

STATE OF NEW YORK

6046

2017-2018 Regular Sessions

IN ASSEMBLY

February 22, 2017

Introduced by M. of A. BUCHWALD, WEINSTEIN, WEPRIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to the commissions of donees of a power in trust, including donees of a power during minority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2306 of the surrogate's court procedure act is
2 amended to read as follows:

3 § 2306. Annual statements to be furnished to beneficiaries

4 Any trustee, donee of a power during minority or donee of a power in
5 trust who is not required to furnish annual statements under either 2308
6 or 2309 because he or she has not retained annual commissions shall
7 nevertheless be required to furnish the annual statements referred to in
8 those sections to any beneficiary receiving income or any person inter-
9 ested in the principal of the trust who shall request such statements,
10 or in the case of a power during minority or of a power in trust, to the
11 beneficiary of the power in trust, or to a person to whom a payment not
12 exceeding \$10,000 could be made under subdivision 1 of section 2220 of
13 this chapter.

14 § 2. The opening paragraph of subdivision 1 of section 2307 of the
15 surrogate's court procedure act, as amended by chapter 474 of the laws
16 of 1994, is amended to read as follows:

17 Except as otherwise provided in paragraph (f) of this subdivision on
18 the settlement of the account of any fiduciary other than a trustee, a
19 donee of a power during minority or a donee of a power in trust, the
20 court must allow to him or her the reasonable and necessary expenses
21 actually paid by him or her and if he or she be an attorney of this
22 state and shall have rendered legal services in connection with his or
23 her official duties, such compensation for his or her legal services as

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 appear to the court to be just and reasonable and in addition thereto it
2 must allow to the fiduciary for his or her services as fiduciary, and if
3 there be more than one, apportion among them according to the services
4 rendered by them respectively the following commissions:

5 § 3. Section 2308 of the surrogate's court procedure act, the section
6 heading and subdivision 1, as amended by chapter 503 of the laws of
7 1980, paragraph (c) of subdivision 1 as added by chapter 376 of the laws
8 of 2001, subdivision 2 as amended by chapter 654 of the laws of 1993,
9 subdivision 3 as amended by chapter 243 of the laws of 2001, subdivi-
10 sions 4, 6, 7 and paragraph (d) of subdivision 9, as amended and subdivi-
11 sion 12 as added by chapter 237 of the laws of 1978, paragraph (a) of
12 subdivision 5 as amended and subdivision 13 as added by chapter 936 of
13 the laws of 1984, paragraphs (a) and (b) of subdivision 6, as amended by
14 chapter 245 of the laws of 1991, and subdivision 8 as amended by chapter
15 685 of the laws of 1967, is amended to read as follows:

16 § 2308. Commissions of trustees, donees of power during minority and
17 donees of powers in trust under wills of persons dying, or
18 under lifetime trusts created, on or before August 31, 1956

19 1. On the settlement of the account of any trustee or donee of power
20 in trust under the will of a person dying on or before August 31, 1956,
21 or under a lifetime trust established on or before August 31, 1956, the
22 court must allow him or her his or her reasonable and necessary expenses
23 actually paid by him or her and if he or she be an attorney of this
24 state and shall have rendered legal services in connection with his or
25 her official duties, such compensation for his or her legal services as
26 shall appear to the court to be just and reasonable and in addition
27 thereto it must allow to the trustee or to the donee of the power in
28 trust for his or her services as trustee or donee of the power in trust
29 the following commissions from trust principal or property subject to
30 the power in trust:

31 (a) For receiving principal or property subject to the power in trust

32 (1) all sums of money constituting principal or property subject to
33 the power in trust not exceeding \$2,000 at the rate of 3 per cent;

34 (2) all additional sums of principal or property subject to the power
35 in trust not exceeding \$10,000 at the rate of 1 1/2 per cent;

36 (3) all sums of principal or property subject to the power in trust
37 above \$12,000 at the rate of 1 1/4 per cent; and

38 (b) For paying out principal or property subject to the power in trust
39 at the rate of 1 per cent.

40 (c) Notwithstanding the provisions of section 8 of chapter 237 of the
41 laws of 1978, commissions provided by paragraph (a) of this subdivision
42 for receiving principal or property subject to the power in trust shall
43 not be allowed to a trustee or donee of a power in trust who qualifies
44 to act as such on or after June 5, 1978, and shall not be allowed on
45 additions of property received on or after June 5, 1978; such commis-
46 sions on any increments in property that are payable by reason of any
47 sale, exchange or liquidation of such property shall be allowed on the
48 lesser of (1) the amount of such increments on the date of sale,
49 exchange or liquidation of such property and (2) the amount of such
50 increments on June 5, 1978; and such commissions on any increments in
51 property that are payable by reason of any distribution of such property
52 shall be allowed on the lesser of (1) the amount of such increments on
53 the date of distribution of such property and (2) the amount of such
54 increments on the effective date of this paragraph.

1 2. In addition to the commission allowed by subdivision one a trustee
2 or a donee of a power in trust shall be entitled to annual commissions
3 at the following rates:

4 (a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000
5 of principal or property to the power in trust;

6 (b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of
7 principal or property subject to the power in trust; and

8 (c) \$3.00 per \$1,000 or major fraction thereof on all additional prin-
9 cipal or property subject to the power in trust.

10 Such annual commissions shall be computed either on the value of the
11 principal of the trust or of the property subject to the power in trust
12 at the end of the period for which the commissions are payable or, at
13 the option of the trustee or of the donee of the power in trust, on the
14 value of the principal of the trust or of the property subject to the
15 power in trust at the beginning of such period, provided that the option
16 elected by the trustee or of the donee of the power in trust for the
17 first period for which such commissions are payable shall be used during
18 the continuance of the trust or of the power in trust and shall be bind-
19 ing on any successor or substitute trustee or trustees or successor or
20 substitute donees of the power in trust. In the case of a trust or
21 power in trust which prior to January 1, 1994 computed annual commis-
22 sions on the basis of a 12 month period (other than a calendar year),
23 the trustee's or donee's prior election of such 12 month period shall be
24 binding unless, prior to January 1, 1995, the trustee or donee makes a
25 new election to compute annual commissions on the basis of a calendar
26 year either on the value of the principal of the trust or of the proper-
27 ty subject to the power in trust at the end of, or at the option of the
28 trustee or donee of the power in trust at the beginning of, the calendar
29 year for which the commissions were payable, which new election shall be
30 used during the remaining continuance of the trust or of the power in
31 trust and shall be binding on any successor or substitute trustee or
32 trustees or donee or donees of the power in trust. The computation shall
33 be made on the basis of a 12 month period but the amount so computed
34 payable to a trustee or donee of a power in trust shall be proportion-
35 ately reduced or increased for any payments made in partial distribution
36 of the trust or of the property subject to the power in trust or receipt
37 of any additional property into the trust or by the donee of a power in
38 trust within such period and shall be proportionately reduced in any
39 period for which such commissions are payable to the trustee or donee of
40 the power in trust if the period is less than 12 months. For the purpose
41 of computing the annual commissions the value of any principal asset
42 when received by the trust or by the donee of a power in trust shall be
43 the presumptive value of the asset at the beginning and end of the peri-
44 od for which such commissions are payable. In computing the value of the
45 principal of the trust or of the property subject to the power in trust
46 the trustee or the donee of the power in trust may use the presumptive
47 value in respect of any principal asset or may use the actual value of
48 the asset. On the settlement of the account of the trustee or of the
49 donee of a power in trust any person interested may dispute the amount
50 of any commission claimed or retained. The burden of proving that the
51 actual value of any principal asset differs from its presumptive value
52 is upon the trustee, the donee of the power in trust or other person
53 claiming the difference.

