
To: Members of House Judiciary Committee
From: MSBA Estate & Trust Law Section
Date: February 21, 2022
Subject: **HB 802** – Estates and Trusts – Claims Against an Estate – Statute of Limitations
Position: **Oppose**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes** House Bill 802– **Estates and Trusts – Claims Against an Estate – Statute of Limitations**. **House Bill 802** lengthens the statute of limitations for filing claims against a decedent’s estate and therefore threatens the timely administration of estates in Maryland.

Description of Current Law

Maryland law gives creditors of a decedent six months from the date of death to present a claim. Section 8-103 of the Estates and Trusts Article also allows this period to be shortened to two months for a creditor who receives a specified written notice indicating that the claim will be time-barred. A creditor’s process for filing a claim is straightforward. There is a one-page form that the Register of Wills provides on its website that the claimant may complete and deliver or mail to the personal representative.

The personal representative has a duty to ascertain known creditors, but there is always the possibility of unknown creditors. To reach unknown creditors, the personal representative must publish a notice in the local newspaper once a week for three weeks announcing the appointment of the personal representative and notifying creditors to present their claims. Although not required to do so by law, the Register of Wills re-publishes these notices on its website.

This six-month limitation reflects the important and long-standing state policy of allowing the efficient and timely distribution of funds from an estate. As the Court of Special Appeals notes in *Imbesi vs. Carpenter Realty Corp.*, 744 A.2d 549 (2000), “the legislative history of Maryland’s nonclaim statutes evidences that the policy has been to increase the scope of those protected by the nonclaim statute and to reduce the time within which an estate’s creditor can avoid the operation of the nonclaim statute.”

Under historic English practice, creditors could often pursue claims against the heirs and legatees of a decedent. That changed in 1969 when there was a substantial revision of Maryland’s testamentary laws. The Commission charged with modernizing Maryland’s testamentary laws concluded that, “at some point after a decedent has died the heirs and legatees ought to be able to receive the property with the assurance that no further claims could be made against them. The continuation of the present six-month date is reasonable in that it gives creditors sufficient time to file their claims and at the same time tends to encourage the prompt administration and settlement of estates.”

Based on the Supreme Court’s ruling in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), Maryland further updated its claims period to refer to the date of death of the decedent rather than the date of the appointment of the personal representative. Thus, since 1969, Maryland courts and the legislature have continued to espouse the public policy of ensuring that those who inherit property can receive property promptly without the possibility of unknown creditors later making a claim.

Proposed Change to Current Law

House Bill 802 would do away with the six-month claims period and instead allow, at a minimum, the standard statute of limitations period for all claims to apply. If a personal representative were appointed later, then the statute of limitations could be extended up to one year after the appointment. The statute of limitations for many types of actions is three years, but some are years longer. In short, the estate funds could be subject to creditor claims for an unknowable period. House Bill 802 would be a step backwards in Maryland’s history of encouraging the prompt administration of estates.

Based on Section 10-102 of the Estates and Trusts Article, unbarred claims could be prosecuted against a person who received funds from the estate after it has closed. In other words, under the system proposed by House Bill 802, beneficiaries would be surprised to learn that their inheritance could be clawed back by an unknown creditor. The personal representative could be liable as well for distributing funds that were subject to creditor claims.

Estate Administration Problems with the Proposed Law

It is not an exaggeration that House Bill 802 would fundamentally change how estates are administered in Maryland. It is prudent practice in Maryland not to distribute estate funds to the heirs and beneficiaries until claims can be resolved. Therefore, estates take at least six months to administer in Maryland so that the personal representative can be sure that all claims are known before closing the estate. If the claims period were extended as described in House Bill 802, personal representatives would be faced with an impossible choice: distribute funds and risk liability for future unknown claims, or wait for years before closing an estate.



To minimize liability, many personal representatives would require waiting at least three years before closing the estate to ensure that most creditor claims would arise. During that time, the estate would incur additional legal fees, costs of filing annual accountings with the Court, and tax preparation fees. Meanwhile, the surviving spouse or children or other heirs would be missing the opportunity to make use of the decedent’s funds for their own support. Many beneficiaries consider the six-month waiting period to be onerous and would find a three-year wait unimaginable.

Not only would delayed estate administration strain personal representatives and beneficiaries, but also it would strain public services. The Register of Wills would need to review additional accountings for estates open for a longer time, and the Orphans’ Court could expect to hear additional conflicts with impatient beneficiaries.

Although a personal representative could do nothing under House Bill 802 to ensure that all claims have been presented, creditors under current law do have the ability to protect their interests by looking for published notices. The Estate and Trust Law Section of the MSBA recognizes that improvements could be made in the process for notifying creditors of the opening of an estate, but problems with the notice procedure should not be addressed in a way that harms the efficient administration of estates. The vast majority of creditors are able to present timely claims under the current system, but HB 802 would harm every estate in Maryland.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **opposes HB 802 and urges an unfavorable committee report. For Further Information, Please Contact:**

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