

# STATE OF NEW YORK

7522

2019-2020 Regular Sessions

## IN ASSEMBLY

May 8, 2019

Introduced by M. of A. BUCHWALD, DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to the commissions of donees of a power in trust, including donees of a power during minority

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

- 1 Section 1. Section 2306 of the surrogate's court procedure act is  
2 amended to read as follows:  
3 § 2306. Annual statements to be furnished to beneficiaries  
4 Any trustee, donee of a power during minority or donee of a power in  
5 trust who is not required to furnish annual statements under either 2308  
6 or 2309 because he or she has not retained annual commissions shall  
7 nevertheless be required to furnish the annual statements referred to in  
8 those sections to any beneficiary receiving income or any person inter-  
9 ested in the principal of the trust who shall request such statements,  
10 or in the case of a power during minority or of a power in trust, to the  
11 beneficiary of the power in trust, or to a person to whom a payment not  
12 exceeding \$10,000 could be made under subdivision 1 of section 2220 of  
13 this chapter.  
14 § 2. The opening paragraph of subdivision 1 of section 2307 of the  
15 surrogate's court procedure act, as amended by chapter 474 of the laws  
16 of 1994, is amended to read as follows:  
17 Except as otherwise provided in paragraph (f) of this subdivision on  
18 the settlement of the account of any fiduciary other than a trustee, a  
19 donee of a power during minority or a donee of a power in trust, the  
20 court must allow to him or her the reasonable and necessary expenses  
21 actually paid by him or her and if he or she be an attorney of this  
22 state and shall have rendered legal services in connection with his or  
23 her official duties, such compensation for his or her legal services as

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

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1 appear to the court to be just and reasonable and in addition thereto it  
2 must allow to the fiduciary for his or her services as fiduciary, and if  
3 there be more than one, apportion among them according to the services  
4 rendered by them respectively the following commissions:

5 § 3. Section 2308 of the surrogate's court procedure act, the section  
6 heading and subdivision 1 as amended by chapter 503 of the laws of 1980,  
7 paragraph (c) of subdivision 1 as added by chapter 376 of the laws of  
8 2001, subdivision 2 as amended by chapter 654 of the laws of 1993,  
9 subdivision 3 as amended by chapter 243 of the laws of 2001, subdivi-  
10 sions 4, 6, 7 and paragraph (d) of subdivision 9, as amended and subdivi-  
11 sion 12 as added by chapter 237 of the laws of 1978, paragraph (a) of  
12 subdivision 5 as amended and subdivision 13 as added by chapter 936 of  
13 the laws of 1984, paragraphs (a) and (b) of subdivision 6 as amended by  
14 chapter 245 of the laws of 1991, and subdivision 8 as amended by chapter  
15 685 of the laws of 1967, is amended to read as follows:

16 § 2308. Commissions of trustees, donees of power during minority and  
17 donees of powers in trust under wills of persons dying, or  
18 under lifetime trusts created, on or before August 31, 1956

19 1. On the settlement of the account of any trustee or donee of power  
20 in trust under the will of a person dying on or before August 31, 1956,  
21 or under a lifetime trust established on or before August 31, 1956, the  
22 court must allow him or her his or her reasonable and necessary expenses  
23 actually paid by him or her and if he or she be an attorney of this  
24 state and shall have rendered legal services in connection with his or  
25 her official duties, such compensation for his or her legal services as  
26 shall appear to the court to be just and reasonable and in addition  
27 thereto it must allow to the trustee or to the donee of the power in  
28 trust for his or her services as trustee or donee of the power in trust  
29 the following commissions from trust principal or property subject to  
30 the power in trust:

31 (a) For receiving principal or property subject to the power in trust

32 (1) all sums of money constituting principal or property subject to  
33 the power in trust not exceeding \$2,000 at the rate of 3 per cent;

34 (2) all additional sums of principal or property subject to the power  
35 in trust not exceeding \$10,000 at the rate of 1 1/2 per cent;

36 (3) all sums of principal or property subject to the power in trust  
37 above \$12,000 at the rate of 1 1/4 per cent; and

38 (b) For paying out principal or property subject to the power in trust  
39 at the rate of 1 per cent.

40 (c) Notwithstanding the provisions of section 8 of chapter 237 of the  
41 laws of 1978, commissions provided by paragraph (a) of this subdivision  
42 for receiving principal or property subject to the power in trust shall  
43 not be allowed to a trustee or donee of a power in trust who qualifies  
44 to act as such on or after June 5, 1978, and shall not be allowed on  
45 additions of property received on or after June 5, 1978; such commis-  
46 sions on any increments in property that are payable by reason of any  
47 sale, exchange or liquidation of such property shall be allowed on the  
48 lesser of (1) the amount of such increments on the date of sale,  
49 exchange or liquidation of such property and (2) the amount of such  
50 increments on June 5, 1978; and such commissions on any increments in  
51 property that are payable by reason of any distribution of such property  
52 shall be allowed on the lesser of (1) the amount of such increments on  
53 the date of distribution of such property and (2) the amount of such  
54 increments on the effective date of this paragraph.

1 2. In addition to the commission allowed by subdivision one a trustee  
2 or a donee of a power in trust shall be entitled to annual commissions  
3 at the following rates:

4 (a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000  
5 of principal or property subject to the power in trust;

6 (b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of  
7 principal or property subject to the power in trust; and

8 (c) \$3.00 per \$1,000 or major fraction thereof on all additional prin-  
9 cipal or property subject to the power in trust.

10 Such annual commissions shall be computed either on the value of the  
11 principal of the trust or of the property subject to the power in trust  
12 at the end of the period for which the commissions are payable or, at  
13 the option of the trustee or of the donee of the power in trust, on the  
14 value of the principal of the trust or of the property subject to the  
15 power in trust at the beginning of such period, provided that the option  
16 elected by the trustee or of the donee of the power in trust for the  
17 first period for which such commissions are payable shall be used during  
18 the continuance of the trust or of the power in trust and shall be bind-  
19 ing on any successor or substitute trustee or trustees or successor or  
20 substitute donees of the power in trust. In the case of a trust or  
21 power in trust which prior to January 1, 1994 computed annual commis-  
22 sions on the basis of a 12 month period (other than a calendar year),  
23 the trustee's or donee's prior election of such 12 month period shall be  
24 binding unless, prior to January 1, 1995, the trustee or donee makes a  
25 new election to compute annual commissions on the basis of a calendar  
26 year either on the value of the principal of the trust or of the proper-  
27 ty subject to the power in trust at the end of, or at the option of the  
28 trustee or donee of the power in trust at the beginning of, the calendar  
29 year for which the commissions were payable, which new election shall be  
30 used during the remaining continuance of the trust or of the power in  
31 trust and shall be binding on any successor or substitute trustee or  
32 trustees or donee or donees of the power in trust. The computation shall  
33 be made on the basis of a 12 month period but the amount so computed  
34 payable to a trustee or donee of a power in trust shall be proportion-  
35 ately reduced or increased for any payments made in partial distribution  
36 of the trust or of the property subject to the power in trust or receipt  
37 of any additional property into the trust or by the donee of a power in  
38 trust within such period and shall be proportionately reduced in any  
39 period for which such commissions are payable to the trustee or donee of  
40 the power in trust if the period is less than 12 months. For the purpose  
41 of computing the annual commissions the value of any principal asset  
42 when received by the trust or by the donee of a power in trust shall be  
43 the presumptive value of the asset at the beginning and end of the peri-  
44 od for which such commissions are payable. In computing the value of the  
45 principal of the trust or of the property subject to the power in trust  
46 the trustee or the donee of the power in trust may use the presumptive  
47 value in respect of any principal asset or may use the actual value of  
48 the asset. On the settlement of the account of the trustee or of the  
49 donee of a power in trust any person interested may dispute the amount  
50 of any commission claimed or retained. The burden of proving that the  
51 actual value of any principal asset differs from its presumptive value  
52 is upon the trustee, the donee of the power in trust or other person  
53 claiming the difference.

