STATE OF NEW YORK

_____

_____

BILL NUMBER ____

IN _____

_____ __, 2025

**Introduced by: _____**

**AN ACT** to amend the surrogate's court procedure act in relation to enacting the "Who May Become a Voluntary Administrator Act," regarding which persons may become Article 13 voluntary administrators for decedents with small estates.

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 each of the persons in the first category described below with members, provided at least one has not renounced such right and is willing and able to act, and if, after qualifying, any voluntary administrator resigns, dies, or otherwise ceases to act as voluntary administrator, the right is given to each of the persons in the first category described below with members, provided at least one has not renounced and is able to act.

The categories consist, in order of priority, of the following persons who are either competent adults or the fiduciaries of the decedent's close relatives described below: (1) 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~~ (2) the ~~a~~ children of the decedent; (3) ~~or~~ the grandchildren of the decedent; (4) the parents of the decedent; (5) the ~~brother or~~

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

~~sister~~ siblings of the decedent; (6) the children of a sibling ~~nephew or niece~~ of the decedent; (7) the siblings of the parents ~~aunt or uncle~~ of the decedent, ~~, or if there be no such person who will act,~~ The fiduciaries, if any, consist of any of the following: (1) the fiduciary of the deceased close relative; (2) the guardian of the close relative's property; ~~of an infant,~~ (3) the committee of the property of ~~any~~ the incompetent close relative; ~~person,~~ or (4) the conservator of the property of a conservatee who is ~~a~~ the close relative ~~distributee and if~~. A person may also be given the right to become the voluntary administrator if the person files consents from each person who otherwise would have the right to become the voluntary administrator and is either a competent adult close relative or a fiduciary of a close relative. Such consent shall state that the designee will not be entitled to any compensation for the designee's voluntary administrator services and will not be required to post a bond to secure the performance of those services.

If none of the foregoing named persons ~~is~~ willing and able to act ~~as~~ as a voluntary administrator, or if there are no known ~~distributees~~ person within the categories listed above, then ~~to~~ the chief fiscal officer of the county of the decedent's domicile will be given the right to become the voluntary administrator, except in those counties in which a public administrator has been appointed under articles eleven ~~and~~ or twelve of this act, in such counties the public administrator will be given the right to become the voluntary administrator. ~~After the surviving spouse, the first distributee within the class of persons entitled or if no distributee will act or 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 original 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 such right, is not willing and able to act, or if, after qualifying, resigns, dies, or otherwise ceases to act as voluntary administrator, the right is given to the willing and able named successor executors, in the order in which succession is set forth in such will. If all those nominees renounce such right, are not willing and able to act, or if, after qualifying, they resign, die, or otherwise cease to act as voluntary administrator, ~~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 original 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 and able to act 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. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

Section 3. This act shall take effect immediately.

NEW YORK STATE _____

MEMORANDUM IN SUPPORT OF LEGISLATION

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

BILL NUMBER: _____

SPONSOR: _____

TITLE OF BILL:

**AN ACT** to amend the surrogate's court procedure act in relation to enacting the "Who May Become a Voluntary Administrator Act," regarding which persons may become Article 13 voluntary administrators for decedents with small estates.

PURPOSE OR GENERAL IDEA OF BILL:

This bill clarifies when different close relatives of a decedent, the fiduciaries or the designees of these close relatives, and the executors and successor executors nominated by a decedent may become Article 13 voluntary administrators for decedents with small estates,

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whether as an initial or as a successor voluntary administrator. This amendment also explicitly permits multiple executors or successor executors to become simultaneous voluntary administrators if a decedent nominates multiple executors and/or multiple successor executors.

SUMMARY OF PROVISIONS:

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 become a voluntary administrator;

(2) if the decedent is intestate, the decedent's close relatives may become a voluntary administrator if they are in the first category set forth with members, provided at least one has not renounced such right and is willing and able to act as the administrator;

(3) if the decedent is intestate, the above priorities to become a voluntary administrator apply if a close relative who qualified as a voluntary administrator resigns, dies, or is otherwise unable to complete the administration of the deceased's estate;

(4) if the decedent is intestate, a fiduciary of a deceased close relative may become a voluntary administrator with the same priority as if the relative were not deceased;

(5) if the decedent is intestate, a guardian of the property of a close relative may become a voluntary administrator with the same priority as if the relative had no guardian;

