

# 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:

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

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

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

15 (a) During the continuance of a trust created solely for public, reli-  
16 gious, charitable, scientific, literary, educational or fraternal uses  
17 and during the period of continuance of such a trust established after  
18 the termination of a life use or uses the trustee shall be entitled to  
19 and may retain annual commissions [~~from income in an amount annually~~  
20 ~~equal to 6 per cent of income collected in each year~~] according to the  
21 terms specified in subdivision 2 of this section, but only to the extent  
22 of 80 percent of the rates stated therein. Notwithstanding any other  
23 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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1 exceeds a principal value of twenty million dollars, the trustee may  
2 only take annual commissions to the extent of 50 percent of the rate  
3 specified in paragraph (c) of subdivision 2 of this section.

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

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10 court procedure act is REPEALED.

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

14 12. If a trustee of a trust is authorized or required by the terms of  
15 the will to accumulate income for any purpose permitted by law, any  
16 income so accumulated which is not added to principal of the trust shall  
17 be deemed a separate trust for purposes of this subdivision and the  
18 trustee shall be entitled to commissions in respect thereof at the rates  
19 and according to the terms and provisions of subdivisions 1 [~~and~~], 2 and  
20 5 of this section as though, for purposes of computing commissions of  
21 the trustee, income so accumulated was principal.

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

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

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

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

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

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

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

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

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