING TO T

THE PUBLIC POLICY SUPPORTING THE AMENDMENT IS THAT, IF THE S WILLING TO LIVE FOR A PROLONGED PERIOD OF TIME PRIOR TO THE DEC HAVING HAD ANYTHING WHATSOEVER TO DO WITH THE DECEDENT, THE WILLING TO DO WITHOUT ANY RIGHTS TO THE DECEDENT'S PROPERTY AF DEATH. THE DISQUALIFICATION ONLY APPLIES TO SPOUSES WHO VOLUNT DO WITH THE DECEDENT FOR A PROLONGED PERIOD OF TIME. THERE IS N THE SEPARATION WAS CAUSED BY ABUSE, OR THE NEED OF AT LEAST ONE C CARED FOR IN A FACILITY DUE TO INJURY OR ILLNESS. THERE IS ALSO NO AFTER THE SEPARATION, THERE WAS VOLUNTARY, CONTRACTUAL OR COUR MEASURE WILL RESULT IN REDUCED LITIGATION BECAUSE IN NUMEROUS C PRESENTLY A QUESTION OF WHETHER AN ABANDONMENT CAN BE ESTABLI SUBPARAGRAPH 5, IT WILL NOW BE CLEAR THAT THE SPOUSE IS DISQUALIFI 7.

THE PROPOSED AMENDMENT WOULD TAKE EFFECT IMMEDIATELY AN ESTATES OF DECEDENTS DYING ON OR AFTER ITS EFFECTIVE DATE.

PROPOSAL:

AN ACT TO AMEND THE ESTATES, POWERS AND TRUSTS LAW, IN RELATION AS A SURVIVING SPOUSE.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

ENACT AS FOLLOWS:

SECTION 1. PARAGRAPH (A) OF SECTION 5-1.2 OF THE ESTATES, POWER

AMENDED BY ADDING A NEW SUBPARAGRAPH (7) TO READ AS FOLLOWS:

(7) THE SURVIVOR AND THE DECEDENT HAVE CONTINUOUSLY LIVED
FOR A PERIOD OF AT LEAST ONE YEAR PRIOR TO THE DATE OF THE DECEDE
THE TOTAL TIME THAT THEY HAVE LIVED SEPARATE AND APART EXCEEDS T
THEY COHABITED AS A MARRIED COUPLE, UNLESS THE SURVIVOR CAN ESTA
FOLLOWING: THE REASON THAT THE PARTIES LIVED SEPARATE AND APART
INJURY WHICH REQUIRED ONE OR BOTH OF THE SPOUSES TO NEED THE C
THE SURVIVOR WAS ACTUALLY RECEIVING SUPPORT FROM, OR PAYING SUP
DECEDENT OR WAS ENTITLED TO RECEIVE SUPPORT FROM THE DECEDENT
ORDER OR AGREEMENT; OR, THAT THE ABUSE OF THE DECEDENT TOWARD
ANOTHER MEMBER OF THE HOUSEHOLD WAS THE REASON THAT THE SURV
COHABITING WITH THE DECEDENT. FOR THE PURPOSE OF THIS SUBPARA
ACCEPT SUCH EVIDENCE AS IS RELEVANT AND COMPETENT, WHETHER OR
OFFERING SUCH EVIDENCE WOULD OTHERWISE BE COMPETENT TO TESTI

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY AND SHALL APPLY TO
DECEDENTS DYING ON OR AFTER ITS EFFECTIVE DATE.

3. AUTHORIZING A TRUST GRANTOR TO PERMIT TRUSTEES TO DISCRETIONARY DISTRIBUTIONS TO THEMSELVES AS BENEF (EPTL 10-10.1)

MODIFIED BY THE SURROGATE'S COURT ADVISORY COMMITTEE TO IN CHANGES SUGGESTED BY MEMBERS OF THE ASSOCIATION OF THE BAR OF T THIS MEASURE WOULD AMEND SECTION 10-10.1 OF THE ESTATES, POWERS A TO ALLOW THE GRANTOR OF A TRUST, BY EXPRESS PROVISION IN THE TRU PROVIDE THAT A TRUSTEE MAY MAKE DISCRETIONARY DISTRIBUTIONS, OF TO HERSELF OR HIMSELF AS A BENEFICIARY.

EPTL 10-10.1 NOW PROVIDES THAT A TRUSTEE (OTHER THAN THE GRA REVOCABLE TRUST) IS DISQUALIFIED FROM EXERCISING A DISCRETIONARY INCOME OR PRINCIPAL TO HERSELF OR HIMSELF AS BENEFICIARY. IF THE I ON TWO OR MORE TRUSTEES, IT CAN BE EXERCISED BY A TRUSTEE WHO IS OR, ABSENT SUCH A TRUSTEE, BY THE SURROGATE'S OR SUPREME COURT.

THE PRIMARY PURPOSE OF SECTION 10-10.1 IS TO PREVENT A GRANTO INADVERTENTLY CAUSING THE INCLUSION OF THE PROPERTY SUBJECT TO GROSS ESTATE OF THE TRUSTEE FOR ESTATE TAX PURPOSES UNDER THE GE APPOINTMENT PROVISIONS OF SECTION 2041 OF THE INTERNAL REVENUE

ALTHOUGH THIS PURPOSE CONTINUES TO BE DESIRABLE, THE PRESEN SECTION 10-10.1 ARE UNNECESSARILY RESTRICTIVE OF TRUST GRANTORS. F BEEN HELD THAT A TRUSTEE MAY NOT, UNDER SECTION 10-10.1, EXERCISE A TO INVADE CORPUS FOR HIS "MAINTENANCE AND SUPPORT" (*MATTER OF S ESTATE*, 58 A.D.2D 72 [2ND DEP'T 1977]) EVEN THOUGH THE POSSESSION OF SU WOULD NOT REQUIRE INCLUSION OF THE PROPERTY UNDER IRC 2041 [SE

IN RECOGNITION OF THE ABOVE CONCERN, SEVERAL STATES WHICH COMPARABLE TO EPTL 10-10.1 (E.G., CALIFORNIA, FLORIDA, WISCONSIN) PRO OF THE POWER IN THE ABOVE SCENARIO AND PERMIT GRANTORS, BY SPEC INSTRUMENT, TO VARY THE NORMAL PROHIBITIONS OF THE STATUTE. TH WOULD FOLLOW THIS APPROACH AND WOULD THEREBY RETAIN THE PRO STATUTE FOR AN UNWARY GRANTOR, WHILE AT THE SAME TIME PROPERLY INTENTIONS OF AN INFORMED GRANTOR.

IT SHOULD BE NOTED THAT THE INSTANT MEASURE DOES NOT PERM
SPOUSE TO MAKE DISCRETIONARY DISTRIBUTIONS TO HERSELF OR HIMSE
DEDUCTION TRUST UNLESS THE TRUST INSTRUMENT EXPRESSLY OVERRID
THIS IS TO PREVENT AN INTENDED QUALIFIED TERMINABLE INTEREST TRU
INADVERTENTLY CONVERTED TO A GENERAL POWER OF APPOINTMENT TR

PROPOSAL:

AN ACT TO AMEND THE ESTATES, POWERS AND TRUSTS LAW, IN RELATION
GRANTOR OF A TRUST TO CONFER UPON TRUSTEES THE POWER TO M
DISTRIBUTIONS TO THEMSELVES AS BENEFICIARIES

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE A

ENACT AS FOLLOWS:

SECTION 1. SECTION 10-10.1 OF THE ESTATES, POWERS AND TRUSTS LA

READ AS FOLLOWS:

10-10.1. POWER TO DISTRIBUTE PRINCIPAL OR ALLOCATE INCOME; R

EXERCISE. [EXCEPT IN THE CASE OF A TRUST WHICH IS REVOCABLE BY SUC

LIFETIME, A POWER CONFERRED UPON A PERSON IN HIS OR HER CAPACITY

EXPRESS TRUST TO MAKE DISCRETIONARY DISTRIBUTION OF EITHER PRIN

HIMSELF OR HERSELF OR TO MAKE DISCRETIONARY ALLOCATIONS IN HIS

RECEIPTS OR EXPENSES AS BETWEEN PRINCIPAL AND INCOME, CANNOT BE

HER] A POWER HELD BY A PERSON AS TRUSTEE OF AN EXPRESS TRUST TO M

DISTRIBUTION OF EITHER PRINCIPAL OR INCOME TO SUCH PERSON AS A B

MAKE DISCRETIONARY ALLOCATIONS IN SUCH PERSON'S FAVOR OF RECEIP
BETWEEN PRINCIPAL AND INCOME, CANNOT BE EXERCISED BY SUCH PERS
PERSON IS THE GRANTOR OF THE TRUST AND THE TRUST IS REVOCABLE BY
LIFETIME OR (2) THE POWER IS A POWER TO PROVIDE FOR SUCH PERSON'S
MAINTENANCE OR SUPPORT WITHIN THE MEANING OF SECTIONS 2041 AN
REVENUE CODE, OR ANY OTHER ASCERTAINABLE STANDARD, OR (3) THE TR
EXPRESS REFERENCE TO THIS SECTION, PROVIDES OTHERWISE. IF THE POW
TWO OR MORE TRUSTEES, IT MAY BE [EXECUTED BY THE] EXERCISED BY THE
WHO ARE NOT SO DISQUALIFIED. IF THERE IS NO TRUSTEE QUALIFIED TO
POWER, ITS [EXECUTION] EXERCISE DEVOLVES ON THE SUPREME COURT OF
COURT, EXCEPT THAT IF THE POWER IS CREATED BY WILL, ITS [EXECUTION]
THE SURROGATE'S COURT HAVING JURISDICTION OF THE ESTATE OF THE

