

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 328
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Estates and Trusts - Guardianship - Payment of Expenses After Death of Ward

This bill requires the guardian of the property of a minor or disabled person, upon the death of the minor or disabled person, to pay from the estate all commissions, fees, and expenses shown on the court-approved final guardianship account before delivering the balance of the estate to an appointed personal representative or other person entitled to it.

Fiscal Summary

State Effect: General fund revenues may decrease minimally to the extent payment of commissions, fees, and expenses by guardians of the property, upon the death of a minor or disabled person, would reduce probate fees paid for administration of the estates of those minors and disabled persons.

Local Effect: The bill does not directly impact local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: When a minor attains majority (and is not then disabled) or the disability of a disabled person has ceased, the guardian is required to meet “all prior claims and expenses of administration” before distributing the estate to the former minor or disabled person. However, when a minor or disabled person dies, the guardian is only directed to deliver any will of the deceased person in the guardian’s possession to the appropriate probate court for safekeeping, inform the personal representative or a beneficiary named in the will that he or she has done so, and retain the estate for delivery to an appointed personal representative of the decedent or other person entitled to it.

State law requires that all property of a deceased person must, upon the person's death, pass directly to the personal representative, who holds the legal title for administration and distribution. (*See* Estates and Trust Article, § 1-301(a))

The Court of Special Appeals, in a 2007 opinion, has ruled that at the moment of a minor or disabled person's death, the assets under a guardianship of the property immediately become assets of the minor or disabled person's estate, precluding a guardian from collecting guardianship commissions before transferring the property to the personal representative of the estate. (*See Battley v. Banks*, 177 Md. App. 638, 647-657 (2007).)

Background: The Estate and Trust Law Section of the Maryland State Bar Association indicates that guardians of minors or disabled persons who die are unreasonably treated differently than guardians of minors or disabled persons who reach majority or cease to be disabled, respectively, with regard to unpaid claims and expenses at the end of the guardianship. Because of the statutory order of payment of claims against an estate with insufficient assets to pay all claims in full, commissions or other expenses of a guardian of a minor or disabled person who dies may go unpaid if there are limited assets in the estate.

Additional Information

Prior Introductions: None.

Cross File: SB 339 (Senator Frosh) - Judicial Proceedings.

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

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a/kdm

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