

SENATE BILL 153

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2004 Regular Session  
4r1595  
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By: **Senators Garagiola and Giannetti**  
Introduced and read first time: January 23, 2004  
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Trusts - Termination by Corporate Fiduciary**

3 FOR the purpose of altering the maximum amount of the fair market value of a trust  
4 that a corporate fiduciary acting as a trustee may terminate without an order of  
5 court; and generally relating to the authorization of a corporate fiduciary acting  
6 as a trustee to terminate a trust without an order of court.

7 BY repealing and reenacting, with amendments,  
8 Article - Estates and Trusts  
9 Section 14-107  
10 Annotated Code of Maryland  
11 (2001 Replacement Volume and 2003 Supplement)

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

14 **Article - Estates and Trusts**

15 14-107.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) (i) "Beneficiary" means an ascertainable person who has a present  
18 or future interest in a trust estate.

19 (ii) "Beneficiary" includes:

20 1. If the beneficiary is a minor, the beneficiary's natural or  
21 legal guardian; or

22 2. If the beneficiary is a disabled person, as defined in §  
23 13-101 of this article, any person acting on behalf of the beneficiary under a  
24 guardianship, conservatorship, or committee.

25 (3) "Corporate fiduciary" has the meaning stated in § 15-1A-01 of this  
26 article.

1 (4) "Life expectancy" means the life expectancy published in the life  
2 tables issued by the U.S. Department of Health and Human Services from time to  
3 time.

4 (5) "Net annual income" means the gross income of a trust estate during  
5 a fiscal year minus trust commissions and expenses attributable to income for that  
6 fiscal year.

7 (b) Subject to the provisions of this section, a corporate fiduciary acting as a  
8 trustee may terminate a trust without an order of court if the fair market value of the  
9 trust as of the trust's last anniversary date is [\$50,000] \$100,000 or less.

10 (c) (1) A corporate fiduciary trustee proposing to terminate a trust under  
11 this section shall send notice of the proposed termination to each cotrustee and each  
12 beneficiary of the trust at the cotrustee's or beneficiary's last known address. The  
13 notice shall be:

14 (i) Personally delivered; or

15 (ii) Mailed by registered or certified mail, postage prepaid, return  
16 receipt requested.

17 (2) The notice required under paragraph (1) of this subsection shall  
18 contain:

19 (i) The name of the trust;

20 (ii) The name of the person who created the trust;

21 (iii) The date on which the trust was established;

22 (iv) The name and address of the corporate fiduciary trustee  
23 seeking to terminate the trust;

24 (v) The name of any cotrustee;

25 (vi) A statement that the effective date of the termination shall be  
26 at least 90 days after the date on which notice under paragraph (1) of this subsection  
27 has been received by each cotrustee and each beneficiary;

28 (vii) A statement of the reasons for termination of the trust;

29 (viii) The approximate amount and the manner of calculation of each  
30 distribution of the trust estate; and

31 (ix) A statement of the right to object and the procedures to follow  
32 under subsection (d) of this section.

33 (d) (1) A person entitled to notice under subsection (c) of this section who  
34 objects to the termination of a trust shall send written objection to the termination.

1           (2)       The written objection shall be personally delivered or mailed by  
2 registered or certified mail, postage prepaid, return receipt requested, within 60 days  
3 after the date on which notice that is sent under subsection (c)(1) of this section is  
4 received by the objecting party, to the corporate fiduciary trustee proposing to  
5 terminate the trust at the address in the notice.

6       (e)       (1)       If no beneficiary or cotrustee delivers a timely objection in accordance  
7 with the provisions of subsection (d) of this section, the trust shall be terminated and  
8 the trust estate shall be distributed in accordance with the provisions of subsection (f)  
9 of this section.

10           (2)       If a beneficiary or cotrustee delivers a timely written objection in  
11 accordance with the provisions of subsection (d) of this section, the trust shall not be  
12 terminated unless the objection is withdrawn in writing by the objecting party within  
13 90 days after receipt of the notice by the objecting party.

14       (f)       (1)       A trust estate that is terminated under this section shall be  
15 distributed in any manner unanimously agreed upon by all beneficiaries.

16           (2)       (i)       If the beneficiaries do not unanimously agree to a manner of  
17 distribution, the distribution shall be made in accordance with the provisions of this  
18 paragraph.

19                   (ii)       A beneficiary who has a present interest in the trust estate  
20 shall receive an amount equal to the present value of an annuity equal to the  
21 beneficiary's proportionate share of the average net annual income of the trust as of  
22 its last 3 anniversary dates for a term equal to the life expectancy of the beneficiary,  
23 at the interest rate for valuing vested benefits provided by the Pension Benefit  
24 Guarantee Corporation for the month immediately preceding the date of which the  
25 notice under subsection (c)(1) of this section is sent.

26                   (iii)       The amount of the trust estate remaining after distribution to  
27 beneficiaries having a present interest in the trust estate shall be distributed to any  
28 beneficiaries having a future interest in the trust estate in whatever proportions are  
29 provided for under the terms of the governing instrument under which the trust was  
30 created.

31       (g)       The existence of spendthrift or similar protective language in the  
32 governing instrument under which the trust was created may not prevent  
33 termination under this section.

34       (h)       All expenses incurred by the trustee incident to the termination of a trust  
35 under this section shall be borne by the trust estate.

36       (i)       A distribution to a minor beneficiary shall be made to the minor's  
37 custodian under the Maryland Uniform Gifts to Minors Act or the Maryland Uniform  
38 Transfers to Minors Act.

1 (j) This section may not be construed to limit the right of any trustee to  
2 terminate a trust in accordance with applicable provisions of the governing  
3 instrument under which the trust was created.

4 (k) A trust may be terminated under this section if:

5 (1) The trustee has determined that termination of the trust is in the  
6 best interests of the beneficiaries; and

7 (2) The governing instrument does not expressly prohibit termination of  
8 the trust regardless of its size.

9 (l) A trust may not be terminated under this section if:

10 (1) The provisions of the governing instrument make the trust eligible to  
11 qualify for the marital deduction for United States estate tax or for United States gift  
12 tax purposes under the Internal Revenue Code, unless all beneficiaries agree that all  
13 of the trust estate shall be distributed to the spouse of the creator of the trust; or

14 (2) The provisions of the governing instrument make the trust qualify, in  
15 whole or in part, for a charitable deduction for United States estate tax, United States  
16 gift tax, or United States income tax purposes under the Internal Revenue Code,  
17 unless all beneficiaries agree that all of the trust estate shall be distributed to one or  
18 more beneficiaries that qualify for the charitable deduction under the Internal  
19 Revenue Code.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 June 1, 2004.