

# STATE OF NEW YORK

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4866--A

2017-2018 Regular Sessions

## IN SENATE

March 3, 2017

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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 -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the estates, powers and trusts law, in relation to trust accounting income and principal

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

1 Section 1. Clause (A) of subparagraph 5 of paragraph (b) of section  
2 11-2.3 of the estates, powers and trusts law, as amended by chapter 408  
3 of the laws of 2008, is amended to read as follows:

4 (A) Where the rules in article 11-A apply to a trust and the terms of  
5 the trust describe the amount that may or must be distributed to a bene-  
6 ficiary by referring to the trust's income, the prudent investor stand-  
7 ard also authorizes the trustee to adjust between principal and income  
8 to the extent the trustee considers advisable to enable the trustee to  
9 make appropriate present and future distributions in accordance with  
10 clause (b)(3)(A) if the trustee determines, in light of its investment  
11 decisions, the consideration factors incorporated in clause (b)(5)(B),  
12 and the accounting income expected to be produced by applying the rules  
13 in article 11-A, that such an adjustment would be fair and reasonable to  
14 all of the beneficiaries. In adjusting from income to principal under  
15 the power conferred by this clause, the trustee may allocate to princi-  
16 pal any form of receipt which would otherwise be characterized as income  
17 and may specify the particular receipt or receipts being allocated to  
18 principal. In adjusting from principal to income the trustee (i) may  
19 allocate to income any asset which would otherwise be characterized as  
20 principal, regardless of whether it constitutes original trust princi-  
21 pal, accumulated income, or realized or unrealized appreciation, (ii)

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

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1 may specify the particular asset or assets being allocated to income,  
2 and (iii) may specify that what is being allocated to income is part or  
3 all of the realized gain from the sale, exchange or other disposition of  
4 particular principal assets.

5 § 2. Paragraph 2 of section 11-A-4.4 of the estates, powers and trusts  
6 law, as added by chapter 243 of the laws of 2001, is amended to read as  
7 follows:

8 (2) money or other property received from the sale, exchange, liqui-  
9 dation, or change in form of a principal asset, including realized  
10 profit, subject to this part; provided, however, that a trustee may vary  
11 this allocation as provided in clause 11-2.3(b)(5)(A), and provided  
12 further, that a trustee who has an unlimited discretionary power to  
13 distribute principal, as defined in subparagraph 10-6.6(s)(9), may allo-  
14 cate to income part or all of the realized gain from the sale, exchange  
15 or other disposition of specified principal assets.

16 § 3. This act shall take effect immediately and shall apply to all  
17 trusts, whenever established.