54 3. Unless the will otherwise explicitly provides, the annual commis-
55 sions allowed by subdivision two of this section shall be payable one-
56 third from the income of the trust or of the property subject to the

1 power in trust and two-thirds from the principal of the trust or from
2 the property subject to the power in trust. However, in the case of a
3 trust whose definition of income is governed by 11-2.4 of the estates,
4 powers and trusts law, such annual commissions shall be payable from the
5 corpus of any such trust after allowance for the unitrust amount and
6 shall not be payable out of such unitrust amount.

7 4. The commissions allowed by subdivision 2 may be retained by a trustee
8 or donee of a power in trust provided he or she furnishes annually
9 as of a date not more than 30 days prior to the end of the trust year
10 selected by the trustee or the calendar year, to each beneficiary
11 currently receiving income, and to any other beneficiary interested in
12 the income and to any person interested in the principal of the trust
13 who shall make a demand therefor or to the beneficiary of the power in
14 trust who shall make a demand therefor, a statement showing the principal
15 assets or the property subject to the power in trust on hand on that
16 date, and at least annually or more frequently if the trustee or donee
17 of a power in trust so elects, a statement showing all his or her
18 receipts of income and principal or property subject to the power in
19 trust during the period with respect to which the statement is rendered
20 including the amount of any commissions retained and the basis upon
21 which the commissions were computed. A trustee or donee of a power in
22 trust shall not be deemed to have waived any commissions by reason of
23 his or her failure to retain them at the time when he or she becomes
24 entitled thereto; provided however that commissions from income for any
25 given trust or calendar year shall be allowed and retained only from
26 income derived from the trust or from the property subject to the power
27 in trust during that year and shall not be supplied from income on hand
28 in respect of any other trust or calendar year. If a beneficiary receiving
29 income does not desire to be furnished with any such statement his
30 or her advice to the trustee or to the donee of the power in trust to
31 that effect in writing shall thereafter excuse the trustee or donee of
32 the power in trust from furnishing such statement to the beneficiary
33 unless and until the beneficiary requests such annual statements from
34 the trustee or donee of the power in trust.

35 5. (a) During the continuance of a trust created solely for public,
36 religious, charitable, scientific, literary, educational or fraternal
37 uses and during the period of continuance of such a trust after the
38 termination of a life use or uses the trustee shall be entitled to and
39 may retain commissions from income in an amount annually equal to 6 per
40 cent of income collected in each year.

41 (b) In the case of a trust created solely for public, religious, charitable,
42 scientific, literary, educational or fraternal uses the trustee
43 shall not be entitled to any commission from principal.

44 (c) In the case of such a trust which continues after the termination
45 of a life use or uses the trustee for the period of the measuring life
46 or lives shall be entitled to commissions from income and principal at
47 the rates and according to the terms otherwise provided in this section,
48 except that he or she shall not be entitled to any commissions for
49 paying out any amount of principal.

50 6. (a) If the gross value of the principal of the trust or of the
51 property subject to the power in trust accounted for amounts to \$400,000
52 or more and there is more than 1 trustee or donee of the power in trust,
53 each trustee or donee of the power in trust is entitled to the full
54 compensation for receiving and paying out principal or property subject
55 to the power in trust allowed herein to a sole trustee or donees of the
56 power in trust unless there are more than 3, in which case the compen-

1 sation to which 3 would be entitled must be apportioned among the trus-
2 tees or donees of the power in trust according to the services rendered
3 by them respectively, unless the trustees or donees of the power in
4 trust shall have agreed in writing among themselves to a different
5 apportionment which, however, shall not provide for more than one full
6 commission for any one of them. If the gross value of the principal of
7 the trust or of the property subject to the power in trust accounted for
8 is:

9 (i) less than \$100,000 and there is more than 1 trustee or donee of
10 the power in trust the full compensation for receiving and paying out
11 principal or property subject to the power in trust allowed herein to a
12 sole trustee or donee of the power in trust must be apportioned among
13 them according to the services rendered by them respectively, or

14 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of
15 the power in trust is entitled to the full compensation for receiving
16 and paying out principal or property subject to the power in trust
17 allowed pursuant to this subdivision to a sole trustee or donee of the
18 power in trust unless there are more than 2 trustees or donees of the
19 power in trust in which case the full compensation for paying out prin-
20 cipal or property subject to the power in trust allowed pursuant to this
21 subdivision to 2 trustees or donees of the power in trust must be appor-
22 tioned among them according to the services rendered by them respective-
23 ly,

24 unless the trustees or donees of the power in trust shall have agreed in
25 writing between or among themselves to a different apportionment which,
26 however, shall not provide for more than one full commission for any one
27 of them.

28 (b) If the value of the principal of the trust or of the property
29 subject to the power in trust for the purpose of computing the annual
30 commissions allowed by subdivision 2 amounts to \$400,000 or more and
31 there is more than one trustee or donee of the power in trust, each
32 trustee or donee of the power in trust is entitled to the full annual
33 commission allowed herein to a sole trustee or donee of the power in
34 trust unless there are more than 3, in which case the annual commissions
35 to which 3 would be entitled must be apportioned among the trustees or
36 donees of the power in trust according to the services rendered by them
37 respectively, unless the trustees or donees of the power in trust shall
38 have agreed in writing among themselves to a different apportionment
39 which, however, shall not provide for more than one full annual commis-
40 sion for any one of them. If the value of the principal or of the prop-
41 erty subject to the power in trust for the purpose of computing the
42 annual commission allowed by subdivision 2 amounts to:

43 (i) less than \$100,000 and there is more than 1 trustee or donee of
44 the power in trust, the annual commissions from income and the annual
45 commission allowed herein to a sole trustee or donee of the power in
46 trust must be apportioned among the trustees or donee of the power in
47 trust according to the services rendered by them respectively, or

