

STATE OF NEW YORK

7530

2019-2020 Regular Sessions

IN ASSEMBLY

May 8, 2019

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

AN ACT to amend the civil practice law and rules, in relation to the establishment of trusts for lawsuit recoveries paid to children and the incapacitated

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

1 Section 1. Section 1206 of the civil practice law and rules, as
2 amended by chapter 115 of the laws of 1981, the opening paragraph as
3 amended by chapter 635 of the laws of 1988, subdivision (b) as amended
4 by chapter 205 of the laws of 1995, subdivision (c) as amended by chap-
5 ter 464 of the laws of 1995 and as further amended by section 104 of
6 part A of chapter 62 of the laws of 2011, is amended to read as follows:
7 § 1206. Disposition of proceeds of claim of an infant~~[, judicially~~
8 ~~declared incompetent or conservatee]~~ or a person for whom a court has
9 appointed a property guardian pursuant to article eighty-one of the
10 mental hygiene law or article seventeen-A of the surrogate's court
11 procedure act. (a) Except as provided in [EPTL 7-4.9], section 7-6.5 of
12 the estates, powers and trusts law any property to which an infant~~[, or~~
13 a person ~~[judicially declared to be incompetent or a conservatee]~~ for
14 whom a court has appointed a property guardian pursuant to article
15 eighty-one of the mental hygiene law or article seventeen-A of the
16 surrogate's court procedure act is entitled, after ~~[deducting]~~ deduction
17 of any expenses allowed by the court, shall be distributed to his or her
18 parent as natural guardian, if he or she is still an infant and no guar-
19 dian has been appointed, or to a guardian appointed pursuant to rule
20 twelve hundred ten of this article, or to the guardian of his or her
21 property~~[, the committee of his property or conservator]~~ appointed
22 pursuant to article eighty-one of the mental hygiene law or article
23 seventeen-A of the surrogate's court procedure act, or to a trustee of a

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

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trust established with the approval of the court. Such parent, guardian or trustee shall be required by the court to hold such property in the manner set forth in subdivision (b) of this section, or if the property is distributed to a trustee of a trust that is established with the approval of the court that has jurisdiction over the claim or over the guardian, then the trustee may hold and invest the trust property as is provided for in the trust document and as is further limited herein, to be held for the use and benefit of such infant[, ~~incompetent, or conservatee~~] or person for whom a court has appointed a property guardian pursuant to article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act except that:

[~~(a)~~] 1. in the case of an infant who is married to and resides with an adult spouse, the court may order that the property be distributed to such adult spouse for the use and benefit of the infant; or

[~~(b)~~] 2. if the value of the property does not exceed [~~ten~~] twenty thousand dollars the court may order the property distributed to a person with whom such infant[, ~~incompetent or conservatee~~] or person for whom a court has appointed a property guardian resides or who has some interest in his or her welfare to be held for the use and benefit of such infant[, ~~incompetent or conservatee~~] or person for whom a court has appointed a property guardian; or

[~~(c)~~ ~~the~~] 3. if the value of the property does not exceed such amount as shall be specified in paragraph (c) of section 7-6.7 of the estates, powers and trusts law, the court may order the property of the infant distributed, pursuant to sections 7-6.7 and 7-6.9 of the estates, powers and trusts law, as appropriate, to a custodian designated by the court and deposited in a New York Uniform Transfers to Minors Act (UTMA) account.

(b) The court may [~~order~~] direct that [~~money constituting any part of the property be~~] the proceeds be:

1. deposited in one or more specified insured banks or trust companies or savings banks or insured state or federal credit unions or be invested in one or more specified accounts in insured savings and loan associations, such as an insured "savings certificate" or an insured "money market" account; or [~~it may order~~]

2. invested in one or more insured or guaranteed United States treasury or municipal bills, notes or bonds; or

