



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 192 (as reported without amendment)
Sponsor: Senator Bruce Caswell
Committee: Judiciary

(as passed by the Senate)

Date Completed: 3-17-11

RATIONALE

The Revised Judicature Act requires the probate court to collect an administration fee, also called an inventory fee, on the value of assets in decedents' estates submitted to probate. The amount of the fee is calculated according to a schedule of fees in the Act, based on the value of an estate at the time of death. When an estate includes real property, the fair market value of that property is included without regard to whether the property is subject to a mortgage or otherwise encumbered by an indebtedness. This was confirmed in 2006 by the Michigan Court of Appeals in *Estate of Wolfe-Haddad v Oakland County* (272 Mich App 323).

It has been suggested that, in such a situation, the amount of the indebtedness should be deducted from the value of the estate for purposes of calculating the administration fee.

CONTENT

The bill would amend the Revised Judicature Act to provide that, if real property included in an estate were encumbered by or used as security for an indebtedness, the amount of the indebtedness would have to be deducted from the value of the real property, in the calculation of the probate court administration fee.

(The Act contains a range of fees based on the value of an estate. At the low end, in an estate worth less than \$1,000, the fee is \$5 plus 1% of the amount over \$500. At the high end, in an estate worth \$100,000 to \$500,000, the fee is \$362.50 plus one-eighth of 1% of the amount over \$100,000.

For each additional \$100,000 value over \$500,000, the Act requires a fee of \$62.50. For each additional \$100,000 value over \$1.0 million, the Act requires a fee of \$31.25.)

MCL 600.871

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Real property can represent a significant portion of the value of an estate, accounting for a large part of the probate court administration fee. In an estate with total assets worth \$600,000, for example, \$450,000 of that amount might be attributable to the value of a residence. Under current law, the administration fee will be based on the full \$600,000, even if the real property is subject to a mortgage loan on which \$350,000 is owed. If that amount were deducted from the value of the estate, the administration fee would be calculated on an estate worth \$250,000. Providing for this deduction would simply be a matter of fairness, especially in today's world where mortgagors often have little equity in their property.

In *Estate of Wolfe-Haddad*, the Michigan Court of Appeals made it clear that the Revised Judicature Act requires probate courts to collect a fee based on the value of all assets held by an estate. The Act does not define the term "value" to exclude security interests and does not otherwise

provide for deductions based on security interests held in an estate's assets. Because the statute is unambiguous, according to the Court, it must be enforced as written. The Court also addressed a Michigan Court Rule that, at the time, required deductions to be allowed for secured loans on property in an estate, when the inventory fee was calculated (MCR 5.307(A)). The Court found that the statute prevailed over the court rule, and the rule subsequently was amended to conform to the Court's decision.

The bill, in effect, would reverse the outcome of *Wolfe-Haddad* by amending the statute to require an inventory fee deduction for security interests in real property.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

To the extent that the bill reduced the applicable value of decedents' estates, probate courts could experience an indeterminate reduction in administration fees. Under the Act, two-fifths of this fee revenue is directed to the county general fund, and three-fifths to the State General Fund.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.