

CHRIS WEST  
Legislative District 42  
Baltimore and Carroll Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

Annapolis Office  
James Senate Office Building  
11 Bladen Street, Room 322  
Annapolis, Maryland 21401  
410-841-3648 · 301-858-3648  
800-492-7122 Ext. 3648  
Chris.West@senate.state.md.us

District Office  
1134 York Road, Suite 200  
Lutherville-Timonium, MD 21093  
410-823-7087

February 15<sup>th</sup>, 2023

Senate Judicial Proceedings Committee

The Honorable William C. Smith, Jr.

2 East Miller Senate Building

Annapolis, Maryland 21401

**Re: Senate Bill – 446 – Estates and Trust – Trusts – Decanting (Maryland Trust Decanting Act)**

Dear Chairman Smith and Members of the Committee,

When a trust is established and circumstances later change, the trust terms sometimes frustrate the purposes of the trust. An example of this is a trust that will soon distribute fund outright to a trust beneficiary when he turns 30, but if the settlor had known that the beneficiary would be (suffering from addiction, bankrupt, undergoing a divorce, qualifying for governmental assistance), the settlor never would have required the outright distribution, which in some cases could do more harm than good.

In Maryland these issues go to court to move the trust to a jurisdiction that allows decanting or argue that Maryland's common law allows distribution of assets in further trust. Decanting allows the trustee to set up a new trust for a beneficiary and Senate Bill 446 provides carefully outlined restrictions on whether and how decanting can be done.

The threshold question for the trustee is whether doing so would further the purposes of the original trust. A trustee cannot add beneficiaries, take away a vested interest, or further things in the trustee's self-interest. There are several provisions clarifying what a trustee can and cannot do regarding decanting. Prior to exercising the decanting power, the trustee must provide 60-days' notice of the trustee's intent to exercise the power to various individuals involved with the trust, including the settlor (if living), the qualified beneficiaries and all other fiduciaries.

Senate Bill 446 is a comprehensive means of ensuring that trusts retain their original intent once used.

I appreciate the Committee's consideration of Senate Bill 446 and will be happy to answer any questions the Committee may have.