

CHAPTER 918  
(House Bill 109)

AN ACT to add new Section 392 to Article 93 of the Annotated Code of Maryland (1964 Replacement Volume), title "Testamentary Law," subtitle "Wills," to follow immediately after Section 391 thereof, amending the Testamentary Law of this State with particular reference to a fiduciary and to the manner of selecting assets for distribution.

WHEREAS, the Internal Revenue Service of the United States has ruled that the marital deduction provided by the Internal Revenue Code may not be allowed to a decedent's estate if there is some uncertainty as to the ultimate distribution to be made to or for the benefit of the surviving spouse under circumstances where the will or other governing instrument provides that the fiduciary may satisfy bequests, devises or transfers in kind with assets at their value as finally determined for federal estate tax purposes; and

WHEREAS, in view of the aforesaid Ruling of the Internal Revenue Service it is believed desirable that the General Assembly of Maryland by statute affirmatively declare the long-existing case law of Maryland which is that, unless otherwise specifically directed in the will or other controlling instrument, a fiduciary, when selecting assets for distribution in kind of satisfaction of such bequests, devises or transfers, shall do so in a manner which is fairly representative of appreciation and depreciation in the value of such assets as of the time of actual distribution, now, therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Section 392 be and it is hereby added to Article 93 of the Annotated Code of Maryland (1957 Edition), title "Testamentary Law", subtitle "Wills", to follow immediately after Section 391 thereof and to read as follows:

392.

*(a) Whenever a fiduciary, by the specific provisions of a will or other governing instrument, is authorized to satisfy a bequest, devise or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the value of the assets to be so distributed shall be determined by reference to their value for purposes of payment of federal estate taxes, the fiduciary, unless the will or other governing instrument otherwise specifically directs, shall distribute such assets, including cash, in a manner fairly representative of appreciation or depreciation (since the date of determination of such valuation) in the value of all property thus available for distribution in satisfaction of such bequest, devise or transfer.*

(B) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY BEQUEST, DEVISE OR TRANSFER WHERE, UNDER THE PROVISIONS OF THE WILL OR OTHER GOVERNING INSTRUMENT, IT IS CLEAR THAT THE FIDUCIARY, IN ORDER TO SATISFY SUCH BEQUEST, DEVISE OR