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**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

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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.



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## **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.



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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.



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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:**

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