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

4. APPOINTMENT OF STANDBY GUARDIAN (SCPA 1726)

A SUBSTANTIALLY SIMILAR VERSION OF THIS MEASURE, WHICH SEEKS APPOINTMENT OF STANDBY GUARDIANS, WAS INTRODUCED AT THE RECO SURROGATE'S COURT ADVISORY COMMITTEE IN 2000. THE EARLIER VERSIO BY THE LEGISLATURE, BUT WAS NOT SIGNED BY THE GOVERNOR, PRIMARIL IN TRANSITION ACT OF 2000 ALSO AMENDED SECTION 1726 OF THE SURRO PROCEDURE ACT. THE MEASURE HAS NOW BEEN MODIFIED TO INCORPOR THOSE CHANGES TO THE STATUTORY LANGUAGE.

NEW YORK STATE'S STANDBY GUARDIANSHIP STATUTE, SECTION L726 COURT PROCEDURE ACT, ALLOWS A PARENT, LEGAL GUARDIAN, LEGAL CUS CARETAKER WHO SUFFERS FROM A FATAL OR DEBILITATING ILLNESS TO PR GUARDIANSHIP OF A CHILD IN THE EVENT OF INCAPACITY, DEBILITATION THAT THERE ARE VARYING DEGREES OF DISABILITY, THE LEGISLATURE HAS EXCLUSIVE STANDBY GUARDIANSHIP PROCEDURES. THOSE WHO ARE CAPA PETITION THE COURT FOR THE APPOINTMENT OF A STANDBY GUARDIAN BECOMES EFFECTIVE UPON THE INCAPACITY, DEATH OR CONSENT OF THE BECAUSE OF THE NATURE OF THEIR ILLNESS, CANNOT OR OTHERWISE PRE ADVANTAGE OF THE JUDICIAL PROCESS MAY DESIGNATE A STANDBY GUAR INSTRUMENT. A DESIGNATED GUARDIAN'S AUTHORITY BECOMES EFFECTI INCAPACITY OR DEBILITATION AND CONSENT OF THE PARENT OR LEGAL C CUSTODIAN OR PRIMARY CARETAKER, SUBJECT TO THE APPROVAL OF THE

THIS PROPOSAL ADDS TWO SIGNIFICANT PROVISIONS TO THE STATU ADDITION OF SUBDIVISION (4)(B)(IV) TO SECTION L726, IS A SAVINGS PROV WILL SAVINGS STATUTES. IT PROVIDES THAT A DESIGNATION OF STANDBY EFFECTIVE, EVEN IF MADE IN ANOTHER STATE, AS LONG AS IT WAS VALIDLY JURISDICTION: (1) WHERE THE PARENT OR GUARDIAN WAS DOMICILED AT (2) WHERE IT WAS EXECUTED OR (3) WHERE THE PARENT OR GUARDIAN IS THE DESIGNATION BECOMES EFFECTIVE. THE SECOND PROVISION, AN AM (4)(F), ADDRESSES THE PROBLEM OF CONFLICTING DESIGNATIONS, INCLU TESTAMENTARY INSTRUMENT, BY PROVIDING THAT THE MOST RECENT DE EFFECT.

IN ADDITION TO THESE SUBSTANTIVE PROVISIONS, THIS MEASURE SU
DEFINITIONS FOR "LEGAL GUARDIAN" AND "CHILD(REN)"[2] AND ALSO MAKE
AMENDMENTS TO SECTION L726. SUBDIVISIONS L(A)(II) AND 4(B)(III) ARE A
DEATH AS ONE OF THE TRIGGERING EVENTS FOR A STANDBY GUARDIAN'S
SUBDIVISIONS 3(D)(II), 3(E)(II), 4(C)(III), 4(D) AND 4(D)(II) ARE EITHER ADDE
COMPORT WITH THE RECENTLY ENACTED PROVISIONS OF SECTION 1726(4
DEATH. SECTION L726(3)(B)(I) CURRENTLY OMITS PETITIONER'S CONSENT A
MAY TRIGGER THE AUTHORITY OF THE STANDBY GUARDIAN TO ACT PURSU
ADDITION, THE LAST SENTENCE OF SECTION 1726(3)(D)(II) IS DELETED BECA
CONFUSING WHEN READ IN RELATION TO OTHER STATUTORY PROVISION
THIS LANGUAGE IS CONTRARY TO THE STATUTORY SCHEME ALLOWING TH
GUARDIAN THE OPTION OF SPECIFYING WHICH ONE OR MORE OF THREE
PETITIONER'S CONSENT, WILL TRIGGER THE PARENT OR GUARDIAN'S AUTH
PROVISIONS ARE INTENDED TO ADD CLARITY OR TO ADDRESS INCONSIST
OCCASIONED BY PRIOR AMENDMENTS, AND TO ENSURE INTERNAL CONSIS
THE TERMS LEGAL GUARDIAN, LEGAL CUSTODIAN, AND PRIMARY CARETAK

PROPOSAL:

AN ACT TO AMEND THE SURROGATE'S COURT PROCEDURE ACT, IN RELATIO
OF STANDBY GUARDIANS

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

AS FOLLOWS:

SECTION 1. SECTION 1726 OF THE SURROGATE'S COURT PROCEDURE A

CHAPTER 290 OF THE LAWS OF 1992, IS AMENDED TO READ AS FOLLOWS:

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[2] OF PARTICULAR NOTE IS THE NEW REFERENCE TO GUARDIAN (AS PART
OF "PARENT") AS THE "GUARDIAN OF AN INFANT'S PERSON." PRESENT LAW, WHEN
THE TERM, "LEGAL GUARDIAN" AS A PERSON WHO COULD PETITION FOR OR DES
GUARDIAN. "LEGAL GUARDIAN," HOWEVER, IS NOT A TERM OF COMMON USAGE,
IN THE SCPA OR THE EPTL. INASMUCH AS SCPA 1726 IS CONCERNED PRIMARILY W
OF CHILDREN, IT IS REASONABLE THAT THE STATUTE BE LIMITED TO INDIVIDUA
IN REGARD TO THE CHILD'S PERSON.

1726. STANDBY GUARDIANS. 1. FOR THE PURPOSE OF THIS SECTION:

(A) "STANDBY GUARDIAN" MEANS (I) A PERSON JUDICIALLY APPOINTED
SUBDIVISION THREE OF THIS SECTION AS STANDBY GUARDIAN OF THE PE
AN INFANT WHOSE AUTHORITY BECOMES EFFECTIVE UPON THE INCAPACI
INFANT'S PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARE
CONSENT OF THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMA
PERSON DESIGNATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION
WHOSE AUTHORITY BECOMES EFFECTIVE UPON THE DEATH OR INCAPACIT
LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER OR UPON T
CONSENT OF THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMA

(B) "LEGAL GUARDIAN" MEANS THE COURT-APPOINTED GUARDIAN OF
AND/OR PROPERTY.

(C) "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMA
THE TREATMENT AND CARE OF THE [PETITIONER] INFANT'S PARENT, LEGAL
CUSTODIAN OR PRIMARY CARETAKER. WHERE MORE THAN ONE PHYSICIAN
RESPONSIBILITY, OR WHERE A PHYSICIAN IS ACTING ON THE ATTENDING
SUCH PHYSICIAN MAY ACT AS THE ATTENDING PHYSICIAN PURSUANT TO
PHYSICIAN HAS SUCH RESPONSIBILITY, ANY PHYSICIAN WHO IS FAMILIAR

PARENT'S, LEGAL GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKE
MAY ACT AS THE ATTENDING PHYSICIAN PURSUANT TO THIS SECTION.

[(C)] (D) "DEBILITATION" MEANS A CHRONIC AND SUBSTANTIAL INABI
DEPENDENT INFANT, AS A RESULT OF (I) A PROGRESSIVELY CHRONIC OR IR
OR (II) A PHYSICALLY DEBILITATING ILLNESS, DISEASE OR INJURY. "DEBILIT
HAVING A DEBILITATION.

