MSBA

SECTION OF ESTATE AND TRUST

Newsletter

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Notes from the Chair

By Anne W. Coventry, Esq.
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In the fall issue of this newsletter, I remarked on the challenges we anticipated for the year: recruitment and retention in response to declining Bar association memberships; changes to our practice caused by technological advancement and a worldwide health crisis; constraints for the legislative session; and a lack of diversity in the wealth-planning industry, our Section, and our Section Council. Through the crucible of adversity, we truly do emerge stronger. COVID moved all our Section operations to the virtual sphere, and we discovered that this new approach not only served our members adequately, but worked remarkable well. Functioning virtually increased participation across the board. We heard enthusiastic praise for the monthly e-blast created by our Membership Committee, with its "Member Spotlights" a huge hit. Our Section established a new mentorship model this year—small-group sessions, virtual meetings, and an easy sign-up process take the pressure off both would-be mentors and eager mentees. It is a winning formula for providing a much-needed service to newer practitioners and tapping into the expertise and guidance of our more

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seasoned members, and yet it is a formula we may never have considered if the pandemic had not forced us all to get comfortable with Zoom. The MSBA saw an increase in memberships for the first time in many years and over 45,000 hours of online content voraciously consumed as we traveled less but reached more members. Our Section's educational program for the (entirely virtual) MSBA Legal Summit & Annual Meeting will address a particularly impactful way that technology affects our practice—members of our E-Wills Work Group will present on electronic wills and remote signings for estate planning documents; be sure to attend.

Your incoming Chair, Michaela Muffoletto, has spent the past year valiantly leading our Legislative Committee in its efforts to improve estate and trust law in Maryland; her "Notes from the Chair-Elect" in this newsletter summarizes what passed, what didn't, and what's next. The Vulnerable Adult Financial Exploitation Task Force, a joint effort of our Section and the Elder Law and Disability Rights Section, succeeded in effecting the enactment of the SAFE Act, which establishes a civil remedy in Maryland in cases of financial exploitation of vulnerable adults. Details of that tremendous achievement appear in this issue, in a piece jointly written by Michael W. Davis and Mary Beth Beattie.

Section Council is deeply committed to improving diversity, equity, and inclusion in the Section and on the Council. As I reported in the fall issue, the Council's voting membership will expand to 10 additional seats by the summer of 2024; two of those seats were filled immediately last June, and another two will be filled next month. This increase in the Council's voting membership, coupled with the continued expansion of committees, will help to disrupt a static trajectory that has previously created barriers to inclusion. With the guidance of the Section's Diversity & Inclusion Committee, we adopted key updates to our bylaws in March, formalizing our commitment to diversity on the Section Council with new rules for the Nominating Committee and term limits for voting members. Our expanded committee structure provides both an on-ramp to Council for potential new members, and an off-ramp for term-limited or other longtime voting members of Council to continue as our institutional memory while making room for new voices at the table. We have been intentional in distributing speaking and writing opportunities more equitably this year and selecting more expansive topics, beyond the historical focus on issues affecting the "1%," to address estates and trusts issues affecting underserved communities. Many of these new voices and new topics have been eye-opening and will inform our Legislative Committee in its work going forward. Building on some of our diversity programming efforts, work groups are in place now to examine the disparate adverse impact of the inheritance tax on marginalized communities and to consider the Uniform Partition of Heirs Property Act for possible enactment in Maryland.

Looking back on the steps we have taken this year to put our Section and its Council on a more inclusive course, I feel an overwhelming sense of humility because the votes to effect these diversity initiatives were all unanimous. This was not the story of one, or a few, indefatigable champions of a cause, striving against opposition or indifference or resistance to change. We were in the right place at the right time to embrace and effect these changes, and we did, but all the groundwork had been laid by countless people who preceded us when the path towards diversity and inclusion was effortful, arduous, or completely blocked. Their efforts made it possible for us, this year, within our little sphere of influence, to make a difference where we could—to achieve some observable, measurable forward progress. We truly stand on the shoulders of giants.

It has been an honor and a privilege to serve as Chair of our Section during this unique year, and I look forward to witnessing what's next for our Section under the able leadership of Michaela Muffoletto.

Calling Writers and Speakers

We are looking for new authors and articles of interest for our 2021 Newsletter publication. We publish the Newsletter in the spring and the fall. We are also lining up speakers for our 2021-2022 continuing education series. We have a specific goal of increasing the diversity of writers and speakers. If you have a topic of interest or if you would like to submit an article for consideration please contact Janet McCurdy jmccurdy@mdglawfirm.com, Lee Carpenter lcarpenter@nilesbarton.com or Sarah J. Broder SBroder@steinsperling.com. If you would like to participate in our continuing education series please contact Christia Pritts cpritts@simscampbell.law, Jeff Glaser Jeffrey.Glaser@saul.com or Victoria Heyliger hlo@heyligerlaw.com.

With your contributions we will provide current, useful information on areas of interest to Section members.

Notes from the Chair-Elect

By Michaela C. Muffoletto, Esq.

Every year our Section is very active in proposing legislation, but I often wonder if our Section members truly appreciate the time and effort that goes into taking an idea and turning it into a bill that ultimately becomes a law that affects the lives of Marylanders. As the chair of the legislative committee of our Section this past year, I now realize exactly the extent of work involved.

Our work began last June as our legislative committee considered legislative ideas for the 2021 Session. By fall of 2020, we had spent countless hours discussing, researching and analyzing various issues and areas of the law, and narrowed our legislative agenda down to four items. Two of these items were companion items and would be groundbreaking in our practices – remote execution of wills, powers of attorneys and advance directives, and remote notarization expanded to apply to our practices. Our committee knew we had an uphill battle, but we secured two wonderful bipartisan sponsors – Senator Chris West and Delegate Wanika Fisher, who were willing to work with our Section on this legislation.

Similar to last year, the 2021 Session was difficult because of the continuing COVID-19 pandemic. Everything was done remotely – meeting with legislators, lobbying for our legislation, committee hearings, and subcommittee hearings. In addition, big agenda items, like police reform and social justice, took center stage for the General Assembly.

At the end of the session, midnight on April 12, 2021, the final results were in and we were successful in getting two of our four bills passed. In addition, several of our members participated in the MSBA Vulnerable Adult Task Force, and they were successful in getting the Safe Act passed. A summary of these items and others follows.

1. SB700/HB1266 - Disposition of Wills - PASSED
New Subtitle 2, ET Sections 4-201 through 4-206. This broadens and expands the methods of disposition of wills.

Except as otherwise provided, a custodian of a will has a duty to maintain the custody of the will and without authorization from the testator may not:

- destroy or dispose of the will,
- disclose the contents of the will or
- deliver the will to anyone other than the testator.

A will may be deposited for safekeeping by any custodian (previously only the testator or testator's agent) in the Register of Wills in the county where testator resides or in which testator resided when the will was executed. The same provisions apply as before regarding safekeeping of the wills by the Register of Wills.

A custodian of will is required to deliver the will on demand to:

- the testator;
- a court appointed guardian; and
- an attorney in fact expressly authorized to demand custody of the will.

As before, after death, a custodian is required to deliver the will to the Register of Wills.

A Maryland attorney who has custody of a will that is more than 25 years old may file the will with the Register of Wills where the testator resided when the will was executed along with an affidavit certifying that the will is more than 25 years old, that the attorney has no knowledge of and after a diligent inquiry cannot ascertain the address of the testator, and that to the best of the attorney's knowledge, the will is not subject to a contract to make or not revoke a will or devise. The Register of Wills is required to collect the required fee under ET 2-206 - $5. Once the will is collected, the Register of Wills has the option of retaining the paper copy of the will and affidavit or destroying and retaining an electronic copy.

A Maryland attorney who has custody of a will of a deceased testator that has not been offered for probated within 10 years following the death of the testator may destroy the will without notice to any person or court.

This legislation has an effective date of October 1, 2021.

2. SB820/HB1261 Execution of Advance Medical Directives, Wills and Powers of Attorney - PASSED
SB 820 allows for the execution of wills, powers of attorney and advance directives without the need for in-person meetings by allowing the parties to be in each other's electronic presence using communication technology. The documents executed in this format must be readable as text, signed by the testator or principal, and attested and signed by two or more credible

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witnesses in the physical and/or electronic presence of the testator or principal. The legislation incorporates safeguards similar to those imposed by the Governor's Emergency Order relating to remote execution of these documents during the COVID-19 pandemic. Specifically, to ensure the safety and prevent abuse during the execution process, the legislation requires a certified paper copy of any remotely witnessed or electronically executed will or power of attorney to be created by a supervising attorney. For wills, an additional self-proving affidavit is required when there is a supervising attorney. In the alternative, the legislation allows for the creation of a certified paper copy of a will by the testator alone without the involvement of a supervising attorney, so long as the testator's signature on the certification is notarized. These last two items are deviations from the Emergency Order and were added to ensure the protection of testators who avail themselves of these remote execution methods.

Unlike the requirement for wills and powers of attorney, the legislation does not require any certification for advance directives. Because in general we do not see the same abuses with advance directives as we do with wills and powers of attorney, by eliminating the certification requirement as relates to advance directives, the legislation will make it easier, not harder, for people to execute advance directives, which is particularly important in the era of COVID-19.

The legislation also provides that the certified paper copies will be given equal status as traditional wills and powers of attorney, and the revocation of these documents may occur in the exact same manner as permitted under current law, i.e., by executing a superseding document or destroying the certified paper copy.

