S T A T E O F N E W Y O R K

2974

2009-2010 Regular Sessions

I N S E N A T E

March 9, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law and the state finance law, in relation to brokers fiduciary funds

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

Section 1. The real property law is amended by adding a new section 443-b to read as follows:

S 443-B. BROKERS FIDUCIARY FUNDS; INTEREST-BEARING ACCOUNTS. 1. AS USED IN THIS SECTION:

(A) "INTEREST ON BROKER ACCOUNT" OR "IOBA" MEANS AN UNSEGREGATED INTEREST-BEARING DEPOSIT ACCOUNT WITH A BANKING INSTITUTION FOR THE DEPOSIT BY A BROKER OF QUALIFIED FUNDS.

(B) "QUALIFIED FUNDS" MEANS MONEYS RECEIVED BY A BROKER IN A FIDUCIARY CAPACITY FROM A CLIENT OR BENEFICIAL OWNER AND WHICH ARE NOT PLACED IN AN INTEREST-BEARING ACCOUNT AT THE REQUEST OF AND FOR THE BENEFIT OF THE CLIENT OR BENEFICIAL OWNER.

(C) "FUNDS RECEIVED IN A FIDUCIARY CAPACITY" MEANS FUNDS RECEIVED BY A BROKER FROM A CLIENT OR BENEFICIAL OWNER IN THE COURSE OF BUSINESS, INCLUDING BUT NOT LIMITED TO, FUNDS RECEIVED IN AN ESCROW CAPACITY.

(D) "BANKING INSTITUTION" MEANS A BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR FOREIGN BANKING CORPORATION WHETHER INCORPORATED, CHARTERED, ORGANIZED OR LICENSED UNDER THE LAWS OF THIS STATE OR THE UNITED STATES, PROVIDED THAT SUCH BANKING INSTITUTION CONDUCTS ITS PRINCIPAL BANKING BUSINESS IN THIS STATE.

2. (A) UNLESS A CLIENT OR BENEFICIAL OWNER SPECIFICALLY REQUESTS OTHERWISE, OR A CONTRACT PROVIDES OTHERWISE, A BROKER WHO RECEIVES MONIES IN A FIDUCIARY CAPACITY SHALL DEPOSIT SUCH MONIES IN AN IOBA IN A BANKING INSTITUTION OF HIS OR HER CHOICE OFFERING SUCH ACCOUNTS.

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

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(B) A BROKER WHO RECEIVES QUALIFIED FUNDS SHALL DISCLOSE TO ALL PARTIES THE BANK IN WHICH THE FUNDS WILL BE DEPOSITED DURING THE TERM OF THE ESCROW. NO FURTHER DISCLOSURE SHALL BE REQUIRED OF SUCH BROKER.

(C) A BROKER WHO DEPOSITS MONEY IN AN IOBA PURSUANT TO THIS SECTION SHALL NOT BE DEEMED IN VIOLATION OF THE SECRETARY OF STATE'S RULES AND REGULATIONS CONCERNING THE MAINTAINING OF ESCROW ACCOUNTS.

(D) NOTWITHSTANDING THE DEPOSIT REQUIREMENTS OF THIS SUBDIVISION, NO BROKER SHALL BE LIABLE IN DAMAGES NOR HELD TO ANSWER FOR A CHARGE OF PROFESSIONAL MISCONDUCT FOR FAILURE TO DEPOSIT QUALIFIED FUNDS IN AN IOBA.

3. NO BROKER SHALL BE LIABLE IN DAMAGES NOR HELD TO ANSWER FOR A CHARGE OF PROFESSIONAL MISCONDUCT BECAUSE OF A DEPOSIT OF MONEYS TO AN IOBA PURSUANT TO A JUDGMENT IN GOOD FAITH THAT SUCH MONEYS WERE QUALIFIED FUNDS.

(A) A BROKER WHICH RECEIVES QUALIFIED FUNDS IN THE COURSE OF ITS BUSINESS AND ESTABLISHES AND MAINTAINS AN IOBA SHALL DO SO BY (I) DESIGNATING THE ACCOUNT AS (NAME OF BROKER IOBA) WITH THE APPROVAL OF THE BANKING INSTITUTION; AND (II) NOTIFYING THE NEW YORK INTEREST ON LAWYER ACCOUNT FUND WITHIN THIRTY DAYS OF ESTABLISHING THE IOBA OF THE ACCOUNT NUMBER AND NAME AND ADDRESS OF THE BANKING INSTITUTION WHERE THE ACCOUNT IS DEPOSITED.

(B) THE RATE OF INTEREST PAYABLE ON ANY IOBA SHALL BE NOT LESS THAN THE RATE PAID BY THE BANKING INSTITUTION ON SIMILAR ACCOUNTS MAINTAINED AT THAT INSTITUTION, AND THE BANKING INSTITUTION SHALL NOT IMPOSE ON SUCH ACCOUNTS ANY CHARGES OR FEES GREATER THAN IT IMPOSED ON SIMILAR ACCOUNTS MAINTAINED AT THAT INSTITUTION.

