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To: Maryland Senate – Judicial Proceedings Committee
From: MSBA Estate & Trust Law Section
Date: January 22, 2024
Subject: **SB 80** – Estates and Trusts – Appointment of Personal Representative – Objections
Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) supports Senate Bill 80 – Estates and Trusts – Appointment of Personal Representative – Objections

Description of Current Law:

Under current law, the Estates and Trusts Form for Publication of Notice of Appointment is unclear, as pointed out by the Maryland Supreme Court in *McIntyre v. Smyth*, 857 A.2d 1235, 159 Md. App. 19 (Md. App. 2004). The ambiguity in the Estates and Trusts Form for Publication of Notice of Appointment stems from the fact that certain persons who do not fall within the statutory definition of an “interested person” of an estate do not have standing to object to the appointment of a personal representative but continue to have standing to challenge the probate of a will.

Problems Addressed by this Legislation:

In 1971, the Maryland legislature adopted the current definition of an “interested person” as:

“an heir even if decedent died testate, except that an heir of a testate decedent ceases to be an “interested person” after the register has given notice pursuant to § 2-209 or § 5-403(a).” Md. Code (1957, 1969 Repl.Vol., 1971 Cum.Supp.)...” *Id.*

The 1971 change to the definition of an “interested person”, however, is not reflected in the statutory Publication of Notice of Appointment form used by the Register of Wills Office, because § 7-103 was not changed at that time. The form does not differentiate between those persons having

standing to object to the appointment of a personal representative and those persons having standing to object to the probate of a will.

How the Legislation Solves the Problem:

Senate Bill 80 proposes to amend § 7-103 to differentiate between those persons who have standing to object to the appointment of a personal representative, i.e. “interested persons” and those persons who have standing to object to the probate of a will, i.e. “all persons.”

For the reasons stated above, the Estates and Trust Law Section of the MSBA **supports SB 80 and urges a favorable committee report. For further information, please contact:**

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SUGGESTED AMENDMENTS TO SB 80

7-103

“To all persons interested in the estate of

This is to give notice that the undersigned, whose address is was, on, appointed personal representative of the estate of who died on (with) (without) a will.

[All persons having any objection to the appointment (or to the probate of the will of the decedent) shall file the same with the register of wills on or before 6 months from the date of the appointment.]

ALL INTERESTED PERSONS OR UNPAID CLAIMANTS HAVING ANY OBJECTION TO THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE SHALL FILE THE SAME WITH THE REGISTER OF WILLS ON OR BEFORE 6 MONTHS FROM THE DATE OF THE APPOINTMENT.

ALL PERSONS HAVING ANY OBJECTION TO THE PROBATE OF THE WILL OF THE DECEDENT SHALL FILE THE SAME WITH THE REGISTER OF WILLS ON OR BEFORE 6 MONTHS FROM THE DATE OF THE APPOINTMENT.

All persons having claims against the decedent must present their claims to the undersigned, or file them with the register of wills on or before the earlier of the following dates:

(1) 6 months from the date of the decedent’s death; or

(2) 2 months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the creditor’s claim will be barred unless the creditor presents the claim within 2 months from the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

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Date of first publication:

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Personal representative