

REPORT OF THE SPECIAL COMMITTEE
OF THE MARYLAND STATE BAR
ASSOCIATION ON INTESTATE
SUCCESSION

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April 7, 1980

Mr. Michael S. Miller
Director, State Library
Courts of Appeal Building
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Annapolis, Maryland 21401

Dear Mr. Miller:

Pursuant to your request of December 13, 1979 to C. M. Zacharski, Chairman of the Estate and Trust Law Section of the Maryland State Bar Association, I am enclosing a copy of the report submitted to the Board of Governors of the Maryland State Bar Association. The Board of Governors approved the report at its meeting held on March 18, 1980 and in accord with its direction, the report has been forwarded to Governor Hughes at whose request the special committee was appointed.

Very truly yours,

Evan A. Chriss
Evan A. Chriss

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Enclosure

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REPORT OF THE SPECIAL COMMITTEE OF THE
MARYLAND STATE BAR ASSOCIATION ON
INTESTATE SUCCESSION

In response to a request from Governor Harry R. Hughes, President M. Peter Moser of the Maryland State Bar Association appointed a special Committee to review the law of Maryland with respect to intestate succession.

The Committee met on a number of occasions and studied the intestate succession provisions of Subtitle 1 of Title 3 of the Estates and Trusts Article, comparing them with the Uniform Probate Code provisions and surveys of the codes of other states.^{/1} The Committee also secured information and statistics concerning the number and size of testate and intestate distributions in several Maryland jurisdictions.^{/2}

In the course of its deliberations, the Committee considered the six following questions concerning intestate distributions alluded to by the Governor in his letter of July 6, 1979:

1. Where there is no surviving spouse and no surviving issue, should the siblings of the decedent share in the decedent's estate with the parents of the decedent?

The Committee concluded that the present statutory provision which provides that where there is no surviving spouse or issue, the surviving parent or parents succeeds to the entire estate is proper and that there was no demonstrated reason to provide that siblings of the decedent should receive a share of the estate. The intestate succession laws of the great majority of the states with but very few exceptions provide that the entire estate in such instance passes to the surviving parents or



^{/1} Fellows, Simon, Rau, Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States. American Bar Foundation, Research Journal (1978), p. 319. Dunham, The Method, Process and Frequency of Wealth Transmission at Death. 30 Univ. of Chicago L. Rev. (1963).

^{/2} We receive reports indicating the number of large and small estate, and the number of testate and intestate estates from Peter J. Basilone, Register of Wills for Baltimore County, Charles V. Moore, Register of Wills for Caroline County, and James Robey, Register of Wills for Allegany County.

parent with no share for the surviving siblings. It was also the opinion of the Committee that in those instances where the surviving parent or parents did not wish to receive all or any part of the decedent's estate but would prefer that it be distributed to the decedent's siblings, this could be accomplished by a timely filed disclaimer under Subtitle 2 of Title 9 of the Estates and Trusts Article.

2. Where there is no surviving issue but there is a surviving spouse, should the surviving spouse inherit the entire estate in preference to the present Maryland provision which provides for one-half of the estate to pass to the spouse and the remaining one-half to the surviving parent or parents of the decedent?

The intestate succession laws of a majority of the states allow the parent or parents of the married decedent who dies without surviving issue to share in the estate with the spouse. The specific division of estates under these statutes varies considerably. For the reasons set forth below the Committee recommends that the statute should be amended to provide that where there are no surviving issue but there is a surviving parent or parents, the share of the surviving spouse should be the first \$15,000 plus one-half of the residue with the other one-half of the residue to be paid to the surviving parent or parents.

3. Where the decedent is survived by natural or adopted children who are also the natural or adopted children of the surviving spouse, should the surviving spouse inherit the entire estate in preference to such natural or adopted children having a share in the estate?

For the reasons set forth below, the Committee recommends that the statute be amended to provide that where there is no surviving minor child, but there is surviving issue, the share of the surviving spouse should be the first \$15,000 plus one-half of the residue. Where there is a surviving minor child, the Committee recommends that the estate be distributed one-half to the surviving spouse and one-half to the surviving issue. In either case, no distinction is made as to whether or not the surviving issue are also the issue of the surviving spouse.

4. If the surviving children of the decedent are not the children of the surviving spouse, should the surviving spouse's share be larger than the share such spouse would otherwise receive if the surviving

children were also the children of such surviving spouse? It was the conclusion of the Committee that no distinction should be made in such instances as to the share of the spouse.

5. Should all children share equally in the estate of the decedent, regardless of whether they were born of different marriages or whether they are legitimate or non-marital children? Presently the law of Maryland makes no distinction in such instances and the Committee found no reason for any change.
6. Should issue who are of the same generation share equally in the estate? In other words, if there are no surviving children of the decedent, but there are surviving the decedent one grandchild who is the child of deceased child A, two grandchildren who are the surviving children of deceased child B, and three grandchildren who are the surviving children of deceased child C, should the six grandchildren inherit by representation or should all of the grandchildren inherit equal shares? It was the Committee's conclusion that there should be no change to present Maryland law which provides that such grandchildren inherit by representation and not per capita.

