
By: **Senator Baker**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Community Trust Act**

3 FOR the purpose of authorizing the establishment of community trusts to provide
4 certain services for persons with disabilities; providing for the organization and
5 administration of community trusts; establishing the membership, powers, and
6 duties of the board of a community trust; providing for eligibility of a person
7 with a disability for participation in and services from a community trust;
8 requiring a community trust to prepare certain annual reports and statements;
9 providing for withdrawal of a participant from a community trust; authorizing a
10 community trust to use surplus trust funds and contributions for certain
11 purposes; requiring a participant's interest in a community trust to be
12 disregarded in assessing financial eligibility and liability under any program of
13 government benefits or assistance; prohibiting government benefits or
14 assistance from being reduced because an individual is a participant in a
15 community trust; prohibiting assignment of an interest in a community trust;
16 exempting an interest in a community trust from claims of creditors;
17 establishing that a community trust is not subject to the rule against
18 perpetuities or restraints on alienation; stating the intent of the General
19 Assembly; providing for the construction and application of this Act; defining
20 certain terms; and generally relating to community trusts.

21 BY adding to
22 Article - Estates and Trusts
23 Section 14-501 through 14-512, inclusive, to be under the new subtitle,
24 "Subtitle 5. Maryland Community Trust Act"
25 Annotated Code of Maryland
26 (1991 Replacement Volume and 2000 Supplement)

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

Article - Estates and Trusts

SUBTITLE 5. MARYLAND COMMUNITY TRUST ACT.

14-501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "COMMUNITY TRUST" MEANS A NONPROFIT, NONGOVERNMENTAL ORGANIZATION THAT OFFERS ANY OF THE FOLLOWING SERVICES:

(1) ADMINISTRATION OF TRUST FUNDS FOR PERSONS WITH DISABILITIES;

(2) COMPREHENSIVE CARE PLANNING;

(3) GUARDIANSHIP FOR PERSONS WITH DISABILITIES WHO ARE INCOMPETENT; AND

(4) ADVICE AND COUNSEL TO PERSONS WHO HAVE BEEN APPOINTED AS INDIVIDUAL GUARDIANS OF THE PERSON OR PROPERTY OF PERSONS WITH DISABILITIES.

(C) "COMPREHENSIVE CARE PLAN" MEANS SERVICES OFFERED BY A COMMUNITY TRUST THAT ARE DESIGNED TO ENSURE THAT THE NEEDS OF EACH PARTICIPANT ARE BEING MET FOR AS LONG AS MAY BE REQUIRED AND THAT MAY INCLUDE PERIODIC VISITS TO THE PARTICIPANT AND TO THE PLACES WHERE THE PARTICIPANT RECEIVES SERVICES, PARTICIPATION IN THE DEVELOPMENT OF INDIVIDUALIZED PLANS FOR THE PARTICIPANT, AND OTHER SIMILAR SERVICES CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE.

(D) "PARTICIPANT" MEANS A PERSON WITH A DISABILITY WHO IS ACCEPTED AS A PARTICIPANT IN AND HAS THE RIGHT TO RECEIVE SERVICES FROM A COMMUNITY TRUST.

(E) "PERSON WITH A DISABILITY" MEANS A PERSON WITH A PHYSICAL OR MENTAL IMPAIRMENT WITH A LONG-TERM NEED FOR SPECIALIZED HEALTH, SOCIAL, OR OTHER SERVICES.

(F) "SURPLUS TRUST FUNDS" MEANS FUNDS ACCUMULATED IN THE TRUST FROM CONTRIBUTIONS MADE BY OR ON BEHALF OF A PARTICIPANT WHICH, AFTER THE PARTICIPANT'S DEATH OR WITHDRAWAL FROM THE PLAN, ARE DETERMINED BY THE BOARD TO BE IN EXCESS OF THE ACTUAL COST OF PROVIDING SERVICES DURING THE PARTICIPANT'S LIFETIME, INCLUDING THE PARTICIPANT'S SHARE OF ADMINISTRATIVE COSTS.

14-502.

