

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 466

(Senator Eckardt, *et al.*)

Judicial Proceedings

Health and Government Operations

Estates and Trusts - Administration of Estates - Waiver of Fees

This bill authorizes a register of wills to waive the fees for administration of an estate if the estate is unable to pay the fees by reason of poverty *and* the real property of the decedent is (1) to be transferred to an heir of the decedent who resides on the property or (2) encumbered by a lien and subject to a tax sale. The bill has prospective application and, accordingly, does not apply to the estate of any decedent who died before the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in general revenues due to reduced probate fees collected by local registers of wills, as discussed below. Expenditures are not affected.

Local Effect: Potential minimal decrease in local revenues due to reduced probate fees collected by local registers of wills, as discussed below. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: An "heir" means a person entitled to any part of the net estate of a decedent not effectively disposed of by will pursuant to the rules of intestate succession.

Administration Fees: Generally, registers of wills are entitled to charge and collect fees for the performance of specified duties, which include, among other things, taking probate of wills, furnishing certified copies of the will and codicils, granting letters of administration, furnishing certificates of letters as specified, issuing warrants to appraise,

filing elections of surviving spouses to take intestate shares, and filing and recording wills, bonds, inventories, accounts of sale, releases, administration accounts, petitions and orders. **Exhibit 1** lists the probate fees based on the assessed value of the probate estate as set forth in State law.

Exhibit 1
Probate Fees Assessed on the Value of the Probate Estate

<u>Value of Probate Estate</u>	<u>Probate Fee</u>
\$0 – but less than \$10,000	\$50
At least \$10,000 – but less than \$20,000	\$100
At least \$20,000 – but less than \$50,000	\$150
At least \$50,000 –but less than \$75,000	\$200
At least \$75,000 – but less than \$100,000	\$300
At least \$100,000 – but less than \$250,000	\$400
At least \$250,000 – but less than \$500,000	\$500
At least \$500,000 – but less than \$750,000	\$750
At least \$750,000 – but less than \$1,000,000	\$1,000
At least \$1,000,000 – but less than \$2,000,000	\$1,500
At least \$2,000,000 – but less than \$5,000,000	\$2,500
At least \$5,000,000 and over	\$2,500 plus 0.2% of excess over \$5,000,000

Source: Department of Legislative Services

Unless otherwise specified, the value of a probate estate is the amount, as reflected in filed administration accounts, that equals the sum of:

- the value of all inventories filed in the proceedings;
- all principal and income receipts; and
- other than a distribution to beneficiaries, all increases less any decreases realized on a disposition of any probate asset.

Real Property Tax Liens and Sales: A county or municipal corporation must sell real property that has been attached with a lien for unpaid property taxes at the time specified by local law, unless an exception applies. Except in Baltimore City, the sale must be executed no later than two years from the date the tax is in arrears. However, failure of the county or municipality to sell within the two-year period does not affect the validity or collectability of any tax, or the validity of any sale made after the two-year time period.

Background: The bill is intended to implement one of the recommendations of the Task Force to Study Tax Sales in Maryland, which was established by Chapters 615 and 616 of 2017. The task force was directed to:

- evaluate and assess the impact of tax sales in Maryland;
- evaluate how tax sales are conducted in each county;
- evaluate tax sales to collect delinquent water charges and alternative methods of collecting delinquent water charges; and
- examine and make recommendations for reform of the tax sale process in Maryland.

Among other things, the task force recommended waiving probate fees “for opening estates when transferring property from a deceased relative to a family member for the purpose of resolving the tax sale situation.” In the report of the task force, the recommendation was explained as follows:

Whereas many courts do have hardship or indigent processes by which costs are waived, probate court does not in the case of estates. This legislation would apply the same process used in other courts to the probate court estates process. At least 19% of the cases that the Maryland Volunteer Lawyers Service sees are an occupant of the home who is a family member of the deceased person whose name is on the deed. In order to avoid tax sale, the occupant needs to have themselves on the deed and therefore must open an estate to do so.

However, occupant family members with limited income often do not have the financial resources to open an estate and pay the applicable fees.

According to the task force, Baltimore City reported that 9,984 properties were placed in tax sale in 2016. Of the total, 5,718 had the liens sold at tax sale, with 1,945 of the liens on owner occupied homes.

State Revenues: General fund revenues may decrease minimally depending on the frequency with which local registers of wills elect to waive probate fees on an estate. Probate fees and inheritance taxes collected by the registers of wills that are not used for salaries and expenses are deposited in the general fund. Data is not readily available to reliably estimate the number of estates that meet the requirements of the bill, or the portion of that number for which a register of wills might grant a fee waiver. However, it is anticipated that the number of estates affected by the bill is minimal. The Office of the Register of Wills reports that it collected \$6,128,730 from probate fees and small estate fees for fiscal 2017.

Local Revenues: Probate fees and inheritance taxes collected by the registers of wills are used to offset the costs for salaries and expenses. To the extent the local registers of wills exercise their discretionary authority under the bill to waive a probate fee, local revenues decrease. It is anticipated that any such decrease in revenues is minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 556 (Delegate Sydnor) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; State Department of Assessments and Taxation; Task Force to Study Tax Sales in Maryland; Department of Legislative Services

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