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REPORT ON LEGISLATION BY THE TRUSTS, ESTATE AND SURROGATE'S COURTS COMMITTEE

MEMORANDUM IN SUPPORT OF PROPOSED AMENDMENT TO §2-1.11(D)(5) OF THE NEW YORK ESTATES, POWERS AND TRUSTS LAW CONCERNING RENUNCIATION OF PROPERTY INTEREST

This brief memorandum is offered by the Trusts, Estates and Surrogate's Courts Committee of the New York City Bar Association in support of OCA's proposed amendment which would amend §2-1.11(d)(5) of the New York Estates, Powers and Trusts Law (EPTL). The Committee supports the amendment for the purpose of reducing the unnecessary expense and delay incident to requiring a decedent's personal representative to obtain court authorization to renounce property interests in every circumstance. The amendment is one of a series of measures introduced at the request of the Chief Administrative Law Judge upon the recommendation of her Surrogate's Court Advisory Committee.

BACKGROUND

EPTL §2-1.11(d)(5) currently requires the personal representative of a decedent to obtain prior court authorization to renounce any interest in property to which the decedent became entitled but did not receive prior to his death. Court authorization must be obtained by the personal representative in every case, even in the most common situation, in which spouses have reciprocal wills with identical beneficiaries who take upon the death of the surviving spouse. Where both spouses die within nine months of each other, disclaimer is often used to minimize the duplication of administration expenses in both estates by allowing the property of the first spouse to die to bypass the second spouse's estate and pass directly to the beneficiaries. The amendment to subparagraph (5), by removing the requirement of court approval, will reduce expense for the estates and importantly, reduce delays in implementing the disclaimer, which is ineffective if made more than nine months after death.

A personal representative who wishes may still obtain court authorization for a renunciation.

For the foregoing reasons, the Committee supports this proposal and recommends its enactment.

Committee of Trusts, Estates and Surrogate's Courts Sharon L. Klein, Chair

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