

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 711

(Senator Forehand)

Judicial Proceedings

Judiciary

Maryland General and Limited Power of Attorney Act

This bill makes changes to the statutory form powers of attorney under the Maryland General and Limited Power of Attorney Act relating to designation of coagents, specified authority granted to an agent, and nomination of a guardian of the principal's property. The bill also specifies that coagents must act unanimously unless the power of attorney provides otherwise. The bill specifies that a document has the meaning and effect prescribed by the Act for a statutory form power of attorney if it is substantially in one of the statutory forms as they were in effect on the date the document was executed.

Fiscal Summary

State Effect: The bill is not expected to have a direct, material impact on State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Designation of Coagents and How Coagents May Act

The statutory form personal financial power of attorney and statutory form limited power of attorney are amended to allow a principal (individual granting authority to an agent in the power of attorney) to designate two or more coagents in the statutory forms. The bill

specifies, in the statutory forms and under the Act itself, that coagents must act together unanimously unless the power of attorney provides otherwise.

Beneficiary Designation and Gift Authority in Statutory Forms

The bill amends the statutory form personal financial power of attorney to state that the principal recognizes that granting the principal's agent the authority to create or change a beneficiary designation for a retirement plan may affect the benefits that the principal may receive if that authority is exercised. The form is also amended to alert the principal that granting the agent the authority to designate the agent, the agent's spouse, or a dependent of the agent as a beneficiary of a retirement plan may constitute a taxable gift by the principal and may make the property subject to that authority taxable as a part of the agent's estate. An authorization of an agent to create or change a beneficiary designation for any retirement plan, and in particular an authorization of the agent to designate as the principal's beneficiary the agent, the agent's spouse, or a dependent of the agent, must be explicitly stated in the special instructions section of the statutory form or in a separate power of attorney.

In the statutory form limited power of attorney, the bill alerts the principal that granting the principal's agent the authority to make gifts to, or to designate as the beneficiary of any retirement plan, the agent, the agent's spouse, or a dependent of the agent may constitute a taxable gift by the principal and may make the property subject to that authority taxable as part of the agent's estate. An authorization of an agent to designate the agent, the agent's spouse, or a dependent of the agent as a beneficiary must be explicitly stated in the special instructions section of the statutory form or in a separate power of attorney.

Nomination of Guardian(s) in Statutory Forms

Under provisions allowing a principal to nominate a guardian, if it becomes necessary for a court to appoint a guardian, the bill replaces a reference in the statutory form personal financial power of attorney to a guardian of the principal's "estate," instead referring to a guardian of the principal's "property," a reference used elsewhere in the form and in the statutory form limited power of attorney.

Current Law:

Designation of Coagents and How Coagents May Act

The Maryland General and Limited Power of Attorney Act allows a principal to delegate to one or more agents the authority to do any act specified in the statutory forms, but the

statutory form personal financial power of attorney does not provide for designation of coagents and the statutory form limited power of attorney provides for designation of one agent and specifies that a principal may name a coagent in the special instructions section of the statutory form. The only reference in the Act to how coagents must act in relation to each other is in the statutory form limited power of attorney, which specifies that the coagents are not required to act together unless the principal includes that requirement in the special instructions.

Statutory Forms – Retirement Plans, Beneficiary Designation, and Gifts

The statutory form personal financial power of attorney provides the principal's agent with general authority to act for the principal with respect to various subjects, including retirement plans. The statutory form limited power of attorney, which allows the principal more flexibility to grant specific or general authority with respect to various subjects, allows the principal to grant an agent authority relating to retirement plans, beneficiary designations, and gifts.

Meaning and Effect of a Statutory Form Power of Attorney

A document substantially in the form of one of the statutory form powers of attorney included in the Act may be used to create a statutory form power of attorney that has the meaning and effect prescribed by the Act. "Statutory form power of attorney," under the Act, however, does not include a statutory form power of attorney in which a principal incorporates by reference one or more provisions of another writing into the special instructions section of the statutory form. Under the Act, a person may not require an additional or different form of power of attorney for any authority granted in a "statutory form power of attorney." A person who refuses to accept an acknowledged statutory form power of attorney is subject to a court order mandating acceptance of the power of attorney and liability for reasonable attorney's fees and costs incurred in an action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Background: The Maryland General and Limited Power of Attorney Act was established under Chapters 689 and 690 of 2010 (effective October 1, 2010). The Act included various new provisions derived in part from the Uniform Power of Attorney Act and also incorporated existing provisions governing powers of attorney, with minor alterations. Modifications were made to the Act under Chapters 74 and 75 of 2011.

The bill's requirements that certain authorizations relating to beneficiary designations be explicitly stated in the special instructions section of the statutory form powers of attorney or in a separate power of attorney, reflect an agreement between the Estate and

Trust Law Section of the Maryland State Bar Association and the State Retirement Agency. The agreement arises from concerns of the State Retirement Agency regarding the effect of the Maryland General and Limited Power of Attorney Act on the agency's ability to refuse requests of agents to change beneficiary designations where it is not explicitly clear under the power of attorney presented that the agent has that authority.

Additional Information

Prior Introductions: None.

Cross File: HB 774 (Delegate Waldstreicher) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Comptroller's Office, State Retirement Agency, Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

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