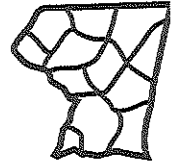




Paul G. Zimmermann
Register

OFFICE OF THE
REGISTER OF WILLS
FOR CARROLL COUNTY
55 N. Court Street • Room 124
Westminster, Maryland 21157



410-848-2586
410-876-3158
Fax: 410-876-0657
Toll Free: 1-888-876-0034

February 21, 2022

To: The Honorable Luke Clippinger
Chair, Judiciary Committee

From: Paul Zimmermann
President, Maryland Register of Wills Association

Re: HB802- Estates and Trusts - Claims Against an Estate - Statute of Limitations - Unfavorable

Chairman Clippinger and members of the Committee:

My name is Paul Zimmermann, and I am the Register of Wills for Carroll County and the President of the Register of Wills Association for the State of Maryland. I am speaking today on behalf of the Register of Wills Association.

I write to respectfully recommend an unfavorable report for House Bill 802, as its enactment would generate several problems for the timely administration of probate estates in Maryland.

The primary purposes of the Estates and Trusts Article is to "simplify the administration of estates, to reduce the expenses of administration (and) to clarify the law governing the estates of decedents". (Estates and Trusts § 1-105(a)). Maryland Rule 6-104 specifically states that the "rules shall be construed to secure simplicity of procedure, fairness in administration and elimination of unjustifiable expense and delay".

The current law provides a limitation on creditors filing claims against an estate 6 months from the date of death of the decedent. The State of Maryland has 6 months from the date of the last notice of the opening of an estate printed in a newspaper of general circulation. The only variance from this is that the Personal Representative can shorten the claim period to 2 months if the Personal Representative provides specific Notice to a Creditor. (Estates and Trusts § 8-103)

Creditors do not have to wait for direct notice or published notice to file a claim. The Creditor can file before an estate is even opened.

The proposed changes would allow for claims to be filed, in most cases, 3 years or more after an estate is opened. That is the general Statute of Limitations for Maryland. However, there

are circumstances where the Statute of Limitations could be up to 20 years. An example is Courts and Judicial Proceedings Article §5-108, in which the Statute of Limitations for injury to a person or property occurring after completion of improvement to realty is 20 years plus up to three additional years to file a cause of action.

House Bill 802 would create the following issues I'd like to bring to the Committee's attention:

For the family: The decedent's family would not get closure or have access to their inheritance, and possibly its livelihood for a number of years. Families are frequently already upset with a wait period of 6 months for distribution, putting a strain on family resources. I can't imagine telling the family that they have to wait for distribution for at least 3 years, if not more, because no one knows claims may be lurking out there. For lower- and middle-income families this would produce a particularly substantial strain on them. In addition, the legislature has provided for Modified Administration of an Estate, a quicker means of resolving an Estate under certain circumstances. This would no longer be viable as a Modified Administration must be closed within 12 months of opening.

For the Personal Representative: If the Personal Representative makes any distributions from the estate prior to the claim period running, the Personal Representative bears personal fiduciary responsibility for any disbursements. The Personal Representative would also face an ethical quandary, as to their responsibilities. Estates and Trusts §7-101 provides that a Personal Representative is "under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will and the estates of decedents law **as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.**" (Emphasis added.) The Personal Representative is required to make distribution of all of the assets of the estate within the time for rendering the First Account, which is 9 months, unless the time is extended by Order of the Orphans Court for good cause shown.

For the Estate and the PR: There would be additional costs and paperwork. The Personal Representative is required to file an Account every 6 months until the assets of the Estate are distributed, and the estate is closed. This would require several unnecessary filings, at additional cost to the estate. If they cannot distribute the property for 3 plus years, they will have to continue to pay the expenses of any real property (including mortgages, taxes, utilities etc.) which will come out of the estate and lessening the value of the estate for distribution. Income taxes would have to be filed every additional year until closure. All of this will result in unnecessary costs to the estate.

For the attorney: I will defer to testimony from the Estates and Trusts Section Council of the Maryland State Bar Association on this issue.

For the Register of Wills: We are the initial contact with people who have lost a loved one. As I stated previously, people are already upset, when they are told that they have to keep an estate open for 6 months for potential claims, which is required by current law. I can't imagine their reaction when they are told they cannot have their money for 3 years. We open approximately 30,000 estates in a year across the State. Under this bill we would need to keep the estates open much longer. We would need to review additional Accounts that would not ordinarily be unnecessary. In addition, the legislature approved a Paperwork Reduction Initiative that allows us to get rid of estate papers (other than Wills and Codicils) six months after estates close. If we must hold the

paperwork for an additional 2-3 years, the backlog of paper just sitting would be immeasurable.

For the Orphans' Courts: Very few Courts meet daily. In the smaller counties they may meet one or two days a week. Carroll County is considered a medium-large county and our court sits only two days a week. The Courts would have to review additional paperwork in every estate, every 6 months.

I'm uncertain who the beneficiaries of this legislation are aside from creditors and/or their attorneys who fail to do their due diligence, to the detriment of all our constituents. Most creditors timely file claims now. We are not aware of any complaints regarding the time frame for filing claims. If there are specific circumstances that we could address, we are willing to work with the Committee to address that situation. Otherwise, with this bill, the fixing of one problem would create so many other issues, particularly for the constituents to whom we all answer.

Respectfully, based on the above, the members of the Maryland Register of Wills Association unanimously recommend an unfavorable report on House Bill 802.

Thank you,

A handwritten signature in black ink, appearing to read "Paul Zimmermann", with a long horizontal flourish extending to the right.

Paul Zimmermann

Register of Wills for Carroll County, MD
President - Maryland Register of Wills Association