[(D)] (E) "INCAPACITY" MEANS A CHRONIC AND SUBSTANTIAL INABILIT
MENTAL IMPAIRMENT, TO UNDERSTAND THE NATURE AND CONSEQUENCE
CONCERNING THE CARE OF ONE'S DEPENDENT INFANT, AND A CONSEQUE
SUCH INFANT. "INCAPACITATED" MEANS THE STATE OF HAVING AN INCAP

2. THE PROVISIONS OF THIS [CHAPTER] ARTICLE RELATING TO GUARI
STANDBY GUARDIANS, EXCEPT INSOFAR AS THIS SECTION PROVIDES OTHE

3. (A) A PETITION FOR THE JUDICIAL APPOINTMENT OF A STANDBY GU
AND/OR PROPERTY OF AN INFANT PURSUANT TO THIS SUBDIVISION MAY
A LEGAL GUARDIAN OF THE INFANT OR A LEGAL CUSTODIAN OF THE INFA
IS NOT RESIDING WITH A PARENT, LEGAL GUARDIAN OR LEGAL CUSTODIA
SATISFACTION OF THE COURT, SUCH PARENT, LEGAL GUARDIAN OR LEGAL
LOCATED WITH DUE DILIGENCE, THE PRIMARY CARETAKER OF SUCH INFA
JUDICIAL APPOINTMENT OF SUCH STANDBY GUARDIAN. APPLICATION FO

AS A PRIMARY CARETAKER SHALL BE UPON MOTION TO THE COURT UPON
THE COURT MAY DIRECT.

(B) A PETITION FOR THE JUDICIAL APPOINTMENT OF A STANDBY GUA
SHALL, IN ADDITION TO MEETING THE REQUIREMENTS OF SECTION SEVEN
THIS ARTICLE:

(I) STATE WHETHER THE AUTHORITY OF THE STANDBY GUARDIAN IS
UPON THE PETITIONER'S INCAPACITY, UPON THE PETITIONER'S DEATH, UP
CONSENT, OR UPON WHICHEVER OCCURS FIRST;

(II) STATE THAT THE PETITIONER SUFFERS FROM (A) A PROGRESSIVELY
AN IRREVERSIBLY FATAL ILLNESS AND THE BASIS FOR SUCH STATEMENT, SU
SOURCE OF A MEDICAL DIAGNOSIS, WITHOUT REQUIRING THE IDENTIFIC
QUESTION.

(C) THE PETITIONER'S APPEARANCE IN COURT SHALL NOT BE REQUIRE
MEDICALLY UNABLE TO APPEAR, EXCEPT UPON MOTION AND FOR GOOD C

(D) (I) IF THE COURT FINDS THAT THE PETITIONER SUFFERS FROM A P
ILLNESS OR AN IRREVERSIBLY FATAL ILLNESS AND THAT THE INTERESTS OF
PROMOTED BY THE APPOINTMENT OF A STANDBY GUARDIAN OF THE PERS
MUST MAKE A DECREE ACCORDINGLY.

(II) SUCH DECREE SHALL SPECIFY WHETHER THE AUTHORITY OF THE S
EFFECTIVE UPON THE RECEIPT OF A DETERMINATION OF THE PETITIONER
RECEIPT OF THE CERTIFICATE OF THE PETITIONER'S DEATH, OR OTHER SU
THAT MAY BE SATISFACTORY TO THE COURT, OR UPON WHICHEVER OCCU
PROVIDE THAT THE AUTHORITY OF THE STANDBY GUARDIAN MAY EARLIE
WRITTEN CONSENT OF THE PARENT PURSUANT TO SUBPARAGRAPH (III) OF
SUBDIVISION. [SUCH DECREE SHALL ALSO INDICATE THAT THE AUTHORIT
GUARDIAN IS EFFECTIVE UPON THE PETITIONER'S CONSENT.]

(III) IF AT ANY TIME PRIOR TO THE COMMENCEMENT OF THE AUTHO
GUARDIAN THE COURT FINDS THAT THE REQUIREMENTS OF SUBPARAGRA
ARE NO LONGER SATISFIED, IT MAY RESCIND SUCH DECREE:

(E) (I) WHERE THE DECREE PROVIDES THAT THE AUTHORITY OF THE S
EFFECTIVE UPON RECEIPT OF A DETERMINATION OF THE PETITIONER'S IN
GUARDIAN'S AUTHORITY SHALL COMMENCE UPON THE STANDBY GUARDI
A DETERMINATION OF INCAPACITY MADE PURSUANT TO SUBDIVISION SIX
STANDBY GUARDIAN SHALL FILE A COPY OF THE DETERMINATION OF INCA
THAT ISSUED THE DECREE WITHIN NINETY DAYS OF THE DATE OF RECEIPT
OR THE STANDBY GUARDIAN'S AUTHORITY MAY BE RESCINDED BY THE CO

(II) WHERE THE DECREE PROVIDES THAT THE AUTHORITY OF THE STA
EFFECTIVE UPON RECEIPT OF A CERTIFICATE OF THE PETITIONER'S DEATH,
OF DEATH THAT MAY BE SATISFACTORY TO THE COURT, THE STANDBY GUA
COMMENCE UPON THE STANDBY GUARDIAN'S RECEIPT OF A CERTIFICATE
EVIDENCE OF DEATH AS MAY BE SPECIFIED IN THE DECREE. THE STANDBY
CERTIFICATE OF DEATH, OR OTHER SUCH EVIDENCE OF DEATH, WITH THE
DECREE WITHIN NINETY DAYS OF THE DATE OF THE PETITIONER'S DEATH
GUARDIAN'S AUTHORITY MAY BE RESCINDED BY THE COURT.

(III) NOTWITHSTANDING SUBPARAGRAPHS (I) AND (II) OF THIS PARAG
GUARDIAN'S AUTHORITY SHALL COMMENCE UPON THE STANDBY GUARDI
PETITIONER'S WRITTEN CONSENT TO SUCH COMMENCEMENT, SIGNED BY
PRESENCE OF TWO WITNESSES AT LEAST EIGHTEEN YEARS OF AGE, OTHER T
GUARDIAN, WHO SHALL ALSO SIGN THE WRITING. ANOTHER PERSON MAY
CONSENT ON THE PETITIONER'S BEHALF AND AT THE PETITIONER'S DIREC
PHYSICALLY UNABLE TO DO SO, PROVIDED SUCH CONSENT IS SIGNED IN T
PETITIONER AND THE WITNESSES. THE STANDBY GUARDIAN SHALL FILE TH
WITH THE COURT THAT ISSUED THE DECREE WITHIN NINETY DAYS OF TH
WRITTEN CONSENT OR THE STANDBY GUARDIAN'S AUTHORITY MAY BE RE

(F) THE PETITIONER MAY REVOKE A STANDBY GUARDIANSHIP CREATE
SUBDIVISION BY EXECUTING A WRITTEN REVOCATION, FILING IT WITH TH
DECREE, AND PROMPTLY NOTIFYING THE STANDBY GUARDIAN OF THE RE

(G) A PERSON JUDICIALLY APPOINTED STANDBY GUARDIAN PURSUAN
MAY AT ANY TIME BEFORE THE COMMENCEMENT OF HIS OR HER AUTHOR
APPOINTMENT BY EXECUTING A WRITTEN RENUNCIATION AND FILING IT
ISSUED THE DECREE, AND PROMPTLY NOTIFYING THE PETITIONER OF THE

4. (A) A PARENT, A LEGAL GUARDIAN, A LEGAL CUSTODIAN, OR PRIMAR
THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION THR
DESIGNATE A STANDBY GUARDIAN BY MEANS OF A WRITTEN DESIGNATION
LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER IN THE PRE
AT LEAST EIGHTEEN YEARS OF AGE, OTHER THAN THE STANDBY GUARDIAN
THE WRITING. ANOTHER PERSON MAY SIGN THE WRITTEN DESIGNATION
GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKER'S BEHALF AND
GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKER'S DIRECTION I
GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER IS PHYSICALLY UN
THE DESIGNATION IS SIGNED IN THE PRESENCE OF THE PARENT, LEGAL GU
OR PRIMARY CARETAKER AND THE WITNESSES.

(B) (I) A DESIGNATION OF A STANDBY GUARDIAN SHALL IDENTIFY TH
GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER, THE INFANT AND
TO BE THE STANDBY GUARDIAN, AND SHALL INDICATE THAT THE PARENT,
CUSTODIAN OR PRIMARY CARETAKER INTENDS FOR THE STANDBY GUARD
INFANT'S GUARDIAN IN THE EVENT THE PARENT, LEGAL GUARDIAN, LEGAL
CARETAKER EITHER: (A) BECOMES INCAPACITATED; (B) BECOMES DEBILITAT
COMMENCEMENT OF THE STANDBY GUARDIAN'S AUTHORITY; OR (C) [DIED
COMMENCEMENT OF A JUDICIAL PROCEEDING TO APPOINT A GUARDIAN
PROPERTY OF AN INFANT.

(II) A PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CAR
AN ALTERNATE STANDBY GUARDIAN IN THE SAME WRITING, AND BY THE S
DESIGNATION OF A STANDBY GUARDIAN.