Finally, a written or electronic will, power of attorney or advance directive signed and witnessed in accordance with Executive Order 20.04.01 authorizing remote witnesses and electronic signing, shall be deemed to be signed in conformity with this Section if it was signed and witnessed during the time the Executive Order was in effect.

The Act is construed to apply retroactively to any will, power of attorney or advance directive executed on or after March 10, 2020. The intent was to apply the Executive Order retroactively, but the terms of the Act and the terms of the Executive Order are substantively different. The Executive Order should remain in effect at least until the effective date of the Act on October 1, 2021.

3. SB735/HB1265 Remote Notarizations – DID NOT PASS
This legislation received broad support from various stakeholders and had no opposition. The Senate passed SB735, but ultimately this legislation was held from being voted on by the Chair of the House Health and Government Operations Committee.

Had this legislation passed, it would have:

- removed the will and trust restriction from RULONA permanently;
- clarified the requirements for credential analysis and identity proofing only when the person whose signature is being notarized is not known to the notary or whose identity is not affirmed by a credible witness;
- clearly delineated the process for remote ink notarizations; and
- permitted the Secretary of State to increase notarial fees to cover the cost of using the required online platforms.

Effective Law Going Forward – The Revised Uniform Law on Notarial Acts, or RULONA, went into effect on 10/1/20. In addition, we are still operating under Executive Order 20.03.30.04, which was amended and restated in its entirety immediately prior to the effective date of RULONA (10/1/20) by Executive Order 20.09.29.01, and continues to permit the remote notarization of Wills and Trusts. Once SB820/HB1261 becomes effective, we will rely on these Executive Orders for remote notarizations of Wills executed under new provisions. No one knows how long the Governor's Executive Orders will remain in effect. By their terms, they remain in effect until "the termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, except as may be rescinded, superseded, amended or revised by additional orders."

4. SB467/HB1264 Attorney's Fees and PR Commissions in Estates – DID NOT PASS
This legislation proposed revisions to ET Section 7-604 to clarify that the payment of commissions and attorneys' fees SHALL be made [instead of MAY be made] when there is a consent to compensation and the amount sought is below the cap on Personal Representative's commissions.

MAJOC (Maryland Association of Judges of the Orphans' Court) and the Maryland Judiciary opposed this legislation because it removes the judges' discretion.

The Estate and Trust Law Section argued that Section 7-604 authorizes the payment without court approval, thus the Court has no discretion over fees and commissions under the statutory cap with consents.

All practitioners should take caution on taking fees under Section 7-604 prior to the issuance of an

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order approving the account reflecting those fees.

Other Legislative Items of Interest:

SB327 The Safe Act - PASSED

The MSBA Vulnerable Adult Exploitation Joint Task Force finalized the Safe Act, which was supported by the Estate and Trust Law Section as well as the Elder Law and Disability Rights Section. The SAFE Act:

- creates a new Subtitle 6 to Title 13 of E&T Article, entitled Financial Exploitation of Susceptible and Older Adults, effective October 1, 2021;
- establishes a separate cause of action for the financial exploitation of certain susceptible and older adults; and
- authorizes damages, including attorneys' fees and expenses, because these cases are expensive to litigate, which also acts as a deterrent to litigation.

The Safe Act is effective October 1, 2021.

HB681 Task Force to Study the Orphans' Court – PASSED

This legislation proposed the creation of a task force to examine the composition and purpose of the Courts, examine and compare them to each of the local jurisdictions, analyze and compare the practices of the probate courts of other states, and make recommendations. This legislation has made repeated appearances over the past couple years and managed to pass through both houses this year.

Medical Assistance Claim Period

In the 2020 legislative session, bills were cross-filed that were intended to clarify the MDH limitation period under ET Section 8-103(f). The law currently provides the limitations period for the Maryland Department of Health and Mental Hygiene to file a claim against the estate of a deceased Maryland Medical Assistance recipient. That limitations period required a claim to be filed within 6 months after publication of notice of the first appointment of a personal representative. Because notice in a regular estate is published three times, there was confusion over whether the first or third publication controlled the date of limitations, and the orphans' courts and several circuit courts were at odds on the interpretation. During the 2020 session, there was a pending case on appeal before the Court of Special Appeals, and as a result, the bill never made it out of Committee. Prior to the end of the 2021 legislative session, the Court of Special Appeals issued an unpublished opinion in *Maryland Department of Health v. Myers*, the pending case on this issue. On December 17, 2020, following a petition to publish by the Maryland Department of Health, the Court of Special Appeals issued it as a published opinion. Based on this case, the date of the third publication controls the date the claim period starts to run for MDH claims for medical assistance.

Workgroups

Our Section's legislative efforts are possible, in large part, because of the many active workgroups we have running at any given time. Currently, we have active workgroups for the following topics: Firearms in Estates, Inheritance Taxes, Attorneys' Fees and Personal Representative's Commissions, the Uniform Partition of Heirs' Property Act, and the Power of Attorney Act. If you are interested in participating in one or more of these groups, or if you have another idea for a workgroup and want to get involved, we would love to hear from you.

The Inheritance Tax and the LGBTQ Community

By Lee Carpenter, Esq.
Niles, Barton & Wilmer, LLP

If you were presenting an award for "Least Popular Death Tax," Maryland's inheritance tax would likely be foremost among the nominees. As a charge against relationships rather than wealth, the tax seems to punish those without close family members to remember in their estate plans. The consequences can be especially hard to stomach for same-sex couples and other members of the LGBTQ community.

As most readers will already know, the inheritance is a 10

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percent charge on the right to receive property. Ancestors, spouses, and siblings are exempt, as are a decedent's lineal descendants and stepchildren. That leaves unmarried partners, nieces and nephews, cousins, and friends among the taxable beneficiaries. Although the responsibility for paying the tax falls to these "collaterals," it is possible to shift the burden back to the estate through language in the will. On its face, the tax might seem fair enough. It applies to any bequest left to a collateral, regardless of the size of the estate from which the gift emanates. In practice, however, it disproportionately affects LGBTQ individuals, who are less likely than most to have a spouse or child.

Before *Obergefell*

Time was when the law afforded few protections to members of the LGBTQ community. Marriage was not an option, making same-sex couples especially vulnerable when one partner died. The government benefits that protect a surviving spouse under Social Security, Medicare, and the Department of Veterans Affairs were simply unavailable. LGBTQ estate planning consisted largely of leveraging the prevailing laws in an attempt to replicate the legal benefits of marriage.

Even for a couple who had prepared wills to provide for each other, the tax consequences for the surviving partner could be devastating. Ten percent of the deceased partner's estate would go to the Register of Wills in inheritance taxes, rather than to the surviving partner. A couple may have lived together for 25 years, raised children as a family, and owned a house jointly. From a legal standpoint, however, they were insufficiently close to be considered kin and exempt from the inheritance tax. The tax posed a special problem when the property in question included illiquid assets, such as real estate. The estate might have included insufficient cash to cover the inheritance tax bill. The surviving partner could then have been forced to mortgage the house, tap into savings, or invade a retirement account just to satisfy this tax obligation.

Take, for example, a same-sex couple—let's call them John and David—who jointly owned a house worth $400,000.00 with no mortgage. If John died, David would have had to write a check for 10 percent of half of the value of the house, or $20,000.00, to the Register of Wills just to keep living there. In effect, it was a tax on same-sex relationships—a tax no married couple would have had to pay.

Domestic Partnerships

Some assistance came in 2009 when the Maryland Legislature added "domestic partner" to the list of family members who are exempt from the inheritance tax when it applies to certain real property passing from a deceased domestic partner.[1] The exemption applies only to the primary residence the partners owned as joint tenants at the time of the first partner's death. In order to qualify for the exemption, couples must have completed an Affidavit of Domestic Partnership. The signed and notarized document attests to their status as domestic partners, providing limited relief from the inheritance tax, as well as some medical decision-making authority.[2]

The statutory change prevented a potential injustice. Under a law passed a year earlier, it became possible for someone to add a domestic partner to the title of his or her house without incurring recordation or transfer fees and taxes.[3] This was helpful legislation, but for technical reasons, it could be a two-edged sword. Without the exemption, a surviving partner might have had to pay inheritance tax on property he already owned.

In the example of John and David, if John owned his house outright and then added David to the title, a presumption was created that John and David each owned 50 percent of the property. If David then died *first*, John would have had to pay inheritance taxes on David's half of the house—even though John owned 100 percent of the house before he added David to the title. In other words, John could *add* David to the title of his house without penalty. But without the added benefit of the inheritance tax exemption for domestic partners, John might have had to pay $20,000.00 in taxes to inherit David's half of the house back from him.

An interesting detail in the history of this exemption for domestic partners is that the only objection to the original bill was that it created a special exception for same-sex couples. The legislative solution was to make the law gender-neutral. Today, unmarried couples of any configuration can take advantage of this helpful carve-out.

Same-Sex Marriage

In the wake of the U.S. Supreme Court's decision in *Obergefell v. Hodges*,[4] estate planning for same-sex couples has become considerably easier. Gay and lesbian couples across the United States can now enter into legal marriages knowing that their unions will be recognized at the state and federal level. The estate-planning attorney no longer has to attempt to replicate the benefits of marriage for couples who cannot legally enter into the institution, and the inheritance tax is no longer a concern for bequests to the surviving spouse. As a consequence, LGBTQ estate planning is relatively straightforward and consists primarily of good estate planning.