(A) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

1 (1) IT IS IN THE PUBLIC INTEREST TO ENCOURAGE SUPPLEMENTATION
2 AND AUGMENTATION OF SERVICES PROVIDED BY LOCAL, STATE, AND FEDERAL
3 GOVERNMENT AGENCIES FOR PERSONS WITH DISABILITIES;

4 (2) COMMUNITY TRUSTS ARE INTENDED TO PROVIDE A METHOD TO
5 ASSURE ONGOING INDIVIDUALIZED SUPPORT FOR A PERSON WITH A DISABILITY;

6 (3) ASSETS CONTRIBUTED BY OR ON BEHALF OF A PERSON WITH
7 DISABILITY SHALL BE AVAILABLE FOR THE USE AND BENEFIT OF THAT
8 PARTICIPANT; AND

9 (4) ASSETS OF PARTICIPANTS MAY BE POOLED TO PROVIDE EFFICIENT
10 MANAGEMENT.

11 (B) THIS SUBTITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO
12 PROMOTE ITS UNDERLYING PURPOSES AND POLICIES, INCLUDING TO:

13 (1) ENCOURAGE THE ORDERLY ESTABLISHMENT OF COMMUNITY
14 TRUSTS FOR THE BENEFIT OF PERSONS WITH DISABILITIES;

15 (2) ENSURE THAT A COMMUNITY TRUST IS ADMINISTERED PROPERLY
16 AND THAT ITS BOARD IS FREE FROM CONFLICTS OF INTEREST;

17 (3) FACILITATE THE SOUND ADMINISTRATION OF CONTRIBUTIONS ON
18 BEHALF OF PERSONS WITH DISABILITIES BY ALLOWING FAMILY MEMBERS AND
19 OTHER INTERESTED PERSONS TO OBTAIN PROFESSIONAL INVESTMENT
20 MANAGEMENT, WHICH MAY ENTAIL POOLING OF CONTRIBUTIONS;

21 (4) PROVIDE FAMILIES AND OTHER INTERESTED PERSONS PEACE OF
22 MIND IN KNOWING THAT A MEANS EXISTS TO SUPPORT AND ASSIST PERSONS WITH
23 DISABILITIES AND PROVIDE EFFICIENT MANAGEMENT OF ASSETS;

24 (5) MAKE GUARDIANS AVAILABLE FOR PERSONS WITH DISABILITIES AS
25 NEEDED;

26 (6) ENCOURAGE THE AVAILABILITY OF RESOURCES FOR THE
27 SUPPLEMENTAL NEEDS OF PERSONS WITH DISABILITIES THAT ARE NOT AVAILABLE
28 THROUGH ANY GOVERNMENTAL OR CHARITABLE PROGRAM;

29 (7) ENCOURAGE THE INCLUSION OF INDIGENT PERSONS WITH
30 DISABILITIES AS BENEFICIARIES OF A COMMUNITY TRUST IF AND WHEN FUNDS ARE
31 AVAILABLE FOR THOSE PERSONS; AND

32 (8) ENCOURAGE FAMILIES AND OTHER INTERESTED PERSONS TO SET
33 ASIDE FUNDS FOR THE FUTURE PROTECTION OF PERSONS WITH DISABILITIES BY
34 ENSURING THAT THE INTEREST OF PERSONS WITH DISABILITIES IN A COMMUNITY
35 TRUST ARE NOT CONSIDERED ASSETS OR INCOME THAT WOULD DISQUALIFY THEM
36 FROM ANY GOVERNMENTAL PROGRAM WITH AN ECONOMIC MEANS TEST.

1 14-503.

2 (A) A COMMUNITY TRUST SHALL BE ORGANIZED AS A NONPROFIT
3 CORPORATION IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE
4 CORPORATIONS AND ASSOCIATIONS ARTICLE.

5 (B) (1) A COMMUNITY TRUST SHALL BE ADMINISTERED BY A BOARD.

6 (2) THE MEMBERS OF THE BOARD MAY INCLUDE FAMILY MEMBERS,
7 INTERESTED PERSONS, PUBLIC REPRESENTATIVES, PERSONS WITH DISABILITIES
8 WHO ARE NOT PARTICIPANTS, LEGAL ADVISERS, TRUST ADVISERS, FINANCIAL
9 ADVISERS, AND PROFESSIONALS IN THE DISABILITIES FIELD.

10 (3) A BOARD MEMBER WITH VOTING POWER MAY NOT BE A PROVIDER
11 OF NONINCIDENTAL HABILITATIVE, HEALTH, SOCIAL, OR EDUCATION SERVICES TO
12 PERSONS WITH DISABILITIES OR AN EMPLOYEE OF A SERVICE PROVIDER. THE
13 BOARD MAY ALLOW SERVICE PROVIDERS TO SERVE ON A SEPARATE ADVISORY
14 BOARD.

