

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 979
Judiciary

(Delegate Montgomery)

Estates and Trusts - Relocation of Charitable Trust Administration Outside of State - Requirements

This bill, subject to specific authority contained in an instrument creating a charitable trust, prohibits a trustee of the charitable trust from changing where the trust administration takes place from a location in this State to a location outside the State except in accordance with specified conditions/requirements. These include: (1) that the charitable purposes of the trust cannot be adequately fulfilled unless the trust administration is changed to a location outside the State; (2) consultation with the person who created the trust, if living and not incapacitated; and (3) approval by the Attorney General or, in the absence of approval by the Attorney General, authorization by a circuit court. The Attorney General may bring an action to enforce the provisions of the bill. A trustee that does not comply with the bill's provisions is subject to removal and payment of the costs, including attorney's fees, of a removal proceeding.

The bill specifies its applicability to trusts and estates in relation to its effective date.

Fiscal Summary

State Effect: None. The bill's changes can be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Charitable trust” has the meaning stated in § 4947(a)(1) of the Internal Revenue Code. “Trust administration” means the grant-making function of the trust.

If a trustee decides to change the location in which a charitable trust is administered from a location in this State to a location outside the State, the trustee must: (1) if the person who created the trust is living and not incapacitated, consult the person concerning the selection of a new location and submit the selection to the Attorney General, or (2) if the person who created the trust is not living or is incapacitated, propose a new location and submit the proposal to the Attorney General. Within 90 days of receipt of a submission, the Attorney General must notify the trustee whether the proposed change of location is approved.

The trustee is also authorized to file an action in the circuit court in which the charitable trust was created, seeking a court order to change the location in which the charitable trust is administered to a location outside the State. The court may exercise its equitable powers to effectuate the original purpose of the charitable trust.

The Attorney General may bring an action to enforce the provisions of the bill and, if a trustee fails to comply with the provisions of the bill, the circuit court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Costs of a proceeding to remove a trustee, including reasonable attorney’s fees, may be assessed against the removed trustee.

The bill does not affect a trustee’s authority to sell real estate owned by a charitable trust.

The bill specifies that, except as otherwise provided by a will, the terms of a trust, or the bill, the bill’s changes apply to (1) a trust existing or created on or after October 1, 2010; (2) the estate of a person who dies before October 1, 2010, if the probate or administration of the estate is pending on or after October 1, 2010; and (3) the estate of a person who dies on or after October 1, 2010.

Current Law: Under State law, courts of equity have full jurisdiction to enforce trusts for charitable purposes upon suit of the State by the Attorney General or suit of any person having an interest in enforcement of the trust. Under the Maryland Uniform Charitable Trusts Administration Act, if a charitable trust is or becomes illegal, or impossible or impracticable to enforce, and if the person who created the trust manifested a general intention to devote the property to charity, a court of equity, upon application of any trustee, any interested person, or the Attorney General may order an administration of the trust as nearly as possible to fulfill the general charitable intention of the person who created the trust. (*See Estates and Trusts Article, §§ 14-301, 14-302.*)

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

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ncs/kdm

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