
By: **Delegate Finifter**

Introduced and read first time: February 12, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Conversion of Sole Proprietorships to Limited Liability**
3 **Companies by Personal Representatives and Fiduciaries**

4 FOR the purpose of allowing a personal representative to convert a decedent's
5 proprietorship to a limited liability company; allowing a fiduciary to convert a
6 decedent's proprietorship to a limited liability company; making a stylistic
7 change; and generally relating to the powers of personal representatives and
8 fiduciaries.

9 BY repealing and reenacting, with amendments,
10 Article - Estates and Trusts
11 Section 7-401 and 15-102
12 Annotated Code of Maryland
13 (1991 Replacement Volume and 1998 Supplement)

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

16 **Article - Estates and Trusts**

17 7-401.

18 (a) In the performance of his duties pursuant to § 7-101, a personal
19 representative may exercise all of the power or authority conferred upon him by
20 statute or in the will, without application to, the approval of, or ratification by the
21 court. Except as validly limited by the will or by an order of court, a personal
22 representative may, in addition to the power or authority contained in the will and to
23 other common-law or statutory powers, exercise the powers enumerated in this
24 section.

25 (b) He may retain assets owned by the decedent pending distribution or
26 liquidation, including those in which the representative is personally interested or
27 which are otherwise improper for trust investment.

1 (c) He may hold a security in the name of a nominee or in other form without
2 disclosure of the interest of the estate. In this case, the personal representative is
3 liable for a wrongful act of the nominee in connection with the security held.

4 (d) He may receive assets from fiduciaries or other sources.

5 (e) He may deposit funds for the account of the estate, including money
6 received from the sale of assets, in checking accounts, in insured interest-bearing
7 accounts, or in short-term loan arrangements which may be reasonable for use by a
8 trustee.

9 (f) He may agree to deposit assets of the estate with a financial institution so
10 that the assets cannot be withdrawn or transferred without:

11 (1) The written consent of the surety on the bond; or

12 (2) An order of court.

13 (g) He may satisfy written charitable pledges of the decedent.

14 (h) He may pay a valid claim as provided in this article or effect a fair and
15 reasonable compromise with a creditor or obligee, or extend or renew an obligation
16 due by the estate.

17 (i) He may pay the funeral expenses of the decedent in accordance with the
18 procedures provided in § 8-106, including the cost of burial space and a tombstone or
19 marker, and the cost of perpetual care.

20 (j) He may pay taxes, assessments, and other expenses incident to the
21 administration of the estate.

22 (k) He may insure the property of the estate against damage, loss, and
23 liability, and himself, as personal representative, against liability in respect to third
24 persons.

25 (l) He may vote stocks or other securities in person or by general or limited
26 proxy.

27 (m) He may sell or exercise stock subscription, conversion or option rights,
28 consent to or oppose, directly or through a committee or agent, the reorganization,
29 consolidation, merger, dissolution, or liquidation of a corporation or other business
30 enterprise.

31 (n) He may invest in, sell, mortgage, pledge, exchange, or lease property.

32 (o) He may borrow money.

33 (p) He may release or terminate a mortgage or security interest, if the
34 obligation secured by the mortgage or security interest was fully satisfied during the
35 lifetime of the decedent or during the administration of the estate. He may also
36 extend or renew any obligation owed to the estate.

1 (q) If assets of the estate are encumbered by a mortgage, pledge, lien, or other
2 security interest and if it appears to be in the best interests of the estate, he may pay
3 the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his
4 security interest, in whole or in part, whether or not the holder of the encumbrance
5 has filed a claim.

6 (r) Regardless of a contrary provision in the will, he may execute, upon the
7 written demand of the owner of a redeemable leasehold or subleasehold estate, a full
8 and valid conveyance of the reversion or subreversion held by the estate.

9 (s) He may continue an unincorporated business or venture in which the
10 decedent was engaged at the time of his death:

11 (1) In the same business form for a period of not more than four months
12 from the date of appointment of a personal representative, where continuation is a
13 reasonable means of preserving the value of the business including goodwill;

14 (2) In the same business form for an additional period of time that may
15 be approved by order of court, in a proceeding to which all persons interested in the
16 estate are parties; or

17 (3) Throughout the period of administration, if the business is
18 incorporated after the death of the decedent.

19 (t) He may incorporate a business or venture in which the decedent was
20 engaged at the time of his death if none of the probable distributees of the business
21 who are competent adults objects to its incorporation and retention in the estate.

22 (U) HE MAY CONVERT A SOLE PROPRIETORSHIP THE DECEDENT WAS
23 ENGAGED IN AT THE TIME OF HIS DEATH TO A LIMITED LIABILITY COMPANY.

24 [(u)] (V) He may perform the contracts of the decedent that continue as
25 obligations of the estate, and execute and deliver deeds or other documents under
26 circumstances as the contract may provide.

