

Memorandum Urging Approval TRUSTS AND ESTATES LAW SECTION

T&E #12 - GOV

September 12, 2014

S. 7077-A
A. 9759

By: Senator Bonacic
By: M. of A. Weinstein
Senate Committee: Judiciary
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the estates, powers and trusts law, in relation to powers of attorney in relation to decedents' estates required to be in writing and recorded.

LAW & SECTION REFERRED TO: Section 13-2.3 of the estates, powers and trusts law.

Summary

This memorandum addresses A9759/S7077-A (the "Bill"), which proposes to amend the Estates, Powers and Trusts Law ("EPTL") §13-2.3 to coincide with a new policy by the Office of Unclaimed Funds of the New York Office of the State Comptroller ("OSC") related to abandoned property location service agreements.¹ The measure also seeks to clarify the law with regard to the filing of such agreements with the Surrogate's Court by an abandoned property services locator under Surrogate's Court Procedure Act ("SCPA") § 1310. This is a proposal by the Office of Court Administration.

Currently, a potential claimant who is not a fiduciary may enter into an agreement with an abandoned property services locator, even though such claimant is not authorized to represent the decedent's estate. EPTL § 13-2.3 requires that these agreements be in writing, acknowledged, and recorded in the Surrogate's Court having jurisdiction over the New York estate.² OSC has determined that it will no longer accept any abandoned property services agreements where letters have not issued to an estate representative, unless the agreement is executed by the spouse or children of a decedent or the amount at issue is less than \$1,000. The Bill seeks to ensure that the agreements are not accepted for filing by the Surrogate's Court unless a fiduciary has been appointed or a proceeding to appoint a fiduciary is pending before the court. The Trusts and Estates Law Section supports the Bill.

¹ Pursuant to Gen Bus Law § 393-e, abandoned property location services include "any service for a fee providing assistance to consumers for the purposes of locating and/or retrieving property held by the State Comptroller pursuant to the Abandoned Property Law."

² *Matter of Kelly*, 26 Misc3d 621 (Surr Ct Westchester Co 2009); see *In re Betlem*, 300 A.D.2d 1026 (4th Dept. 2002).

Background

OSC provides information concerning unclaimed funds on its website. Despite this public access, there are services who claim they can help obtain unclaimed funds held by OSC for a finder's fee.

In order to enter into an abandoned property location services agreement, the agreement must comply with New York Abandoned Property Law § 1416, which includes the requirements that the agreement (i) is in such form as may be prescribed by the Comptroller; (ii) is in writing; (iii) is signed by the property owner; and (iv) witnessed and acknowledged by a notary public; (v) discloses the nature of the property; (vi) discloses the name and address of the Comptroller; and (vii) discloses, in a clear and conspicuous manner, and in at least twelve-point boldface type:

Abandoned funds held by the State can be obtained directly from the Office of the State Comptroller by the owner of such funds without paying a fee. These funds are held indefinitely by the Office of the State Comptroller. For more information, contact the Office of the State Comptroller at (insert the current telephone number established by the Office of the State Comptroller for receiving inquiries from consumers regarding unclaimed funds) or (insert the current address of the website of the Office of the State Comptroller).

The agreements also cannot provide for payment of a finder's fee in excess of fifteen percent of the value of recoverable property.

Currently, EPTL § 13-2.3 requires that "every power of attorney relating to an interest in a decedent's estate and every conveyance or assignment of an interest in an estate, or similar instrument, which contains an express or implied authorization or delegation of power to act thereunder shall be in writing and acknowledged..." and recorded in the Surrogate's Court with jurisdiction over the New York estate. It has been held that this requirement applies to abandoned property location services agreements. *Matter of Kelly*, 26 Misc.3d 621 (Surr Ct Westchester Co 2009).

OSC's Policy Change

Currently, a claimant who is not a fiduciary may enter into an abandoned property location services agreement – even though the fiduciary is not authorized to represent the estate. The memo in support of the Bill (the "Bill Memo") states that OSC has determined it will no longer accept an abandoned property location services agreement where letters have not been issued to an estate representative, unless it is executed by the spouse or children of a decedent or the amount at issue is less than \$1,000. Any other claimant would be required to obtain letters pursuant to Article 13 of the SCPA for claims in excess of \$1,000. The Bill Memo states that OSC has proposed and expects to

adopt regulatory changes to this effect. The stated purpose of the Bill is to enact the necessary statutory amendments to coincide with this policy change.

Conclusion

Based on the foregoing, the Trusts and Estates Law Section supports this legislation and urges the Governor to **APPROVE** the bill.

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