Intestacy Law Update Will Benefit Domestic Partners, Married Couples

BY LEE CARPENTER | OFFIT KURMAN, PA

Maryland's unmarried couples have gained the right to inherit from each other through intestacy while avoiding the inheritance tax. Under Senate Bill 792, a surviving domestic partner will be entitled to an intestate share equal to that provided to a surviving spouse. The law also gives the surviving partner a family allowance and the right to serve as personal representative of the deceased partner's estate.

When a domestic partner dies with a will, the surviving partner is not entitled to take an elective share. But whether a partner dies with a will or not, the new law exempts the survivor from the inheritance tax on any property received from the decedent.

Senate Bill 792 was sponsored by Republican Sen. Chris West and passed both houses of the Maryland Legislature without a dissenting vote. The legislation was signed into law on May 16 and will take effect on October 1, 2023.

Before the law was passed, Maryland provided no inheritance rights to couples who chose not to marry. In addition, unmarried couples who did prepare wills or will substitutes were still generally subject to the Maryland inheritance tax for any assets that transferred to the surviving partner.

One exception applies to the transfer of a jointly held primary residence. Under a law passed in 2009, Maryland couples who title their primary residence as joint tenants with right of survivorship and prepare an affidavit of domestic partnership can avoid the inheritance tax on the home when one partner dies.

REGISTRATION REQUIREMENTS

Under SB972, unmarried couples who wish to register as domestic partners must complete an affidavit with their names and address. Each partner must be at least 18 years old, unmarried, and in no other domestic partnership. The signed and notarized form must then be mailed or hand-delivered to the Register of Wills in the partners' county of residence with a payment of $25.00. No supporting documentation will be required. The registry is available to same-sex and opposite-sex couples alike.

The registers will all be able to access the records of the other registers, so a couple will be able to move to a different county without having to re-register. In addition, the registers will recognize domestic-partnership registrations from other states where the requirements are substantially similar to those in Maryland.

Once the requirements of registration have been met, the register will issue a certificate of domestic partnership, which will look something like letters of administration. According to Byron MacFarlane, Register of Wills for Howard County, the registers will have the forms and procedures in place by the law's effective date. By requiring the use of a single form, Mr. MacFarlane explained, registration will be simpler than in other jurisdictions, such as Washington, D.C., where domestic partners seeking legal recognition of their relationships must complete three separate forms.

Unmarried couples who have registered with the state can terminate their partnerships in four possible ways—by the mutual consent of the partners, by a partner who has been abandoned by the other partner for at least six months, or upon the death or marriage of either partner.

The law stemmed from the recommendations of a task force that comprised members of the Estate & Trust Section of the bar, organizations serving low-income Marylanders, and several Registers of Wills. The group's charge was to determine whether our state's intestacy laws aligned with the reasonable disposition of assets for those who die testate. In other words, the group sought to determine whether Maryland's rules of intestacy replicate the typical will provisions for someone in similar circumstances. Finding that the Maryland rules fell short on this front, the task force suggested legislative changes that resulted in the new law.

MARITAL PRESUMPTION UPDATE

As part of the recognition of domestic partnerships, SB972 expands the circumstances in which a presumption of parentage will exist.2 A child born or conceived during a domestic partnership will be presumed to be the child of both domestic partners. The presumption will also apply to a child conceived through assisted reproductive technology (ART), such as in vitro fertilization, whose parents are registered as domestic partners.

A child born to a couple who are not married or registered domestic partners is deemed to be the child of his or her mother. The parentage of the non-mother can be established in three ways—(i) by a judicial determination, (ii) by giving his or her consent with the mother to ART with the intent of becoming the child's parents, or, (iii) in an important change, by being identified by the mother as the child's other biological parent and agreeing to the designation.

The law still creates a rebuttable presumption of parentage for the non-mother where this person has acknowledged being the parent in writing, has "openly and notoriously" recognized the child as his or her own, or later marries or enters into a domestic partnership with the mother and acknowledges the child as his or her own.

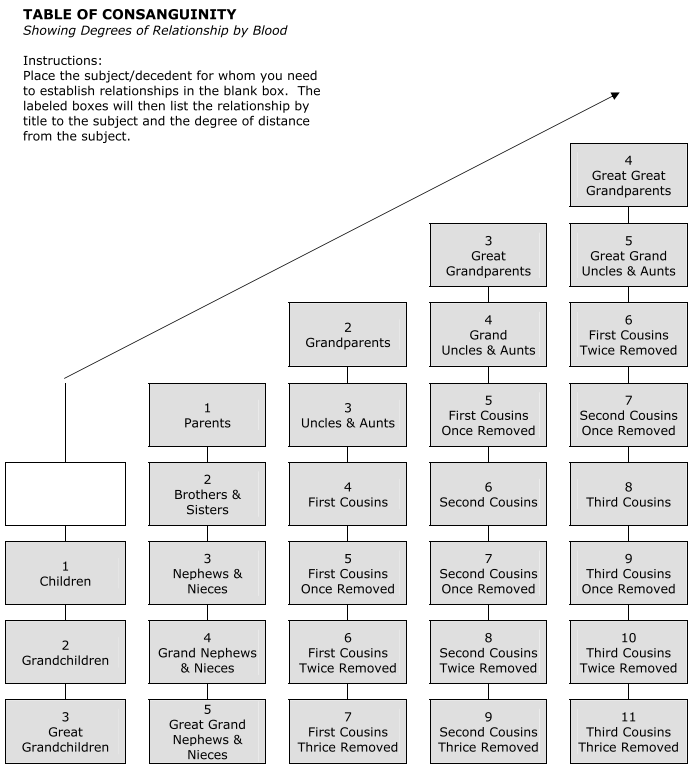
INTESTACY LAW CHANGES

Senate Bill 972 also modernizes the rules of intestacy for some married couples. For example, in a new distinction between nuclear and blended families, the intestate share of a surviving spouse is now 100 percent when all the adult children of the deceased spouse are also children of the surviving spouse and there are no minor children. Under current law, a surviving spouse in this circumstance would receive the first $40,000.00 of the estate plus half of the balance (the other half going to the children). Starting October 1, the surviving spouse will be entitled to the entire estate.

In a blended family, when one spouse dies leaving adult children who are not also children of the surviving spouse and there are no minor children, the surviving spouse is entitled to a larger share of the deceased spouse's estate. Under current law, the surviving spouse would again be entitled to the first $40,000.00 of the estate plus half of the balance (the other half going to the children). Under this new legislation, the survivor is entitled to the first $100,000.00 of the estate plus half of the balance—a significant increase.

For couples who have been married less than five years, the new law eliminates the surviving parents of a deceased spouse as intestate heirs. In instances where there are no children or other descendants and the couple have been married less than five years, the surviving spouse's share is the whole estate.

In a further change, the pool of potential intestate heirs has been reduced significantly. The descendants of great-grandparents are no longer deemed to be heirs of someone who dies intestate. This change limits heirs at law to the first three parentelas, or columns, of a typical table of consanguinity.



Finally, as part of this modernization of the Code, references to a child no longer include the terms "legitimate" or "illegitimate," relying instead on the terms "child" and "natural child" as necessary.

Lee Carpenter is a Principal in the Estates & Trusts Practice Group at Offit Kurman, P.A. He can be reached at (410) 209-6426 or Lee.Carpenter@OffitKurman.com. *This article appears in the Summer 2023 issue of the MSBA Estate & Trust Law Section Newsletter.*