



1982

## Recent Developments in Maryland's Intestate Succession Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

### Recommended Citation

(1982) "Recent Developments in Maryland's Intestate Succession Law," *University of Baltimore Law Forum*: Vol. 13: No. 1, Article 9.  
Available at: <http://scholarworks.law.ubalt.edu/lf/vol13/iss1/9>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

In so doing, the court indulged in a lengthy review of the statutory history of MPDA and of the prevailing doctrines which other states with similar statutes have employed in enforcing those statutes. While stressing the importance of protecting the interests of spouses who had made monetary and nonmonetary contribution to the marital unit and residence, the court considered and rejected two competing theories adopted by a majority of its sister jurisdictions: (1) the "inception of title theory," which grants title to the spouse who had acquired an equitable right to the property prior to the marriage, even though not perfected, and (2) the "transmutation of property theory," which classifies property as marital for the purpose of equitable distribution when there has been a contribution of marital funds to nonmarital property. Instead, the court held that under the MPDA, the appropriate analysis to be applied is the "source of funds theory."

Under that theory, when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, a spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property. The remaining property is characterized as marital property subject to an equitable distribution.

*Harper*, \_\_\_Md. at \_\_\_, 448 A.2d at 929.

The court stated that the "source of funds theory" is consistent with the language of § 3-6A-01(e), which sets forth an exclusive list of nonmarital property and indicates a legislative intent that certain property not be subject to equitable distribution, specifically, property which is acquired prior to the marriage.

Additionally, to best effectuate the imposition of its holding, the court adopted an interpretation of the term "acquired" appearing in § 3-6A-01(e) as:

The on-going process of making payment for property. *Tibbets*, 406 A.2d at 77. Under this definition, characterization of nonmarital or marital property depends upon the source of each contribution as payments are made, rather than at the time legal or equitable title or possession of the property is obtained.

*Id.* at \_\_\_, 448 A.2d at 929.

Thus, in light of the court's newly adopted source of funds theory and interpretation of the term "acquired," it remanded the case to the trial court so that there might be a determination as to: (1) the source of the funds expended for the parcel of land and the improvements made thereon by the spouses individually and as a unit; (2) the degree to which the parcel of land and the marital residence are to be characterized as marital and/or nonmarital; and (3) the value of the marital property. The aforementioned factors are all relevant in the court's determination of an equitable distribution of the property in issue.

The decision adds some clarification to the MPDA which to this date remains a statute relatively undefined by case law. It seems to reaffirm that Maryland courts have little or no intention of becoming a community property jurisdiction, as evidenced by the Court of Appeals's rejection of the "inception of title theory" and the "transmutation of property theory."

\* \* \*

## Recent Developments in Maryland's Intestate Succession Law

The 1982 amendment to Md. Est. & Trusts Code Ann. § 3-102 (1974), is a welcome change to Maryland's intestate succession law. The legislature's purpose for enacting the amendment was to reflect the intestate's desire to have the greater portion of the estate go to the surviving spouse.

Under the statute as it existed prior to 1981, a surviving spouse received only one third of the deceased's estate if there was a surviving issue. If there was no surviving issue, but a surviving parent of the deceased, then the spouse's share of the estate increased to one half. And, if there were no surviving issue or parents, but a surviving sibling of the deceased, then the spouse's share became one half of the residue of the estate plus \$4,000.00. Thus, the only way a surviving spouse was entitled to receive the entire estate was if there were no surviving issue, parents or siblings of the deceased. Md. Est. & Trust Code Ann. § 3-102 (1974).

The 1981 amendments to the law increased the spouse's distribution of the estate to one half regardless of whether there was a surviving issue or parent. Absent a surviving issue or parent, the spouse received the entire estate regardless of whether or not there was a surviving sibling. Md. Est. & Trust Code Ann. § 3-102 (1981).

The 1982 amendment gives the surviving spouse an even greater portion of the estate if the surviving issue is an adult as opposed to a surviving minor issue. If the surviving issue is an adult, then the spouse will be entitled to the first \$15,000 of the estate plus one half of the residue. The same entitlement ap-

plies if there is a surviving parent of the decedent. But, if there is surviving minor issue, the spouse will receive only one half of the estate, the other half of the estate going to the surviving minor issue. The policy is to prevent minor issue from possibly becoming wards of the state by insuring their support. Md. Est. & Trust Code Ann. § 3-102 (1982).