54 3. Unless the will otherwise explicitly provides, the annual commis-  
55 sions allowed by subdivision two of this section shall be payable one-  
56 third from the income of the trust or of the property subject to the

1 power in trust and two-thirds from the principal of the trust or from  
2 the property subject to the power in trust. However, in the case of a  
3 trust whose definition of income is governed by 11-2.4 of the estates,  
4 powers and trusts law, such annual commissions shall be payable from the  
5 corpus of any such trust after allowance for the unitrust amount and  
6 shall not be payable out of such unitrust amount.

7 4. The commissions allowed by subdivision 2 may be retained by a trustee  
8 or donee of a power in trust provided he or she furnishes annually  
9 as of a date not more than 30 days prior to the end of the trust year  
10 selected by the trustee or the calendar year, to each beneficiary  
11 currently receiving income, and to any other beneficiary interested in  
12 the income and to any person interested in the principal of the trust  
13 who shall make a demand therefor or to the beneficiary of the power in  
14 trust who shall make a demand therefor, a statement showing the principal  
15 assets or the property subject to the power in trust on hand on that  
16 date, and at least annually or more frequently if the trustee or donee  
17 of a power in trust so elects, a statement showing all his or her  
18 receipts of income and principal or property subject to the power in  
19 trust during the period with respect to which the statement is rendered  
20 including the amount of any commissions retained and the basis upon  
21 which the commissions were computed. A trustee or donee of a power in  
22 trust shall not be deemed to have waived any commissions by reason of  
23 his or her failure to retain them at the time when he or she becomes  
24 entitled thereto; provided however that commissions from income for any  
25 given trust or calendar year shall be allowed and retained only from  
26 income derived from the trust or from the property subject to the power  
27 in trust during that year and shall not be supplied from income on hand  
28 in respect of any other trust or calendar year. If a beneficiary receiving  
29 income does not desire to be furnished with any such statement his  
30 or her advice to the trustee or to the donee of the power in trust to  
31 that effect in writing shall thereafter excuse the trustee or donee of  
32 the power in trust from furnishing such statement to the beneficiary  
33 unless and until the beneficiary requests such annual statements from  
34 the trustee or donee of the power in trust.

35 5. (a) During the continuance of a trust created solely for public,  
36 religious, charitable, scientific, literary, educational or fraternal  
37 uses and during the period of continuance of such a trust after the  
38 termination of a life use or uses the trustee shall be entitled to and  
39 may retain commissions from income in an amount annually equal to 6 per  
40 cent of income collected in each year.

41 (b) In the case of a trust created solely for public, religious, charitable,  
42 scientific, literary, educational or fraternal uses the trustee  
43 shall not be entitled to any commission from principal.

44 (c) In the case of such a trust which continues after the termination  
45 of a life use or uses the trustee for the period of the measuring life  
46 or lives shall be entitled to commissions from income and principal at  
47 the rates and according to the terms otherwise provided in this section,  
48 except that he or she shall not be entitled to any commissions for  
49 paying out any amount of principal.

50 6. (a) If the gross value of the principal of the trust or of the  
51 property subject to the power in trust accounted for amounts to \$400,000  
52 or more and there is more than 1 trustee or donee of the power in trust,  
53 each trustee or donee of the power in trust is entitled to the full  
54 compensation for receiving and paying out principal or property subject  
55 to the power in trust allowed herein to a sole trustee or donee of the  
56 power in trust unless there are more than 3, in which case the compen-

1 sation to which 3 would be entitled must be apportioned among the trus-  
2 tees or donees of the power in trust according to the services rendered  
3 by them respectively, unless the trustees or donees of the power in  
4 trust shall have agreed in writing among themselves to a different  
5 apportionment which, however, shall not provide for more than one full  
6 commission for any one of them. If the gross value of the principal of  
7 the trust or of the property subject to the power in trust accounted for  
8 is:

9 (i) less than \$100,000 and there is more than 1 trustee or donee of  
10 the power in trust the full compensation for receiving and paying out  
11 principal or property subject to the power in trust allowed herein to a  
12 sole trustee or donee of the power in trust must be apportioned among  
13 them according to the services rendered by them respectively, or

14 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of  
15 the power in trust is entitled to the full compensation for receiving  
16 and paying out principal or property subject to the power in trust  
17 allowed pursuant to this subdivision to a sole trustee or donee of the  
18 power in trust unless there are more than 2 trustees or donees of the  
19 power in trust in which case the full compensation for paying out prin-  
20 cipal or property subject to the power in trust allowed pursuant to this  
21 subdivision to 2 trustees or donees of the power in trust must be appor-  
22 tioned among them according to the services rendered by them respective-  
23 ly,

24 unless the trustees or donees of the power in trust shall have agreed in  
25 writing between or among themselves to a different apportionment which,  
26 however, shall not provide for more than one full commission for any one  
27 of them.

