

Senate Bill No. 296—Non-Resident Trustees on Deeds of Trust

AN ACT to add new Section 44 to Article 21 of the Annotated Code of Maryland (1970 Supplement), title "Conveyancing," to follow immediately after Section 43 thereof and to be under the new subtitle "Deeds of Trust," prohibiting non-resident trustees on deeds of trust; TO EXCEPT FROM THE PROVISIONS OF THIS SECTION DEEDS OF TRUST DATED PRIOR TO THE EFFECTIVE DATE OF THE ACT; TO EXCEPT DEEDS OF TRUST APPLYING TO PROPERTY SINGLY OR JOINTLY OWNED AND SITUATE PARTLY IN THIS STATE AND PARTLY OUTSIDE THIS STATE OR TO PROPERTY SITUATE IN THIS STATE WHICH, TOGETHER WITH PROPERTY SITUATE OUTSIDE THIS STATE, IS THE SECURITY FOR THE PERFORMANCE OF AN OBLIGATION AND GENERALLY RELATING THERETO.

May 28, 1971.

Honorable William S. James
President of the Senate
State House
Annapolis, Maryland 21404

Dear Mr. President:

In accordance with Article II, Section 17, of the Maryland Constitution, I have today vetoed Senate Bill 296.

This bill requires that only persons who are residents of the State of Maryland or corporations qualified to do business in the State of Maryland shall be permitted to act as trustees of deeds of trust covering real estate.

Apparently Senate Bill 296 was intended to prohibit a non-resident from acting as a trustee of a deed of trust conveying real estate for the purpose of financing or securing a debt, but its language is not so limited. Many attorneys have written to me opposing the bill because it prohibits non-residents from serving as trustees of deeds of trusts where financing is not involved, but where ordinary family arrangements are the principal concern. In effect, the language of the bill would apply to virtually all deeds of trust. The effect of such a broad application of this bill would be to preclude a non-resident family member from serving as trustee under an inter vivos deed of trust executed by another member of his family, where the trust includes real estate. For example, a father may desire to transfer his assets, which include real estate, to an inter vivos trust, and the father may desire that his closest relatives, his two sons, be the trustees of the trust. However, if the sons live in Delaware, under Senate Bill 296 the father would be unable to name them as trustees because they are non-residents.

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 than before. Furthermore, such a law would invite neighboring States to impose similar restrictions on Maryland residents.

In a memorandum by Professor Russell R. Reno and Shale D. Stiller, on behalf of the Section on Real Property, Planning and Zoning and the Section of Estate and Trust Law, of the Maryland State Bar Association, which memorandum is attached herewith, these