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Judicial Proceedings Committee

Vice Chair, Baltimore County
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THE SENATE OF MARYLAND
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Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 700 – Estates and Trusts – Wills - Custodianship

Dear Chairman Smith and Members of the Committee:

This bill deals with what happens to a person’s will after it is executed. Generally speaking – but not always – the attorney who prepared the will retains possession of the will after the signing. The current law gives little guidance about custody of the will between its execution and the death of the testator. But sometimes things occur that call out for statutory direction.

For example, what happens to the will if the attorney retires or dies? Suppose the attorney’s firm wants to cease the practice of estates and trusts law? Suppose the testator relocates and can’t be found and it is likely that, due to the passage of time, the testator has died?

Currently, the law allows an original will to be deposited “with the register of the county where the testator resides”, but suppose the attorney can’t find the testator or ascertain where the testator currently resides? Senate Bill 700 tries to deal with these issues.

First the bill establishes the general rule that any person other than the testator who has custody of a will has a duty to maintain custody of the will and, unless authorized by the testator, may not destroy or dispose of the will, may not disclose the contents of the will to anyone and may not deliver the will to anyone except the testator.

The bill then provides, as under current law, that the testator may deposit the will for safekeeping with the register of the county in which the testator resides or, alternatively, that any other person with custody of the will may deposit the will with the register of the county in which the testator resides or with the register of the county in which the testator resided when the will was executed.

The bill also provides that a person with custody of a will shall deliver the will: to the testator, upon demand of the testator; to a court-appointed guardian of the testator’s property, on demand of the guardian; to an attorney in fact acting under a durable power of attorney signed by the testator which expressly authorizes the attorney in fact to demand custody of the will; or, upon

the death of the testator, to the register for the county where administration of the estate should take place.

Finally, the bill states that a licensed Maryland attorney who has custody of a will may file the will with the register of the county where the testator resided when the will was executed in the event that 25 years have elapsed since the execution and the attorney has diligently but unsuccessfully tried to ascertain the testator's current address. In such an event, the register may destroy the will but must retain an electronic copy of the will.

The bill makes other technical changes to the law.

I hope the Committee will issue a favorable report on this bill.