

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 149
Judiciary

(Delegates Kach and Olszewski)

Judicial Proceedings

Estates and Trusts - Trust for Care of Animal

This bill allows for the creation and enforcement of a trust to provide for the care of an animal alive during the lifetime of the person creating the trust. The common-law rule against perpetuities recognized in the State (and modified by statute) does not apply to a trust created for that purpose. The bill only applies prospectively.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The trust lasts for the lifetime of the animal(s) and may be enforced by a person appointed under the terms of the trust, or if no person is appointed, a person appointed by the court. A person with an interest in the welfare of the animal(s) 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. Unless otherwise provided by the terms of the trust, property not required for the intended use is distributed to the person who created the trust, or if that person is deceased, the person's successors in interest.

Current Law/Background: The validity and enforceability 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.

The Restatement (Third) of Trusts is promulgated by the American Law Institute and is intended as guidance to the legal community. It specifies that 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. There is no obligation because there is no beneficiary that can seek to enforce the trust and no charitable purpose (which, under Maryland law, could be enforced by a court of equity upon suit by the State or any person with an interest in the enforcement of the trust). Instead, the restatement's rule indicates that the trustee is treated as holding the property in trust for the successors in interest of the person who created the trust, subject to the trustee's nonmandatory power to carry out the purpose of the trust. 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. (*See Estates and Trusts Article §14-301.*)

The restatement indicates that a trust for a specific, noncharitable purpose is generally allowed a period reasonably appropriate to accomplish its purpose, but the period could be limited to 21 years, by analogy to the rule against perpetuities. The common law rule against perpetuities is based in the public policy that an interest should not vest too remotely and generally provides that an interest is not valid unless it is certain to vest or fail within 21 years after some (generally human) life in being at the creation of the interest. (States, in many cases, have limited the rule or its application, including Maryland.) The restatement, however, comments that if a trust for the care of a pet "is worth allowing at all..., it makes sense to allow it to continue for the life of the pet, although not a human "life in being" for perpetuities purposes[.]" (*See Arundel Corp. v. Marie*, 383 Md. 489, 495-497 (2004).)

The bill modifies a provision of the most recent Uniform Trust Code (2005) (drafted, approved, and recommended for enactment by the National Conference of Commissioners on Uniform State Laws) allowing for the creation and enforcement of a trust to provide for the care of an animal. According to the Animal Legal and Historical Center, a project of the Michigan State University College of Law, 39 states specifically address or allow for companion animal (pet) trusts in statute.

Additional Information

Prior Introductions: SB 235 of 2006 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Michigan State University College of Law (Animal Legal and Historical Center); The American Law Institute, *Restatement (Third) of Trusts* (2003); National Conference of Commissioners on Uniform State Laws; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2009
mlm/kdm Revised - House Third Reader - March 27, 2009

Analysis by: Scott D. Kennedy

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