
By: Delegate Finifter

Introduced and read first time: February 8, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Attorney in Fact - Gifts**

3 FOR the purpose of authorizing an attorney in fact or agent to make gifts of the
4 principal's property to individuals or organizations under certain conditions;
5 limiting the amount of a certain gift that an attorney in fact or agent may make;
6 clarifying that this Act does not impair the authority of a principal to authorize or
7 prohibit an attorney in fact or agent to make gifts of the principal's property;
8 authorizing an attorney in fact or agent to petition the circuit court to make gifts of
9 the principal's property under certain conditions; and generally relating to the
10 authority of an attorney in fact or agent to make gifts of the principal's property.

11 BY adding to

12 Article - Estates and Trusts
13 Section 13-604
14 Annotated Code of Maryland
15 (1991 Replacement Volume and 1995 Supplement)

16 Preamble

17 WHEREAS, The Maryland Court of Appeals held in King v. Bankerd, 303 Md. 98
18 (1985) that a general power of attorney, no matter how broad its terms, does not include
19 the specific power to make gifts of the principal's assets unless that specific power is
20 expressly conferred, arises as a necessary implication from the conferred powers, or is
21 clearly intended by the parties, as evidenced by the surrounding facts and circumstances;
22 and

23 WHEREAS, The Internal Revenue Service supports this holding; and

24 WHEREAS, In light of these positions, Maryland statutory law should clarify the
25 conditions under which an attorney in fact or agent who is designated by a power of
26 attorney may make gifts of the principal's property; now, therefore,

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Estates and Trusts**

2 13-604.

3 (A) AN ATTORNEY IN FACT OR AGENT MAY MAKE GIFTS OF THE PRINCIPAL'S
4 PROPERTY TO INDIVIDUALS OR ORGANIZATIONS IN ACCORDANCE WITH THE
5 PRINCIPAL'S HISTORY OF MAKING OR JOINING IN THE MAKING OF LIFETIME GIFTS,
6 IF THE WRITING THAT GRANTS THE POWER OF ATTORNEY:

7 (1) AUTHORIZES THE ATTORNEY IN FACT OR AGENT TO DO ANY ACT
8 THAT THE PRINCIPAL MAY DO; OR

9 (2) OTHERWISE EVIDENCES THE PRINCIPAL'S INTENT TO GIVE THE
10 ATTORNEY IN FACT OR AGENT FULL POWER TO HANDLE THE PRINCIPAL'S AFFAIRS
11 OR DEAL WITH THE PRINCIPAL'S PROPERTY.

12 (B) UNLESS OTHERWISE EXPRESSLY STATED IN THE WRITING THAT GRANTS
13 THE POWER OF ATTORNEY, THE AMOUNT OF A GIFT THAT AN ATTORNEY IN FACT
14 OR AGENT MAY MAKE TO HIMSELF OR HERSELF FROM THE PRINCIPAL'S PROPERTY
15 MAY NOT EXCEED:

16 (1) TWICE THE AMOUNT OF THE ANNUAL GIFT TAX EXCLUSION
17 PROVIDED IN 26 U.S.C. § 2503(B) OF THE UNITED STATES CODE, IF THE PRINCIPAL IS
18 MARRIED AT THE TIME OF THE GIFT; OR

19 (2) THE AMOUNT OF THE ANNUAL GIFT TAX EXCLUSION PROVIDED IN
20 26 U.S.C. § 2503(B) OF THE UNITED STATES CODE, IF THE PRINCIPAL IS NOT MARRIED
21 AT THE TIME OF THE GIFT.

22 (C) SUBSECTION (A) OF THIS SECTION DOES NOT IMPAIR THE AUTHORITY
23 OF A PRINCIPAL, BY EXPRESS WORDS IN THE POWER OF ATTORNEY OR OTHERWISE
24 TO AUTHORIZE OR PROHIBIT AN ATTORNEY IN FACT OR OTHER AGENT TO MAKE
25 GIFTS OF THE PRINCIPAL'S PROPERTY.

26 (D) (1) AFTER REASONABLE NOTICE TO THE PRINCIPAL, AN ATTORNEY IN
27 FACT OR AGENT MAY PETITION THE CIRCUIT COURT FOR AUTHORITY TO MAKE
28 GIFTS OF THE PRINCIPAL'S PROPERTY TO THE EXTENT NOT INCONSISTENT WITH
29 THE EXPRESS TERMS OF THE POWER OF ATTORNEY OR OTHER WRITING.

30 (2) THE COURT SHALL DETERMINE THE AMOUNTS, RECIPIENTS, AND
31 PROPORTIONS OF ANY GIFTS OF THE PRINCIPAL'S PROPERTY AFTER CONSIDERING
32 ALL RELEVANT FACTORS, INCLUDING:

33 (I) THE SIZE OF THE PRINCIPAL'S ESTATE;

34 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND
35 MAINTENANCE NEEDS;

36 (III) THE PRINCIPAL'S PERSONAL HISTORY OF MAKING, OR JOINING
37 IN THE MAKING OF, LIFETIME GIFTS;

38 (IV) THE PRINCIPAL'S ESTATE PLAN; AND

39 (V) THE TAX EFFECT OF THE GIFTS.

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1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.