

SENATE BILL 153

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 18, 2004

CHAPTER _____

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; repealing a certain mailing option for sending certain notices and
6 objections; providing for the application of this Act; and generally relating to the
7 authorization of a corporate fiduciary acting as a trustee to terminate a trust
8 without an order of court.

9 BY repealing and reenacting, with amendments,
10 Article - Estates and Trusts
11 Section 14-107
12 Annotated Code of Maryland
13 (2001 Replacement Volume and 2003 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 14-107.

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

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

21 (ii) "Beneficiary" includes:

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

3 2. If the beneficiary is a disabled person, as defined in §
4 13-101 of this article, any person acting on behalf of the beneficiary under a
5 guardianship, conservatorship, or committee.

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

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

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

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

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

21 (i) Personally delivered; or

22 (ii) Mailed by ~~registered or~~ certified mail, postage prepaid, return
23 receipt requested.

24 (2) The notice required under paragraph (1) of this subsection shall
25 contain:

26 (i) The name of the trust;

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

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

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

31 (v) The name of any cotrustee;

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

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

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

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

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

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

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

16 (2) If a beneficiary or cotrustee delivers a timely written objection in
17 accordance with the provisions of subsection (d) of this section, the trust shall not be
18 terminated unless the objection is withdrawn in writing by the objecting party within
19 90 days after receipt of the notice by the objecting party.

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

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

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

32 (iii) The amount of the trust estate remaining after distribution to
33 beneficiaries having a present interest in the trust estate shall be distributed to any
34 beneficiaries having a future interest in the trust estate in whatever proportions are
35 provided for under the terms of the governing instrument under which the trust was
36 created.

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

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

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

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

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

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

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

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

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

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
26 trusts existing on or after June 1, 2004, regardless of the effective date of the
27 governing instrument under which the trust was created.

28 ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect June 1, 2004.