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The Senate Judicial Proceedings Committee

The Honorable William C. Smith, Jr.

2 East Miller Senate Office Building

Annapolis, Maryland 21401

Re: SB 36 – Wills and Trusts Instruments – Electronic Execution

Dear Chairman Smith and members of the Committee,

Last year, the General Assembly enacted Chapter 686, allowing a Will to be electronically executed, or remotely witnessed. There was a companion bill last year, which dealt with the notarization of Wills, Senate Bill 735. SB 735 passed the State Senate unanimously but got lost in the House. This year's Senate Bill 36 attempts to push last year's Senate Bill 735 over the goal line.

Several years ago, there were attempts by the MSBA Real Estate Section and the Estates and Trusts Section to deal with the need for notarizations of legal documents by Notary Publics who could not be physically present at the time the legal documents were signed. The Real Estate Section agreed to reform the law relating to Notaries, but the Estates and Trusts Section balked when it came to Wills.

At the onset of COVID-19, the Estates and Trusts Section realized that in a pandemic environment, the requirement that Notaries be physically present at the time a Will was signed was impractical. The Estates and Trusts Section worked with the Governor's legal staff to produce an Executive Order to enable the execution of Wills without the need for a Notary to be present at the signing. The problem was that the Executive Order, which overrode existing law, was only operative during the pendency of the Governor's underlying Emergency Order dealing with COVID. When the Governor rescinded his Emergency Order, the Executive Order dealing with Notaries at Will signings was terminated as well. The underlying law of Maryland once again was operative, requiring every Will signing to involve a Notary Public. Senate Bill 36 is an Emergency Bill – because the Estates and Trusts Section badly needs to be able to execute Wills without the need for Notaries to be present at the signing.

That's a long explanation for the simple "fix" provided by this bill. Senate Bill 36 is a top priority of the Maryland State Bar Association's Estates and Trusts Section. Here is what this bill does: Under current Maryland law, for a Will to be properly executed, there needs to be two witnesses. One of the two witnesses may be the supervising attorney who prepared the Will and

presides over the signing. In addition, there needs to be a Notary. So, in every case, there will be at least three people overseeing the signing – a witness, the supervising attorney, and the Notary. Under Senate Bill 36, there will not need to be a Notary at the signing, but in such a situation, the supervising attorney cannot be one of the witnesses. There will have to be two witnesses, plus the supervising attorney. So, under this bill, there will still need to be three people overseeing the signing, the two witnesses and the supervising attorney, but there will no longer be the need for the presence of a Notary Public at the signing.

In a Will signing without a Notary, Senate Bill 36 requires the supervising attorney to prepare an attestation that will be signed by the supervising attorney, as well as by the testator and both witnesses stating that the testator signed the Will in the physical or electronic presence of the witnesses and that the witnesses signed the Will in the physical or electronic presence of the testator. This attestation is virtually identical to the attestation that would be provided by the Notary and will substitute for the customary attestation of the Notary.

I appreciate the Committee's consideration of Senate Bill 36 and will answer any follow-up questions the Committee may have.