48 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of
49 the power in trust is entitled to the full annual commission allowed
50 pursuant to this subdivision to a sole trustee or donee of the power in
51 trust unless there are more than 2 trustees or donees of the power in
52 trust in which case the full annual commissions allowed pursuant to this
53 subdivision to 2 trustees or donees of the power in trust must be appor-
54 tioned among them according to the services rendered by them respective-
55 ly,

1 unless the trustees or donees of the power in trust shall have agreed in
2 writing between or among themselves to a different apportionment which,
3 however, shall not provide for more than one full annual commission for
4 any one of them. However, if from a trust or from property subject to a
5 power in trust having a value of \$400,000 or more, or if from a trust or
6 from property subject to a power in trust having a value of \$100,000 or
7 more but less than \$400,000, as the case may be, at the beginning of a
8 trust year or of the calendar year in the case of a power in trust, any
9 payments in partial distribution of the trust or of the property subject
10 to the power in trust shall be made during the trust or calendar year so
11 as to reduce the trust or of the property subject to the power in trust
12 to a value of less than \$400,000 or \$100,000, as the case may be, at the
13 end of the trust or calendar year, then the annual commission allowed
14 herein shall, on a proportionate basis, be those allowed to a trustee of
15 a trust or to the donees of a power in trust over property having a
16 value of \$400,000 or more, of a trust or to the donees of a power in
17 trust over property having a value of \$100,000 or more but less than
18 \$400,000, as the case may be, for the period from the beginning of the
19 trust or calendar year to the date of the distribution and shall, on a
20 proportionate basis, be those allowed to trustees of a trust or to the
21 donees of a power in trust over property having a value of either
22 \$100,000 or more but less than \$400,000 or less than \$100,000, as the
23 case may be, for the remainder of the trust or calendar year and the
24 part of such commissions payable from principal and computed from the
25 beginning of the trust or calendar year to the date of distribution
26 shall be charged ratably to the property remaining in the trust and to
27 the property distributed from the trust on the basis of their respective
28 values. Further, if during a trust year or a calendar year in the case
29 of power in trust additional property shall be received into a trust
30 which had a value of less than \$100,000 or by a donee of a power in
31 trust the property subject to which had a value of less than \$100,000,
32 or into a trust which had a value of \$100,000 or more but less than
33 \$400,000 or by a donee of a power in trust the property subject to which
34 had a value of \$100,000 or more but less than \$400,000, as the case may
35 be, at the beginning of the trust or calendar year so that because of
36 the additional property the trust or the property subject to the power
37 in trust shall have a value of \$100,000 or more or of \$400,000 or more,
38 as the case may be, at the end of the trust or calendar year, then the
39 annual commission allowed herein to the trustee or to the donee of the
40 power in trust shall, on a proportionate basis, be those allowed to
41 trustees of a trust or to donees of a power in trust over property
42 having a value of less than \$100,000, or to trustees of a trust or to
43 the donees of the power in trust having a value of \$100,000 or more but
44 less than \$400,000, as the case may be, for the period from the begin-
45 ning of the trust or calendar year to the date of the receipt of the
46 additional property and shall, on a proportionate basis, be those
47 allowed to trustees of a trust or to donees of a power in trust over
48 property having a value of \$100,000 or more but less than \$400,000, or
49 to trustees of a trust or to donees of a power in trust over property
50 having \$400,000 or more, as the case may be, for the remainder of the
51 trust or calendar year.

52 (c) Notwithstanding any provisions of paragraphs (a) and (b) of this
53 subdivision to the contrary, if during the continuance of a trust
54 created solely for public, religious, charitable, scientific, literary,
55 educational or fraternal uses or during the continuance of such a trust
56 after the termination of a life use or uses, the annual income of the

1 trust amounts to \$4,000 or more and there is more than 1 trustee, each
2 trustee is entitled to the full commission allowed under subdivision 5
3 to a sole trustee unless there are more than 2, in which case the
4 commissions to which 2 trustees would be entitled must be apportioned
5 among the trustees according to the services rendered by them respec-
6 tively, unless they shall have agreed in writing among themselves to a
7 different apportionment which, however, shall not provide for more than
8 one full commission to any one of them; provided however, if during the
9 continuance of a trust created solely for public, religious, charitable,
10 scientific, literary, educational or fraternal uses created prior to
11 April 1, 1948, the annual income of the trust amounts to \$4,000 or more
12 and there is more than 1 trustee each trustee is entitled to the full
13 commission allowed under subdivision 5 to a sole trustee unless there
14 are more than 3, in which case the commission to which 3 trustees would
15 be entitled must be apportioned among the trustees according to the
16 services rendered by them respectively, unless they shall have agreed in
17 writing among themselves to a different apportionment which, however,
18 shall not provide for more than one full commission to any one of them.
19 If the annual income of the trust amounts to less than \$4,000 and there
20 is more than 1 trustee the commissions to which a sole trustee would be
21 entitled under subdivision 5 must be apportioned among the trustees
22 according to the services rendered by them respectively unless they
23 shall have agreed in writing among themselves to a different apportion-
24 ment.

25 7. Where a trustee or donee of a power in trust is for any reason
26 entitled or required to collect the rents of and manage real property
27 the net amount of rents collected and not the gross amount shall be used
28 in making computation of commissions allowed by subdivision 5 hereof and
29 in addition to the commissions herein provided he or she shall be
30 allowed and may retain for such services 6 per cent of the gross rents
31 collected, but there shall be only 1 such additional commission regard-
32 less of the number of trustees or donees of the power in trust. If there
33 are 2 or more trustees or donees of the power in trust the additional
34 commission herein provided must be apportioned among them according to
35 the services rendered by them respectively unless they shall have agreed
36 in writing among themselves to a different apportionment.

37 8. A trustee who prior to September 1, 1966 shall have received the
38 maximum amount of commissions on principal permitted by subdivision 8 of
39 section 285-a of the surrogate's court act as that subdivision existed
40 prior to that date, shall not be entitled to annual principal commis-
41 sions for the period from the date when he or she shall receive such
42 maximum and September 1, 1966, but shall be entitled to receive commis-
43 sions from and after September 1, 1966 at the rates and in the manner
44 provided in this section. A trustee who has become entitled to annual
45 principal commissions pursuant to section 285-a of the surrogate's court
46 act as it existed prior to September 1, 1966, but has not received them,
47 may receive an amount of commissions not in excess of the amount he or
48 she would have been entitled to if he or she had taken such commissions,
49 and be entitled to receive in addition commissions from and after
50 September 1, 1966 at the rates and in the manner provided in that
51 section.

52 9. A trustee who has been acting prior to July 1, 1956 shall be enti-
53 tled to have commissions on principal and income theretofore received by
54 him or her computed, allowed and paid under the methods and at the rates
55 set forth herein, except as follows:

1 (a) If prior to July 1, 1956 a trustee has been allowed or has
2 retained commissions for receiving and paying out or for distributing
3 any item of principal he or she shall be entitled to no further commis-
4 sions on the item.

