

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 154

(Senator Frosh)

Judicial Proceedings

Judiciary

Estates and Trusts - Admission of Copy of Executed Will

This bill allows an interested person to file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if the original is alleged to be lost or destroyed, a copy is offered, and all heirs and persons that receive property under the will execute a specified consent to the probate of the copy. The orphans' court may authorize the petitioner to proceed with administrative probate and authorize the register of wills to accept the copy, or require the filing of judicial probate. The bill only applies prospectively and does not affect or apply to the estate of any decedent who died before the bill takes effect.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: An "interested person" includes those who receive property under a will, those entitled to property if the decedent died without a will, and a person named as executor in a will. A petition for probate has to contain a statement of whether the decedent died testate (having made a valid will) or intestate (without a valid will) and if the person died testate, the will or a copy of the will has to be exhibited with the petition. (See Estates and Trusts Article §§1-101 and 5-201.)

The Maryland Court of Special Appeals indicated in *McIntyre v. Smyth*, 159 Md. App. 19 (2004) that “the principal difference between [administrative and judicial] probate is that the former is an administrative proceeding before the register of wills while the latter is a judicial proceeding before the orphans’ court.” Under administrative probate, a register of wills may admit a will to probate based on specified proof of proper execution of a will. Judicial probate can serve to resolve and determine facts in instances where there is a lack of proof of proper execution or where a will is lost or destroyed. (*See* Estates and Trusts Article §§ 5-301, 5-302, 5-303, 5-401, 5-402.)

Background: The Estate and Trust Law Section Council of the Maryland State Bar Association indicates there is uncertainty regarding whether a copy of an original executed will can be admitted to probate in the absence of the original will and the issue is addressed differently among local jurisdictions. In some jurisdictions, the register of wills admits a copy of an executed will in place of an original as a matter of course, while in other jurisdictions, admission of a copy of an executed will requires judicial probate.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 9, 2009
ncs/kdm

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