

HB928 Estates and Trusts- Wills- Married Couples a

Uploaded by: Brian Crosby

Position: FAV

BRIAN CROSBY
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

The Honorable Luke Clippinger, Chair
Judiciary Committee
Maryland House of Delegates
Annapolis, MD 21401

March 5, 2025

**Testimony in Support of HB928: Estates and Trusts- Wills- Married Couples and
Registered Domestic Partnerships**

Chair Clippinger, Vice Chair Bartlett, and esteemed members of this committee,

HB928 is presented to prevent a will from being signed under duress. The bill prohibits a testator from signing a will in the presence of his/her spouse or registered domestic partner. Prohibiting a testator who is married or in a registered domestic partnership from signing a will in the presence of their spouse or partner would limit the opportunities where an abusive partner can exert undue influence when signing a will. This measure would protect the testator from potential coercion and ensure that the document reflects the true will of each testator.

HB928 also prohibits an individual who witnesses and signs a testator's will from also witnessing and signing the will of the testator's spouse or partner. This additional requirement would add another layer of protection and would prevent situations where a single individual, possibly influenced by the abusive partner, can manipulate his/her partner into approving a will that benefits the abuser.

The purpose of the legislation arises from a situation in which a spouse was forced to make significant changes to her will without her approval. The spouse was unable to express disapproval of the will due to concerns that stating any opposition would result in physical violence towards her by her husband. Without the client's attorney, who requested her client and the other testator be separated prior to signing the will, the document would have been signed under duress. This legislation ensures that the onus to protect one's client is not exclusively on an attorney or client; it builds protections directly into the process of signing a will.

Thank you for your consideration of this legislation, I urge a favorable report.

Sincerely,

A handwritten signature in blue ink, appearing to be "B. Crosby", written over a horizontal line.

Delegate Brian Crosby
District 29B, St. Mary's County

HB 928 Witnessing Oppose.pdf

Uploaded by: Deb Howe

Position: UNF



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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:**

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House Bill 928 3-5-2025.pdf

Uploaded by: Kimberly Cascia

Position: UNF

House Bill 928

Kimberly Cascia

Unfavorable

House Judiciary Committee

Delegate Clippinger, Delegate Bartlett and Members of the Committee

I have had the privilege and honor to serve the citizens of Queen Anne's County since 2010 as an Orphans' Court Judge and have been a Board Member of the Conference of Orphans' Court Judges appointed by the Chief Justices each year since 2011 and elected by my fellow judges to the MAJOC Board since 2011 as well. I come to you today in my individual capacity and not on behalf of the Maryland Judiciary or any of its parts.

For a will to be valid under current law in Maryland, a will must be (1) in writing (typed or handwritten), (2) signed by the person making the will, and (3) attested and signed by two credible witnesses in the presence of the person making the will. The person making the will and the two witnesses must be at least 18 years of age and legally competent. Audio, oral, and video wills are not valid.

Prohibiting a testator from signing their will in the presence of their spouse or registered domestic partner, as well as prohibitive witnessing, is too restrictive!

Not all citizens use, or can afford an attorney to write their wills. When someone takes the time to put their wishes for distribution of their assets in writing, it should be respected.

It would be wrong to ignore the specifically written instructions of the testator because their spouse or registered domestic partner was one of the witnesses or was present at the signing of the will.

I humbly request that House Bill 928 not receive your approval.

Kimberly Jean Cascia
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