

Summer 2019

NEWS

New York Assembly Judiciary Committee

Carl E. Heastie, Speaker • Jeffrey Dinowitz, Chair
Legislative Office Building, Room 831 • Albany, NY 12248 • www.nyassembly.gov

Message from the Chair



Dear Friend,

I write to you with news from the New York State Assembly Judiciary Committee. The 2019 legislative session was one of the most productive and historic sessions on record. Enclosed in this newsletter you'll find some information on legislation that was passed by the Assembly in 2019.

With the legislative session behind us, the Committee will continue to work on issues suitable for legislative review that were not resolved this year. In the coming months, the Committee plans to host hearings on the topic of "court consolidation" and review, gather, and evaluate information on other various challenges facing New Yorkers.

It is my hope that this newsletter will offer some good insight into the workings of the Committee and what we will be working on as we head into the summer. Please be sure to note the contact information that may be of use to you.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Dinowitz".

Jeffrey Dinowitz
Chair, New York State Assembly Judiciary Committee

COMMITTEE JURISDICTION

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over amendments to the State Constitution, Civil Practice Law and Rules, Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relations Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, Eminent Domain Procedure Law and Indian Law. The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. In addition, all proposed amendments

to the New York State Constitution are considered by the Judiciary Committee.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2019. All of the bills below have passed both houses of the legislature unless otherwise noted. Bills will be delivered to the governor for his consideration or in the case of constitutional amendments, be brought before the legislature again for second passage in the next legislative session.



Chairman Dinowitz bears witness testimony at the 2019 Joint Budget Hearing on Public Protection.

LEGISLATIVE HIGHLIGHT: *Uniform Partition of Heirs Property Act – A.7058A (Dinowitz)/S.4865 (Hoylman)*

The Uniform Partition of Heirs Property Act (“UPHPA”) provides families and communities protection from a strategy that is used by real estate speculators and permitted under the partition provisions of the Real Property Actions and Proceedings Law (Article 9). Under current law, a real estate speculator can purchase a small interest from a co-tenant and then force a sale of the property, often at a price far below market value. This predatory strategy has resulted in individuals being evicted from homes on property they acquired from a parent or grandparent in some cases, and the division of large tracts of land into lots for residential or commercial development resulting in a windfall for the real estate speculators.

The UPHPA adds a new section to article 9 that recognizes a special class of property called “heirs property,” which is defined as property owned by co-tenants any of whom acquired title from

a relative, living or dead, and where a minimum percentage of the co-tenants are related to each other, or acquired a minimum percentage of the property from a relative, or where any co-tenant who acquired title from a relative lives on the property. If there is no binding agreement among the co-tenants that governs the partition of the heirs property, the new provisions provide a series of steps that lead to resolution of the proceeding that, using a fair market value of the property as a whole, can result in a disposition of the property that gives co-tenants more options than simply selling their interest in the property.

The new provisions allow some co-tenants to purchase the interests of other co-tenants who wish to sell. The law does not favor a disposition by sale as the present law does, which is more appropriate in a commercial setting in which the property does not meet the definition of heirs property.



Chairman Dinowitz was honored to host and introduce members of the New York State Women’s Bar Association on the Assembly floor.

Protecting Domestic Violence Victims, Children & Families

Relates to adoption by a petitioner where such petitioner’s parentage is legally-recognized – A.460 (Paulin)/S.3999 (Hoylman) This bill provides that a second parent’s petition to adopt shall not be denied solely on the basis that the petitioner’s parentage is already legally recognized.

Relates to name change upon marriage – A.1044 (Simotas)/S.2505 (Kaplan) This bill allows one or both parties to a marriage to elect to change their middle name on their marriage license.

Relates to allowing a person having a lawful order of custody of a child to make medical decisions for such child – A.1239 (Jaffee)/S.3248 (Salazar) This bill includes non-parents with lawful orders of custody as persons who may make medical decisions for minors in their care.

Establishes a time period in which an action to recover damages for injury arising from domestic violence must be brought – A.1945 (Zebrowski)/S.2416 (Kaplan) The bill increases the statute of limitation for civil suits related to injury caused by domestic violence to two years.

Provides an exemption from jury duty for breastfeeding women – A.5424 (Crespo)/S.748 (Montgomery) Allows women who are breastfeeding children to be excused from jury service or to postpone jury service for up to two years.

Relates to notification of rights of victims of domestic violence in criminal and family court proceedings – A.7395 (Weinstein)/S.6158 (Liu) This bill would simplify the language of the notice of rights and expectations that is required to be provided by law enforcement to domestic violence victims. It expands the breadth of the information provided and makes the notice available, at a minimum, in plain English, Spanish, Chinese, and Russian.

