

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 261

(Senator Ferguson)

Judicial Proceedings

Health and Government Operations

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**Estates and Trusts - Administration of Estates - Waiver of Fees - Required**

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This bill *requires*, rather than authorizes, a register of wills to waive the fees for administration of an estate if (1) the real property of the decedent is to be transferred to an heir of the decedent who resides on the property or is encumbered by a lien and subject to a tax sale and (2) the estate is unable to pay the fees by reason of “poverty.” The bill applies prospectively and does not apply to the estate of any decedent who died before the bill’s October 1, 2019 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially impact State finances or operations, as discussed below.

**Local Effect:** The bill is not anticipated to materially impact local government finances or operations, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A register of wills *may* waive the fees for administration of an estate if (1) the real property of the decedent is to be transferred to an heir of the decedent who resides on the property or is encumbered by a lien and subject to a tax sale and (2) the estate is unable to pay the fees by reason of “poverty.”

“Poverty” means (1) at the time of the decedent’s death, the decedent’s family household income was less than 50% of the median family income for the State as reported in the

Federal Register or (2) the personal representative is represented by an attorney retained through the Maryland Legal Services Corporation. 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.

**Background:** Chapter 233 of 2018 *authorized* a register of wills to waive the fees for administration of an estate under specified circumstances. Chapter 233 was 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.

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.” The final report of the task force explained that while many courts have hardship or indigent processes by which costs are waived, probate court does not in the case of estates. The report further stated that 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.

*Probate 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. The Office of the Register of Wills [maintains a website](#) that lists the applicable regular estate probate fees, small estate probate fees, and other fees. **Exhibit 1** lists the probate fees based on the assessed value of the probate estate as set forth in State law.

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.

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

<u><b>Value of Probate Estate</b></u>	<u><b>Probate Fee</b></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: Office of the Register of Wills

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**State Revenues:** General fund revenues may decrease minimally due to the bill’s requirement that local registers of wills waive probate fees on an estate under the bill. (As noted above, under current law, local registers of wills are *authorized, but not required*, to waive those fees.) 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. However, based on the negligible fiscal impact of Chapter 233 of 2018, 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 \$6,769,846 from probate fees and small estate fees for fiscal 2018.

**Local Revenues:** Probate fees and inheritance taxes collected by the registers of wills are used to offset the costs for salaries and expenses. Local revenues may decrease due to the bill’s requirement that probate fees be waived on an estate under the bill. However, it is anticipated that any such decrease in revenues is minimal.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2019  
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