28 (b) If the value of the principal of the trust or of the property  
29 subject to the power in trust for the purpose of computing the annual  
30 commissions allowed by subdivision 2 amounts to \$400,000 or more and  
31 there is more than one trustee or donee of the power in trust, each  
32 trustee or donee of the power in trust is entitled to the full annual  
33 commission allowed herein to a sole trustee or donee of the power in  
34 trust unless there are more than 3, in which case the annual commissions  
35 to which 3 would be entitled must be apportioned among the trustees or  
36 donees of the power in trust according to the services rendered by them  
37 respectively, unless the trustees or donees of the power in trust shall  
38 have agreed in writing among themselves to a different apportionment  
39 which, however, shall not provide for more than one full annual commis-  
40 sion for any one of them. If the value of the principal or of the prop-  
41 erty subject to the power in trust for the purpose of computing the  
42 annual commission allowed by subdivision 2 amounts to:

43 (i) less than \$100,000 and there is more than 1 trustee or donee of  
44 the power in trust, the annual commissions from income and the annual  
45 commission allowed herein to a sole trustee or donee of the power in  
46 trust must be apportioned among the trustees or donee of the power in  
47 trust according to the services rendered by them respectively, or

48 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of  
49 the power in trust is entitled to the full annual commission allowed  
50 pursuant to this subdivision to a sole trustee or donee of the power in  
51 trust unless there are more than 2 trustees or donees of the power in  
52 trust in which case the full annual commissions allowed pursuant to this  
53 subdivision to 2 trustees or donees of the power in trust must be appor-  
54 tioned among them according to the services rendered by them respective-  
55 ly,

1 unless the trustees or donees of the power in trust shall have agreed in  
2 writing between or among themselves to a different apportionment which,  
3 however, shall not provide for more than one full annual commission for  
4 any one of them. However, if from a trust or from property subject to a  
5 power in trust having a value of \$400,000 or more, or if from a trust or  
6 from property subject to a power in trust having a value of \$100,000 or  
7 more but less than \$400,000, as the case may be, at the beginning of a  
8 trust year or of the calendar year in the case of a power in trust, any  
9 payments in partial distribution of the trust or of the property subject  
10 to the power in trust shall be made during the trust or calendar year so  
11 as to reduce the trust or of the property subject to the power in trust  
12 to a value of less than \$400,000 or \$100,000, as the case may be, at the  
13 end of the trust or calendar year, then the annual commission allowed  
14 herein shall, on a proportionate basis, be those allowed to a trustee of  
15 a trust or to donees of a power in trust over property having a value of  
16 \$400,000 or more, of a trust or to donees of a power in trust over prop-  
17 erty having a value of \$100,000 or more but less than \$400,000, as the  
18 case may be, for the period from the beginning of the trust or calendar  
19 year to the date of the distribution and shall, on a proportionate  
20 basis, be those allowed to trustees of a trust or to donees of a power  
21 in trust over property having a value of either \$100,000 or more but  
22 less than \$400,000 or less than \$100,000, as the case may be, for the  
23 remainder of the trust or calendar year and the part of such commissions  
24 payable from principal and computed from the beginning of the trust or  
25 calendar year to the date of distribution shall be charged ratably to  
26 the property remaining in the trust and to the property distributed from  
27 the trust on the basis of their respective values. Further, if during a  
28 trust year or a calendar year in the case of power in trust additional  
29 property shall be received into a trust which had a value of less than  
30 \$100,000 or by a donee of a power in trust the property subject to which  
31 had a value of less than \$100,000, or into a trust which had a value of  
32 \$100,000 or more but less than \$400,000 or by a donee of a power in  
33 trust the property subject to which had a value of \$100,000 or more but  
34 less than \$400,000, as the case may be, at the beginning of the trust or  
35 calendar year so that because of the additional property the trust or  
36 the property subject to the power in trust shall have a value of  
37 \$100,000 or more or of \$400,000 or more, as the case may be, at the end  
38 of the trust or calendar year, then the annual commission allowed herein  
39 to the trustee or to the donee of the power in trust shall, on a propor-  
40 tionate basis, be those allowed to trustees of a trust or to donees of a  
41 power in trust over property having a value of less than \$100,000, or to  
42 trustees of a trust or to donees of the power in trust having a value of  
43 \$100,000 or more but less than \$400,000, as the case may be, for the  
44 period from the beginning of the trust or calendar year to the date of  
45 the receipt of the additional property and shall, on a proportionate  
46 basis, be those allowed to trustees of a trust or to donees of a power  
47 in trust over property having a value of \$100,000 or more but less than  
48 \$400,000, or to trustees of a trust or to donees of a power in trust  
49 over property having \$400,000 or more, as the case may be, for the  
50 remainder of the trust or calendar year.

51 (c) Notwithstanding any provisions of paragraphs (a) and (b) of this  
52 subdivision to the contrary, if during the continuance of a trust  
53 created solely for public, religious, charitable, scientific, literary,  
54 educational or fraternal uses or during the continuance of such a trust  
55 after the termination of a life use or uses, the annual income of the  
56 trust amounts to \$4,000 or more and there is more than 1 trustee, each

1 trustee is entitled to the full commission allowed under subdivision 5  
2 to a sole trustee unless there are more than 2, in which case the  
3 commissions to which 2 trustees would be entitled must be apportioned  
4 among the trustees according to the services rendered by them respec-  
5 tively, unless they shall have agreed in writing among themselves to a  
6 different apportionment which, however, shall not provide for more than  
7 one full commission to any one of them; provided however, if during the  
8 continuance of a trust created solely for public, religious, charitable,  
9 scientific, literary, educational or fraternal uses created prior to  
10 April 1, 1948, the annual income of the trust amounts to \$4,000 or more  
11 and there is more than 1 trustee each trustee is entitled to the full  
12 commission allowed under subdivision 5 to a sole trustee unless there  
13 are more than 3, in which case the commission to which 3 trustees would  
14 be entitled must be apportioned among the trustees according to the  
15 services rendered by them respectively, unless they shall have agreed in  
16 writing among themselves to a different apportionment which, however,  
17 shall not provide for more than one full commission to any one of them.  
18 If the annual income of the trust amounts to less than \$4,000 and there  
19 is more than 1 trustee the commissions to which a sole trustee would be  
20 entitled under subdivision 5 must be apportioned among the trustees  
21 according to the services rendered by them respectively unless they  
22 shall have agreed in writing among themselves to a different apportion-  
23 ment.

24 7. Where a trustee or donee of a power in trust is for any reason  
25 entitled or required to collect the rents of and manage real property  
26 the net amount of rents collected and not the gross amount shall be used  
27 in making computation of commissions allowed by subdivision 5 hereof and  
28 in addition to the commissions herein provided he or she shall be  
29 allowed and may retain for such services 6 per cent of the gross rents  
30 collected, but there shall be only 1 such additional commission regard-  
31 less of the number of trustees or donees of the power in trust. If there  
32 are 2 or more trustees or donees of the power in trust the additional  
33 commission herein provided must be apportioned among them according to  
34 the services rendered by them respectively unless they shall have agreed  
35 in writing among themselves to a different apportionment.

36 8. A trustee who prior to September 1, 1966 shall have received the  
37 maximum amount of commissions on principal permitted by subdivision 8 of  
38 section 285-a of the surrogate's court act as that subdivision existed  
39 prior to that date, shall not be entitled to annual principal commis-  
40 sions for the period from the date when he or she shall receive such  
41 maximum and September 1, 1966, but shall be entitled to receive commis-  
42 sions from and after September 1, 1966 at the rates and in the manner  
43 provided in this section. A trustee who has become entitled to annual  
44 principal commissions pursuant to section 285-a of the surrogate's court  
45 act as it existed prior to September 1, 1966, but has not received them,  
46 may receive an amount of commissions not in excess of the amount he or  
47 she would have been entitled to if he or she had taken such commissions,  
48 and be entitled to receive in addition commissions from and after  
49 September 1, 1966 at the rates and in the manner provided in that  
50 section.

