

SUMMARY OF COMMENTS
OF
THE ESTATES, TRUSTS AND PROBATE LAW SECTION
OF THE D.C. BAR
REGARDING PROPOSED BILL NO. 10-649
THE "PROBATE REFORM ACT OF 1994"

The Estates, Trusts and Probate Law Section intends to submit oral and written testimony at the hearings before the Judiciary Committee of the D.C. City Council on Bill 10-649, the "Probate Reform Act of 1994." The hearings are scheduled to take place on October 14, 1994.

The Section is generally supporting the theme of the proposed legislation. However, in view of the various significant substantive and procedural problems created by the draft legislation, members of the Steering Committee of the Section intend to testify on behalf of a redrafted, revised version of the legislative proposal. The new proposal is the result of a collaborative effort by representatives of our Section, the Council for Court Excellence, Legal Counsel for the Elderly, the American Association of Retired Persons and the Washington Bar Association.

A summary of the revised "Consensus Draft," containing the significant changes is attached.

S U M M A R Y
of
REVISED "CONSENSUS DRAFT"
of
THE PROBATE REFORM ACT OF 1994

A. Genesis of "Consensus Draft".

This "consensus draft" was prepared by an ad hoc committee composed of members of various groups in the community who are involved in probate matters from a variety of perspectives. The members of the committee are listed on Schedule A attached to this summary.

B. Changes from "UPC Proposal".

As shown on the program materials prepared by Nick Ward for the Bar's July 28, 1994 program on this proposed legislation (Schedule B), several very significant problems are created by the language of the proposal ("UPC Proposal") introduced in May by Councilman Nathanson. The consensus draft attempts to correct these problems while still preserving the theme of that legislative proposal -- the creation of a preference for unsupervised probate as (generally) defined by the Uniform Probate Code.

In addition, the consensus draft also makes other changes which, generally, fall into one of the following categories:

1. changes believed to be either necessary or advisable in order to more effectively implement the goals of the UPC Proposal;
2. changes recommended by the Probate Task Force;
3. changes needed in order to clean-up or resolve sources of conflict or uncertainty in the current statute; and
4. a few complementary (but new) proposed changes, which are believed to complement the goals of the UPC Proposal by providing needed certainty in the area of trusts used as "probate substitutes."

C. Summary of Changes to Current Statute, as Proposed in "Consensus Draft."

I. **Creation of Unsupervised Administration, as an Alternative to the Current System of Administration.**

A. Structure (see attached flow chart - Schedule C)

B. Improvements made to UPC Proposal include:

1. a requirement that the personal representative ("PR") file a certificate with the Court, within 90 days after appointment, certifying that all interested persons have received notice of the probate proceeding and a description of their rights in this process;

2. a provision confirming that an interested person can bring a matter to the Court's attention by simply writing a letter to the Court -- no formal petition or other particular format is required;

3. small estate proceedings are preserved (and the limit is increased from \$10,000 to \$25,000), as is the surviving spouse allowance;

4. the published notice will include a statement as to whether or not administration will be supervised;

5. PR has an obligation to update erroneous information given to interested persons, even if nothing is filed with the Court;

6. there will be no unsupervised probate if the will directs supervision (although the interested persons could waive the filing of inventories and accounts, and thus achieve unsupervised probate); and

7. the proceeding can be concluded by the PR filing a Certificate of Completion -- there is no need for a Court Order or any other action or review by the Court (with the exception of making sure that all of the required elements of the Certificate are present).

II. Changes to Current System of Administration.

A. Recommendations of the Probate Task Force:

1. if bond is waived, there is no bond;
2. confirmation that all PRs always have a duty to account to the interested persons, regardless of whether or not a filing with the Court is required;
3. waivers of inventories and accounts can be done by will, or by the consent of all interested persons;
4. eliminate the limit on funeral expenses for solvent estates, and increase the limit from \$750 to \$1,500 in insolvent estates; and
5. simplify (and allow the Will to govern) distributions to minors.

B. Other Changes:

1. interested persons who have waived the filing of inventories and accounts can ask for specific (or targeted) relief instead of simply requiring the filing and audit of those documents; and
2. providing a more clear and shorter period for achieving finality for PRs.

III. Additional Provisions.

1. successor trustees of trusts can be appointed by petition (instead of by complaint);
2. trustees may subdivide trusts for generation-skipping transfer tax purposes; and
3. create a much needed regime for providing a shortened statute of limitations for filing claims against a trust, or challenges to its validity.

IV. "Clean-up," Conforming, and Other Miscellaneous Changes.

SCHEDULE A

MEMBERS OF AD HOC DRAFTING COMMITTEE

Melissa B. Burkholder	State Legislation Department American Association of Retired Persons
Vicki R. Craig, Esquire Leftwich & Douglas	Member, Washington Bar Association
William E. Davis, Esquire Davis & Gooch	Co-Chair, Estates, Trusts and Probate Law Section D. C. Bar
J. Gordon Forester, Jr., Esquire Greenstein, DeLorme & Luchs, P.C.	Chair, Court Improvements Committee Council for Court Excellence
Catherine V. Hughes, Esquire Miller & Chevalier, Chartered	Member, Steering Committee (and former Chair) Estates, Trusts and Probate Law Section D. C. Bar (and Chair of this ad hoc committee)
Samuel F. Harahan	Executive Director Council for Court Excellence
DaCosta R. Mason, Esquire	Legal Counsel for the Elderly
Shelley G. Robinson, Esquire Steptoe & Johnson	Co-Chair, Estates, Trusts and Probate Law Section D. C. Bar
Nicholas D. Ward, Esquire	Chair, Probate Committee Estates, Trusts and Probate Law Section -- D. C. Bar Chair, Estates and Trust Law Committee, Bar Association of D. C. and Co-author of <u>Wills, Trusts, and Estates.</u>

