



NEW JERSEY STATE BAR ASSOCIATION

**Statement On A2351 (Mukherji)
Assembly Judiciary Committee
October 17, 2022**

The New Jersey State Bar Association supports A2351, which permits a court to effectuate equitable distribution when a complaint for divorce or dissolution of a civil union has been filed and either party has died prior to a final judgment. We are appreciative of Chairman Raj Mukherji's sponsorship of this bill, which resolves the issue when a surviving spouse is excluded from receiving an elective share under estate laws and is also precluded from receiving a share of equitable distribution in a divorce proceeding when a spouse dies prior to a final judgment of a divorce.

The bill codifies the holding in In the Matter of the Estate of Arthur Brown, Deceased, 448 N.J. Super. 252 (App. Div. 2017), cert. den. 230 N.J. 393. The Appellate Division held that despite the presence of a cause of action of divorce, the surviving spouse was not allowed to disclaim an elective share. This holding resolves an important issue regarding these matters where a spouse dies prior to a final judgment of a divorce and the surviving spouse is left without any entitlement to the deceased spouse's estate.

The NJSBA worked collaboratively with stakeholders including elder law attorneys, trust and estate attorneys, and the New Jersey Law Revision Commission to address this issue. This legislation will simply provide a remedy for the division of the deceased spouse's property.

We urge the committee to vote yes on this bill.