27 [(v)] (W) He may exercise options, rights, and privileges contained in a life
28 insurance policy, annuity, or endowment contract constituting property of the estate,
29 including the right to obtain the cash surrender value, convert the policy to another
30 type of policy, revoke a mode of settlement, and pay a part or all of the premiums on
31 the policy or contract.

32 [(w)] (X) He may employ, for reasonable compensation auditors, investment
33 advisors, or persons with special skills, to advise or assist him in the performance of
34 his administration duties.

35 [(x)] (Y) He may prosecute, defend, or submit to arbitration actions, claims, or
36 proceedings in any appropriate jurisdiction for the protection or benefit of the estate,
37 including the commencement of a personal action which the decedent might have
38 commenced or prosecuted, except that:

1 (1) A personal representative may not institute an action against a
2 defendant for slander against the decedent during the lifetime of the decedent.

3 (2) In an action instituted by the personal representative against a
4 tort-feasor for a wrong which resulted in the death of the decedent, the personal
5 representative may recover the funeral expenses of the decedent up to the amount
6 allowed under § 8-106(b) of this article in addition to other damages recoverable in
7 the action.

8 [(y)] (Z) If the decedent died testate, he may designate himself on documents
9 as an executor, or if the decedent died intestate, as an administrator.

10 [(z)] (AA) He may make partial and final distributions, in cash, in kind, or both,
11 from time to time during the administration.

12 [(aa)] (BB) If the estate is of a physician, podiatrist, optometrist, or dentist
13 who was a sole practitioner, the administrator shall follow the notice requirements
14 under § 4-305 of the Health - General Article of the Code before the destruction or
15 transfer of any medical records of a patient of the decedent.

16 [(bb)] (CC) (1) To comply with an environmental law, a personal
17 representative may:

18 (i) Inspect property held by the personal representative, including
19 any type of interest in a sole proprietorship, partnership, or corporation, and any
20 assets owned by a sole proprietorship, partnership, or corporation to determine
21 compliance with an environmental law and respond to an actual or potential
22 environmental liability relating to the property;

23 (ii) Before or after the initiation of a claim or a governmental
24 enforcement action, take any action necessary to prevent, abate, or otherwise remedy
25 an actual or potential environmental liability relating to property held by the
26 personal representative;

27 (iii) Settle or compromise at any time a claim against the estate
28 based on an alleged environmental liability that may be asserted by any person; and

29 (iv) Pay from the estate the costs of an inspection, review, study,
30 abatement, response, cleanup, or other remedial action that involves an
31 environmental liability as provided under § 7-304 of this title.

32 (2) If a personal representative acts prudently and in good faith, the
33 personal representative is not liable to a person with an interest in assets held by the
34 personal representative for a decrease in the value of the assets for taking action
35 under this subsection or otherwise taking action to comply with an environmental law
36 or reporting requirement.

37 (3) Acceptance by the personal representative of property or failure by
38 the personal representative to take action under this subsection does not imply that
39 there is or may be liability under an environmental law with respect to any property.

1 15-102.

2 (a) (1) In this section, "fiduciary" means a trustee acting under a deed, will,
3 declaration of trust or other instrument in the nature of a trust or appointed by a
4 court, a committee or guardian of the property of a minor or a disabled person,
5 whether the trust or estate be created or the appointment made prior or subsequent
6 to the effective date of this subtitle.

7 (2) "Fiduciary" does not include a receiver, trustee of a trust for the
8 benefit of creditors, executor, administrator, or personal representative.

9 (b) (1) A fiduciary may perform the functions and duties enumerated in this
10 section without application to, approval of, or ratification by a court.

11 (2) Except as expressly limited in the governing instrument, the powers
12 of a fiduciary under this section are in addition to those derived from common law,
13 statute, or the governing instrument.

14 (3) The powers listed in this section may be extended or limited by the
15 appropriate court, and the court may also eliminate any limitation imposed by a court
16 on a fiduciary.

17 (c) He may invest in, sell, mortgage, exchange, or lease any property, real or
18 personal.

19 (d) He may borrow money for the purpose of protecting property and pledge
20 property as security for the loan.

21 (e) He may effect a fair and reasonable compromise with any debtor, obligor,
22 creditor or obligee, or extend or renew any obligation by or to the fiduciary estate.

23 (f) He may retain assets owned by the minor or disabled person, in the case of
24 a guardian, or owned by the decedent or the grantor, in the case of a trustee or
25 otherwise coming into the hands of the fiduciary pending distribution or liquidation,
26 including those in which the fiduciary is personally interested or which are otherwise
27 improper for trust investment.

28 (g) He may receive assets from any sources, including other fiduciaries.