51 9. A trustee who has been acting prior to July 1, 1956 shall be enti-  
52 tled to have commissions on principal and income theretofore received by  
53 him or her computed, allowed and paid under the methods and at the rates  
54 set forth herein, except as follows:

55 (a) If prior to July 1, 1956 a trustee has been allowed or has  
56 retained commissions for receiving and paying out or for distributing

1 any item of principal he or she shall be entitled to no further commis-  
2 sions on the item.

3 (b) If prior to July 1, 1956 a trustee has been allowed or retained  
4 commissions on any item of principal received but not paid out or  
5 distributed by him or her he or she shall be entitled to no further  
6 commissions for receiving the item.

7 (c) Any trustee who became entitled to an annual principal commission  
8 under subdivision 1 (b) of section 285-a of the surrogate's court act as  
9 it existed prior to April 1, 1948 and who has not retained such commis-  
10 sion may retain an amount equal to one-half of such annual principal  
11 commission. A trustee who because of the provisions of subdivision 2 of  
12 section 285-a of the surrogate's court act as it existed prior to April  
13 1, 1948 either was not entitled to retain an annual principal commission  
14 under subdivision 1 (b) thereof or was required to credit such annual  
15 principal commission against his or her commission for receiving princi-  
16 pal, may retain an amount equal to 1/2 of such annual principal commis-  
17 sion. If a trustee has been allowed by decree or has retained any such  
18 annual principal commission one-half the amount thereof shall be  
19 deducted from the amount of commissions to which the trustee would  
20 otherwise be entitled under the provisions of subdivision 1.

21 (d) The annual principal commissions allowed by subdivision 3 of this  
22 section as it existed on September 1, 1967 shall not be allowed or  
23 retained in respect of any trust year ending prior to April 1, 1948, but  
24 for any trust year ending on or after April 1, 1948 and prior to July 1,  
25 1956, the annual principal commission which may be allowed or retained  
26 shall be computed at the rates in effect on the date such trust year  
27 ended.

28 (e) If prior to July 1, 1956 a trustee has been allowed or has  
29 retained commissions on any item of income received and paid out by him  
30 or her prior to September 1, 1943 or on any item of income collected by  
31 him or her subsequent to September 1, 1943 he or she shall be entitled  
32 to no further commission on the item.

33 10. The value of any property to be determined in such manner as  
34 directed by the court and the increment thereof received, distributed or  
35 delivered shall be considered as money in making computation of commis-  
36 sions. Whenever any portion of the dividends, interests or rents payable  
37 to a trustee or donee of a power in trust is required by any law of the  
38 United States or other governmental unit to be withheld by the person  
39 paying it for income tax purposes, the amount so withheld shall be  
40 deemed to have been collected.

41 11. Where the will provides a specific compensation to a trustee or  
42 donee of a power in trust he or she is not entitled to any other allow-  
43 ances for his or her services.

44 12. If a trustee of a trust or donee of a power in trust is authorized  
45 or required by the terms of the will to accumulate income for any  
46 purpose permitted by law, any income so accumulated which is not added  
47 to principal of the trust or to the principal of the property subject to  
48 the power in trust shall be deemed a separate trust or separate fund  
49 subject to the power in trust for purposes of this subdivision and the  
50 trustee or donee of the power in trust shall be entitled to commissions  
51 in respect thereof at the rates and according to the terms and  
52 provisions of subdivisions 1 and 2 of this section as though, for  
53 purposes of computing commissions of the trustee, income so accumulated  
54 was principal.

55 13. For the purposes of this section, the term "trustee" shall mean  
56 any trustee who is not a corporate trustee and the term "donee of a

1 power in trust" shall mean any such donee including a donee of a power  
2 during minority who is not a corporate fiduciary of a donee of a power  
3 during minority with the rights and duties of a guardian under section  
4 1714 of this chapter provided, however, that as used in subdivision 6 of  
5 this section, the term trustee shall include a corporate trustee.

6 § 4. Section 2309 of the surrogate's court procedure act, the section  
7 heading and subdivision 1 as amended by chapter 503 of the laws of 1980,  
8 subdivision 2 as amended by chapter 654 of the laws of 1993, subdivision  
9 3 as amended by chapter 243 of the laws of 2001, paragraph (a) of subdivi-  
10 sion 5 as amended and subdivision 11 as added by chapter 936 of the  
11 laws of 1984, subdivisions 6 and 7 as amended by chapter 303 of the laws  
12 of 1976, paragraphs (a) and (b) of subdivision 6 as amended by chapter  
13 245 of the laws of 1991, and the opening paragraphs of paragraphs (a)  
14 and (b) of subdivision 6 as amended by chapter 514 of the laws of 1993,  
15 is amended to read as follows:

16 § 2309. Commissions of trustees, of donees of powers during minority and  
17 of donees of powers in trust under wills of persons dying, or  
18 lifetime trusts established, after August 31, 1956

19 1. On the settlement of the account of any trustee or donee of a power  
20 in trust under the will of a person dying after August 31, 1956, or  
21 under a lifetime [~~inter~~] trust established after August 31, 1956, the  
22 court must allow to him or her his or her reasonable and necessary  
23 expenses actually paid by him or her and if he or she be an attorney of  
24 this state and shall have rendered legal services in connection with his  
25 or her official duties, such compensation for his or her legal services  
26 as shall appear to the court to be just and reasonable and in addition  
27 thereto it must allow to the trustee or donee of a power in trust for  
28 his or her services as trustee or donee of a power in trust a commission  
29 from principal or from the property subject to the power in trust, for  
30 paying out all sums of money constituting principal or property subject  
31 to the power in trust at the rate of 1 per cent.

32 2. In addition to the commission allowed by subdivision 1 hereof a  
33 trustee or donee of a power in trust shall be entitled to annual commis-  
34 sions at the following rates:

35 (a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000  
36 of principal or property subject to the power in trust.

37 (b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of  
38 principal or property subject to the power in trust.

39 (c) \$3.00 per \$1,000 or major fraction thereof on all additional prin-  
40 cipal or property subject to the power in trust.

