

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 722

(Senator Zirkin)

Judicial Proceedings

Maryland Trust Act

This bill establishes the Maryland Trust Act. The Act partially codifies the existing law in Maryland governing trusts, which is based in both case law and statute, but also contains changes and additions to existing law.

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 statutory provisions governing trusts and generally incorporates those provisions, with certain modifications, into the newly established Maryland Trust Act.

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 statute), 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; the requirement that a trust and the terms of the trust be for the benefit of the beneficiaries of the trust, and that the trust have a purpose that is lawful and possible to achieve; 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 of terms under the Act;
- rules regarding notice and a person or organization's knowledge of a fact;
- 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, 2012, and to all judicial proceedings concerning trusts commenced on or after October 1, 2012. The bill does not apply to judicial proceedings concerning trusts commenced before October 1, 2012. A rule of construction or presumption in the bill applies to trust instruments executed before October 1, 2012, unless there is a clear indication of a contrary intent in the terms of the

trust. An act done before October 1, 2012, 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, 2012, that statute continues to apply to the right even if the statute has been repealed or superseded.

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 (also known as the Uniform Law Commission (ULC)). Twenty-three 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. 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. ULC indicates that trusts are commonly used as part of an individual’s estate plan, to avoid probate and obtain favorable tax consequences.

Additional Information

Prior Introductions: SB 745 of 2011 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 750, received a hearing in the House Judiciary Committee but was withdrawn.

Cross File: HB 682 (Delegate Simmons) - Judiciary.

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

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ncs/kdm

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