(III) A DESIGNATION MAY, BUT NEED NOT, BE IN THE FOLLOWING FO

DESIGNATION OF STANDBY GUARDIAN

(NOTE: AS USED IN THIS FORM, THE TERM "PARENT" SHALL INCLUDE A PARENT,
A COURT-APPOINTED GUARDIAN OF AN INFANT'S PERSON OR PROPERTY, A LEGAL CUSTODIAN, OR A
PRIMARY CARETAKER, AND THE TERM "CHILD(REN)" SHALL INCLUDE THE DEPENDANT INFANT OF A
PARENT, COURT-APPOINTED GUARDIAN, LEGAL CUSTODIAN OR
PRIMARY CARETAKER

I (NAME OF PARENT) HEREBY DESIGNATE (NAME, HOME ADDRESS AND
STANDBY GUARDIAN) AS STANDBY GUARDIAN OF THE PERSON AND PROPE
(NAME OF CHILD(REN)).

(YOU MAY, IF YOU WISH, PROVIDE THAT THE STANDBY GUARDIAN'S A
EXTEND ONLY TO THE PERSON, OR ONLY TO THE PROPERTY, OF YOUR CHI
"PERSON" OR "PROPERTY", WHICHEVER IS INAPPLICABLE, ABOVE.)

THE STANDBY GUARDIAN'S AUTHORITY SHALL TAKE EFFECT [IF AND W
DOCTOR CONCLUDES IN WRITING THAT I AM MENTALLY INCAPACITATED,
CARE FOR MY CHILD(REN); [OR] (2) IF MY DOCTOR CONCLUDES IN WRITIN
DEBILITATED, AND THUS UNABLE TO CARE FOR MY CHILD(REN) AND I CON
TWO WITNESSES, TO THE STANDBY GUARDIAN'S AUTHORITY TAKING EFFE

IN THE EVENT THE PERSON I DESIGNATE ABOVE IS UNABLE OR UNWI
GUARDIAN FOR MY CHILD(REN), I HEREBY DESIGNATE (NAME, HOME ADDR
NUMBER OF ALTERNATE STANDBY GUARDIAN), AS STANDBY GUARDIAN OF

I ALSO UNDERSTAND THAT MY STANDBY GUARDIAN'S AUTHORITY WI
AFTER COMMENCING UNLESS BY SUCH DATE HE OR SHE PETITIONS THE C
GUARDIAN.

I UNDERSTAND THAT I RETAIN FULL PARENTAL, GUARDIANSHIP, CUST
RIGHTS EVEN AFTER THE COMMENCEMENT OF THE STANDBY GUARDIAN'S
REVOKE THE STANDBY GUARDIANSHIP AT ANY TIME.

SIGNATURE:

ADDRESS:

DATE:

I DECLARE THAT THE PERSON WHOSE NAME APPEARS ABOVE SIGNED T
PRESENCE, OR WAS PHYSICALLY UNABLE TO SIGN AND ASKED ANOTHER TO
WHO DID SO IN MY PRESENCE. I FURTHER DECLARE THAT I AM AT LEAST E
AM NOT THE PERSON DESIGNATED AS STANDBY GUARDIAN.

WITNESS' SIGNATURE:

ADDRESS:

DATE:

WITNESS' SIGNATURE:

ADDRESS:

DATE:

(IV) NOTWITHSTANDING PARAGRAPHS (A) AND (B) OF THIS SUBDIVISI
STANDBY GUARDIAN SHALL BE EFFECTIVE AS IF MADE IN ACCORDANCE WI
THIS SUBDIVISION IF IT WAS VALIDLY MADE: (A) WHERE THE PARENT, LEGA

CUSTODIAN OR PRIMARY CARETAKER WAS DOMICILED AT THE TIME IT WA
JURISDICTION WHERE IT WAS EXECUTED OR (C) WHERE THE PARENT, LEGA
CUSTODIAN OR PRIMARY CARETAKER IS DOMICILED AT THE TIME THE DES
EFFECTIVE.

(C) THE AUTHORITY OF THE STANDBY GUARDIAN UNDER A DESIGNAT
UPON EITHER: (I) THE STANDBY GUARDIAN'S RECEIPT OF A COPY OF A DET
INCAPACITY MADE PURSUANT TO SUBDIVISION SIX OF THIS SECTION; [OR]
GUARDIAN'S RECEIPT OF (A) A COPY OF A DETERMINATION OF DEBILITATIO
SUBDIVISION SIX OF THIS SECTION AND (B) A COPY OF THE PARENT'S, LEGA
CUSTODIAN'S OR PRIMARY CARETAKER'S WRITTEN CONSENT TO SUCH CO
THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKE
WITNESSES AT LEAST EIGHTEEN YEARS OF AGE, OTHER THAN THE STANDBY
ALSO SIGN THE WRITING. ANOTHER PERSON MAY SIGN THE WRITTEN CO
LEGAL GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKER'S BEHALF
LEGAL GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKER'S DIRECT
GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER IS PHYSICALLY UN
SUCH CONSENT IS SIGNED IN THE PRESENCE OF THE PARENT, LEGAL GUAR
OR PRIMARY CARETAKER AND THE WITNESSES; OR (III) THE STANDBY GUAR
CERTIFICATE OF DEATH, FUNERAL HOME RECEIPT OR OTHER SUCH DOCUM

THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKE
GUARDIAN SHALL FILE A PETITION PURSUANT TO PARAGRAPH (D) OF THIS
DAYS OF THE DATE OF ITS COMMENCEMENT PURSUANT TO THIS PARAGRA
GUARDIAN'S AUTHORITY SHALL CEASE AFTER SUCH DATE, BUT SHALL RECC
FILING.

(D) THE STANDBY GUARDIAN MAY FILE A PETITION FOR APPOINTME
RECEIPT OF EITHER: (I) A COPY OF A DETERMINATION OF INCAPACITY MAD
SUBDIVISION SIX OF THIS SECTION; OR (II) (A) A COPY OF A DETERMINATIC
PURSUANT TO SUBDIVISION SIX OF THIS SECTION AND (B) A COPY OF THE
GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMARY CARETAKER'S WRITTEN CO
PARAGRAPH (C) OF THIS SUBDIVISION; OR (III) A CERTIFICATE OF DEATH, C
OF DEATH THAT MAY BE SATISFACTORY TO THE COURT. SUCH PETITION M
MEETING THE REQUIREMENTS OF SECTION SEVENTEEN HUNDRED FOUR C

(I) APPEND THE WRITTEN DESIGNATION OF SUCH PERSON AS STANDI

(II) APPEND A COPY OF [EITHER]: (A) THE DETERMINATION OF INCAPA
LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER; OR (B) THE
DEBILITATION AND THE PARENTAL, GUARDIAN'S, CUSTODIAN'S OR CARETA
COPY OF THE PARENT'S, LEGAL GUARDIAN'S, LEGAL CUSTODIAN'S OR PRIMA
CERTIFICATE, OR OTHER SUCH EVIDENCE OF DEATH THAT MAY BE SATISFA

(III) IF THE PETITION IS BY A PERSON DESIGNATED AS ALTERNATE STA
THAT THE PERSON DESIGNATED AS STANDBY GUARDIAN IS UNWILLING O
STANDBY GUARDIAN, AND THE BASIS FOR SUCH STATEMENT.

(E) IF THE COURT FINDS THAT THE [PERSON] PETITIONER WAS DULY I
GUARDIAN, THAT [A DETERMINATION OF INCAPACITY, A DETERMINATION
PARENTAL OR GUARDIAN'S CONSENT OR A DOCUMENT INDICATING THAT
GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER OF THE INFANT IS
DEBILITATED AND CONSENTS OR HAS DIED, [SUCH] AS ESTABLISHED BY A C
CERTIFICATE OR [A FUNERAL HOME RECEIPT OR OTHER SUCH DOCUMENT
DEATH AS MAY BE SATISFACTORY TO THE COURT, THAT THE INTERESTS OF
PROMOTED BY THE APPOINTMENT OF A STANDBY GUARDIAN OF THE PERS
AND THAT, IF THE PETITION IS BY A PERSON DESIGNATED AS ALTERNATE S
PERSON DESIGNATED AS STANDBY GUARDIAN IS UNWILLING OR UNABLE T
GUARDIAN, IT MUST MAKE A DECREE ACCORDINGLY.

(F) THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CA
STANDBY GUARDIANSHIP CREATED UNDER THIS SUBDIVISION: (I) BY EXEC
DESIGNATION OF GUARDIANSHIP PURSUANT TO PARAGRAPHS (A) AND (B)
(II) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 1710 AND 1711 OF T
OF A STANDBY GUARDIAN WHOSE AUTHORITY BECOMES EFFECTIVE UPON

LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER OF THE INF
DESIGNATION OF STANDBY GUARDIAN SET FORTH IN A WILL OF THE PARE
LEGAL CUSTODIAN OR PRIMARY CARETAKER, OR (III) BY NOTIFYING THE ST
VERBALLY OR IN WRITING OR BY ANY OTHER ACT EVIDENCING A SPECIFIC
STANDBY GUARDIANSHIP PRIOR TO THE FILING OF A PETITION[; AND (II) W
PETITION HAS ALREADY BEEN FILED, BY EXECUTING A WRITTEN REVOCATI
COURT WHERE THE PETITION WAS FILED, AND PROMPTLY NOTIFYING THE
THE REVOCATION.