Relates to the date of adjustment and amount of the spousal maintenance cap – A.7518 (Joyner)/S.5515 (Montgomery) This bill would amend the family court act, and the domestic relations law in relation to the date of adjustment, as well as the amount of the spousal maintenance cap.

Relates to the notification of allowance for infant support – A.8033 (Seawright)/S.5144-A (Montgomery) This bill requires notice to be given to either the parent or legal guardian of the infant, and if there is more than one, to both parents or legal guardians of the infant at the same time when an allowance is made for an infant’s support.

Protecting Tenants and Homeowners

Provides for a notice of conveyance of real property to be sent to the owners of record of residential real property - A440A (Perry)/S.5372 (Comrie) In order to combat conveyance fraud, this bill requires county clerks and city registrars to send written notice to the owner of a residential property when it is conveyed to another person or entity.

Relates to inspecting, securing and maintaining vacant and abandoned residential real property – A.1800 (Magnarelli)/S.4182 (Salazar)

This bill amends the Real Property Actions and Proceedings Law to require that mortgage holders maintain vacant and abandoned residential properties that are part of a homeowners association or co-op.

Establishes the right of tenants to call police or emergency assistance without fear of losing their housing – A.2665A (Lavine)/S.4657A (Hoylman)

This bill provides legal protections to tenants from collateral consequences such as eviction when they are compelled to contact emergency services for assistance in cases where they are the victims of violence or if they fear violence. This bill also provides protections to tenants who call for emergency service assistance on behalf of other tenants.

Provides that the defense, in a mortgage foreclosure action, of the plaintiff's lack of standing is not waived because of the defendant's failure to raise such defense in his or her responsive pleading – A.5619 (Weinstein)/S.5160 (Kavanagh)

This bill amends the Real Property Actions and Proceedings Law to provide that the defense of the plaintiff's lack of standing to bring a residential mortgage foreclosure action is not waived if the defendant fails to raise the defense in a pre-answer motion or an answer to the complaint. This safeguard does not apply after a foreclosure sale unless the judgment of foreclosure and sale was issued on the defendant's default.

Directs the department of financial services to establish a website for federal home equity conversion mortgage product comparison – A.5625A (Weinstein)/S.3221 (Sanders)

This bill directs the Department of Financial Services, to create a new website which that will provide to seniors a comparison of federal home equity conversion reverse mortgage products offered in the state.

Provides for the regulation of federal home equity conversion mortgages – A.5626 (Weinstein)/S.4407 (Gouardes)

This bill regulates reverse mortgages issued under the Federal Home Equity Conversion Mortgage for Seniors Program. It protects seniors from unfair or deceptive practices, by requiring authorized lenders to provide more information about their products, and to provide consumer protection material.

Administration of Justice

Where one defendant has settled in a tort case, this bill requires, that the remaining defendants must elect prior to trial how the settlement amount will be applied to reduce the remaining defendant's liability; repealer – A.2372 (Dinowitz)/S.6081 (Hoylman)

The object of this bill is to encourage pre-trial settlements in multi-defendant torts litigation. Non-settled defendants are required to elect before opening statements the method by which the any settlement amounts is to be offset against the verdict.

Relates to the statute of limitations for public water suppliers to commence an action for injury to property – A.5477C (Thiele)/S.3337C (Gaughran)

This bill changes the statute of limitations for bringing lawsuits against polluters of groundwater supplies by public and wholesale water suppliers thereby better protecting the public against contamination of that critical resource.

Relates to small claims court jurisdiction – A.7525 (DenDekker)/S.6417 (Gianaris)

This bill raises the monetary jurisdiction of small claims courts in the New York City Civil Court system from \$5,000.00 to \$10,000.00. This will make it possible for more persons to use the small claims process to resolve disputes.

Relates to raising the value of a small estate – A.7571A (Dinowitz)/S.4951A (Sepúlveda) This bill amends the Surrogate's Court Procedure Act to raise the value of a "small estate" from \$30,000.00 to \$50,000.00. This change reflects the

increase in values of estates resulting from inflation and reduces the cost for people to administer "small estates" using a \$1.00 "do-it-yourself program provided by the court system.

Extends provisions of law relating to the use of electronic means for the commencement and filing of papers in certain actions or proceedings – A.7969 (Dinowitz)/S.6256 (Hoylman)

This bill extends for another two years provisions related to the use of electronic means for the commencement and filing of papers in certain actions and proceedings.

Workers and Consumer Protections

Increases the applicability of the plain language law to consumer contracts involving amounts up to \$250,000 – A.2653A (Dinowitz)/S.3704 (Kavanagh) This bill increases the monetary exclusion on the requirement of plain language in consumer contracts.

