
By: Delegate Finifter

Introduced and read first time: February 12, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Virtual Representation**

3 FOR the purpose of allowing certain persons in certain disputes involving a decedent's
4 estate, guardianship, or fiduciaries to act as virtual representatives for certain other
5 persons whose interests are identical, including minors, unborn or unascertained
6 persons, and persons whose interest will vest only upon the happening of some
7 future event; allowing certain persons to be the only interested persons required as
8 parties to certain disputes; and generally relating to representation of parties in
9 disputes regarding a decedent's estate, guardianship, and fiduciaries.

10 BY repealing and reenacting, without amendments,
11 Article - Estates and Trusts
12 Section 1-101(a) and 13-101(a)
13 Annotated Code of Maryland
14 (1991 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Estates and Trusts
17 Section 1-101(h), 13-101(j), and 15-101
18 Annotated Code of Maryland
19 (1991 Replacement Volume and 1995 Supplement)

20 BY adding to
21 Article - Estates and Trusts
22 Section 1-104, 13-108, and 15-115
23 Annotated Code of Maryland
24 (1991 Replacement Volume and 1995 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

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1 **Article - Estates and Trusts**

2 1-101.

3 (a) In the estates of decedents law the following words have the meanings
4 indicated.

5 (h) SUBJECT TO § 1-104 OF THIS SUBTITLE, "[Interested] INTERESTED person"
6 is:

7 (1) A person named as executor in a will;

8 (2) A person serving as personal representative after judicial or
9 administrative probate;

10 (3) A legatee in being, not fully paid, whether his interest is vested or
11 contingent;

12 (4) An heir even if the decedent dies testate, except that an heir of a testate
13 decedent ceases to be an "interested person" when the register has given notice pursuant
14 to § 2-210 or § 5-403(a).

15 Interested person includes a person as above defined who is (a) a minor or other
16 person under a disability, or (b) the judicially appointed guardian, committee, conservator
17 or trustee for such person, if any, and if none, then the parent or other person having
18 assumed responsibility for such person.

19 An heir or legatee whose interest is contingent solely on whether some other heir or
20 legatee survives the decedent by a stated period is an interested person but only after the
21 other heir or legatee has died within that period.

22 1-104.

23 (A) THIS SECTION APPLIES ONLY TO A DISPUTE INVOLVING:

24 (1) ASCERTAINMENT OF A CLASS OF CREDITORS, LEGATEES, HEIRS, OR
25 OTHER PERSONS INTERESTED IN AN ESTATE;

26 (2) DIRECTION OF A PERSONAL REPRESENTATIVE TO DO OR NOT DO A
27 PARTICULAR ACT WHEN ACTING IN A FIDUCIARY CAPACITY;

28 (3) DETERMINATION OF A QUESTION THAT ARISES IN THE
29 ADMINISTRATION OF AN ESTATE, INCLUDING:

30 (I) CONSTRUCTION OF A WILL;

31 (II) A CHANGE OR APPOINTMENT OF A PERSONAL
32 REPRESENTATIVE OR SPECIAL ADMINISTRATOR;

33 (III) APPROVAL OF AN ACCOUNT; OR

34 (IV) DETERMINATION OF THE COMMISSION OF A PERSONAL
35 REPRESENTATIVE;

1 (4) THE GRANT TO A PERSONAL REPRESENTATIVE OF A NECESSARY OR
2 DESIRABLE POWER NOT OTHERWISE GRANTED IN THE WILL OR BY LAW THAT THE
3 REQUIRED PARTIES TO THE DISPUTE DETERMINE TO BE CONSISTENT WITH THE
4 PURPOSES OF THE WILL OR LAW; AND

5 (5) AMENDMENT, REFORMATION, OR CONFORMATION OF A WILL TO
6 COMPLY WITH THE UNITED STATES INTERNAL REVENUE CODE AND REGULATIONS
7 ADOPTED UNDER IT TO QUALIFY FOR DEDUCTIONS, TO MAKE ELECTIONS, AND TO
8 MEET OTHER TAX REQUIREMENTS CONSISTENT WITH THE PURPOSES OF THE WILL.