5. THE STANDBY GUARDIAN MAY ALSO FILE A PETITION FOR APPOINT
ANY OTHER MANNER PERMITTED BY THIS ARTICLE OR ARTICLE SIX OF THE
NOTICE TO THE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMAR
APPEND A DESIGNATION OF STANDBY GUARDIAN TO THE PETITION FOR C
COURT IN THE DETERMINATION OF SUCH PETITION.

6. (A) A DETERMINATION OF INCAPACITY OR DEBILITATION MUST: (I)
ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF MEDICAL CERTAINT
(III) CONTAIN THE ATTENDING PHYSICIAN'S OPINION REGARDING THE CA
[PETITIONER'S] INCAPACITY OR DEBILITATION AS WELL AS ITS EXTENT AND
ATTENDING PHYSICIAN SHALL PROVIDE A COPY OF THE DETERMINATION

DEBILITATION TO THE STANDBY GUARDIAN, IF THE STANDBY GUARDIAN'S
THE PHYSICIAN.

(B) IF REQUESTED BY THE STANDBY GUARDIAN, AN ATTENDING PHYSI
DETERMINATION REGARDING THE [PETITIONER'S] PARENT'S, LEGAL GUARI
OR PRIMARY CARETAKER'S INCAPACITY OR DEBILITATION FOR PURPOSES O

(C) THE STANDBY GUARDIAN SHALL ENSURE THAT THE [PETITIONER]
GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER IS INFORMED OF T
THE STANDBY GUARDIAN'S AUTHORITY AS A RESULT OF A DETERMINATION
THE [PETITIONER'S] PARENT'S, LEGAL GUARDIAN'S, LEGAL CUSTODIAN'S OR
RIGHT TO REVOKE SUCH AUTHORITY PROMPTLY AFTER RECEIPT OF THE D
INCAPACITY, PROVIDED THERE IS ANY INDICATION OF [THE PETITIONER'S
COMPREHEND SUCH INFORMATION.

7. THE COMMENCEMENT OF THE STANDBY GUARDIAN'S AUTHORITY
DETERMINATION OF INCAPACITY, DETERMINATION OF DEBILITATION, OR
ITSELF, DIVEST THE [PETITIONER] PARENT, LEGAL GUARDIAN, LEGAL CUSTO
CARETAKER OF ANY PARENTAL, [OR] GUARDIANSHIP, CUSTODIAL OR CARET
CONFER UPON THE STANDBY GUARDIAN CONCURRENT AUTHORITY WITH

8. (A) THE CLERK OF ANY COUNTY UPON BEING PAID THE FEES ALLOW
SHALL RECEIVE FOR FILING ANY INSTRUMENT APPOINTING OR DESIGNATI

PURSUANT TO SECTION SEVENTEEN HUNDRED TWENTY-SIX OF THIS CHAP
DOMICILIARY OF THE COUNTY, AND SHALL GIVE A WRITTEN RECEIPT THEI
DELIVERING IT. THE FILING OF AN APPOINTMENT OR DESIGNATION OF ST
BE FOR THE SOLE PURPOSE OF SAFEKEEPING AND SHALL NOT AFFECT THE V
APPOINTMENT OR DESIGNATION.

(B) THE APPOINTMENT OR DESIGNATION SHALL BE DELIVERED ONLY
LEGAL GUARDIAN, LEGAL CUSTODIAN OR PRIMARY CARETAKER WHO APPO
STANDBY GUARDIAN: (II) THE STANDBY GUARDIAN OR ALTERNATE STANDI
PERSON DESIGNATED AS STANDBY GUARDIAN OR ALTERNATE STANDBY GU
PERSON DIRECTED BY THE COURT.

2. THIS ACT SHALL TAKE EFFECT ON THE FIRST DAY OF JANUARY NEX
DATE ON WHICH IT BECOMES A LAW.

5. LEGITIMACY OF CHILDREN BORN TO A MARRIED COUPLE USING ASSISTED REPRODUCTION TECHNIQUES (DRL 73)

SECTION 73 OF THE DOMESTIC RELATIONS LAW RECOGNIZES THE LEG CHILDREN BORN TO MARRIED COUPLES BY MEANS OF ARTIFICIAL INSEMIN COMMITTEE RECOMMENDS THAT SECTION 73 BE AMENDED TO EXTEND SU CHILDREN WHO ARE BORN TO MARRIED COUPLES BY MORE ADVANCED M REPRODUCTION, SUCH AS IN VITRO FERTILIZATION.

SECTION 73 OF THE DOMESTIC RELATIONS LAW NOW PROVIDES THAT TO A MARRIED WOMAN BY MEANS OF ARTIFICIAL INSEMINATION . . . [BY A WITH THE CONSENT IN WRITING OF THE WOMAN AND HER HUSBAND, SH LEGITIMATE, NATURAL CHILD OF THE HUSBAND AND HIS WIFE FOR ALL PU CONCEIVED BY A MARRIED WOMAN WITH THE SPERM OF A PERSON OTHER WOULD NEVERTHELESS BE THE HUSBAND'S LEGITIMATE, NATURAL CHILD I REQUIRED BY SECTION 73 WERE FOLLOWED.

RECENT ADVANCES IN MEDICAL TECHNOLOGY, HOWEVER, HAVE EXPA AND OPPORTUNITIES FOR MARRIED INFERTILE COUPLES TO HAVE CHILDR OF ASSISTED REPRODUCTION, INCLUDING IN VITRO FERTILIZATION (IVF) INTRAFALLOPIAN TRANSFER (GIFT) THAT MAY INVOLVE DONATED GAMETE EMBRYOS (FERTILIZED EGGS). USE OF DONATED SEMEN AND EGGS COULD RIGHTS, DUTIES AND RESPONSIBILITIES OF THE DONOR (BIOLOGICAL PAR PRESENT LAWS.[3] MOREOVER, CRYOPRESERVATION ALLOWS FROZEN GAMET TO BE IMPLANTED IN A MARRIED WOMAN FOR THIS PURPOSE EVEN AFTER DONORS.[4] ACCORDINGLY, IT IS IMPERATIVE THAT SECTION 73 OF THE DO INCLUDE CHILDREN BORN BY ANY METHOD OF ASSISTED REPRODUCTION

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[3] FOR EXAMPLE, UNDER ESTATES, POWERS AND TRUSTS LAW, SECTION MARITAL CHILD WOULD BE CONSIDERED THE LEGITIMATE CHILD OF HIS HIS ISSUE WOULD INHERIT FROM HIS FATHER AND HIS PATERNAL KINDR BLOOD GENETIC MARKER TEST HAD BEEN ADMINISTERED TO THE FATHER WITH OTHER AVAILABLE EVIDENCE ESTABLISHES PATERNITY BY CLEAR AND EVIDENCE."

[4] UNDER SECTIONS 2-1.3(A)(2), 5-3.2 AND 6-5.7, CHILDREN OF THE DON PARENT BORN AFTER HIS OR DEATH MAY HAVE CERTAIN RIGHTS.

DEVELOPED IN THE FUTURE, SO THAT THESE CHILDREN WILL BE DEEMED T
NATURAL CHILDREN OF THE WIFE AND HER CONSENTING HUSBAND, REG
THEIR OWN OR DONATED GAMETES OR EMBRYOS ARE USED.

AFTER AN INTENSIVE, COMPREHENSIVE EXAMINATION OF ASSISTED R
NEW YORK STATE TASK FORCE ON LIFE AND THE LAW, APPOINTED BY EXEC
ISSUED ITS REPORT, ASSISTED REPRODUCTIVE TECHNOLOGIES, ANALYSIS A
FOR PUBLIC POLICY IN APRIL 1998,[5] RECOMMENDING, INTER ALIA, AT P. XX

> NEW YORK'S DOMESTIC RELATIONS LAW SHOULD BE AMENDED T
> PROVIDE THAT WHEN A MARRIED WOMAN UNDERGOES ANY ASS
> REPRODUCTIVE PROCEDURE USING DONOR SEMEN, THE WOMA
> HUSBAND IS THE LEGAL FATHER OF ANY CHILD WHO RESULTS,
> PROVIDED THE PROCEDURE WAS PERFORMED BY A LICENSED
> PHYSICIAN WITH THE HUSBAND'S CONSENT.
>
> * * *
>
> NEW YORK LAW SHOULD PROVIDE THAT A WOMAN WHO GIVES I
> TO A CHILD IS THE CHILD'S LEGAL MOTHER, EVEN IF THE CHILD
> NOT CONCEIVED WITH THE WOMAN'S EGG.