[1] *See* MD Tax – General § 7–203.

[2] *See* MD Health Code – General § 6-101.

[3] *See* MD Tax-Prop Code § 12-108(c)(1)(ix).

[4] 576 U.S. 644 (2015).

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Even so, the inheritance tax often looms larger for same-sex couples and other LGBTQ individuals than our straight counterparts.

Despite having the legal right to marry, many couples still hesitate to tie the knot. This reluctance sometimes stems from religious convictions, fear of familial disapproval, or a simple lack of understanding as to the legal benefits marriage affords. It also aligns with a national trend. Marriage rates continue to drop nationwide, and barely more than half of U.S. adults report living with a lawfully wedded spouse. As a consequence, estate planning for any couple, gay or straight, often requires inheritance-tax planning for the death of the first partner.

Another concern applies to unmarried couples with children where both partners may not have a legal connection to each child. If, for example, one partner has a child from a previous relationship, the other partner is not a stepparent but a legal stranger. A bequest from the non-parent partner to the child will also be subject to the inheritance tax. The partner could pursue adoption, but if the child's other biological parent is still living, he or she may be unwilling to sever ties with the child and allow the adoption to proceed.

With same-sex couples and other LGBTQ individuals, inheritance tax considerations may need to go a step further. We often have fraught relationships within our own families. Tensions with disapproving parents and siblings may lead to estrangement. As a consequence, we may favor friends over family when making bequests under our estate plans. This preference often manifests itself in a client's choice of fiduciaries as well. An ex-partner may well be the client's attorney-in-fact, health care agent, personal representative, and primary beneficiary.

When LGBTQ individuals do want to include bequests to family, the relatives in question are often nieces and nephews—collaterals for whom these gifts will be subject to the inheritance tax. One possible workaround is to leave the bequests to the beneficiaries' parents (the testator's siblings). The client may find this option unpalatable, and of course the inheritance tax will nevertheless apply if the sibling predeceases the testator and the gift passes to the nieces and nephews *per stirpes*.

Possible Reform

In my experience, explaining the inheritance tax to my LGBTQ clients often results in looks of shock and disbelief. Outside the LGBTQ community, the tax is no less unpopular. Nieces and nephews are common targets of testamentary generosity, and singling them out for adverse tax treatment is often thought unfair. In addition, the inheritance tax is seen as inequitable because it applies to rich and poor alike. Among the three "death taxes" that may apply to transfers at death, the inheritance tax is the only one that hinges on the relationship between the donor and the recipient, rather than the size of the donor's estate.

Bills that would include nieces and nephews among the exempt beneficiaries are occasionally discussed in Annapolis. Passing one would be a helpful step toward greater equity in the state's tax code.

Reasonable and Fair Trustee Compensation – A proposal for modifying trustee commissions under the Maryland Trust Act

By Roxy Araghi, Esq. and Adam P. Swaim, Esq.
Pasternak & Fidis, P.C.

Introduction

When the settlor of a revocable living trust dies, the responsibilities of the successor trustee are similar to those of a personal representative. A personal representative collects, manages, values, and protects the estate assets; pays the decedent's enforceable debts and funeral expenses; prepares and files federal and state income and estate tax returns and pays the taxes due; pays the estate administration expenses; completes all necessary probate filings and accounts to the probate court and the beneficiaries; and distributes the estate assets according to the decedent's will or the rules of intestacy.

Where the decedent created an estate plan using a pour-over will and revocable trust, the trustee will send required notices to the beneficiaries of the trust; manage, value, and protect the trust assets; prepare and file federal and state income and estate tax returns and pay the taxes due; pay the trust administration expenses; account to the beneficiaries; and distribute the trust income and assets in the manner directed by the trust agreement. Ideally, the assets will have been retitled into the trust during the settlor's lifetime, so there will be no probate assets to administer. There will then be no need to appoint a personal representative, and all administration responsibilities will be handled by the trustee.

A personal representative and a trustee are both fiduciaries, and they have similar rights and responsibilities. The personal representative will handle court-supervised probate and satisfy certain duties and deadlines issued by the probate court; the trustee must satisfy certain duties and deadlines under the Maryland Trust Act. And both fiduciaries are entitled to compensation for their services. Of course, not all fiduciaries intend to take commissions for their time in office. But especially when a non-beneficiary friend, relative, or colleague is serving as a fiduciary, he or she may fairly raise the issue of compensation. The responsibilities that must be assumed and the time it takes to handle each task can be significant. When the issue of compensation does arise, the natural question is, How much?

Discussion

Estate-planning documents usually include general language allowing the fiduciary to receive "reasonable compensation" for his or her services. This language conforms to § 14.5-708(a) of the Uniform Trust Code, which the state of Maryland adopted in 2015 through the Maryland Trust Act. In Maryland, the general rule is that trustee compensation is determined by the sliding scale outlined in § 14.5-708 of the Estates and Trusts Article. The code section sets forth the calculation and payment of trustee commissions and compensation in the form of a percentage of income received and paid and a percentage of principal received and paid. The statute makes an exception for an increased right of income and corpus commissions by a trustee who is a financial institution subject to supervision, or a member of the Maryland Bar.[1] The benefit of such an increased rate schedule, however, requires that the trustee have filed a schedule of such rates with the Maryland Commissioner of Financial Regulations and given notice to the qualified beneficiaries of any trust subject to the rate schedules.[2]

Consider a decedent with the following assets:

Residence	$750,000
Investment property	$600,000
Business interests	$400,000
Marketable securities	100,000
Checking and savings accounts	$250,000
Total assets =	$4,100,000

The decedent's residence, investment property, business interests, securities accounts, and savings account were titled in the decedent's revocable trust, and his checking account designated the revocable trust as a pay-on-death beneficiary. The decedent owned no other assets in his individual name; accordingly, there is no probate estate and no need for the court to appoint a personal representative. The successor trustee appointed under the trust is the decedent's friend, who is not a member of the Maryland Bar and will handle all aspects of administration.

Pursuant to § 14.5-708(b)(1)(i), the trustee's commission on real estate income is calculated as 6% of the annual

[1] § 14.5-708(a)(2)
[2] Id.

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income. Commissions on all other yearly income collected is calculated pursuant to § 14.5-708(b)(1)(ii). Here, we will assume that the decedent's investment property produced $20,000 in rental income and that his business interests and assets held in the his securities accounts produced income of $35,000. The commission earned on the trust's real estate income in the first year of administration is 6% of $20,000 and yields $1,200. The commission earned on business interests and assets held in the securities account is 6.5% on the first $10,000 (or $650), 5% on the next $10,000 (or $500), 4% on the next $10,000 (or $400), and 3% on any remainder (or $150). The total commission for income from the business interests and securities is therefore $1,700.

Further, § 14.5-708(c)(1) provides that the trustee's commissions payable on the fair value of the corpus of the trust at the end of each year are to be calculated as follows:

(i) 0.4% on the first $250,000;
(ii) 0.25% on the next $250,000;
(iii) 0.15% on the next $500,000; and
(iv) 0.1% on any excess.

In this case, the total corpus of the trust is valued at $4,100,000 at the end of the first year of administration. The trustee's commissions on the corpus are therefore calculated as follows:

(i) 0.4% x $250,000 = $1,000
(ii) 0.25% x $250,000 = $625
(iii) 0.15% x $500,000 = $750
(iv) 0.1% x $3,100,000 = $3,100

The total commissions payable to the trustee would be $5,475 on the corpus, in addition to $2,900 from the income, yielding $8,375.

Finally, § 14.5-708(e)(1) allows for a trustee allowance payable upon final distribution of the trust estate. That allowance, "in the absence of special circumstances," is equal to 0.5% of the fair value of the corpus that is distributed.[3] Here, the trustee would be entitled to an allowance of 0.5% x $4,155,000 = $20,775. The total commissions and final distribution allowance together equal $29,150.

Now, assume that the same assets were not in the decedent's revocable trust but were instead held in his individual name. The decedent died with a last will and testament appointing a personal representative. A personal representative's compensation is calculated pursuant to § 7-601(b). Under Maryland law, the maximum compensation is 9% of the first $20,000 of the value of the probate estate plus 3.6% of the value that exceeds $20,000.[4] In the above scenario, the total value of the estate subject to administration is $4,155,000 ($4,100,000 in probate assets and $55,000 received in rental and investment income). Personal representative commissions are calculated as follows: 9% x $20,000 = $1,800; and 3.6% x $4,080,000 = $146,880. The total compensation to which this personal representative would be entitled is $148,680.[5]

As noted above, the responsibilities of each of these fiduciaries are similar. Why, then, the stark contrast between the commissions payable to each?

Of course, the statutory scheme for trustee compensation is "subject to the provisions of any valid agreement," and the court may increase or decrease the allowance in its discretion for "sufficient cause."[6] Thus, while under Maryland law the trustee receives the same fixed amount, regardless of the time spent, difficulties encountered, quality of services rendered, or success achieved, a trustee's statutory compensation can be increased or decreased if it would otherwise be unreasonably low or high. For example, an agreement entered into by the trustee and the beneficiaries may set forth an amount and source of payment of commissions different from that provided in the statute.[7] In all likelihood, however, the trustee will not want to undergo the time and expense of procuring such an agreement from each beneficiary or of petitioning the court for compensation in excess of that provided under the Maryland statutory formula.