9 (B) IF AN INTEREST IN AN ESTATE HAS BEEN GIVEN TO A LIVING PERSON,
10 AND THE SAME INTEREST, OR A SHARE IN THE INTEREST, IS TO PASS TO THAT
11 LIVING PERSON'S SURVIVING SPOUSE OR PERSONS WHO ARE OR MAY BE THE
12 DISTRIBUTEES, HEIRS, OR ISSUE OF THAT LIVING PERSON WHEN A FUTURE EVENT
13 HAPPENS, THE LIVING PERSON SHALL:

14 (1) ACT AS A VIRTUAL REPRESENTATIVE FOR ALL THE OTHER LIVING
15 PERSONS; AND

16 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
17 DISPUTE WITH RESPECT TO THE INTEREST.

18 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
19 IF AN INTEREST IN AN ESTATE IS TO BE GIVEN TO A PERSON, A CLASS OF PERSONS,
20 OR BOTH, WHEN A FUTURE EVENT HAPPENS, AND THE SAME INTEREST OR A SHARE
21 IN THE INTEREST IS TO PASS TO ANOTHER PERSON, CLASS OF PERSONS, OR BOTH,
22 WHEN AN ADDITIONAL FUTURE EVENT HAPPENS, THE LIVING PERSON OR CLASS
23 WHO WOULD TAKE THE INTEREST WHEN THE FIRST EVENT HAPPENS SHALL:

24 (1) ACT AS VIRTUAL REPRESENTATIVE FOR THE OTHER PERSONS; AND

25 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
26 DISPUTE WITH RESPECT TO THE INTEREST OF THOSE OTHER PERSONS.

27 (D) IF ANOTHER PERSON IS NOT AN INTERESTED PERSON FOR A MINOR OR
28 PERSON UNDER A DISABILITY UNDER § 1-101(4) OF THIS TITLE, AND THE MINOR OR
29 PERSON UNDER DISABILITY HAS AN INTEREST WITH A CLASS OF PERSONS, AT LEAST
30 ONE OF WHOM IS NOT A MINOR OR UNDER DISABILITY, EACH LIVING PERSON OF
31 THE CLASS WHO IS NOT A MINOR OR UNDER DISABILITY SHALL ACT AS VIRTUAL
32 REPRESENTATIVE FOR ALL THE MEMBERS OF THE CLASS WHO ARE MINORS OR
33 UNDER DISABILITY AND SHALL BE THE ONLY INTERESTED PERSONS REQUIRED AS
34 A PARTY TO THE DISPUTE WITH RESPECT TO THE INTEREST OF THE MINORS AND
35 PERSONS UNDER DISABILITY.

36 (E) (1) NOTWITHSTANDING SUBSECTIONS (B) THROUGH (D) OF THIS
37 SECTION, IF A PERSON ACTING AS A VIRTUAL REPRESENTATIVE UNDER THIS
38 SECTION HAS A CONFLICT OF INTEREST WITH A PERSON WHOM THE VIRTUAL
39 REPRESENTATIVE REPRESENTS AND THE CONFLICT OF INTEREST INVOLVES THE
40 INTEREST IN DISPUTE, THE PERSON WITH WHOM THE VIRTUAL REPRESENTATIVE
41 HAS A CONFLICT OF INTEREST SHALL NEVERTHELESS BE AN INTERESTED PERSON
42 REQUIRED AS A PARTY TO THE DISPUTE.

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1 (2) THIS SUBSECTION DOES NOT APPLY TO ADMINISTRATIVE DISPUTES.

2 13-101.

3 (a) In this title the following words have the meanings indicated.

