

5191

2015-2016 Regular Sessions

I N S E N A T E

May 6, 2015

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 a trustee's authority to recant the invasion of a trust and the creation of a new trust

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

1 Section 1. The opening paragraph and subparagraph 6 of paragraph (j)
2 of section 10-6.6 of the estates, powers and trusts law, the opening
3 paragraph as added by chapter 451 of the laws of 2011 and subparagraph 6
4 as amended by chapter 482 of the laws of 2013, are amended and a new
5 subparagraph 7 is added to read as follows:
6 The exercise of the power to appoint to an appointed trust under para-
7 graph (b) or (c) of this section shall be evidenced by an instrument in
8 writing, signed, dated and acknowledged by the authorized trustee. The
9 exercise of the power shall be effective thirty days after the date of
10 service of the instrument as specified in subparagraph (2) of this para-
11 graph, unless the persons entitled to notice consent in writing to a
12 sooner effective date. THE EXERCISE OF THE POWER IS IRREVOCABLE ON SUCH
13 EFFECTIVE DATE, EITHER THIRTY DAYS FOLLOWING SERVICE OF THE NOTICE OR
14 THE EFFECTIVE DATE AS SET FORTH IN THE WRITTEN CONSENT.
15 (6) A copy of the instrument exercising the power shall be kept with
16 the records of the invaded trust and, WITHIN TWENTY DAYS OF THE EFFEC-
17 TIVE DATE, the original shall be filed in the court having jurisdiction
18 over the invaded trust. Where a trustee of an inter vivos trust exer-
19 cises the power and the trust has not been the subject of a proceeding
20 in the surrogate's court, no filing is required. The instrument shall
21 state that in certain circumstances the appointment will begin the
22 running of the statute of limitations that will preclude persons inter-

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

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1 ested in the invaded trust from compelling an accounting by the trustees
2 after the expiration of a given time.

3 (7) PRIOR TO THE EFFECTIVE DATE AS PROVIDED HEREIN, A TRUSTEE MAY
4 REVOKE THE EXERCISE OF THE POWER TO INVADE TO A NEW TRUST. WHERE A TRUS-
5 TEE HAS SERVED NOTICE OF THE EXERCISE OF THE POWER PURSUANT TO SUBPARA-
6 GRAPH (2) OF THIS PARAGRAPH, THE TRUSTEE SHALL SERVE NOTICE OF THE REVO-
7 CATION OF THE EXERCISE OF THE POWER TO PERSONS INTERESTED IN THE INVAD-
8 ED TRUST AND THE APPOINTED TRUST BY REGISTERED OR CERTIFIED MAIL, RETURN
9 RECEIPT REQUESTED, OR BY PERSONAL DELIVERY OR IN ANY OTHER MANNER
10 DIRECTED BY THE COURT HAVING JURISDICTION OVER THE INVAD-ED TRUST. WHERE
11 THE NOTICE OF THE EXERCISE OF THE POWER WAS FILED WITH THE COURT, THE
12 TRUSTEE SHALL FILE THE NOTICE OF REVOCATION OF THE EXERCISE OF THE POWER
13 WITH SUCH COURT.

14 S 2. This act shall take effect immediately and shall apply to all
15 estates and living trusts.