

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 474

(Delegates West and Kramer)

Health and Government Operations

Judicial Proceedings

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**Estates and Trusts - Breach of Trust Action - Limitation Period**

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This bill prohibits a beneficiary of a trust from instituting an action for breach of trust against a trustee more than one year after the date that the beneficiary or the representative of the beneficiary is sent a report that (1) adequately discloses the existence of a potential claim for breach of trust, as specified, and (2) informs the beneficiary or the representative of the beneficiary of the time allowed for bringing a judicial action. The bill applies prospectively and has no effect on any action arising before the bill's October 1, 2018 effective date.

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**Fiscal Summary**

**State Effect:** The bill's changes can be implemented with existing resources. Revenues are not affected.

**Local Effect:** Potential minimal decrease in local revenues to the extent that fewer breach of trust actions are filed due to the time limitation created by the bill. The bill's changes can be implemented with existing resources.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** A report that adequately discloses the existence of a potential claim for breach of trust provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into the existence of the claim.

The bill does not limit the time for bringing an action against a trustee for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

**Current Law:** Pursuant to § 5-101 of the Courts and Judicial Proceedings Article, a civil action must be filed within three years from the date it accrues, unless otherwise specified by State law. State law provides a longer, 12-year statute of limitations for filing civil actions for specialties, including a promissory note or other instrument under seal; a bond, except a public officer's bond; a judgment; a recognizance; and a contract under seal.

The Maryland Trust Act (MTA) does not specify a time limitation on instituting a judicial action against a trustee for breach of trust, so the general statute of limitations applies.

*Breach of Trust:* A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust. A breach of trust may occur by action or by inaction. To remedy a breach of trust by the trustee that has occurred or that may occur, the court may:

- compel the trustee to perform the duties of the trustee;
- enjoin the trustee from committing a breach of trust;
- compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- order the trustee to account;
- appoint a special fiduciary to take possession of the trust property and administer the trust;
- suspend or remove the trustee, as specified;
- reduce or deny compensation to the trustee;
- subject to specified limitations, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or proceeds from the property; or
- order other appropriate relief.

*Terms of a Trust:* Generally, the terms of a trust prevail over a provision of MTA, 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, as specified; (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 are for the benefit of 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 terms; (9) specified rights of a person other than a trustee or beneficiary; and (10) the prohibition against a person serving as a representative of a beneficiary of a trust when that person is serving as a trustee of the same trust.

A court, however, may reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proved by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

*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 and impose 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 1014 (Senator Ready) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - February 13, 2018  
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