



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item # 6(b)

REQUESTED ACTION: Approval of an affirmative legislative proposal from the Trusts and Estates Law Section to amend Estates, Powers, and Trusts Law (“EPTL”) § 5-1.2 with respect to the disqualification of spouses in cases involving decedents who married when they lacked the required mental capacity.

Attached are proposed legislative language (pages 1 to 2), a supporting memorandum (pages 2 to 12), and a resolution from the Trusts and Estates Law Section (pages 13 to 14) relating to EPTL 5-1.2.

The purpose of the proposed amendment is to target a type of elder abuse where a person takes unfair advantage of an individual who lacks the capacity to enter into a marriage, or otherwise uses fraud and undue influence to secretly marry the individual for the purpose of obtaining a portion of his or her estate.

The proposed amendment would allow a marriage to be nullified *after* the death of an incapacitated person. Currently, EPTL 5-1.2 only provides grounds for disqualification of a person as “surviving spouse” that apply *prior to* the death of an incapacitated person.

This report was circulated for comment on March 23, 2012. As of this writing, no comments have been received.

Jennifer F. Hillman, vice chair of the section’s Committee on Legislation and Governmental Relations, will present the proposal at the June 21-22 meeting.