

SENATE BILL 417

N2

5r1920
CF 5r2114

By: **Senator Lee**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Trust Act – Revocable Trusts – Creditors’ Claims – Limitations**

3 FOR the purpose of providing that, under certain circumstances, property of a certain
4 revocable trust is not subject to, and a trustee and beneficiaries of that trust may not
5 be held liable for, certain claims of creditors of the settlor; providing that, if a certain
6 proceeding has not been commenced, the publication of certain notice by a certain
7 trustee in a certain manner shall afford the trust property, the trustee, and the trust
8 beneficiaries certain protections under certain provisions of law barring certain
9 claims after a certain period of time; barring certain claims against the trust
10 property, the trustee, and the trust beneficiaries unless, within a certain time period,
11 a certain creditor files a certain action and serves certain notice on the trustee or
12 presents to the trustee a certain claim; providing that a claim may not be deemed to
13 have been presented to the trustee under certain circumstances; providing that,
14 except under certain circumstances, a claimant is forever barred to the extent of a
15 certain disallowance; and generally relating to certain creditors’ claims against
16 certain trust property.

17 BY repealing and reenacting, with amendments,
18 Article – Estates and Trusts
19 Section 14.5–508
20 Annotated Code of Maryland
21 (2011 Replacement Volume and 2014 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Estates and Trusts**

25 14.5–508.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) The following rules apply, whether or not the terms of a trust contain a
2 spendthrift provision:

3 (1) During the lifetime of the settlor, the property of a revocable trust is
4 subject to claims of the creditors of the settlor;

5 (2) With respect to an irrevocable trust, a creditor or an assignee of the
6 settlor may reach only the lesser of:

7 (i) The claim of the creditor or assignee; and

8 (ii) The maximum amount that can be distributed to or for the
9 benefit of the settlor;

10 (3) If a trust has more than one settlor, the amount the creditor or assignee
11 of a particular settlor may reach may not exceed the interest of the settlor in the portion of
12 the trust attributable to the contribution of that settlor;

13 (4) With respect to a trust described in 42 U.S.C. § 1396p(d)(4)(A) or (C),
14 the court may limit the award of the creditor of a settlor under items (1) and (2) of this
15 subsection to the relief that is appropriate under the circumstances, considering among
16 other factors determined appropriate by the court, the supplemental needs of the
17 beneficiary; and

18 (5) After the death of a settlor, and subject to **SUBSECTION (B) OF THIS**
19 **SECTION AND** the right of the settlor to direct the source from which liabilities will be paid,
20 the property of a trust that was revocable at the death of the settlor is subject to claims of
21 the creditors of the settlor.

22 **(B) (1) WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A**
23 **SPENDTHRIFT PROVISION, IF A PROCEEDING OTHER THAN FOR A SMALL ESTATE**
24 **UNDER TITLE 5, SUBTITLE 6 OF THIS ARTICLE IS COMMENCED TO ADMINISTER THE**
25 **ESTATE OF A DECEASED SETTLOR AS PROVIDED IN TITLE 5 OF THIS ARTICLE,**
26 **PROPERTY OF A TRUST THAT WAS REVOCABLE AT THE DEATH OF THE SETTLOR IS**
27 **NOT SUBJECT TO, AND THE TRUSTEE AND BENEFICIARIES OF THAT TRUST MAY NOT**
28 **BE HELD LIABLE FOR, CLAIMS OF THE CREDITORS OF THE SETTLOR THAT ARE NOT**
29 **PROPERLY PRESENTED IN THE ESTATE PROCEEDING WITHIN THE TIME PERIODS**
30 **SPECIFIED IN § 8–103 OF THIS ARTICLE OR THAT ARE DISALLOWED AND BARRED AS**
31 **PROVIDED IN § 8–107 OF THIS ARTICLE.**

32 **(2) (I) IF A PROCEEDING AS DESCRIBED UNDER PARAGRAPH (1) OF**
33 **THIS SUBSECTION HAS NOT BEEN COMMENCED, THE TRUSTEE OF THE TRUST OF**
34 **WHICH THE DECEDENT WAS A SETTLOR MAY PUBLISH A NOTICE ONCE A WEEK FOR**
35 **3 SUCCESSIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN WHAT WOULD**

1 OTHERWISE BE THE PROPER VENUE FOR AN ADMINISTRATIVE OR JUDICIAL
2 PROBATE FOR THAT DECEDENT UNDER § 5-103 OF THIS ARTICLE.

3 (II) THE NOTICE SHALL:

- 4 1. ANNOUNCE THE DEATH OF THE DECEDENT;
- 5 2. PROVIDE THE NAME AND ADDRESS OF THE TRUSTEE;
- 6 3. NOTIFY CREDITORS OF THE DECEDENT TO PRESENT
7 THEIR CLAIMS TO THE TRUSTEE; AND
- 8 4. BE SUBSTANTIALLY IN THE FOLLOWING FORM:

9 NOTICE TO CREDITORS OF A SETTLOR OF A REVOCABLE TRUST

10 TO ALL PERSONS INTERESTED IN THE TRUST OF _____:

11 THIS IS TO GIVE NOTICE THAT _____ DIED ON OR ABOUT
12 _____. BEFORE THE DECEDENT’S DEATH, THE DECEDENT CREATED
13 A REVOCABLE TRUST FOR WHICH THE UNDERSIGNED, _____,
14 WHOSE ADDRESS IS _____, IS NOW A TRUSTEE.

