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

7630

I N S E N A T E

June 8, 2012

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to the exercise of a power of appointment and an authorized trustee's authority to invade a trust; and to amend chapter 451 of the laws of 2011, amending the estates, powers and trusts law relating to the exercise of a power of appointment and an authorized trustee's authority to invade trust principal, in relation to the effectiveness thereof

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

Section 1. The opening paragraph of paragraph (b) of section 10-6.6 of the estates, powers and trusts law, as added by chapter 451 of the laws of 2011, is amended to read as follows:

An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of such principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one or all of the current beneficiaries of the invaded trust (to the exclusion of any one or more of such current beneficiaries). The successor and remainder beneficiaries of such appointed trust [shall] MAY be one, more than one or all of the successor and remainder beneficiaries of such invaded trust (to the exclusion of any one [or], more THAN ONE OR ALL of such successor and remainder beneficiaries).

S 2. Paragraph (d) of section 10-6.6 of the estates, powers and trusts law, as added by chapter 451 of the laws of 2011, is amended to read as follows:

(d) An exercise of the power to invade trust principal under paragraphs (b) and (c) of this section shall be considered the exercise of a special power of appointment as defined in section 10-3.2 of this article PROVIDED, HOWEVER, THAT SUCH EXERCISE SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 10-10.7 OF THIS ARTICLE.

S 3. Subparagraphs 1 and 4 of paragraph (s) of section 10-6.6 of the estates, powers and trusts law, as added by chapter 451 of the laws of 2011, are amended to read as follows:

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

LBD16167-01-2

(1) The term "appointed trust" means an irrevocable trust which receives principal from an invaded trust under paragraph (b) or (c) of this section including a new trust created by the creator of the invaded trust or by the trustees, in that capacity, of the invaded trust. For purposes of creating the new trust, the requirement of section 7-1.17 of this chapter that the instrument be [signed by the creator] EXECUTED AND ACKNOWLEDGED BY THE PERSON ESTABLISHING SUCH TRUST shall be deemed satisfied by the [signature] EXECUTION AND ACKNOWLEDGMENT of the trustee of the appointed trust.

(4) The term "current beneficiary or beneficiaries" means the person or persons (or as to a class, any person or persons who are or will become members of such class) to whom the trustees may distribute principal at the time of the exercise of the power, PROVIDED HOWEVER THAT THE INTEREST OF A BENEFICIARY TO WHOM INCOME, BUT NOT PRINCIPAL, MAY BE DISTRIBUTED IN THE DISCRETION OF THE TRUSTEE OF THE INVADED TRUST MAY BE CONTINUED IN THE APPOINTED TRUST.

S 4. Section 3 of chapter 451 of the laws of 2011 amending the estates, powers and trusts law relating to the exercise of a power of appointment and an authorized trustee's authority to invade trust principal is amended to read as follows:

S 3. This act shall take effect immediately and shall apply to trusts whether created prior to, ON, or after such effective date.

S 5. This act shall take effect immediately.