41 Such annual commissions shall be computed either on the value of the  
42 principal of the trust or of the property subject to the power in trust  
43 at the end of the period for which the commissions are payable or, at  
44 the option of the trustee or donee of the power in trust, on the value  
45 of the principal of the trust or of the property subject to the power in  
46 trust at the beginning of such period, provided that the option elected  
47 by the trustee or donee of the power in trust for the first period for  
48 which such commissions are payable shall be used during the continuance  
49 of the trust or of the power in trust and shall be binding on any  
50 successor or substitute trustee or trustees, donee or donees. In the  
51 case of a trust which prior to January 1, 1994 computed annual commis-  
52 sions on the basis of a 12 month period (other than a calendar year),  
53 the trustee's prior election of such 12 month period shall be binding  
54 unless, prior to January 1, 1995, the trustee makes a new election to  
55 compute annual commissions on the basis of a calendar year either on the  
56 value of the principal of the trust at the end of, or at the option of

1 the trustee at the beginning of, the calendar year for which the commis-  
2 sions were payable, which new election shall be used during the remain-  
3 ing continuance of the trust and shall be binding on any successor or  
4 substitute trustee or trustees. The computation shall be made on the  
5 basis of a 12-month period but the amount so computed payable to a trust-  
6 tee shall be proportionately reduced or increased for any payments made  
7 in partial distribution of the trust or the receipt of any additional  
8 property into the trust within such period and shall be proportionately  
9 reduced in any period for which such commissions are payable to the  
10 trustee if the period is less than 12 months. For the purpose of comput-  
11 ing the annual commissions the value of any principal asset when  
12 received by the trust or donee of a power in trust shall be the presump-  
13 tive value of the asset at the beginning and end of the period for which  
14 such commissions are payable. In computing the value of the principal of  
15 the trust or of the property subject to the power in trust the trustee  
16 or donee of the power in trust may use the presumptive value in respect  
17 of any principal asset or may use the actual value of the asset. On the  
18 settlement of the account of the trustee or donee of a power in trust  
19 any person interested may dispute the amount of any commission claimed  
20 or retained. The burden of proving that the actual value of any princi-  
21 pal asset or asset subject to the power in trust differs from its  
22 presumptive value is upon the trustee or donee of a power in trust or  
23 other person claiming the difference.

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

36 4. The commissions allowed by subdivision 2 may be retained by a trust-  
37 tee provided he or she furnishes annually as of a date no more than 30  
38 days prior to the end of the trust year selected by the trustee, to each  
39 beneficiary currently receiving income, and to any other beneficiary  
40 interested in the income and to any person interested in the principal  
41 of the trust who shall make a demand therefor and by a donee of a power  
42 in trust if he or she furnishes annually as of a date no more than 30  
43 days prior to the end of the calendar year to the beneficiary of the  
44 power in trust, a statement showing the principal assets on hand on that  
45 date, and at least annually or more frequently if the trustee or donee  
46 of the power in trust so elects, a statement showing all his or her  
47 receipts of income and principal or property subject to the power in  
48 trust during the period with respect to which the statement is rendered  
49 including the amount of any commissions retained and the basis upon  
50 which the commissions were computed. A trustee or donee of a power in  
51 trust shall not be deemed to have waived any commissions by reason of  
52 his or her failure to retain them at the time when he or she becomes  
53 entitled thereto; provided however that in the case of a trust commis-  
54 sions payable from income for any given trust year shall be allowed and  
55 retained only from income derived from the trust during that year and  
56 shall not be supplied from income on hand in respect of any other trust

1 year and in the case of property subject to a power in trust commissions  
2 payable from income for any given calendar year shall be allowed and  
3 retained only from income derived from the property during that year and  
4 shall not be supplied from income on hand in respect of any other calen-  
5 dar year. If a beneficiary receiving income does not desire to be  
6 furnished with any such statements his or her advice to the trustee or  
7 to the donee of the power in trust to that effect in writing shall ther-  
8 eafter excuse the trustee or donee of the power in trust from furnishing  
9 such statement to the beneficiary unless and until the beneficiary  
10 requests such annual statements from the trustee or donee of the power  
11 in trust.

12 5. (a) During the continuance of a trust created solely for public,  
13 religious, charitable, scientific, literary, educational or fraternal  
14 uses and during the period of continuance of such a trust after the  
15 termination of a life use or uses the trustee shall be entitled to and  
16 may retain commissions from income in an amount annually equal to 6 per  
17 cent of income collected in each year.

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

21 (c) In the case of such a trust which continues after the termination  
22 of the measuring life use or uses the trustee for the period of the  
23 measuring life use or uses shall be entitled to commissions from income  
24 and principal at the rates and according to the terms specified in  
25 subdivision 2 and except in respect of principal paid out to a charity  
26 or for charitable uses shall be entitled to a commission for distribut-  
27 ing all sums of principal at the rate specified in subdivision 1.

28 6. (a) Subject to section 2313 regarding multiple commissions of exec-  
29 utors [~~or~~], trustees, or donees of a power in trust created under wills  
30 of persons dying, or lifetime trusts established, after August 31, 1993,  
31 if the gross value of the principal of the trust or of the property  
32 subject to the power in trust accounted for amounts to \$400,000 or more  
33 and there is more than 1 trustee or donee each trustee or donee is enti-  
34 tled to the full compensation for paying out principal allowed herein to  
35 a sole trustee or donee unless there are more than 3, in which case the  
36 compensation to which 3 would be entitled must be apportioned among the  
37 trustees or donees of the power in trust according to the services  
38 rendered by them respectively unless [~~the trustees~~] they shall have  
39 agreed in writing among themselves to a different apportionment which,  
40 however, shall not provide for more than one full commission for any one  
41 of them. If the gross value of the principal of the trust or of the  
42 property subject to the power in trust accounted for is:

43 (i) less than \$100,000 and there is more than 1 trustee or donee of  
44 the power in trust, the full compensation for paying out principal  
45 allowed herein to a sole trustee or donee of the power in trust must be  
46 apportioned among them according to the services rendered by them  
47 respectively, or

48 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of  
49 the power in trust is entitled to the full compensation for paying out  
50 principal allowed herein to a sole trustee or donee of the power in  
51 trust unless there are more than 2 trustees or donees of the power in  
52 trust in which case the full compensation for paying out principal  
53 allowed herein to 2 trustees or donees of a power of trust must be  
54 apportioned among them according to the services rendered by them  
55 respectively, unless the trustees or donees of the power in trust shall  
56 have agreed in writing between or among themselves to a different appor-

1 tionment which, however, shall not provide for more than one full  
2 commission for any one of them.

3 (b) Subject to section 2313 regarding multiple commissions of execu-  
4 tors [~~or~~], trustees, or donees of a power in trust created under wills  
5 of persons dying, or lifetime trusts established, after August 31, 1993,  
6 if the value of the principal of the trust or of the property subject to  
7 the power in trust for the purpose of computing the annual commissions  
8 allowed by subdivision 2 amounts to \$400,000 or more and there is more  
9 than one trustee or donee of a power in trust each trustee or donee of a  
10 power in trust is entitled to the full annual commission allowed herein  
11 to a sole trustee or donee of a power in trust unless there are more  
12 than 3, in which case the annual commissions to which 3 would be enti-  
13 tled must be apportioned among the trustees or donees of the power in  
14 trust according to the services rendered by them respectively unless the  
15 trustees or donees of the power in trust shall have agreed in writing  
16 among themselves to a different apportionment which, however, shall not  
17 provide for more than one full annual commission for any one of them. If  
18 the value of the principal of the trust or of the property subject to  
19 the power in trust for the purpose of computing the annual commission  
20 allowed by subdivision 2 amounts to:

