
To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: February 12, 2020

Subject: **House Bill # 543** – Estates and Trusts – Closed Estates- Subsequent Discovery of Check

Position: **Support**

The Maryland State Bar Association (MSBA) **supports House Bill #543** - Estates and Trusts – Closed Estates- Subsequent Discovery of Check as it will enable the beneficiaries of a decedent's estate to receive after-discovered assets that might otherwise be uneconomical to administer.

When property is discovered after a decedent's estate has been closed, handling the property can be expensive and time-consuming. The property could come in the form of a refund check to the decedent, a small bank account no one knew about, or an unexpected stock dividend. In many instances, these after-discovered assets are of only nominal value, making it uneconomical to administer them by reopening the estate.

The law currently offers two options for administering after-discovered property. Under the first option, if the personal representative of the estate has not been terminated, he or she may file a supplemental inventory and estate accounting under Maryland Rule 6-422. The second option applies if the personal representative has been terminated, in which case a petition must be filed requesting the appointment of a personal representative under § 10-104 of the Estates & Trusts Article of the Maryland Code. The court may require the newly appointed personal representative to purchase a bond, and filing a supplemental inventory and account is required. In addition to incurring the costs of preparing an inventory and accounting, it may be necessary to pay the fees associated with opening a new estate checking account in order to deposit and disburse the assets.

When the cost of administering the after-discovered property exceeds the value of the property itself, the personal representative is left in a quandary. Should the property be administered at a net loss to the beneficiaries? Or should the personal representative decline to process the assets, avoiding the administrative costs but depriving the beneficiaries of a portion of their inheritance?

The proposed legislation would remedy this problem by creating an efficient new option. The law would apply when a check of \$1,000.00 or less, payable to the decedent or the estate, is discovered or received after the estate has been closed. Any interested person of the estate could

then request that that Orphans' Court issue an order allowing the person to deposit the check in his or her own bank account. An interested person is defined in § 1-101(i) of the Estates & Trusts Article of the Maryland Code and includes a person named as executor in a will, a person who was serving as personal representative, a legatee who was not fully paid, and an heir of the decedent. The order would be for the limited purpose of enabling the interested person to disburse the funds in accordance with the decedent's Last Will and Testament or the rules of intestacy under Maryland law, as the case may be.

In cooperation with the Registers of Wills, the Estate & Trust Law Section developed friendly amendments to HB #543. These amendments would require the request be made in the form of a petition. This will ensure transparency in that all interested persons in the estate would receive notice of the petition and the subsequent order. While not required, a hearing may be requested by any interested person. Further, the amendments would make this option available so long as:

- The estate was solvent at the time that it was closed;
- The value of the check would not cause a small estate to become a regular estate;
- Any additional probate fee or inheritance taxes are paid; and
- Distribution of the funds are made within 60 days of the Court's Order is entered.

We urge the Committee to support this measure. It will help to ensure that the beneficiaries of a Maryland estate receive the fullest possible inheritance from the decedent. It will also create greater efficiency for the Registers of Wills by eliminating the need for an additional estate inventory and accounting when nominal assets are discovered or nominal checks are received after an estate has been closed.

For the reason(s) stated above, the MSBA Estate & Trust Law Section **supports HB #543 with the friendly amendments offered and urges a favorable committee report.**

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