

ABR SB792 Favorable.pdf

Uploaded by: Alexis Burrell-Rohde

Position: FAV



ALEXIS BURRELL-ROHDE

REGISTER OF WILLS, BALTIMORE COUNTY
COUNTY COURTS BUILDING
MAIL STOP 3507
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204

410-887-6680

registers.maryland.gov
FAX 410-583-2517

February 23, 2023

The Honorable Guy Guzzone, Chair
Budget and Taxation Committee
Miller Senate Office Building, 3 West
Annapolis, MD 21401

SUPPORT (FAV) – SB 792 – ESTATES AND TRUSTS – REGISTERED DOMESTIC PARTNERSHIPS

Dear Chair Guzzone and Committee Members:

My name is Alexis Burrell-Rohde. I am the Register of Wills for Baltimore County and testifying in favor to Senate Bill 792.

In 2021, a Gallup poll found only 46% of U.S. adults have a will. This means that for most Americans, intestacy laws become their *de facto* estate plan. In Maryland, roughly 60% of estates are intestate. With this in mind, an Intestacy Workgroup was formed with the goal of modernizing Maryland's laws of intestacy, to better match the expectations of the public and to reflect the changing nature of modern family structures. The Intestacy Workgroup met between March 3, 2022, and August 24, 2022. The workgroup consisted of representatives from the Register of Wills Association, Trusts and Estates Section of the Maryland Bar, Maryland Legal Aid and judges of the Orphans' Court. The workgroup analyzed data compiled from various Register of Wills offices in Maryland, national data on intestacy and demographics, and surveyed the laws of intestacy from other states for best practices and examples.

In total, the workgroup spent dozens of hours researching and deliberating a wide variety of options for reforming Maryland intestacy law and has produced a set of recommendations based on those intensive work sessions. The workgroup elected to study a relatively narrow set of policy areas where consensus could be achieved without venturing into more controversial areas such as the elective share or inheritance taxes. The workgroup focused on 1) the intestate share of the surviving spouse 2) removing the term "illegitimate child" 3) domestic partners and 4) shares to descendants of great-grandparents.

Intestate Share of the Surviving Spouse

One of the most misunderstood provisions of Maryland's intestacy laws is the fact that a surviving spouse does not always receive 100% of the predeceased spouse's estate. Particularly surprising is that parents are entitled to a share of a predeceased spouse's estate. Maryland is also the only state where the surviving spouse's intestate share of an estate is dependent on the age of surviving children and the length of the marriage. To create a more uniform, easy to understand and modern share for the surviving spouse, the workgroup recommends that a surviving spouse receive 100% of the estate unless there are minor children or children that are not of the deceased and surviving spouse. In cases where there are minor children, the children will inherit 50% of the estate, which is the same as existing law and designed to protect children's best interests. If there are children from outside the marriage, the surviving spouse will receive the first \$100,000 and split the remainder 50% to the spouse and 50% to the surviving adult children. Finally, the legislation removes the distinction between marriages of more or less than 5 years under the belief that all marriages are equal and deserve the same treatment.

Removing the Stigmatizing Term "Illegitimate Child"

Maryland law currently calls children of a marriage "legitimate children" while referring to children from outside a marriage as "illegitimate." The workgroup recommends removing this stigmatizing language and referring to all children simply as "children." There is no such thing as an illegitimate child and this change makes that clear in law.

Domestic Partner Registry

Under current law, domestic partners are treated as legal strangers in intestacy with a minor exception for a jointly owned primary residence. This means that domestic partners, despite sharing lives, children and finances together receive almost no benefits upon the death of one partner. They are not provided the family allowance, exception from inheritance taxes or priority in serving as personal representative of the estate. This means that even if a couple shares a life together, including intertwining finances, the surviving domestic partner inherits nothing whatsoever in an intestate estate and in a testate estate leaving property to a domestic partner, that person pays a 10% inheritance tax on property that was already bought and paid for with their own money.

A growing number of couples – individuals of all ages, income levels, sexes, religions or any other characteristics are choosing not to marry – for a wide variety of legitimate reasons. Recognizing this trend and the inequity of current law, the workgroup recommends treating domestic partners, who properly register their relationship and attest to the relationship under the penalty of perjury, the same as a spouse for the purposes of probate. This means that a surviving domestic partner will receive the \$10,000 family allowance, the ability to inherit property the same as a spouse in intestacy, priority appointment as the personal representative of the estate, and the same inheritance tax exemption as a spouse. A domestic partner will not have the ability to elect against a will in the event a will disinherits them.