Under the Uniform Probate Code, if (1) there are no surviving issue of the intestate decedent but there is a surviving parent, or (2) there are surviving issue of the intestate decedent who are also the issue of the surviving spouse, the surviving spouse receives a guaranteed amount of \$50,000 and the remaining balance is distributed one-half to the surviving spouse and the other one-half to the surviving parent or to such issue as the case may be. The Uniform Probate Code, however, further provides that if one or more of the surviving issue of the intestate decedent are not issue of the surviving spouse, there is no guaranteed amount for the surviving spouse, and the estate is divided equally between the surviving spouse and the surviving issue. At least eighteen states provide for a guaranteed amount for the surviving spouse in amounts ranging from \$4,000 to \$100,000 under varying circumstances.

Simplification of administration and distribution, while desirable in all instances, are of even greater importance in the small to moderate estate. The provision of a guaranteed minimum amount to be paid to the surviving spouse before a division between the spouse and the surviving issue and/or parents of the decedent would, depending upon the amount of the guaranteed minimal payment to the spouse, achieve desirable simplification in the administration and distribution of many small and moderate estates. The problem which arises however is the balancing of the interest of the surviving parent or issue in receiving a share of decedent's estate and the interest of the surviving spouse to have available

at least a guaranteed amount of the accumulated wealth of the marriage before it is shared with the decedent's parents or issue.

It was the sense of the members of the Committee that as a general rule, parents and issue other than minor children are not likely to be dependent upon the decedent's estate for their support. Therefore, the possibility that parents or issue other than minor children might be disinherited by providing for a guaranteed amount for the surviving spouse should not stand in the way of protecting the interest of the surviving spouse who is more likely to have an established financial interdependence with the decedent or is probably wholly dependent upon the decedent. From their varied experience and background, it was also the consensus of the Committee members that testators of small to moderate estates bequeath the great bulk or at least a significant portion of their estates to their surviving spouse in preference to surviving parents or issue. The expressed desires of those making wills was considered to be indicative of what most intestate decedents would probably desire.

It was the opinion of the Committee however that the claim of minor children to share in the estate of their deceased intestate parent was different than the claims of other issue and/or parents of the decedent. Minor children, to a much greater degree than parents or other issue, depend upon the decedent for financial security. Even though the surviving minor children (at least when they are also the children of the surviving spouse) are the natural objects of the bounty and concern of the surviving spouse, it was the feeling of the Committee that they should share in the estate of the intestate parent in all instances. There was concern expressed about the possibility that the minor children might be disinherited as a result of mismanagement of the inherited property by the surviving spouse or as a result of his or her remarriage. The needs of minor children as compared to those of adult children or other issue are generally greater and, as a matter of social policy and public interest, deserve recognition, favor and protection equal to that of the surviving spouse and should not therefore be sacrificed in the interest of simplification of administration or distribution. Accordingly, it was the sense of the Committee that the share of minor children in the estate of an intestate should not be reduced.

Although there was unanimity among the Committee members that there should be some guaranteed amount which should pass to the surviving spouse there was initial diversity of opinion as to what that amount should be. After much deliberation, taking into account: 1) the Uniform Probate Code 2) the statutory provisions of other states 3) the relative size of the estates for which the desired simplification of administration and distribution was most urgently needed and 4) the circumstance that in most small to moderate estates the surviving spouse is usually the beneficiary of insurance and/or jointly owned property which passes to her outside of the probate estate, agreement was reached by the Committee to recommend that the guaranteed amount for the surviving spouse

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should be in the amount of \$15,000 as recommended in paragraphs 2 and 3 above.

Attached to this report are recommended amendments to Section 3-102 of Subtitle 1 of Title 3 of the Estates and Trusts Article which provides for the share of the surviving spouse.

Respectfully submitted,

Hon. J. Joseph Curran, Jr.
Laurence M. Jones
Hon. Suzanne Mensh
W. Jerome Offutt
Hon. Joseph E. Owens
Louis J. Rosenthal
Carol E. Smith
Evan A. Chriss, Chairman

ESTATES AND TRUSTS
TITLE 3
INTESTATE SUCCESSION AND STATUTORY SHARE

Subtitle 1. Intestate Succession

#3.102. Share of surviving spouse.

(a) General. -- The share of a surviving spouse shall be as provided in this section.

(b) SURVIVING MINOR CHILD. -- If there is A SURVIVING MINOR CHILD, the share shall be one-half.

(c) NO SURVIVING MINOR CHILD, BUT SURVIVING ISSUE. -- IF THERE IS NO SURVIVING MINOR CHILD BUT THERE IS SURVIVING ISSUE, THE SHARE SHALL BE THE FIRST \$15,000 PLUS ONE-HALF OF THE RESIDUE.

(d) No surviving issue, but surviving parent. -- If there is no surviving issue but a surviving parent, the share shall be THE FIRST \$15,000 PLUS ONE-HALF OF THE RESIDUE.

(e) No surviving issue or parent. -- If there is no surviving issue or parent, the share shall be the whole estate.

(f) Calculation of net estate. -- For the purposes of this section, the net estate shall be calculated without a deduction for the tax as defined in § 11-109.

Words in capitals indicate changes from present statute.