Proponents of the amendment were hoping that the legislature would adopt the Uniform Probate Code § 2-102 (1969), which gives the surviving spouse the first \$50,000 of the estate plus one half of the residue, however, the Maryland legislature was not ready for such a drastic change. The steady progression of this law from 1974 to 1982 indicates that it may not be long before the Uniform Probate Code finds its way into Maryland Law.

*Louis J. Rosenthal, member of the Governor's Committee on Intestate Succession and a member of the adjunct law faculty of the University of Baltimore School of Law supplied information regarding this recent amendment.*

## Legislative— New Incentive for Secondary Financing?

by Lisa Dopkin

With housing starts at record lows, high interest rates, and the Supreme Court's recent ruling upholding the validity of "due-on-sale" clauses in mortgages by federally chartered institutions, it seems as if the American dream of buying a home is beyond the reach of most. In order to aid the troubled housing market in times such as these, it is often necessary to develop alternative methods of financing.

The Maryland legislature recently amended Section 8-110 of the Real Property Article, increasing from 6% to 12% the allowable capitalization

rate for redemption of certain reversionary estates created by "ground rent" leases for longer than 15 years. This action provides a much needed incentive for creating secondary financing.

### Historical Background

"Ground rent" leases, while not generally used in other states, have been used in Maryland, particularly in Baltimore City, since the colonial days. The origin and development of ground rents in this state have been extensively reviewed by Judge Frank A. Kaufman; *The Maryland Ground Rent—Mysterious But Beneficial*, 5 Md. L. Rev. 1 (1940) and by Mayer, *Ground Rents in Maryland* (1883).

In the ground rent lease, the owner of the land in fee simple leases it for the period of 99 years with a covenant for renewal from time to time forever upon payment of a small renewal fine. The renewal is conditioned on the lessee paying a certain rent (usually payable semi-annually), which, if capitalized at a reasonable rate of interest, represents what is conceived to be the value of the land. The lease also usually provides that if the payment is in default the lessor may re-enter and terminate the lease. This system of creating leasehold estates appears to have been based on the policy of encouraging the lessee to make improvements. *Banks v. Has-kie*, 45 Md. 207 (1876); *Culbreth v. Smith*, 69 Md. 450, 16 A. 112 (1888); *Moran v. Hammersla*, 188 Md. 378, 52 A.2d 727 (1947); *Kolker v. Biggs*, 203 Md. 137, 99 A.2d 743 (1953). Although the term "ground rent" primarily relates to the rent payable to the lessor, it is often used to refer to the lessor's reversionary interest in the leasehold premises. *Ogle v. Reynolds*, 75 Md. 145, 23 A. 137 (1891).

The interest of the owner of the reversion has long been held to be an interest in real property. On the other hand, the interest of the lessee is a leasehold interest, and has been uniformly regarded as per-

sonal property, notwithstanding the fact assignment of the leasehold interest must be executed, acknowledged and recorded as deeds. *Myers v. Silljacks*, 58 Md. 319 (1882).

However, "[u]nlike ordinary leases . . . the leasehold interest is frequently, not to say usually, by far the most valuable of the two interests in such perpetual leases . . . The leaseholder is the substantial owner of the property. All that the owner of the ground rent is concerned about is that his rent is secure . . ." *Mayor and City Council of Baltimore v. Latrobe*, 101 Md. 621, 640, 61 A. 203, 209 (1905).

"In practical economic effect, the relation of the lessee to the property is that of an owner of land and improvements thereon subject to the payment of the annual rent and taxes on the property . . . [t]he technical relation between the owner of the rent and of the leasehold is that of landlord and tenant." *Jones v. Magruder*, 42 F. Supp. 193, 196 (D. Md. 1941). Furthermore, the owner of the leasehold under ground rent lease may assign, sublet or mortgage the leasehold. *Williams v. Safe Deposit & Trust Co.*, 167 Md. 499, 175 A. 331 (1934).

For more than a century the leasehold owner could not absolve himself of the necessity of paying the rent absent an appropriate provision in the lease. However, beginning in 1884, with a series of statutes which were only prospective in their operation, the legislature provided for the conditions upon which the ground rents were made redeemable at the option of the leasehold owner. *Trustees of Sheppard & Enoch Pratt Hospital v. Swift & Co.*, 178 Md. 200, 13 A.2d 174 (1940). Redemption transferred the fee to the leasehold owner thus relieving him of the obligation to pay rent. The redemption statutes apply not only to the usual form of ground rent leases for 99 years, renewable forever, but also to all leases of terms in excess of 15 years. *Marburg v. Mercantile Bldg. Co.*, 154 Md. 438, 140 A. 836 (1928). But redemption could not, and to this day cannot,