29 (h) He may perform the contracts of the decedent or disabled person that
30 continue as obligations of the fiduciary estate. In performing an enforceable contract
31 to convey or lease land the fiduciary may execute and deliver a deed or conveyance for
32 cash payment of all sums remaining due, or for the note of the purchaser for the sum
33 remaining due secured by a mortgage or deed of trust on the land, as the contract may
34 provide.

35 (i) He may satisfy written charitable pledges of the disabled person or
36 decedent.

1 (j) He may deposit funds for the account of the fiduciary estate in checking
2 accounts, in insured interest-bearing accounts, or in short-term loan arrangements.

3 (k) He may vote securities in person or by general or limited proxy, or enter
4 into or participate in a voting trust or agreement of shareholder.

5 (l) He may insure the property of the fiduciary estate against damage, loss
6 and liability, and himself, as fiduciary against liability in respect to third persons.

7 (m) He may pay taxes, assessments and other expenses incident to the
8 administration of the fiduciary estate.

9 (n) He may sell or exercise stock subscription, conversion or option rights,
10 consent to or oppose, directly or through a committee or other agent, the
11 reorganization, consolidation, merger, dissolution or liquidation of a corporation or
12 other business enterprises.

13 (o) He may employ for reasonable compensation agents, attorneys, auditors,
14 investment advisors or other persons with special skills, to advise or assist the
15 fiduciary in the performance of his administrative duties, but no attorneys' fee in an
16 amount exceeding \$50 shall be paid in a fiduciary estate administered under court
17 jurisdiction unless the amount of the fee has been first approved by order of court.

18 (p) Except as provided in the Maryland Rules, he may prosecute, defend, or
19 submit to arbitration any actions, claims, or proceedings in any jurisdiction for the
20 protection of the fiduciary estate.

21 (q) He may continue as or become a limited partner in any partnership.

22 (r) He may incorporate any business or venture which forms a part of the
23 fiduciary estate.

24 (S) HE MAY CONVERT A SOLE PROPRIETORSHIP THE DECEDENT WAS
25 ENGAGED IN AT THE TIME OF HIS DEATH TO A LIMITED LIABILITY COMPANY.

26 [(s)] (T) He may exercise options, rights and privileges contained in a life
27 insurance policy, annuity, or endowment contract constituting property of the
28 fiduciary estate, including the right to obtain the cash surrender value, convert a
29 policy to another type of policy, revoke any mode of settlement, and pay any part or all
30 of the premiums on the policy or contract.

31 [(t)] (U) He may pay any valid claim.

32 [(u)] (V) If any assets of the fiduciary estate are encumbered by mortgage,
33 pledge, lien, or other security interest, he may pay the [encumbrance]
34 ENCUMBRANCE or any part of it, renew, or extend an obligation secured by the
35 encumbrance, or convey or transfer the assets to the creditor in satisfaction of his
36 security interest, in whole or in part, if the act appears to be in the best interest of the
37 fiduciary estate.

1 [(v)] (W) He may release or terminate any mortgage or security interest, if the
2 obligation secured by the mortgage or security interest has been fully satisfied.

3 [(w)] (X) A guardian may exercise any inter vivos power which the minor or
4 disabled person could have exercised under an instrument, including the power to
5 sell, mortgage, or lease.

6 [(x)] (Y) He may hold a security in the name of a nominee or in other form
7 without disclosure of the interest of the fiduciary estate, but the fiduciary shall be
8 liable for a wrongful act of the nominee in connection with the security so held.

9 [(y)] (Z) (1) To comply with an environmental law, a fiduciary may:

10 (i) Inspect property held by the fiduciary, including any type of
11 interest in a sole proprietorship, partnership, or corporation, and any assets owned by
12 a sole proprietorship, partnership, or corporation, to determine compliance with an
13 environmental law and respond to an actual or potential environmental liability
14 relating to the property;

15 (ii) Before or after the initiation of a claim or a governmental
16 enforcement action, take action necessary to prevent, abate, or otherwise remedy an
17 actual or potential environmental liability that affects the fiduciary estate;

18 (iii) Settle or compromise at any time a claim against the fiduciary
19 estate based on an alleged environmental liability that may be asserted by any
20 person; and

21 (iv) Pay from the fiduciary estate the costs of an inspection, review,
22 study, abatement, response, cleanup, or other remedial action that involves an
23 environmental liability.

24 (2) If a fiduciary acts prudently and in good faith, the fiduciary is not
25 liable to a person with an interest in assets of the fiduciary estate for a decrease in
26 the value of the assets for taking action under this subsection or otherwise taking
27 action to comply with an environmental law or reporting requirement.

28 (3) Acceptance by the fiduciary of property or failure by the fiduciary to
29 take action under this subsection does not imply that there is or may be any liability
30 under an environmental law with respect to any property.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 1999.