

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 868
Judiciary

(Delegate Rosenberg, *et al.*)

Estates and Trusts - Interpretation of Wills - Evidence of Intent (Granny's Law)

This bill authorizes a personal representative – who has power of attorney or whom a decedent named as the decedent’s caregiver – to petition the court to interpret a will based on the intent of the decedent if the will (1) contains a legacy for a health provider or charitable organization in the health sector and (2) does not expressly provide that the legacy must be used to address health equity issues. The bill requires the court to interpret the will and the intent of the decedent for such a legacy in a specified way, and to defer to the judgment of the personal representative if specified language is included in the will. A personal representative may petition the court to issue an order or judgment against a legatee under certain circumstances after the probate estate is closed. The bill also establishes a State policy relating to health disparities. The bill’s provisions related to interpretation of a will must be construed to apply retroactively and must be applied to and interpreted to affect any will probated on or after October 1, 2021.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary:

Personal Representative – Petition to Interpret a Will

The bill specifies that a personal representative who has power of attorney or whom a decedent named as the decedent's caregiver may petition the court to interpret a will according to the intent of the decedent if the will:

- contains a legacy for a health provider or charitable organization in the health sector; and
- does not expressly provide that the legacy must be used to address health equity issues even though the decedent's life reflected an active interest in health equity issues.

Court Proceeding – Interpretation of a Will and Judgment of the Personal Representative

Under the bill, the court must interpret a will and defer to the judgment of the personal representative regarding the administration of the will as follows:

- (1) ***Interpretation of a Will for Specified Legacy*** – The court must interpret a legacy in a will to a health provider or charitable organization in the health sector as the decedent's intent for the legacy be used to address health equity issues if (1) the personal representative presents evidence satisfactory to the court, including evidence of actions taken by the decedent during the decedent's lifetime, which then creates a rebuttable presumption as to the intent of the decedent, and (2) the rebuttable presumption created by the evidence presented by the personal representative is not rebutted.
- (2) ***Deference to Judgment of the Personal Representative*** – The court must defer to the judgment of the personal representative regarding the administration of the will (which includes any act to address health disparity and must be considered authorized by law unless there is compelling evidence that the personal representative is acting contrary to the intent of the decedent and with the intent to commit fraud against the estate) if the will includes the following language:

In addition to the powers conferred upon personal representatives and trustees by law, my representative and trustee, or any duly appointed successor, shall have authority without adjudication or order or direction of the court to:

- sell, pursuant to option or otherwise, at a public or private sale and upon such terms as the personal representative shall deem best, any real or personal property belonging to my estate without regard to the necessity of such sale for the purpose of paying debts, taxes, or legacies;
- retain any and all of such property not so required without liability for any depreciation thereof;
- assign or transfer certificates of stock, bonds, or other securities;
- adjust, compromise, and settle any and all claims in favor of or against my estate;
- conduct and carry on all business until such time as the business can be sold and distributed as a going concern or otherwise, and the personal representative shall be exonerated from any loss which may result thereby; and
- do any and all things necessary and proper to complete the administration of all my estate as fully as I could do if I were living.

(3) ***Interpretation of a Will with Above-specified Language*** – The court must interpret a will with language specified above regarding the authority of the personal representative and trustee to ensure that (1) all individuals with powers of attorney or named as caregivers by the decedent during the decedent's lifetime are held accountable and protected and (2) a personal representative holds an interested person accountable for their actions or inactions toward, related to, in honor of, or on behalf of the decedent.

Legatee's Use of Legacy for Health Equity Issues

For the period beginning six months after the probate of the estate and ending three years after the probate of the estate, a personal representative who petitions the court under the bill's provisions may require a legatee (health provider or charitable organization in the health sector) to demonstrate how the legacy was used by the legatee. If the legatee fails to demonstrate that the legacy was used to address health equity issues, in accordance with the court's interpretation of the will, the personal representative may petition the court to issue (1) an order requiring the beneficiary to return the legacy to the estate or (2) a judgment requiring the legatee to pay the estate the value of the legacy. The court may pass any order it considers proper and consistent with the guidance under the bill's provisions.

Health-General Article – State Policy

The bill adds a provision to the Health-General Article specifying that it is the policy of the State to oppose and alleviate any disparity in health outcomes for and among racial

groups in the State resulting from the provision of treatment otherwise available to assist the public in general, and to encourage and support the making of gifts and bequests consistent with this policy to address and alleviate such health disparities.

Current Law:

Orphans' Courts

Under the Maryland Constitution, each county and Baltimore City elects, for a term of four years, three judges to the orphans' court of their respective jurisdictions, with the exception of Harford, Howard, and Montgomery counties, where a circuit court judge sits as the orphans' court. The orphans' courts are the State's probate courts. The courts supervise the handling of estates and also have certain jurisdiction over the guardianship of minors and their property.

Interpretation of a Will – Testator's Intent

The Supreme Court of Maryland, in *Vito v. Grueff*, described that when interpreting a will the primary concern of the court is to understand and effectuate the testator's expressed intent from the "four corners of the will." Extrinsic evidence is inadmissible unless it "clarifies an ambiguous testamentary intent. See 453 Md. 88, 106-108, 110 (2017).

Personal Representative Powers

A personal representative may exercise all of the power or authority conferred on the personal representative by statute or in the will, without application to, the approval of, or ratification by the court. The personal representative has various statutory powers listed in § [7-401](#) of the Estates and Trusts Article. The personal representative may also petition the court for permission to act in any matter relating to the administration of the estate and the court may pass any order it considers proper.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1518 of 2024.

Designated Cross File: SB 1029 (Senator Attar, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Orphans' Court of Baltimore County; Register of Wills; Department of Legislative Services

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Analysis by: Joanne E. Tetlow

Direct Inquiries to:
(410) 946-5510
(301) 970-5510