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To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 27, 2023

Subject: **SB 769**– Baltimore City – Residential Real Property – Disclaimed Property and Exemptions from Prepayment

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) wishes to offer comment on **Senate Bill 769**.

SB 769 allows Baltimore City to acquire certain disclaimed residential real property of a decedent’s estate that has been closed and if the appointment of the personal representative has terminated.

We do not express an opinion about the merits of this bill; rather, we are writing to ensure the process of disclaimer is fully understood. If a formal disclaimer is filed, it means that someone in the decedent’s family did not want the property—it does not necessarily mean that nobody in the decedent’s family wanted the property, although we anticipate that is sometimes the case. Disclaimer shifts the interests of one heir to other heirs.

When property is disclaimed from an estate, the person initially entitled to receive the property formally renounces the interest in the property. The disclaimer must be in writing and delivered to the personal representative, or if none, to the Orphans’ Court.

If the initial person entitled to receive the property files a formal disclaimer, then another person would have a right to receive the property. Usually, this new recipient is the same person who would receive if the first recipient had been deceased. In some cases, a person will disclaim property knowing that it will pass instead to that person’s children.



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In the normal course of administration, if property is disclaimed, the personal representative would find the next person in line and transfer the property to that person. If that person also disclaimed, then the process would continue. The person next in line may or may not be considered an Interested Person who would have received notice of estate proceedings.

If an estate has been closed, the court has allowed the personal representative to be terminated, and property has been formally disclaimed without a new recipient taking the property, something has gone awry with the estate administration process. It may be that the next person in line could not be found, or the lack of a personal representative means that there is no one looking for the next person in line, or there is an awareness that no family member will be willing to accept the property because of associated liabilities. All of these could trap the property in the estate, a problem that we anticipate SB769 is intended to address.

In short, a single disclaimer shifts the interest in property to another heir, but the fact pattern identified by the bill may suggest a failure in the process to get the property to that person.

We hope this is helpful in your evaluation of SB769.

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