4 (j) SUBJECT TO § 13-108 OF THIS SUBTITLE, "[Interested] INTERESTED
5 person" means the guardian, the heirs of the minor or disabled person, any governmental
6 agency paying benefits to the minor or disabled person, or any person or agency eligible
7 to serve as guardian of the disabled person under § 13-707 of this title. If an interested
8 person is also a minor or a disabled person, interested person also includes a judicially
9 appointed guardian, committee, conservator, or trustee for that person, or, if none, the
10 parent or other person having assumed responsibility for him.

11 13-108.

12 (A) THIS SECTION APPLIES ONLY TO A DISPUTE INVOLVING:

13 (1) ASCERTAINMENT OF A CLASS OF CREDITORS, HEIRS, OR OTHER
14 PERSONS INTERESTED IN THE ESTATE;

15 (2) DIRECTION OF THE GUARDIAN OR OTHER FIDUCIARIES TO DO OR
16 NOT DO A PARTICULAR ACT WHEN ACTING IN THEIR FIDUCIARY CAPACITY;

17 (3) DETERMINATION OF A QUESTION THAT ARISES IN THE
18 ADMINISTRATION OF AN ESTATE, INCLUDING:

19 (I) A CHANGE OF GUARDIAN OR OTHER FIDUCIARY;

20 (II) A CHANGE OF THE SITUS OF THE GUARDIANSHIP;

21 (III) OBTAINING AN ACCOUNT FROM A GUARDIAN OR OTHER
22 FIDUCIARY; OR

23 (IV) DETERMINATION OF THE COMMISSION OF A GUARDIAN OR
24 OTHER FIDUCIARY; OR

25 (4) THE GRANT TO A GUARDIAN OR OTHER FIDUCIARY OF A
26 NECESSARY OR DESIRABLE POWER NOT OTHERWISE GRANTED IN THE
27 INSTRUMENT OR BY LAW THAT THE REQUIRED PARTIES TO THE DISPUTE
28 DETERMINE TO BE CONSISTENT WITH THE PURPOSES OF THE WILL OR TRUST OR
29 WITH THE BEST INTERESTS OF THE DISABLED PERSON.

30 (B) IF AN INTEREST IN AN ESTATE HAS BEEN GIVEN TO A LIVING PERSON,
31 AND THE SAME INTEREST, OR A SHARE IN THE INTEREST, IS TO PASS TO THAT
32 LIVING PERSON'S SURVIVING SPOUSE OR PERSONS WHO ARE OR MAY BE THE
33 DISTRIBUTEES, HEIRS, OR ISSUE OF THAT LIVING PERSON WHEN A FUTURE EVENT
34 HAPPENS, THE LIVING PERSON SHALL:

35 (1) ACT AS A VIRTUAL REPRESENTATIVE FOR ALL THE OTHER LIVING
36 PERSONS; AND

37 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
38 DISPUTE WITH RESPECT TO THE INTEREST.

5

1 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
2 IF AN INTEREST IN AN ESTATE IS TO BE GIVEN TO A PERSON, A CLASS OF PERSONS,
3 OR BOTH, WHEN A FUTURE EVENT HAPPENS, AND THE SAME INTEREST OR A SHARE
4 IN THE INTEREST IS TO PASS TO ANOTHER PERSON, CLASS OF PERSONS, OR BOTH,
5 WHEN AN ADDITIONAL FUTURE EVENT HAPPENS, THE LIVING PERSON OR CLASS
6 WHO WOULD TAKE THE INTEREST WHEN THE FIRST EVENT HAPPENS SHALL:

7 (1) ACT AS THE VIRTUAL REPRESENTATIVE FOR THE OTHER PERSONS;
8 AND

9 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
10 DISPUTE WITH RESPECT TO THE INTEREST OF THOSE OTHER PERSONS.

