
To: Members of Senate Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 25, 2020

Subject: Senate Bill # 886 – Maryland Trust Act – Liability of Trustee – Report and Release by Interested Party

Position: Support with Amendment

The Estate & Trust Law Section of the Maryland State Bar Association (MSBA) **supports with amendment Senate Bill #886 - Maryland Trust Act – Liability of Trustee – Report and Release by Interested Party**. SB 886 provides a responsible and efficient statutory method for releasing a trustee upon trust termination, or trustee resignation or removal, and facilitates the prompt distribution of trust assets to the beneficiaries or a successor trustee. We support SB 886 because it will further enhance the use and administration of trusts in Maryland by permitting trustee succession and trust termination to be less costly and time consuming than filing an account with the Circuit Court or obtaining negotiated release agreements from each of the trust beneficiaries. SB 886 also protects the rights of the trust's interested parties by providing disclosure of pertinent trust information and a reasonable time period within which to object to the reports.

Description of Current Law: Maryland law pertaining to the release of trustees is generally described below:

One Year Limitation Period for Breach of Trust. Under Estates and Trusts Article, Section 14.5-904, a beneficiary may not bring a judicial action against a trustee for breach of trust more than one year after the date that the beneficiary is sent a report that adequately discloses the existence of a claim for breach of trust and informs the beneficiary of the time allowed for bringing a judicial action.

Express Written Release. Estates and Trusts Article, Section 14.5-907 provides that a trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless the consent was wrongfully induced or the beneficiary did not know of his or her rights or of the material facts relating

to the consent. Case Law. In *Hastings v. PNC Bank, N.A.*, 2012 WL 4464890 (Sept. 27, 2012), the

Maryland Court of Appeals held that a trustee has the right to obtain a release from liability prior to making distributions by either obtaining a written release from trust beneficiaries or filing an accounting and obtaining a release from liability from the Circuit Court.

In sum, under Maryland law, it is well established that a trustee has the right to file an account or obtain a release prior to distributing trust assets. However, obtaining such release can be unnecessarily time consuming, costly and inefficient.

Problem Addressed by this Legislation and Why the Issue is Important:

The problem with the existing law is that the one year statute of limitation period under E&T Section 14.5-904 is burdensome and inefficient because after all appropriate disclosures are made, a trustee still has to wait at least one year to transfer funds to the beneficiaries upon trust termination or to a successor trustee upon a trustee's resignation or removal. Further, the option for the trustee to obtain a written release or consent from each beneficiary under E&T Section 14.5-907 is also burdensome and costly especially when there are multiple beneficiaries. For example, when a trustee presents a written release to a beneficiary it is typically drafted by the trustee's attorney and often prompts the beneficiary to hire their own attorney to review and negotiate the release. This adds to the overall time and cost of the trust administration and creates a more contentious atmosphere among the parties.

It is important that Maryland law protects beneficiaries and holds trustees strictly accountable for their actions, however, it should also foster an environment that is not acrimonious and encourages parties to serve as trustees of Maryland trusts.

How the Legislation Solves the Problem:

SB 886 creates a non-mandatory option for a trustee to obtain a statutory release so that the trust administration and distributions may be carried out in a responsible and timely manner, but only after substantial disclosures are made to the interested parties and there are no objections made within the 120 day objection period. This means that if an interested party has any objection relating to the trust administration or even the adequacy of the disclosures made, they may notify the trustee of their objection in writing and prevent the statutory release process from going forward. The 120 day objection period is longer than most statutes of this nature in neighboring states and no other neighboring state has a longer objection period. This 120 day period gives the interested parties the time necessary to understand the nature of the matter, seek counsel and advice and stop the

release process by submitting what can be a simple written notice of the objection to the trustee's administration of the trust.

Specifically, SB 886 would create an exception to the one year limitations period for filing a claim for breach of trust under E&T Section 14.5-904 if the trustee fulfills the new disclosure and notice provisions that SB 886 seeks to add to E&T Section 14.5-907. The amendment to E&T Section 14.5-907 that is proposed by SB 886 states that if the trustee provides each interested party with the information listed below and such party does not file an objection within the 120 day objection period, such party is deemed to have released the trustee and consented to and ratified all actions of the trustee:

- (i) Notice that the trust is terminating, or that a trustee has resigned or been removed;
- (ii) A trust accounting for the prior five years;
- (iii) An estimate of trust property or interests reasonably anticipated but not yet received or disbursed;
- (iv) The amount of fees, including trustees' fees remaining to be paid; and
- (v) Notice that (1) the interested party may submit an objection to the trustee regarding the trustee's administration of the trust within 120 days after the trustee mailed the report, and (2) if the interested party does not submit a written objection to the trustee within 120 days after the trustee mailed the report, the interested party shall be deemed to have released the trustee and consented to and ratified all actions of the trustee.

Further, if no interested party objects within the 120 day objection period, the trustee is required to distribute the trust property to the appropriate successors in interest within a reasonable time.

Finally, the Estate & Trust Law Section of the MSBA supports an additional amendment that requires the trustee's notice to the beneficiary under E&T Section 14.5907 to include a statement that the trustee is not aware of any undisclosed information that would present a claim by a beneficiary.

The amendments to Sections 14.5-904 and 14.5-907 of the Estates and Trusts Article that are proposed by SB 886 would create a statutory method of release for trustees that is responsible, protects the interests of trust beneficiaries and trustees, and brings about reasonable trust efficiencies.

For the reasons stated above, the Estate & Trust Law Section of the MSBA supports with amendment SB 886 and urges a favorable committee report.



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