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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 At the request of the Estates & Trusts Section Council of the Maryland State Bar Association, this bill was withdrawn as a workgroup of stakeholders had already begun to form organically with a mission of achieving the precise goals of the proposed task force.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The principal goals of this workgroup were (1) to modernize outdated statutes, (2) bring our intestacy laws more in line with what the average citizen assumes happens when someone dies without a will, (3) bring Maryland's laws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