

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 762

(Senator Garagiola)

Judicial Proceedings

Judiciary

Estates and Trusts - Fiduciaries - Directions from Advisors

This bill protects a fiduciary from liability where a governing instrument gives authority to an “advisor” to direct, consent to, or disapprove actual or proposed investments, distributions, or other decisions of the fiduciary, and a loss occurs due to an act of the fiduciary made at the direction of the advisor or the fiduciary’s failure to act due to lack of consent from the advisor where consent was required. The bill’s limitations on liability do not apply to a fiduciary that exercises control over the advisor.

The bill takes effect June 1, 2006.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Potential meaningful. Small businesses acting as fiduciaries would be protected from liability in the specific situations identified in the bill.

Analysis

Bill Summary: Unless a governing instrument provides otherwise, an advisor is a fiduciary when exercising the advisor’s authority under the terms of the governing instrument. If a governing instrument provides that the fiduciary is to follow the direction of an advisor, the fiduciary is not liable for a loss resulting from an act or failure to act in accordance with the direction of the advisor, except in a case of willful misconduct or gross negligence by the fiduciary. If a governing instrument provides that the fiduciary is prohibited from making an investment decision without the consent of the

advisor, the fiduciary is not liable for a failure to act resulting from the failure of the advisor to provide consent, except in a case of willful misconduct or gross negligence by the fiduciary. These limitations on liability do not apply to a fiduciary that exercises control over the advisor.

“Investment decision” is defined as a decision made with respect to the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in an investment.

The provisions of the bill only apply prospectively and do not apply to or have an effect on any action by a fiduciary before the effective date of the bill.

Current Law: A fiduciary includes a trustee acting under a deed, will, declaration of trust or other instrument in the nature of a trust or appointed by a court, a receiver, custodian, committee or guardian of the property of a minor or disabled person, executor, administrator, or personal representative. A fiduciary may perform statutorily specified functions and duties, including making investments, and has other powers, subject to the terms of the governing instrument, derived from common law, statute, or the governing instrument.

State law outlines guidelines and standards applicable to the investment of fiduciary assets. A fiduciary is defined for the purpose of the guidelines and standards as:

- a trust company,
- an investment advisor that is controlled by or under common control with a trust company, or
- a trustee, guardian, conservator, committee, custodian under the Maryland Uniform Transfers to Minors Act, investment manager, or investment advisor that elects to have the guidelines and standards for investment of assets by a fiduciary apply to the fiduciary assets controlled by the person.

A fiduciary must invest and manage fiduciary assets in accordance with the statutorily defined guidelines and standards. If more than one person has investment authority over fiduciary assets, the guidelines and standards apply if any of those persons is a fiduciary. To the extent the guidelines and standards are inconsistent with the governing instrument, the governing instrument controls. A court has the power to direct or permit a fiduciary to deviate from the terms of a governing instrument, and may also direct or permit a fiduciary to take, or restrain a fiduciary from taking, any action regarding the making or retention of investments.

Additional Information

Prior Introductions: None.

Cross File: HB 645 (Delegate Simmons) – Judiciary is designated as a cross file although it is not identical.

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

Fiscal Note History: First Reader - February 10, 2006
ncs/jr Revised - Senate Third Reader - March 27, 2006

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510