5 (b) If prior to July 1, 1956 a trustee has been allowed or retained
6 commissions on any item of principal received but not paid out or
7 distributed by him or her he or she shall be entitled to no further
8 commissions for receiving the item.

9 (c) Any trustee who became entitled to an annual principal commission
10 under subdivision 1 (b) of section 285-a of the surrogate's court act as
11 it existed prior to April 1, 1948 and who has not retained such commis-
12 sion may retain an amount equal to one-half of such annual principal
13 commission. A trustee who because of the provisions of subdivision 2 of
14 section 285-a of the surrogate's court act as it existed prior to April
15 1, 1948 either was not entitled to retain an annual principal commission
16 under subdivision 1 (b) thereof or was required to credit such annual
17 principal commission against his or her commission for receiving princi-
18 pal, may retain an amount equal to 1/2 of such annual principal commis-
19 sion. If a trustee has been allowed by decree or has retained any such
20 annual principal commission one-half the amount thereof shall be
21 deducted from the amount of commissions to which the trustee would
22 otherwise be entitled under the provisions of subdivision 1.

23 (d) The annual principal commissions allowed by subdivision 3 of this
24 section as it existed on September 1, 1967 shall not be allowed or
25 retained in respect of any trust year ending prior to April 1, 1948, but
26 for any trust year ending on or after April 1, 1948 and prior to July 1,
27 1956, the annual principal commission which may be allowed or retained
28 shall be computed at the rates in effect on the date such trust year
29 ended.

30 (e) If prior to July 1, 1956 a trustee has been allowed or has
31 retained commissions on any item of income received and paid out by him
32 or her prior to September 1, 1943 or on any item of income collected by
33 him or her subsequent to September 1, 1943 he or she shall be entitled
34 to no further commission on the item.

35 10. The value of any property to be determined in such manner as
36 directed by the court and the increment thereof received, distributed or
37 delivered shall be considered as money in making computation of commis-
38 sions. Whenever any portion of the dividends, interests or rents payable
39 to a trustee or donee of a power in trust is required by any law of the
40 United States or other governmental unit to be withheld by the person
41 paying it for income tax purposes, the amount so withheld shall be
42 deemed to have been collected.

43 11. Where the will provides a specific compensation to a trustee or
44 donee of a power in trust he or she is not entitled to any other allow-
45 ances for his or her services.

46 12. If a trustee of a trust or donee of a power in trust is authorized
47 or required by the terms of the will to accumulate income for any
48 purpose permitted by law, any income so accumulated which is not added
49 to principal of the trust or to the principal of the property subject to
50 the power in trust shall be deemed a separate trust or separate fund
51 subject to the power in trust for purposes of this subdivision and the
52 trustee or donee of the power in trust shall be entitled to commissions
53 in respect thereof at the rates and according to the terms and
54 provisions of subdivisions 1 and 2 of this section as though, for
55 purposes of computing commissions of the trustee, income so accumulated
56 was principal.

1 13. For the purposes of this section, the term "trustee" shall mean
2 any trustee who is not a corporate trustee and the term "donee of a
3 power in trust" shall mean any such donee including a donee of a power
4 during minority who is not a corporate fiduciary provided, however, that
5 as used in subdivision 6 of this section, the term trustee shall include
6 a corporate trustee, and further provided that the term "property
7 subject to the power in trust" shall include property subject to a power
8 during minority.

9 § 4. Section 2309 of the surrogate's court procedure act, the section
10 heading and subdivision 1 as amended by chapter 503 of the laws of 1980,
11 subdivision 2 as amended by chapter 654 of the laws of 1993, subdivision
12 3 as amended by chapter 243 of the laws of 2001, paragraph (a) of subdi-
13 vision 5 as amended and subdivision 11 as added by chapter 936 of the
14 laws of 1984, subdivisions 6 and 7 as amended by chapter 303 of the law
15 of 1976, paragraphs (a) and (b) of subdivision 6 as amended by chapter
16 245 of the laws of 1991, and the opening paragraphs of paragraphs (a)
17 and (b) of subdivision 6 as amended by chapter 514 of the laws of 1993,
18 is amended to read as follows:

19 § 2309. Commissions of trustees, of donees of powers during minority and
20 of donees of powers in trust under wills of persons dying, or
21 lifetime trusts established, after August 31, 1956

22 1. On the settlement of the account of any trustee or donee of a power
23 in trust under the will of a person dying after August 31, 1956, or
24 under a lifetime [~~inter~~] trust established after August 31, 1956, the
25 court must allow to him or her his or her reasonable and necessary
26 expenses actually paid by him or her and if he or she be an attorney of
27 this state and shall have rendered legal services in connection with his
28 or her official duties, such compensation for his or her legal services
29 as shall appear to the court to be just and reasonable and in addition
30 thereto it must allow to the trustee or donee of a power in trust for
31 his or her services as trustee or donee of a power in trust a commission
32 from principal or from the property subject to the power in trust, for
33 paying out all sums of money constituting principal or property subject
34 to the power in trust at the rate of 1 per cent.

35 2. In addition to the commission allowed by subdivision 1 hereof a
36 trustee or donee of a power in trust shall be entitled to annual commis-
37 sions at the following rates:

38 (a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000
39 of principal or property subject to the power in trust.

40 (b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of
41 principal or property subject to the power in trust.

42 (c) \$3.00 per \$1,000 or major fraction thereof on all additional prin-
43 cipal or property subject to the power in trust.

44 Such annual commissions shall be computed either on the value of the
45 principal of the trust or of the property subject to the power in trust
46 at the end of the period for which the commissions are payable or, at
47 the option of the trustee or donee of the power in trust, on the value
48 of the principal of the trust or of the property subject to the power in
49 trust at the beginning of such period, provided that the option elected
50 by the trustee or donee of the power in trust for the first period for
51 which such commissions are payable shall be used during the continuance
52 of the trust or of the power in trust and shall be binding on any
53 successor or substitute trustee or trustees, donee or donees. In the
54 case of a trust which prior to January 1, 1994 computed annual commis-
55 sions on the basis of a 12 month period (other than a calendar year),
56 the trustee's prior election of such 12 month period shall be binding

1 unless, prior to January 1, 1995, the trustee makes a new election to
2 compute annual commissions on the basis of a calendar year either on the
3 value of the principal of the trust at the end of, or at the option of
4 the trustee at the beginning of, the calendar year for which the commis-
5 sions were payable, which new election shall be used during the remain-
6 ing continuance of the trust and shall be binding on any successor or
7 substitute trustee or trustees. The computation shall be made on the
8 basis of a 12-month period but the amount so computed payable to a trust-
9 tee shall be proportionately reduced or increased for any payments made
10 in partial distribution of the trust or the receipt of any additional
11 property into the trust within such period and shall be proportionately
12 reduced in any period for which such commissions are payable to the
13 trustee if the period is less than 12 months. For the purpose of comput-
14 ing the annual commissions the value of any principal asset when
15 received by the trust or donee of a power in trust shall be the presump-
16 tive value of the asset at the beginning and end of the period for which
17 such commissions are payable. In computing the value of the principal of
18 the trust or of the property subject to the power in trust the trustee
19 or donee of the power in trust may use the presumptive value in respect
20 of any principal asset or may use the actual value of the asset. On the
21 settlement of the account of the trustee or donee of a power in trust
22 any person interested may dispute the amount of any commission claimed
23 or retained. The burden of proving that the actual value of any princi-
24 pal asset or asset subject to the power in trust differs from its
25 presumptive value is upon the trustee or donee of a power in trust or
26 other person claiming the difference.

