

To: The Chair and Members of the Senate Judicial Proceedings Committee

Date: March 22, 2022

Re: HB0092 – Maryland General and Limited Power of Attorney Act – Assistance with Governmental Benefits and Programs

2021 Testimony being submitted with the approval of Morris Klein, Esq.

To: The Chair and Members of the House Judiciary Committee

From: MSBA Elder Law Section by Morris Klein, Esq.

Date: February 22, 2021

Re: HB 870 - Maryland General and Limited Power of Attorney Act

Position: Support with Amendments

The Elder and Disability Law Section of the Maryland State Bar Association is an attorney organization whose members represent senior clients. I submit this report only in my capacity of serving as a spokesperson to express the position of this group.

A significant part of many of our members' practices involves drafting financial powers of attorney (and health care powers of attorney, which is not the subject today). A POA is a legal document in which an individual (the principal) appoints another person (the agent) with the legal authority to act on the principal's behalf. This document gives the principal the confidence that a chosen and trusted agent would make sound financial decisions choices if he or she can no longer make decisions. A POA avoids the need for a costly guardianship which results in a stranger making such decisions. An agent's typical actions may include accessing the principal's financial accounts to pay various bills, manage property, file income tax returns, protect assets for their benefit and the benefit of family members, and apply for public benefits such as veterans' benefits and Medicaid.

Eleven years ago, the Maryland General Assembly enacted a power of attorney law (Acts of 2010, Chs. 689 and 690, Md. Estates and Trusts Code Ann. § 17-101 et seq.) intended to make it easier for individuals to sign powers of attorney. The legislature developed some standardized forms that became part of the legislation. These forms are not perfect, and while enough time has passed to justify a more general review of this law, HB 870 focuses on one particular flaw that requires attention.

Some persons who become disabled and require long term care need to protect assets to protect their spouses and other family members from becoming impoverished or to set aside funds for disabled family members in a special needs trust. HB 870 clarifies that such actions are possible. This bill will improve the power of attorney document by offering additional options to better serve the wishes of the principal.

Our section offers amendments to add further clarification. Specifically, the proposed amendments add special needs trusts to the types of programs that the agent may establish and fund on behalf of the principal (amendments to lines 4 - 7 on page 25 of HB 870). It removes the potentially double negative explaining which items require a specific check-off

(lines 33 and 34 on page 25). It allows the agent to specifically initial authorization for unlimited gifting to these programs (on lines 8 - 14 of page 26 of the bill), permit gifts to the agent (line 14 of p. 26), and to fund trusts (line 15 of p. 26).

We assume that the agent is trustworthy and does not abuse his or her authority. Indeed, the agent is legally obligated to serve as a fiduciary of the principal. It is beyond the scope of this legislation to address problems with agents who abuse their authority. We understand that other legislation now on the books or under consideration addresses this issue.

Respectfully submitted,

Morris Klein, Esq.

4520 East-West Highway, Suite 700

Bethesda, MD 20814

301-652-4462

morrisklein@morrisklein.com