21 (i) less than \$100,000 and there is more than 1 trustee or donee of  
22 the power in trust, the annual commission allowed herein to a sole trus-  
23 tee or donee of a power in trust must be apportioned among the trustees  
24 or donees of the power in trust according to the services rendered by  
25 them respectively, or

26 (ii) \$100,000 or more but less than \$400,000, each trustee or donee of  
27 the power in trust is entitled to the full annual commission allowed  
28 herein to a sole trustee or donee of a power in trust unless there are  
29 more than 2 trustees or donees of the power in trust in which case the  
30 full annual commissions allowed herein to 2 trustees or donees of a  
31 power in trust must be apportioned among them according to the services  
32 rendered by them respectively, unless the trustees or donees of the  
33 power in trust shall have agreed in writing between or among themselves  
34 to a different apportionment which, however, shall not provide for more  
35 than one full annual commission for any one of them. However, if from a  
36 trust or from property subject to a power in trust having a value of  
37 \$400,000 or more, or if from a trust or from property subject to a power  
38 in trust having a value of \$100,000, or more but less than \$400,000, as  
39 the case may be, at the beginning of a trust year or of the calendar  
40 year any payments in partial distribution of the trust or of the proper-  
41 ty subject to the power in trust shall be made during the trust or  
42 calendar year so as to reduce the trust or the property subject to the  
43 power in trust to a value of less than \$400,000 or \$100,000, as the case  
44 may be, at the end of the trust or calendar year, then the annual  
45 commissions allowed herein shall, on a proportionate basis, be those  
46 allowed to trustees of a trust or to donees of a power in trust over  
47 property having a value of \$400,000 or more, or of a trust or to donees  
48 of a power in trust over property having a value of \$100,000 or more but  
49 less than \$400,000, as the case may be, for the period from the begin-  
50 ning of the trust or calendar year to the date of the distribution and  
51 shall, on a proportionate basis, be those allowed to trustees of a trust  
52 or to donees of a power in trust over property having a value of either  
53 \$100,000 or more but less than \$400,000 or less than \$100,000, as the  
54 case may be, for the remainder of the trust or calendar year and the  
55 part of such commissions payable from principal and computed from the  
56 beginning of the trust or calendar year to the date of distribution

1 shall be charged ratably to the property remaining in the trust or still  
2 subject to the power in trust after such distribution and to the proper-  
3 ty distributed from the trust or to the beneficiary of the power in  
4 trust on the basis of their respective values. Further, if during a  
5 trust or calendar year additional property shall be received into a  
6 trust which had a value of less than \$100,000 or by a donee of a power  
7 in trust the property subject to which had a value of less than  
8 \$100,000, or into a trust which had a value of \$100,000 or more but less  
9 than \$400,000 or by a donee of a power in trust the property subject to  
10 which had a value of \$100,000 or more but less than \$400,000, as the  
11 case may be, at the beginning of the trust year or calendar year, so  
12 that because of the additional property the trust or the property  
13 subject to the power in trust has a value of \$100,000 or more but less  
14 than \$400,000, or of \$400,000 or more, as the case may be, at the end of  
15 the trust or calendar year, then the annual commissions allowed herein  
16 to the trustee or to the donee of the power in trust shall, on a propor-  
17 tionate basis, be those allowed to trustees of a trust or to donees of a  
18 power in trust over property having a value of less than \$100,000, or to  
19 trustees of a trust or to donees of a power in trust over property  
20 having a value of \$100,000 or more but less than \$400,000, as the case  
21 may be, for the period from the beginning of the trust or calendar year  
22 to the date of the receipt of the additional property and shall, on a  
23 proportionate basis, be those allowed to trustees of a trust or to  
24 donees of a power in trust over property having a value of \$100,000 or  
25 more but less than \$400,000, or to trustees of a trust or to donees of a  
26 power in trust over property having \$400,000 or more, as the case may  
27 be, for the remainder of the trust or calendar year.

28 (c) Notwithstanding any provision of paragraphs (a) and (b) of this  
29 subdivision to the contrary, if during the continuance of a trust not  
30 measured at any time directly or indirectly by a life or lives or during  
31 the continuance of a trust after the termination of the measuring life  
32 or lives, the annual income of the trust amounts to \$4,000 or more and  
33 there is more than 1 trustee, each trustee is entitled to the full  
34 commissions allowed under subdivision 5 to a sole trustee unless there  
35 are more than 2, in which case the commissions to which 2 trustees would  
36 be entitled must be apportioned among the trustees according to the  
37 services rendered by them respectively unless they shall have agreed in  
38 writing among themselves to a different apportionment which, however,  
39 shall not provide for more than one full commission to any one of them.  
40 If the annual income of the trust amounts to less than \$4,000 and there  
41 is more than 1 trustee the commissions to which a sole trustee would be  
42 entitled under subdivision 5 must be apportioned among the trustees  
43 according to the services rendered by them respectively unless they  
44 shall have agreed in writing among themselves to a different apportion-  
45 ment.

46 7. Where a trustee or donee of a power in trust is for any reason  
47 entitled or required to collect the rents of and manage real property  
48 the net amount of rents collected and not the gross amount shall be used  
49 in making computation of commissions allowed by subdivision 5 and in  
50 addition to the commissions herein provided he or she shall be allowed  
51 and may retain for such services 6 [~~per cent~~] percent of the gross rents  
52 collected, but there shall be only one such additional commission  
53 regardless of the number of trustees or donees of the power in trust. If  
54 there are 2 or more trustees or donees of the power in trust the addi-  
55 tional commission herein provided for must be apportioned among them  
56 according to the services rendered by them respectively unless they

1 shall have agreed in writing among themselves to a different apportion-  
2 ment.

3 8. If a trustee or donee of a power in trust is either authorized or  
4 required by the terms of the will to accumulate income for any purpose  
5 permitted by law he or she shall be entitled to commissions from the  
6 income so accumulated, including income derived from the investment of  
7 such accumulated income, at the rate of 2 [~~per-cent~~] percent of the  
8 first \$2,500 of such income distributed during the administration of the  
9 trust and 1 [~~per-cent~~] percent of all such income distributed in excess  
10 of \$2,500 and he or she may retain such commissions at the time or times  
11 such income is distributed.

12 9. The value of any property to be determined in such manner as  
13 directed by the court and the increment thereof received, distributed or  
14 delivered, shall be considered as money in making computation of commis-  
15 sions. Whenever any portion of the dividends, interests or rents payable  
16 to a trustee or to a donee of a power in trust is required by any law of  
17 the United States or other governmental unit to be withheld by the  
18 person paying it for income tax purposes, the amount so withheld shall  
19 be deemed to have been collected.

20 10. Where the will provides a specific compensation for a trustee or  
21 for a donee of a power in trust he or she is not entitled to any other  
22 allowances for his or her services.

