

2577

2009-2010 Regular Sessions

I N A S S E M B L Y

January 20, 2009

Introduced by M. of A. WEINSTEIN, JOHN -- Multi-Sponsored by -- M. of A. BRENNAN, CHRISTENSEN, CLARK, COLTON, COOK, DESTITO, DINOWITZ, ESPAILLAT, GLICK, GREENE, JACOBS, MAGNARELLI, MARKEY, McENENY, MILLMAN, O'DONNELL, PRETLOW, TITUS -- read once and referred 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:

1 Section 1. The real property law is amended by adding a new section
2 443-b to read as follows:
3 S 443-B. BROKERS FIDUCIARY FUNDS; INTEREST-BEARING ACCOUNTS. 1. AS
4 USED IN THIS SECTION:
5 (A) "INTEREST ON BROKER ACCOUNT" OR "IOBA" MEANS AN UNSEGREGATED
6 INTEREST-BEARING DEPOSIT ACCOUNT WITH A BANKING INSTITUTION FOR THE
7 DEPOSIT BY A BROKER OF QUALIFIED FUNDS.
8 (B) "QUALIFIED FUNDS" MEANS MONEYS RECEIVED BY A BROKER IN A FIDUCIARY
9 CAPACITY FROM A CLIENT OR BENEFICIAL OWNER AND WHICH ARE NOT PLACED IN
10 AN INTEREST-BEARING ACCOUNT AT THE REQUEST OF AND FOR THE BENEFIT OF THE
11 CLIENT OR BENEFICIAL OWNER.
12 (C) "FUNDS RECEIVED IN A FIDUCIARY CAPACITY" MEANS FUNDS RECEIVED BY A
13 BROKER FROM A CLIENT OR BENEFICIAL OWNER IN THE COURSE OF BUSINESS,
14 INCLUDING BUT NOT LIMITED TO, FUNDS RECEIVED IN AN ESCROW CAPACITY.
15 (D) "BANKING INSTITUTION" MEANS A BANK, TRUST COMPANY, SAVINGS BANK,
16 SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR FOREIGN BANKING CORPO-
17 RATION WHETHER INCORPORATED, CHARTERED, ORGANIZED OR LICENSED UNDER THE
18 LAWS OF THIS STATE OR THE UNITED STATES, PROVIDED THAT SUCH BANKING
19 INSTITUTION CONDUCTS ITS PRINCIPAL BANKING BUSINESS IN THIS STATE.
20 2. (A) UNLESS A CLIENT OR BENEFICIAL OWNER SPECIFICALLY REQUESTS
21 OTHERWISE, OR A CONTRACT PROVIDES OTHERWISE, A BROKER WHO RECEIVES

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

LBD01546-01-9

1 MONIES IN A FIDUCIARY CAPACITY SHALL DEPOSIT SUCH MONIES IN AN IOBA IN A
2 BANKING INSTITUTION OF HIS OR HER CHOICE OFFERING SUCH ACCOUNTS.

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

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

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

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

17 (A) A BROKER WHICH RECEIVES QUALIFIED FUNDS IN THE COURSE OF ITS BUSI-
18 NESS AND ESTABLISHES AND MAINTAINS AN IOBA SHALL DO SO BY (I) DESIGNAT-
19 ING THE ACCOUNT AS (NAME OF BROKER IOBA) WITH THE APPROVAL OF THE BANK-
20 ING INSTITUTION; AND (II) NOTIFYING THE NEW YORK INTEREST ON LAWYER
21 ACCOUNT FUND WITHIN THIRTY DAYS OF ESTABLISHING THE IOBA OF THE ACCOUNT
22 NUMBER AND NAME AND ADDRESS OF THE BANKING INSTITUTION WHERE THE ACCOUNT
23 IS DEPOSITED.

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

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

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

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

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

40 (IV) BE PERMITTED TO IMPOSE REASONABLE SERVICE CHARGES FOR THE PREPA-
41 RATION AND ISSUANCE OF THE STATEMENT; AND

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

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

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

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

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

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

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

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

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

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

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

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

1 of New York in furtherance of effecting the provisions of section 70-b
2 of the public officers law.