

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 472

(Delegate Miele, *et al.*)

Health and Government Operations

Judicial Proceedings

Estates and Trusts - Registers of Wills - Retention of Estate Files

This bill allows a register of wills to dispose of any files associated with an estate, other than the probated will, after 180 days following the closing of an estate, if a copy of the file is retained in accordance with specified document retention rules. Thus, a register of wills can dispose of original copies of files associated with an estate other than the actual will, in lieu of returning the files to the estate's personal representative.

The bill applies retroactively to all estates opened on or after October 1, 2014.

Fiscal Summary

State Effect: Although the bill is expected to increase operational efficiencies for the registers of wills, it is not expected to have a significant impact on State finances, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A register of wills (register), no sooner than 180 days following the closing of an estate, may return files associated with the estate, other than the probated will, to the personal representative of the estate, if a copy of the files associated with the estate is retained by the register in paper, photographic, microprocessed, magnetic, mechanical, electronic, digital, or any other medium. The copy must be maintained in the manner described below.

Each register of wills in each county and in Baltimore City must receive, file, and store safely every original paper and record in its custody, in a repository of the courthouse as the court may direct. Generally, any will probated, or any paper filed in the office of the register, may not be delivered out of the office to any person unless a permanent paper file of a probated will is retained in the office along with a copy of any other file associated with the estate in paper, photographic, microprocessed, magnetic, mechanical, electronic, digital, or other medium. The copies must be maintained in a manner that (1) is clear and legible; (2) accurately reproduces the original document in its entirety, including any attachments to the document; (3) is capable of producing a clear and legible hard copy of the original document; and (4) preserves evidence of any signature contained on the document. Immediately upon the administrative or judicial probate of a will, the register must record it, with every paper incidental to probate, in the wills record book, and index it under the name of the decedent.

Background: Chapters 296 and 297 of 2014 addressed the matter of congested registers of will offices due to the number of estate records that must be permanently retained by providing a process by which local registers could return certain estate documents to a personal representative six months after an estate closes. The Anne Arundel Registers of Wills advises that this procedure is more cumbersome in practice than was expected, requiring substantial administrative resources to contact and mail files to personal representatives. The bill is intended to allow registers to discard original estate files (except wills and codicils) without contacting personal representatives first, and maintain them in a manner that expands available storage space.

State Fiscal Effect: Probate fees and inheritance taxes collected by the registers of wills that are not used for salaries and expenses of the registers of wills are deposited in the general fund. General fund revenues increase to the extent the registers' repository expenses decrease as a result of the bill. While any such increase cannot be reliably estimated at this time, it is not anticipated to be significant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts), Register of Wills, Maryland State Archives, Department of Legislative Services

Fiscal Note History:
min/kdm

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Analysis by: Michelle Davis

Direct Inquiries to:

(410) 946-5510

(301) 970-5510