

Sections of the Bar Association have urged that I veto Senate Bill 296 for the above-mentioned reasons as well as for others. Other attorneys specializing in trusts and estates have similarly requested that the bill be vetoed.

For the above reasons, I believe that Senate Bill 296 must be vetoed.

Sincerely,

/s/ MARVIN MANDEL,
Governor.

Memorandum in Opposition to Senate Bill 296

May 7, 1971.

The Sections of Estate and Trust Law and of Real Property, Planning and Zoning Law of the Maryland State Bar Association are strongly opposed to Senate Bill 296. Both Sections urge the Governor to veto the Bill.

The major difficulty with Senate Bill 296 is that it is so badly drafted that it will cause an enormous number of problems, litigation, and title difficulties.

1. The Bill purports to prohibit any non-resident of the State of Maryland from acting as a trustee of a "deed of trust" which owns real estate. The purpose of the Bill apparently is to prohibit non-resident trustees where a deed of trust is used to secure a debt. However, the Bill simply refers to "a deed of trust conveying real estate." It is not limited to "a deed of real estate conveying real estate for the purpose of securing a debt." Senate Bill 296 can, therefore, be construed to deal with all deeds of trust whether the purpose of the trust is to secure a debt or whether the purpose of the trust is legitimate estate planning.

In its most common use, the term "deed of trust" does refer to a deed of trust to secure a debt. However, it is clear that the term can refer to other types of deeds of trust. See, e.g., 54 Am. Jur., Trusts, §63; *Hall v. Hall*, 109 Va. 117, 63 S.E. 420 (1909); *Huse v. Den*, 85 Cal. 390, 24 Pac. 790 (1890); and *In re Douglas' Estate*, 303 Pa. 227, 154 Atl. 376 (1931), all of which involved the use of the term "deed of trust" where no financing was involved.

There are several anomalies about the drafting of this particular Bill which will lead the careful reader to assume that the draftsman himself envisaged more than one type of deed of trust. On page 2 of this Bill, in lines 21-24, the amendatory language exempts from the application of the Bill:

"property situate in this State which, together with property situate outside this State, is the security for the performance of an obligation."

Any reasonable grammatical construction of this phrase makes it clear that a deed of trust whose purpose is "security for the performance of an obligation" is dealt with *only* in the instance where the deed of trust conveys some property located in Maryland and some property located outside of Maryland. If this construction is correct, the drafts-