

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 519

(Senator Klausmeier)

Judicial Proceedings

Estates and Trusts - Wills and Advance Medical Directives - Notaries Public

This bill establishes that a will may be made self-proved, through an acknowledgment and affidavits made before a notary public. Beginning October 1, 2021, the bill also requires, subject to an exception, a written or electronic advance medical directive to be acknowledged and subscribed by witnesses, as specified, before a notary public.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances.

Local Effect: The bill is not anticipated to materially affect local finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Self-proving Will

The bill establishes that a will, at the time of execution or at any subsequent time, may be made self-proved by the acknowledgement of the testator and the affidavits of the attesting witnesses before a notary public, evidenced by the notary public's certificate, under seal, attached or annexed to the will. The bill provides a specified form and content for the notarized acknowledgment and affidavits.

A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution. A self-proving affidavit of any witness taken pursuant to the bill's provisions must be accepted by the court as if it had been taken before the court.

Advance Medical Directives

Beginning October 1, 2021 (and subject to an existing exception for certain electronic advance directives), in addition to being dated and signed by or at the express direction of the individual making the advance directive, and subscribed by two witnesses, a written or electronic advance directive must be (1) acknowledged by the individual before a notary public and (2) subscribed by two witnesses *who sign in the presence of the individual and in the presence of each other* before a notary public. The notary public before whom the individual acknowledges the advance directive may serve as a witness.

Current Law:

Wills

Generally, every will must be (1) in writing; (2) signed by the testator, or by another person on behalf of the testator, in the testator's presence and by the testator's express direction; and (3) attested and signed by two or more credible witnesses in the presence of the testator.

Chapters 322 and 323 of 2019 established that, for the purpose of serving as a witness to the signing of a will, a witness is not in the presence of the testator if the witness is in a different physical location than the testator, regardless of whether the testator can observe the witness through electronic audio-video or other technological means.

Under administrative probate, the Register of Wills must assume due execution of a will (1) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution or (2) if it does not appear so, or if the will does not contain that recital, then upon the verified statement of a person with personal knowledge of the circumstances of execution whether or not the person was in fact an attesting witness.

Advance Medical Directives

Maryland codified procedures for advance medical decision making for an individual who is incapable of making an informed decision in the Health Care Decisions Act passed in 1993 (Health-General Article, Title 5, Subtitle 6). The Act allows an adult who has decision-making capacity to deal with future health care issues through written instructions, a written appointment of an agent, or an oral statement to a physician or nurse

practitioner. The advance directive outlines the individual's instructions regarding the provision of health care or withholding or withdrawing health care. The individual may name an agent to make health care decisions under circumstances stated in the directive, and the Act outlines the authority of surrogate decision makers based on their relationships with the individual. The directive becomes effective when two physicians have certified in writing that the patient is incapable of making an informed decision.

With the exception of an electronic advance directive that has been authenticated in a specified manner, a written or electronic advance directive generally must be dated, signed by or at the express direction of the individual making the advance directive, and subscribed by two witnesses.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 203 (Delegate C. Jackson) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

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