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

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

2. For trusts having a principal value of more than four hundred thousand dollars and as donee of a power in trust where the property subject to the power, including for purposes of this section the property subject to a power during minority, has a principal value of more than four hundred thousand dollars and subject to the provisions of subdivision 4 of this section, if the will or lifetime trust instrument does not make provisions for specific rates or amounts of commissions, or, contains only a general reference to commissions allowed by law or words of like import, a corporate trustee shall be entitled to such commissions as may be reasonable, and the court, upon application of a person interested in the trust or in the fund held by the corporate trustee as donee of a power in trust, may review the reasonableness of the commission of such corporate trustee.

3. Subject to the provisions of paragraph (a) of subdivision 4 of this section and regardless of the principal value of the trust: (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 a corporate trustee, except as provided in paragraph (b) of this subdivision, shall be entitled to and may retain annual commissions in accordance with the provisions of subdivision 1 or 2 of this section, as the case may be.

(b) In the case of a trust created solely for public, religious,

charitable, scientific, literary, educational or fraternal uses a corporate trustee shall not be entitled to any commission for paying out principal.

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

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

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

(b) A corporate trustee shall, in addition to the compensation permitted by the provisions of paragraph (a) of this subdivision, be entitled to annual commissions at the rate of not more than $12.35 per thousand or major fraction thereof, in lieu of the annual commissions provided under paragraph (a) of this subdivision, on trusts having a principal value of not more than four hundred thousand dollars and shall be entitled to annual commissions at the same rate as donee of a power in trust where the property subject to the power has a principal value of not more than four hundred thousand dollars, and such annual commissions shall be deemed reasonable compensation, unless the will or

lifetime trust instrument or an agreement between the corporate trustee and the testator or grantor or by the corporate trustee shall provide otherwise. A corporate trustee shall be entitled to receive such commissions from time to time during the trust or calendar year and shall otherwise be governed by the provisions of sections 2308 and 2309, as the case may be, in effect from time to time.

5. Unless the will or lifetime trust instrument expressly provides otherwise, the commissions allowable by subdivision 1, 2 or 4 hereof, as the case may be, shall be payable one-third from the income of the trust or from the income of the property subject to the power in trust and two-thirds from the principal of the trust or from the 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 commissions shall be payable from the principal 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. The commissions allowed by subdivision 1, 2 or 4 thereof, as the case may be, may be retained, at any time or from time to time during the year in which such commissions are earned, by a corporate trustee, provided it furnishes annually as of a date no more than 30 days prior to the end of the year selected by the corporate trustee, to each beneficiary currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor, and, when acting as donee of a power in trust, to the beneficiary of the power in trust, a statement showing the principal assets or assets subject to the power in trust on hand on that date, and at least annually or more frequently if the trustee so elects, a statement showing all his or her receipts of income and principal or of property subject to the power in trust during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. A corporate trustee shall not be deemed to

have waived any commissions by reason of its failure to retain them at the time when it becomes entitled thereto; provided however that commissions payable from income for any such year shall be allowed and retained only from income derived from the trust during such year and shall not be supplied from income on hand in respect of any other year. If a beneficiary receiving income or a beneficiary of a power in trust of which the corporate trustee is donee does not desire to be furnished with any such statements his or her advice to the trustee to that effect in writing shall thereafter excuse the corporate trustee from furnishing such statements to the beneficiary unless and until the beneficiary requests such annual statements from the trustee. Upon enactment of, and subject to subdivision 1 of this section, a corporate trustee shall continue to receive commissions in the manner provided for a trustee or when acting as donee of a power in trust in the manner provided for a donee of a power in trust under sections 2308 and 2309, as the case may be, in effect immediately before the effective date of this section until the end of the then current trust or calendar year, and thereafter, a corporate trustee may receive commissions in accordance with the provisions of subdivision 2 or 4 of this section. A corporate trustee shall not change from the commissions provided for by subdivision 2 or 4 of this section, as the case may be, during a trust's calendar or fiscal year or the calendar year in the case of a power in trust but a corporate trustee may change from the commissions provided for by subdivision 2 to the commissions provided for by subdivision 4 of this section, or vice versa, only at the beginning of a calendar or fiscal year of a trust or a calendar year in the case of a power in trust, as the case may be.

7. On the settlement of the account of any trustee or donee of a power in trust under a will or lifetime trust instrument, in addition to the commissions provided for by this section, the court must allow to the corporate trustee including a corporate trustee acting as donee of a power in trust the corporate trustee's reasonable and necessary expenses actually paid by the trustee.

8. The value of any property to be determined in such manner as directed by the court and the increment thereof received, distributed or

delivered, shall be considered as money in making computation of commissions. Whenever any portion of the dividends, interests, rents or other income payable to a trustee or donee of a power in trust is required by any law of the United States or other governmental unit to be withheld by the person paying it for income tax purposes, the amount so withheld shall be deemed to have been collected.

9. A trustee who prior to September 1, 1966 shall have received the maximum amount of commissions on principal permitted by subdivision 8 of section 285-a of the surrogate's court act as that subdivision existed prior to that date, shall not be entitled to annual principal commissions for the period from the date when he or she shall have received such maximum to September 1, 1966, but shall be entitled to receive commissions from and after September 1, 1966 at the rates and in the manner provided in section 2308 as in effect immediately before enactment of this section. A trustee who is entitled to annual principal commissions pursuant to section 285-a of the surrogate's court act as it existed prior to September 1, 1966, but has not received them, may receive an amount of commissions not in excess of the amount he or she would have been entitled to if he or she had taken such commissions, and be entitled to receive in addition commissions from and after September 1, 1966 at the rates and in the manner provided in section 285-a of this act.

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

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

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

(c) Any trustee who became entitled to an annual principal commission

under subdivision 1 (b) of section 285-a of the surrogate's court act as it existed prior to April 1, 1948 and who has not retained such commission may retain an amount equal to one-half of such annual principal commission. A trustee who because of the provisions of subdivision 2 of section 285-a of the surrogate's court act as it existed prior to April 1, 1948 either was not entitled to retain an annual principal commission under subdivision 1 (b) thereof or was required to credit such annual principal commission against his or her commission for receiving principal, may retain an amount equal to one-half of such annual principal commission. If a trustee has been allowed by decree or has retained any such annual principal commission one-half the amount thereof shall be deducted from the amount of commissions to which the trustee would otherwise be entitled under the provisions of subdivision 1 of surrogate's court procedure act section 2308.

(d) The annual principal commissions allowed by subdivision 3 of surrogate's court procedure act section 2308 as it existed on September 1, 1967 shall not be allowed by decree or retained in respect of any trust year ending prior to April 1, 1948, but for any trust year ending on or after April 1, 1948 and prior to July 1, 1956, the annual principal commission which may be allowed by decree or retained shall be computed at the rates in effect on the date such trust year ended.

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

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