THE PROPOSED AMENDMENT TO SECTION 73 OF THE DOMESTIC RELA
PROVIDE THAT A MARRIED WOMAN AND HER CONSENTING HUSBAND WO
NATURAL PARENTS OF THE CHILD FOR ALL PURPOSES, WHETHER THE CHIL
SEMEN, EGG OR EMBRYO DONATED BY PERSONS THEN LIVING OR WHO HA
AND HIS OR HER ISSUE WOULD ALSO BE DEEMED THE LEGITIMATE, NATUR
HUSBAND AND HIS WIFE AND THE LEGITIMATE, NATURAL ISSUE OF THE RE
THE HUSBAND OR HIS WIFE FOR PURPOSES OF INTESTACY AND CLASS DESI
OTHER INSTRUMENTS.

THE PROPOSAL WOULD ALSO CLARIFY THAT THE DONOR OR DONORS
MATERIAL (AND THEIR FAMILIES) WOULD BE RELIEVED OF ALL PARENTAL D
RESPONSIBILITIES AND WOULD HAVE NO RIGHTS OVER THE CHILD OR TO
FROM OR THROUGH SUCH CHILD BY INTESTACY OR CLASS DESIGNATIONS
INSTRUMENTS.

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[5] SEE ALSO, CHAPTER 12, "DETERMINING PARENTAL RIGHTS AND POSS

THE TERM "CLASS DESIGNATIONS IN WILLS OR OTHER INSTRUMENTS
DEFINED TO INCLUDE, UNLESS OTHERWISE PROVIDED IN THE DISPOSING
DESIGNATION UNDER A WILL, TRUST INDENTURE, DEED, AN INSTRUMENT
APPOINTMENT, A BENEFICIARY DESIGNATION OR CONTRACTUAL ARRANG
THE DISPOSITION OF A BANK OR BROKERAGE ACCOUNT, INSURANCE, PEN
STOCK BONUS OR PROFIT-SHARING PLAN OR ANY OTHER INSTRUMENT DI
PERSONAL PROPERTY.

THE COMMITTEE BELIEVES THAT THE PUBLIC POLICY OF THE STATE O
STRONGLY SUPPORTS THE DESIRE OF INFERTILE MARRIED COUPLES TO HA
ANY AVAILABLE TECHNIQUE OF ASSISTED REPRODUCTION, AND RECOGNIZ
AS THE NATURAL CHILDREN OF THE MARRIED WOMAN AND HER HUSBAN
CONVERSELY, THE DONOR OR DONORS OF GENETIC MATERIALS AND THEI
DIVESTED OF ANY RIGHTS, DUTIES OR RESPONSIBILITIES WITH RESPECT TO

THE PROPOSAL WOULD APPLY TO CHILDREN DESCRIBED IN SECTION
RELATIONS LAW WHETHER BORN BY ARTIFICIAL INSEMINATION, IN VITRO
OTHER TECHNIQUE OF ASSISTED REPRODUCTION BEFORE, ON OR AFTER T
THE ACT.

PROPOSAL:

AN ACT TO AMEND THE DOMESTIC RELATIONS LAW, IN RELATION TO CHIL
MARRIED COUPLE BY ANY MEANS OF ASSISTED REPRODUCTION

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

ENACT AS FOLLOWS:

SECTION 1. SECTION 73 OF THE DOMESTIC RELATIONS LAW IS AMEND

FOLLOWS:

73. LEGITIMACY OF CHILDREN BORN BY [ARTIFICIAL INSEMINATION

REPRODUCTION. 1. ANY CHILD BORN TO A MARRIED WOMAN BY MEANS O

INSEMINATION, IN VITRO FERTILIZATION OR ANY OTHER TECHNIQUE OF
REPRODUCTION, WHETHER WITH THE GENETIC MATERIAL OF THE WOMA
WITH GENETIC MATERIAL DONATED BY OTHERS, PERFORMED IN ACCORDA
THE JURISDICTION WHERE SUCH ASSISTED REPRODUCTION OCCURS BY P
AUTHORIZED TO PRACTICE MEDICINE OR BY ANY OTHER PERSON OR PERS
SUPERVISION OF A PERSON DULY AUTHORIZED TO PRACTICE MEDICINE, A
IN WRITING OF THE WOMAN AND HER HUSBAND, SHALL BE DEEMED THE
CHILD OF THE HUSBAND AND HIS WIFE FOR ALL PURPOSES. SUCH CHILD
SHALL BE DEEMED THE LEGITIMATE, NATURAL ISSUE OF THE HUSBAND AN
LEGITIMATE, NATURAL ISSUE OF THE RESPECTIVE ANCESTORS OF THE HUS
ALL PURPOSES, INCLUDING WITHOUT LIMITATION THE RIGHT TO RECEIV
PROPERTY BY INTESTACY AND CLASS DESIGNATIONS IN WILLS OR OTHER I
SUCH CHILD AND HIS OR HER ISSUE SHALL HAVE NO RIGHTS TO RECEIVE
PROPERTY FROM AND THROUGH THE DONOR OR DONORS OF GENETIC M
RESPECTIVE KINDRED BY ANY MEANS, INCLUDING WITHOUT LIMITATION
DESIGNATIONS IN WILLS OR OTHER INSTRUMENTS.

2. THE DONOR OR DONORS OF GENETIC MATERIAL SHALL BE RELIEVE
DUTIES TOWARD AND OF ALL RESPONSIBILITIES FOR SUCH CHILD, AND TH
AND THEIR RESPECTIVE KINDRED SHALL HAVE NO RIGHTS TO RECEIVE REA

PROPERTY FROM AND THROUGH SUCH CHILD BY ANY MEANS, INCLUDING BY INTESTACY AND CLASS DESIGNATIONS IN WILLS OR OTHER INSTRUMEN

3. THE PHRASE "CLASS DESIGNATIONS IN WILLS OR OTHER INSTRUME WITHOUT LIMITATION UNLESS OTHERWISE PROVIDED IN THE DISPOSING DESIGNATION UNDER A WILL, TRUST INSTRUMENT, DEED, AN INSTRUMEN OF APPOINTMENT, A BENEFICIARY DESIGNATION OR CONTRACTUAL ARRA TO THE DISPOSITION OF A BANK OR BROKERAGE ACCOUNT, INSURANCE, P PLAN, STOCK BONUS OR PROFIT-SHARING PLAN, OR ANY OTHER INSTRUM OR PERSONAL PROPERTY.

4. THE [AFORESAID] WRITTEN CONSENT REQUIRED BY SUBSECTION 1 AND ACKNOWLEDGED BEFORE OR AT ANY TIME AFTER THE BIRTH OF THE HUSBAND AND THE WIFE AND THE PHYSICIAN WHO PERFORMS THE TECH PHYSICIAN HAS DIED OR IS UNAVAILABLE, ANY PERSON WHO ASSISTED TH PERSON WHO PERFORMED THE TECHNIQUE UNDER THE SUPERVISION OF SHALL CERTIFY IN WRITING THAT HE OR SHE HAD RENDERED THE SERVIC AND PLACE SET FORTH IN THE CERTIFICATION.

2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY AND SHALL APPLY TO DESCRIBED IN SUBDIVISION ONE OF SECTION 73 OF THE DOMESTIC RELAT PURSUANT TO THIS ACT, WHENEVER HE OR SHE IS BORN.

6. RENUNCIATION OF PROPERTY INTERESTS PURSUANT TO POWER OF ATTORNEY (EPTL 2-1.11; GOL 5-1502(G))

THE SURROGATE'S COURT ADVISORY COMMITTEE RECOMMENDS THA
THE ESTATES POWERS AND TRUSTS LAW (EPTL) BE AMENDED TO CLARIFY TH
UNDER WHICH AN ATTORNEY-IN-FACT MAY RENOUNCE A PROPERTY INTE
NON-DISABLED PERSON AND SPECIFY THE INSTANCES IN WHICH PRIOR C
REQUIRED.

SECTION 2-1.11(C) OF THE ESTATES, POWERS AND TRUSTS LAW, WHICH
RENUNCIATION OF PROPERTY INTERESTS CREATED UNDER A WILL OR TRU
INFANTS, INCOMPETENTS, CONSERVATEES AND DECEASED PERSONS, NOW
RENUNCIATION BY A GUARDIAN, COMMITTEE, CONSERVATOR OR PERSONA
APPROPRIATE, PROVIDED COURT APPROVAL FIRST IS OBTAINED. THIS MEA
THE STATUTE TO PROVIDE THAT, SUBJECT TO PRIOR COURT APPROVAL, A R
MADE: (1) ON BEHALF OF A PERSON UNDER DISABILITY BY HIS OR HER GUA
A PERSON WHO HAS HAD A GUARDIAN APPOINTED UNDER ARTICLE 81 OF T
LAW; OR (3) BY HIS OR HER ATTORNEY-IN-FACT PURSUANT TO A DULY EXEC
ATTORNEY. AT THE SAME TIME, IT WOULD CLARIFY THAT AN ATTORNEY-IN
RENUNCIATION ON BEHALF OF A NON-DISABLED PERSON, WITH NO NEED
APPROVAL EXCEPT WHERE THE ATTORNEY-IN-FACT, OR THE SPOUSE OR ISS
IN-FACT, WILL BENEFIT THEREFROM AND THE INSTRUMENT OF HIS OR HE
INCLUDES NO EXPRESS AUTHORIZATION FOR SUCH RENUNCIATION.