23 11. For the purposes of this section, the term "trustee" shall mean  
24 any trustee who is not a corporate trustee and the term "donee of a  
25 power in trust" shall mean any such donee including a donee of a power  
26 during minority who is not a corporate fiduciary provided, however, that  
27 as used in subdivision 6 of this section, the term trustee shall include  
28 a corporate trustee and further provided that the term "property subject  
29 to the power in trust" shall include property subject to a power during  
30 minority.

31 § 5. Section 2312 of the surrogate's court procedure act, as added by  
32 chapter 936 of the laws of 1984, subdivisions 2, 3, 7, 9 and paragraphs  
33 (d) and (e) of subdivision 10 as amended by chapter 511 of the laws of  
34 1987, paragraph (b) of subdivision 4 as amended by chapter 245 of the  
35 laws of 1991, and subdivision 5 as amended by chapter 243 of the laws of  
36 2001, is amended to read as follows:

37 § 2312. Commissions of corporate trustees, including when acting as  
38 donees of powers during minority or donees of power in trust

39 1. If the will or lifetime trust instrument makes provisions for  
40 specific rates or amounts of commissions (other than a general reference  
41 to commissions allowed by law or words of like import) for a corporate  
42 trustee, or, if a corporate trustee has agreed to accept specific rates  
43 or amounts of commissions, a corporate trustee, whether as trustee or as  
44 donee of a power in trust, including for purposes of this section as  
45 donee of a power during minority, created under the provisions of the  
46 will or lifetime trust instrument, shall be entitled to be compensated  
47 in accordance with such provisions or agreement, as the case may be.

48 2. For trusts having a principal value of more than four hundred thou-  
49 sand dollars and as donee of a power in trust where the property subject  
50 to the power, including for purposes of this section the property  
51 subject to a power during minority, has a principal value of more than  
52 four hundred thousand dollars and subject to the provisions of subdivi-  
53 sion 4 of this section, if the will or lifetime trust instrument does  
54 not make provisions for specific rates or amounts of commissions, or,  
55 contains only a general reference to commissions allowed by law or words  
56 of like import, a corporate trustee shall be entitled to such commis-

1 sions as may be reasonable, and the court, upon application of a person  
2 interested in the trust or in the fund held by the corporate trustee as  
3 donee of a power in trust, may review the reasonableness of the commis-  
4 sion of such corporate trustee.

5 3. Subject to the provisions of paragraph (a) of subdivision 4 of this  
6 section and regardless of the principal value of the trust: (a) during  
7 the continuance of a trust created solely for public, religious, chari-  
8 table, scientific, literary, educational or fraternal uses and during  
9 the period of continuance of such a trust after the termination of a  
10 life use or uses a corporate trustee shall be entitled to and may retain  
11 commissions from income in accordance with the provisions of subdivision  
12 1 or 2 hereof, as the case may be.

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

16 (c) In the case of such a trust which continues after the termination  
17 of the measuring life use or uses a corporate trustee for the period of  
18 the measuring life use or uses shall be entitled to commissions from  
19 income and principal according to the provisions of subdivision 1 or 2  
20 hereof, as the case may be, and except in respect of principal paid out  
21 to a charity or for charitable uses shall be entitled to a commission  
22 for distributing all sums of principal in accordance with the provisions  
23 of subdivision 1 or 2 hereof, as the case may be.

24 4. Notwithstanding anything contained in this chapter, the estates,  
25 powers and trusts law or any other provision of law to the contrary,

26 (a) Except as otherwise provided by paragraph (b) of this subdivision  
27 and subdivision three of this section, a corporate trustee of any trust  
28 created under will or lifetime trust instrument, or as donee of a power  
29 in trust created under will or lifetime instrument, whether in existence  
30 on or after the effective date of this section, shall be entitled to  
31 receive at least the compensation provided for an individual trustee  
32 under subdivisions 1, 2, 5 (but only as trustee), 6, 7 and 12 of section  
33 2308 and subdivisions 1, 2, 5 (but only as trustee), 6, 7 and 8 of  
34 section 2309, as the case may be, in effect after the effective date of  
35 this section, at the time and in the manner provided by such sections,  
36 unless the will or lifetime trust instrument or an agreement between the  
37 trustee and the testator or grantor or by the trustee shall provide  
38 otherwise.

39 (b) A corporate trustee shall, in addition to the compensation permit-  
40 ted by the provisions of paragraph (a) of this subdivision, be entitled  
41 to annual commissions at the rate of not more than \$12.35 per thousand  
42 or major fraction thereof, in lieu of the annual commissions provided  
43 under paragraph (a) of this subdivision, on trusts having a principal  
44 value of not more than four hundred thousand dollars and shall be enti-  
45 tled to annual commissions at the same rate as donee of a power in trust  
46 where the property subject to the power has a principal value of not  
47 more than four hundred thousand dollars, and such annual commissions  
48 shall be deemed reasonable compensation, unless the will or lifetime  
49 trust instrument or an agreement between the corporate trustee and the  
50 testator or grantor or by the corporate trustee shall provide otherwise.  
51 A corporate trustee shall be entitled to receive such commissions from  
52 time to time during the trust or calendar year and shall otherwise be  
53 governed by the provisions of sections 2308 and 2309, as the case may  
54 be, in effect from time to time.

55 5. Unless the will or lifetime trust instrument expressly provides  
56 otherwise, the commissions allowable by subdivision 1, 2 or 4 hereof, as

1 the case may be, shall be payable one-third from the income of the trust  
2 or from the income of the property subject to the power in trust and  
3 two-thirds from the principal of the trust or from the property subject  
4 to the power in trust. However, in the case of a trust whose definition  
5 of income is governed by section 11-2.4 of the estates, powers and  
6 trusts law or a charitable remainder annuity trust or a charitable  
7 remainder unitrust, as defined in section six hundred sixty-four of the  
8 Internal Revenue Code of nineteen hundred eighty-six, as amended, such  
9 commissions shall be payable from the principal of any such trust after  
10 allowance for the annuity or unitrust amounts and shall not be payable  
11 out of such annuity or unitrust amounts.

