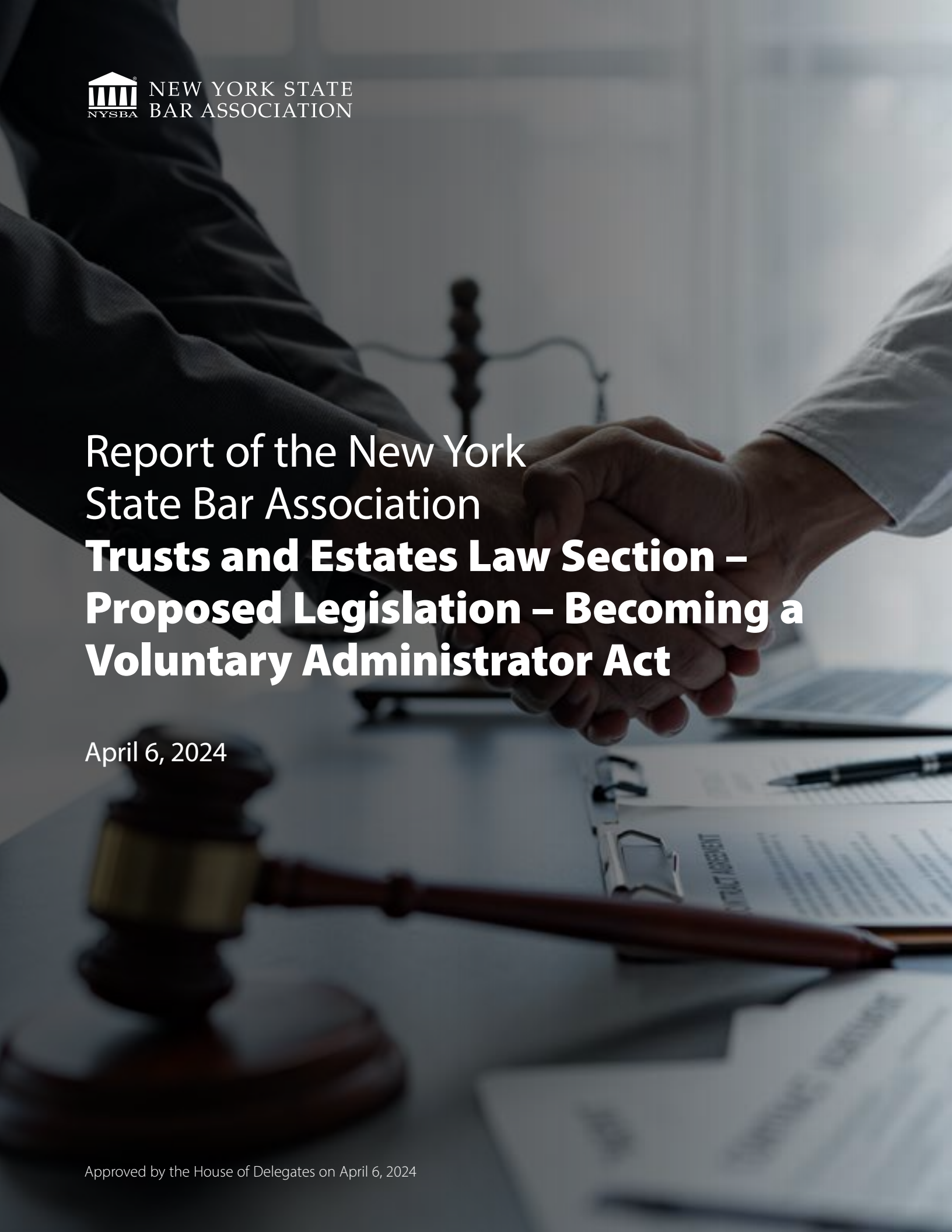

NEW YORK STATE BAR ASSOCIATION

Report of the New York State Bar Association

Trusts and Estates Law Section – Proposed Legislation – Becoming a Voluntary Administrator Act

April 6, 2024

Approved by the House of Delegates on April 6, 2024

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TO: Executive Committee, New York State Bar Association House of Delegates

FROM: Executive Committee, Trusts and Estates Law Section

DATED: December 8, 2023

RE: Reports for Executive Committee of NYSBA House of Delegates

RESOLVED, that the NYSBA Trusts and Estates Law Section supports the accompanying Proposed Legislation – Becoming a Voluntary Administrator Act entitled *Amend SCPA 1303-12-08-23*.

