STATE OF NEW YORK

7750

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to proof of lost or destroyed trusts

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

Section 1. The surrogate's court procedure act is amended by adding a new section 1510 to read as follows:

§ 1510. Proof of lost or destroyed trust

1. A lost or destroyed trust may be proved in a proceeding only if:

(a) Execution of the trust and any amendments thereto are proved in the manner required by New York law, or by the applicable law of the situs at the time of execution;

(b) The trust has not been revoked; and

(c) All of the provisions of the trust are established by a copy or draft of the trust proved to be true and complete, or in the absence of copy or draft of the trust, by establishing the following:

(i) the designated trustee of the trust;

(ii) the designated beneficiary or beneficiaries of the trust;

(iii) the dispositive provisions of the trust; and

(iv) that identifiable assets were transferred to and are held in the trust.

2. There shall be a presumption of due execution where it is established that assets were transferred to the trust.

3. There shall be a presumption that the trust was not revoked.

4. In any proceeding to prove a lost or destroyed trust:

(a) The person or persons seeking to challenge the validity of the trust shall have the burden of proof to establish that the trust has been revoked; and

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

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(b) The person or persons seeking to prove the validity of the trust shall have the burden of proof on the requirements contained in paragraphs (a) and (c) of subdivision one of this section.

5. Process must issue to the following persons, if not petitioners, in a proceeding to establish or challenge the validity of a lost or destroyed trust:

(a) All nominated trustees of the trust;

(b) All persons designated as beneficiaries of the trust;

(c) All distributees of the settlor, unless the court dispenses with such process;

(d) The fiduciary of the settlor's estate as defined in subdivision twenty-one of section one hundred three of this chapter, if any;

(e) The beneficiaries under the will of the settlor admitted to probate or offered for probate in any court of competent jurisdiction;

(f) The attorney general if the trust is a charitable trust or if there are persons unknown; and

(g) All such other persons as the court in its discretion may determine.

§ 2. This act shall take effect immediately.