

Memorandum Urging Disapproval

TRUSTS AND ESTATES LAW SECTION

T&E #4-GOV

July 14, 2015

S. 4154
A. 5647

By: Senator LaValle

By: M. or A. Thiele

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: 30th day after it shall have
become a law

AN ACT in relation to authorizing the state comptroller to pay the proceeds of the estate of Howard J. Geyer to any person who can trace a familial relationship through common great-grandparents with the decedent, and providing for a kinship hearing in the surrogate's court of the county of Suffolk to determine persons entitled to such proceeds.

LAW & SECTION REFERRED TO: Section 4-1.1 of the Estates, Powers and Trusts Law.

This bill, S.4154/A.5647, would: (a) authorize the New York State Comptroller (the "Comptroller") to pay the proceeds of the Estate of Howard J. Geyer (the "Decedent") to any person who can trace a familial relationship through common great-grandparents with the Decedent; and, (b) provide for a kinship hearing to take place in the Surrogate's Court, Suffolk County (the "Court"), to determine which persons are entitled to share in the proceeds of the Decedent's estate. For the reasons explained more fully below, the Section **OPPOSES** the bill and recommends veto.

Pertinent Background

The Decedent died, intestate, domiciled in the County of Suffolk, State of New York. Thereafter, the Court held a kinship hearing, properly determining that the individuals who claimed the proceeds of the Decedent's estate were not entitled to a share of such proceeds, as they did not qualify as intestate distributees of the Decedent under Estates, Powers and Trusts Law ("EPTL") § 4-1.1. The claimants even entered into a stipulation of settlement, whereby they agreed that the Suffolk County Public Administrator would turn over the balance of the Decedent's estate to the Comptroller's Abandoned Property Fund.

After the kinship hearing concluded and the Court found that the claimants were not the Decedent's intestate distributees, a bill was proposed – and passed, which purported to authorize the Comptroller to pay the proceeds of the Decedent's estate to “any person who can trace a familial relationship through common grandparents with the Decedent.” Then-Governor Patterson vetoed that bill in 2008.

Reasons to VETO the Bill

As Governor Patterson correctly recognized when he vetoed the prior version of this bill in 2008, reasons to oppose the proposal abound. One of the reasons is the simple fact that, if signed into law by Governor Cuomo, the current bill would establish the dangerous precedent of creating a legislative exception to the longstanding laws of intestacy codified in EPTL § 4-1.1. Additionally, to the extent that the bill would permit claimants who are not intestate distributees of the Decedent to receive shares of the Decedent's estate, it casts aside the Court's lawful findings after a kinship hearing; undermines the aforementioned stipulation of settlement; and fails to protect the interests of unknown distributees who may come forward in the future to justifiably claim shares of the Decedent's estate.

Conclusion

For the foregoing reasons, the Trusts and Estates Law Section opposes this bill and respectfully urges Governor Cuomo to **VETO** the measure.

Memorandum prepared by: Jennifer F. Hillman, Esq. and Robert M. Harper, Esq.

Section Chair: Marion Hancock Fish, Esq.