Analysis/Resolution

The first statute providing for trustee compensation was enacted in June 1939, when trustees were following an investment strategy distinguishable from today's standards. That is, back in the first half of the twentieth century, trustees were focused on investments of trust assets that would reliably produce ordinary income—e.g., dividend-generating stock portfolios and rent-generating real property. The standard approach to investing has since changed, and trustees are now focused on "total return." The result is a decrease in

[3] § 14.5-708(e)(1)(3)
[4] § 7-601(b)(2).

[5] Of course, the personal representative must first obtain authorization to pay to himself or herself such compensation—either by seeking court approval or by obtaining the consent of all interested persons (the latter option is permitted for estates of decedents dying on or after January 1, 1998, where the combined sum of all payments of attorneys' fees and personal representative commissions are equal to or less than the amount calculated under § 7-601). Note also that the case law suggests that total commissions and attorneys' fees cannot exceed the statutory amount permitted for personal representative commissions. See Wolfe v. Turner, 267 Md. 646, 299 A.2d 106, 58 A.L.R.3d 307 (1973) and Wright v. Nuttle, 267 Md. 698, 298 A.2d 389 (1973). Additionally, § 7-602(c), governing the right to reasonable compensation for an attorney who provides legal services to the estate or to the personal representative of the estate (or both), provides that the court shall not allow aggregate compensation in excess of the total charge for the cost of administering the estate. Section 7-602(c) is therefore understood to limit total personal representative commissions and attorneys' fees to the statutory amount set forth in § 7-601.
[6] § 14.5-708(a)(1)(ii)–(iii).
[7] § 14.5-708(a)(1)(ii).

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Trustee Compensation. . .

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the ordinary income a trust generates (otherwise subject to higher compensation figures) and an increase in the value of the trust principal (subject to a much lower compensation figure). The result is a lesser amount paid as compensation to the trustee. Moreover, after the settlor's death, the successor trustee of a revocable trust typically is not investing for maximum return. Charged with protecting and preserving the trust assets during administration, the trustee will most often liquidate the assets and invest the proceeds in low-risk alternatives. While the statutory formula has been amended to increase the percentages and establish new values to which they apply, the compensation scheme has remained the same since the initial statute was enacted, notwithstanding changes in investment strategies and fiduciary best practices. [8]

Moreover, the current formula for trustee compensation may have been calculated with an ongoing trust in mind. The trustee of an ongoing trust, while charged with various responsibilities, will not be required to perform many of the duties of the successor trustee of a revocable trust after the settlor dies. The trustee of the ongoing trust still must file income tax returns, and he or she will be responsible for overseeing the investment of the trust's assets and making distributions. But given that the ongoing trust may be in existence for many years, the statutory scheme for trustee compensation will likely be fair and reasonable in the vast majority of cases.

What does not seem equitable, however, is the disconnect between the allowable commissions for a personal representative and the allowable commissions for the trustee of a decedent's revocable trust, especially considering the parallel roles these fiduciaries play.

Conclusion

The § 14.5-708 rate schedule applies to all trustees whose duties include collecting and distributing income from property held in trust, or preserving and distributing such property. If Maryland law were to distinguish between commissions payable to the trustee of a testamentary trust and those payable to the trustee of a revocable trust, the statutory scheme could account for the breadth of responsibilities that the latter undertakes upon the settlor's death. The result would be a formula that more closely aligns with the "reasonable compensation" to which a trustee is entitled.

The authors propose a legislative solution to this dilemma: carving out a separate statutory scheme to apply specifically to the trustee of a revocable trust that is intended to function as a "will substitute."

[8] Sokol v. Nattans, 26 Md. App. 65, 337 A.2d 460 (1975).

Estate Planning and Changing the Generational Narrative in Families of Color

By Elsa W. Smith, Esq.
Law Offices of Elsa W. Smith, LLC

"[W]e as African Americans have the capacity to pass on more wealth than any previous generation–wealth needed to continue to finance the progress and empowerment of future generations. But this potential cannot be realized if we don't collectively commit to estate planning. Merely buying enough life insurance to cover the costs of our burials may have been acceptable for our parents, but it's not even close to good enough for our children and grandchildren."[1]

- Earl G. Graves, Sr.,
Founder and Publisher of Black Enterprise

[1] Earl G. Graves, *Lack of Estate Planning Puts Black Wealth at Risk*, Nov. 3, 2015, https://www.blackenterprise.com/lack-of-estate-planning-puts-black-wealth-at-risk/

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Generational Narrative. . .

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Source: Canva.com

Who is going to take care of mom's affairs now that she's suffered a stroke?
How are we going to pay for Dad's funeral?
Did dad have a Will?
What's going to happen to the house now that mom and dad are gone?

The chaos and confusion that follow these questions are too common among families of color. Complacency with the status quo is not an option for me and other estate planning practitioners who believe that stemming the loss of generational wealth in families of color must be strategic, consistent and comprehensive. As part of my professional mission to educate and empower through estate planning, I lend my voice to the discussion with this article. First, I look at historical challenges to building Black wealth. Next, I highlight present-day obstacles to estate planning for Black families. It is worth noting that the historical challenges form the foundation for today's issues. Finally, I propose what we as estate planning professionals can do to change the generational narrative in families of color.

I. Introduction

According to a 2021 Wills and Estate Planning Study by Caring.com, a non-profit for caregivers, only about a third of Black Americans have a will. However, that percentage has increased from 25.9% in 2020 to 27.5% in 2021. Compare this to White Americans which is approximately 35%.[2] In my law business, it is not unusual for clients to share that their parents or grandparents did not have a will when they died. Others share that their parents had a life insurance policy, but it was just enough to pay for burial expenses. Troubling is the asymmetry of the educational, professional and financial progress we have made as people of color and the lack of estate planning in place to protect those gains. Before we can attempt to prescribe a solution to the problem, however, we must understand the underlying causes.

II. From Survival to Accumulating Wealth

"We used to be the assets. Now we have assets."[3]
-Lori Anne Douglass, Esq.
Estate Planning Attorney

Enduring effects of slavery, Jim Crow laws, and racist institutional policies, such as redlining have made it difficult for Black families to attain, much less, transfer generational wealth. Every honest review of the racial wealth gap in this country has begun with our almost two hundred and fifty-year history of slavery. "...[B]eginning with 246 years of chattel slavery and followed by Congressional mismanagement of the Freedman's Savings Bank (which left 61,144 depositors with losses of nearly $3 million in 1874), the violent massacre decimating Tulsa's Greenwood District in 1921 (a population of 10,000 that thrived as the epicenter of African American business and culture, commonly referred to as "Black Wall Street"), and discriminatory policies throughout the 20th century including the Jim Crow Era's "Black Codes" strictly limiting opportunity in many southern states, the GI bill, the New Deal's Fair Labor Standards Act's exemption of domestic agricultural and service occupations, and redlining" efforts to create Black wealth has been a struggle.[4] The cumulative effect of racism and discrimination have cost Black Americans an estimated $70 trillion dollars over the course of several generations.[5]

Dr. Pamela Jolly, CEO of Torch Enterprises and author of "The Narrow Road: A Guide to Legacy Wealth," observed: "... Given our history, it has been a relatively recent phenomenon [that] African Americans could move from focusing on sheer survival to accumulating wealth, let alone the power to transfer that wealth to the next generation." [6] We are aware of various means by which wealth is transferred to future generations such as a significant financial wedding gift or a down payment for a first home. In the estate

[2] 2021 Wills and Estate Planning Study, https://www.caring.com/caregivers/estate-planning/wills-survey

[3] Tomi Akitunde, *50% Of African Americans Die Without A Will—It's Time To Change That*, https://matermea.com/estate-planning-basics-african-americans-black-families/

[4] Kriston McIntosh, et. al., *Brookings Institute, Examining the Black-White Wealth Gap*, February 27, 2020, https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/

[5] Rochester, Shawn. The Black Tax: The Cost of Being Black in America (2018)

[6] Angie Chatman, *When my mother died without a will, I learned a big lesson about money management as an African American*, September 9, 2019, https://www.businessinsider.com/personal-finance/what-mothers-death-taught-me-about-money-as-african-american-2019-9

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planning context, bequests can occur through creation of revocable or irrevocable trusts and will bequests. Despite the existence of these estate planning tools, a chasm between the levels of Black wealth and that of Whites remains.

One contributor to the racial wealth gap is intergenerational wealth transfer through gifts and inheritances.[7] A 2012 study by the Urban Institute analyzed wealth and private transfers given and received across households and found large wealth gaps by race and ethnicity.[8] The study analyzed wealth and private transfers given and received across households in the Panel Study of Income Dynamics, a longitudinal survey of roughly 5,000 families.

Over the period of 1999-2007, the median net worth of white families was $122,927 compared to $18,181 for black families (one-sixth of that of white families). The study revealed that the gap stemmed from lower asset holdings, not higher debt.[9]

Black families are five times less likely to receive large gifts and inheritances than white families.[10] Over the past 10 years, 12% of the difference in wealth between white and black Americans are due to inheritances and gifts. "Large gifts and inheritances may have a larger effect on wealth than smaller support transfers because they are often used to finance higher education or to make a down payment on a house."[11]

A more recent study by the Board of Governors of the Federal Reserve System has shown how Blacks' median wealth and mean net worth trail behind that of White families.[12] Referring to their 2019 study, the authors note, "[t]his point-in-time observation is a result of many complex societal, governmental, and individual factors that play out over the life cycle and even across generations. Among other factors, intergenerational transfers, homeownership opportunities, access to tax-sheltered savings plans, and individuals' savings and investment decisions contribute to wealth accumulation and families' financial security."[13]

[7] Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, September 28, 2020, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm

[8] Signe-Mary McKernan, Caroline Ratcliffe, Margaret Simms, and Sisi Zhang, *Do Financial Support and Inheritance Contribute to the Racial Wealth Gap?*, September 2012, https://www.urban.org/sites/default/files/publication/25766/412644-do-financial-support-and-inheritance-contribute-to-the-racial-wealth-gap-.pdf

[9] Id.

