

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 971

(Delegate Feldman)

Economic Matters

Judicial Proceedings

Maryland Statutory Trust Act

This bill clarifies and revises the Maryland Business Trust Act and renames it the Maryland Statutory Trust Act.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's misdemeanor provision. Potential minimal special fund revenue increase from filing fees and penalties imposed on foreign statutory trusts that do not comply with registration requirements. No effect on expenditures.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Definitions

The bill repeals the definitions of "business trust," "foreign limited liability company," and "foreign limited partnership," and defines "foreign business entity," "foreign statutory trust," and "statutory trust."

Powers of Statutory Trust

Except as provided in its certificate of trust or governing instrument, a statutory trust has the general powers to:

- sue, be sued, complain, and defend in all courts;
- have, use, alter, or abandon a trust seal;
- transact its business, carry on operations, and exercise the powers granted it;
- make contracts and guarantees, incur liabilities, and borrow money;
- sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any or all of its assets;
- issue bonds, notes, and other obligations and secure the obligations by mortgage or deed of trust of any or all of its assets;
- acquire by purchase or any other manner, take, receive, own, hold, use, employ, improve, and otherwise deal with interests in real or personal property;
- purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock and other interests in and obligations of other business entities, statutory trusts, and individuals;
- acquire its own shares of beneficial interest, bonds, notes, and other obligations and securities;
- invest its surplus funds, lend money to carry on its operations or fulfill the purposes specified in its governing instrument, and take and hold real and personal property as security for the payment of funds invested or loaned;
- be a promoter, a partner, a member, an associate, or a manager of a partnership, joint venture, trust, or other enterprise;
- make gifts or contributions in cash, other property, stock, or other securities of the trust to or for the use of a federal, state, or local government or a charitable organization;
- elect its officers and appoint its agents, define their duties, determine their compensation, and adopt and carry into effect employee and officer benefit plans;
- exercise generally the powers set forth in its governing instrument and those granted by law; and
- do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its governing instrument.

Additional Requirements, Powers, and Actions of Domestic and Foreign Statutory Trusts

In addition to making technical changes, the bill clarifies the requirements for formation and governance of a statutory trust. Under the bill, a statutory trust may amend its certificate of trust by filing a restated certificate of trust that contains specified information. Furthermore, a statutory trust's governing instrument may contain provisions relating to the nature and division of beneficial interests, including the rights of certain persons, and actions by or on behalf of the trust in the event there are no trustees.

The bill establishes that a statutory trust's beneficial owners and trustees are bound by the trust's governing instrument, whether or not they executed it, and prohibits the instrument from eliminating the duty of a trustee to perform duties in good faith. The bill further clarifies certain powers, duties, and liabilities of trustees and outlines the procedures by which beneficial owners or trustees (1) hold meetings; (2) vote or consent to certain actions; (3) approve a merger or consolidation; and (4) are indemnified and held harmless against certain claims and demands.

A foreign statutory trust must register with the State Department of Assessments and Taxation prior to conducting business in the State. The bill establishes registration procedures for a foreign statutory trust and sets forth penalties for failing to register. Subject to the Maryland Constitution, the laws of the jurisdiction under which a foreign statutory trust is formed govern its organization, internal affairs, and the liability of its trustees.

The bill alters additional provisions concerning merger or consolidation, forfeiture, and the ability of foreign statutory trusts to conduct business in the State.

Current Law: Chapter 452 of 1999 authorized the establishment of business trusts in Maryland. A "business trust" is defined as an unincorporated business, trust, or association that is created by a governing instrument under which (1) property is or will be held, managed, administered, controlled, invested, reinvested, or operated by a trustee for the benefit of persons who are or may become entitled to a beneficial interest in the trust property; or (2) business or professional activities for profit are carried on or will be carried on by a trustee for the benefit of persons who are or may become entitled to a beneficial interest in the trust property. Prior to Chapter 452 of 1999, State law only provided for the establishment of real estate investment trusts.

Background: The bill renames the Maryland Business Trust Act as the Maryland Statutory Trust Act to make the Act consistent with corresponding statutes in other states. The name change is also meant to avoid the inference that a trust is a business trust under federal bankruptcy law. As a general rule, trusts are not entitled to relief under the

federal Bankruptcy Code unless the trust is a “business trust” that comes within the Bankruptcy Code’s definition of “corporation.”

Additional Information

Prior Introductions: None.

Cross File: SB 784 (Senator Raskin) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Department of Legislative Services

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