STATE OF NEW YORK

5513

2019-2020 Regular Sessions

IN SENATE

May 3, 2019

Introduced by Sen. HOYLMAN -- (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 testamentary disposition to trustee under, or in accordance with, terms of existing inter vivos trust

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

Section 1. Section 3-3.7 of the estates, powers and trusts law, paragraph (a) as amended by chapter 139 of the laws of 1997 and such section as renumbered by chapter 472 of the laws of 1967, is amended to read as follows:

§ 3-3.7 Testamentary disposition to trustee under, or in accordance with terms of existing inter vivos trust

(a) A testator [~~or testatrix~~] may by will dispose of or appoint all or any part of [~~his or her~~] such testator's estate to a trustee of a trust, the terms of which are evidenced by a written instrument executed by the testator [~~or testatrix~~], the testator [~~or testatrix~~] and some other person, or some other person, including a trust established for the receipt of the proceeds of an annuity or pure endowment contract, or of a thrift, savings, pension, retirement, death benefit, stock bonus, or profit-sharing plan or system or a funded or unfunded life, group life, industrial life or accident and health insurance trust (although the [~~settlor~~] person establishing such trust has reserved any or all rights of ownership of the insurance contracts), regardless of [~~the existence, size or character of the corpus of such insurance trust or other trust~~] whether any assets have been transferred to the trust prior to the death of the testator; provided that [~~such~~] the trust instrument is identified in the will and is executed by the person establishing the trust prior to or contemporaneously with the execution of the will and, unless such person is the sole trustee, by at least one trustee thereof prior to the

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

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death of the testator, in the manner [~~provided for in 7-1.17, prior to or contemporaneously with the execution of the will, and such trust instrument is identified in such will~~] required by the laws of this state for the recording of a conveyance of real property or, in lieu thereof, in the presence of two witnesses who shall affix their signatures to the trust instrument.

(b) The testamentary disposition or appointment is valid, even though:

(1) The trust instrument is amendable or revocable, or both, provided, however, that the disposition or appointment shall be given effect in accordance with the terms of the trust instrument, including an amendment thereto, as they appear in writing on the date of the testator's death and, where the testator so directs, including amendments to the trust instrument after his or her death, if the instrument evidencing such amendment is executed and acknowledged in the manner [~~herein~~] provided for [~~executing and acknowledging the instrument which it amends~~] in paragraph (b) of 7-1.17.

(2) The right is reserved in such trust instrument (A) to exercise any power over any property transferred to or held in the trust or (B) to direct during the lifetime of the [~~settlor~~] person establishing the trust or any other person, the persons and organizations to whom or in whose behalf the income shall be paid or the principal distributed.

(3) The trust instrument or any amendment thereto was not executed and attested in accordance with the formalities prescribed by 3-2.1.

(c) The property so disposed of or appointed by will becomes a part of the trust to which it is given, and title thereto vests in the trustee to be administered and disposed of in accordance with the terms of the trust instrument.

(d) Any disposition or appointment to the trustee made by a testator who died prior to the effective date of this section, which would be invalid under the applicable law of this state pre-existing the effective date of this section, shall be construed to create a testamentary trust under and in accordance with the terms of the trust instrument which the testator originally intended should embrace the property disposed of or appointed, as such terms appear in such trust instrument at the date of the testator's death.

(e) A revocation or termination of the trust before the death of the testator shall cause the disposition or appointment to fail, unless the testator has made an alternative disposition.

§ 2. This act shall take effect immediately and shall apply to all testamentary dispositions to a trustee occurring on or after such effective date.