

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 155 (Senator Frosh)
Judicial Proceedings

Estates and Trusts - Effect of Divorce or Annulment on Will

This bill specifies that, in the event of a revocation of a will, or part of a will, as a result of a divorce or annulment, all property or other benefits that are passed to the surviving former spouse under the will are treated as if the surviving former spouse had died before the execution of the will, unless otherwise stated in the will or decree. The bill repeals language specifying that, in such an instance, all provisions in the will relating to the spouse, and only those provisions, are revoked.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect governmental operations or finances.

Small Business Effect: None.

Analysis

Current Law/Background: A will, or any part of a will, may be revoked by an absolute divorce of a testator (person who had made the will) and the testator's spouse, or the annulment of the marriage, subsequent to the execution of the will. All provisions in the will relating to the spouse, and only those provisions, are revoked, unless otherwise stated in the will or decree.

The Estate and Trust Law Section of the Maryland State Bar Association indicates that there is some uncertainty regarding the effect of absolute divorce or annulment on a decedent's estate in certain situations. For example, uncertainty may arise in a situation

in which a wife leaves property to her husband in her will, but in the event that he does not survive her, then to another legatee (person receiving property under a will). If the wife and husband divorce and the wife subsequently dies, the provisions leaving property to the husband are revoked. However, because the husband survived the wife, the condition of the bequest to the other legatee is not met, leaving it in doubt. The Estate and Trust Law Section indicates that it can be argued that such a bequest fails because the condition is not met.

The bill specifies that, in the case of an absolute divorce or annulment, the property or other benefits that would have passed to the surviving former spouse are treated as if the surviving former spouse had died before the execution of the will. In that instance, the bequest (or legacy) to the surviving former spouse is void, and in the example above, the condition of the surviving former spouse having predeceased the deceased spouse is satisfied, allowing the property to pass to the other legatee. Existing law also indicates that, where a contrary intent is not expressly indicated in a will, property that fails to pass under a void legacy is distributed as part of the estate of the testator to those persons, including legatees, who would have taken the property if the void legacy had not existed. (See Estates and Trusts Article §4-404.)

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Gibber, Allan J., *Gibber on Estate Administration* (5th Ed.)(2008); Maryland State Bar Association (Estate and Trust Law Section); Department of Legislative Services

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mlm/kdm

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