

CBA LPRC POSITION REQUEST FORM

The CBA Elder Law Section

Law **position request** is as follows:

1) Proposed legislative or regulatory concept:

The Elder Law section opposes legislation that would provide a Probate Court judge with the discretion to award a surviving spouse a statutory share of an estate that exceeds one-third of all property passing under a will based on the equities of the case.

2) Explanation and rationale for advancing this position: Current law provides that on the death of a spouse, the surviving spouse may elect to take a statutory share of the real and personal property passing under the Will of the deceased spouse. This means a life estate of one-third in value of all the property passing under the Will of the deceased spouse after payment of all debts and charges against the estate. The legislation previously proposed on this issue, would be a significant change and give a Probate Judge the authority to award a surviving spouse a statutory share that could be more than that. This would change a clear statute with a fixed statutory share to a broad power with an uncertain share as determined by the Judge in each case, with no clear standard.

3) Is draft regulation, legislation or proposed bill included? No.

4) What is the date of any legislative hearing, if known? None.

5) Was this position previously approved by the CBA? If so, when does/did it expire?
Yes approved House of Delegates March 20, 2017, expired end of 2019 legislative session.

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position? No.

7) Potential or actual CBA opposition from another CBA section or committee? None.

8) Strength of section position (including process and results of section vote taken on issue):

This position was previously approved in 2017 by the Executive Committee by an e mail vote 28 in favor none opposed 1 abstained. At a meeting of the Section on September 17, 2019 the Executive Committee voted unanimously to pursue reauthorization of the position, with 24 Executive Committee members present.

9) Fiscal impact (on the state): Unknown, although this position seeks to maintain the status quo so it would not change current budgetary matters.

10) Are you seeking “fast-track” approval? No.

¹ A “fast track” recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.