27 3. Unless the will or lifetime trust instrument otherwise explicitly
28 provides the annual commissions allowed by subdivision 2 shall be paya-
29 ble one-third from the income of the trust or property subject to the
30 power in trust and two-thirds from the principal of the trust or proper-
31 ty subject to the power in trust. However, in the case of a trust whose
32 definition of income is governed by section 11-2.4 of the estates,
33 powers and trusts law or a charitable remainder annuity trust or a char-
34 itable remainder unitrust, as defined in section six hundred sixty-four
35 of the Internal Revenue Code of nineteen hundred eighty-six, as amended,
36 such annual commissions shall be payable from the corpus of any such
37 trust after allowance for the annuity or unitrust amounts and shall not
38 be payable out of such annuity or unitrust amounts.

39 4. The commissions allowed by subdivision 2 may be retained by a trust-
40 tee provided he or she furnishes annually as of a date no more than 30
41 days prior to the end of the trust year selected by the trustee, to each
42 beneficiary currently receiving income, and to any other beneficiary
43 interested in the income and to any person interested in the principal
44 of the trust who shall make a demand therefor and by a donee of a power
45 in trust if he or she furnishes annually as of a date no more than 30
46 days prior to the end of the calendar year to the beneficiary of the
47 power in trust, a statement showing the principal assets on hand on that
48 date, and at least annually or more frequently if the trustee or donee
49 of the power in trust so elects, a statement showing all his or her
50 receipts of income and principal or property subject to the power in
51 trust during the period with respect to which the statement is rendered
52 including the amount of any commissions retained and the basis upon
53 which the commissions were computed. A trustee or donee of a power in
54 trust shall not be deemed to have waived any commissions by reason of
55 his or her failure to retain them at the time when he or she becomes
56 entitled thereto; provided however that in the case of a trust commis-

1 sions payable from income for any given trust year shall be allowed and
2 retained only from income derived from the trust during that year and
3 shall not be supplied from income on hand in respect of any other trust
4 year and in the case of property subject to a power in trust commissions
5 payable from income for any given calendar year shall be allowed and
6 retained only from income derived from the property during that year and
7 shall not be supplied from income on hand in respect of any other calen-
8 dar year. If a beneficiary receiving income does not desire to be
9 furnished with any such statements his or her advice to the trustee or
10 to the donee of the power in trust to that effect in writing shall there-
11 after excuse the trustee or donee of the power in trust from furnishing
12 such statement to the beneficiary unless and until the beneficiary
13 requests such annual statements from the trustee or donee of the power
14 in trust.

15 5. (a) During the continuance of a trust created solely for public,
16 religious, charitable, scientific, literary, educational or fraternal
17 uses and during the period of continuance of such a trust after the
18 termination of a life use or uses the trustee shall be entitled to and
19 may retain commissions from income in an amount annually equal to 6 per
20 cent of income collected in each year.

21 (b) In the case of a trust created solely for public, religious, char-
22 itable, scientific, literary, educational or fraternal uses the trustee
23 shall not be entitled to any commission from principal.

24 (c) In the case of such a trust which continues after the termination
25 of the measuring life use or uses the trustee for the period of the
26 measuring life use or uses shall be entitled to commissions from income
27 and principal at the rates and according to the terms specified in
28 subdivision 2 and except in respect of principal paid out to a charity
29 or for charitable uses shall be entitled to a commission for distribut-
30 ing all sums of principal at the rate specified in subdivision 1.

31 6. (a) Subject to section 2313 regarding multiple commissions of exec-
32 utors [~~or~~], trustees, or donees of a power in trust created under wills
33 of persons dying, or lifetime trusts established, after August 31, 1993,
34 if the gross value of the principal of the trust or of the property
35 subject to the power in trust accounted for amounts to \$400,000 or more
36 and there is more than 1 trustee or donee each trustee or donee is enti-
37 tled to the full compensation for paying out principal allowed herein to
38 a sole trustee or donee unless there are more than 3, in which case the
39 compensation to which 3 would be entitled must be apportioned among the
40 trustees or donees of the power in trust according to the services
41 rendered by them respectively unless [~~the trustees~~] they shall have
42 agreed in writing among themselves to a different apportionment which,
43 however, shall not provide for more than one full commission for any one
44 of them. If the gross value of the principal of the trust or of the
45 property subject to the power in trust accounted for is:

46 (i) less than \$100,000 and there is more than 1 trustee or donee of
47 the power in trust, the full compensation for paying out principal
48 allowed herein to a sole trustee or donee of the power in trust must be
49 apportioned among them according to the services rendered by them
50 respectively, or

51 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of
52 the power in trust is entitled to the full compensation for paying out
53 principal allowed herein to a sole trustee or donee of the power in
54 trust unless there are more than 2 trustees or donees of the power in
55 trust in which case the full compensation for paying out principal
56 allowed herein to 2 trustees or donees of a power of trust must be

1 apportioned among them according to the services rendered by them
2 respectively, unless the trustees or donees of the power in trust shall
3 have agreed in writing between or among themselves to a different appor-
4 tionment which, however, shall not provide for more than one full
5 commission for any one of them.