Shares to descendants of Great-Grandparents

Under current law, if a person dies intestate, property passes to their descendants all the way down to descendants of their great-grandparents. While this is very rare, this means that property may pass to very distant family members the deceased may never have met. These individuals are often referred to as "laughing heirs" because they are inheriting money from someone they have never met and didn't know existed. Most states have ended the right of "laughing heirs" to inherit and the workgroup recommends Maryland do the same. Because these heirs are very distant and often unknown to the deceased, they are often difficult and expensive to locate using heir search companies – sometimes the expense of finding these descendants exceeds the assets in the entire estate. In light of this fact and Maryland's minority status in this provision, the workgroup recommends removing the great-grandparent level of inheritance. This change also has the positive effect of moving step children up one space in the order of intestacy.

Our workgroup diligently studied Maryland's laws, the laws of other states and eventually found consensus on these limited recommendations. We don't take altering the laws of intestacy lightly as changes to intestacy can have profound consequences on families and loved ones. We should only change the law when it is no longer meeting the needs and expectations of Marylanders. I am confident, these changes will benefit most Marylanders and better modern family structure and what the average person thinks should happen when a loved one dies. In particular, families of modest means will benefit where splitting up a relatively small amount of assets often means being forced to sell the family home or other valuable assets that would be better left intact to preserve intergenerational wealth. Taken together, these changes should improve economic equity in Maryland, simplify the probate process, limit intra-family conflict and meet the needs of modern relationships. For these reasons, I respectfully recommend a favorable report on Senate Bill 792.

Best regards,

Alexis Burrell Rohde



Register of Wills for Baltimore County

SB792 - Macfarlane - FAVORABLE.pdf

Uploaded by: Byron Macfarlane

Position: FAV



BYRON E. MACFARLANE
REGISTER OF WILLS FOR HOWARD COUNTY
9250 JUDICIAL WAY, SUITE 1100
ELLCOTT CITY, MARYLAND 21043
410.313.2133 – www.registers.maryland.gov – bmacfarlane@registers.maryland.gov

February 23, 2023

The Honorable William C. Smith, Jr., Chair
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, MD 21401

RE: SB792 – Estates and Trusts – Registered Domestic Partnerships – FAVORABLE

Dear Chairman Smith and Members of the Committee,

My name is Byron Macfarlane, I am the Register of Wills for Howard County, and I write to respectfully request a favorable report for Senate Bill 792.

Background

Last year, legislation was introduced to establish a task force to study the laws of intestacy – the laws that govern who inherits when someone dies without a Last Will and Testament. This task force would have directed members to examine Maryland’s intestacy laws, analyze and compare the laws and practices of other states, examine any other research, analysis, or guidance to the laws of intestacy, and to make recommendations to the General Assembly on revisions to these laws. At the request of the Estates & Trusts Section Council of the Maryland State Bar Association, this bill was withdrawn as a workgroup of stakeholders had already begun to form organically with a mission of achieving the precise goals of the proposed task force. This workgroup was initially comprised of Registers of Wills, Orphans’ Court judges, and Estates & Trusts attorneys – from solo practitioners to attorneys at large firms to pro bono legal aid attorneys – and worked for nearly a year to conduct our research, discussions, and to carefully formulate the recommendations that are embodied in Senate Bill 792.

Guiding Principles

The principal goals of this workgroup were (1) to modernize outdated statutes, (2) bring our intestacy laws more in line with what the average citizen assumes happens when someone dies without a will, (3) bring Maryland’s laws more in line with other states, and (4) in recognition of the growing number of adults who partner and do not marry, establish a domestic partnership registry in Maryland.

Analysis – Intestacy Reform

Three areas of Maryland’s intestacy laws we identified as needing reform are the share due to a surviving spouse, Maryland’s inclusion of great-grandparents and their descendants in the line of intestate succession, and some objectionable and inaccurate terminology in existing law. (*You may find a side-by-side summary of these changes included at the conclusion of my written testimony*).