12 6. The commissions allowed by subdivision 1, 2 or 4 thereof, as the  
13 case may be, may be retained, at any time or from time to time during  
14 the year in which such commissions are earned, by a corporate trustee,  
15 provided it furnishes annually as of a date no more than 30 days prior  
16 to the end of the year selected by the corporate trustee, to each bene-  
17 ficiary currently receiving income, and to any other beneficiary inter-  
18 ested in the income and to any person interested in the principal of the  
19 trust who shall make a demand therefor, and, when acting as donee of a  
20 power in trust, to the beneficiary of the power in trust, a statement  
21 showing the principal assets or assets subject to the power in trust on  
22 hand on that date, and at least annually or more frequently if the trus-  
23 tee so elects, a statement showing all his or her receipts of income and  
24 principal or of property subject to the power in trust during the period  
25 with respect to which the statement is rendered including the amount of  
26 any commissions retained and the basis upon which the commissions were  
27 computed. A corporate trustee shall not be deemed to have waived any  
28 commissions by reason of its failure to retain them at the time when it  
29 becomes entitled thereto; provided however that commissions payable from  
30 income for any such year shall be allowed and retained only from income  
31 derived from the trust during such year and shall not be supplied from  
32 income on hand in respect of any other year. If a beneficiary receiving  
33 income or a beneficiary of a power in trust of which the corporate trus-  
34 tee is donee does not desire to be furnished with any such statements  
35 his or her advice to the trustee to that effect in writing shall there-  
36 after excuse the corporate trustee from furnishing such statements to  
37 the beneficiary unless and until the beneficiary requests such annual  
38 statements from the trustee. Upon enactment of, and subject to subdivi-  
39 sion 1 of this section, a corporate trustee shall continue to receive  
40 commissions in the manner provided for a trustee or when acting as donee  
41 of a power in trust in the manner provided for a donee of a power in  
42 trust under sections 2308 and 2309, as the case may be, in effect imme-  
43 diately before the effective date of this section until the end of the  
44 then current trust or calendar year, and thereafter, a corporate trustee  
45 may receive commissions in accordance with the provisions of subdivision  
46 2 or 4 of this section. A corporate trustee shall not change from the  
47 commissions provided for by subdivision 2 or 4 of this section, as the  
48 case may be, during a trust's calendar or fiscal year or the calendar  
49 year in the case of a power in trust but a corporate trustee may change  
50 from the commissions provided for by subdivision 2 to the commissions  
51 provided for by subdivision 4 of this section, or vice versa, only at  
52 the beginning of a calendar or fiscal year of a trust or a calendar year  
53 in the case of a power in trust, as the case may be.

54 7. On the settlement of the account of any trustee or donee of a power  
55 in trust under a will or lifetime trust instrument, in addition to the  
56 commissions provided for by this section, the court must allow to the

1 corporate trustee including a corporate trustee acting as donee of a  
2 power in trust the corporate trustee's reasonable and necessary expenses  
3 actually paid by the trustee.

4 8. The value of any property to be determined in such manner as  
5 directed by the court and the increment thereof received, distributed or  
6 delivered, shall be considered as money in making computation of commis-  
7 sions. Whenever any portion of the dividends, interests, rents or other  
8 income payable to a trustee or donee of a power in trust is required by  
9 any law of the United States or other governmental unit to be withheld  
10 by the person paying it for income tax purposes, the amount so withheld  
11 shall be deemed to have been collected.

12 9. A trustee who prior to September 1, 1966 shall have received the  
13 maximum amount of commissions on principal permitted by subdivision 8 of  
14 section 285-a of the surrogate's court act as that subdivision existed  
15 prior to that date, shall not be entitled to annual principal commis-  
16 sions for the period from the date when he or she shall have received  
17 such maximum to September 1, 1966, but shall be entitled to receive  
18 commissions from and after September 1, 1966 at the rates and in the  
19 manner provided in section 2308 as in effect immediately before enact-  
20 ment of this section. A trustee who is entitled to annual principal  
21 commissions pursuant to section 285-a of the surrogate's court act as it  
22 existed prior to September 1, 1966, but has not received them, may  
23 receive an amount of commissions not in excess of the amount he or she  
24 would have been entitled to if he or she had taken such commissions, and  
25 be entitled to receive in addition commissions from and after September  
26 1, 1966 at the rates and in the manner provided in section 285-a of this  
27 act.

28 10. A trustee who has been acting prior to July 1, 1956 shall be enti-  
29 tled to have commissions on principal and income theretofore received by  
30 him or her computed, allowed and paid under the methods and at the rates  
31 set forth herein, except as follows:

32 (a) If prior to July 1, 1956 a trustee has been allowed or has  
33 retained commissions for receiving and paying out or for distributing  
34 any item of principal he or she shall be entitled to no further commis-  
35 sions on the item.

36 (b) If prior to July 1, 1956 a trustee has been allowed or retained  
37 commissions on any item of principal received but not paid out or  
38 distributed by him or her he or she shall be entitled to no further  
39 commissions for receiving the item.

40 (c) Any trustee who became entitled to an annual principal commission  
41 under subdivision 1 (b) of section 285-a of the surrogate's court act as  
42 it existed prior to April 1, 1948 and who has not retained such commis-  
43 sion may retain an amount equal to one-half of such annual principal  
44 commission. A trustee who because of the provisions of subdivision 2 of  
45 section 285-a of the surrogate's court act as it existed prior to April  
46 1, 1948 either was not entitled to retain an annual principal commission  
47 under subdivision 1 (b) thereof or was required to credit such annual  
48 principal commission against his or her commission for receiving princi-  
49 pal, may retain an amount equal to one-half of such annual principal  
50 commission. If a trustee has been allowed by decree or has retained any  
51 such annual principal commission one-half the amount thereof shall be  
52 deducted from the amount of commissions to which the trustee would  
53 otherwise be entitled under the provisions of subdivision 1 of surro-  
54 gate's court procedure act section 2308.

55 (d) The annual principal commissions allowed by subdivision 3 of  
56 surrogate's court procedure act section 2308 as it existed on September

1 1, 1967 shall not be allowed by decree or retained in respect of any  
2 trust year ending prior to April 1, 1948, but for any trust year ending  
3 on or after April 1, 1948 and prior to July 1, 1956, the annual princi-  
4 pal commission which may be allowed by decree or retained shall be  
5 computed at the rates in effect on the date such trust year ended.

6 (e) If prior to July 1, 1956 a trustee has been allowed by decree or  
7 has retained commissions on any item of income received and paid out by  
8 him or her prior to September 1, 1943 or on any item of income received  
9 by him or her subsequent to September 1, 1943 he or she shall be enti-  
10 tled to no further commission on the item.

11 (f) For purposes of this section, the term "donee of a power in trust"  
12 shall mean any such donee including a donee of a power during minority  
13 who is a corporate fiduciary and the term "property subject to the power  
14 in trust" shall include property subject to a power during minority.

15 § 6. Section 2313 of the surrogate's court procedure act, as amended  
16 by chapter 471 of the laws of 1995, is amended to read as follows:

17 § 2313. Multiple commissions of executors or trustees, donees of powers  
18 during minority, or donees of power in trust under wills of  
19 persons dying, or lifetime trusts established, after August  
20 31, 1993

21 With respect to wills of persons dying, or lifetime trusts estab-  
22 lished, after August 31, 1993, if there are more than two executors or  
23 trustees, donees of a power during minority, or donees of a power in  
24 trust, no more than two commissions shall be allowed unless the decedent  
25 or creator has specifically provided otherwise in a signed writing, and  
26 the compensation thus allowable must be apportioned among the fiduciar-  
27 ies or donees of the power in trust according to the services rendered  
28 by them respectively unless they shall have agreed in writing among  
29 themselves to a different apportionment which, however, shall not  
30 provide for more than one full commission for any one of them.

31 § 7. This act shall take effect on the first of January next succeed-  
32 ing the date on which it shall have become a law.