HB 241

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 241 (Delegates Simmons and Vallario)
Judiciary

Estates and Trusts - Claims Against Decedents and Protections for Revocable Inter Vivos Trusts

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This bill subjects revocable inter vivos trusts to certain existing rules governing wills and estates. It expands the application of the statutory time limit for instituting claims against a decedent's estate to trusts or any other mechanism for transferring property from a decedent. In the absence of express language to the contrary, the bill provides for the automatic revocation of distribution of trust property to an individual who has received an absolute divorce or annulment from the settlor (person creating the trust), or in the case of a settlor who subsequently married and conceived, adopted, or legitimized a child after executing the trust.

The bill is to be applied prospectively and may not be applied to any decedent who dies before the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: Potential minimal increase or decrease in State inheritance and/or estate tax revenues (general funds). The actual effect would depend upon the values of affected estates, the nature of the transferred property, and the relationships of beneficiaries to decedents. No impact on expenditures.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines revocable inter vivos trust as a trust that is revocable by the settlor during the settlor's lifetime. The bill subjects these "living" trusts to the following rules in the Estates and Trusts Article that currently apply only to wills and estates: (1) legatee failing to survive legator by 30 days; (2) lapse; (3) exoneration; (4) void or inoperative legacies; (5) change in securities; (6) legacy for charitable use; (7) in terrorem clause; and (8) die without issue and similar phrases (see discussion of these provisions under Current Law section below). It also applies the current statutory time limit for bringing a claim against an estate to all trust instruments and other mechanisms for transferring property after the death of a decedent.

The bill also defines "testamentary aspects" as those provisions of a trust that dispose of the trust property, other than the settlor's estate, on or after the death of the settlor. It also provides for automatic revocation of that part of a revocable inter vivos trust that relates to the settlor's spouse, unless otherwise provided in a trust agreement or decree, when the settlor and the settlor's spouse subsequently divorce or annul the marriage. In addition, in the absence of express language to the contrary, a subsequent marriage of a settlor, followed by a birth, adoption, or legitimation of a child by the settlor that occurs after execution by the settlor of a revocable inter vivos trust, shall revoke the testamentary aspects of the revocable inter vivos trust if the child or a descendant of the child survives the settlor.

Current Law: Except as otherwise provided, all claims against the estate of a decedent are forever barred unless presented within the earlier of six months after the date of the decedent's death or two months after the personal representative mails a certain notice to the creditor.

Unless otherwise provided, a civil action at law must be filed within three years from the date it occurs.

Maryland follows the general rule that revocable inter vivos trusts are not part of an estate and thus are not subject to probate. Only that portion of estates and decedents law providing rules for construing certain terms relating to determination of an individual's relationship to a decedent applies to inter vivos trusts.

The following rules currently apply to wills and estates. A beneficiary of a will other than a spouse who fails to survive the testator for 30 full days is deemed to have predeceased the testator unless a will expressly requires otherwise. Statutory "lapse" provisions state that a legacy may not lapse or fail because of the death of a beneficiary after the execution of a will but prior to the death of the testator if certain requirements are met. In such a situation the property will pass under the will to those persons who would have taken the property had the beneficiary died owning the property.

The “exoneration” provisions of the Estates and Trusts Article provide that a legacy of specific property passes subject to a security interest or lien on the property which existed at the time of a will’s execution unless a contrary intent is expressly indicated in the will. If a security interest attaches after the execution of a will, the beneficiary is entitled to exoneration.

Property failing to pass under a void or inoperative legacy is distributed to those individuals who would have taken the property if the legacy had not existed, unless the will expressly indicates otherwise. A specific bequest of securities includes all other securities received by the testator after execution of the will because of the testator’s ownership of the original securities. The Estates and Trusts Article limits the effect of “in terrorem” clauses in wills, which penalize all interested individuals for contesting a will or instituting other proceedings. If probable cause exists for instituting the proceedings, such clauses related to an estate are void.

A legacy for charitable use may not be void because of uncertainty with respect to the donees if the will making the legacy also contains directions for the formation of a corporation to take it, a corporation is so formed, and other specified requirements are met.

Unless otherwise indicated, the words “die without issue” and similar phrases in a will mean a lack or a failure to have children in the lifetime, or at the time of death of the person, and not an indefinite failure of issue.

Maryland imposes two death taxes. The inheritance tax is applied to the receipt of property from a decedent’s estate. As a result of Chapter 497 of 2000, for decedents dying on or after July 1, 2000, all direct beneficiaries and siblings are exempt from the inheritance tax. Direct beneficiaries include grandparents, parents, spouses, children, other lineal descendants, stepparents, stepchildren, or a corporation if all stockholders are direct beneficiaries. Collateral beneficiaries include all other beneficiaries than those above and are taxed at the rate of 10%.

Maryland’s other death tax, the “pick-up” estate tax, applies only if a federal estate tax return is required for the estate of a decedent. Any estate subject to both the estate tax and the inheritance tax may receive a credit against the estate tax for any inheritance tax paid. Thus, for estates valued greater than $1,000,000 (the threshold for federal and State estate tax liability in tax year 2003), any inheritance tax reductions are offset by an increase in the estate tax paid.

State Revenues: The bill's provisions that automatically revoke distributions from revocable inter vivos trusts could increase or decrease State inheritance tax revenue depending on the relationship of the subsequent beneficiaries of the trust to the decedent settlor of the trust. However, the Comptroller's Office advises that only a relatively small number of trusts would be affected by this provision since an executor of a trust can draft language to defeat the automatic revocation aspect of the bill. Any effect on estate tax revenues is also expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 308 (Senator Giannetti) – Judicial Proceedings.

Information Source(s): Register of Wills, Comptroller's Office, Department of Legislative Services

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