Share of Surviving Spouse

This legislation proposes changes to the share of the surviving spouse in three circumstances: (1) when all of the surviving issue of decedent are adults and are also issue of the surviving spouse, (2) when there is surviving issue of the decedent who are not also issue of the surviving spouse, and (3) when there is no surviving issue but surviving parents.

1. Under current law, if a decedent dies with surviving adult children and a surviving spouse, the surviving spouse is not guaranteed to inherit the entire estate. This comes as a shock to families after the death of a spouse or parent. The general public assumes that when you are married, your spouse inherits your estate when you die. To correct that and to bring Maryland more in line with the majority of states, we propose that in these circumstances – when all of the surviving children of the decedent are adults and also children of the surviving spouse – the surviving spouse will inherit the entire estate.
2. As previously stated, if a decedent dies with surviving adult children and a surviving spouse, the surviving spouse receives the first \$40,000 of the estate plus one half of the remainder of the estate, and the children receive the other half. Compared with other states, this is a fairly miserly provision for the surviving spouse. Most states provide that the surviving spouse received a much larger initial share and a larger fractional share of the remainder of the estate. To further bring Maryland more in line with most states, we propose that when a decedent dies with children who are not also children of the surviving spouse – from a prior partner or spouse – the surviving spouse would inherit the first \$100,000 plus one half of the remainder of the estate.
3. Under current law, if a decedent dies with no surviving children, a surviving spouse, and one or more surviving parents, the surviving spouse is also not guaranteed to inherit the entire estate. As with item 1 above, this comes as quite a shock to members of the public, who assume that parents do not inherit if a decedent was married at the time of their death. Until a few years ago, the Maryland law provided \$40,000 plus one half of the remainder to the surviving spouse, and parents receive the other half. This was modified so that the surviving spouse would receive the entire estate if they were married five years or more. This was an arbitrary and, in my view, constitutionally questionable distinction. It is based on a dated and prejudicial attitude that the *value* of a marriage should be based *solely* on the length of that marriage. This is yet another instance where Maryland law is an anomaly compared to other states, so we propose eliminating this dubious five-year requirement to simply state that if a decedent dies with no children and a surviving spouse, the surviving spouse receives the entire estate.

Lastly, I want to note that under current law, if the decedent dies with any surviving minor children, the surviving spouse receives 50% of the estate and the children receive the other 50%. While Maryland holds the distinction of being the only state in America that differentiates between minor and adult children, concerns from stakeholders led us to recommend no changes to this aspect of current law.

Share of Great-Grandparents and Their Descendants

Maryland is in the minority of states that includes great-grandparents and their descendants in our intestate succession laws. Most states stop looking for living heirs at grandparents and their descendants (aunts, uncles, and first cousins). Over 98% of estates do not progress beyond the spouse, descendants, ancestors, and siblings. Almost the entire remainder involves grandparents and their descendants. It's fair to say it is a fraction of a percent of all estates in Maryland that involve relatives more distant. In these rare estates, identifying and locating these distant relatives can require the Personal Representative to hire professional heir search firms and their services can cost estates thousands of dollars in fees. It is also usually the case that there was no meaningful relationship between the decedent and those relatives. These statutes are sometimes referred to as "laughing heir" laws because the heir is so distantly related, they probably didn't know or barely knew of the decedent. Between its infrequent use, the likely cost-prohibitive requirement to locate such distant relatives, and the unreasonableness of permitting such distant relatives to inherit, this legislation would simply eliminate the great-grandparent provision from our intestacy laws. This will also bring stepchildren – who are the only non-blood relatives who can inherit in intestacy – one step closer to the decedent.

Revised Terminology

Current Maryland law refers to both "legitimate" and "illegitimate" children. These terms are stigmatizing and offensive and there are alternative methods of identifying children based on whether they were born of a marriage or not. We propose using the term "natural" child and eliminating the use of both "legitimate" and "illegitimate" in the Estates & Trusts Article. We also hope that this leads to the removal of the term "bastards" from the Index in the Estates & Trusts Article, a similarly dated and offensive term.

Current Maryland law also makes reference to a decedent's "paternal" and "maternal" grandparents, when we know that not everyone has pairs of male and female grandparents. Some individuals will have a pair of grandparents of the same gender or individual grandparents are non-binary or gender non-conforming. There is no legal basis for using gendered terms for these provisions, so we recommend instead referring to each "pair" of grandparents.