[10] Id.

[11] Id.

[12] Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, September 28, 2020, https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm

[13] Id.

III. Barriers to Estate Planning

Barriers to estate planning among families of color include, but are not limited to, concerns over advance care planning, historic distrust of the legal system, and a lack of estates and trusts attorneys of color.

Concerns About Advanced Care Planning (ACP)

Some of my clients who are Black never signed advance directives because they were concerned that their documented wishes about care would be honored even if they had a change of heart years later. They admitted a lack of awareness that advance directives could be updated. There are other reasons we do not see greater numbers of people of color preparing advance care plans.

According to Catherine Koss, "[p]roposed explanations for relatively low rates of ACP among Black older adults include mistrust of doctors and the health care system, religiosity, reluctance to acknowledge terminal prognosis, greater desire for life-sustaining treatment, lower health literacy, and doubt about the efficacy of ACP."[14]

The formality of an advance directive can be intimidating, according to Sharon Williams, research scientist at the University of North Carolina Center on Aging and Diversity. "The formal nature of advance planning — a living will you have to sign, or an ominous sounding do-not-resuscitate document — ignite entrenched fears that doctors won't do everything possible to save a person's life. It also puts into question a person's religious faith, says Williams."[15]

A study into differences between race, ethnicity and adoption of advance directives revealed that Black older Americans (24%) were less likely to possess advance directives than White older Americans (44%).[16] The purpose of the study, which was published in the Journal of Palliative Medicine, was to provide a foundation for targeted efforts to improve advance care planning in the minority populations surveyed.[17]"In summary, low adoption of advance directives among black older Americans (as compared with white older Americans) is not explained by other demographic factors, religious characteristics, or personal health values. As a

[14] Koss, Catherine S., *Links Between Race Disparities in Advanced Care and Estate Planning*, August 1, 2017, https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-6--august-2017-/links-between-race-disparities-in-advance-care-and-estate-planni/

[15] Cynthia Ramnarace, *Fewer African Americans Plan for End-of-Life Care*, January 7, 2011, https://www.aarp.org/relationships/caregiving/info-01-2011/planning_end_of_life_care.html.

[16] Ivy Huang, BA, John M, Neuhaus, PhD, and Winston Chiong, MD, PhD, *Racial and Ethnic Differences in Advance Directive Possession: Role of Demographic Factors, Religious Affiliation, and Personal Health Values in a National Survey of Older Adults*, J Palliat Med., 2016 Feb 1; 19(2): 149–156. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4753625/

[17] Id.

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matter of policy, these findings support targeted efforts and reimbursement models to promote advance care planning among members of underserved groups, as an individual's religious beliefs and personal health values do not fully explain the racial difference in advance directive possession. Additional findings suggest that employment transitions and access to information (such as through the Internet) may be promising targets for promoting advance care planning and, ultimately, closer adherence to older adults' wishes near the end of life."[18] Of note, the authors cautioned clinicians not to assume that Black older Americans are not interested in advance care planning due to cultural reasons.[19]

Historic Distrust of the Legal System and Heirs' Property

The reluctance to write wills and take advantage of estate planning has caused much of the land held by African Americans in the southeastern United States to become heirs' property.[20] According to the USDA Southern Research Station, heirs' property is inherited without a clear title. Given that disadvantage, owners cannot access credit, sell natural resources or participate in state and federal land improvement programs."[21] Scientist Cassandra Johnson Gaither noted that heirs' property is associated with "economic stagnation and generational poverty."[22] Heir's' properties identified in the Black Belt of the South are estimated at 1.6 million acres with a value of $6.6 billion.[23] "The problem with passing down property without a formal legal record is that any single owner can petition the court for a forced sale of the property. Over time, as the number of owners reaches into the dozens, the risk of a money grab increases, and family members become targets for real estate developers looking to score property below market value in popular locations." [24]

Lack of Attorneys of Color in the Practice

According to the American Bar Association's 2020 Profile of the Legal Profession, five percent (5%) of attorneys are Black.[25] What is even more tragic is that the percentage has not increased over the last ten years.[26] A report published in 2010 warned us of the effect a lack of diversity in the profession has in a macro sense: "[T]he profession has historically provided access to income and wealth commensurate with the 'American Dream.' Historically, racial and ethnic groups, women and other marginalized groups have recognized that a law degree accelerates their social and economic mobility. If any part of our profession – especially the vast and powerful fields of private practice – fails to be diverse and inclusive, we are sending meaningful symbolic messages to members of underrepresented groups, especially those of lower socioeconomic status."[27]

A lack of Black attorneys in the estates and trusts arena conveys an implicit message to people of color that estate planning is not for them. ACTEC Fellow Sarah Moore Johnson observed, "[t]he simple Act of preparing a will for a family of color or encouraging investment and life insurance can create tangible economic gains that will help close the wealth gap. The more Black and Brown estate planning attorneys we have, the more likely our families of color are to seek legal representation and create a plan for intergenerational wealth transfer."[28]

IV. How Our Profession Can Help Change the Narrative

"Diversify your Life"

Author and journalist Rochelle Riley said it best during her appearance on ACTEC's video series addressing economic inequality in America: "Diversity your life...if you are an attorney and all of your clients are white, or maybe one client is Black and everybody else is white, and you want to change that, then there are ways to reach out that aren't even that hard. Go and visit a Black church. Go to a Black-owned restaurant. Talk to people that you know who are people of color and say- you know what, I'd like to reach out more."[29]

Challenge Unconscious Biases

I recall a conversation I had with a well-meaning estate planning colleague who happens to be Caucasian. When we spoke about the need to serve a more diverse segment of the population, he assumed I was speaking of low-income residents. I acknowledge that there is a great need for estate planning among low-income residents. By volunteering

[18] Id.
[19] Id.
[20] Roy W. Copeland, *Heir Property in The African American Community: From Promised Lands to Problem Lands*, Professional Agricultural Workers Journal, Vol 2, No. 2, June 1, 2015, https://tuspubs.tuskegee.edu/cgi/viewcontent.cgi?article=1037&context=pawj
[21] Sarah Farmer, *Identifying Potential Heirs Properties, USDA Southern Research Station*, CompassLive Nov. 30, 2017, https://www.srs.fs.usda.gov/compass/2017/11/30/identifying-potential-heirs-properties/
[22] Id.
[23] Teresa Jackson, *Highlighting Heirs' Property Ownership and Land Loss, USDA Southern Research Station*, CompassLive, July 30, 2020, https://www.srs.fs.usda.gov/compass/2020/07/30/srs-publication-highlights-heirs-property-ownership-and-land-loss/
[24] Sarah Breitenbach, *Heirs' Property Challenges Families, States*, July 15, 2015, https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/07/15/heirs-property-challenges-families-states
[25] American Bar Association, *2020 Profile of the Legal Profession Report*, page 33, https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf
[26] Id.
[27] American Bar Association, Diversity in the Legal Profession: The Next Steps, (2010), page 21, https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/next-steps-report.pdf
[28] ACTEC, *How to Increase Diversity in the Legal Profession*, April 5, 2021 [Online Video], available at: https://www.actec.org/diversity/how-to-increase-diversity-in-the-legal-profession/
[29] ACTEC, *Planning for a Diverse and Equitable Future: Economic Inequality in America*, Dec. 7, 2020, [Online Video], available at: https://www.actec.org/diversity/economic-inequality-in-america/

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with the Maryland Pro Bono Resource Center's estate planning clinics, I have seen first-hand the benefit of helping the economically disadvantaged create a plan for their legacy. However, in the conversation referenced earlier, I referred to the underserved, and in some cases ignored, segments of Maryland's Black community that range from middle-income to high-net worth residents.

My point in sharing that story is that people should examine their unconscious biases as they relate to Blacks or people of color and estate planning. Start by not assuming that families of color have little or no assets requiring protection. Be intentional about presenting charitable giving options during meetings with clients of color. In firms with a diversity deficit, actively recruit, retain and promote minority estate planning attorneys to connect with prospective clients of color. Lastly, promote estate planning in communities of color to model good stewardship to younger generations. [30]Unconscious biases are limitations on your ability to serve a more diverse audience. This, I would submit, is a disservice to our profession. Changing the generational narrative in families of color is a significant challenge, but one to which we must rise if we seek a more equitable society.

[30] ElsaWSmithLaw, (2021), *How You Can Use Stewardship Principles to Build A Legacy,* [Online Video] available at: https://youtu.be/ye70oUDH2q8.

The Maryland SAFE Act– Fighting the Crime of the Century

By Michael W. Davis, Esq. and Mary Beth Beattie, Esq.

The Vulnerable Adult Exploitation Joint Task Force was organized by the Section Councils of both the Estate & Trust Law Section and the Elder Law & Disability Rights Section of the Maryland State Bar Association to address the growing concerns about the financial exploitation of vulnerable adults. The Maryland SAFE Act is the result of countless hours of research, discussion, and drafting by the Task Force members. With the invaluable assistance of the Act's sponsors, the Maryland General Assembly passed the Act with bipartisan support.

