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# Recent Legislation: Decedents' Estates — Laws Enacted at the 1974 Session of the General Assembly of Maryland Affecting the Administration of Decedents' Estates

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In *Myer v. Montgomery Ward*,<sup>18</sup> the Maryland Court of Appeals, in dicta, quoted a treatise which spoke of the overlap of the two sections. While the court apparently agreed with the treatise, in a one sentence commentary which immediately followed the quoted passage, the court contradicted itself,<sup>19</sup> indicating at least its confusion regarding these sections.

Applying Pennsylvania law, a North Carolina case<sup>20</sup> also stated in dicta that sections 2-314 and 2-315 are not mutually exclusive. In that case a transportation company purchased fifty trailers whose brakes failed. The plaintiff brought his case under section 2-315 and the defendant argued that since the trailers were used for their ordinary purpose, the section 2-314 warranty, which was not pleaded, applied. The court allowed recovery under section 2-315. This result, however, appeared to be based on the theory that the trailers were *peculiar to the plaintiff's business* and therefore qualified as a particular purpose under section 2-315, even though they were put to the ordinary use for which they were designed.<sup>21</sup> This interpretation preserves the distinction between the two sections while it recognizes that a given set of facts may allow a plaintiff to recover under either section 2-314 or 2-315.

These cases notwithstanding, because it overlooked section 2-314, the current legislation as enacted fails to protect the consumer who leases under all but "particular" circumstances. The remedy is for the Legislature to extend section 2-314, as well as 2-315, to leases.

#### DECEDENTS' ESTATES — LAWS ENACTED AT THE 1974 SESSION OF THE GENERAL ASSEMBLY OF MARYLAND AFFECTING THE ADMINISTRATION OF DECEDENTS' ESTATES

James G. McCabe\*

Chapter 11 (S.B. 133)\*\* — This statute, known as the "Estates and Trusts Article" completely replaces Article 93 as it existed before July 1, 1974. It codifies in one Article, eventually to be published by Michie as a new volume of the Code, not only Article 93 pertaining to decedents' estates but also Article 93A, pertaining to the estates of minors and persons under a disability; the Uniform Gifts to Minors Act; and Minors Recovery in Tort; as well as Article 37A, the Uniform Fiduciaries Act; Article 43, the Anatomical Gift Act; Article 75B, the Uniform Principal and Income Act; a number

18. 253 Md. 282, 252 A.2d 855 (1969).

19. *Id.* at 295-96, 252 A.2d at 863-64.

20. *Tennessee Carolina Transp., Inc. v. Strick Corp.*, 283 N.C. 423, 431-33, 196 S.E.2d 711, 717 (1972).

21. See note 16 *supra*, cf. section 2-315, Comment 2. The court also referred to the inclusion in Comment 2 of the statement that a contract may contain both a warranty of merchantability and of fitness for a particular purpose.

of pertinent Sections of Article 16; and also certain pertinent Sections of other Articles of the Code.

This statute was produced by the Governor's Commission to revise the Annotated Code.

Although on the whole the revision involves only the re-organization of paragraphs and changes in style and language, some substance does appear however. The following two instances of substantive change have been noticed in the Sections pertaining to decedents' estates:

1. Section 7-502(A), providing for notice to interested persons of Personal Representative's commissions and counsel fees, now requires that the notice state that a request for a hearing may be made within 20 days.
2. Section 7-301, providing for notice to interested persons of the filing of administration accounts, no longer requires that the account be filed within 15 days of giving the notice.

Chapter 759 (H.B. 972)\*\* — Amended Section 7-601(B) of the new Estates and Trusts Article to include income from fee simple property in the probate estate subject to Personal Representative's commissions.

Chapter 760 (H.B. 974)\*\* — Amended Section 7-301 of the new Estates and Trusts Article by changing the word "certificate" to "certification".

Chapter 762 (H.B. 998)\*\* — Amended certain Sub-Sections of Section 2-206 of the new Estates and Trusts Article by increasing certain Register's fees.

Chapter 763 (H.B. 999)\*\* — Deleted 7-602(D) from the new Estates and Trusts Article, thus eliminating appearance fees for counsel in the Orphans' Court.

Chapter 767 (H.B. 103)\*\* — Repealed and re-enacted Section 7-501(B) of the new Estates and Trusts Article so as to change the time for excepting to administration accounts from 30 days to 20 days.

Chapter 493 (H.B. 1050)\*\* — Repealed and re-enacted Section 2-211(C) of the new Estates and Trusts Article so that, upon approval of final administration account, only inventories, accounts, notices to creditors and petitions and orders need be recorded by the Register.

Chapter 649 (S.B. 765)\*\*\* — Repealed and re-enacted Sections 5-601 and 5-605 of the new Estates and Trusts Article increasing the maximum amount of decedent's estate from \$2,000 to \$5,000 in order to qualify for administration under the Small Estates Act.

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\*\* Effective July 1, 1974, and therefore apparently applicable to all estates regardless of date of death.

\*\*\* Effective July 1, 1974, but only as to the estates of decedents dying on or after that date.