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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:

1 Section 1. The opening paragraph of paragraph (b) of section 10-6.6 of
2 the estates, powers and trusts law, as added by chapter 451 of the laws
3 of 2011, is amended to read as follows:
4 An authorized trustee with unlimited discretion to invade trust prin-
5 cipal may appoint part or all of such principal to a trustee of an
6 appointed trust for, and only for the benefit of, one, more than one or
7 all of the current beneficiaries of the invaded trust (to the exclusion
8 of any one or more of such current beneficiaries). The successor and
9 remainder beneficiaries of such appointed trust [shall] MAY be one, more
10 than one or all of the successor and remainder beneficiaries of such
11 invaded trust (to the exclusion of any one [or], more THAN ONE OR ALL of
12 such successor and remainder beneficiaries).
13 S 2. Paragraph (d) of section 10-6.6 of the estates, powers and trusts
14 law, as added by chapter 451 of the laws of 2011, is amended to read as
15 follows:
16 (d) An exercise of the power to invade trust principal under para-
17 graphs (b) and (c) of this section shall be considered the exercise of a
18 special power of appointment as defined in section 10-3.2 of this arti-
19 cle PROVIDED, HOWEVER, THAT SUCH EXERCISE SHALL BE GOVERNED BY THE
20 PROVISIONS OF SECTION 10-10.7 OF THIS ARTICLE.
21 S 3. Subparagraphs 1 and 4 of paragraph (s) of section 10-6.6 of the
22 estates, powers and trusts law, as added by chapter 451 of the laws of
23 2011, are amended to read as follows:

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

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

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

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

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

23 S 5. This act shall take effect immediately.