§ 1508. Authority to release claims against the state by reason of appropriation of trust property not subject to power of sale

1. The surrogate of any county having jurisdiction of the trust may, by order, authorize any testamentary trustee to release a claim against the state for compensation on account of the appropriation by the state of any real property or any right, interest or easement therein belonging to the trust, and for legal damages caused by the appropriation and for damages sustained by any entry upon, use or occupation of, or injury to the real property by the state prior to completion of the appropriation.

2. Application for the order may be entertained by the court in all cases where the will does not contain a valid power of sale with regard to such property or a sale is not authorized under the provisions of EPTL 11-1.1.

3. Notice of the application shall be given to such persons and in such manner as directed by the court. Prior to the application and irrespective of when the appropriation was effected, the trustee may enter into an agreement with the state, subject to the approval of the court, for the payment of such compensation, a copy of which agreement shall be presented to the court together with the petition.

4. Upon consideration by the court of the petition, the allegations and proofs of the parties and upon the testimony of the petitioner and of at least 2 disinterested persons acquainted with the facts, presented orally or by affidavit, as to the value of the interest of the trust in the property so appropriated, including the legal damage caused by the appropriation and the damages, if any, sustained by the entry upon, use or occupation of, or injury to the real property by the state prior to completion of appropriation and upon inquiring into the facts and circumstances, if it shall appear to the satisfaction of the court that the amount of compensation offered by the state represents the fair market value of the property appropriated and just compensation for the legal damages caused by the appropriation and the damages, if any, sustained by the entry upon, use or occupation of or injury to the

property by the state prior to completion of appropriation, the court may by order confirm the agreement and authorize and direct the trustee to execute and deliver to the state a release of such claim and any documents or instruments required by the state to give full effect to the release, for the amount of consideration so offered by the state for such release in full payment of such claim for compensation for the use and benefit of the trust.

5. The order made pursuant to this section and the release and attendant documents and instruments executed and delivered in conformity therewith shall be binding and conclusive on the remainders and reversions as well as the immediate or future trust interests in the real property so held under the trust and shall bind and be conclusive against all persons under disability as defined in this act and persons not in being and all other persons having estates or interests vested or contingent, for life or in trust, or in reversion or remainder in the trust property or in the proceeds of the appropriation thereof by the state.