Analysis – Domestic Partnerships

This legislation takes an important step to recognize that adults in committed relationships are increasingly choosing to partner rather than marry. National statistics show at least 7-8% of cohabitating adults are partnered and I think it's safe to say that number will increase over time. As we acknowledge how many loving and dedicated relationships look today and how we anticipate this way of life to continue and grow, our laws should reflect this and respect the decisions of our residents to orient their relationships however they choose. This is

why this legislation proposes Maryland join over 10 other states by establishing a domestic partnership registry and explicitly bestow specified benefits to those individuals who are registered domestic partners.

When it comes to probate, domestic partners are treated as legal strangers for the most part. They have no right to serve as Personal Representative and are not entitled to inherit from their partner's estate. They are also subject to inheritance tax, with one limited exemption for jointly held real property. The lack of protections for the surviving partner can lead to intense conflict with the biological family of the decedent and a tax burden imposed on what is often jointly accumulated wealth.

What we propose is that any two individuals who are not otherwise partnered or married, may apply to become registered domestic partners with their local Register of Wills. We would charge a nominal fee and maintain a statewide database of these registered partners. It would put a surviving partner on equal footing as a surviving spouse if the decedent dies without a Last Will and Testament. So, a surviving registered domestic partner would have the same priority to serve, the same right to inherit, the same right to a spousal allowance, and the same right to be exempt from the inheritance tax as a surviving spouse. It's important to note that the partners would have to take the affirmative step of registering as partners prior to either of their deaths for these benefits to be granted. Put another way, a surviving partner cannot simply appear at a Register's office to open an estate and claim they were partnered. They would need to file an application, signed under the penalties of perjury, with a notary seal, during their lifetimes in order for the surviving partner to be treated the same as a surviving spouse if the decedent died without a Last Will and Testament. This new registry would be an affordable and cost-effective method for partners to obtain some limited protections in lieu of more robust and more expensive estate planning, which many Marylanders simply cannot afford.

Conclusion

Senate Bill 792 represents years of comprehensive research, debate and compromise among stakeholders, and, ultimately, a package of reforms that will substantially improve Maryland's outdated intestacy laws. I appreciate the opportunity to present testimony to this Committee and I respectfully recommend a favorable report to Senate Bill 792.

Sincerely,



Byron E. Macfarlane
Register of Wills

SB792 West FAV.pdf

Uploaded by: Christopher West

Position: FAV

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville-Timonium, MD 21093
410-823-7087

February 23rd, 2023
Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill – 792 - Estates and Trusts - Registered Domestic Partnerships

Dear Chairman Smith and members of the Committee,

The laws of intestacy regarding who inherits if a Maryland resident dies without a will have not been updated to reflect modern families. Senate Bill 792 will remedy this issue.

The bill allows domestic partners to register their domestic partnership by filing a declaration with the Register of Wills in the county in which they are domiciled. By registering, a surviving domestic partner will have the same right to an intestate share of the deceased domestic partner's estate as a surviving spouse would have, and the inheritance tax will not apply to the amounts received.

Senate Bill 792 also eliminates "legitimate child" and "illegitimate child" with more appropriate terminology. Furthermore, if there are no minor children, and no adult children from a prior relationship, the surviving spouse or registered domestic partner's share is increased to the entire residuary estate.

In the scenario in which there is no surviving minor child but there are adult children from another relationship, the spouse's/registered domestic partner's share will be the first \$100,000 (rather than \$40,000), plus one-half of the residue. Also, great-grandparents and issue of great-grandparents are deleted as classes of intestate beneficiaries.

No changes have been made regarding the inheritance of a minor child, and task force including estate attorneys, two Registers of Wills, and other stakeholders collaborated on this bill.

I appreciate the Committee's consideration of Senate Bill 792 and will be happy to answer any questions the Committee may have.

SB 792 - MSBA Estate and Trust Section Council Wri

Uploaded by: Laura Thomas

Position: FAV



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 23, 2023

Subject: **SB 792** – Estates and Trusts – Registered Domestic Partnerships

Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 792 – Estates and Trusts – Registered Domestic Partnership.**

Description of Current Law

“The purpose of statutes of descent and distribution is to make such a will for an intestate as intestate would have been most likely to make.” *Barron v. Janney*, 225 Md. 228 (1961).