15 (4) THE BOARD MEMBERS SHALL BE SELECTED FROM THE GEOGRAPHIC
16 AREAS SERVED BY THE COMMUNITY TRUST.

17 (5) A MEMBER OF THE BOARD MAY NOT RECEIVE FEES OR
18 COMMISSIONS FOR SERVICES PROVIDED AS A MEMBER OF THE BOARD.

19 (C) A COMMUNITY TRUST SHALL BE CONSIDERED THE TRUSTEE OF ANY
20 FUNDS ADMINISTERED BY IT. AN INDIVIDUAL BOARD MEMBER MAY NOT BE
21 CONSIDERED TO BE A TRUSTEE.

22 (D) THE BOARD SHALL ADOPT APPROPRIATE POLICIES AND BYLAWS IN
23 ACCORDANCE WITH THIS SUBTITLE.

24 (E) (1) THE BOARD MAY RETAIN PAID STAFF AS IT CONSIDERS NECESSARY
25 TO PROVIDE COMPREHENSIVE CARE PLAN SERVICES TO THE EXTENT REQUIRED BY
26 EACH PARTICIPANT.

27 (2) (I) THE COMMUNITY TRUST MAY AUTHORIZE THE EXPENDITURE
28 OF FUNDS FOR ANY GOODS OR SERVICES WHICH, IN ITS SOLE DISCRETION, IT
29 DETERMINES WILL PROMOTE THE WELL-BEING OF ANY PARTICIPANT, INCLUDING
30 RECREATIONAL SERVICES.

31 (II) THE COMMUNITY TRUST MAY PAY FOR THE BURIAL OF ANY
32 PARTICIPANT.

33 (III) THE COMMUNITY TRUST MAY NOT EXPEND FUNDS FOR ANY
34 GOODS OR SERVICES AVAILABLE TO ANY PARTICULAR PARTICIPANT THROUGH ANY
35 GOVERNMENTAL OR CHARITABLE PROGRAM, INSURANCE, OR OTHER SOURCE
36 AVAILABLE TO THE PARTICIPANT.

1 (IV) THE COMMUNITY TRUST MAY EXPEND FUNDS TO MEET THE
2 REASONABLE COSTS OF ADMINISTRATION.

3 (F) A COMMUNITY TRUST MAY ACCEPT APPOINTMENT AS GUARDIAN OF THE
4 PERSON, GUARDIAN OF THE PROPERTY, OR GUARDIAN OF BOTH ON BEHALF OF ANY
5 PARTICIPANT. IF A COMMUNITY TRUST ACCEPTS APPOINTMENT AS GUARDIAN, IT
6 SHALL ASSIGN A STAFF MEMBER TO CARRY OUT ITS RESPONSIBILITIES AS
7 GUARDIAN. A COMMUNITY TRUST MAY, ON REQUEST, OFFER CONSULTATIVE AND
8 PROFESSIONAL ASSISTANCE TO THE GUARDIAN OF ANY OF ITS PARTICIPANTS.

9 14-504.

10 (A) (1) A PERSON WITH A DISABILITY MAY BE ELIGIBLE TO BE A
11 PARTICIPANT IN A COMMUNITY TRUST:

12 (I) UPON A CONTRIBUTION OF ASSETS INTO THE COMMUNITY
13 TRUST, OR THE BOARD'S WAIVER OF A CONTRIBUTION, BY OR ON BEHALF OF THE
14 PERSON; AND

15 (II) ACCEPTANCE INTO THE COMMUNITY TRUST BY THE BOARD.

16 (2) THE BOARD SHALL DEVELOP STANDARDS OF ELIGIBILITY FOR
17 PARTICIPANTS.

18 (B) (1) THE EXTENT AND CHARACTER OF THE SERVICES AND ACCEPTANCE
19 OF PARTICIPANTS ARE AT THE DISCRETION OF THE COMMUNITY TRUST.

20 (2) THE COMMUNITY TRUST MAY ACCEPT CONTRIBUTIONS, BEQUESTS,
21 PAYEE SERVICES, OR PROPERTY PASSING BY BENEFICIARY DESIGNATION BY OR ON
22 BEHALF OF PERSONS WITH DISABILITIES.

