

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 451

(Senator Lee)

Judicial Proceedings

Health and Government Operations

Maryland Trust Act - Revocable Trust - Partial Revocation by Divorce or
Annulment

This bill establishes that, unless otherwise specified, on the absolute divorce of the settlor and the settlor's spouse or annulment of their marriage (1) the terms of a settlor's trust relating to trust distributions to or for the benefit of the settlor's former spouse are automatically revoked; (2) the settlor's former spouse, if serving as a trustee or an advisor to the trustee of the settlor's trust, must be removed without further court action; and (3) the settlor's former spouse may not serve as the trustee or an advisor to the trustee of the settlor's trust or exercise any trust or fiduciary powers related to the settlor's trust.

The bill's provisions apply to all final judgements of divorce or annulment entered into on or after October 1, 2016, unless otherwise specified in the settlor's trust instrument, by court order, or by a written agreement between the settlor and the settlor's spouse or former spouse.

Fiscal Summary

State Effect: The bill does not affect State finances or operations.

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

Small Business Effect: Minimal.

Analysis

Current Law: A will, or any part of it, is revoked by an absolute divorce of a testator and the spouse or the annulment of their marriage. All provisions in the will relating to the

spouse, and only those provisions, must be revoked unless otherwise specified in the will or decree. There are no provisions in State law that authorize the revocation of the terms of a trust relating to trust distributions to or for the benefit of a settlor's former spouse, in the event of divorce or annulment.

Background: *Black's Law Dictionary* describes a revocable trust as a trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income. Revocable trusts can be used as an alternative to wills, as they can authorize the disposition of assets immediately upon the death of the settlor. Unlike assets distributed through a will, assets distributed through a revocable trust on the death of a settlor pass outside of probate.

Chapter 585 of 2014 established the Maryland Trust Act. The Act also applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise specified by the statute), judgment, or decree that required the trust to be administered in the manner of an express trust.

Additional Information

Prior Introductions: SB 428 of 2015 passed the Senate, but received an unfavorable report from the House Health and Government Operations Committee. HB 625, its cross file, was heard in the Health and Government Operations Committee but subsequently withdrawn.

Cross File: HB 541 (Delegate Kelly) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2016
md/kdm

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