

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1049
Judiciary

(Delegate Cardin)

Judicial Proceedings

Maryland Trust Act - Trustee Liability - Release by Interested Parties

This bill modifies procedures under the Maryland Trust Act that a trustee may elect to follow, upon the termination of a trust or the trustee's removal or resignation, to seek the trustee's release from liability for the administration of the trust. The bill modifies those procedures by allowing a trustee to seek release from liability from one or more interested parties rather than from each interested party, allowing for earlier distribution of trust assets if those interested parties from whom release from liability is sought each submit a written statement that they do not object, and limits the interested parties who must be involved in resolving an objection to those from whom the trustee sought release from liability.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill modifies the procedures a trustee may elect to follow to seek the trustee's release from liability, by (1) authorizing a trustee to send a specified report (that provides certain information and notice) to the interested party from whom the trustee is seeking release instead of to *each* interested party; (2) allowing for the interested party to whom the report was sent to submit within 120 days a written statement to the trustee that the interested party does not object, in addition to the existing option to submit a written

objection within 120 days; (3) allowing for an interested party who submits a written statement that they do not object to be deemed to have released the trustee and consented to and ratified all actions of the trustee; and (4) if each interested party to whom a report was sent provides a written statement that they do not object, allowing for the trustee to distribute the trust property prior to the end of the 120-day period after the mailing of the report.

If an interested party to whom a report was sent submits a written objection to the trustee within 120 days after the trustee mailed the report, the bill limits the interested parties to whom notice must be given of a court proceeding to resolve the objection or who must be in agreement along with the trustee in resolving the objection, to those interested parties to whom a report was sent.

Current Law:

Limitation Period for Breach of Trust Action

Under the Maryland Trust Act, except as provided in § 14.5-907 of the Act, a beneficiary cannot bring a judicial action against a trustee for breach of trust more than one year after the date that the beneficiary or the representative of the beneficiary is sent a report that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary or the representative of the beneficiary of the time allowed for bringing a judicial action.

Section 14.5-907

Chapters 361 and 362 of 2020 amended § 14.5-907 to authorize a trustee to send each “interested party” a specified report (described below), by first-class, certified mail, return receipt requested, when a trust terminates in accordance with the terms of the trust or the Maryland Trust Act, or upon the removal or resignation of the trustee in accordance with the terms of the trust or the Maryland Trust Act, seeking the release of the trustee from liability for the administration of the trust. An interested party’s failure to submit a written objection within 120 days after the trustee mailed the report results in the interested party releasing the trustee and consenting to and ratifying all actions of the trustee. If there are no objections submitted within the 120-day period, the trustee must distribute the trust property to the appropriate persons within a reasonable time. If an interested party submits a timely written objection, the objection may either be (1) submitted to the court, with notice to all interested parties, to commence a proceeding for resolution of the objection or (2) resolved by the agreement of all interested parties and the trustee. “Interested party” means a beneficiary, representative of a beneficiary, co-trustee, successor trustee, or any other person having an interest in or authority over a trust.

The report from the trustee to each interested party must:

- inform the interested party that the trust is terminating or that the trustee has resigned or has been removed;
- provide the interested party (1) an accounting of the trust, such as account statements, for the immediately preceding five years; (2) an estimate of any trust property or interests reasonably anticipated but not yet received or disbursed; and (3) the amount of any fees, including trustee fees, remaining to be paid; and
- notify the interested party that (1) the interested party may submit a written objection to the trustee regarding the trustee's administration of the trust within 120 days after the trustee mailed the report; (2) if the interested party does not submit a written objection within 120 days after the trustee mailed the report, the interested party must be deemed to have released the trustee and consented to and ratified all actions of the trustee; and (3) the trustee is unaware of any undisclosed information that could give rise to a claim by an interested party.

Termination of a Trust

In general, a trust may be terminated for various reasons, including pursuant to the terms of the trust and, under certain circumstances, by the court, when termination furthers the purposes of the trust.

Resignation of a Trustee

A trustee may resign with the approval of the court. In approving a resignation of a trustee, the court is authorized to issue orders and impose conditions reasonably necessary for the protection of the trust property.

Removal of a Trustee

Upon the request of a settlor, a co-trustee, or a beneficiary to the court, or on the court's own initiative, the court may remove a trustee if:

- the trustee has committed a serious breach of trust;
- lack of cooperation among co-trustees substantially impairs the administration of the trust;
- because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
- there has been a substantial change of circumstances and removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best

serves the interest of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.

Pending a final decision, the Maryland Trust Act authorizes the court to order appropriate relief under specified law as may be necessary to protect the trust property or the interests of the beneficiaries.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 878 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2022
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