

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 164

(Senator West)

Judicial Proceedings

Judiciary

Estates and Trusts - Interested Person - Definition

This bill alters the definition of an “interested person” in the Estates and Trusts Article by (1) establishing that a legatee ceases to be an interested person if the legatee’s interest has been fully adeemed; (2) adding as interested persons a surviving spouse who has timely filed an election to take an elective share and a person who timely files a petition to caveat a will; and (3) establishing that an assignee of a legatee or an heir is not an interested person.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Interested Person – In General

Under current law, an “interested person” is (1) a person named as executor in a will; (2) a person serving as personal representative after judicial or administrative probate; (3) a legatee in being, not fully paid, whether the legatee’s interest is vested or contingent; (4) an heir even if the decedent dies testate, except that an heir of a testate decedent ceases to be an interested person when the register has given specified notice; or (5) an heir or legatee

whose interest is contingent solely on whether some other heir or legatee survives the decedent by a stated period if the other heir or legatee has died within that period.

Pursuant to the Estates and Trusts Article, an interested person is entitled to file, and receive notice about, various petitions and filings with the register of wills and orphans' court of the county where the estate is being administered. An interested person may file a petition for administrative probate, judicial probate, and for the orphan's court to resolve any question concerning an estate or its administration. Also, an interested person must receive notice about, among other things, the filing of administrative probate and appointment of the personal representative, judicial probate, and administration accounts, and proposed payment of compensation to the personal representative or attorney handling the estate.

Bill's Changes to the Definition of an Interested Person

Legatee Ceases to Be an Interested Person If Interest Has Been Fully Adeemed

The bill establishes that a legatee whose interest has been fully adeemed ceases to be an interested person on receipt of notice of the ademption. Under current law, "legatee" means a person, including a trustee, who under the terms of a will would receive any property.

Ademption has been defined by the Maryland Supreme Court as a revocation, recalling, or cancellation of a legacy (property transferred by a will) by the acts of a testator during the testator's life. See *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654 (2005). Ademption can occur when (1) the legacy consisted of unique property that was sold, given away, or destroyed, or was not otherwise in existence at the time of the testator's death or (2) the testator gave something of value to the legatee, while the testator was alive, that was intended to be in lieu of the legacy in the will.

Surviving Spouse Who Elects to Take an Elective Share

The bill adds to the definition of an "interested person" a surviving spouse who timely files an election to take an elective share, except that a surviving spouse ceases to be an interested person on the election being withdrawn or ruled ineffective by a court.

Under current law, instead of property left to a surviving spouse by will, a spouse may elect to take (1) a one-third share of the value of the estate subject to election, reduced by the value of all spousal benefits, if there is surviving issue (living lineal descendants) or (2) a one-half share, reduced by the value of all spousal benefits, if there is no surviving issue. An election to take an elective share is filed in court and must be made within the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will, though an extension may be sought. If the election is filed prior to the appointment of the personal representative, the spouse may file with the

register in the county in which the decedent was domiciled or in any county in which the decedent resided on the date of the decedent's death or in which real property or a leasehold interest in real property of the decedent is located. The surviving spouse may withdraw the election at any time before the expiration of the time for making the election.

On the election of the surviving spouse to take an elective share, all property or other benefits that would have passed to the surviving spouse under the will, other than any portion of the spousal benefits, must be treated as if the surviving spouse had died before the execution of the will.

Petitioner in a Caveat Proceeding

Under the bill, a person who timely files a petition to caveat a will (challenge a will's validity), as specified, is added to the definition of an "interested person," but ceases to be an interested person once the caveat proceeding has been determined by the orphans' court.

Currently, a petition to caveat a will may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil of the decedent. A petition to caveat a will may be filed at any time before the expiration of six months following the first appointment of a personal representative under a will (whether or not a petition for probate has been filed), even if there is a subsequent judicial probate or appointment of a personal representative. A petition to caveat filed before the filing of a petition for probate, or after administrative probate, has the effect of a request for judicial probate. A determination made by the court in a proceeding for judicial probate is final and binding on all persons, as specified.

Assignee of a Legatee or Heir

Under the bill, an assignee of a legatee or an heir is not an interested person.

Under current law, "legatee" means a person, including a trustee, who under the terms of a will would receive any property, and "heir" means a person entitled to property of an intestate decedent (a person who died without a will), as specified. "Assignee" is not defined in the Estates and Trusts Article.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 325 (Delegate Cardin) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Orphans' Court of Baltimore County; Register of Wills; Department of Legislative Services

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