11 (D) IF ANOTHER PERSON IS NOT AN INTERESTED PERSON FOR A MINOR OR
12 PERSON UNDER A DISABILITY UNDER § 13-101(J) OF THIS SUBTITLE, AND THE MINOR
13 OR PERSON UNDER DISABILITY HAS AN INTEREST WITH A CLASS OF PERSONS, AT
14 LEAST ONE OF WHOM IS NOT A MINOR OR UNDER DISABILITY, EACH LIVING PERSON
15 OF THE CLASS WHO IS NOT A MINOR OR UNDER DISABILITY SHALL ACT AS A
16 VIRTUAL REPRESENTATIVE FOR ALL THE MEMBERS OF THE CLASS WHO ARE
17 MINORS OR UNDER DISABILITY AND SHALL BE THE ONLY INTERESTED PERSON
18 REQUIRED AS A PARTY TO THE DISPUTE WITH RESPECT TO THE INTEREST OF THE
19 MINORS AND PERSONS UNDER DISABILITY.

20 (E) (1) NOTWITHSTANDING SUBSECTIONS (B) THROUGH (D) OF THIS
21 SECTION, IF A PERSON ACTING AS A VIRTUAL REPRESENTATIVE UNDER THIS
22 SECTION HAS A CONFLICT OF INTEREST WITH A PERSON WHOM THE VIRTUAL
23 REPRESENTATIVE REPRESENTS AND THE CONFLICT OF INTEREST INVOLVES THE
24 INTEREST IN DISPUTE, THE PERSON WITH WHOM THE VIRTUAL REPRESENTATIVE
25 HAS THE CONFLICT OF INTEREST SHALL NEVERTHELESS BE AN INTERESTED
26 PERSON REQUIRED AS A PARTY TO THE DISPUTE.

27 (2) THIS SUBSECTION DOES NOT APPLY TO ADMINISTRATIVE DISPUTES.

28 15-101.

29 (a) In this subtitle the following words have the meanings indicated.

30 (b) "Committee" includes any reorganization or protective committee formed for
31 the purpose of formulating, proposing, or carrying out any plan of reorganization or to act
32 in any other manner for the protection of the interests of the holders of any class or
33 classes of securities, or persons performing a similar function, and any corporation
34 formed or acting for any such purpose.

35 (c) "Corporate fiduciary" has the meaning stated in § 15-1A-01 of this article.

36 (d) "Depository" includes any person receiving securities for deposit, exchange, or
37 distribution under any reorganization agreement or plan of reorganization, or stamping
38 securities presented to it to indicate the assent of any present or future holder or holders
39 to any plan of reorganization affecting the securities or that the securities have been
40 absolutely or conditionally made subject to any plan of reorganization.

1 (e) "Deposited or exchanged", as applied to securities, includes the presentation
2 of securities to a depository for stamping to indicate the assent of any present or future
3 holder to any plan of reorganization affecting the securities or that the securities have
4 been absolutely or conditionally made subject to any plan or organization.

5 (f) (1) "Environmental law" means a federal, State, or local law, rule,
6 regulation, or ordinance that relates to the protection of the environment.

7 (2) "Environmental law" includes Title 9 of the Natural Resources Article
8 of the Annotated Code of Maryland.

9 (g) "Fiduciary" includes a trustee acting under a deed, will, declaration of trust or
10 other instrument in the nature of a trust or appointed by a court, a receiver, custodian,
11 committee or guardian of the property of a minor or disabled person, executor,
12 administrator, or personal representative.

13 (H) SUBJECT TO § 15-115 OF THIS SUBTITLE, "INTERESTED PERSON" INCLUDES:

14 (1) ALL BENEFICIARIES OF THE FIDUCIARY ESTATE WHO SHALL OR
15 MAY RECEIVE CURRENT DISTRIBUTION OF INCOME OR PRINCIPAL, AND ALL
16 REMAINDER BENEFICIARIES OF THE FIDUCIARY ESTATE, WHETHER THEIR
17 INTERESTS ARE VESTED OR CONTINGENT;

18 (2) ALL FIDUCIARIES AND CO-FIDUCIARIES OF THE FIDUCIARY
19 ESTATE;

20 (3) ANY CREATOR OF THE FIDUCIARY ESTATE;

