

**Department of Legislative Services
Maryland General Assembly
2005 Session**

FISCAL AND POLICY NOTE

Senate Bill 45

(Senator Giannetti)

Judicial Proceedings

Judiciary

Estates - Personal Representatives - Nomination by Power Conferred in Will

This bill includes individuals who have been nominated in accordance with a power conferred in a will on the priority list of persons who may be eligible for appointment as a personal representative in administrative or judicial probate, or appointed as a successor personal representative or special administrator.

The bill also enables a person not expressly nominated in a will but who is nominated in accordance with a power conferred in the will, to be eligible for appointment as a personal representative, second in priority to those individuals specifically named as personal representatives by a testator in a will. Similarly, the bill entitles this class of individuals to probate.

Fiscal Summary

State Effect: None.

Local Effect: None. The changes are procedural in nature and would not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: State law sets forth a priority order of classes of individuals to be named personal representative of an estate by a register of wills or probate court. There are 11 classes total. The classes in order of priority are: (1) personal representatives named in a

will admitted to probate; (2) the surviving spouse and children of an intestate decedent, or surviving spouse of a testate decedent; (3) residuary legatees (other persons named in a will); (4) children of a testate decedent who are entitled to share in the estate; (5) grandchildren of a decedent who are entitled to share in the estate; (6) parents of a decedent who are entitled to share in the estate; (7) siblings of a decedent who are entitled to share in the estate; (8) other relations of a decedent; (9) the largest creditor of a decedent; (10) any other person having a pecuniary interest in the proper administration of an estate; and (11) any other person.

Chapter 298 of 2004 granted eligibility as a personal representative to noncitizen, permanent residents of the U.S. who are a spouse, sibling, ancestor, or descendant of a decedent. A register of wills or court must observe the statutory order of priority.

When there are several eligible persons in a class entitled to appointment, the court or register may appoint one or more of them as necessary or convenient for the proper administration of the estate. However, subject to certain statutory exceptions, all personal representatives named in the will are entitled to probate. Within classes two through nine, two or more persons in different classes may be appointed provided that the person or class first entitled to appointment consents.

There is no provision in current law authorizing a testator to delegate the nomination of a personal or successor representative under the terms of a will.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 18, 2005
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