Intestacy laws are the laws that determine the distribution of a probate estate when a person dies without a valid, operative Will. Maryland’s intestacy laws were last updated as a whole in 1974 when Maryland adopted an early version of the Uniform Probate Code. More recently, revisions have been made to the laws to increase a surviving spouse’s share of an intestate estate and to eliminate parental inheritance when a decedent was married for more than 5 years prior to death. Since 1974, the structure of families and relationships of the citizens of our state have changed and those changes necessitate an update to Maryland’s intestacy laws to “make such a will for an intestate as intestate would have been most likely to make”.

Beginning in March 2022, a task force consisting of representatives of the Estate and Trust Section of the bar, organizations serving low income Marylanders, and Registers of Wills met on a monthly basis to review and discuss whether Maryland’s intestacy laws reflected the disposition of assets in a way similar to the testate estates of Marylanders. Each section of the intestacy law was reviewed and the recommendations of the task force form the basis of this legislation.



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

Problems Addressed by this Legislation:

Currently, Maryland intestacy law does not provide for a distinction between nuclear families and blended families. In addition, the intestacy laws do not recognize couples who decide not to marry, even though their financial and personal affairs are entwined in many of the same ways as a married couple. Maryland is also one of only 8 states in the country that provide surviving parents the same share of an intestate estate as children of the decedent would have received, even if there is a surviving spouse of the decedent. Lastly, the inclusion of descendants of great-grandparents as potential heirs causes a costly search for distant relatives of the deceased person, even when the deceased person has a Will.

How this Legislation Solves the Problems:

Senate Bill 792 modernizes Maryland intestacy laws in the following ways:

1. Creates a distinction between nuclear and blended families when there are only adult children
2. Increases the intestate share of the surviving spouse to 100% in intestate estates when all the adult children of a deceased person are also the children of the surviving spouse and there are no minor children.
3. Increases the intestate share of the surviving spouse in intestate estates when there are no minor children, and all the adult children of a deceased person are not the children of the surviving spouse.
4. Creates a domestic partnership registry to provide a surviving registered domestic partner the same rights as a surviving spouse (i) when determining the share received from an intestate estate; (ii) when determining the family allowance; (iii) in the priority of appointment as the Personal Representative, and (iv) regarding the inheritance tax.
5. Eliminates surviving parents as heirs in an intestate estate if the decedent and their spouse are married less than 5 years.
6. Eliminates descendants of great-grandparents as heirs in an intestate estate.



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

Below are examples comparing current law with the proposed changes regarding a surviving spouse's or surviving domestic partner's share of an intestate estate:

Taylor and Leslie are a married couple who are the joint parents of two adult children. Taylor dies with a \$200,000 residuary probate estate. Leslie receives:

Current Law	Proposed Legislation
\$40,000 + \$80,000 = \$120,000	\$200,000

Taylor and Leslie are a married couple. Taylor has two adult children from a prior relationship. Taylor dies with a \$200,000 residuary probate estate. Leslie receives:

Current Law	Proposed Legislation
\$40,000 + \$80,000 = \$120,000	\$100,000 + \$50,000 = \$150,000

Taylor and Leslie are a married couple with no children who have been married for 4 years and 11 months. Taylor's mother is living. Taylor dies with a \$200,000 residuary probate estate. Leslie receives:

Current Law	Proposed Legislation
\$40,000 + \$80,000 = \$120,000	\$200,000

Taylor and Leslie are domestic partners (and under the proposed legislation, registered domestic partners). Taylor has no surviving descendants, no surviving parents or descendants of parents, and no surviving grandparents or descendants of grandparents. Taylor dies with a \$200,000 residuary probate estate. Leslie receives:

Current Law	Proposed Legislation
\$0*	\$200,000
Leslie is last in the priority of persons entitled to Letters of Administration	Leslie is the first person entitled to Letters of Administration

*Taylor's estate would also need to determine if there are any living descendants of Taylor's great-grandparents who would inherit.



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 792 and urges a favorable committee report. For further information, please contact:**

Christine W. Hubbard
(410) 798-4533
christine@chubbardlaw.com

Sarah B. Kahl
(410) 244-7584
sbkahl@venable.com

Laura Thomas
(443) 537-2891
lthomas@darslaw.com