21 (4) ANY OTHER PERSON NAMED BY THE COURT AS HAVING A
22 SUBSTANTIAL INTEREST IN THE ADMINISTRATION OF THE FIDUCIARY ESTATE; AND

23 (5) A PERSON WHO MEETS THE QUALIFICATIONS OF THIS SUBSECTION
24 AND WHO:

25 (I) IS A MINOR OR OTHER PERSON UNDER DISABILITY;

26 (II) IS A JUDICIALLY APPOINTED GUARDIAN, COMMITTEE,
27 CONSERVATOR, OR TRUSTEE FOR THE PERSON; OR

28 (III) IF SUBITEM (II) OF THIS ITEM DOES NOT APPLY, IS THE PARENT
29 OR OTHER PERSON WHO HAS ASSUMED RESPONSIBILITY FOR THE PERSON.

30 [(h)] (I) "Person" includes the State, any county, municipal corporation, or other
31 political subdivision of the State, or any of their units, or an individual, fiduciary, or any
32 partnership, firm, association, public or private corporation, or any other entity.

33 [(i)] (J) "Plan of reorganization" includes any plan for the reorganization of any
34 corporation, public or private, or of any partnership, firm or association, and any plan of
35 adjustment, readjustment, refunding, refinancing, or recapitalization affecting any
36 securities, whether or not the plan is proposed or submitted in connection with any
37 proceedings under the jurisdiction of any court.

38 [(j)] (K) "Reorganization agreement" includes any deposit agreement, protective
39 agreement for the protection of holders of any class of securities, or similar agreement or

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1 instrument which embodies any plan of reorganization or provides for or permits the
2 formulation or carrying out of a plan of reorganization.

3 [(k)] (L) "Securities" includes stocks, bonds, debentures, notes, voting trust
4 certificates, equipment trust certificates, certificates of deposit, certificates of
5 participation, certificates of beneficial interest, stock rights, stock warrants issued by or in
6 connection with any corporation, partnership, firm, association or similar organization,
7 and any other instruments evidencing rights of a similar character.

8 [(l)] (M) "Trust company" has the meaning stated in § 1-101 of this article.

9 15-115.

10 (A) THIS SECTION APPLIES ONLY TO A DISPUTE INVOLVING:

11 (1) ASCERTAINMENT OF A CLASS OF CREDITORS, BENEFICIARIES,
12 PERMISSIBLE APPOINTEES OF A POWER OF APPOINTMENT OR OTHER PERSONS
13 INTERESTED IN THE FIDUCIARY ESTATE;

14 (2) DIRECTION OF THE FIDUCIARIES OR CO-FIDUCIARIES TO DO OR
15 NOT DO A PARTICULAR ACT WHEN ACTING IN THEIR FIDUCIARY CAPACITY;

16 (3) DETERMINATION OF A QUESTION THAT ARISES IN THE
17 ADMINISTRATION OF AN ESTATE, INCLUDING:

18 (I) CONSTRUCTION OF A DOCUMENT THAT GOVERNS THE
19 FIDUCIARY ESTATE;

20 (II) A CHANGE OR APPOINTMENT OF A FIDUCIARY OR
21 CO-FIDUCIARY;

22 (III) A CHANGE OF THE SITUS OF A TRUST;

23 (IV) OBTAINING AN ACCOUNT FROM A FIDUCIARY OR
24 CO-FIDUCIARY; OR

25 (V) DETERMINATION OF THE COMMISSION OF A FIDUCIARY OR
26 CO-FIDUCIARY.

