

Chapter 355

(Senate Bill 793)

AN ACT concerning

Maryland Trust Act – Representatives of Beneficiaries

FOR the purpose of authorizing a settlor of a trust to designate certain persons to serve as a representative or successor representative of a certain beneficiary of the trust, to designate certain persons who may in turn designate a representative or successor representative of a beneficiary of the trust, and to specify the order of priority among those persons; prohibiting a trustee from serving as a representative of a certain beneficiary except under certain circumstances; providing that a certain representative may be held liable to the beneficiary on whose behalf the representative acts only under certain circumstances; altering a certain provision of the Maryland Trust Act so as to prohibit the terms of a trust from prevailing over the prohibition under this Act; and generally relating to trusts.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 14.5–105
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

BY adding to
Article – Estates and Trusts
Section 14.5–306
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Estates and Trusts

14.5–105.

The terms of a trust prevail over a provision of this title, except:

- (1) The requirements for creating a trust;
- (2) The duty of a trustee to act reasonably under the circumstances and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) 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, not contrary to public policy, and possible to achieve;

(4) **THE PROHIBITION UNDER § 14.5–306 OF THIS TITLE AGAINST A PERSON SERVING AS A REPRESENTATIVE OF A BENEFICIARY OF A TRUST WHEN THAT PERSON IS SERVING AS A TRUSTEE OF THE SAME TRUST;**

(5) The power of the court to modify or terminate a trust under §§ 14.5–410, 14.5–411, 14.5–413, and 14.5–414 of this title;

[(5)] (6) The rights of certain creditors and assignees to reach a trust as provided in Subtitle 5 of this title;

[(6)] (7) The power of the court under § 14.5–702 of this title to require, dispense with, modify or terminate a bond;

[(7)] (8) The subject matter jurisdiction and venue for commencing a proceeding as provided by the laws of this State;

[(8)] (9) The power of the court under § 14.5–708(a) of this title to increase or decrease the commissions of a trustee;

[(9)] (10) The duties to provide information, copies, and notices specified under § 14.5–813(a) and (c) of this title;

[(10)] (11) The duty under § 14.5–813(a) and (b) of this title to:

(i) Notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, the identity of the trustee, and their right to request trustee's reports and a copy of the trust; and

(ii) Respond to the request of a qualified beneficiary of an irrevocable trust for reports by the trustee and other information reasonably related to the administration of the trust;

[(11)] (12) The effect of an exculpatory term under § 14.5–906 of this title;

[(12)] (13) The rights under §§ 14.5–908 through 14.5–910 of this title of a person other than a trustee or beneficiary; and

[(13)] (14) The power of the court to take an action and exercise jurisdiction as may be necessary in the interests of justice.

14.5–306.

(A) A SETTLOR MAY:

(1) DESIGNATE ONE OR MORE PERSONS WHO MAY SERVE AS A REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE TRUST;

(2) DESIGNATE ONE OR MORE OTHER PERSONS WHO MAY DESIGNATE A REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE TRUST; AND

(3) SPECIFY THE ORDER OF PRIORITY AMONG TWO OR MORE PERSONS WHO ARE AUTHORIZED UNDER THIS TITLE TO SERVE AS A REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE TRUST.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, EXCEPT AS PROVIDED IN § 14.5-303 OF THIS SUBTITLE, A PERSON DESIGNATED UNDER SUBSECTION (A) OF THIS SECTION MAY NOT SERVE AS A REPRESENTATIVE OF A BENEFICIARY OF A TRUST IF THE PERSON SERVES AS A TRUSTEE OF THE SAME TRUST.

(C) (1) A REPRESENTATIVE DESIGNATED UNDER SUBSECTION (A) OF THIS SECTION MAY BE HELD LIABLE TO THE BENEFICIARY ON WHOSE BEHALF THE REPRESENTATIVE ACTS ONLY IF:

(I) THE REPRESENTATIVE HAS UNDERTAKEN OR AGREED TO REPRESENT THE BENEFICIARY; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE REPRESENTATIVE'S ACTION OR FAILURE TO ACT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE TO HAVE BEEN IN BAD FAITH WITH RESPECT TO THE BENEFICIARY.

(2) FOR PURPOSES OF DETERMINING LIABILITY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, A REPRESENTATIVE ACTS, OR FAILS TO ACT, IN BAD FAITH ONLY IF:

(I) THE ACTION OR INACTION WAS THE RESULT OF INTENTIONAL WRONGDOING BY THE REPRESENTATIVE; OR

(II) THE REPRESENTATIVE ACTED, OR FAILED TO ACT, WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARY ON WHOSE BEHALF THE REPRESENTATIVE ACTED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, April 18, 2017.