

7061

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 30, 2013

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Introduced by M. of A. BRAUNSTEIN, WEINSTEIN -- (at request of the  
Office of Court Administration) -- read once and referred 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 author-  
ity to invade a trust

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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. Subparagraphs 5 and 6 of paragraph (j) of section 10-6.6 of the  
14    estates, powers and trusts law, as added by chapter 451 of the laws of  
15    2011, are amended to read as follows:  
16    (5) The receipt of a copy of the instrument exercising the power shall  
17    not affect the right of any person interested in the invaded trust to  
18    compel the authorized trustee who exercised the power [of appointment  
19    pursuant to] UNDER paragraph (b) or (c) of this section to account for  
20    such exercise and shall not foreclose any such interested person from  
21    objecting to an account or compelling a trustee to account. WHETHER THE  
22    EXERCISE OF A POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION BEGINS  
23    THE RUNNING OF THE STATUTE OF LIMITATIONS ON AN ACTION TO COMPEL A TRUS-

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

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1 TEE TO ACCOUNT SHALL BE BASED ON ALL THE FACTS AND CIRCUMSTANCES OF THE  
2 SITUATION.

3 (6) A copy of the instrument exercising the power shall be kept with  
4 the records of the invaded trust and the original shall be filed in the  
5 court having jurisdiction over the invaded trust. Where a trustee of an  
6 inter vivos trust exercises the power and the trust has not been the  
7 subject of a proceeding in the surrogate's court, no filing is required.  
8 THE INSTRUMENT SHALL STATE THAT IN CERTAIN CIRCUMSTANCES THE APPOINTMENT  
9 WILL BEGIN THE RUNNING OF THE STATUTE OF LIMITATIONS THAT WILL PRECLUDE  
10 PERSONS INTERESTED IN THE INVADDED TRUST FROM COMPELLING AN ACCOUNTING BY  
11 THE TRUSTEES AFTER THE EXPIRATION OF A GIVEN TIME.

12 S 3. Subparagraphs 1 and 4 of paragraph (s) of section 10-6.6 of the  
13 estates, powers and trusts law, as added by chapter 451 of the laws of  
14 2011, are amended to read as follows:

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

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

31 S 4. Paragraph (s) of section 10-6.6 of the estates, powers and trusts  
32 law is amended by adding a new subparagraph 10 to read as follows:

33 (10) THE CREATOR SHALL NOT BE CONSIDERED TO BE A BENEFICIARY OF AN  
34 INVADDED OR APPOINTED TRUST BY REASON OF THE TRUSTEE'S AUTHORITY TO PAY  
35 TRUST PRINCIPAL TO THE CREATOR PURSUANT TO SECTION 7-1.1 OF THIS CHAPTER  
36 OR BY REASON OF THE TRUSTEE'S AUTHORITY UNDER THE TRUST INSTRUMENT OR  
37 ANY OTHER PROVISION OF LAW TO PAY OR REIMBURSE THE CREATOR FOR ANY TAX  
38 ON TRUST INCOME OR TRUST PRINCIPAL THAT IS PAYABLE BY THE CREATOR UNDER  
39 THE LAW IMPOSING SUCH TAX OR TO PAY ANY SUCH TAX DIRECTLY TO THE TAXING  
40 AUTHORITIES.

41 S 5. Section 10-6.6 of the estates, powers and trusts law is amended  
42 by adding a new paragraph (t) to read as follows:

43 (T) CROSS-REFERENCE. FOR THE EXERCISE OF THE POWER UNDER PARAGRAPH (B)  
44 OR (C) OF THIS SECTION WHERE THERE ARE MULTIPLE TRUSTEES, SEE SECTIONS  
45 10-6.7 AND 10-10.7 OF THIS ARTICLE.

46 S 6. Section 10-6.7 of the estates, powers and trusts law, as amended  
47 by chapter 686 of the laws of 1967, is amended to read as follows:

48 S 10-6.7 Exercise by all donees; exceptions

49 Whenever a power of appointment, OTHER THAN A POWER IN A TRUSTEE TO  
50 INVADEN TRUST PRINCIPAL UNDER SECTION 10-6.6 OF THIS ARTICLE OR UNDER THE  
51 TERMS OF THE DISPOSITIVE INSTRUMENT, is created in two or more donees,  
52 all must unite in its exercise, unless the instrument creating such  
53 power provides otherwise. But, if before its execution, one or more of  
54 such donees dies or becomes incompetent, such power may be exercised by  
55 the survivor or the competent donee, unless such exercise is explicitly  
56 barred by the terms of the instrument creating such power.

1 S 7. Section 10-10.7 of the estates, powers and trusts law, as amended  
2 by chapter 904 of the laws of 1973, is amended to read as follows:

3 S 10-10.7 Exercise of powers by multiple fiduciaries; joint and several  
4 powers

5 Unless contrary to the express provisions of an instrument affecting  
6 the disposition of property, a joint power other than a power of  
7 appointment BUT INCLUDING A POWER IN A TRUSTEE TO INVADE TRUST PRINCIPAL  
8 UNDER SECTION 10-6.6 OF THIS ARTICLE OR UNDER THE TERMS OF THE DISPOSI-  
9 TIVE INSTRUMENT, conferred upon three or more fiduciaries, as that term  
10 is defined in 11-1.1, by the terms of such instrument, or by statute, or  
11 arising by operation of law, may be exercised by a majority of such  
12 fiduciaries, or by a majority of survivor fiduciaries, or by the survi-  
13 vor fiduciary. Such a power conferred upon or surviving to two such  
14 fiduciaries may be exercised jointly by both such fiduciaries or by the  
15 survivor fiduciary, unless contrary to the express terms of the instru-  
16 ment creating the power. A fiduciary who fails to act through absence or  
17 disability, or a dissenting fiduciary who joins in carrying out the  
18 decision of a majority of the fiduciaries if his OR HER dissent is  
19 expressed promptly in writing to his OR HER co-fiduciaries, shall not be  
20 liable for the consequences of any majority decision, provided that  
21 liability for failure to join in administering the estate or trust or to  
22 prevent a breach of the trust may not thus be avoided. A power vested  
23 in one or more persons under a trust of real property created in  
24 connection with the salvaging of mortgage participation certificates may  
25 be executed by one or more of such persons as provided in such trust.  
26 This section shall not affect the right of any one of two or more  
27 personal representatives of a decedent to exercise a several power.

28 S 8. This act shall take effect immediately.