Financial exploitation of vulnerable adults is endemic in our society today. As attorneys and family counselors, we too often hear allegations of deception, intimidation, and undue influence to defraud vulnerable adults of their property. Our experiences were reflected in the 2009 report that is commonly referred to as the MetLife Study.[1] This was an extensive study conducted about elder physical and emotional abuse and financial exploitation. With its authors characterizing financial elder abuse as ***the crime of the 21st Century,*** the MetLife Study states that up to 1,000,000 older Americans may be targeted each year, and that related costs like health care, social services, investigations, legal fees, prosecution, lost income and assets can reach tens of millions of dollars annually.

The current pandemic caused by the Covid-19 virus has highlighted the financial fragility of vulnerable adults. Our legal system needs to be able to provide access to justice in a variety of ways so that the financial security of vulnerable adults can be protected. The Maryland SAFE Act was enacted to help achieve this goal.

Defining the Need for the Maryland SAFE Act

Under current Maryland law, remedies for financial exploitation are mostly limited to criminal actions,[2] which have been largely ineffective[3] for the following reasons:

(1) There is a strong reluctance of victims to involve law enforcement in family matters;

(2) There is a very high burden of proof necessary to obtain a conviction (beyond reasonable doubt); and

[1] MetLife and VPI Mature Market Institute, the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University entitled *Broken Trust: Elders, Family and Finances.*

[2] See*, e.g.* Annotated Code of Maryland, Criminal Law Article, §§3-604 and 8-801.

[3] Maryland's Legislative Services stated in its Fiscal & Policy Analysis for HB320 in 2020 that during 2019, Maryland's Judiciary reported 47 violations of §8-801 of the Criminal Law Article in the District Court regarding financial exploitation, which resulted in two guilty dispositions, and 55 violations in the Circuit Court, which resulted in 8 guilty dispositions.

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(3) There are only limited resources available to handle these cases by state-funded agencies charged with doing so, such as the Offices of the States' Attorney, the Attorney General's Office and Adult Protective Services.

The Task Force determined that a different approach would be needed – a civil cause of action. The Task Force reviewed the statutes of many states which had attempted to address this matter, and the laws of Delaware,[4] California[5] and Florida,[6] and the guidelines that were provided by the American Bar Association,[7] were used as bases from which the Maryland SAFE Act was created. Importantly, the existing laws of Maryland, both statutory laws and case law, were heavily incorporated into the Act.

The Maryland SAFE Act codifies existing Maryland case law by creating a statutory cause of action for financial exploitation. The Act then provides remedies similar to those provided in Maryland's Wage Payment and Collection law,[8] including allowing the victim to be awarded treble damages, attorney's fees, and equitable relief, in addition to recovering the value of the loss. Maryland law currently provides no such civil remedies for financial exploitation; rather, a victim of such abuse must rely on the criminal statutes, with their heavy burden of proof, or on actions taken by government agencies on their behalf, to get back only the property that was stolen, if that is even possible. As a civil cause of action with enhanced remedies, the Maryland SAFE Act will provide a path for victims to recover the full value of their property, with an easier burden of proof, and without involving law enforcement.

The SAFE Act contains broad definitions of "financial exploitation" and "susceptible adults" and expands the list of parties who may bring suit to recover assets lost by the vulnerable adult. It should be noted that this bill was originally written to protect "vulnerable adults," defined as persons with some degree of diminished capacity such that they can no longer make responsible decisions regarding the management of their assets or can be manipulated to do or not do something because of such diminished capacity. Because the term "vulnerable adult" has historically been used in the context of criminal matters, the term "susceptible adults" was substituted to avoid confusion.

Specific Provisions of the Maryland SAFE Act

The Maryland SAFE Act is found in a new subtitle of the Estates and Trusts Article at Sections 13-601, *et. seq*.

CAUSE OF ACTION: Section 13-604 provides that a "susceptible adult or an older adult who has been subjected to financial exploitation…may bring a cause of action against a person who has committed financial exploitation against the susceptible adult or older adult to recover damages and obtain other appropriate relief…." This is a deceptively simple statement that will require significant inquiry to understand the full scope of the Act.

SUSCEPTIBLE ADULT: Section 13-601(i) defines an older adult as "an individual who is at least 68 years of age." A "susceptible adult," according to Section 13-601(k), is "[any] adult who is unable to perform, without prompting or assistance, one or more activities of daily living, is unable to protect the adult's rights, or has diminished executive functioning, due to disease, advanced age, impaired mobility, habitual drunkenness, addiction to drugs, or hospitalization." The term "activities of daily living"[9] includes both "basic activities of daily living"[10] and "instrumental activities of daily living." [11]

FINANCIAL EXPLOITATION: Once it is determined that the adult is qualified as a susceptible adult or an adult who is 68 years or older, the question is whether a perpetrator committed actionable financial exploitation under the Act against that person. Section 13-601(e) addresses three different types of financial exploitation: (i) exploitation by a person who is in a position of trust and confidence; (ii) exploitation by deception, etc.; and (iii) exploitation by a perpetrator who knows or who should know that an adult is a susceptible adult. These three categories of financial exploitation are meant to address any form of such exploitation by any person.

Note that "financial exploitation" includes "misappropriation, misuse, or transfer of assets belonging to a susceptible adult or older person from a personal or joint account.[12]" This definition should make it more difficult for a perpetrator to defend against such exploitation when that perpetrator plunders a joint account that was set up for convenience purposes only. However, "financial exploitation" does not include transfers of property from a susceptible person or older person for purpose of "implementing an estate plan intended to reduce taxes or maximize eligibility for public benefits in order preserve assets for an identified or identifiable person."[13]

[4] Delaware Statutes, Title 31, Welfare, §§ 3901, et. seq.
[5] California Welfare and Institutions Code, § 15600, et seq.
[6] 2020 Florida Statutes, Title XLVI, Crimes, Chapter 825.103, Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults.
[7] *The Model Civil Provisions of Elder Financial Exploitation* (April 2017) by ABA Commission on Law and Aging and the National Center for Victims of Crime.
[8] Annotated Code of Maryland, Labor and Employment Article, §3–507.2.
[9] Section 13-601(B)
[10] Section 13-601(C)
[11] Section 13-601(F)
[12] Section 13-601(E)(2)(IV)
[13] Section 13-601(E)(3)

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PARTIES: Section 13-605 sets out a broad list of persons, including government agencies, who can act on behalf of a susceptible person or older adult in bringing an action under the Maryland SAFE Act. These include, but are not limited to: attorneys-in-fact, guardians, trustees, health care agents, spouses, parents, descendants, a named beneficiary to receive any property, personal representatives, and government agencies. As an action under the Act survives the death of the susceptible person or older adult,[14] representatives of the victim's estate and other property interests after the death of the victim must be allowed to bring suit under the Act.

DAMAGES: One of the key elements of this Act is its provision for damages. In addition to being able to recover the full value of the property that was transferred from a susceptible adult or older adult, a plaintiff may also be awarded attorneys' fees and treble damages, subject to the discretion of the court. This is an important provision because it should allow victims to obtain competent legal counsel since the payment of fees is better protected. Also, from the perspective of settling claims, a perpetrator may be more willing to settle if the prospect of paying more than the value of what was transferred is a factor.[15] In addition to monetary damages, a court retains the ability to provide injunctive relief, rescission, restitution, accounting, declaratory relief, and other equitable relief.[16]

Conclusion

The Maryland SAFE Act contains broad definitions of "financial exploitation" and "susceptible adults" and expands the list of parties who may bring suit to recover assets lost by the vulnerable adult. With the law more clearly defined and applied, and with a reasonable burden of proof, litigation against a perpetrator of financial abuse should be easier to pursue with better results. The broad scope of the Act will also serve as a deterrent to would-be perpetrators of financial abuse.

[14] Section 13-605(B)(2)

[15] This phenomenon has been one of the outcomes of using one of the statutory financial powers of attorney under the General and Limited Power of Attorney Act, Estates & Trusts Article, § 17-201, *et seq*.

[16] Section 13-306(C).

Maryland Caselaw Developments

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1. Castruccio Continues: *Legal Fees Incurred by a Special Administrator during Multifaceted Estate Litigation*

In *Castruccio v. Castruccio*, 247 Md. App. 1 (2020), the Court of Special Appeals ruled on several issues related to legal fees incurred by the Estate of Peter Castruccio (the "Estate"). The Estate defended several lawsuits brought by Dr. Castruccio's widow, including a will caveat, a will-construction action, an action to quiet title on real properties Dr. Castruccio owned, and two petitions to remove the special administrator. In addition, the Estate was required to seek an order requiring Mrs. Castruccio to provide the special administrator and his counsel access to Dr. Castruccio's properties and records. When Mrs. Castruccio failed to comply, the Estate filed a show cause petition for why Mrs. Castruccio should not be held in contempt. *(For a discussion of two of the underlying cases, please see the Spring 2018 and Fall 2019 issues of this newsletter.)*

In 2015, the Estate filed an interim petition for attorneys' fees, expert-witness fees, mediation fees, and expenses in the Orphans' Court for Anne Arundel County. Mrs. Castruccio filed exceptions to the fee petition, arguing that the Estate's special administrator needed Orphans' Court approval to engage DLA Piper LLP in Baltimore ("DLA") as the Estate's lead litigation counsel. The residuary beneficiary of the Estate, Darlene Barclay ("Ms. Barclay"), also filed an exception to the fee petition, arguing that the fees should be paid out of Mrs. Castruccio's elective share because of her alleged bad faith during the litigation. The Orphans' Court denied both exceptions and granted the interim fee petition. Mrs. Castruccio and Ms. Barclay appealed the Orphans'

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Court order to the Circuit Court for Anne Arundel County. After a six-day trial, the Circuit Court approved $785,370 of the requested $1,934,061 in legal fees and $214,028 of the requested $262,421 in litigation expenses. The Circuit Court ordered that the approved fees and expenses be paid from the Estate. The Estate appealed the Circuit Court's decisions, and Ms. Barclay and Mrs. Castruccio filed cross-appeals.

