

SB158 FAV.pdf

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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 158: *Estates and Trusts – Maryland Trust Decanting Act – Notification and Document Transmittal*

Dear Chairman Smith and Members of the Committee,

Two years ago, the General Assembly passed a bill setting up a procedure for a trustee under a Maryland trust to distribute property of the trust to a second trust or to modify the terms of the trust in accordance with the trustee's fiduciary duties. This process is referred to by members of the Estates and Trusts bar as "decanting". The bill that we passed two years ago was known as the Maryland Trust Decanting Act.

The genesis of this bill occurred when the Estates and Trusts bar realized that Uniform Decanting Act, upon which the Maryland Trust Decanting Act was based, does not include a list of the methods of notice that a trustee must use to ensure proper notice to the individuals entitled to notice. Because Maryland's Trust Decanting Act is not under the same subtitle as the Maryland Trust Act, which does include a list of the methods of notice, the Maryland Trust Decanting Act currently does not contain a list of proper methods of notice.

Senate Bill 158 simply provides a list of methods of notice that a trustee must use to ensure proper notice is given to the individuals entitled to notice of a decanting. The methods of notice are the same as the methods of notice under the Maryland Trust Act.

I appreciate the Committee's consideration of Senate Bill 158 and will be happy to answer any questions the Committee may have.

SB 158 MSBA Estates and Trusts Section - Estates a

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To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: January 23, 2025

Subject: **SB0158** – Estates and Trusts – Maryland Decanting Act – Notification and Document Transmittal

Position: **Support**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 158 – Estates and Trusts – Maryland Decanting Act – Notification and Document Transmittal**. Senate Bill 158 seeks to specify proper methods of notice for a trustee to provide before a trust is decanted.

Description of Current Law:

Under the Maryland Trust Decanting Act (specifically, Md. Estates and Trusts Code Ann. §14-605), a trustee must give notice to certain individuals when a trustee is going to exercise his or her power to decant a trust.

Problem Addressed by this Legislation:

Md. Estates and Trusts Code Ann. §14-605 is based on the Uniform Decanting Act, which does not include a list of the methods of notice that a trustee must use to ensure proper notice to the individuals entitled to notice. Because Maryland’s Trust Decanting Act is not under the same subtitle as the Maryland Trust Act, which does include a list of the methods of notice, the Maryland Trust Decanting Act does not contain a list of proper methods of notice. The lack of a list of proper methods of notice has led to uncertainty among trustees as to whether the trustee has provided proper notice.

How this Legislation Solves the Problem:

This legislation provides a list of methods of notice that a trustee must use to ensure proper notice is given to the individuals entitled to notice of a decanting. The methods of notice are the same as the methods of notice under the Maryland Trust Act and include (i) personal service; certified mail or first-class mail, postage prepaid, return receipt requested; (ii) by courier delivery

service; or, (iii) with the consent of the person entitled to receive notice, (a) first-class mail; (b) facsimile transmission; or (c) e-mail.

For the reasons stated above, the Estates and Trust Law Section of the MSBA **supports** **Senate Bill 158 and urges a favorable committee report.**

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