

**Michael Harris**

**In Favor of HB1345 – Maryland Trust Act – In Terrorem Clause**

**March 11, 2026**

**Clarification of Statutes Relating to The Maryland Trust Act**

I am writing to respectfully urge your consideration of targeted, clarifying amendments to the Maryland Trust Act that would promote fairness, consistency, and public confidence in Maryland's estate-planning laws.

I raise these issues not only as a matter of policy, but based on a real-world outcome that illustrates unintended consequences of the current statutory framework.

**Background and Practical Impact**

My wife's family has been involved in more than four years of litigation concerning a family trust that was substantially altered only three months after the death of their grandfather. The amendments dramatically shifted control and benefits to a single cousin. That cousin was not included in the original trust created in 2008, when both grandparents were alive, competent, and actively involved in their estate planning.

Despite serious questions regarding the validity of the amended trust under the Maryland Trust Act, the case was dismissed at the trial-court level because the complaint to contest the validity of the trust was not filed within the one-year period set forth in MD Code, Estates and Trusts § 14.5-605(1). The court construed that provision as a statute of repose rather than a statute of limitations, thereby eliminating any possibility of equitable tolling. The appellate court affirmed, and the Supreme Court declined review.

As a result, the amended trust has been deemed valid as a matter of law, even though it appears facially inconsistent with statutory requirements and reflects highly irregular changes. This outcome was not the result of a merits determination, but of statutory interpretation that leaves no meaningful avenue for review once a short period expires.

This experience highlights broader structural issues in the Maryland Trust Act that warrant legislative attention.

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## **Issues Warranting Legislative Clarification**

### **1. Inconsistent Treatment of No-Contest Clauses**

Maryland law recognizes that no-contest clauses can chill valid challenges. For that reason, MD Code, Estates and Trusts § 4-413 renders such clauses unenforceable in wills when probable cause exists. The Maryland Trust Act, however, contains no comparable protection for trusts.

This inconsistency is not grounded in legislative intent. Rather, it appears to be an artifact of the Trust Act's adoption of the Uniform Trust Code, which deferred the issue to the states. Maryland's policy judgment, reflected in decades-old statutory law, is clear: individuals with probable cause should not be penalized for seeking judicial review of estate planning instruments.

To address this inconsistency, I propose amending MD Code, Estates and Trusts, § 14.5-112 to include § 4-413 as an enumerated section where the terms "wills" and "trusts" should be used interchangeably.

Alternatively, the legislature could add specific language to the Maryland Trust Act, such as:

*"If probable cause exists for instituting proceedings, a provision in a trust purporting to penalize an interested person for contesting the trust or instituting other proceedings relating to the estate is void."*

This change would ensure fairness and consistency in the treatment of no-contest clauses across different estate planning instruments.

### **2. Ambiguity Between Statutes of Limitations and Statutes of Repose**

There is significant ambiguity in § 14.5-605 regarding whether the trust contest deadline is intended to function as a statute of limitations or a statute of repose. Statutes of repose are traditionally confined to tort law, begin from a fixed date unrelated to discovery, and categorically bar equitable tolling.

Applied in the trust context, this interpretation can produce troubling results: a trust that is fraudulent, coerced, or otherwise invalid may become permanently insulated from review simply because time has passed, even where the defect could not reasonably have been discovered earlier.

Clarifying that § 14.5-605 establishes a statute of limitations, subject to equitable tolling in appropriate circumstances, would preserve finality while avoiding outcomes that undermine confidence in Maryland's fiduciary law. I have also attached a Petition for

Certiorari that was filed that outlines the reasons why not only should §14.5-605 be interpreted as a statute of limitation, but that even if the legislature intended for it to be a statute of repose, it would fail as statutes of repose are not applicable to non-tort actions. While the Supreme Court of Maryland declined to issue a Writ of Certiorari, it is likely that they viewed this as an issue that should be addressed by the legislature, and not by the court.

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## **Conclusion**

The proposed changes outlined above are narrow, clarifying, and consistent with Maryland's long-standing legislative policies. They do not reopen settled estates or create new causes of action. Rather, they ensure that trust law operates fairly, predictably, and in harmony with the principles already embedded in Maryland's estates and trusts framework.

I respectfully urge you to consider introducing legislation in the upcoming session to address these issues as clarifications of existing law. I would welcome the opportunity to discuss these matters further with you or your committee and am happy to provide additional materials, including relevant statutory provisions and briefing documents.

Thank you for your time, attention, and service to the people of Maryland.

Respectfully,

Michael Harris