THIS PROPOSAL RECOGNIZES THE PROVISIONS OF ARTICLE 17-A OF TH
COURT PROCEDURE ACT, WHICH GOVERNS GUARDIANS OF MENTALLY RET
DEVELOPMENTALLY DISABLED PERSONS, AND RECENTLY-ENACTED ARTICL
HYGIENE LAW, WHICH GOVERNS GUARDIANS OF PERSONS UNDER DISABIL
SUPERSEDED THE PROVISIONS OF THE MENTAL HYGIENE LAW GOVERNING
COMMITTEES AND CONSERVATORS. THE COURTS HAVE AUTHORIZED REN
FIDUCIARIES AND, INDEED, ARTICLE 81 OF THE MENTAL HYGIENE LAW SPE
THAT A COURT MAY PROVIDE A GUARDIAN WITH POWER TO RENOUNCE. S
LAW, 81.21; *MATTER OF CARVELLI*, NYLJ, JUNE 3, 1993, P. 26, COL.5, NASSAU
CO.[INVOLVING RENUNCIATION BY AN ARTICLE 17-A GUARDIAN]; *MATTER*
NYLJ, NOVEMBER 6, 1992, P.26, COL.2, KINGS CO.; AND *MATTER OF LISLE*, NYL
1994, P.27, COL.4, NASSAU CO. [INVOLVING RENUNCIATIONS BY ARTICLE 81

ATTORNEYS-IN-FACT OF PERSONS UNDER DISABILITY OR THOSE OF P
DISABILITY WHO, THEMSELVES, WOULD BENEFIT FROM A RENUNCIATION S
IN THE CLASS OF FIDUCIARIES WHO MUST SEEK COURT APPROVAL BEFORE
RENUNCIATION. AS DETERMINED BY SURROGATE ROTH IN *MATTER OF KU*
MISC.2D 672 (N.Y. CO. 1994), SOME SCRUTINY OF THE ACTIONS OF THE ATTO
NECESSARY BECAUSE OF THE WELL-ESTABLISHED JURISDICTION OVER THE
FIDUCIARIES AND THE COURT'S NEED TO BE ASSURED THAT THE RENUNCI
IMPAIR, AS IN THAT CASE, THE PRINCIPAL'S MEDICAID ELIGIBILITY AND STA
AT THE SAME TIME, LIKE SCRUTINY CERTAINLY IS APPROPRIATE WHERE AN
A PERSON WHO IS NOT UNDER DISABILITY INTENDS TO EXECUTE A RENUN
PERSON'S BEHALF WHERE THE RESULT IS TO BENEFIT THE ATTORNEY-IN-FA

THIS MEASURE ALSO WOULD AMEND SECTION 5-1502G(3) OF THE GEN
LAW, WHICH REGULATES THE LANGUAGE AND EFFECT OF THE NEW YORK S
ATTORNEY WITH RESPECT TO AN AGENT ENTERING INTO "ESTATE TRANSA
SECTION CONSISTENT WITH THE PROPOSED AMENDMENT TO EPTL 2.1-11(C

PROPOSAL:

AN ACT TO AMEND THE ESTATES, POWERS AND TRUSTS LAW AND THE GEN
LAW, IN RELATION TO RENUNCIATIONS OF CERTAIN PROPERTY INTE
PARAGRAPH (C) OF SECTION 2-1.11 OF THE ESTATES, POWERS AND TRU
THERETO

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AN

ENACT AS FOLLOWS:

SECTION 1. PARAGRAPH (C) OF SECTION 2-1.11 OF THE ESTATES, POWE

REPEALED AND A NEW PARAGRAPH (C) IS ADDED TO READ AS FOLLOWS:

(C) A RENUNCIATION MAY BE MADE BY:

(1) THE GUARDIAN OF THE PROPERTY OF AN INFANT, WHEN SO AUTH
COURT HAVING JURISDICTION OF THE ESTATE OF THE INFANT.

(2) THE COMMITTEE OF AN INCOMPETENT WHEN SO AUTHORIZED BY
APPOINTED THE COMMITTEE.

(3) THE CONSERVATOR OF A CONSERVATEE, WHEN SO AUTHORIZED B
APPOINTED THE CONSERVATOR.

(4) A GUARDIAN APPOINTED UNDER ARTICLE EIGHTY-ONE OF THE ME
WHEN SO AUTHORIZED BY THE COURT THAT APPOINTED THE GUARDIAN.

(5) THE PERSONAL REPRESENTATIVE OF A DECEDENT, WHEN SO AUTH
COURT HAVING JURISDICTION OF THE ESTATE OF THE DECEDENT.

(6) AN ATTORNEY-IN-FACT, WHEN SO AUTHORIZED UNDER A DULY EX
ATTORNEY, PROVIDED, HOWEVER, THAT ANY RENUNCIATION BY AN ATTO
PERSON UNDER DISABILITY SHALL NOT BE EFFECTIVE UNLESS IT IS FURTHE
COURT WITH WHICH THE RENUNCIATION MUST BE FILED UNDER SUBPAR
PARAGRAPH (B) OF THIS SECTION, AND PROVIDED, FURTHER, THAT A RENU
ATTORNEY-IN-FACT OF A PERSON NOT UNDER DISABILITY MAY BE MADE W
AUTHORIZATION, UNLESS THE PROPERTY WHICH WOULD HAVE PASSED UN
RENUNCIATION IS, BY REASON OF SAID RENUNCIATION, DISPOSED OF IN
ATTORNEY-IN-FACT OR THE SPOUSE OR ISSUE OF SUCH ATTORNEY-IN-FAC

RENUNCIATION SHALL NOT BE EFFECTIVE UNLESS EITHER (A) THE INSTRUM
ATTORNEY-IN-FACT EXPRESSLY AUTHORIZES A RENUNCIATION IN FAVOR O
FACT OR THE SPOUSE OR ISSUE OF SUCH ATTORNEY-IN-FACT, OR (B) SUCH
BEEN AUTHORIZED BY THE COURT WITH WHICH THE RENUNCIATION MU
SUBPARAGRAPH TWO OF PARAGRAPH (B).

2. SUBDIVISION 3 OF SECTION 5-1502G OF THE GENERAL OBLIGATION
TO READ AS FOLLOWS:

3. [TO] SUBJECT TO THE PROVISIONS OF PARAGRAPH (C) OF SECTION
POWERS AND TRUSTS LAW, TO ACCEPT, TO REJECT, TO RECEIVE, TO RECEIPT
ASSIGN, TO RELEASE, TO PLEDGE, TO EXCHANGE, OR TO CONSENT TO A RE
MODIFICATION OF, ANY SHARE IN OR PAYMENT FROM ANY ESTATE, TRUST

3. THIS ACT SHALL TAKE EFFECT SEPTEMBER 1, 2003.

7. THE EFFECT ON INHERITANCE RIGHTS OF ADOPTION BY AN UNRELATED PERSON (DRL 117; EPTL 2-1.3(A)(1))

THIS MEASURE WOULD AMEND SECTION 117 OF THE DOMESTIC RELAT SECTION 2-1.3(A)(1) OF THE ESTATES, POWERS AND TRUSTS LAW, TO ENSURE ADOPTIVE CHILD CONTINUES TO RESIDE WITH THE NATURAL PARENT, AS PARENT ADOPTIONS AND ADOPTIONS PURSUANT TO *MATTER OF JACOB* AN *MATTER OF DANA*, 86 N.Y.2D 651 (1995), SUCH ADOPTIVE CHILD IS NOT PEN LOSING INHERITANCE RIGHTS EITHER FROM HIS OR HER NATURAL PAREN FROM A LIFETIME OR TESTAMENTARY DISPOSITION FROM HIS OR HER NAT MEMBER OF A CLASS UNDER EPTL 2-1.3. THIS AMENDMENT NEITHER ENDO POLICY ISSUES DISCUSSED IN THE ABOVE CITED CASES.

PROPOSAL:

AN ACT TO AMEND THE DOMESTIC RELATIONS LAW AND THE ESTATES, PO IN RELATION TO THE EFFECT OF AN ADOPTION BY AN UNRELATED PE

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE A

ENACT AS FOLLOWS:

SECTION 1. SECTION 117 OF THE DOMESTIC RELATIONS LAW IS AMEND

SUBDIVISION 4 TO READ AS FOLLOWS:

4. NOTWITHSTANDING SUBDIVISIONS ONE AND TWO OF THIS SECTI

HAVING CUSTODY OF A CHILD CONSENTS THAT THE CHILD BE ADOPTED

WHO RESIDES WITH SUCH PARENT, AFTER THE MAKING OF AN ORDER OF

CONSENTING PARENT SHALL RETAIN ALL PARENTAL DUTIES AND RESPONS

RIGHTS WITH RESPECT TO SUCH CHILD, AND NEITHER SUCH CONSENT NO
ADOPTION SHALL AFFECT:

(A) THE RIGHTS OF SUCH CHILD TO INHERITANCE AND SUCCESSION
THROUGH EITHER NATURAL PARENT, OR

(B) THE RIGHT OF THE CHILD AND HIS OR HER ISSUE TO TAKE UNDE
LIFETIME INSTRUMENTS EXECUTED BY EITHER NATURAL PARENT OR NATU
EITHER NATURAL PARENT.

