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**To:** Members of the Senate Judiciary Proceedings Committee

**From:** MSBA Estate & Trust Law Section

**Date:** March 29, 2022

**Subject:** **HB 187** – Estates & Trusts – Administration of Estates – Fees

**Position:** **Support as Amended**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports as amended** House Bill 187 – Estates and Trusts – Administration of Estates – Fees.

Maryland’s Registers of Wills are charged with the responsibility of assisting the public with the process known as probate, whereby property in the name of a decedent is transferred to the beneficiaries named in a will or to the decedent’s heirs, when the decedent died without a will. The fees that a Register of Wills collects for the performance of their duties are governed by § 2-206 of the Estates and Trusts Article. Among the enumerated fees, §2-206 specifically provides for the collection of a probate fee, the calculation of which is based upon the value of the probate estate. As provided in § 2-206 (b)(1), this fee is “[f]or taking probate of wills and furnishing 2 certified copies of the will and codicils, granting letters of administration and furnishing 12 certificates of letters, issuing warrants to appraise, enter on estate docket, filing elections of surviving spouses to take intestate shares, filing renunciations and disclaimers, filing and recording wills, bonds, inventories, accounts of sale, releases, administration accounts, petitions and orders, and other papers filed in the administration of decedents’ estates ....” The probate fee is currently assessed on all estates in Maryland, including small estates which have a value of less than \$50,000 (or less than \$100,000 if the spouse is the sole legatee or beneficiary of the estate).

The current schedule for determining the probate fee results in small estates paying a disproportionately higher fee than larger estates. For example, a probate estate of \$30,000 is assessed a probate fee at the rate of .005% or \$150, whereas a probate estate of \$530,000 is assessed a probate fee at the rate of .001% or \$750. The inequity is actually greater when considering the ability of wealthier individuals to afford the legal services of an estate planning attorney to prepare revocable living trusts and use other estate planning tools that avoid the cost of probate. Economically disadvantaged families, on the other hand, are dependent upon the probate process in order to gain access to their inheritance. For many of these lower income families, even the most modest probate fee is a financial hardship.

In 2020 and 2021, the Estate and Trust Law Section of the Maryland State Bar Association participated as a member of Life & Health Planning Committee to the Maryland Attorney General's COVID-19 Recovery Task Force. As stated in that Task Force's Report, the COVID-19 pandemic exacerbated the challenges faced by low-income families dealing with the death of their family members, including costs associated with probate and property transfers. It was the recommendation of the Life & Health Committee, as adopted by the Task Force, that the Maryland General Assembly eliminate probate fees on small estates to allow for greater access to justice.<sup>1</sup>

HB 187 resolves the financial inequities of the current probate fee schedule by removing the probate fee on all small estates and adjusts the remaining fee structure to correct its current regressive nature. It is worthy to note that no increase in the probate fee schedule has occurred for more than 30 years. Accordingly, it is reasonable to adjust the probate fee schedule to not only correct the inequities described above, but to have the fees reflect the actual increase in costs to the Register of Wills that comes with the performance of their duties.

For the reasons stated above, the MSBA **supports HB 187 as amended and urges a favorable committee report.**

**For Further Information, Please Contact:**

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<sup>1</sup> See, *Confronting the Covid-19 Access to Justice Crisis*, report of the Maryland Attorney General Brian E. Frosh's COVID-19 Access to Justice Task Force, January 2021, page 33.