



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: March 3, 2025

Subject: **HB 928** – Estates and Trusts – Wills – Married Couples and Registered Domestic Partnerships

Position: **Oppose**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes** House Bill 928 – **Estates and Trusts – Wills – Married Couples and Registered Domestic Partnerships**. **House Bill 928** places additional formalities when married couples or registered domestic partners are signing their wills in Maryland. If these custom formalities are not met, the wills of married couples or registered domestic partners would be invalid.

Description of Current Law

The formalities surrounding the execution of a will have been in place in essentially the same form in Maryland since the Acts of 1798. To be valid, a will must be made in writing, signed by the testator (or by some other person in the testator's presence and at the testator's express direction, and attested and signed by two witnesses in the physical or electronic presence of the testator.

If there is evidence of undue influence or other fraud, by a witness, legatee, or anyone else, an interested person may challenge a will in a caveat proceeding in the Orphans' Court. The fact that the person accused of undue influence was present at the execution of the will or served as one of the witnesses can be a factor suggesting undue influence, but other factors must exist for a finding of undue influence.

The result of a caveat proceeding may be to keep the will intact, to modify the will to strike the portion of the will benefitting the person influencing the testator, or to invalidate the entire will, depending on the facts and circumstances.

Proposed Change to Current Law

House Bill 928 places two, additional requirements for married couples and registered domestic partners to follow when signing their wills. (1) The testator/testatrix must not be in each other's physical or electronic presence when signing their wills and (2) the witnesses for the will of one person may not witness that person's spouse or domestic partner's will.

Problems with the Proposed Law

House Bill 928 creates a broad and burdensome solution to a narrow issue (one spouse unduly influencing or coercing the other regarding the disposition of his or her estate).

Unduly Burdensome: Couples and registered domestic partners typically work together to create an estate plan. The proposed law would require that they be separated for the purpose of signing *and* that their wills not share any witnesses. If an attorney prepares the wills, this may be burdensome because of the additional time, space, and manpower it would require. For wills that are prepared without the assistance of an attorney the danger of non-compliance would be high. The restriction on witnessing is not limited to a timeframe.

If I witnesses someone's will, I am never permitted to witness that person's spouse or registered domestic partner's will. Most witnesses do not keep a log of the documents they have witnessed and for whom. This could easily result in wills being invalidated.

Overly Broad Remedy: The remedy in the proposed law for when a will is signed in the present of a spouse or registered domestic partner, or witnessed by a shared witness, is the invalidation of the entire will. If the concern is to protect testators from the undue influence of a spouse or registered domestic partner, the remedy should be tailored to apply only to the provisions of the will benefiting the spouse or registered domestic partner.

Existing Solution is Superior: Existing Maryland law provides ample solutions to address the issue of undue influence. As noted above, an interested person may caveat the will to demonstrate that it was procured by undue influence and, within that context, the court would have the ability to tailor the appropriate remedy.

An attorney who prepares a will has the opportunity to assess the dynamic between the couple for signs of undue influence or coercion and has an ethical duty to take steps to determine what *each* of their individual wishes are.

House Bill 928 is a blunt instrument, invalidating all wills that spouse or registered domestic partner sign in each other's presence or have shared witnesses. Rather than deterring fraud, this



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bill would be an impediment to spouses or registered domestic partners ability to establish an estate plan.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **opposes HB 928 and urges an unfavorable committee report. For Further Information, Please Contact:**

For further information, please contact:

Christia A. Pritts
(410) 828-7775
cpritts@simscampbelllaw.com

Laura Lynn Thomas
(240) 813-4885
Laura@LegacyLegalMD.com

Deborah Howe
(410) 263-4876
dhowe@frankebeckett.com

David P. Shapiro
President

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President-Elect

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Executive Director