

# STATE OF NEW YORK

8300

2025-2026 Regular Sessions

## IN ASSEMBLY

May 12, 2025

Introduced by M. of A. McMAHON -- (at request of the Unified Court System) -- read once and referred to the Committee on Judiciary

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 to repeal 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 601 of the laws of 2019, is amended  
3 to read as follows:

4 3. Unless the will or lifetime trust instrument otherwise explicitly  
5 provides, the annual commissions allowed by [~~subdivision two of~~] this  
6 section shall be payable one-third from the income of the trust [~~or of~~  
7 ~~the property subject to the power in trust~~] and two-thirds from the  
8 principal of the trust [~~or from the property subject to the power in~~  
9 ~~trust~~]. However, in the case of a trust whose definition of income is  
10 governed by section 11-2.4 of the estates, powers and trusts law, such  
11 annual commissions shall be payable from the corpus of any such trust  
12 after allowance for the annuity or unitrust [~~amount~~] amounts and shall  
13 not be payable out of such annuity or unitrust amount and shall not be  
14 payable out of such unitrust amount.

15 § 2. Paragraphs (a) and (b) of subdivision 5 of section 2308 of the  
16 surrogate's court procedure act, as amended by chapter 601 of the laws  
17 of 2019, are amended to read as follows:

18 (a) During the continuance of a trust created solely for public, reli-  
19 gious, charitable, scientific, literary, educational or fraternal uses  
20 and during the period of continuance of such a trust established after  
21 the termination of a life use or uses the trustee shall be entitled to  
22 and may retain annual commissions [~~from income in an amount annually~~  
23 ~~equal to 6 per cent of income collected in each year~~] according to the

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

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terms specified in subdivision 2 of this section, but only to the extent of 80 percent of the rates stated therein. Notwithstanding any other provision of law, with respect to any portion of such trust which exceeds a principal value of twenty million dollars, the trustee may only take annual commissions to the extent of 50 percent of the rate specified in paragraph (c) of subdivision 2 of this section.

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

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

§ 4. Subdivision 12 of section 2308 of the surrogate's court procedure act, as amended by chapter 601 of the laws of 2019, is amended to read as follows:

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

§ 5. Subdivision 3 of section 2309 of the surrogate's court procedure act, as amended by chapter 601 of the laws of 2019, is amended to read as follows:

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

§ 6. Paragraphs (a) and (b) of subdivision 5 of section 2309 of the surrogate's court procedure act, as amended by chapter 601 of the laws of 2019, are amended to read as follows:

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

1 only take annual commissions to the extent of 50 percent of the rate  
2 specified in paragraph (c) of subdivision 2 of this section.

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

8 § 7. Paragraphs (a) and (b) of subdivision 3 of section 2312 of the  
9 surrogate's court procedure act, as amended by chapter 601 of the laws  
10 of 2019, are amended to read as follows:

11 (a) during the continuance of a trust created solely for public, reli-  
12 gious, charitable, scientific, literary, educational or fraternal uses  
13 and during the period of continuance of such a trust established after  
14 the termination of a life use or uses a corporate trustee, except as  
15 provided in paragraph (b) of this subdivision, shall be entitled to and  
16 may retain annual commissions [~~from income~~] in accordance with the  
17 provisions of subdivision 1 or 2 [~~hereof~~] of this section, as the case  
18 may be.

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

23 § 8. This act shall take effect on the sixtieth day after it shall  
24 have become a law and shall apply to all trusts in existence on or after  
25 such effective date; provided, however, that a trustee of a trust in  
26 existence on such effective date may elect to continue to take commis-  
27 sions under the law in effect prior to such effective date until Decem-  
28 ber 31 of the year this act takes effect.