

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 8

(Delegate Vitale)

Judiciary

Judicial Proceedings

Estates and Trusts - Guardianship Accounts - Form and Limits

This bill specifies that a guardian of the property of a minor or disabled person may petition the court to deposit cash belonging to the minor or disabled person in an amount not exceeding \$200,000 into a single restricted account. Amounts in excess of \$200,000 must be deposited in additional restricted accounts, subject to the same \$200,000 limit, and the aggregate amount deposited in any financial institution may not exceed \$200,000. A deposit may be made into any type of account, including a certificate of deposit, in a financial institution that accepts deposits and is federally insured or regulated by the Commissioner of Financial Regulation.

Fiscal Summary

State Effect: None. The bill does not directly affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: A guardian of the property of a minor is appointed by a court, upon petition by an interested person, where it is determined that (1) a minor owns or is entitled to property that requires management or protection or (2) funds are needed for the minor's support, care, welfare, and education and protection is necessary or desirable to obtain or provide funds. A guardian of the property of a disabled person is appointed if the court determines that (1) the person is unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual

drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance and (2) the person has or may be entitled to property or benefits which require proper management.

Among various statutory powers of a guardian of the property of a minor or disabled person, which may be extended or limited by the appropriate court, is the power to deposit funds in checking accounts, in insured interest-bearing accounts, or in short-term loan arrangements.

The orphans' courts and the circuit courts have concurrent jurisdiction over guardianships of the property of a minor, and circuit courts have jurisdiction over guardianships of the property of a disabled person.

Under provisions of the Maryland Rules governing fiduciary estates, including guardianships of the property, when a fiduciary estate consists entirely of cash, in an amount not exceeding \$75,000, a fiduciary may petition the court for an order authorizing the deposit of cash in a federally insured financial institution in a single restricted account. According to information from the registers of wills, in a guardianship overseen by an orphans' court (registers of wills serve as the clerks for the orphans' courts) cash amounts of over \$75,000 can be deposited into separate accounts, with each limited to \$75,000. The accounts may be in the same institution. Information on the overall practices of circuit courts regarding cash accounts under guardianships of the property is not readily available.

Based on documentation about the adoption of the Maryland Rule containing the \$75,000 limit for these restricted accounts, it appears that the federal insurance limit for bank accounts, which at the time was \$100,000, was a consideration in setting the limit. The applicable Federal Deposit Insurance Corporation (FDIC) limit was temporarily increased in 2008 to \$250,000, and has since become permanent. Money in separate accounts established by a guardian in the same bank is aggregated for the purposes of the FDIC limit. The accounts are not separately insured.

The Commissioner of Financial Regulation, among other things, regulates and supervises State-chartered financial institutions including State-chartered banks, credit unions, and trust companies.

Additional Information

Prior Introductions: None.

Cross File: SB 168 (Senator Simonaire) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts and Standing Committee on Rules of Practice and Procedure), Register of Wills, Federal Deposit Insurance Corporation, Department of Legislative Services

Fiscal Note History: First Reader - January 21, 2013
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