Mrs. Castruccio's Cross-Appeal

Mrs. Castruccio's cross-appeal asked the following: (i) Did the Circuit Court err in finding that the special administrator had the authority to hire DLA without Orphans' Court approval? (ii) Was the fee petition deficient because it failed to estimate fees that might be requested in the future? And (iii) did the Circuit Court err in awarding the Estate's fees related to the will-construction action?

The Court of Special Appeals found that the Circuit Court had not erred in finding that the special administrator did not need court approval to hire DLA. The Court of Appeals held that "although ET § 6-403(b)(1) imposes the duties conferred in Subtitles 2, 3, and 5 of Title 7 on the special administrator, it does not limit the special administrator's powers to those granted in those three subtitles. Under the power to 'collect, manage, and preserve property,' granted in § 6-403(b)(2), a special administrator may … engage counsel to prosecute and defend litigation on behalf of the estate, without court approval." *Id*. at 36.

The Court of Special Appeals also found that the fee petition was not deficient for failing to contain an estimate of future fees as mandated by Maryland Rule 6-416(a)(1)(B). The Court noted that there were "no fewer than four separate proceedings" pending when the interim fee petition was filed and that the fee petition stated that the Estate could not reasonably estimate the amount of fees or commissions that would be requested in the future at that time. The Court concluded that "[w]here a fiduciary of a decedent's estate cannot make a reasonable, good faith estimate of the likely future fees, as in this unusual case, it is futile to require one to be made." *Id*. at 39. The Court also noted that it would be unreasonable to require the Estate to wait until all the litigation was over before filing a fee petition.

Regarding Ms. Castruccio's third argument on appeal, the Court of Special Appeals was not persuaded that the fees incurred in connection with the will-construction action were improperly awarded. The Court cited *Piper Rudnick LLC v. Hartz*, 386 Md. at 217 for the holding that "'there is no statutory independent or separate requirement contained within [ET] §7-603 that the personal representative benefit the estate' before a court may allow the payment of attorney's fees out of assets of the estate." *Id*. at 40. The Court noted that Maryland law has not yet expressly acknowledged that a personal representative who participates in a will-construction action is acting to benefit the estate and is therefore entitled to attorney's fees. *Id*. at 41. The Court of Special Appeals found that the Circuit Court correctly awarded the fees incurred with the personal representative's good-faith defense of Dr. Castruccio's intent in the will-construction action.

Ms. Barclay's Appeal

On appeal, Ms. Barclay asked whether the Circuit Court abused its discretion in failing to charge the Estate's fees against Mrs. Castruccio's share of the Estate. Ms. Barclay argued that a court may charge the Estate's legal fees against a beneficiary's share of the Estate when the beneficiary causes "unnecessary litigation" or acts in bad faith. Ms. Barclay argued that the Circuit Court erred in concluding that Mrs. Castruccio's claims had merit and that she had not proceeded in bad faith. In addition, Ms. Barclay argued that the Circuit Court abused its discretion in refusing to hear testimony about a statement made by Mrs. Castruccio (or her counsel) that would have proved Mrs. Castruccio's bad faith. After an extensive discussion about evidentiary rules, the Court of Special Appeals determined that the Circuit Court was able to evaluate whether Mrs. Castruccio had acted in bad faith from the extensive and multi-faceted litigation record without the alleged statement's admission. The Court of Special Appeals found that the Circuit Court was well in its right in finding that Mrs. Castruccio acted in good faith. Therefore, the Court denied Ms. Barclay's appeal.

Estate Appeals

The Estate asked two questions of the Special Court of Appeals: (i) whether the Circuit Court impermissibly reduced the already-discounted rates of DLA; and (ii) whether the Circuit Court erroneously deemed a large portion of DLA's work unnecessary.

The Court of Special Appeals found that the Circuit Court's reduction of DLA's hourly rates to those customary in Anne Arundel County was erroneously based on the conclusion that the special administrator could have readily found an Anne Arundel County law firm with the "resources and specialized experience to defend the estate against the sophisticated, multi-front legal offensive that Mrs. Castruccion was about to launch" *Id*. at 43. The reliance on this "locality factor" was determined to be an abuse of the Circuit Court's discretion. The Court of Special Appeals also found that the Circuit Court abused its discretion in finding that 40% of the lawyer's work was unnecessary without giving the Estate the opportunity to respond to the Court's concerns about the lack of specificity in

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certain DLA time entries. The Court of Special Appeals noted that '[i]n reviewing petitions for the awards of attorney's fees, 'trial courts need not, and indeed should not, become green-eyeshade accountants." *Id*. at 58, citing *Fox v. Vice*, 563 U.S. 826 (2011). The Court of Special Appeals remanded the case to the Circuit Court to reevaluate the fee petition.

Note, however, that the Court of Special Appeals rejected the Estate's argument that the Circuit Court should have used Md. Rule 2-703(a) or the "lodestar approach to claims for attorney fee-shifting" (allowing an attorney to be fully compensated when a party has obtained an excellent result) instead of Md. Rule 19-301.5. The Court noted that ET 7-603 does not permit the estate to shift its fees to its adversary and held that "[w]here a fiduciary is seeking to shift the costs of litigation to the beneficiaries rather than to a statutorily disfavored adversary, a court should consider the amount of the requested fees in relation to the size of the estate." *Id*. at 49.

2. **Only One Path to Pursue Medicaid Benefits for Deceased Applicant:** *The Limits of Circuit Courts' Equity Jurisdiction against the Exclusive Jurisdiction of the Orphans' Court*.

In *Turner v. Maryland Department of Health*, Md. App. 248 (2020), the Maryland Court of Special Appeals signaled a vigorous reminder that the Orphans' Court, not the Circuit Court, has primary jurisdiction over the administration of a decedent's interests in Maryland.

Almost one year after the death of a nursing home facility resident who had been twice denied Medicaid benefits by the Howard County Department of Social Services, the facility successfully petitioned the Howard County Circuit Court to be appointed the "Authorized Medicaid Representative" with apparent power to apply for Medicaid benefits on the decedent's behalf to cover the costs of decedent's care. The department denied the facility's petition for benefits, and the facility appealed the decision to the Circuit Court, which dismissed the facility's petition for lack of standing under COMAR.

The facility appealed the Circuit Court's decision to the Maryland Court of Special Appeals. The Court upheld the lower court's decision, holding that (1) the facility lacked standing to petition for judicial review of the denial of Medicaid benefits and (2) the Circuit Court lacked authority to appoint the facility as an authorized Medicaid representative.

The facility protested the Circuit Court's dismissal, based largely on its allegation that federal law provided an independent, valid basis for its appointment and that the broad equity powers of the Circuit Court likewise supported its appointment notwithstanding its failure to become (or apply to become) personal representative of the applicant's Estate. At the same time, the Maryland Department of Health—intervening in the facility's appeal—countered that only a personal representative appointed by the Orphans' Court has standing to bring actions on behalf of a decedent and therefore the Circuit Court's earlier order granting the facility such authority was *ultra vires*.

The Court of Special Appeals reviewed the decision of the Circuit Court *de novo* and ultimately recognized the generally exclusive jurisdiction of the Orphans' Court for matters having to do with the administration of a decedent's estate. In response to the facility's allegations, the Court demonstrated that federal law was designed to apply in union with state law for the application of its Medicaid relief provisions, that Maryland's rules were consistent with federal law, and that Maryland's rules provided only one method of being appointed an authorized representative of a Medicaid applicant after the applicant's death in COMAR 10.01.04.12, which says such a party must provide "proof of legal authority to act on behalf of a participant," which "includes, but is not limited to those who are the . . . [p]ersonal representative of the applicant or recipient's estate, or a person who in good faith filed an application to be appointed the personal representative of the applicant or recipient's estate." In addition, the Court was unconvinced by the facility's argument that the Circuit Court's equity powers extend to granting powers otherwise reserved for the Orphans' Court, instead reinforcing its commitment to remain faithful to the "comprehensive framework for the appointment of personal representatives and their respective obligations and authority" established by the General Assembly, and the proper understanding of a court's equitable powers as previously expressed by the Court of Appeals, as follows:

> "*Equity, like the common law, is not a 'brooding omnipresence in the sky.' Equitable principles are applicable to limited subjects in limited circumstances."*
>
> —*Turner v. Md. Dep't of Health,* 245 Md. App. 248, 277

The Court offered additional arguments and evidence that likewise support the exclusive jurisdiction of the Orphans' Court and the singular path that Maryland law provides to pursue actions on behalf of a decedent—the means the General Assembly established in the Estates & Trusts Article of the Maryland Code.

PERSPECTIVES ON DIVERSITY

Racial Wealth Gap: It's About Power

By Aimee D. Griffin, Esq.