(C) WITH RESPECT TO IOBA'S, THE BANKING INSTITUTION SHALL:

(I) REMIT AT LEAST QUARTERLY ANY INTEREST EARNED ON THE ACCOUNT DIRECTLY TO THE NEW YORK INTEREST ON LAWYER ACCOUNT FUND, AFTER DEDUCTION OF SERVICE CHARGES OR FEES, IF ANY, ARE APPLIED;

(II) TRANSMIT TO THE NEW YORK INTEREST ON LAWYER ACCOUNT FUND WITH EACH REMITTANCE A STATEMENT SHOWING AT LEAST THE NAME OF THE ACCOUNT, SERVICE CHARGES OR FEES DEDUCTED, IF ANY, AND THE AMOUNT OF NET INTEREST REMITTED FROM SUCH ACCOUNT;

(III) TRANSMIT TO EACH BROKER WHICH MAINTAINS AN IOBA A STATEMENT SHOWING AT LEAST THE NAME OF THE ACCOUNT, SERVICE CHARGES OR FEES DEDUCTED, IF ANY, AND THE AMOUNT OF INTEREST REMITTED FROM SUCH ACCOUNT;

(IV) BE PERMITTED TO IMPOSE REASONABLE SERVICE CHARGES FOR THE PREPARATION AND ISSUANCE OF THE STATEMENT; AND

(V) HAVE NO DUTY TO INQUIRE OR DETERMINE WHETHER DEPOSITS CONSIST OF QUALIFIED FUNDS.

4. (A) PAYMENT FROM AN IOBA TO OR UPON THE ORDER OF THE BROKER MAINTAINING SUCH ACCOUNT SHALL BE VALID AND SUFFICIENT RELEASE OF ANY CLAIMS BY ANY PERSON OR ENTITY AGAINST ANY BANKING INSTITUTION FOR ANY PAYMENTS SO MADE.

(B) ANY REMITTANCE OF INTEREST TO THE NEW YORK INTEREST ON LAWYER ACCOUNT FUND BY A BANKING INSTITUTION PURSUANT TO THIS SECTION SHALL BE A VALID AND SUFFICIENT RELEASE AND DISCHARGE OF ANY CLAIMS BY ANY PERSON OR ENTITY AGAINST SUCH BANKING INSTITUTION FOR ANY PAYMENT SO MADE, AND NO ACTION SHALL BE MAINTAINED AGAINST ANY BANKING INSTITUTION SOLELY FOR OPENING, OFFERING, OR MAINTAINING AN IOBA, FOR ACCEPTING ANY FUNDS FOR DEPOSIT TO ANY SUCH ACCOUNT OR FOR REMITTING ANY INTEREST TO THE NEW YORK INTEREST ON LAWYER ACCOUNT FUND.

5. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE ANY BANKING INSTITUTION TO OFFER, ACCEPT OR MAINTAIN IOBA'S.

6. ALL PAPERS, RECORDS, DOCUMENTS OR OTHER INFORMATION IDENTIFYING A BROKER, CLIENT OR BENEFICIAL OWNER OF AN IOBA SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY A BANKING INSTITUTION EXCEPT WITH THE CONSENT OF THE ATTORNEY MAINTAINING THE ACCOUNT OR AS PERMITTED BY ANY LAW, REGULATION OR ADMINISTRATIVE REQUIREMENT.

7. A BROKER THAT CAN ESTABLISH THAT COMPLIANCE WITH SUBDIVISION THREE OF THIS SECTION HAS RESULTED IN ANY BANKING SERVICE CHARGES OR FEES SHALL BE ENTITLED TO REIMBURSEMENT OF SUCH EXPENSE FROM THE INTEREST ON LAWYER ACCOUNT FUND BY FILING A CLAIM WITH SUPPORTING DOCUMENTATION WITH THE FUND.

S 2. Paragraphs d and g of subdivision 3 of section 97-v of the state finance law, as added by chapter 659 of the laws of 1983, are amended to read as follows:

d. The board shall adopt rules and regulations for the administration of the IOLA fund to carry out the purposes and provisions of this section and of [section] SECTIONS four hundred ninety-seven of the judiciary law AND FOUR HUNDRED FORTY-THREE-B OF THE REAL PROPERTY LAW. Such regulations shall be adopted in accordance with article two of the state administrative procedure act.

g. Notwithstanding any statute or rule to the contrary, the board shall maintain all papers, records, documents or other information identifying an attorney, BROKER, client or beneficial owner of an IOLA account OR AN INTEREST ON BROKER ACCOUNT on a private and confidential basis and shall not disclose such information unless such disclosure is necessary to accomplish the purposes of this section and section four hundred ninety-seven of the judiciary law, or unless disclosure is pursuant to compulsory legal process.

S 3. The closing paragraph of section 98 of the state finance law, as amended by chapter 317 of the laws of 1994, is amended to read as follows:

Notwithstanding the provisions of any other general or special law, the comptroller shall not invest the moneys of any fund in any security or securities except as above described, provided, however, that: (a) the comptroller may, in order to maximize the rate of return on investments, invest the moneys belonging to the New York interest on lawyer account fund in notes, securities and deposits of banking institutions which accept IOLA AND/OR INTEREST ON BROKER accounts, and (b) the provisions of this section shall not limit the types of investments that may be made with moneys belonging to the volunteer ambulance service award fund established by section two hundred nineteen-h of the general municipal law.

S 4. This act shall take effect immediately; provided, however, that the provisions of section one of this act shall not take effect until the board of trustees of the IOLA fund established under the provisions of section 97-v of the state finance law, as added by chapter 659 of the laws of 1983, shall have certified to the secretary of state that the commissioner of internal revenue of the United States has ruled interest earned on an interest on broker account is not includable in the gross income of either the broker maintaining the account or the gross income of the beneficial owner; provided further, that the secretary of state shall notify the legislative bill drafting commission as to whether or not the office of the secretary of state has timely received such certification in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 70-b of the public officers law.