3. used to purchase an annuity and that a structured settlement agreement be executed, which shall include any settlement whose terms contain provisions for the payment of funds on an installment basis, provided that with respect to future installment payments, the court may order that each party liable for such payments shall fund such payments, in an amount necessary to assure the future payments, in the form of an annuity contract executed by a qualified insurer and approved by the superintendent of financial services pursuant to articles fifty-A and fifty-B of this chapter[~~. The court may elect that the money be deposited in a high interest yield account such as an insured "savings certificate" or an insured "money market" account. The court may further elect to invest the money in one or more insured or guaranteed United States treasury or municipal bills, notes or bonds. This money is subject to withdrawal only upon order of the court, except that no court order shall be required to pay over to the infant who has attained the age of eighteen years all moneys so held unless the depository is in receipt of an order from a court of competent jurisdiction directing it to withhold such payment beyond the infant's eighteenth birthday. Notwithstanding the preceding sentence, the ability of an infant who has attained the age of~~]

~~eighteen years to accelerate the receipt of future installment payments pursuant to a structured settlement agreement shall be governed by the terms of such agreement. The reference to the age of twenty-one years in any order made pursuant to this subdivision or its predecessor, prior to September first, nineteen hundred seventy four, directing payment to the infant without further court order when he reaches the age of twenty-one years, shall be deemed to designate the age of eighteen years; or~~

~~(d) the court may order that the property be held for the use and benefit of such infant, incompetent or conservatee as provided by subdivision (d) of section 1210.]; or~~

4. deposited into a special needs trust, in compliance with section three hundred sixty-six of the social services law, as it may be amended, and section 7-1.12 of the estates, powers and trusts law, as it may be amended, and with the consent of the state department of social services, and the order shall, in such event, contain any and all language required by such statutes and any regulations promulgated thereunder; or

5. deposited into a trust account at a bank or brokerage firm, provided that the trust agreement complies with all the applicable provisions of this section.

(c) If the funds are deposited pursuant to paragraph one or two of subdivision (b) of this section, the order shall provide that the funds are subject to withdrawal only upon a further order of the court, except that no court order shall be required to pay over to an infant who has attained the age of eighteen years all moneys so held unless the depository is in receipt of an order from a court of competent jurisdiction directing it to withhold such payment beyond the infant's eighteenth birthday.

(d) If the funds are deposited pursuant to paragraph three of subdivision (b) of this section, the right of an infant who has attained the age of eighteen years to accelerate the receipt of future installment payments pursuant to a structured settlement agreement shall be governed by the terms of such agreement and subject to the provisions of the structured settlement protection act pursuant to title seventeen of article five of the general obligations law.

(e) The court may direct, in the order approving the settlement and regardless of the nature of the account in which the funds are deposited, that an application shall be brought before a court of competent jurisdiction in the year prior to the infant's reaching the age of eighteen to determine if the infant is incapacitated at that time, and therefore in need of a court-appointed guardian of the person, a guardian of the property, or both.

(f) The court may order that the property be held by a trustee, for the use and benefit of an infant or a person for whom a property guardian has been appointed, only if:

1. the court has determined that the trustee shall file an undertaking, utilizing the analysis set forth in section seventeen hundred eight of the surrogate's court procedure act, or determined that the undertaking shall be dispensed with; and

2. the trustee's powers to invest the trust assets are specified to be identical to those set forth in sections 11-1.1 and 11-2.1 of the estates, powers and trusts law; and

3. the court has appointed a referee to examine the annual accountings of the trustee each year and report to the court concerning the use of the trust funds, or specified the reason that a referee is not appointed in the order; and

1 4. the trustee is directed in the order to file an annual accounting
2 with the court, or with another court having jurisdiction over the
3 trust, and to provide a copy to the referee or his or her successor
4 referee, and to the applicable social services agency if the trust is a
5 special needs trust, concerning the trustee's use of the trust principal
6 and income in the preceding year; and

7 5. the court may direct, in a further order, that the trustee pay from
8 trust assets a fee to the referee, in connection with the review of each
9 annual accounting.

10 (g) If, at any time after the settlement is approved, a court of
11 competent jurisdiction appoints a guardian for the infant, the court
12 having jurisdiction over the guardian of the infant shall thereafter
13 have jurisdiction over the settlement funds, in whatever form they are
14 held.

15 § 2. This act shall take effect immediately.