2. PARAGRAPH (1) OF SUBDIVISION (A) OF SECTION 2-1.3 OF THE ESTA
TRUSTS LAW, AS AMENDED BY CHAPTER 248 OF THE LAWS OF 1990, IS AMEN
FOLLOWS:

(1) ADOPTED CHILDREN AND THEIR ISSUE IN THEIR ADOPTIVE RELAT
RIGHTS OF ADOPTED CHILDREN AND THEIR ISSUE TO RECEIVE A DISPOSIT
LIFETIME INSTRUMENTS AS A MEMBER OF SUCH CLASS OF PERSONS BASED
RELATIONSHIP SHALL BE GOVERNED BY THE PROVISIONS OF [SUBDIVISION
AND FOUR OF SECTION ONE HUNDRED SEVENTEEN OF THE DOMESTIC RE

3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY AND SHALL APPLY TO
AFTER SUCH DATE, TO ESTATES OF DECEDENTS DYING ON OR AFTER SUCH
AND LIFETIME INSTRUMENTS WHENEVER EXECUTED.

III. FUTURE MATTERS

THE COMMITTEE IS DRAFTING LEGISLATION IN A NUMBER OF AREAS. MATTERS BEING ADDRESSED ARE:

1. EPTL 7-1.14; GOL 5-1502 — USE OF A POWER OF ATTORNEY TO CREATE, MODI OR REVOKE A LIFETIME TRUST

THIS MEASURE WOULD CIRCUMSCRIBE THE USE OF THE STATUTORY S OF ATTORNEY TO CREATE, MODIFY OR REVOKE A LIFETIME TRUST. CURREN NOT EVEN BE AWARE THAT HE OR SHE IS AUTHORIZING THIS RATHER OBS RESPECT TO LIFETIME TRUSTS, GIVING RISE TO A POTENTIAL FOR ITS MISU AGENT.

2. EPTL ARTICLE 7 — TERMINATION OF UNECONOMICAL SMALL T

THIS MEASURE WOULD ADD A NEW SECTION TO ARTICLE 7 PROVIDIN APPLICATION BY A TRUSTEE OR BENEFICIARY OF A TESTAMENTARY OR LIFE THAN A CHARITABLE TRUST OR SUPPLEMENTAL NEEDS TRUST) TO TERMINA THAN ONE HUNDRED THOUSAND DOLLARS WHEN CONTINUED ADMINIS IS ECONOMICALLY IMPRACTICABLE.

3. SCPA 2307 — RENUNCIATION OF SPECIFIC COMPENSATIO FAVOR OF STATUTORY COMMISSIONS

THIS MEASURE WOULD AMEND SCPA 2307 TO PREVENT A FIDUCIARY F WILL'S DIRECTIVE THAT HE OR SHE RECEIVE SPECIFIC COMPENSATION IN COMMISSIONS. THE PROPOSAL WOULD REQUIRE THAT WHERE A WILL PRO COMPENSATION, THE FIDUCIARY WHO ELECTS TO SERVE IS NOT ENTITLED ALLOWANCES FOR HIS OR HER SERVICES AS FIDUCIARY.

4. SCPA ARTICLE 4 — APPEARANCES ON BEHALF OF PERSONS UNDI DISABILITY

THIS MEASURE WOULD AMEND SCPA ARTICLE 4 TO CLARIFY AND UPD
ALLOW GUARDIANS APPOINTED PURSUANT TO SCPA ARTICLE 17-A AND ME
ARTICLE 81 TO APPEAR ON BEHALF OF AN INCAPACITATED PARTY, WHILE ST
COURT TO APPOINT A GUARDIAN AD LITEM FOR THAT PARTY IF THE COUR
PROPOSAL WOULD PERMIT THE APPEARANCE OF ARTICLE-81 GUARDIANS O
GUARDIAN HAD BEEN GRANTED POWERS UNDER MHL 81.21 AUTHORIZIN

5. SCPA 206 NON-DOMICILIARIES; JURISDICTION AND VE

THIS MEASURE WOULD CLARIFY THE EXTENT OF THE SURROGATE'S CO
MATTER JURISDICTION IN ANCILLARY PROCEEDINGS, IN THE WAKE OF MA
N.Y.2D 591 (1998). THE PROPOSAL WOULD AMEND SCPA 206 TO GRANT JURI
OF ACTION FOR THE DISCOVERY OR RETURN OF PROPERTY WRONGFULLY
WITHIN OR FROM THE STATE. IT WOULD ALSO MAKE CLEAR THAT THE STA
JURISDICTION IS CO-EXTENSIVE WITH THE JURISDICTIONAL AUTHORITY O
SURROGATE'S COURT UNDER SECTION 12(D) OF ARTICLE 6 OF THE CONSTI
DETERMINATION OF WHETHER AND TO WHAT EXTENT SUCH JURISDICTIO
PARTICULAR CASE BEING LEFT TO THE COURT'S DISCRETION.

6. EPTL 5-1.1-A; INTEREST ON PECUNIARY DISPOSITIONS
11-1.5(D),(E)

THIS PROPOSAL WOULD AMEND EPTL 11-1.5(D) AND (E) AND EPTL 5-1.1-
ALIA, THAT INTEREST IS PAYABLE ON PECUNIARY DISPOSITIONS FROM THE
NINE MONTHS FROM THE TIME LETTERS ARE GRANTED OR ONE YEAR FRO
DECEDENT'S DEATH, WITHOUT THE NECESSITY OF LITIGATION BEING COM
PAYMENT. CURRENTLY, WHERE THERE HAS BEEN A DELAY IN PAYMENT OF
ESTATES PAY INTEREST, WHILE OTHERS, ASSERTING THAT THE LAW IS UNCL

EPTL 11-1.5 ALSO CURRENTLY PROVIDES THAT INTEREST CAN BE PAID I
SUED FOR FAILURE TO PAY THE BEQUEST. CONSEQUENTLY, UNNECESSARY
LITIGATION IS ENCOURAGED. THE PROPOSED LEGISLATION WOULD MAKE
IS MANDATORY AND ACCRUES REGARDLESS OF LITIGATION. THE PROPOSA
METHOD OF CALCULATING INTEREST.

7. SCPA 2313 MULTIPLE COMMISSIONS OF EXECUTORS OR TRUSTEES

THIS MEASURE WOULD AMEND SCPA 2313 TO ALLOW, WHERE THE DEC SPECIFICALLY PROVIDED OTHERWISE, UP TO THREE COMMISSIONS FOR EX RATHER THAN THE PRESENT TWO COMMISSIONS. THIS MEASURE WOULD OF COMMISSIONS ALLOWABLE PRIOR TO 1994. ANY CONCERNS OVER ATTO MAY HAVE BEEN A FACTOR IN REDUCING THE NUMBER FROM THREE TO TW ALLEVIATED BY THE ENACTMENT OF SCPA 2307-A IN 1995. THIS PROPOSAL W AVOID DISPUTES THAT CAN ARISE WHEN TWO EXECUTORS ARE DEADLOCK ESTATE TO CLAIM AN ADDITIONAL EXPENSE OF ADMINISTRATION ON THE

IN ADDITION TO THE ABOVE LEGISLATION, THE COMMITTEE IS ALSO RELATED TO:

1. CHANGING OR ELIMINATING THE RULE AGAINST PERPETUITIES.

2. THE TAX TREATMENT OF CAPITAL GAINS IN UNITRUST DISTRIBU

3. THE VOIDING OF WILLS OF INCAPACITATED PERSONS BY ARTICL

4. PROTECTION OF BENEFICIARIES OF BANK-RUN MUTUAL FUNDS, ACCOUNTINGS AND OTHER POSSIBLE PROCEDURES.

5. PERMITTING INCORPORATION BY REFERENCE IN POUR-OVER WI

6. CHARGING A FIDUCIARY'S LEGAL FEES AGAINST A LITIGIOUS BEN

7. A METHOD FOR THE ORDERLY TRANSFER OF ASSETS FROM A GUA EXECUTOR OR ADMINISTRATOR.

8. AMENDMENT OF CPLR 4519, THE DEADMAN'S STATUTE.

9. THE USE OF ATTORNEY-CERTIFIED DEATH CERTIFICATES IN VOL ADMINISTRATIONS.

10. THE INTERPLAY BETWEEN STATUTORY LIMITATIONS ON POWERS OF EXECUTORS AND TESTAMENTARY TRUSTEES AND THE PRUDENT INVEST

RESPECTFULLY SUBMITTED,

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