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

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:

Section 1. The opening paragraph and subparagraph 6 of paragraph (j) of section 10-6.6 of the estates, powers and trusts law, the opening paragraph as added by chapter 451 of the laws of 2011 and subparagraph 6 as amended by chapter 482 of the laws of 2013, are amended and a new subparagraph 7 is added to read as follows:

The exercise of the power to appoint to an appointed trust under paragraph (b) or (c) of this section shall be evidenced by an instrument in writing, signed, dated and acknowledged by the authorized trustee. The exercise of the power shall be effective thirty days after the date of service of the instrument as specified in subparagraph (2) of this paragraph, unless the persons entitled to notice consent in writing to a sooner effective date. THE EXERCISE OF THE POWER IS IRREVOCABLE ON SUCH EFFECTIVE DATE, EITHER THIRTY DAYS FOLLOWING SERVICE OF THE NOTICE OR THE EFFECTIVE DATE AS SET FORTH IN THE WRITTEN CONSENT.

(6) A copy of the instrument exercising the power shall be kept with the records of the invaded trust and, WITHIN TWENTY DAYS OF THE EFFECTIVE DATE, 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 inter-

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

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

(7) PRIOR TO THE EFFECTIVE DATE AS PROVIDED HEREIN, A TRUSTEE MAY REVOKE THE EXERCISE OF THE POWER TO INVADE TO A NEW TRUST. WHERE A TRUSTEE HAS SERVED NOTICE OF THE EXERCISE OF THE POWER PURSUANT TO SUBPARAGRAPH (2) OF THIS PARAGRAPH, THE TRUSTEE SHALL SERVE NOTICE OF THE REVOCATION OF THE EXERCISE OF THE POWER TO PERSONS INTERESTED IN THE INVADED TRUST AND THE APPOINTED TRUST BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL DELIVERY OR IN ANY OTHER MANNER DIRECTED BY THE COURT HAVING JURISDICTION OVER THE INVADED TRUST. WHERE THE NOTICE OF THE EXERCISE OF THE POWER WAS FILED WITH THE COURT, THE TRUSTEE SHALL FILE THE NOTICE OF REVOCATION OF THE EXERCISE OF THE POWER WITH SUCH COURT.

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