RESOLVED, that the NYSBA Trusts and Estates Law Section is in favor of the above legislation for the reasons set forth in the accompanying Memorandum in Support, which is entitled *T & E Memo in Support of Amendment of SCPA 1303-12-08-23*.

Resolution Prepared By:	Albert Feuer
Approved By:	Vote of the Executive Committee of the NYSBA Trusts and Estates Law Section
Section Chair:	Michael Schwartz

MEMORANDUM

From: Trusts & Estates Law Section of the New York State Bar Association
To: House of Delegates of the New York State Bar Association
Re: Proposed Legislation – Becoming a Voluntary Administrator Act
Date of Approval: December 8, 2023

AN ACT to amend the surrogate's court procedure act in relation to enacting the "Becoming a Voluntary Administrator Act," to clarify the role under Article 13 of guardians of the property of a distributee, fiduciaries of a deceased distributee, and of nominated executors and successor executors for small estates, including allowing multiple executors or successor executors to become simultaneous voluntary administrators under such article if a decedent nominates multiple executors and/or successor executors.

LAW & SECTION REFERRED TO: The legislation would amend subdivisions (a), (b), and (c) of Section 1303 of the Surrogate's Court Procedure Act.

STATUTORY PURPOSE:

This amendment would clarify that

(1) Section 1303 determines who may become a voluntary administrator in conformity with the section's title, whereas Section 1304 determines how to qualify as a voluntary administrator;

(2) a guardian of the property of a distributee may become a voluntary administrator if the decedent dies intestate;

(3) a fiduciary of a deceased distributee may become a voluntary administrator if the decedent dies intestate;

(4) nominated executors have priority to become voluntary administrators over nominated successor executors;

(5) successor executors have priority to become voluntary administrators over an individual eligible to become an administrator c.t.a;

(6) the above priorities to become voluntary administrators apply if a nominated executor who qualifies as a voluntary administrator resigns, dies, or is unable to complete the administration of the deceased's estate; and

(7) multiple nominated executors or multiple successor executors respectively may serve simultaneously as voluntary administrators.

Thus, the amendment would further the Article 13 remedial goal of providing a summary procedure to implement a decedent's intentions or presumed intentions if the decedent leaves a small estate. This memorandum is derived from the memorandum in support of legislation that is part of the attached proposed Becoming a Voluntary Administrator Act.

STATE OF NEW YORK

_____

_____

BILL NUMBER ____

IN _____

_____ __, 2024

Introduced by: _____

AN ACT to amend the surrogate's court procedure act in relation to enacting the "Becoming a Voluntary Administrator Act," to clarify the role under Article 13 of guardians of the property of a distributee, fiduciaries of a deceased distributee, and of nominated executors and successor executors for small estates, including allowing multiple executors or successor executors to become simultaneous voluntary administrators under such article if a decedent nominates multiple executors and/or successor executors.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1303 of the surrogate's court procedure act, as amended by L. 1995, ch. 281, § 1, is amended to read as follows:

§ 1303. Persons who may become a voluntary administrator.

(a) If the deceased dies intestate, the right to become the ~~act as a~~ voluntary administrator is hereby given first to the surviving adult spouse, if any, of the decedent and if there be none or if the spouse renounce, then in order to a competent adult who is a child or grandchild, parent, brother or sister, niece or nephew or aunt or uncle of the decedent, or if there be no such person who will act, then to the guardian of the property of ~~an infant a~~ distributee, the committee of the property of any incompetent person or the conservator of the property of a conservatee who is a distributee, the fiduciary of a deceased distributee and if none of the foregoing named persons will act or if there are no known distributees within the categories listed above, then to the chief fiscal officer of the county except in those counties in which a public administrator has been appointed under articles eleven and twelve of this act. After the surviving spouse, the first distributee

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

within the class of persons entitled or if no distributee will act or if no guardian of the property of such distributee will act or if no fiduciary of a deceased distributee will act or if there are no known distributees within the class of persons entitled, then the chief fiscal officer of the county as above who makes and files the required affidavit, is authorized to act as voluntary administrator, or as successor voluntary administrator in the event of the death or resignation of the voluntary administrator before the completion of the settlement of the estate.

