STATE OF NEW YORK

9764--A

Cal. No. 723

IN ASSEMBLY

February 6, 2018

Introduced by M. of A. DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the surrogate's court procedure act, in relation to the computation and allocation of the commissions of trustees of charitable trusts; and repealing certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 3 of section 2308 of the surrogate's court procedure act, as amended by chapter 243 of the laws of 2001, is amended to read as follows:

3. Unless the will otherwise explicitly provides, the annual commissions allowed by [~~subdivision two of~~] this section shall be payable one-third from the income of the trust and two-thirds from the principal of the trust. However, in the case of a trust whose definition of income is governed by 11-2.4 of the estates, powers and trusts law, such annual commissions shall be payable from the corpus of any such trust after allowance for the unitrust amount and shall not be payable out of such unitrust amount.

§ 2. Paragraphs (a) and (b) of subdivision 5 of section 2308 of the surrogate's court procedure act, paragraph (a) as amended by chapter 936 of the laws of 1984, are amended to read as follows:

(a) During the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust **established** after the termination of a life use or uses the trustee shall be entitled to and may retain **annual** commissions [~~from income in an amount annually equal to 6 per cent of income collected in each year~~] **according to the terms specified in subdivision 2 of this section, but only to the extent of 80 percent of the rates stated therein. Notwithstanding any other provision of law, with respect to any portion of such trust which**

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

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exceeds a principal value of twenty million dollars, the trustee may only take annual commissions to the extent of 50 percent of the rate specified in paragraph (c) of subdivision 2 of this section.

(b) In the case of a trust [~~created solely for public, religious, charitable, scientific, literary, educational or fraternal uses the~~] described in paragraph (a) of this subdivision, a trustee shall not be entitled to any commission from principal as specified in subdivision 1 of this section for paying out principal.

§ 3. Paragraph (c) of subdivision 6 of section 2308 of the surrogate's court procedure act is REPEALED.

§ 4. Subdivision 12 of section 2308 of the surrogate's court procedure act, as added by chapter 237 of the laws of 1978, is amended to read as follows:

12. If a trustee of a trust is authorized or required by the terms of the will to accumulate income for any purpose permitted by law, any income so accumulated which is not added to principal of the trust shall be deemed a separate trust for purposes of this subdivision and the trustee shall be entitled to commissions in respect thereof at the rates and according to the terms and provisions of subdivisions 1 [~~and~~], 2 and 5 of this section as though, for purposes of computing commissions of the trustee, income so accumulated was principal.

§ 5. Subdivision 3 of section 2309 of the surrogate's court procedure act, as amended by chapter 243 of the laws of 2001, is amended to read as follows:

3. Unless the will or lifetime trust instrument otherwise explicitly provides the annual commissions allowed by [~~subdivision 2~~] this section shall be payable one-third from the income of the trust and two-thirds from the principal of the trust. However, in the case of a trust whose definition of income is governed by 11-2.4 of the estates, powers and trusts law or a charitable remainder annuity trust or a charitable remainder unitrust, as defined in section six hundred sixty-four of the Internal Revenue Code of nineteen hundred eighty-six, as amended, such annual commissions shall be payable from the corpus of any such trust after allowance for the annuity or unitrust amounts and shall not be payable out of such annuity or unitrust amounts.

§ 6. Paragraphs (a) and (b) of subdivision 5 of section 2309 of the surrogate's court procedure act, paragraph (a) as amended by chapter 936 of the laws of 1984, are amended to read as follows:

(a) During the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust established after the termination of a life use or uses the trustee shall be entitled to and may retain annual commissions [~~from income in an amount annually equal to 6 per cent of income collected in each year~~] according to the terms specified in subdivision 2 of this section, but only to the extent of 80 percent of the rates stated therein. Notwithstanding any other provision of law, with respect to any portion of such trust which exceeds a principal value of twenty million dollars, the trustee may only take annual commissions to the extent of 50 percent of the rate specified in paragraph (c) of subdivision 2 of this section.

(b) In the case of a trust [~~created solely for public, religious, charitable, scientific, literary, educational or fraternal uses the~~] described in paragraph (a) of this subdivision, a trustee shall not be entitled to any commission from principal as specified in subdivision 1 of this section for paying out principal.

§ 7. Paragraphs (a) and (b) of subdivision 3 of section 2312 of the surrogate's court procedure act, as amended by chapter 511 of the laws of 1987, are amended to read as follows:

(a) during the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust **established** after the termination of a life use or uses a corporate trustee shall be entitled to and may retain **annual** commissions [~~**from income**~~] in accordance with the provisions of subdivision 1 or 2 [~~**hereof**~~] **of this section**, as the case may be**, except that the trustee shall not be entitled to a commission for paying out principal**.

(b) In the case of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses a corporate trustee shall not be entitled to any commission [~~**from**~~] **for paying out** principal.

§ 8. This act shall take effect immediately and shall apply to all trusts in existence on or after such effective date; provided, however that a trustee of a trust in existence on such effective date may elect to continue to take commissions under the law in effect prior to such effective date until December 31 of the year this act takes effect.