23 (C) (1) UPON THE ACCEPTANCE OF A PERSON WITH A DISABILITY AS A
24 PARTICIPANT, THE COMMUNITY TRUST SHALL:

25 (I) DEVELOP A COMPREHENSIVE CARE PLAN FOR THE
26 PARTICIPANT; AND

27 (II) PROVIDE THE PLAN TO THE DONOR AND TO THE PARTICIPANT
28 OR THE PARTICIPANT'S REPRESENTATIVE.

29 (2) THE COMPREHENSIVE CARE PLAN SHALL INCLUDE:

30 (I) A STARTING DATE FOR THE DELIVERY OF SERVICES OR THE
31 CONDITION FOR COMMENCING DELIVERY OF SERVICES;

32 (II) THE NATURE AND DURATION OF THE SERVICES TO BE
33 PROVIDED; AND

34 (III) THE CRITERIA OR PROCEDURES FOR MODIFYING THE
35 PROGRAM OF SERVICES FROM TIME TO TIME.

1 (D) (1) THE COMMUNITY TRUST IS NOT REQUIRED TO PROVIDE SERVICES
2 TO A PARTICIPANT WHO:

3 (I) IS A COMPETENT ADULT AND WHO HAS REFUSED TO ACCEPT
4 SERVICES; OR

5 (II) IS DETERMINED BY THE BOARD TO BE NO LONGER ELIGIBLE TO
6 BE A PARTICIPANT.

7 (2) THE COMMUNITY TRUST MAY NOT PROVIDE SERVICES OF A NATURE
8 OR IN A MANNER THAT WOULD BE CONTRARY TO THE PUBLIC POLICY OF THE STATE
9 AT THE TIME THE SERVICES ARE TO BE PROVIDED.

10 (3) IN EITHER CASE, THE COMMUNITY TRUST MAY OFFER ALTERNATE
11 SERVICES THAT ARE CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE AND IN
12 KEEPING WITH THE BEST INTEREST OF THE PARTICIPANT.

13 14-505.

14 (A) THE COMMUNITY TRUST MAY AGREE TO FULFILL ANY SPECIAL REQUEST
15 MADE BY OR ON BEHALF OF A PARTICIPANT IF THE REQUEST IS CONSISTENT WITH
16 THIS SUBTITLE AND ADEQUATE FUNDS ARE AVAILABLE FOR THAT PURPOSE.

17 (B) THE COMMUNITY TRUST MAY AGREE TO SERVE AS TRUSTEE OR AS TRUST
18 ADVISOR FOR ANY INDIVIDUAL TRUST CREATED BY OR ON BEHALF OF A
19 PARTICIPANT, REGARDLESS OF WHETHER THE TRUST IS REVOCABLE OR
20 IRREVOCABLE, HAS ONE OR MORE REMAINDERMEN OR CONTINGENT
21 BENEFICIARIES, OR ANY OTHER CONDITION, SO LONG AS THE INDIVIDUAL TRUST IS
22 CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE.

23 14-506.

24 (A) THE COMMUNITY TRUST SHALL PREPARE AN ANNUAL REPORT ITEMIZING
25 ALL FUNDS COLLECTED FOR THE YEAR, INCOME EARNED, SALARIES, OTHER
26 EXPENSES INCURRED, AND THE OPENING AND FINAL TRUST BALANCES.

27 (B) THE COMMUNITY TRUST SHALL, UPON REQUEST, PROVIDE A COPY OF THE
28 REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION TO A PARTICIPANT OR
29 THE PARTICIPANT'S REPRESENTATIVE.

30 (C) EACH YEAR, THE COMMUNITY TRUST SHALL PREPARE ON BEHALF OF
31 EACH PARTICIPANT:

32 (1) A DETAILED INDIVIDUAL STATEMENT OF THE SERVICES PROVIDED
33 TO THE PARTICIPANT DURING THE PREVIOUS 12 MONTHS, AND THE SERVICES
34 PLANNED FOR THE PARTICIPANT DURING THE FOLLOWING 12 MONTHS; AND

35 (2) AN ACCOUNTING OF EXPENDITURES MADE ON BEHALF OF THE
36 PARTICIPANT AND THE INVESTMENTS REMAINING IN THE PARTICIPANT'S ACCOUNT.

1 (D) THE COMMUNITY TRUST SHALL PROVIDE THE STATEMENT REQUIRED
2 UNDER SUBSECTION (C) OF THIS SECTION TO THE PARTICIPANT OR THE
3 PARTICIPANT'S REPRESENTATIVE, AND CONSISTENT WITH STANDARDS ADOPTED BY
4 THE BOARD TO PROTECT THE PARTICIPANT'S PRIVACY RIGHTS, SHALL UPON
5 REQUEST PROVIDE THE STATEMENT TO EACH DONOR FOR THE PARTICIPANT.