Relates to voiding and rendering unenforceable contract provisions limiting certain speech by contractees – A.3548 (Dinowitz)/S.2455A (Krueger)

This bill prohibits contractual provisions which limit or waive the consumer's right to make any statement regarding the seller or lessor, and allows for penalties against violators.

Requires the inclusion of instruction in ethical business practices and recent legal matters in the continuing education requirements for real estate licensees – A. 6082 (Dinowitz)/S.3839 (Hoylman) This bill expands the continuing education for real estate licensees to require two and a half hours pertaining to ethical business practices and one hour pertaining to legal updates.

Trusts and Estates and Guardianship

Makes certain technical amendments to the estates, powers and trusts law and the surrogate's court procedure act to reflect the provisions of the marriage equality act – A.5604 (O'Donnell)/S.300 (Hoylman)

This bill amends the Estates, Powers and Trusts Law and the Surrogates Court Procedure Act to reflect the provisions of the Marriage Equality Act by using gender neutral designations.

Relates to testamentary disposition to trustee under, or in accordance with, terms of existing inter vivos trust – A.7519 (Stirpe)/S.5513 (Hoylman)

This bill clarifies the Estates, Powers and Trusts Law with respect to testamentary dispositions to trustees of an inter vivos trust in accordance with the terms of a will. The new law makes it clear that an inter vivos trust will be deemed created even if not funded as long as the testator identifies the trust in his or her will and executes the trust document prior to executing the will, provided that at least one trustee executes the trust document prior to the death of the testator.

Relates to the commissions of donees of a power in trust, including donees of a power during minority – A.7522 (Buchwald)/S.5512 (Hoylman)

This bill amends the Surrogate's Court Procedure Act to regulate how commissions are to be computed and paid to donees of a power in trust including donees of a power during minority. Formerly, the statute addressed only the commissions of trustees.

Relates to the privilege between a personal representative and the attorney to lifetime trustees – A.7601 (Dinowitz)/S.6409 (Gaughran)

This bill establishes that a lifetime trustee is a "personal representative" and is therefore protected by the attorney-client privilege extended to other fiduciaries. The law also provides that the fiduciary's testimony that he or she has relied on the attorney's advice does not by itself constitute a waiver of the attorney-client privilege.

IMPORTANT CONTACTS

New York State Unified Court System Office of Court Administration

25 Beaver Street, Room 852
New York, NY 10004

NYS Unified Court System Office of Court Administration

4 ESP, Suite 2001, Empire State Plaza
Albany, NY 12223-1450

NYC Office: 212-428-2700
Albany Office: 518-453-8650
<http://www.nycourts.gov/>

The New York State Unified Court System is the official name of the judicial branch of New York State government. The Court hears on average over 3 million cases per year on a wide array of issue. Such matters involve civil and criminal complaints, family matters, landlord-tenant cases, and trust and estate issues, among many others.

NYS Attorney General

The Capitol
Albany, NY 12224
1-800-771-7755 www.ag.ny.gov

The New York State Office of the Attorney General mediates and litigates various cases against businesses and individuals engaged in fraudulent, misleading, deceptive or illegal trade practices. The Office pays special attention to patterns of complaints involving the same company, in addition to new and unique issues. When appropriate, the Attorney General's office will direct consumers to the appropriate agency.

Amendments to the State Constitution

Removes ten day advance voter registration requirement – A.777 (Carroll)/S.1048 (Gianaris) This bill removes the ten day advance voter registration requirement.

Authorizes ballot by mail by removing cause for absentee ballot voting – A.778 (Vanel)/ S.1049 (Comrie) This bill authorizes ballot by mail by removing cause for absentee ballot voting.

Relates to the right to clean air and water and a healthful environment – A.2064 (Englebright)/S.2072 (Carlucci) This is a Resolution to amend article 1 of the State Constitution to provide that people have a right to clean air and water and a healthful environment.

Relates to the jurisdiction over the classes of actions and proceedings which shall be originated in the New York City Civil Court – A.7714 (Dinowitz)/S.6346 (Sepúlveda) This is a Resolution to amend section 15 article VI of the Constitution to increase the monetary jurisdiction of the New York City Civil Court from \$25,000 to \$50,000.

Resolutions Reported by the Committee

Calling for ratification of the Equal Rights Amendment – K.77 (Seawright) This resolution calls for the ratification of the Equal Rights Amendment by members of the U.S. Senate and House of Representatives and asks the Assembly to affirm strong support of the Equal Rights Amendment and a commitment to put the ERA into the Constitution. (Adopted by the Assembly)

New York State Assembly, Albany, New York 12248



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