
THE MARYLAND TRUST ACT

*By Richard T. Wright, Esquire
The Wright Firm*

Background Information

The Maryland Trust Act (the “MTA”) represents the culmination of over ten years of study, discussion, and drafting by the Estates and Trust Law Section Council of the Maryland State Bar Association (the “Section Council”) as to the nature of Maryland trust law and how this law should best be codified. The Section Council used as its original base the Uniform Trust Code (the “UTC”) drafted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) as most recently amended by NCCUSL in 2005. Some 29 states¹ and the District of Columbia have now adopted variations of the UTC and its adoption has been endorsed by the American Bar Association, the ABA Real Property, Probate and Trust Law Section, and AARP.

Much of the UTC accurately reflects current Maryland trust law; and where this was true, the Section Council for the most part tried to retain NCCUSL’s recommended UTC provisions in its recommended text. However, while the UTC provided a comprehensive template for a trust code, it did not always reflect Maryland trust law. Consequently, where the UTC differed from Maryland trust law, the Section Council’s recommended text generally changed the proposed UTC text to follow Maryland law. (This procedure has been the norm in most of the states enacting the UTC.)

In 2008, the MTA became a joint effort of the Maryland State Bar Association and the Maryland Bankers Association. Prior to enactment, it was also thoroughly reviewed and approved by the MSBA’s Elder Law Section and the Maryland chapter of the American Association for Justice. During this vetting process, compromises occurred that changed the Section Council’s originally proposed text so that it could be more universally supported. Further amendments were recommended for adoption by the House of Delegates’ Judiciary Committee and the Maryland Senate’s Judicial Proceedings Committee.

Prior Maryland Law:

Before the enactment of the MTA, Maryland statutory law on trusts, primarily found in Title 14 of the Estates and Trusts Article, consisted of a handful of discrete statutes on various points. However, Maryland has an extensive body of trust cases, some of them very old, addressing many issues. Other principles are covered by the Restatement of the Law of Trusts, now in its third version, and the case law of other jurisdictions to which Maryland courts look when no Maryland case is on point. With respect to procedural issues in litigated trust cases, the Maryland Rules contain a

number of provisions applicable to trusts that are helpful, but even these rules leave some questions unanswered. Because of the disparate and arcane sources for much of Maryland trust law, many Maryland practitioners are unfamiliar with its applicable tenets.

Maryland has never before had a comprehensive trust law code. Because Maryland appellate courts have not had opportunities to rule on every possible question regarding trusts, there were and are “gaps” in Maryland trust law. These gaps are inherent in any system of common law. Thus, trustees and beneficiaries often have difficulty finding answers to questions of trust administration, and many trusts are administered without the benefit of a full understanding of trust law. The MTA attempts to provide such answers and fill in many of these gaps.

Purposes of the Maryland Trust Act

The MTA is intended to provide individuals with a readily available source for determining Maryland law on trusts, reorganizing that law in one conveniently found location. An industry of trust service providers has arisen to assist in the creation, management and investment of trusts. Trusts are administered by a wide variety of professional and non-professional trustees, including attorneys, legal assistants, employees of corporate trust departments, accountants, certified financial consultants, and other financial professionals. Perhaps the largest category of persons serving as trustee consists of family members and other individuals who are trusted by the trust settlor, but who may have no practical experience in trust administration. The MTA will make trust law more accessible to these individuals and the general public. Finding trust law answers will be far easier in the MTA than on law library shelves or in search engines.

Maryland Trust Act Changes to Existing Maryland Law

For the most part, the MTA does not substantially revise current Maryland trust law. That current law “works.” Broad, substantive changes were not needed. However, as a comprehensive codification of trust law, the MTA necessarily fills in gaps in prior Maryland trust law and provides answers to questions of trust law in one location. Any codification requires legal concepts to be put into statutory form, instead of the language of court opinions, and thus could be said to be “different” from Maryland law. The legislative process itself has resulted in a number of changes as compromises were effected to serve the

(continued on page 5)