6 (b) Subject to section 2313 regarding multiple commissions of execu-
7 tors ~~[or]~~, trustees, or donees of a power in trust created under wills
8 of persons dying, or lifetime trusts established, after August 31, 1993,
9 if the value of the principal of the trust or of the property subject to
10 the power in trust for the purpose of computing the annual commissions
11 allowed by subdivision 2 amounts to \$400,000 or more and there is more
12 than one trustee or donee of a power in trust each trustee or donee of a
13 power in trust is entitled to the full annual commission allowed herein
14 to a sole trustee or donee of a power in trust unless there are more
15 than 3, in which case the annual commissions to which 3 would be enti-
16 tled must be apportioned among the trustees or donees of the power in
17 trust according to the services rendered by them respectively unless the
18 trustees or donees of the power in trust shall have agreed in writing
19 among themselves to a different apportionment which, however, shall not
20 provide for more than one full annual commission for any one of them. If
21 the value of the principal of the trust or of the property subject to
22 the power in trust for the purpose of computing the annual commission
23 allowed by subdivision 2 amounts to:

24 (i) less than \$100,000 and there is more than 1 trustee or donee of
25 the power in trust, the annual commission allowed herein to a sole trus-
26 tee or donee of a power in trust must be apportioned among the trustees
27 or donees of the power in trust according to the services rendered by
28 them respectively, or

29 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of
30 the power in trust is entitled to the full annual commission allowed
31 herein to a sole trustee or donee of a power in trust unless there are
32 more than 2 trustees or donees of the power in trust in which case the
33 full annual commissions allowed herein to 2 trustees or donees of a
34 power in trust must be apportioned among them according to the services
35 rendered by them respectively, unless the trustees or donees of the
36 power in trust shall have agreed in writing between or among themselves
37 to a different apportionment which, however, shall not provide for more
38 than one full annual commission for any one of them. However, if from a
39 trust or from property subject to a power in trust having a value of
40 \$400,000 or more, or if from a trust or from property subject to a power
41 in trust having a value of \$100,000, or more but less than \$400,000, as
42 the case may be, at the beginning of a trust year or of the calendar
43 year any payments in partial distribution of the trust or of the proper-
44 ty subject to the power in trust shall be made during the trust or
45 calendar year so as to reduce the trust or the property subject to the
46 power in trust to a value of less than \$400,000 or \$100,000, as the case
47 may be, at the end of the trust or calendar year, then the annual
48 commissions allowed herein shall, on a proportionate basis, be those
49 allowed to trustees of a trust or to the donees of a power in trust over
50 property having a value of \$400,000 or more, or of a trust or to the
51 donees of a power in trust over property having a value of \$100,000 or
52 more but less than \$400,000, as the case may be, for the period from the
53 beginning of the trust or calendar year to the date of the distribution
54 and shall, on a proportionate basis, be those allowed to trustees of a
55 trust or to the donees of a power in trust over property having a value
56 of either \$100,000 or more but less than \$400,000 or less than \$100,000,

1 as the case may be, for the remainder of the trust or calendar year and
2 the part of such commissions payable from principal and computed from
3 the beginning of the trust or calendar year to the date of distribution
4 shall be charged ratably to the property remaining in the trust or still
5 subject to the power in trust after such distribution and to the proper-
6 ty distributed from the trust or to the beneficiary of the power in
7 trust on the basis of their respective values. Further, if during a
8 trust or calendar year additional property shall be received into a
9 trust which had a value of less than \$100,000 or by a donee of a power
10 in trust the property subject to which had a value of less than
11 \$100,000, or into a trust which had a value of \$100,000 or more but less
12 than \$400,000 or by a donee of a power in trust the property subject to
13 which had a value of \$100,000 or more but less than \$400,000, as the
14 case may be, at the beginning of the trust year or calendar year, so
15 that because of the additional property the trust or the property
16 subject to the power in trust has a value of \$100,000 or more but less
17 than \$400,000, or of \$400,000 or more, as the case may be, at the end of
18 the trust or calendar year, then the annual commissions allowed herein
19 to the trustee or to the donee of the power in trust shall, on a propor-
20 tionate basis, be those allowed to trustees of a trust or to donees of a
21 power in trust over property having a value of less than \$100,000, or to
22 trustees of a trust or to donees of a power in trust over property
23 having a value of \$100,000 or more but less than \$400,000, as the case
24 may be, for the period from the beginning of the trust or calendar year
25 to the date of the receipt of the additional property and shall, on a
26 proportionate basis, be those allowed to trustees of a trust or to
27 donees of a power in trust over property having a value of \$100,000 or
28 more but less than \$400,000, or to trustees of a trust or to donees of a
29 power in trust over property having \$400,000 or more, as the case may
30 be, for the remainder of the trust or calendar year.

31 (c) Notwithstanding any provision of paragraphs (a) and (b) of this
32 subdivision to the contrary, if during the continuance of a trust not
33 measured at any time directly or indirectly by a life or lives or during
34 the continuance of a trust after the termination of the measuring life
35 or lives, the annual income of the trust amounts to \$4,000 or more and
36 there is more than 1 trustee, each trustee is entitled to the full
37 commissions allowed under subdivision 5 to a sole trustee unless there
38 are more than 2, in which case the commissions to which 2 trustees would
39 be entitled must be apportioned among the trustees according to the
40 services rendered by them respectively unless they shall have agreed in
41 writing among themselves to a different apportionment which, however,
42 shall not provide for more than one full commission to any one of them.
43 If the annual income of the trust amounts to less than \$4,000 and there
44 is more than 1 trustee the commissions to which a sole trustee would be
45 entitled under subdivision 5 must be apportioned among the trustees
46 according to the services rendered by them respectively unless they
47 shall have agreed in writing among themselves to a different apportion-
48 ment.

49 7. Where a trustee or donee of a power in trust is for any reason
50 entitled or required to collect the rents of and manage real property
51 the net amount of rents collected and not the gross amount shall be used
52 in making computation of commissions allowed by subdivision 5 and in
53 addition to the commissions herein provided he or she shall be allowed
54 and may retain for such services 6 per cent of the gross rents
55 collected, but there shall be only one such additional commission
56 regardless of the number of trustees or donees of the power in trust. If

1 there are 2 or more trustees or donees of the power in trust the addi-
2 tional commission herein provided for must be apportioned among them
3 according to the services rendered by them respectively unless they
4 shall have agreed in writing among themselves to a different apportion-
5 ment.

6 8. If a trustee or donee of a power in trust is either authorized or
7 required by the terms of the will to accumulate income for any purpose
8 permitted by law he or she shall be entitled to commissions from the
9 income so accumulated, including income derived from the investment of
10 such accumulated income, at the rate of 2 [~~per-cent~~] percent of the
11 first \$2,500 of such income distributed during the administration of the
12 trust and 1 [~~per-cent~~] percent of all such income distributed in excess
13 of \$2,500 and he or she may retain such commissions at the time or times
14 such income is distributed.

15 9. The value of any property to be determined in such manner as
16 directed by the court and the increment thereof received, distributed or
17 delivered, shall be considered as money in making computation of commis-
18 sions. Whenever any portion of the dividends, interests or rents payable
19 to a trustee or to a donee of a power in trust is required by any law of
20 the United States or other governmental unit to be withheld by the
21 person paying it for income tax purposes, the amount so withheld shall
22 be deemed to have been collected.

23 10. Where the will provides a specific compensation for a trustee or a
24 donee of a power in trust he or she is not entitled to any other allow-
25 ances for his or her services.

