SB 662

Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

Senate Bill 662 (Senator Baker)
Judicial Proceedings Judiciary

Uniform Principal and Income Act - Adjustments Between Principal and Income

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This bill authorizes a trustee to make adjustments between the principal and income of a trust under certain conditions.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill provides that a trustee may make adjustments between principal and income to the extent the trustee considers necessary under certain circumstances, one of which must be a written request from a beneficiary to exercise the power conferred to make such an adjustment. In deciding whether and to what extent to alter the allocation between principal and income, a trustee may consider a variety of specified factors relevant to the particular trust, including the amount of income being generated by the trust.

A trustee cannot make an adjustment:

- that diminishes the income interest in a trust that requires all the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, wholly or partly, if the trustee did not have the power to make the adjustment;

- that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

- that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

- from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

- if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

- if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

- if the trustee is a beneficiary of the trust;

- if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly; or

- if possessing or exercising the power to make the adjustment causes a change in the inclusion ratio of the trust or otherwise causes the trust to be potentially subject to generation-skipping transfer tax.

The trustee must give notice -- by a specified method -- to all qualified beneficiaries of a proposed decision regarding the exercise or nonexercise of the discretionary power to adjust between principal and income. Any qualified beneficiary who objects in writing to the proposed decision may file, within 60 days after the trustee receives the qualified beneficiary's written objection, a petition to review the proposed decision in the circuit court for the county in which the trustee resides in this State, if the trustee is an individual, or in which the principal place of business of the trustee is located in this State. A qualified beneficiary objecting to the proposed decision has the burden of proving that the trustee's proposed decision should not be taken, and the sole remedy in the proceeding is to direct, deny, or revise an adjustment between principal and income.

If no qualified beneficiary objects within the applicable period, the trustee is not liable to any person having a present or future interest in the trust, vested or contingent, including any unborn or unascertained beneficiary.

The bill also requires that a trustee make an adjustment from principal to income to compensate an income beneficiary for taxes paid or payable by the income beneficiary in respect to the taxable income of an entity that is taxable to the income beneficiary but that is distributed to the trustee and allocated to principal.

Current Law: A trustee may exercise discretionary power in the administration of a trust, but the trustee is held to the duty of acting in a way that is fair and reasonable to all of the beneficiaries, unless the trust specifies otherwise. There is no specific provision for adjustments between principal and income, nor is there any legal protection for trustees if they make such an adjustment, even if the adjustment is made according to prudent investment rules.

Background: Chapter 292 (HB 939/SB 636) of 2000 enacted most of the Uniform Principal and Income Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1997 (UPIA 1997). The provision of UPIA 1997 that would allow a trustee to adjust principal and income to the extent made necessary by prudent investment rules when a trust provides for a fixed income for the income beneficiary, was omitted from Chapter 292. The adjustment provision in UPIA 1997, however, is not identical to the current bill and does not include, for instance, the requirement that the adjustment be initiated by a beneficiary rather than the trustee.

Additional Information

Prior Introductions: None.

Cross File: HB 956 (Delegate Dembrow) – Judiciary.

Information Source(s): Registers of Wills, Uniform Law Commissioners, Department of Legislative Services

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