

6762

2009-2010 Regular Sessions

I N A S S E M B L Y

March 12, 2009

Introduced by M. of A. CARROZZA, COLTON, ORTIZ -- Multi-Sponsored by --
M. of A. BRENNAN, TOWNS, WEISENBERG -- read once and referred to the
Committee on Judiciary

AN ACT to amend the estates, powers and trusts law and the civil prac-
tice law and rules, in relation to clarifying and declaring as the
existing law of the state of New York the provisions of rules relating
to the lapse of a power of withdrawal over the income or principal of
a trust

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of section 7-3.1 of the estates, powers and
2 trusts law, as amended by chapter 108 of the laws of 1987, is amended to
3 read as follows:

4 (a) A disposition in trust for the use of the creator is void as
5 against the existing or subsequent creditors of the creator. NO INDIVID-
6 UAL SHALL BE TREATED FOR PURPOSES OF THIS SECTION AS HAVING MADE A
7 DISPOSITION IN TRUST FOR THE USE OF THAT INDIVIDUAL BY REASON OF A LAPSE
8 OF A POWER OF WITHDRAWAL OVER THE INCOME OR CORPUS OF A TRUST CREATED BY
9 ANOTHER PERSON.

10 S 2. Paragraph 1 of subdivision (c) of section 5205 of the civil prac-
11 tice law and rules, as amended by chapter 93 of the laws of 1995, is
12 amended to read as follows:

13 1. Except as provided in paragraphs four and five of this subdivision,
14 all property while held in trust for a judgment debtor, where the trust
15 has been created by, or the fund so held in trust has proceeded from, a
16 person other than the judgment debtor, is exempt from application to the
17 satisfaction of a money judgment. FOR PURPOSES OF THIS SECTION, A JUDG-
18 MENT DEBTOR SHALL NOT BE TREATED AS CREATING OR FUNDING A TRUST BY
19 REASON OF THE LAPSE OF A POWER OF WITHDRAWAL OVER THE INCOME OR PRINCI-
20 PAL OF A TRUST CREATED AND FUNDED BY A PERSON OR PERSONS OTHER THAN THE
21 JUDGMENT DEBTOR.

22 S 3. This act shall take effect immediately and shall be enforceable
23 as to all trusts created under New York law, regardless of when created,
24 as it is declaratory of existing New York law.

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

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