(b) If the deceased dies testate, and the last will and testament has been filed with the surrogate's court, the right to become the voluntary administrator of the decedent's estate is hereby given first to the named executor, and if the named executor renounces, resigns, or is unable to serve as the voluntary administrator, the right is given to the named successor executors, in the order in which succession is set forth. If all those persons renounce, resign, or are unable to serve, ~~the named executor or alternate executor shall have the first right to act as voluntary administrator, upon filing the last will and testament with the surrogate's court. If the named executor or alternate executor, renounces~~ or fail to file the required affidavit within thirty days after the last will and testament has been filed in the surrogate's court, then any adult person who would be entitled to petition for letters of administration with will annexed under section 1418 of ~~this chapter may~~ the Surrogate's Court Procedure Act may ~~file the required affidavit and have the right to act as~~ become the voluntary administrator.

If multiple persons are named as executors, or, if none of the persons named as executors is willing to serve as the voluntary administrator of the decedent's estate, and multiple persons are named as successor executors, then more than one of those named persons, may simultaneously become the voluntary administrators.

(c) No person other than one hereinbefore mentioned may become a voluntary administrator, except in cases where multiple persons may become voluntary administrators as described in subsection (b).

Section 2. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 3. This act shall take effect immediately.

NEW YORK STATE _____

MEMORANDUM IN SUPPORT OF LEGISLATION

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

Submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: _____

SPONSOR: _____

AN ACT to amend the surrogate's court procedure act in relation to enacting the "Becoming a Voluntary Administrator Act," to clarify the role under Article 13 of guardians of the property of a distributee, fiduciaries of a deceased distributee, and of nominated executors and successor executors for small estates, including allowing multiple executors or successor executors to become simultaneous voluntary administrators under such article if a decedent nominates multiple executors and/or successor executors.

The SCPA, enacted in 1966, contains Article 13 consisting of Section 1301-1312, that sets forth a summary procedure for the settlement of small estates by voluntary administrators. Article 13 is based on Article 8-B of the Surrogate's Court Act. The remedial purpose of the predecessor article was set forth in Section 137 of the Surrogate's Court Act as follows:

> The purpose of this article is to create a summary procedure for the settlement of small estates without formal administration which will eliminate the delay and unnecessary expense now frequently found in the settlement of such estates; and thereby to relieve the courts, lawyers, debtors, transfer agents and other persons from the burden of handling the details of such estates.

SCPA Sec. 1301 defines a "small estate" as the estate of a domiciliary or a non-domiciliary who dies leaving personal property having a gross value of $50,000 or less exclusive of the property required to be set off for the benefit of the decedent's family under EPTL Sec. 5-3.1(a). The affidavit that must be filed under SCPA Sec. 1304 to become a voluntary administrator provides that joint bank accounts, trust accounts, U.S. savings bonds, POD (payable on death) accounts or securities, and jointly owned personal property are also excluded in determining the $50,000 threshold. SCPA Sec. 1302 provides that the summary procedures of Article 13 are not applicable to any interest in real property in this state owned by a decedent, but such interest does not prevent the use of the summary procedures. SCPA Sec. 1306 provides that the voluntary administrator has no power to enforce a claim for wrongful death or for personal injuries to the decedent.

This amendment would clarify that

(1) Section 1303 determines who may become a voluntary administrator in conformity with the section's title, whereas Section 1304 determines how to qualify as a voluntary administrator;

(2) a guardian of the property of a distributee may become a voluntary administrator if the decedent dies intestate;

(3) a fiduciary of a deceased distributee may become a voluntary administrator if the decedent dies intestate;

(4) nominated executors have priority to become voluntary administrators over nominated successor executors;

(5) nominated successor executors have priority to become voluntary administrators over an individual eligible to become an administrator c.t.a;

(6) the above priorities to become voluntary administrators apply if a nominated executor who qualifies as a voluntary administrator resigns, dies, or is unable to complete the administration of the deceased's estate; and

(7) multiple nominated executors or nominated successor executors respectively may serve simultaneously as voluntary administrators.

Since its enactment by L. 1963 ch. 495 §1, the amendments to Article 13 have expanded the availability of voluntary administration, most notably, by increasing the gross value of the personal property eligible for voluntary administration from $3,000 as originally enacted, to $50,000 (SCPA Sec. 1301) by L. 2019 ch. 557, §1. Its application was expanded to testate as well as intestate estates (SCPA Sec. 1303(b)) by L. 1970, ch. 998, §§ 2-3.

In addition, the amendments to Article 13 have expanded the set of persons who may become voluntary administrators, most recently to include the decedent's siblings (SCPA Sec. 1303(a) by L. 1995 ch. 281 §1. The standards for who may become a voluntary administrator under SCPA 1303 are generally less stringent than the SCPA Sec. 707 standards applicable to executors and other estate fiduciaries.

