

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 152

(Senator Frosh)

Judicial Proceedings

Judiciary

Estates and Trusts - Personal Representatives and Fiduciaries - Powers

This bill allows a personal representative to become a limited partner in any partnership or a member in any limited liability company, including a single member limited liability company. In addition, the bill allows a fiduciary to continue as or become a member in any limited liability company, including a single member limited liability company.

Fiscal Summary

State Effect: None. The bill's changes do not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: A personal representative may exercise all of the power or authority conferred on the personal representative by statute or in the will. State law sets out various powers and authority that a personal representative may exercise unless validly limited by the will or a court order, including the power to convert a sole proprietorship the decedent was engaged in at the time of his/her death to a limited liability company. (*See* Estates and Trusts Article §7-401.)

State law sets out various functions and duties a fiduciary may perform, including that a fiduciary may continue as or become a limited partner in any partnership and may convert a sole proprietorship the decedent was engaged in at the time of his/her death to a

limited liability company. The various functions and duties may be limited by the governing instrument or extended or limited by the appropriate court. A fiduciary is a trustee acting under a deed, will, declaration of trust, or other instrument in the nature of a trust or appointed by a court, a committee, or a guardian of the property of a minor or a disabled person. A fiduciary does not include a personal representative, administrator, executor, receiver, or trustee of a trust for the benefit of creditors. (See Estates and Trusts Article §15-102.)

Small Business Effect: The bill would help a personal representative to keep a small business running for the estate of a decedent, which would help preserve its value, especially if the decedent was an owner or a major partner in the business. The personal representative would also be protected from personal liability in the business.

Additional Information

Prior Introductions: SB0771 LR3045 2008 JPR

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Orphans' Court of Baltimore County, Register of Wills, Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2009
ncs/kdm

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510