

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 348

(Senator Lee)

Judicial Proceedings

Health and Government Operations

Estates and Trusts - Contesting Validity of Revocable Trust - Limitation

This bill establishes a time limit for contesting the validity of a revocable trust. A person must commence a judicial proceeding within the earliest of (1) one year after the death of the settlor or (2) six months after the trustee sends the person a copy of the trust instrument and a notice informing the person of the existence of the trust, the name and address of the trustee, and the time allowed for commencing a proceeding. The bill has prospective application and does not apply to the estate of any decedent who dies before the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

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

Small Business Effect: Minimal.

Analysis

Current Law: Pursuant to § 5-101 of the Courts and Judicial Proceedings Article, a civil action must be filed within three years from the date it accrues, unless otherwise provided by State law. State law provides a longer, 12-year statute of limitations for filing civil actions for specialties, including a promissory note or other instrument under seal; a bond, except a public officer's bond; a judgment; a recognizance; and a contract under seal.

The Maryland Trust Act (MTA) does not specify a time limitation on instituting a judicial action to contest the validity of a trust, so the general statute of limitations applies.

Generally, a trust is created only if:

- the settlor has capacity to create a trust;
- the settlor indicates an intention to create the trust;
- the trust has a definite beneficiary, or is a charitable trust, a trust for the care of an animal, or a trust for a noncharitable purpose; and
- the trustee has duties to perform.

Under MTA, a trust not created by will is valid if creation of the trust complies with (1) the law of the jurisdiction in which the trust instrument was executed or (2) the law of the jurisdiction in which, at the time of creation:

- the settlor was domiciled or was a national;
- a trustee of the trust was domiciled or had a place of business; or
- any trust property was located.

The validity of a trust created by will is customarily determined by the law of the decedent's domicile. For trusts created after January 1, 2015, unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

Background: The Uniform Trust Code drafted by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission (ULC)) includes similar provisions that are intended to limit the time period in which the validity of a revocable trust may be contested. Generally, the validity of a revocable trust may be contested on various grounds, including, but not limited to, duress, fraud, or lack of capacity of the settlor. According to ULC, time limitations for contesting the validity of a trust are intended as a way to assist trustees with making timely and accurate distributions from the trust.

Additional Information

Prior Introductions: None.

Cross File: HB 444 (Delegates West and Kelly) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Uniform Law Commission; Department of Legislative Services

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