

STATE OF NEW YORK

6765--B

2017-2018 Regular Sessions

IN SENATE

June 16, 2017

Introduced by Sen. LANZA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD09529-06-8

1 and may retain annual commissions [~~from income in an amount annually~~
2 ~~equal to 6 per cent of income collected in each year~~] according to the
3 terms specified in subdivision 2 of this section, but only to the extent
4 of 80 percent of the rates stated therein. Notwithstanding any other
5 provision of law, with respect to any portion of such trust which
6 exceeds a principal value of twenty million dollars, the trustee may
7 only take annual commissions to the extent of 50 percent of the rate
8 specified in paragraph (c) of subdivision 2 of this section.

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

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15 court procedure act is REPEALED.

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

19 12. If a trustee of a trust is authorized or required by the terms of
20 the will to accumulate income for any purpose permitted by law, any
21 income so accumulated which is not added to principal of the trust shall
22 be deemed a separate trust for purposes of this subdivision and the
23 trustee shall be entitled to commissions in respect thereof at the rates
24 and according to the terms and provisions of subdivisions 1 [~~and~~], 2 and
25 5 of this section as though, for purposes of computing commissions of
26 the trustee, income so accumulated was principal.

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

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

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

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

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

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

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

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

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