6 (E) THE COMMUNITY TRUST SHALL PROVIDE THE STATEMENT REQUIRED
7 UNDER SUBSECTION (C) OF THIS SECTION AS A FINAL STATEMENT UPON THE
8 WITHDRAWAL OF A PARTICIPANT.

9 14-507.

10 (A) (1) THE BOARD SHALL DEVELOP STANDARDS AND PROCEDURES FOR
11 THE WITHDRAWAL OF A PARTICIPANT FROM THE COMMUNITY TRUST.

12 (2) A PARTICIPANT MAY WITHDRAW FROM THE COMMUNITY TRUST. THE
13 DEATH OF A PARTICIPANT SHALL CONSTITUTE A WITHDRAWAL FROM THE
14 COMMUNITY TRUST.

15 (3) THE BOARD MAY DETERMINE THAT A PARTICIPANT MUST
16 WITHDRAW FROM THE COMMUNITY TRUST.

17 (B) UPON THE WITHDRAWAL OF A PARTICIPANT FROM THE COMMUNITY
18 TRUST, THE BOARD MAY RELEASE FROM THE COMMUNITY TRUST ALL OR ANY
19 PORTION OF THE PARTICIPANT'S SURPLUS TRUST ASSETS.

20 (C) THE COMMUNITY TRUST MAY USE SURPLUS TRUST FUNDS FOR PURPOSES
21 INCLUDING QUALIFYING A PERSON WITH A DISABILITY AS A PARTICIPANT,
22 REDUCING THE CHARGES FOR THE COST OF ADMINISTRATION, AND FOR ANY OTHER
23 PURPOSE THAT IS CONSISTENT WITH THIS SUBTITLE.

24 (D) THE COMMUNITY TRUST MAY NOT USE A PARTICIPANT'S SURPLUS TRUST
25 FUNDS TO MAKE ANY CHARITABLE CONTRIBUTION ON BEHALF OF ANY PARTICIPANT
26 OR CLASS OF PARTICIPANTS.

27 14-508.

28 THE COMMUNITY TRUST MAY ACCEPT CONTRIBUTIONS NOT DESIGNATED FOR
29 A PARTICULAR PARTICIPANT, AND USE THE CONTRIBUTIONS, IN ITS DISCRETION,
30 FOR PURPOSES INCLUDING QUALIFYING A PERSON WITH A DISABILITY AS A
31 PARTICIPANT, MEETING START-UP COSTS, REDUCING THE CHARGES TO THE TRUST
32 FOR THE COST OF ADMINISTRATION, AND FOR ANY OTHER PURPOSE THAT IS
33 CONSISTENT WITH THIS SUBTITLE.

34 14-509.

35 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PARTICIPANT'S
36 INTEREST IN THE COMMUNITY TRUST SHALL BE DISREGARDED IN ASSESSING
37 FINANCIAL ELIGIBILITY AND LIABILITY UNDER ANY PROGRAM OF GOVERNMENT
38 BENEFITS OR ASSISTANCE. A GOVERNMENT AGENCY MAY NOT REDUCE THE

1 BENEFITS OR SERVICES AVAILABLE TO ANY INDIVIDUAL BECAUSE THAT PERSON IS
2 A PARTICIPANT.

3 14-510.

4 (A) A PARTICIPANT MAY NOT ASSIGN, CONVEY, ALIENATE, OR OTHERWISE
5 ENCUMBER ANY INTEREST IN THE COMMUNITY TRUST.

6 (B) AN INTEREST IN THE COMMUNITY TRUST OR ANY TRUST DISBURSEMENT
7 IS NOT SUBJECT TO ANY CREDITOR'S CLAIM, ATTACHMENT, ENCUMBRANCES, OR
8 EXECUTION UNDER ANY WRIT OR PROCEEDING IN LAW OR EQUITY.

9 14-511.

10 THE COMMUNITY TRUST MAY NOT BE SUBJECT TO OR HELD TO BE IN
11 VIOLATION OF THE RULE AGAINST PERPETUITIES OR ANY RESTRAINTS ON
12 ALIENATION OR PERPETUAL ACCUMULATIONS.

13 14-512.

14 THIS SUBTITLE MAY BE CITED AS THE "MARYLAND COMMUNITY TRUST ACT".

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2001.