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**To:** Maryland House of Delegates – Ways and Means Committee

**From:** MSBA Estate & Trust Law Section

**Date:** March 7, 2024

**Subject:** **HB 1349** – Estates and Trusts – Elective Share of Surviving Spouse – Exclusion of Inherited Property

**Position:** **Oppose**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes House Bill 1349 – Estates and Trusts – Elective Share of Surviving Spouse – Exclusion of Inherited Property**, and urges an **unfavorable** report.

This bill attempts to exclude property “inherited” by a decedent from the estate subject to election by a surviving spouse. If enacted, it would upset centuries of settled law protecting the interests of surviving spouses and place them at economic risk. In addition, the bill’s language is vague, and would give rise to much litigation. Finally, the change sought by this bill is unnecessary because the law already contains protections for legacy assets.

Since colonial times, Maryland law, in one way or another, has protected widows and widowers by giving them rights in their deceased spouses’ estates. Those laws have evolved over time with changing modes of asset ownership, but the basic principle has remained constant: those assets within a decedent’s dominion and control are subject to the elective share regardless of their origin. Those evolutions – the most recent of which took effect in 2020 – uniformly have expanded the pool of assets available to surviving spouses. HB 1349 would reverse that trend and alter longstanding policy by removing inherited assets from the formula regardless of how long a decedent has held them, the amount of control the decedent exerted over them, or the degree to which the couple relied upon them for their economic support.

It is not unusual for a person to receive a significant portion of their wealth through inheritance. That can happen at any time during their lifetime, and couples often rely upon those assets for their living expenses, to assist with the purchase of a home, or for other elements of their financial support. In many instances, those assets form an integral part of a couple’s financial lives for many years, and their presence may factor into their long-term financial planning. If inherited assets are removed from the elective share equation, a surviving spouse who thought themselves financially secure suddenly could find themselves in an economically precarious position, perhaps to the level of needing public support.

In addition to jeopardizing the economic security of widows and widowers, HB 1349 would invite significant litigation in determining the value of an elective share. Maryland law does not define the term “inherited.” It can be read narrowly to apply only to assets passing through probate, or expansively to encompass all assets passing by reason of someone’s death, including life insurance, retirement accounts, jointly held assets, and assets received from trusts. Even if the definitional issue could be resolved, enactment of HB 1349 would create a “tracing” problem. Inherited assets may have been owned for many years. They may have become co-mingled with other assets. How are they to be properly identified? Who bears the burden of proof? All of these issues would need to be litigated if HB 1349 is enacted.

Finally, HB 1349 is unnecessary. Existing elective share law provides ample opportunities for families to plan for the transmission of legacy assets in a way that removes them from the elective share calculation. Even if the person from whom the decedent received the asset does not plan for it, the existing statute encourages the Orphans’ Court to consider heirloom assets – such as multi-generational family homes or items of artwork passed down the generations – in calculating the elective share. If someone believes that including a certain asset in the elective share calculation is unjust, they have ready access to judicial relief.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **opposes House Bill 1349 – Estates and Trusts – Elective Share of Surviving Spouse – Exclusion of Inherited Property**, and urges an **unfavorable** report.

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