26 11. For the purposes of this section, the term "trustee" shall mean
27 any trustee who is not a corporate trustee and the term "donee of a
28 power in trust" shall mean any such donee including a donee of a power
29 during minority who is not a corporate fiduciary provided, however, that
30 as used in subdivision 6 of this section, the term trustee shall include
31 a corporate trustee and further provided that the term "property subject
32 to the power in trust" shall include property subject to a power during
33 minority.

34 § 5. Section 2312 of the surrogate's court procedure act as added by
35 chapter 936 of the laws of 1984, subdivision 2, 3, 7, 9 and paragraphs
36 (d) and (e) of subdivision 10 as amended by chapter 511 of the laws of
37 1987, paragraph (b) of subdivision 4 as amended by chapter 245 of the
38 laws of 1991, and subdivision 5 as amended by chapter 243 of the laws of
39 2001, is amended to read as follows:

40 § 2312. Commissions of corporate trustees, including when acting as
41 donees of powers during minority or donees of power in trust

42 1. If the will or lifetime trust instrument makes provisions for
43 specific rates or amounts of commissions (other than a general reference
44 to commissions allowed by law or words of like import) for a corporate
45 trustee, or, if a corporate trustee has agreed to accept specific rates
46 or amounts of commissions, a corporate trustee, whether as trustee or as
47 donee of a power in trust, including for purposes of this section as
48 donee of a power during minority, created under the provisions of the
49 will or lifetime trust instrument, shall be entitled to be compensated
50 in accordance with such provisions or agreement, as the case may be.

51 2. For trusts having a principal value of more than four hundred thou-
52 sand dollars and as donee of a power in trust where the property subject
53 to the power, including for purposes of this section the property
54 subject to a power during minority, has a principal value of more than
55 four hundred thousand dollars and subject to the provisions of subdivi-
56 sion 4 of this section, if the will or lifetime trust instrument does

1 not make provisions for specific rates or amounts of commissions, or,
2 contains only a general reference to commissions allowed by law or words
3 of like import, a corporate trustee shall be entitled to such commis-
4 sions as may be reasonable, and the court, upon application of a person
5 interested in the trust or in the fund held by the corporate trustee as
6 donee of a power in trust, may review the reasonableness of the commis-
7 sion of such corporate trustee.

8 3. Subject to the provisions of paragraph (a) of subdivision 4 of this
9 section and regardless of the principal value of the trust: (a) during
10 the continuance of a trust created solely for public, religious, chari-
11 table, scientific, literary, educational or fraternal uses and during
12 the period of continuance of such a trust after the termination of a
13 life use or uses a corporate trustee shall be entitled to and may retain
14 commissions from income in accordance with the provisions of subdivision
15 1 or 2 hereof, as the case may be.

16 (b) In the case of a trust created solely for public, religious, char-
17 itable, scientific, literary, educational or fraternal uses a corporate
18 trustee shall not be entitled to any commission from principal.

19 (c) In the case of such a trust which continues after the termination
20 of the measuring life use or uses a corporate trustee for the period of
21 the measuring life use or uses shall be entitled to commissions from
22 income and principal according to the provisions of subdivision 1 or 2
23 hereof, as the case may be, and except in respect of principal paid out
24 to a charity or for charitable uses shall be entitled to a commission
25 for distributing all sums of principal in accordance with the provisions
26 of subdivision 1 or 2 hereof, as the case may be.

27 4. Notwithstanding anything contained in this chapter, the estates,
28 powers and trusts law or any other provision of law to the contrary,

29 (a) Except as otherwise provided by paragraph (b) of this subdivision
30 and subdivision three of this section, a corporate trustee of any trust
31 created under will or lifetime trust instrument, or as donee of a power
32 in trust created under will or lifetime instrument, whether in existence
33 on or after the effective date of this section, shall be entitled to
34 receive at least the compensation provided for an individual trustee
35 under subdivisions 1, 2, 5 (but only as trustee), 6, 7 and 12 of section
36 2308 and subdivisions 1, 2, 5 (but only as trustee), 6, 7 and 8 of
37 section 2309, as the case may be, in effect after the effective date of
38 this section, at the time and in the manner provided by such sections,
39 unless the will or lifetime trust instrument or an agreement between the
40 trustee and the testator or grantor or by the trustee shall provide
41 otherwise.

42 (b) A corporate trustee shall, in addition to the compensation permit-
43 ted by the provisions of paragraph (a) of this subdivision, be entitled
44 to annual commissions at the rate of not more than \$12.35 per thousand
45 or major fraction thereof, in lieu of the annual commissions provided
46 under paragraph (a) of this subdivision, on trusts having a principal
47 value of not more than four hundred thousand dollars and shall be enti-
48 itled to annual commissions at the same rate as donee of a power in trust
49 where the property subject to the power has a principal value of not
50 more than four hundred thousand dollars, and such annual commissions
51 shall be deemed reasonable compensation, unless the will or lifetime
52 trust instrument or an agreement between the corporate trustee and the
53 testator or grantor or by the corporate trustee shall provide otherwise.
54 A corporate trustee shall be entitled to receive such commissions from
55 time to time during the trust or calendar year and shall otherwise be

1 governed by the provisions of sections 2308 and 2309, as the case may
2 be, in effect from time to time.

3 5. Unless the will or lifetime trust instrument expressly provides
4 otherwise, the commissions allowable by subdivision 1, 2 or 4 hereof, as
5 the case may be, shall be payable one-third from the income of the trust
6 or from the income of the property subject to the power in trust and
7 two-thirds from the principal of the trust or from the property subject
8 to the power in trust. However, in the case of a trust whose definition
9 of income is governed by section 11-2.4 of the estates, powers and
10 trusts law or a charitable remainder annuity trust or a charitable
11 remainder unitrust, as defined in section six hundred sixty-four of the
12 Internal Revenue Code of nineteen hundred eighty-six, as amended, such
13 commissions shall be payable from the principal of any such trust after
14 allowance for the annuity or unitrust amounts and shall not be payable
15 out of such annuity or unitrust amounts.

