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

2004

2011-2012 Regular Sessions

I N A S S E M B L Y

January 12, 2011

Introduced by M. of A. WEPRIN, 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 practice 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

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

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

S 3. This act shall take effect immediately and shall be enforceable as to all trusts created under New York law, regardless of when created, 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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