

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 235

(Senator Green)

Judicial Proceedings

Judiciary

Estates and Trusts - Trust For Care of Animal

This bill provides that a trust may be created to provide for the care of an animal alive during the lifetime of the person creating the trust (settlor), and that the common-law rule against perpetuities does not apply to a trust created for that purpose.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The trust terminates upon the death of the animal, or if the trust was created for the care of more than one animal, upon the death of the last surviving animal. The trust may be enforced by a person appointed under the terms of the trust, or in the alternative, a person appointed by the court. A person with an interest in the welfare of an animal whose care is provided for under the trust may ask the court to appoint a person to enforce the trust or remove a person appointed. The property of the trust may only be used for the intended purpose of the trust, unless the court determines that the value of the trust exceeds the amount required for the intended use, in which case any property not required for the intended use must be distributed to the person who created the trust, or if that person is deceased, the person's successors in interest.

Current Law: The validity of a trust created for the care of an animal is not addressed by Maryland statutory law and there does not appear to be any Maryland case law on the subject. According to the Restatement (Third) of Trusts,¹ a trustee of a trust intended for a specific, noncharitable purpose, such as the care of an animal, is not obligated to carry out the purpose of the trust, though the trustee may do so. *Restatement (Third) of Trusts*, § 47, Comment d (2001). This is due to the fact that a trust for the care of an animal has no beneficiary that can seek to enforce the trust. *Id.* Instead, the trustee is treated as holding the property in trust for the successors in interest of the person who created the trust. *Id.* Successors in interest are those to whom a deceased person's property interests, that are not otherwise validly distributed through a will or trust, are passed to by operation of State law. In the case of a trust for the care of an animal, the successors in interest are more or less the beneficiaries of the trust, subject to the trustee's nonmandatory power to carry out the purpose of the trust. *Id.*

The common law rule against perpetuities is based in the public policy that estate or trust property should not vest at an indeterminable or too remote time in the future. *See Restatement (Third) of Trusts* at § 29, Comment f. The rule generally provides that a trust interest is not valid unless by its terms it is certain to vest or fail within 21 years after some (generally human) life in being at the creation of the interest. *Id.* at § 29, Comment g. A trust such as that for the care of an animal is generally allowed a period reasonably appropriate to accomplish its purpose, though generally the period may not exceed 21 years, by analogy to the rule against perpetuities. *Id.* at § 47, Comment d(2).

If the trustee fails to apply the property to the intended purpose within the time allowed or the amount or value of the property is more than is reasonably necessary for the purpose of the trust, the trustee is under a duty to distribute the unused or unneeded property to the successors in interest. *Id.* at § 47, Comment d.

¹ *The Restatement (Third) of Trusts, adopted and promulgated by the American Law Institute, draws on court decisions and statutes and is intended as guidance to legislatures, judges, and attorneys. See Restatement (Third) of Trusts, Foreword (2001).*

Background: A number of states have added statutory provisions allowing for enforceable pet trusts, including Montana, New York, Oregon, North Carolina, and Utah. The laws in these states are similar to the provisions in this bill, generally providing that (1) a trust for the care of an animal is valid for the lives of the animals the trust was set up for; (2) if a trustee is not appointed by the terms of a trust, a court may appoint a trustee; and (3) when the trust is terminated, the trust property is distributed either as directed by the terms of the trust, or to the person who created the trust, or that person's successors in interest.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 31, 2006
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