

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 417

(Senator Lee)

Judicial Proceedings

Health and Government Operations

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Maryland Trust Act - Revocable Trusts - Creditors' Claims - Limitations

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This bill specifies that, under certain circumstances, the property of a trust that was revocable at the death of the settlor is not subject to, and the trustee and beneficiaries of that trust may not be held liable for, claims by the creditors of a settlor of a revocable trust. The bill further specifies that if administration of the decedent's estate has not begun, a personal representative may provide notice to creditors of a settlor of a revocable trust. The bill sets forth a procedure to which the creditor of a settlor of a revocable trust must comply with to bring a proper claim against the trustee of a revocable trust. The bill further specifies certain procedures upon a trustee's disallowance of a claim made by a creditor of a settlor of a revocable trust.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State operations or finances.

**Local Effect:** This bill is not expected to materially affect local operations or finances.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** Whether or not the terms of a trust contain a spendthrift provision, if a proceeding (other than for a small estate) is commenced to administer the estate of a deceased settlor, the property of a trust that was revocable at the death of the settlor is not subject to, and the trustee and beneficiaries of that trust may not be held liable for, claims of the creditors that (1) are not properly presented in the estate proceeding within the time period specified in State law or (2) are disallowed and barred under State law.

If a proceeding for the administration of an estate has not been commenced, the trustee of the decedent's trust may publish a notice that must (1) announce the death of the decedent; (2) provide the name and address of the trustee; (3) notify creditors of the decedent to present their claims to the trustee; and (4) be substantially in the same form as specified in the bill. The notice must be published once a week for three successive weeks in a newspaper of general circulation in what would otherwise be the proper venue for an administrative or judicial probate for the estate of that decedent.

The publication of a notice affords the trust property, the trustee, and the beneficiaries of the trust the same protections that are afforded to a decedent's estate, personal representative, and heirs and legatees against claims presented more than six months after the date of the first publication of the notice.

Within six months after the date of first publication of proper notice, a creditor must (1) file an action on the creditor's claim against the trustee and serve a copy of the complaint on the trustee within 30 days of the filing or (2) present to the trustee at the address provided in the notice:

- a verified written statement of the claim indicating its basis;
- the name and address of the claimant;
- if the claim is not yet due, the date on which it will become due;
- if the claim is contingent, the nature of the contingency;
- if the claim is secured, a description of the security; and
- the specific amount claimed.

If a claim containing all of the aforementioned details is not filed and served or otherwise presented to the trustee within six months after the date of first publication of the notice of the personal representative, all claims of the creditor are forever barred as against the trust property, the trustee, and the trust beneficiaries.

If a proper claim is presented to the trustee and the trustee disallows the claim wholly or in a stated amount, the claimant is forever barred to the extent of the disallowance unless the claimant files an action against the trustee or against any person to whom trust property has been distributed. Such an action must be filed within 60 days after the mailing of the notice of disallowance by the trustee to the claimant. The notice informing the claimant of the disallowance must contain a notice to the claimant concerning the time limitations for commencing an action.

## **Current Law:**

A “spendthrift” provision restrains both voluntary and involuntary transfer of the beneficiary’s interest.

### *Trust Property and the Claims of Creditors or Assigns*

Regardless of whether or not the terms of a trust contain a spendthrift provision, after the death of a settlor, and subject to the right of the settlor to direct the source from which liabilities will be paid, the property of a trust that was revocable at the death of the settlor is subject to claims of the creditors of the settlor.

### *Statute of Limitations*

A civil action at law must be filed within three years from the date it accrues, unless otherwise specified in Maryland law. An action on one of the following specialties must be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner: (1) promissory note or other instrument under seal; (2) bond except a public officer’s bond; (3) judgment; (4) recognizance; (5) contract under seal; or (6) any other specialty.

### *Limitation on the Presentation of a Creditor’s Claim*

Unless otherwise specified in statute, a claim by a creditor against an estate of a decedent is barred against an estate, a personal representative, and an heir or legatee unless brought within a specified period of time. Generally, such a claim must be presented within the earlier of (1) six months after the date of the decedent’s death or (2) two months after the personal representative mails or otherwise delivers to the creditor a notice that states that the creditor’s claim will be barred unless a claim is brought within two months from the mailing or delivery of the notice.

### *Personal Representatives Allowance or Disallowance of a Creditor’s Claim*

If a personal representative of an estate intends to disallow, in whole or in part, a proper claim, the personal representative must give the creditor notice stating (1) that the claim has been disallowed in whole or in the stated amount or (2) that the personal representative will petition the court to determine whether the claim should be allowed. If a claim is disallowed, a creditor must petition for the allowance in a court or commence an action against a personal representative or against one or more of the persons to whom property has been distributed.

### *Proper Venue for an Administrative or Judicial Probate*

The venue for administrative or judicial probate of an estate is in the county in which the decedent was domiciled at the time of death, or, if the decedent was not domiciled in Maryland, the county in which the petitioner believes the largest part of the value of the property of the decedent in Maryland was located at the time of death. For determining venue for the administration of the estate of a decedent who was not domiciled in Maryland at the time of death, the situs of tangible property is its location. The situs of intangible personal property is the location of the instrument evidencing a debt, obligation, stock, or chose in action. If there is no instrument, the residence of the debtor governs. The situs of an interest in property held in trust is any county where the trustee may be sued.

**Background:** Revocable trusts can be used as an alternative to wills, as they can provide for the disposition of assets immediately upon the death of the settlor. Unlike assets distributed through a will, assets distributed through a revocable trust on the death of a settlor pass outside of probate.

Chapter 585 of 2014 established the Maryland Trust Act. The Act applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise specified in statute), judgment, or decree that required the trust to be administered in the manner of an express trust.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 666 (Delegate Miele, *et al.*) - Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Attorney General (Securities Division), Register of Wills, Maryland State Bar Association, Department of Legislative Services

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