

Jurisdictional Statutes

Jurisdiction of the Orphans' Courts

Generally – the orphans' courts are courts of **limited jurisdiction** authorized to:

- conduct judicial probate;
- direct the conduct of a personal representative;
- summon witnesses; and
- issue orders that may be required in the court of the administration of an estate of a decedent; or necessary to determine the value or sources of payment of an elective share under § 3-413 of Estates and Trusts Article (E and T Article) (§ 2-102(a)(1) of E and T Article).

The orphans' courts may not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred (§ 2-102(a)(2) of E and T Article).

Jurisdiction of the Circuit Courts

Generally – the circuit courts are trial courts of **general jurisdiction** with equitable powers (§ 1-501 of Courts and Judicial Proceedings Article (C and JP Article)).

Trusts and Fiduciary Matters

The circuit court:

- has **personal jurisdiction** over a trustee, beneficiary, and distributee of a trust having its principal place of administration in the State (§ 14.5-202 of E and T Article);
- may intervene actively in the administration of a trust, fashioning and implementing remedies as the public interest and the interests of the beneficiaries may require (§ 14.5-201(a) of E and T Article);
- may remedy by specified actions a breach of trust by the trustee that has occurred or may occur (§ 14.5-901(b) of E and T Article);
- must remove a fiduciary who has done specified actions (§ 15-112 of E and T Article).

Concurrent Jurisdiction – Guardianship of the Person and Property of a Minor

The orphans' courts and the circuit courts have **concurrent jurisdiction** over guardians of the person of a minor and overprotective proceedings for minors. Upon petition of an interested person, a matter initiated in the orphans' court may be transferred to the circuit court (§ 13-105(a) of E and T Article). "Court" means the court having jurisdiction under § 13-105 of this subtitle (§ 13-101(d) of E and T Article).

Guardian of the Person

The orphans' court:

- may exercise jurisdiction over guardianship of the person of a minor if the presiding judge of the orphans' court is a member of the bar, regardless of whether the minor who is subject to the petition for guardianship of the person has property, may inherit property, or is destitute (§ 13-105(c)(1) of E and T Article);
- that exercises jurisdiction or are requested to exercise jurisdiction under this subsection may: (1) transfer the matter to the circuit court on a finding that the best interests of the child require utilization of the equitable powers of the circuit court; and (2) waive the costs, if any, of a transfer under this paragraph (§ 13-105(c)(2) of E and T Article); and
- may appoint a guardian of the person of an unmarried minor if the court finds, by a preponderance of the evidence, that (1) the appointment is in the best interest of the minor; (2) no testamentary appointment has been made; and (3) no parent is willing or able to serve as guardian of the person of the minor; each parent consent to the appointment of the guardian of the person; or no parent files an objection to the appointment of the guardian of the person (§ 13-702(a)(1) of E and T Article).

The circuit court also has **additional** jurisdiction over the guardianship of the person of a minor:

- has exclusive original jurisdiction over specified juvenile causes, including a guardianship review proceeding, and concurrent jurisdiction with juvenile courts over specified custody, visitation, and support (§ 3-803 of C and JP Article);
- as an equity court has jurisdiction over specified subjects, including custody or guardianship of a child (§ 1-201 of Family Law Article); and
- has exclusive original jurisdiction over specified crimes committed by a juvenile under Subtitle 8A of the Courts and Judicial Proceeding Article.

See 77 *Md. Op. Att'y Gen.* 41 (1992); *In Re Adoption/Guardianship of Tracy K.*, 434 Md. 198 (2013)

Guardian of the Property

The orphans' court and the circuit court:

- may appoint a guardian of the property of a minor or a disabled person. A guardian must be appointed if the court determines that a minor owns or is entitled to property that requires management or protection; or funds are needed for the minor's support, care, welfare, and education and protection are necessary or desirable to obtain and provide funds (§ 13-201(a) and (b) of E and T Article).

The orphans' court:

- has full power to secure the rights of a minor whose estate is being administered by a guardian under its jurisdiction. The orphans' court, under the pretext of incidental power or constructive authority, may not exercise jurisdiction not expressly conferred by law. The orphans' court is governed by the provisions of §§ 2-102 through 2-105 of this article (§ 13-106 of E and T Article).

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