16 6. The commissions allowed by subdivision 1, 2 or 4 thereof, as the
17 case may be, may be retained, at any time or from time to time during
18 the year in which such commissions are earned, by a corporate trustee,
19 provided it furnishes annually as of a date no more than 30 days prior
20 to the end of the year selected by the corporate trustee, to each bene-
21 ficiary currently receiving income, and to any other beneficiary inter-
22 ested in the income and to any person interested in the principal of the
23 trust who shall make a demand therefor, and, when acting as donee of a
24 power in trust, to the beneficiary of the power in trust, a statement
25 showing the principal assets or assets subject to the power in trust on
26 hand on that date, and at least annually or more frequently if the trus-
27 tee so elects, a statement showing all his or her receipts of income and
28 principal or of property subject to the power in trust during the period
29 with respect to which the statement is rendered including the amount of
30 any commissions retained and the basis upon which the commissions were
31 computed. A corporate trustee shall not be deemed to have waived any
32 commissions by reason of its failure to retain them at the time when it
33 becomes entitled thereto; provided however that commissions payable from
34 income for any such year shall be allowed and retained only from income
35 derived from the trust during such year and shall not be supplied from
36 income on hand in respect of any other year. If a beneficiary receiving
37 income or a beneficiary of a power in trust of which the corporate trus-
38 tee is donee does not desire to be furnished with any such statements
39 his or her advice to the trustee to that effect in writing shall there-
40 after excuse the corporate trustee from furnishing such statements to
41 the beneficiary unless and until the beneficiary requests such annual
42 statements from the trustee. Upon enactment of, and subject to subdivi-
43 sion 1 of this section, a corporate trustee shall continue to receive
44 commissions in the manner provided for a trustee or when acting as donee
45 of a power in trust in the manner provided for a donee of a power in
46 trust under sections 2308 and 2309, as the case may be, in effect imme-
47 diately before the effective date of this section until the end of the
48 then current trust or calendar year, and thereafter, a corporate trustee
49 may receive commissions in accordance with the provisions of subdivision
50 2 or 4 of this section. A corporate trustee shall not change from the
51 commissions provided for by subdivision 2 or 4 of this section, as the
52 case may be, during a trust's calendar or fiscal year or the calendar
53 year in the case of a power in trust but a corporate trustee may change
54 from the commissions provided for by subdivision 2 to the commissions
55 provided for by subdivision 4 of this section, or vice versa, only at

1 the beginning of a calendar or fiscal year of a trust or a calendar year
2 in the case of a power in trust, as the case may be.

3 7. On the settlement of the account of any trustee or donee of a power
4 in trust under a will or lifetime trust instrument, in addition to the
5 commissions provided for by this section, the court must allow to the
6 corporate trustee including a corporate trustee acting as donee of a
7 power in trust the corporate trustee's reasonable and necessary expenses
8 actually paid by the trustee.

9 8. The value of any property to be determined in such manner as
10 directed by the court and the increment thereof received, distributed or
11 delivered, shall be considered as money in making computation of commis-
12 sions. Whenever any portion of the dividends, interests, rents or other
13 income payable to a trustee or donee of a power in trust is required by
14 any law of the United States or other governmental unit to be withheld
15 by the person paying it for income tax purposes, the amount so withheld
16 shall be deemed to have been collected.

17 9. A trustee who prior to September 1, 1966 shall have received the
18 maximum amount of commissions on principal permitted by subdivision 8 of
19 section 285-a of the surrogate's court act as that subdivision existed
20 prior to that date, shall not be entitled to annual principal commis-
21 sions for the period from the date when he or she shall have received
22 such maximum to September 1, 1966, but shall be entitled to receive
23 commissions from and after September 1, 1966 at the rates and in the
24 manner provided in section 2308 as in effect immediately before enact-
25 ment of this section. A trustee who is entitled to annual principal
26 commissions pursuant to section 285-a of the surrogate's court act as it
27 existed prior to September 1, 1966, but has not received them, may
28 receive an amount of commissions not in excess of the amount he or she
29 would have been entitled to if he or she had taken such commissions, and
30 be entitled to receive in addition commissions from and after September
31 1, 1966 at the rates and in the manner provided in section 285-a of this
32 act.

33 10. A trustee who has been acting prior to July 1, 1956 shall be enti-
34 tled to have commissions on principal and income theretofore received by
35 him or her computed, allowed and paid under the methods and at the rates
36 set forth herein, except as follows:

37 (a) If prior to July 1, 1956 a trustee has been allowed or has
38 retained commissions for receiving and paying out or for distributing
39 any item of principal he or she shall be entitled to no further commis-
40 sions on the item.

41 (b) If prior to July 1, 1956 a trustee has been allowed or retained
42 commissions on any item of principal received but not paid out or
43 distributed by him or her he or she shall be entitled to no further
44 commissions for receiving the item.

45 (c) Any trustee who became entitled to an annual principal commission
46 under subdivision 1 (b) of section 285-a of the surrogate's court act as
47 it existed prior to April 1, 1948 and who has not retained such commis-
48 sion may retain an amount equal to one-half of such annual principal
49 commission. A trustee who because of the provisions of subdivision 2 of
50 section 285-a of the surrogate's court act as it existed prior to April
51 1, 1948 either was not entitled to retain an annual principal commission
52 under subdivision 1 (b) thereof or was required to credit such annual
53 principal commission against his or her commission for receiving princi-
54 pal, may retain an amount equal to one-half of such annual principal
55 commission. If a trustee has been allowed by decree or has retained any
56 such annual principal commission one-half the amount thereof shall be

1 deducted from the amount of commissions to which the trustee would
2 otherwise be entitled under the provisions of subdivision 1 of surro-
3 gate's court procedure act section 2308.

4 (d) The annual principal commissions allowed by subdivision 3 of
5 surrogate's court procedure act section 2308 as it existed on September
6 1, 1967 shall not be allowed by decree or retained in respect of any
7 trust year ending prior to April 1, 1948, but for any trust year ending
8 on or after April 1, 1948 and prior to July 1, 1956, the annual princi-
9 pal commission which may be allowed by decree or retained shall be
10 computed at the rates in effect on the date such trust year ended.

11 (e) If prior to July 1, 1956 a trustee has been allowed by decree or
12 has retained commissions on any item of income received and paid out by
13 him or her prior to September 1, 1943 or on any item of income received
14 by him or her subsequent to September 1, 1943 he or she shall be enti-
15 tled to no further commission on the item.

16 (f) For purposes of this section, the term "donee of a power in trust"
17 shall mean any such donee including a donee of a power during minority
18 who is a corporate fiduciary and the term "property subject to the power
19 in trust" shall include property subject to a power during minority.

20 § 6. Section 2313 of the surrogate's court procedure act, as amended
21 by chapter 471 of the laws of 1995, is amended to read as follows:

22 § 2313. Multiple commissions of executors or trustees, donees of powers
23 during minority, or donees of power in trust under wills of
24 persons dying, or lifetime trusts established, after August
25 31, 1993

26 With respect to wills of persons dying, or lifetime trusts estab-
27 lished, after August 31, 1993, if there are more than two executors or
28 trustees, donees of a power during minority, or donees of a power in
29 trust, no more than two commissions shall be allowed unless the decedent
30 or creator has specifically provided otherwise in a signed writing, and
31 the compensation thus allowable must be apportioned among the fiduciar-
32 ies or donees of the power in trust according to the services rendered
33 by them respectively unless they shall have agreed in writing among
34 themselves to a different apportionment which, however, shall not
35 provide for more than one full commission for any one of them.

36 § 7. This act shall take effect on the first of January next succeed-
37 ing the date on which it shall have become a law.