Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

House Bill 956 (Delegate Dembrow)
Judiciary Judicial Proceedings

Uniform Principal and Income Act - Adjustments Between Principal and Income

This bill authorizes a trustee to make adjustments between the principal and income of a trust under certain conditions. The bill takes effect October 1, 2001 and applies to trusts and estates existing on or after that date.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill provides that a trustee may make adjustments between principal and income to the extent the trustee considers necessary under certain circumstances, one of which must be a written request from a beneficiary to exercise the power conferred to make such an adjustment. Such an adjustment may only be made if each qualified beneficiary consents and a court of competent jurisdiction reviews and approves the petition. In deciding whether and to what extent to alter the allocation between principal and income, a trustee must consider a variety of specified factors relevant to the particular trust, including the amount of income being generated by the trust.

A trustee cannot make an adjustment between principal and income under a variety of specified circumstances that could adversely affect the trust's beneficiaries.

The trustee must give notice **--** by a specified method **--** to all qualified beneficiaries of a proposed decision regarding the exercise or nonexercise of the discretionary power to adjust between principal and income. The trustee has the burden of proving that the trustee's proposed decision should be taken, and the sole remedy in the proceeding is to direct, deny, or revise an adjustment between principal and income.

A trustee who meets the bill's requirements is not liable for a decision to exercise (or not exercise) the power to adjust between principal and income to a qualified beneficiary who consented or to any person who has a present or future interest in the trust, vested or contingent, including any unborn or unascertained beneficiary.

The bill also requires that a trustee make an adjustment from principal to income to compensate an income beneficiary for taxes paid or payable by the income beneficiary in respect to the taxable income of an entity that is taxable to the income beneficiary but that is distributed to the trustee and allocated to principal.

Current Law: A trustee may exercise discretionary power in the administration of a trust, but the trustee is held to the duty of acting in a way that is fair and reasonable to all of the beneficiaries, unless the trust specifies otherwise. There is no specific provision for adjustments between principal and income, nor is there any legal protection for trustees if they make such an adjustment, even if the adjustment is made according to prudent investment rules or with the consent of all the beneficiaries.

Background: Chapter 292 (HB 939/SB 636) of 2000 enacted most of the Uniform Principal and Income Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1997 (UPIA 1997). The provision of UPIA 1997 that would allow a trustee to adjust principal and income to the extent made necessary by prudent investment rules when a trust provides for a fixed income for the income beneficiary was omitted from Chapter 292. The adjustment provision in UPIA 1997, however, is not identical to the current bill and does not include, for instance, the requirement that the adjustment be initiated by a beneficiary rather than the trustee.

Additional Information

Prior Introductions: None.

Cross File: SB 662 (Senator Baker) **-** Judicial Proceedings.

Information Source(s): Registers of Wills, Uniform Law Commissioners, Department of Legislative Services

Fiscal Note History:	First Reader – February 28, 2001
ncs/jr	Revised – House Third Reader – April 9, 2001

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