(6) if the decedent is intestate, the decedent's close relatives, who may otherwise become a voluntary administrator, may designate a third party who may become a voluntary administrator, if all close relatives consent to such designations, including those whose estate fiduciaries or guardians of the property consent on their behalf, and such consents shall state that the designee will not be entitled to any compensation for the designee's voluntary administrator services and will not be required to post a bond to secure the performance of those services;

(7) if the decedent is intestate, and none of the close relatives described above, or none of their fiduciaries, if any, are willing and able to act as the decedent's voluntary administrator, and they have appointed no designee who will act, then the local chief fiscal officer of the decedent's county of domicile may become the voluntary administrator, except in those counties in which a public administrator has been appointed in which case the public administrator may become the voluntary administrator;

(8) if the decedent is testate, the nominated willing and able executors have priority to become voluntary administrators over nominated successor executors;

(9) if the decedent is testate, nominated willing and able successor executors have priority to become voluntary administrators over an individual eligible to become an administrator c.t.a;

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

(11) multiple nominated executors or nominated successor executors respectively may act simultaneously as voluntary administrators.

JUSTIFICATION:

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. 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.

Since the introduction of voluntary administration by L. 1963 ch. 495 §1, the amendments to the voluntary administration provisions 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 the voluntary administration provisions have expanded the set of persons who may become voluntary administrators, most recently to include the siblings of the decedent's parents (SCPA Sec. 1303(a) by L. 1995 ch. 281 §1. The standards for who may become a voluntary administrator under SCPA Sec. 1303 are generally less stringent than the SCPA Sec. 707 standards applicable to executors and other estate fiduciaries.

It is advisable to clarify that in the intestacy case, voluntary administration uses the same priorities among the decedent's close relatives, if any, to determine who may become the voluntary administrator as used to determine who may obtain letters of administration under SCPA Sec. 1001. Similarly, if there are close relatives or their fiduciaries willing and able to act in a category each may become the initial or successor voluntary administrator, if all the close

relatives or their fiduciaries in a higher category are unwilling or unable to act, or have renounced their right to become the voluntary administrator.

This proposal would provide that there may be voluntary administration of the estate in a case such as one where an unmarried adult with no children who commits suicide in his apartment and leaves personal property with a small value, is survived by his parents and a brother living out of state, but his parents are unwilling or unable to administer his intestate estate. The proposal would permit the parents to renounce their right to become the voluntary administrator and thereby permit his brother to become the voluntary administrator. A renunciation would not be necessary if the brother may show that neither is willing and able to act as a voluntary administrator, as if often the case if the parents are in a nursing facility or, in some cases, when the decedent's brother is taking care of them. The parents in such cases often have no guardians who can renounce their voluntary administration rights or be willing and able to take on those duties on their behalf.

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

In the intestate case, as in the case of formal administration, the close relatives would be permitted to designate a third party to become a voluntary administrator, if each close relative or their fiduciaries, if any. who could otherwise become the decedent's voluntary administrator, consents to such designation. This is similar to the ability of close relatives eligible to obtain letters of administration in formal administration to select a designee. SCPA Sec. 1001.6. The designee may, but need not be a blood or marital relative of the decedent, but like a close relative or one of their fiduciaries, would be entitled no compensation for its voluntary administration services.

This clarification would make it possible for there to be voluntary administration for an intestate decedent who leaves property of small value to the decedent's sole distributee, who lives abroad but wished to give a third party the right to become the decedent's voluntary administrator. Judge Rene Roth could not approve such an appointment and recommended the law be changed to permit this in *Matter of Ortega*, 14 Misc. 3d 312 (Sur. Ct. New York Co., 2006). Judge Roth also recommended therein that a personal representative of a distributee and a guardian of the property of a distributee be permitted to become a voluntary administrator.

There is uncertainty about the number of persons who may act simultaneously as voluntary administrators in the testate case. SCPA Sec. 1403.1(b) permits multiple persons to act 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 act 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 act.

Finally, the amendment addresses not only who may become the initial voluntary administrator, who may become a successor voluntary administrator. It is often the case that the closest relatives of an elderly unmarried decedent without issue are of a similar age, are the initial voluntary administrator. However, they may become unable to continue serving as the voluntary administrator several years later, when property of the decedent may become apparent, such as a small income tax refund. The amendment would insure that a younger close relative may, as such time, become the voluntary administrator and obtain the property.

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 IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE AND SEVERABILITY:

The bill shall take effect immediately. In 1995, the most recent amendment to SCPA Section 1303 was enacted 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.