

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 888 (Delegate West)

Health and Government Operations

Judicial Proceedings

Maryland Trust Act - Nonjudicial Settlement Agreements

This bill authorizes “interested persons” to enter into a binding nonjudicial settlement agreement with respect to specified matters involving a trust, provided the settlement agreement does not violate a material purpose of the trust. The settlement agreement must include terms and conditions that may be properly approved by a court under existing law. An interested person may request a court to determine whether representation by a holder of a qualified power of appointment was adequate and whether the agreement contains terms and conditions that a court may properly approve.

Fiscal Summary

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

Local Effect: None. The circuit courts can handle the bill’s requirements with existing resources. No effect on revenues.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “interested person” as a person whose consent is required to achieve a binding settlement if the settlement were approved by the court. Matters that may be resolved by a nonjudicial settlement agreement include (1) interpretation or construction of the terms of a trust; (2) approval of a report or accounting of a trustee; (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of a necessary or desirable power; (4) the resignation or appointment of a trustee and the

determination of the compensation of the trustee; (5) transfer of the principal place of administration of a trust; and (6) liability of a trustee for an action relating to the trust.

Current Law:

Trust Administration: Generally, trustees and beneficiaries must seek court approval to make any changes involving trust administration. A court with equity jurisdiction has general superintending power with respect to trusts. On petition by an interested person, on the court's own motion, or as otherwise provided by law, the court may intervene actively in the administration of a trust, fashioning and implementing remedies as the public interest and the interests of the beneficiaries may require. A judicial proceeding involving a trust may relate to a matter involving the administration of the trust, including a request for instructions and an action to declare rights. A trust is not subject to continuing judicial supervision unless ordered by the court.

Interpretation or Construction of Terms: The court may reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proven by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Reports: On request, a trustee must send to the qualified beneficiary annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the compensation of the trustee, a listing of the trust assets, and, if feasible, the respective market values of the trust assets. A qualified beneficiary may waive the right to a trustee's report or other required information and may withdraw the waiver for future reports.

Resignation of Trustee(s): A trustee may resign with the approval of the court. In approving a resignation of a trustee, the court may issue orders and impose conditions that are reasonably necessary for the protection of the trust property.

Transfer of Principal Place of Administration: Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiary, may transfer the principal place of administration of the trust to another state or a jurisdiction outside the United States.

Liability of Trustee(s): A trustee that commits a breach of trust is liable to the beneficiaries affected by the breach for the greater of (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred or (2) the profit the trustee made as a result of the breach.

Compensation of Trustee(s): A testamentary trustee and trustee of any other trust whose duties comprise the collection and distribution of income from property held under a trust agreement or the preservation and distribution of the property is entitled to commissions provided by statute for trust administration services. The amount and source of payment of commissions are subject to any valid agreement. A court having jurisdiction over the administration of the trust may increase or diminish commissions for sufficient cause or may allow special commissions or compensation for services of an unusual nature.

Qualified Power of Appointment: The holder of a qualified power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. For example, although a surviving spouse may have a limited power of appointment to appoint the remaining trust assets at the time of his or her death among the surviving children, that spouse is still able to represent and bind the children in specified trust matters.

Background: The bill contains provisions recommended as part of the modified version of the Uniform Trust Code (UTC) drafted by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission). The intent of the bill is to facilitate the resolution of disputes between trustees and beneficiaries relating to trust administration through nonjudicial means.

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

Additional Information

Prior Introductions: None.

Cross File: SB 571 (Senator Lee) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Securities Division), Judiciary (Administrative Office of the Courts), Register of Wills, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2016
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