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

7061

2013-2014 Regular Sessions

I N A S S E M B L Y

April 30, 2013

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 authority to invade a trust

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. Subparagraphs 5 and 6 of paragraph (j) 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:

(5) The receipt of a copy of the instrument exercising the power shall not affect the right of any person interested in the invaded trust to compel the authorized trustee who exercised the power [of appointment pursuant to] UNDER paragraph (b) or (c) of this section to account for such exercise and shall not foreclose any such interested person from objecting to an account or compelling a trustee to account. WHETHER THE EXERCISE OF A POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION BEGINS 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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TEE TO ACCOUNT SHALL BE BASED ON ALL THE FACTS AND CIRCUMSTANCES OF THE SITUATION.

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

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:

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

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

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

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

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

S 10-6.7 Exercise by all donees; exceptions

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

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

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

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

S 8. This act shall take effect immediately.