A guardian of the property of an infant distributee may serve as voluntary administrator. It is advisable to permit a guardian of the property of an adult distributee to also serve as voluntary administrator to facilitate voluntary administration for a small estate when such a guardian is willing and able to serve whether the distributee is an infant or an adult. Similarly it is advisable to permit a fiduciary of a deceased distributees to serve as voluntary administrators.

There is uncertainty about the number of persons who may serve simultaneously as voluntary administrators. SCPA 1403.1(b) permits multiple persons to serve simultaneously as executors. EPTL Sec. 10-10.7 provides that absent an express provision in the will, such powers may be exercised by a majority of such fiduciaries. On the other hand, SCPA Sec. 1303(c) provides that "[n]o person other than one heretofore mentioned can become a voluntary administrator." Some, but not all, clerks interpret the latter provision to prohibit multiple persons from serving simultaneously as a decedent's voluntary administrator.

It is advisable to permit multiple voluntary administrators to serve simultaneously for testate small estates to satisfy the decedent's preference for multiple executors or multiple successor executors, in the order in which succession is set forth.

The amendment would ensure that a testator's wishes regarding who should administer the testator's personal property would be respected, in the order in which succession is set forth

in the testator's will, without the need for executors to be named in a formal probate proceeding, when the value of the testator's personal property is small enough to qualify for voluntary administration, and some of the decedent's nominees are willing and able to serve.

Thus, the amendment would further the Article 13 remedial goal of providing a summary procedure to implement a decedent's intentions if the decedent leaves a small estate.

LEGISLATIVE HISTORY:

None. New proposal.

FISCAL NOTE:

There would be no revenue impact from implementing the bill.

EFFECTIVE DATE AND SEVERABILITY:

The bill shall take effect immediately. In 1995, the most recent amendment to SCPA Section 1303 was enacted in 1995 with an immediate effective date. The amendment permitted an intestate decedent's aunts and uncles to become voluntary administrators.

The bill also includes a severability section.

FOR CONSIDERATION BY THE NEW YORK STATE BAR ASSOCIATION EXECUTIVE COMMITTEE AND BY THE HOUSE OF DELEGATES, APRIL 2024

Report of the New York State Bar Association Trusts and Estates Law Section
Section Chair Michael S. Schwartz
Approved: December 13, 2023

Drafting Committees: Life Insurance and Employee Benefits Committee
Chair Albert Feuer Vice Chair Anna Masilela
Estates and Trusts Administration Committee
Chairs Paul S. Forster and Jinsoo J. Ro

Proposed Legislation – Becoming a Voluntary Administrator Act

I. Introduction.

The Becoming a Voluntary Administrator Act would permit the guardian of the property of a decedent's otherwise eligible distributee, and the fiduciary of the estate of a post-deceased otherwise eligible distributee of a decedent, to become voluntary administrators of small estates under the informal rules of Article 13 of the Surrogate's Court Practice Act (SCPA). The Act would also clarify the voluntary administration provisions for a decedent who leaves a will nominating executors and/or successor executors, and permit multiple nominees to become simultaneous voluntary administrators

II. Executive Summary and Rationale for the Proposal

The Voluntary Administration provisions were introduced in 1963

> to create a summary procedure for the settlement of small estates without formal administration which will eliminate the delay and unnecessary expense now frequently found in the settlement of such estates; and thereby to relieve the courts, lawyers, debtors, transfer agents and other persons from the burden of handling the details of such estates. [1]

The individuals who administer such estates are called voluntary administrators and voluntary administration is available for both testate and intestate estates. Voluntary administration is limited to the decedent's personal property in the decedent's estate, and is only available if its date of death value was less than or equal to $50,000.

[1] Surrogates Court Act § 137 as enacted by L. 1963 chap. 945 § 1.

For intestate estates, at present the individuals who may become voluntary administrators are primarily the decedent's close relatives, the guardian of the property of an infant, committees, and conservators. For testate estates, the individuals who may become voluntary administrators are primarily the decedent's nominated executors or successor executors.

The voluntary administrator procedures are used extensively. In 2023 there were 30,122 voluntary administrations, 41,250 probates, and 20,386 administration filings in New York courts, and only 9 objections were filed pertaining to such administrations. This is consistent with the facts that many decedents have small estates for which there is little dispute about its disposition, or who should take care of such disposition. Thus, it is often the case that small estates may be disposed of quickly with little expense and little discord using the voluntary administration procedures as originally intended.

There are, however, still gaps in the current voluntary administration procedure.

