

**To: The Chair and Members of Health and Government Operations Committee**

**From: MSBA Elder Law Section and  
the MD/DC Chapter National Academy of Elder Law Attorneys by  
Morris Klein, Esq.**

**Date: February 4, 2021**

**Re: HB 203 Estates and Trusts - Wills and Advance Medical Directives  
- Notaries Public**

**Position: Oppose**

The MSBA Elder Law Section and the MD/DC Chapter National Academy of Elder Law Attorneys are attorney organizations whose members represent senior clients. Our work includes public benefits eligibility, guardianship and estate planning documents, including health care directives and wills. I am a member of both organizations, and I submit this report only in my capacity of serving as a spokesperson to express the position of these two groups.

The legislation makes it more difficult for these documents to be legally acceptable. The additional requirements will make it harder for persons to sign and add an expense (even if nominal) if they have to pay for a notary.

Further, the legislation is counter to the goal of other legislation intended to make it easier for clients to sign legal documents to ameliorate the added difficulties executing documents executed in these days of Covid.

#### 1. Health Care Directive

We understand that by friendly amendment the provisions regarding health care directives will be deleted, but we do want to go on record that these documents are often essential for a person to express his or her health care decisions. Unamended, this legislation increases the possibility that, if health care directive is not executed, an individual may undergo medical procedures that he or she may not want, or have individuals they do not want to make health care decisions for them.

#### 2. Self-proving Will

We do not see a need for the enactment of "optional" requirements, as the language requiring notarization and the language specified in the statute for a will to be self-proving is voluntary.

Practitioners now add self-proving language with notarization to wills they draft if their clients expect to move to a jurisdiction where self-proving wills are required. So a law stating only that Maryland wills may, but are not required, to have self-proving language does not change current practices.

If the bill is intended to have mandatory self-proving wills, if not now then at some future date, we question why this requirement is needed. Even if voluntary now, we are concerned that this can morph into a mandatory requirement at a later date. True, most states follow the Uniform Probate Code to require self-proving wills. Maryland, however, has had a long tradition of not blindly adopting uniform laws but utilizing those provisions that best serve Maryland's citizens. Maryland's versions of the Model Uniform Trust Code (Maryland Trust Act - 2014 legislative session) and the Model Uniform Power of Attorney Law ( Maryland General and Limited Power of Attorney Act - 2010 legislative session) are but two examples where uniform laws are not wholly adopted.

Additional technical requirements are a trap for the unwary possibly resulting in the failure of a will that legitimately reflects the testator's intentions to be admitted to probate, with the risk that an estate will be distributed to heirs at law contrary to the testator's intent. While understand the concern that some wills may not reflect the testator's true intentions, because they were taken advantage of, additional requirements may make it harder for such wills to be probated. Yet, we are not aware of how extensive this problem is that requires the proposed solution.

Thus, we fear the solution this legislation proposes may only create a new problem of not fulfilling a testator's intentions.

All of this could disproportionately affect low-income individuals who already are challenged to access legal services. Thus, the problem the legislation seeks to solve could result new problems.

In conclusion, we are not aware of problems adversely affecting Marylanders that this legislation aims to correct. Current laws pertaining to the validity of a will are working, and we do not see the need for change at this time. Moreover, this provision is contrary to efforts to make legal documents easier to execute, not harder, in this age of Covid.

Respectfully submitted,

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