

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

## FISCAL AND POLICY NOTE

Senate Bill 745 (Senator Stone)  
Judicial Proceedings

## Maryland Trust Act

This bill establishes the Maryland Trust Act and repeals certain existing statutory provisions governing trusts, generally incorporating those provisions, with modifications, within the Act.

## Fiscal Summary

**State Effect:** The bill does not appear to have a material, direct impact on State finances.

**Local Effect:** The bill does not appear to have a material, direct impact on local government finances.

### **Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill repeals certain existing provisions governing trusts and generally incorporates those provisions, with a number of modifications, into the newly established Maryland Trust Act. Among those modifications, the bill notably alters the applicability of provisions enacted under Chapter 202 of 2010 and the extent to which the immunity established under Chapter 202 of specified property held in trust from the claims of creditors may be waived.

### *Maryland Trust Act, Generally*

The bill applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless

otherwise provided by the trust), judgment, or decree that requires the trust to be administered in the manner of an express trust.

The terms of a trust prevail over a provision of the Act, with certain exceptions, including the requirements under the Act for creating a trust; the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries; specified rights of certain creditors and assignees and other specified persons; and specified powers of a court. The common law of trusts and principles of equity supplement the Act, except to the extent modified by the Act or another statute of the State.

Issues addressed by the bill include:

- definition and clarification of terms and rules regarding notice under the Act;
- governing law with respect to the meaning and effect of the terms of a trust;
- determination of the principal place of administration of a trust and transfer of the principal place of administration of a trust to another state or a jurisdiction outside of the United States;
- rights of certain persons and organizations as qualified beneficiaries (specified distributees or permissible distributees of trust income or principal) of specified trusts;
- permissibility of nonjudicial settlement agreements to resolve matters involving trusts;
- court jurisdiction over a trust;
- rules regarding representation of others in relation to trusts;
- creation, validity, modification, and termination of a trust;
- claims of creditors against parties to a trust;
- rules relating to revocable trusts;
- rules applicable to the position of trustee (*e.g.*, acceptance of trusteeship, actions of cotrustees, vacancy in a trusteeship, resignation, removal, commissions, etc.);
- duties and powers of a trustee;
- duties and powers of an adviser to a trustee; and
- liability of a trustee and protection from liability of persons dealing with a trustee.

The bill applies to all trusts created before, on, or after October 1, 2011, and to all judicial proceedings concerning trusts commenced on or after October 1, 2011. The bill applies to judicial proceedings concerning trusts commenced before October 1, 2011, unless the court finds that application of a particular provision of the bill would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties. A rule of construction or presumption in the bill applies to trust instruments

executed before October 1, 2011, unless there is a clear indication of a contrary intent in the terms of the trust. An act done before October 1, 2011, however, is not affected by the bill. If a right is acquired, extinguished, or barred on the expiration of a prescribed period that began under another statute before October 1, 2011, that statute continues to apply to the right even if the statute has been repealed or superseded.

#### *Changes to Provisions Enacted Under Chapter 202 of 2010*

Chapter 202 of 2010 specifies, in part, that property of a husband and wife that is held by them as tenants by the entirety and subsequently conveyed to a trustee, and the proceeds of that property, have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, subject to certain conditions. Chapter 202 also specifies that after the death of the first spouse to die, the property continues to be immune from the claims of the decedent's separate creditors, but to the extent the surviving spouse remains a beneficiary of the trust, the property is subject to the claims of the surviving spouse's separate creditors.

The bill specifies that the immunity of property held in trust, under Chapter 202, applies to property conveyed to *the trustee or trustees of one or more trusts* and also adds a condition to the immunity: that the trust instrument, deed, or other instrument of conveyance provides that the provisions enacted under Chapter 202 apply to the property or its proceeds.

The bill lastly expands the authority to waive the immunity established under Chapter 202. Chapter 202 allows for the immunity to be waived as to any specific creditor or any specifically described trust property. The bill allows the immunity to also be waived as to all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee or trustees.

**Current Law:** The Maryland Code contains discrete statutes/provisions applicable to trusts but does not contain a comprehensive statement of the law of trusts in the State. There is a significant amount of Maryland case law governing trusts and courts may look to the Restatement of the Law of Trusts or case law in other jurisdictions where Maryland statutory or case law does not resolve an issue. The Maryland Rules also contain provisions addressing procedural issues in litigated trust cases.

**Background:** The bill provides a more comprehensive codification of the law of trusts within the Maryland Code. It partially codifies the existing law in Maryland governing trusts, but also contains changes and additions to existing law. The bill is a modified version of the Uniform Trust Code (UTC) drafted by the National Conference of

Commissioners on Uniform State Laws (now known as the Uniform Law Commission). Twenty-two states and the District of Columbia have enacted a version of the UTC, including Virginia and Pennsylvania.

Trusts can be a beneficial method of asset management for various reasons and have been increasing in popularity. The Uniform Law Commission (ULC) describes the formation of a trust as the transfer of property from one person to another “in trust” for beneficiaries or a legally acknowledged beneficial purpose. The person who receives the property is the “trustee,” who is a fiduciary with enforceable obligations to the person who transferred the property, the beneficiaries, or beneficial purpose. The ULC indicates that trusts are commonly used as part of an individual’s estate plan, to avoid probate and obtain favorable tax consequences.

The bill’s changes to provisions enacted under Chapter 202 of 2010 arise from questions raised about whether Chapter 202 of 2010 applies to transfers of tenancy by the entirety property to trusts with more than one trustee or trustees of multiple trusts and concerns that Chapter 202 may have unintended estate tax consequences in relation to certain trusts used for estate planning purposes to obtain the benefit of both spouses’ estate tax exemption.

**State Fiscal Effect:** The bill may result in an undetermined amount of estate tax revenue not being collected in future years to the extent it avoids unintended estate tax consequences of Chapter 202 of 2010 related to certain trusts. The bill’s changes in that respect, however, are intended to correct the potential unintended consequences of Chapter 202 of 2010 and are not expected to otherwise affect ongoing estate tax revenue. The extent to which increased revenues may be collected in the absence of this bill, as a result of Chapter 202, is also uncertain and likely negligible.

---

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 750 (Delegate Simmons) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Comptroller’s Office, Maryland State Bar Association (Estate and Trust Law Section), Uniform Law Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2011  
ncs/kdm

---

Analysis by: Scott D. Kennedy

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