

Department of Legislative Services  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 338

(Senator Frosh)

Judicial Proceedings

Judiciary

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**Estates and Trusts - Elective Share - Extension of Time for Making Election**

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This bill repeals statutory language specifying that an extension of the time for a surviving spouse to elect to take an elective share of the deceased spouse's estate be authorized by the court prior to the expiration of the time period for making the election. The bill instead specifies only that the surviving spouse must file a petition (with a copy given to the personal representative) with the orphans' court for an extension of time within the period for making an election.

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** Instead of property left to a surviving spouse by will, the surviving spouse can elect to take a specified share (one-third if there is a surviving lineal descendant of the deceased spouse or one-half if there is no surviving lineal descendant) of the net estate of the deceased spouse. (*See* Estates and Trusts Article §§ 3-203, 1-209.) The surviving spouse must make the election within the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will.

The orphans' court may extend the time for election, *before its expiration*, for a period not to exceed three months at a time, upon notice given to the personal representative and for good cause shown. The Maryland Rules similarly indicate that, within the period for making an election, the surviving spouse may file with the court a petition for an extension of time and the court may grant extensions not to exceed three months at a time, provided each extension is granted before the expiration of the period originally prescribed or extended by a previous order. The Court of Appeals discussed these provisions in a 2005 opinion (*Downes v. Downes*, 388 Md. 561 (2005)).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 329 (Delegate Carter, *et al.*) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Register of Wills; Estate and Trust Law Section, Maryland State Bar Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2010  
mpc/kdm

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