

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 793

(Senator Smith)

Judicial Proceedings

Health and Government Operations

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Maryland Trust Act - Representatives of Beneficiaries

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This bill authorizes a settlor of a trust under the Maryland Trust Act to (1) designate one or more persons to serve as a representative or successor representative of a beneficiary of the trust; (2) designate one or more other persons who may in turn designate a representative or successor representative of a beneficiary of the trust; and (3) specify the order of priority among those persons. The bill prohibits, except in specified circumstances, a person designated under the bill, as specified, from serving as a representative of a beneficiary of a trust if the person also serves as a trustee of the same trust. This prohibition may not be overridden by the terms of a trust.

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Fiscal Summary

**State Effect:** The Judiciary can implement the bill's provisions with existing resources.

**Local Effect:** Potential minimal increase in expenditures for the circuit courts to the extent additional cases are filed due to the bill's provisions.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Under the bill, a representative or successor representative of a beneficiary of a trust may be held liable to the beneficiary on whose behalf the representative acts only if the representative has undertaken or agreed to represent the beneficiary and 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. In determining liability for bad faith representation, the action or inaction must be found to be the result of intentional

wrongdoing by the representative, or the representative must have 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.

**Current Law:** Under the Maryland Trust Act, individuals may be represented and bound by others with respect to trust matters in specified circumstances. A holder of a qualified power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. Various other circumstances for representation are specified, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to the particular question or dispute (*e.g.*, a guardian of the property may represent and bind a minor or disabled person, and an agent having specific authority to act with respect to trust matters may represent and bind the principal).

*Judicial Administration of Trusts Generally:* On a motion by an interested person, on its own motion, or as otherwise provided by law, a court may intervene actively in the administration of a trust, fashioning and implementing remedies as the public interest and the interests of the beneficiaries may require. A judicial proceeding involving a trust may relate to a matter involving the administration of the trust, including a request for instructions and an action to declare rights.

*Power of Representatives:* Except as required by the applicable rules of civil procedure in a judicial proceeding, notice to a person who is authorized to represent and bind a beneficiary has the same effect as if notice were given directly to the beneficiary, unless the person represented objects to the representation by notifying the trustee and the representative before the notice otherwise becomes effective. Similarly, the consent of a person authorized to represent and bind another person is also binding on the person represented, unless the person represented objects by notifying the trustee and the representative before the consent otherwise becomes effective.

*Authorized Representatives:* To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- a guardian of the property may represent and bind the minor or disabled person;
- a guardian of the person may represent and bind the minor or disabled person if a guardian of the property has not been appointed;
- an agent having specific authority to act with respect to trust matters may represent and bind the principal;
- a trustee of a trust that is a beneficiary of another trust may represent and bind the beneficiaries of the trust that is the beneficiary of the other trust;

- a personal representative of the estate of a decedent that is a beneficiary of a trust may represent and bind interested persons in the estate;
- a parent may represent and bind the minor, incapacitated, unborn, or unknown child of the parent or child of the parent whose location is unknown and not reasonably ascertainable if a guardian of the property or guardian of the person for the child has not been appointed; and
- a grandparent or remote ancestor may bind a beneficiary if the beneficiary is a minor, or an incapacitated, unborn, or unknown individual or an individual whose location is unknown and not reasonably ascertainable, and the beneficiary is not represented, as specified.

*Court Appointment of a Representative:* If a court determines that an interest is not represented or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, an incapacitated individual, an unborn individual, or a person whose identity or location is unknown or is not reasonably ascertainable as long as there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute.

Generally, the terms of a trust prevail over a provision of the Maryland Trust Act, with specific exceptions relating to, among other things, (1) the requirements for creating a trust; (2) the duty of a trustee to act with reasonable care; (3) the requirement that a trust have a lawful purpose that is not contrary to public policy and that is possible to achieve, with terms that benefit its beneficiaries; (4) court actions that modify or terminate a trust or bond, or that alter the commission of a trustee, or other actions in the interest of justice; (5) the rights of specified creditors and assignees; (6) court venue and subject matter jurisdiction; (7) specified administrative procedures, notice, and reporting requirements; (8) specified exculpatory term; and (9) specified rights of a person other than a trustee or beneficiary.

**Background:** The Maryland Trust Act applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise provided by statute), judgment, or decree that requires a trust to be administered in the manner of an express trust.

**Local Expenditures:** The bill may increase cases against designated representatives of beneficiaries in the circuit courts. Although data is not available to estimate the magnitude of any such increase, the impact is anticipated to be potentially minimal.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 753 (Delegate West, *et al.*) - Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2017  
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