While the current law permits the guardian of the property of an infant distributee of a decedent (SCPA Article 17) to become a voluntary administrator under SCPA Article 13, it does not do so for the guardian of the property of an otherwise eligible distributee who is intellectually disabled or developmentally disabled (SCPA Article 17-A) or the guardian of the property of an otherwise eligible adult distributee under MHL Article 81. The latter omission is particularly anomalous in light of the eligibility of conservators and committees to become voluntary administrators.

The current law is also ambiguous regarding the voluntary administrator priorities if the decedent has nominated both executors and successor executors, i.e., do nominated executors have priority, and whether if the decedent nominates multiple executors or multiple successor executors may there be multiple simultaneous voluntary administrators, as would be the case if the will were probated.

The Act would address these gaps by

- Allowing any form of the guardian of the property of an otherwise eligible distributee to become a voluntary administrator of the decedent.
- Allowing a fiduciary of the estate of an otherwise eligible distributee to become a voluntary administrator of the decedent.
- Providing that nominated executors have priority over nominated successor executors, and if the decedent nominated multiple executors and/or multiple successor executors, multiple members of either group may, but need not, become simultaneous voluntary administrators.

III. No Additional Parties Support or Oppose the Becoming a Voluntary Administrator Act

None of the other Sections or Committees of the NYSBA has expressed a position on the proposal.

IV. Conclusion

By harmonizing and clarifying the voluntary administration provisions, the Act would enhance the effectiveness of those provision in achieving their purpose of facilitating the informal administration of the many New York small estates. Moreover, those changes would also increase

the likelihood that the individuals who may become the decedent's voluntary administrators align with decedent's presumed or expressed intentions.

NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 ◎ PH 518.463.3200 ◎ www.nysba.org

COMMITTEE ON LEGAL AID

February 21, 2024

TO: Trusts & Estates Law Section

FROM: Committee on Legal Aid

RE: Support of the Trusts & Estates Law Section Proposed Volunteer Administrator Act

The Committee on Legal Aid has voted to support the Trusts & Estates Law Section's proposed legislation, *Becoming a Voluntary Administrator Act*. This proposal would help beneficiaries of those with small estates by permitting them to access an expedited and low-cost way of administering such estates while reflecting the intentions of decedents. For these reasons, we lend our support to the *Becoming a Voluntary Administrator Act.*

NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 PH 518.463.3200 www.nysba.org

PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE

March 14, 2024

TO: Trusts & Estates Law Section

FROM: President's Committee on Access to Justice

RE: Support of the Trusts & Estates Law Section Proposed Volunteer Administrator Act

The President's Committee on Access to Justice has voted to support the Trusts & Estates Law Section's proposed legislation, *Becoming a Voluntary Administrator Act*. This proposal would help beneficiaries of those with small estates by permitting them to access an expedited and low-cost way of administering such estates while reflecting the intentions of decedents.
For these reasons, we lend our support to the *Becoming a Voluntary Administrator Act*.

New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

New York State Bar Association
Committee on Diversity, Equity, and Inclusion

March 15, 2024

Albert Feuer
Chair, Life Insurance and Employee Benefits Committee
New York State Bar Association Trusts & Estates Law Section
Law Offices of Albert Feuer
110-45 71st Road #7M
Forest Hills, New York 11375
afeuer@aya.yale.edu

Dear Mr. Feuer:

The Association's Committee on Diversity, Equity, and Inclusion (the "Committee on DEI") has reviewed the Becoming a Voluntary Administrator Act (the "Act") legislative proposal (the "Proposal") of the Association's Trusts & Estates Law Section (the "T&E Section").

We commend the T&E Section on its legislative proposal, as well as the Section's commitment to ensuring that the intentions of decedents who leave small estates are respected. We support the Proposal, including its stated goal of furthering the remedial goal of providing a summary procedure to implement a decedent's intentions or presumed intentions if the decedent leaves a small estate.

A review of the Proposal shows that there are various portions of the Act that uses gendered language, including, but not limited to, brother or sister, niece or nephew, and aunt or uncle. Although we are aware of the fact that this may not be possible at the current legislative stage or as part of the Proposal, in the future, we would recommend additional revisions to the Act to use gender neutral language in place of gendered language, in order to ensure that the Act reflects the gender identities and pronouns of all New Yorkers affected.

The Committee on DEI thanks the T&E Section for its work on the Proposal, and remains willing to collaborate with the T&E Section on this matter and others.

Signed,

Nihla Sikkander and Dena DeFazio on behalf of the New York State Bar Association's Committee on Diversity, Equity and Inclusion