I am not sure why the killing of George Floyd was the tipping point. But it was. We know that unarmed Black people have been killed for centuries while others looked on and did nothing. Why was this different? I have no idea, but I am thankful. I am thankful that we are having conversations about White supremacy. I am thankful that we are having the hard conversations about valuing Black lives. We are seeing the public signs of Black Lives Matter in places that have never been evidenced before. I am indeed grateful that the conversations are happening. The value of our lives is correlative with our economic value.

Power concedes nothing without a demand. It never did and it never will. Frederick Douglass made this quote in 1857. It is through this lens that the racial wealth gap should be viewed. Federal Reserve notes, in the 2019 survey, White families have the highest level of both median and mean family wealth: $188,200 and $983,400, respectively. Black families' median and mean wealth is less than 15 percent that of White families, at $24,100 and $142,500, respectively.

While the facts speak for themselves, there is no contention about the financial dwarfing of the net worth and mean family wealth comparatively between White and Black people. There is also no contention about the historic realities of Black people who had a status first as property during slavery, then 3/5ths of a person for the Constitutional Congress before the amendment allowing Black people to be recognized as full people in Reconstruction. The realities of the diminution of Black people to property is not a humanity question but a capitalistic reality. The ability to diminish the value of a person supports the ability to either not compensate or compensate at a diminished value the work that is provided. The realization of a capitalistic motivation provides a perspective that leads to the perpetuation of the diminution of Black people. The analysis of the economic power that was held by reducing the value of Black people was mighty. The power that was conceded to end slavery was not due to a humanitarian concern but the Civil War that demanded the elimination of slavery.

Black families' median and mean wealth is less than 15 percent that of White families.

Understanding the basics of net worth is the total of one's assets minus one's liabilities helps the revelation of the racial wealth gap. The Federal Reserve indicates the net worth of a homeowner is actually 40 times greater than that of a renter. Many Black people sought to achieve the dream of home ownership. The ability to acquire assets for Black people was thwarted by the federal government with "Redlining" and the GI Bill.

The Federal Government recognized the importance of home ownership and as the Great Depression threatened the stability of home ownership the New Deal created the Federal Housing Administration. The FHA had a manual which explicitly said that it was risky to make mortgage loans in predominantly Black areas. Overt racism made it very difficult to purchase in areas that were not Black areas. Redlining was a policy of the Federal Housing Administration that was established in 1934. The "redline" denoted the Black areas.

The GI Bill, formally known as the Servicemen's Readjustment Act of 1944, did not provide an opportunity for home ownership for Black veterans because banks would not allow mortgages in Black neighborhoods. There was significant opposition when Black people attempted to purchase properties in the suburbs to gain access to the resources. Therefore, the federal government was a significant participant in the

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diminution of asset acquisition for Black people.

The Fair Housing Act of 1968 was passed into law prohibiting discrimination concerning the sale, rental and financing of housing based on race, religion, national origin or sex.

The Community Reinvestment Act of 1977 was enacted to prevent redlining and to encourage banks and savings associations to help meet the credit needs of all segments of their communities, including low to moderate income neighborhoods.

The financial services industry has demonstrated systematic racism far beyond the mortgage components. The Freedmen's Bank was set up following emancipation in 1865. The idea was to help newly freed Black American's start to develop their own wealth. Even though the bank didn't offer loans, it grew strong with tens of thousands of Black Americans trusting it with their deposits.

By 1874, fraud and mismanagement by senior leaders and the board of directors at Freedmen's Bank had weakened the bank. One board member, White businessman Henry D Cook, used money from the Freedmen's bank to invest in his own quarry operations. The quarry eventually went bankrupt and the bank was ruined.

By 1874 Freedmen's Bank had closed and 60,000 Black Americans lost $3 million in savings. Given that full-time employment and fair pay were rarely accessible for formerly enslaved people, it was no surprise that much of this wealth was built through the establishment of Black businesses. When the Freedmen's bank failed, many of these entrepreneurs and their families were financially ruined.

The failure of the Freedmen's Bank was the beginning of a cultural legacy of mistrust by the Black community towards banking institutions.

Discrimination goes beyond mortgage lending. A report from *The Business Journals* found White neighborhoods receive roughly twice as much per person in small-business loans compared with Black neighborhoods. Similarly, predominantly White neighborhoods receive, on average, about twice as many small-business loans per capita.

The report also notes that, since peaking before the 2008 financial crisis, the number of loans made to Black-owned businesses through the Small Business Association's 7(a) program decreased by 84%, compared to a 53% drop in 7(a) loans awarded overall.

The decline came despite other positive trends, including a 48% growth in the economy, an 82% rise in commercial loans, and a 101% increase in bank deposits. Orv Kimbrough, Chairman and CEO at Midwest BankCentre, calls this disparity "corporate redlining."

Here are a few other key findings that provide evidence of discrimination in small-business lending:

- A review by the New York Times showed that 75% of the government's initial round of Paycheck Protection Program loans went to businesses in majority-White census tracts.
- Citi, Bank of America, JPMorgan, and Wells Fargo—the nation's four largest banks—made 91% fewer 7(a) loans to Black-owned businesses in 2019 than in 2007.
- Black businesses got 3% of 7(a) loan dollars in 2019. About 9.5% of U.S. businesses are Black-owned, according to the Census Bureau.

The historic Black Wall Street, Oklahoma's Greenwood District, was once a prosperous Black community with substantial businesses. After a newspaper reported that a Black man attempted to rape a White woman, the city erupted and thirty-five city blocks were destroyed, 300 people died, and 800 people were injured. This Black community had banks, hotels, cafés, clothiers and "remarkable school system".

Bridging the Racial Gap requires a multi-prong approach. There are responsibilities for individuals, institutions as well as government to complete in order to create opportunity and equity. Many people recant the 40 acres and a mule promise that enslaved people were promised as a part of reparations. That is not going to happen. Slave owners received reparations for the freedom of the slaves.

However, suggestions for reparations by the government have included the idea of Baby Bonds. Each newborn child would be granted a bond, a federally funded trust

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fund of sorts. The poorest child would get, say, $60,000, with the amount dwindling to nothing for the children of the richest families. The money would be put in an interest-bearing account that becomes accessible upon adulthood and could only be used for wealth-building activities, such as going to college or putting a down payment on a home. They figure the program would cost about $60 billion per year, which, Darity and Hamilton wrote in an academic paper, is "less than 10% of the non-war spending budget for the Department of Defense."

Some might contend that Baby Bonds, by focusing on wealth rather than race, unsatisfactorily address a racial problem. But Darity and Hamilton argue, "Since the distributions of white and non-white wealth are so disparate — 85% of black families have wealth holdings below the median white family — wealth can be an effective non-race-based instrument to eliminate racial inequality." Darity told me he thinks Baby Bonds "could go a long way toward closing the racial wealth gap."

The universality of Baby Bonds provides the potential to attract support from an interracial coalition of working-class people pursuing their own economic self-interest. Such a coalition could form a base that a political majority can rest upon. A poor white person in West Virginia would have as much reason to support this program as a poor black person in rural Alabama. Baby Bonds might get people to appreciate their commonality with others who, because of race, rarely think of themselves as having the same interests.

Corporations and Financial Institutions also have a significant role to play. Discrimination suits against Bank of America, MetLife, Prudential and Wells Fargo have resulted in significant legal judgments and settlements for discrimination. Ideally, accountability may compel change.

While there is often the fear of blaming the victim, there are actions that individuals must take to overcome the real obstacles that the status quo has imposed. Black people have survived, and many have thrived irrespective of the consistent "knee in the neck" that is being experienced with the mass incarceration, systematic and individualized racism.

Individualized action must work hand in hand with the corporate and governmental change that is desired. Individuals must utilize the tools that are necessary to build wealth and transfer through generations. Individuals must buy homes, make financial investments and decisions to create estate plans to transfer their property strategically. With each generation the opportunity to raise the platform for the following generation requires strategic action. That action must be taken with culturally competent and sensitive advisors. There is a proverb that says there is safety in the multitude of counselors. Cultural competence begins with understanding the goal and the journey. When America was perceived as the melting pot the expectation was to assimilate. The Diversity, Equity and Inclusion movement allows for validation for each person to be his/her authentic self. Advisors are encouraged to serve with empathy and compassion.

The collective demand for the equity for all people can shift the power for greater humanity.

ESTATE AND TRUST LAW SECTION COUNCIL

REPORT OF THE NOMINATING COMMITTEE

The members of the Nominating Committee for the Estate and Trust Law Section Council, Jonathan G. Lasley, (Chair of the Committee) Danielle M. Cruttenden, Anne W. Coventry, Christine W. Hubbard, and Michaela C. Muffoletto recommend the following appointments for 2021-2022:

Nominations for Officers 2021-2022

Chair: Michaela C. Muffoletto *(Chair-Elect will automatically become Chair following the annual meeting as provided in the Bylaws)*
Chair-Elect: Christine W. Hubbard
Secretary: Sarah B. Kahl

New Member Nomination to fill an unexpired term 2021-22

Leanne F. Broyles

New Member Nominations for Term 2021-23

Shakisha A. Morgan
Elsa W. Smith
Micah G. Snitzer
Laura L. Thomas

Nominations for Reelection to a single two-year term 2021-23 (Bylaws Section 4.01)

Jay M. Eisenberg
Janet I. McCurdy

Nominations for Reelection to a two-year term 2021-23

Rachel D. Burke
Nicholas J. Monteleone
Alex S. Tanouye