

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 887

(Delegate West)

Health and Government Operations

Judicial Proceedings

Maryland Trust Act - Representation

This bill expands the categories of persons authorized to represent and bind beneficiaries of a trust in judicial proceedings to include a grandparent or more remote ancestor of the following individuals provided they are not otherwise represented: (1) a minor; (2) an incapacitated person; (3) an unborn individual; and (4) an unknown individual or an individual whose location is unknown and not reasonably ascertainable. The bill also allows a minor, an incapacitated or unborn individual, or an individual whose identity is unknown and not reasonably ascertainable, to be represented and bound by a representative with a substantially identical interest in a trust with respect to a particular question or dispute; this provision only applies to the extent that a representative has no conflict of interest with the individual being represented with respect to the question or dispute.

Fiscal Summary

State Effect: The bill is procedural in nature and does not directly affect governmental finances.

Local Effect: The bill is procedural in nature and does not directly affect governmental finances.

Small Business Effect: None.

Analysis

Current Law:

Judicial Administration of Trusts Generally: On a motion by an interested person, on the court's own motion, or as otherwise provided by law, a court may intervene actively in the administration of a trust, fashioning and implementing remedies as the public interest and the interests of the beneficiaries may require. A judicial proceeding involving a trust may relate to a matter involving the administration of the trust, including a request for instructions and an action to declare rights.

Power of Representatives: Except as required by the applicable rules of civil procedure in a judicial proceeding, notice to a person that is authorized to represent and bind a beneficiary has the same effect as if notice were given directly to the beneficiary unless the person represented objects to the representation by notifying the trustee and the representative before the notice otherwise becomes effective. Similarly, the consent of a person authorized to represent and bind another person is also binding on the person represented unless the person represented objects by notifying the trustee and the representative before the consent otherwise becomes effective. A representative may consider the general benefit accruing to the living members of the family of the individual when making decisions on behalf of a beneficiary.

Authorized Representatives: To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- a guardian of the property may represent and bind the minor or disabled person;
- a guardian of the person may represent and bind the minor or disabled person if a guardian of the property has not been appointed;
- an agent having specific authority to act with respect to trust matters may represent and bind the principal;
- a trustee of a trust that is a beneficiary of another trust may represent and bind the beneficiaries of the trust that is the beneficiary of the other trust;
- a personal representative of the estate of a decedent that is a beneficiary of a trust may represent and bind interested persons in the estate; and

- a parent may represent and bind the minor, incapacitated, unborn, or unknown child of the parent or child of the parent whose location is unknown and not reasonably ascertainable if a guardian of the property or guardian of the person for the child has not been appointed.

Court Appointment of a Representative: If a court determines that an interest is not represented or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, an incapacitated individual, an unborn individual, or a person whose identity or location is unknown or is not reasonably ascertainable as long as there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute.

Background: The bill sets forth a provision of the 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) that expands the current categories of virtual representation allowed in trust matters. The UTC was adopted in part by Chapter 585 of 2014 as 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 requires the trust to be administered in the manner of an express trust.

Additional Information

Prior Introductions: None.

Cross File: None designated. However, SB 570 (Senator Lee – Judicial Proceedings) is identical.

Information Source(s): Office of the Attorney General (Securities Division), Judiciary (Administrative Office of the Courts), Register of Wills, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2016
kb/kdm

Analysis by: Michelle Davis

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