

MEMORANDUM
FROM STATE BAR ASSOCIATION
Section on Real Property, Planning, and Zoning
(Senate Bill 209)

The Section on Real Property, Planning & Zoning of the Maryland State Bar Association urges Governor Mandel to veto Senate Bill 209.

In 1971, a similar bill (Senate Bill No. 296) was passed by the General Assembly and was vetoed by Governor Mandel. In the Governor's veto message, he stated:

"Recent Maryland legislation has considerably extended the rights of non-residents to serve in other fiduciary capacities in Maryland (Article 93 and 93A). It would seem anomalous now to enact a law more severely restricting the rights of non-resident trustees."

Last year's bill contained numerous ambiguities and other problems that prompted the Maryland State Bar Association to oppose it. In the 1971 Formal Report of the Maryland State Bar Association, the bill was described in the following terms: "Its provincialism is less distasteful than its shabby draftsmanship." (p. 117).

Although this year's version of the bill has corrected many of the drafting problems, the bill is still replete with ambiguities, difficulties, and bad policy.

I.

As the Governor's veto message stated last year, Maryland has removed all parochial barriers to non-resident fiduciaries serving in Maryland. This bill would reverse that policy and create new barriers. Indeed, one curious aspect of Senate Bill 209 is that it would create a barrier that never has existed in Maryland. There have never been any statutes which restrict non-resident trustees of any type of Maryland trust. To enact this bill at the present time would certainly be a regressive step.

It is very difficult to determine the reason why this legislation is needed in Maryland. To the best of our knowledge, there have been no complaints about the activities of non-resident trustees. Non-resident trustees who own title to property in Maryland are subject to service of process in Maryland, so that there is no problem with respect to service where litigation is involved.

II.

The bill prohibits "non-residents" from serving as trustees. There are few terms in the law which are more ambiguous than the term "resident." As Judge Goodrich stated in *United States v. Stabler*, 169 F 2nd 995, 998 (3rd Cir. 1948), residence is "a single term of broad and ill-defined content having no exact legal meaning." One of the leading articles on the subject states:

"Domicil has a reasonably constant meaning. Residence, on the other hand, is one of the most variable words in the legal dictionary."