

PROBATE & ESTATE PLANNING SECTION
Public Policy Position
HB 4821 and HB 4822

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,544 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On October 14, 2017, the Section adopted its position after discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position on HB 4821 and HB 4822, 0 members voted against this position, 0 members abstained, 5 members did not vote.

The Probate & Estate Planning Section Opposes HB 4821 and HB 4822 with Recommended Amendments.

SB HB 4821 (H-1): The Section opposes all suggested amendments to MCL 700.3203 as well as the addition of subsection (6) to MCL 700.3414 pertaining to criminal penalties for a public administrator who knowingly fails to provide certain notices.

SB HB 4822 (H-1): The Section opposes all suggested amendments to MCL 700.3721 as well as the portion of MCL 700.3715(2)(A) requiring written approval of the state court administrator before a probate court may approve a sale of decedent's real property.

Explanation of Position

1. Substitute HB 4821

Substitute HB 4821 amends MCL 700.3203, 700.3204, and 700.3414. It amends MCL 700.3203 to extend the timeframe before a public administrator can step in and administer an estate from 42 days to 91 days, except where exigent circumstances exist a court may appoint a public administrator after 42 days but before 91 days. The committee opposes all suggested amendments to MCL 700.3203.

Substitute HB 4821 amends MCL 700.3204 to require a public administrator be appointed only in a formal proceeding. The committee is agreeable to the amendments to MCL 700.3204.

Substitute HB 4821 amends MCL 700.3414 to create specific notice requirements where a public administrator is seeking appointment as personal representative and has knowledge that the decedent's real property is subject to a mortgage foreclosure or has delinquent property taxes. It also amends MCL 700.3414 to create criminal penalties for a public administrator who knowingly fails to provide the notices required.

The committee is agreeable to the amendments to MCL 700.3414 added as a new subsection (5), but the committee opposes the addition of subsection (6) pertaining to criminal penalties.

2. Substitute SB HB 4822

Substitute HB 4822 amends MCL 700.3705, 700.3715, and 700.3721. It amends MCL 700.3705 to require notice of appointment be given to the county treasurer when the public administrator is the personal representative and the decedent's real property is subject to a tax foreclosure. The committee is indifferent to this.

Substitute HB 4822 amends MCL 700.3715 to require public administrators to obtain court approval before sale of a decedent's real property. It also goes on to prohibit a court from approving such a sale when the real property is occupied by an heir of the decedent unless the state public administrator provides written approval. The committee is agreeable to requiring court approval to sell real property, but opposes the remainder of subsection (2)(A) requiring written approval of the state court administrator before a court may approve a sale. It also amends MCL 700.3715 to provide that all court filing fees associated with administration of the estate be advanced by the personal representative unless waived by the court. The committee doesn't believe this provision adds anything new as this is likely the standard practice currently; therefore, we are indifferent.

Finally, Substitute HB 4822 amends MCL 700.3721 to require court review of the propriety of employment of any person hired by the personal representative when the personal representative is the public administrator. It also provides that real estate fees or fees related to identifying real property subject to foreclosure that are in excess of 10% of the net proceeds payable to the estate are considered excessive where decedent's real property is subject to tax or mortgage foreclosure. The committee doesn't believe these amendments are necessary; and, therefore, opposes the amendments to MCL 700.3721. Heirs are already protected in that they can object to fees under other provisions of EPIC already if they believe they are excessive. Where there are no known heirs and the AG has been served with notice of hearing on the petition for probate, the AG must be served with notice pertaining to sale of the real estate as well. It would be up to the AG to object to fees. To require the probate court to evaluate fees in each and every case, especially where there are no objections being raised, puts too much on the courts. It adds an extra layer to the process with no benefit to the public.

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