

2013 Legislative Update and Summary

By Ian W. MacLean and Robert M. Harper

The New York Legislature had a particularly busy 2013 legislative session—so busy, in fact, that it ended in the early morning of June 22, rather than the typical close of business on June 21. The Trusts and Estates Law Section and the members of its several committees were busy proposing several legislative initiatives and commenting on (and usually supporting) initiatives introduced independently by legislators or by other trusts and estates-related entities.

There were more than a dozen legislative proposals and bills that bore on the trusts and estates laws of New York. Six important initiatives passed and (as of this writing) await delivery to the Governor for signature. Many equally important amendments to improve existing law—either by providing clarity, removing the basis for differing interpretations by the Surrogates, or adding entirely new sections—failed to pass both houses. A summary of the legislative proposals and bills with relevant bill numbers follows.

- Not for Profit Corporation Law—A8072/S5845. Enacts the “Non-Profit Revitalization Act of 2013,” which relates to the reform of charitable organizations and adds a new Estates Powers and Trusts Law (“EPTL”) Section 8-1.9. The New York State Bar Association supported this bill. The bill passed both houses and awaits delivery to the Governor.
- Anti-Lapse Statute—A6555/S4852. The Section reviewed and offered a memorandum in support of a proposal by the Office of Court Administration that clarifies the application of the anti-lapse statute in relation to multi-generational gifts and the issue of a testator’s siblings. The bill passed both houses of the Legislature and awaits delivery to the Governor.
- Decanting—A7061/S3790. The Section reviewed and offered a memorandum in support of a proposal by the Office of Court Administration that modifies and expands the authority of a trustee to decant a trust to another trust and the authority of a trustee to exercise a power of appointment and invade trust principal. The bill passed both houses and awaits delivery to the Governor.
- Interest on Legacies—A1185/S4952. The Section proposed legislation that clarifies the application of interest on legacies not paid within seven months of the issuance of letters and establishes an interest rate in tune with current economic conditions and tied to an understandable economic indicator interest rate. The proposal was supported by the Office of Court Administration, the New York City Bar Association and the New York Bankers Association. This is the third year that this proposal has been put before the Legislature. The bill, introduced in both houses after careful review by the respective Judiciary Committees, again passed the Assembly and yet failed again to pass in the Senate.
- QDOT Trusts & New York Estate Tax—A6556/S4851. The Section issued a memorandum in support of an initiative concerning the tax treatment of trusts created for surviving spouses who are not U.S. citizens. The bill passed both houses of the Legislature and awaits delivery to the Governor.
- Abatement for Certain Residential Property—A6658/S4600. This bill was issued by the New York City Bar Association and relates to partial tax abatements for certain residential real property held in trust. The bill passed both houses of the Legislature and awaits delivery to the Governor.
- Right of Election Disclosure Requirements—A0855. This bill would require prior disclosure of a decedent’s income, assets and financial obligations to enforce a surviving spouse’s waiver of the right of election. The bill was reviewed by the Assembly Judiciary Committee, but did not progress any further in the Legislature.
- Resignation of a Fiduciary—A7062/S4272. This bill relates to settlement of an account by a resigning fiduciary and clarifies what is the existing practice in most, if not, all counties. The bill passed both houses of the Legislature and awaits delivery to the Governor.
- Computation of Trustee Commissions and the Power to Adjust. The Section issued a memorandum in support of and lobbied for a bill that clarifies the computation of a trustee’s commissions following the exercise of the trustee’s power to adjust between income and principal under the existing New York Prudent Investor Act. The New York City Bar Association and the New York State Bankers Association both supported the proposal. The proposal was reviewed by the Judiciary Committees of both houses of the Legislature, but was not introduced.

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- **Marriage Equality Act Amendments to SCPA & EPTL—A7100.** The Section issued a memorandum in support of and lobbied for amendments to Articles 4 and 6 of the EPTL and Articles 10, 13, and 17 of the SCPA. The proposal suggested changes to the EPTL and SCPA to reflect gender-neutral language that is consistent with New York's recently enacted Marriage Equality Act. The Marriage Equality Act legalized same-sex marriage in New York. Although the proposal passed the Assembly, it did not garner a sponsor in the Senate.
- **Exoneration Clauses in Inter Vivos Trusts.** The Section issued a memorandum in support of and lobbied for amendments to EPTL Section 11-1.7, which provides that exculpatory provisions in testamentary instruments purporting to absolve executors and testamentary trustees from liability for the failure to exercise reasonable care are void and unenforceable. Under the proposal, similar exculpatory provisions in inter vivos trusts, which currently are enforceable (except to the extent they seek to absolve trustees from liability for bad faith, self-dealing, gross negligence, and reckless indifference) are violative of public policy. This proposal was not introduced as a bill.
- **Posthumous Annulment and the Right of Election.** The Section issued a memorandum in support of and lobbied for amendments to EPTL Section 5-1.2, which addresses the grounds upon which a surviving spouse may be deemed disqualified to take an elective share of a decedent's estate. Although recent case law authorizes courts to disqualify a surviving spouse for "equitable" reasons, the proposed amendment would permit the disqualification of a spouse based upon the posthumous annulment of the spouse's marriage to a decedent. This proposal was not introduced in the Legislature.
- **Posthumously-Conceived Children's Inheritance Rights—A7461/S4779-A.** This bill provides that

certain posthumously conceived children can inherit as distributees and beneficiaries of class gifts benefiting the "children" of their natural parents. This bill, which was written by the Office of Court Administration, passed in the Assembly, but did not advance to a vote in the Senate.

- **Reduced Interest Rate on Taxable Escheated Property—A5960/S4310-A.** This bill provides for a reduced rate of interest applicable to certain additions of tax resulting from discovery after filing an estate tax return of certain assets belonging to the decedent held by the state comptroller as abandoned property. The bill passed both houses and awaits delivery to the Governor.

As the Co-Chairs of the Legislation and Governmental Relations Committee, we wish to thank the committee chairs and many Section members who worked diligently on the Section's initiatives and on the proposals by OCA, the City Bar, the Banker's Association and others. The hard work and expertise of many Section members is evident in the high quality of the analysis and clarity of the proposals and reviews. It is highly rewarding to be part of so many important legislative initiatives and successful legislation.

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