



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

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Other:

Proposal to amend section 2431 of the Mortgage Foreclosure Act (MCL 600.2431)

Date position was adopted:

October 23, 2004

Process used to take the ideological position:

Vote of the Council of the Section

Number of members in the decision-making body:

16

Number who voted in favor and opposed to the position:

Of the 16 voting members, 11 were present. 11 voted in favor, none were opposed.

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The law firm of Trott & Trott sought comment from the Section with regard to a proposed revision to MCL 600.2431 (attorney's fees for mortgage foreclosure). Motion was made to comment to Trott & Trott that the Section would likely oppose modification of the existing statute to the extent that such modification would change the current statutory scheme of providing for a specific amount for attorney's fees upon mortgage foreclosure. The motion before the Council also noted that there was not presently a specific bill for the Council to review and consider. The motion further noted that if a bill was presented which merely set forth a different specific amount from that presently contained in the statute, then the Council would not take a position on any such amendment.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

This proposal has not been introduced in the legislature. As proposed, MCL 600.2431 would delete the current specific sums referenced in section 2431 as recoverable attorney's fees and insert instead a right to recover a "reasonable" attorney fee.

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

Arguments against the position (if any):

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

Fiscal implications of the recommended policy to the State Bar of Michigan:

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- ✓ The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- ✓ The availability of legal services to society
- The regulation of attorney trust accounts
- ✓ The regulation of the legal profession, including the education, the ethics, the competence, and the integrity of the profession.

Keller- permissible explanation: