

NY CLS CPLR § 4527

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Article 45 Evidence (§§ 4501 — 4551)

§ 4527. Death or other status of missing person

(a) Presumed Death. A written finding of presumed death, made by any person authorized to make such findings by the federal missing persons act is prima facie evidence of the death, and the date, circumstances and place of disappearance. In the case of a merchant seaman, a written finding of presumed death, made by the maritime war emergency board or by the war shipping administration or the successors or assigns of such board or administration in connection with war risk insurance is prima facie evidence of the death, and the date, circumstances and place of disappearance.

(b) Death, Internment, Capture and Other Status. An official written report or record that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by an officer or employee of the United States authorized by law of the United States to make it is prima facie evidence of such fact.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 341a.

Advisory Committee Notes:

This section is the same as former § 341-a, with language changes designed to clarify and simplify. The reference to a certified copy in the former section is covered by CPLR § 4539.

Notes to Decisions

1. Under prior law

War Department report, that soldier was missing in action in France as of Dec. 27, 1944, was admissible as evidence of death, date and circumstance, in action on life policy. *Risikoff v Metropolitan Life Ins. Co.*, 66 N.Y.S.2d 878, 188 Misc. 768, 1946 N.Y. Misc. LEXIS 3161 (N.Y. Sup. Ct. 1946).

Finding of War Department that bomber crew member died Jan. 17, 1946, made for termination pay purposes, did not establish actual or probable date of death, but it did confine period of speculation to such date. *In re Mt. Vernon Trust Co.*, 83 N.Y.S.2d 902, 193 Misc. 226, 1948 N.Y. Misc. LEXIS 3473 (N.Y. Sup. Ct. 1948).

Upon application for letters of administration on estate of infant child of Navy lieutenant who with wife and twin children were lost at sea while passengers on Navy airplane in same disaster, certificate issued by Navy department certifying determination of death of decedent on specified date sufficed to establish allegations of petition. *In re Jacobsen's Estate*, 143 N.Y.S.2d 432, 208 Misc. 443, 1955 N.Y. Misc. LEXIS 2848 (N.Y. Sur. Ct. 1955).

Research References & Practice Aids

Federal Aspects:

The Federal Missing Persons Act, cited in statutory text, formerly appeared as 50 USC Appx. §§ 1001 et seq. prior to its repeal by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 632; similar provisions now appear as 5 USCS §§ 5561 et seq. and 37 USCS §§ 551 et seq.

Jurisprudences:

57 NY Jur 2d Evidence and Witnesses § 109. .

58 NY Jur 2d Evidence and Witnesses § 504. .

Law Reviews:

Evidence symposium. 52 Cornell L.Q. 177.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4527, Death or Other Status of Missing Person.

1 Rohan, New York Civil Practice: EPTL ¶ 1-1.1, 2-1.6, 2-1.7.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 30.02.

2 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 901.07, 1003.18, 1004.02; 3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1422.01.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 35.02.

Matthew Bender's New York Evidence:

1 Bender's New York Evidence § 118.02. Authentication of Public and Official Documents Dealing with Natural Persons.

Annotations:

Presumption of death from absence, in proceedings for social security benefits. 1 ALR Fed 753.

Matthew Bender's New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Texts:

3 New York Trial Guide (Matthew Bender) § 40.51. .

Hierarchy Notes:

NY CLS CPLR, Art. 45

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