

HOUSE BILL 759

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HB 1386/98 - JUD

1999 Regular Session
9r1492

By: **Delegate Finifter**
Introduced and read first time: February 12, 1999
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 16, 1999

CHAPTER _____

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 sole
5 proprietorship to a limited liability company; allowing a fiduciary to convert a
6 decedent's sole 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

1 other common-law or statutory powers, exercise the powers enumerated in this
2 section.

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

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

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

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

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15 that the assets cannot be withdrawn or transferred without:

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

17 (2) An order of court.

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

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

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

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

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

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

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

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

1 (o) He may borrow money.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (i) Inspect property held by the personal representative, including
26 any type of interest in a sole proprietorship, partnership, or corporation, and any
27 assets owned by a sole proprietorship, partnership, or corporation to determine
28 compliance with an environmental law and respond to an actual or potential
29 environmental liability relating to the property;

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

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

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

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

6 (3) Acceptance by the personal representative of property or failure by
7 the personal representative to take action under this subsection does not imply that
8 there is or may be liability under an environmental law with respect to any property.
9 15-102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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