Testimony SB131.pdf
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 22, 2026

The Maryland State Senate
Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 131: Estates and Trusts – Fiduciaries – Attorney-Client Privilege

Dear Chairman Smith and Members of the Committee,

Senate Bill 131 is identical to last year's Senate Bill 135, which passed unanimously in this Committee and then passed on the Senate floor 44-0. The bill never was taken up by the House last year. The purpose of this bill is to give the House another shot at doing the right thing and passing this bill.

Maryland defines attorney-client privilege as: (1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his or her capacity as such, (3) the communications relating to that purpose, (4) which are made in confidence, (5) between the attorney and the client, (6) are at the client's insistence permanently protected, (7) from disclosure by the client or by the legal adviser. *Newman v. State*, 384 Md. 285, 302 (Md. 2004) (citing *Harrison v. State*, 276 Md. 122, 135 (1975)).

Maryland recognizes some limited exceptions to attorney-client privilege; however, a fiduciary exception to attorney-client privilege is not among them. See *Trasatti v. Trasatti*, 2018 Md. App. LEXIS 546. On the other hand, Maryland court decisions do not explicitly establish that there is no such exception to the attorney-client privilege. So, the law in Maryland is currently in the grey area on this issue.

In the context of estate administration, the attorney-client privilege protects communications between the fiduciary and the fiduciary's legal counsel which occur in the course of administering the trust or estate.

If beneficiaries or others were able to require the disclosure of such communications, the result would be a breakdown in the attorney-client relationship. No longer could a fiduciary communicate with his or her legal counsel without worrying that whatever was said might be

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discoverable and might be the subject of litigation by a disappointed beneficiary or by someone else.

Because neither Maryland case law nor our statutes clearly state that Maryland either recognizes or does not recognize a fiduciary exception to the attorney-client privilege, parties often raise the issue in litigation, resulting in increased cost and delayed adjudication of the pending matter.

This bill will add a section to the Estates and Trusts Code that makes clear, like in many other states, that Maryland does not recognize a fiduciary exception to the attorney-client privilege.

I appreciate the Committee's consideration of Senate Bill 131 and will be happy to answer any questions the Committee may have.

SB131 Witness Support.pdf
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To: Members of Senate Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: January 20, 2026

Subject: SB 131 – Estates and Trusts – Fiduciaries – Attorney-Client Privilege

Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 131– Estates and Trusts – Fiduciaries – Attorney-Client Privilege.** Senate Bill 131 creates certainty in the law by codifying the attorney-client privilege in fiduciary situations.

Problem with Current Law

The attorney-client privilege, codified at Maryland Code Ann. Cts. & Jud. Pro. § 9-108, is an established, sacrosanct privilege that frees clients to communicate openly with their attorneys without fear that their communications can be discovered and used against them.[1] However, there is uncertainty whether the attorney-client privilege applies to a fiduciary (such as a trustee, agent under a financial power of attorney, or a personal representative) who seeks advice and counsel. Maryland law does have some limited exceptions to the attorney-client privilege, however, a fiduciary exception is not one of them. *See Trasatti v. Trasatti*, 2018 Md. App. LEXIS 546 (explaining that Maryland has never recognized a fiduciary exception to the attorney client-privilege) (unreported opinion). A minority of jurisdictions have recognized a fiduciary exception to the attorney-client privilege allowing beneficiaries to access privileged communications and documents. Recognizing the adverse impact of this exception to fiduciaries, several states have expressly codified legislation declaring that there is no fiduciary exception to the attorney-client privilege. Because Maryland Courts have not directly addressed this uncertainty, litigants are forced to bear increased costs and delayed adjudication when the issue is raised during fiduciary litigation.

[1] Maryland has adopted the following definition of the attorney-client privilege: (1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his insistence permanently protected, (7) from disclosure by himself or by the legal adviser, (8) except the protection may be waived. *Newman v. State*, 384 Md. 285, 302 (Md. 2004) (citing *Harrison v. State*, 276 Md. 122, 135 (1975)).

How SB 131 Solves the Problem

Senate Bill 131 eliminates the uncertainty by codifying an affirmative statement that the attorney-client privilege applies when an attorney represents a fiduciary. This, in turn, allows fiduciaries to be candid and thorough when discussing legal issues with their attorney, as any other client would in any other scenario. Explicitly codifying that Maryland does not recognize a fiduciary exception to the attorney-client privilege will save time and money for all parties involved in fiduciary litigation.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 131 and urges a favorable committee report.**

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MARYLAND BANKERS ASSOCIATION

SB 131 – Estates and Trusts – Fiduciaries – Attorney–Client Privilege
Committee: Senate Judicial Proceedings Committee
Date: January 22, 2026
Position: Favorable

The Maryland Bankers Association (MBA) **STRONGLY SUPPORTS** SB 131. This legislation provides clarity that communication between an attorney and a fiduciary is subject to attorney-client privilege, even if fiduciary funds are used to compensate the attorney for legal services. This clarifying piece of legislation provides assurance that fiduciaries, including banks administering estates and trusts, can obtain legal advice without compromising client confidentiality.

Maryland banks routinely serve Maryland residents in fiduciary capacities—acting as trustees, personal representatives, custodians, and agents. In these roles, institutions seek timely and confidential legal guidance to ensure their actions comply with state law, fulfill fiduciary duties, and protect beneficiaries' interests.

Without clear statutory protection, fiduciaries may hesitate to consult an attorney and may face uncertainty over whether beneficiaries could later demand access to privileged legal advice simply because such advice was paid for using trust or estate assets. Removing ambiguity around this attorney-client relationship ensures fiduciaries can confidently consult legal counsel, and that beneficiaries receive accurate fiduciary administration.

SB 131 strengthens Maryland's fiduciary framework and allows financial institutions to better serve their clients while administering estates and trusts. Accordingly, MBA urges the issuance of a **FAVORABLE** report on SB 131.

The Maryland Bankers Association (MBA) represents FDIC-insured community, regional, and national banks, employing thousands of Marylanders and holding $194.8 billion in deposits in over 1,100 branches across our State. The Maryland banking industry serves customers across the State and provides an array of financial services including residential mortgage lending, business banking, estates and trust services, consumer banking, and more.