27 (4) THE GRANT TO A FIDUCIARY OR CO-FIDUCIARY OF A NECESSARY
28 OR DESIRABLE POWER NOT OTHERWISE GRANTED IN THE DOCUMENT THAT
29 GOVERNS THE FIDUCIARY ESTATE OR BY LAW THAT THE REQUIRED PARTIES TO
30 THE DISPUTE DETERMINE TO BE CONSISTENT WITH THE PURPOSES OF THE
31 FIDUCIARY ESTATE OR LAW; AND

32 (5) AMENDMENT, REFORMATION, OR CONFORMATION OF A
33 DOCUMENT THAT GOVERNS THE FIDUCIARY ESTATE TO COMPLY WITH THE UNITED
34 STATES INTERNAL REVENUE CODE AND REGULATIONS ADOPTED UNDER IT TO
35 QUALIFY FOR DEDUCTIONS, TO MAKE ELECTIONS, AND TO MEET OTHER TAX
36 REQUIREMENTS CONSISTENT WITH THE PURPOSES OF THE DOCUMENT THAT
37 GOVERNS THE FIDUCIARY ESTATE OR THE LAW.

38 (B) IF AN INTEREST IN A FIDUCIARY ESTATE HAS BEEN GIVEN TO A LIVING
39 PERSON, AND THE SAME INTEREST, OR A SHARE IN THE INTEREST, IS TO PASS TO

8

1 THAT LIVING PERSON'S SURVIVING SPOUSE OR PERSONS WHO ARE OR MAY BE THE
2 DISTRIBUTEES, HEIRS, OR ISSUE OF THAT LIVING PERSON WHEN A FUTURE EVENT
3 HAPPENS, THE LIVING PERSON SHALL:

4 (1) ACT AS A VIRTUAL REPRESENTATIVE FOR ALL THE OTHER LIVING
5 PERSONS; AND

6 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
7 DISPUTE WITH RESPECT TO THE INTEREST.

8 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
9 IF AN INTEREST IN AN ESTATE IS TO BE GIVEN TO A PERSON, A CLASS OF PERSONS,
10 OR BOTH, WHEN A FUTURE EVENT HAPPENS, AND THE SAME INTEREST OR A SHARE
11 IN THE INTEREST IS TO PASS TO ANOTHER PERSON, CLASS OF PERSONS, OR BOTH,
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15 (2) BE THE ONLY INTERESTED PERSON REQUIRED AS A PARTY TO THE
16 DISPUTE WITH RESPECT TO THE INTEREST OF THOSE OTHER PERSONS.

17 (D) IF ANOTHER PERSON IS NOT AN INTERESTED PERSON FOR A MINOR OR
18 PERSON UNDER A DISABILITY UNDER § 15-101(H)(5) OF THIS SUBTITLE, AND THE
19 MINOR OR PERSON UNDER DISABILITY HAS AN INTEREST WITH A CLASS OF
20 PERSONS, AT LEAST ONE OF WHOM IS NOT A MINOR OR UNDER DISABILITY, EACH
21 LIVING PERSON OF THE CLASS WHO IS NOT A MINOR OR UNDER DISABILITY SHALL
22 ACT AS A VIRTUAL REPRESENTATIVE FOR ALL THE MEMBERS OF THE CLASS WHO
23 ARE MINORS OR UNDER DISABILITY AND SHALL BE THE ONLY INTERESTED PERSON
24 REQUIRED AS A PARTY TO THE DISPUTE WITH RESPECT TO THE INTEREST OF THE
25 MINORS AND PERSONS UNDER DISABILITY.

26 (E) (1) NOTWITHSTANDING SUBSECTIONS (B) THROUGH (D) OF THIS
27 SECTION, IF A PERSON ACTING AS A VIRTUAL REPRESENTATIVE UNDER THIS
28 SECTION HAS A CONFLICT OF INTEREST WITH A PERSON WHOM THE VIRTUAL
29 REPRESENTATIVE REPRESENTS AND THE CONFLICT OF INTEREST INVOLVES THE
30 INTEREST IN DISPUTE, THE PERSON WITH WHOM THE VIRTUAL REPRESENTATIVE
31 HAS THE CONFLICT OF INTEREST SHALL NEVERTHELESS BE AN INTERESTED
32 PERSON REQUIRED AS A PARTY TO THE DISPUTE.

33 (2) THIS SUBSECTION DOES NOT APPLY TO ADMINISTRATIVE DISPUTES.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 1996.