15 TO HAVE A CLAIM SATISFIED FROM THE PROPERTY OF THIS TRUST, A PERSON
16 WHO HAS A CLAIM AGAINST THE DECEDENT MUST PRESENT THE CLAIM ON OR
17 BEFORE THE DATE THAT IS 6 MONTHS AFTER THE DATE OF THE FIRST
18 PUBLICATION OF THIS NOTICE TO THE UNDERSIGNED TRUSTEE AT THE
19 ADDRESS STATED ABOVE. THE CLAIM MUST INCLUDE THE FOLLOWING
20 INFORMATION:

- 21 A VERIFIED WRITTEN STATEMENT OF THE CLAIM INDICATING ITS BASIS;
- 22 THE NAME AND ADDRESS OF THE CLAIMANT;
- 23 IF THE CLAIM IS NOT YET DUE, THE DATE ON WHICH IT WILL BECOME
24 DUE;
- 25 IF THE CLAIM IS CONTINGENT, THE NATURE OF THE CONTINGENCY;
- 26 IF THE CLAIM IS SECURED, A DESCRIPTION OF THE SECURITY; AND
- 27 THE SPECIFIC AMOUNT CLAIMED.

28 ANY CLAIM NOT PRESENTED TO THE TRUSTEE ON OR BEFORE THAT DATE OR
29 ANY EXTENSION PROVIDED BY LAW IS UNENFORCEABLE.

30 _____
31 TRUSTEE

1 **DATE OF FIRST PUBLICATION: _____.**

2 **(3) THE PUBLICATION OF A NOTICE IN ACCORDANCE WITH**
3 **PARAGRAPH (2) OF THIS SUBSECTION SHALL AFFORD THE TRUST PROPERTY, THE**
4 **TRUSTEE, AND THE BENEFICIARIES OF THE TRUST THOSE PROTECTIONS UNDER §**
5 **8-103 OF THIS ARTICLE AFFORDED TO A DECEDENT'S ESTATE, PERSONAL**
6 **REPRESENTATIVE, AND HEIRS AND LEGATEES AGAINST CLAIMS PRESENTED MORE**
7 **THAN 6 MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF THE NOTICE.**

8 **(4) CLAIMS AGAINST A DECEASED SETTLOR ARE FOREVER BARRED**
9 **AS AGAINST THE TRUST PROPERTY, THE TRUSTEE, AND THE TRUST BENEFICIARIES**
10 **UNLESS, WITHIN 6 MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF A**
11 **NOTICE IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, THE**
12 **CREDITOR:**

13 **(i) FILES AN ACTION AGAINST THE TRUSTEE ON THE**
14 **CREDITOR'S CLAIM AND SERVES A COPY OF THE COMPLAINT ON THE TRUSTEE**
15 **WITHIN 30 DAYS OF THE FILING; OR**

16 **(ii) PRESENTS TO THE TRUSTEE AT THE ADDRESS PROVIDED IN**
17 **THE NOTICE:**

18 **1. A VERIFIED WRITTEN STATEMENT OF THE CLAIM**
19 **INDICATING ITS BASIS;**

20 **2. THE NAME AND ADDRESS OF THE CLAIMANT;**

21 **3. IF THE CLAIM IS NOT YET DUE, THE DATE ON WHICH**
22 **IT WILL BECOME DUE;**

23 **4. IF THE CLAIM IS CONTINGENT, THE NATURE OF THE**
24 **CONTINGENCY;**

25 **5. IF THE CLAIM IS SECURED, A DESCRIPTION OF THE**
26 **SECURITY; AND**

27 **6. THE SPECIFIC AMOUNT CLAIMED.**

28 **(5) A CLAIM MAY NOT BE DEEMED TO HAVE BEEN PRESENTED TO THE**
29 **TRUSTEE UNLESS THE CLAIMANT HAS PROVIDED ALL THE INFORMATION SPECIFIED**
30 **IN PARAGRAPH (4) OF THIS SUBSECTION.**

1 **(6) (I) IF A CLAIM IS PRESENTED TO THE TRUSTEE AS PROVIDED**
2 **IN PARAGRAPH (4) OF THIS SUBSECTION AND THE TRUSTEE DISALLOWS THE CLAIM**
3 **WHOLLY OR IN A STATED AMOUNT, THE CLAIMANT IS FOREVER BARRED TO THE**
4 **EXTENT OF THE DISALLOWANCE UNLESS THE CLAIMANT FILES AN ACTION AGAINST**
5 **THE TRUSTEE OR AGAINST ANY PERSON TO WHOM TRUST PROPERTY HAS BEEN**
6 **DISTRIBUTED.**

7 **(II) AN ACTION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**
8 **SHALL BE FILED WITHIN 60 DAYS AFTER THE MAILING OF THE NOTICE OF**
9 **DISALLOWANCE BY THE TRUSTEE TO THE CLAIMANT.**

10 **(III) THE NOTICE INFORMING THE CLAIMANT OF THE**
11 **DISALLOWANCE SHALL CONTAIN A WARNING TO THE CLAIMANT CONCERNING THE**
12 **TIME LIMITATION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH FOR**
13 **COMMENCING AN ACTION.**

14 **[(b)](C) (1) During the period the power of withdrawal may be exercised, the**
15 **holder of a power of withdrawal shall be treated in the same manner as the settlor of a**
16 **revocable trust to the extent of the property subject to that power.**

17 **(2) After the lapse, waiver, or release of a power of withdrawal, the former**
18 **power holder shall no longer be considered a settlor of the trust.**

19 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
20 **October 1, 2015.**