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The Honorable Luke Clippinger, Chair
Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

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

Dear Chair Clippinger 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, which has crossed over from the Senate on a unanimous vote and was heard in this chamber on March 1st as HB755.

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