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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 23, 2025

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 12: *Estates and Trusts – Spousal Lifetime Access Trusts*

Dear Chairman Smith and Members of the Committee,

Under current Maryland law, an individual who creates a trust may not be considered the settlor of that trust with regard to the individual's interests in the trust if that interest is the authority of the trustee under the trust instrument to pay or reimburse the individual; or the individual creates the trust for the benefit of the individual's spouse, and the trust is treated as qualified terminable interest property, and the individual's interest in the trust income, trust principal, or both follows the termination of the spouse's prior interest in the trust. This protects the individual's interest from the individual's creditors in these situations.

However, because of the potential for a reduction in the federal estate tax exemption, Marylanders have created trusts transferring a significant portion of their assets to their spouse. But if the spouse dies before the creator of the trust, the spouse loses access to those assets indefinitely. Through a power of appointment, the spouse can designate the individual as one of a class of beneficiaries who can benefit from the trust after the spouse's death or give an independent person the ability to distribute trust assets to the individual, preserving those assets for the individual if those assets are needed. However, in Maryland those assets would be accessible to the individual's creditors.

By adding this type of trust, if the individual's spouse dies before the individual, and the spouse decides to appoint the remaining trust assets to the individual, the individual's creditors will not be able to access their assets and instead preserved by the individual.

I appreciate the Committee's consideration of Senate Bill 12 and will be happy to answer any questions the Committee may have.

SB 12 MSBA Estates and Trusts Section - Estates an

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To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: January 23, 2025

Subject: **SB 12** – Estates and Trusts – Spousal Lifetime Access Trusts

Position: **Support**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 12 – Estates and Trusts – Spousal Lifetime Access Trusts**. Senate Bill 12 seeks to amend MD Code Ann. Est. & Trusts §14.5-1003 to provide Spousal Lifetime Access Trusts the same protections under Maryland law that are currently provided to lifetime Qualified Terminable Interest Property trusts.

What is a Spousal Lifetime Access Trust?

A Spousal Lifetime Access Trust (SLAT) is an irrevocable trust created by a settlor for the benefit of the settlor's spouse (and sometimes, other beneficiaries in addition to the settlor's spouse). SLATs are created to use a settlor's federal estate and gift tax exemption (which in 2025 is \$13,990,000) and protect appreciation on those assets from the federal estate tax, while providing the settlor's spouse with access to financial resources for the settlor's spouse's lifetime. When a SLAT is funded with the settlor's assets, some or all the settlor's federal gift tax exemption is applied to the gift. After the SLAT is created and the gift of assets made to the SLAT, the assets and the appreciation on those assets are removed from the settlor's estate for estate tax purposes. During the settlor's lifetime, a SLAT is often considered a grantor trust for income tax purposes. This means that the settlor pays the taxes due on the income generated by the assets owned by the SLAT. The assets owned by the SLAT are protected from the creditors of the beneficiaries of the SLAT, because the SLAT was created by a third-party, the settlor.

When the settlor's spouse dies before the settlor, the SLAT assets are no longer accessible by the settlor unless the SLAT is written in a way to permit the settlor's spouse or another person to make the assets available to the settlor (this is done through a "power of appointment"). Many Marylanders have engaged in SLAT planning to minimize the impact of the federal estate tax when the current federal gift and estate tax exemption sunsets on December 31, 2025.

Description of Current Law:

Maryland law does not currently provide a way for SLAT assets to be excluded from a settlor's taxable estate if the settlor's spouse or another person allows the settlor to have access to the trust funds after the settlor's spouse's death. Maryland law does permit assets held in another type of trust to be excluded from a settlor's taxable estate, even if the settlor receives an interest in the trust after their spouse's death. This trust is known as a lifetime Qualified Terminable Interest Property (QTIP) trust and, like the SLAT, it is an irrevocable trust created for the benefit of a settlor's spouse. Est. & Trusts §14.5-1003(a)(2) provides that if an individual creates a trust that is for the benefit of their spouse, the trust is treated as a QTIP trust under the Internal Revenue Code, and the individual's interest in the trust follows the termination of their spouse's prior interest, the individual is not considered the settlor of the trust. This allows the lifetime QTIP trust property to avoid inadvertent inclusion in the settlor's taxable estate. Maryland law contains a gap regarding the exclusion of a SLAT created by a settlor of which the settlor becomes a beneficiary through the exercise of a power of appointment from the settlor's estate. This gap could result in inadvertent inclusion of the SLAT in the settlor's taxable estate.

Problem Addressed by this Legislation:

By expanding Est. & Trusts §14.5-1003 to include SLATs, there would be no inadvertent inclusion of the SLAT assets in the settlor's taxable estate if the settlor receives an interest in the SLAT after the death of their spouse. This legislation protects settlors of SLATs in the same way that current Maryland law protects the settlors of lifetime QTIP trusts. The proposed legislation will provide Marylanders with the same estate and gift tax planning opportunities that are available in 10 other states, including Delaware.

For the reasons stated above, the Estates and Trust Law Section of the MSBA **supports** **Senate Bill 12 and urges a favorable committee report.**

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