

Act No. 54*
Public Acts of 2000
Approved by the Governor
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator Van Regenmorter

ENROLLED SENATE BILL No. 1045

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending sections 1103, 1104, 1105, 1106, 1107, 1213, 1214, 1303, 1402, 2114, 2202, 2203, 2205, 2504, 2513, 2519, 2702, 2718, 2807, 3102, 3204, 3301, 3401, 3412, 3414, 3505, 3806, 3807, 3901, 3902, 3917, 3921, 3924, 3956, 5101, 5103, 5202, 5204, 5213, 5219, 5301, 5308, 5310, 5312, 5313, 5314, 5316, 5406, 6302, 6306, 7206, 7303, 7409, 7501, and 7507 (MCL 700.1103, 700.1104, 700.1105, 700.1106, 700.1107, 700.1213, 700.1214, 700.1303, 700.1402, 700.2114, 700.2202, 700.2203, 700.2205, 700.2504, 700.2513, 700.2519, 700.2702, 700.2718, 700.2807, 700.3102, 700.3204, 700.3301, 700.3401, 700.3412, 700.3414, 700.3505, 700.3806, 700.3807, 700.3901, 700.3902, 700.3917, 700.3921, 700.3924, 700.3956, 700.5101, 700.5103, 700.5202, 700.5204, 700.5213, 700.5219, 700.5301, 700.5308, 700.5310, 700.5312, 700.5313, 700.5314, 700.5316, 700.5406, 700.6302, 700.6306, 700.7206, 700.7303, 700.7409, 700.7501, and 700.7507); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1103. As used in this act:

(a) “Agent” includes, but is not limited to, an attorney-in-fact under a durable or nondurable power of attorney and an individual authorized to make decisions as a patient advocate concerning another’s health care.

(b) “Application” means a written request to the probate register for an order of informal probate or informal appointment under part 3 of article III.

(c) “Attorney” means, if appointed to represent a child under the provisions referenced in section 5213, an attorney serving as the child’s legal advocate in the manner defined and described in section 13a of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(d) “Beneficiary” includes, but is not limited to, the following:

(i) In relation to a trust beneficiary, a person that is an interested trust beneficiary.

(ii) In relation to a charitable trust, a person that is entitled to enforce the trust.

(iii) In relation to a beneficiary of a beneficiary designation, a person that is a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

*This printed copy of Enrolled Senate Bill No. 1045 (2000 PA 54) signed by the Governor on March 29, 2000, replaces a defective Enrolled Senate Bill No. 1045 previously filed with the Secretary of State on March 30, 2000. This corrected version of Enrolled Senate Bill No. 1045 became PA 54 of 2000, effective April 1, 2000.

(iv) In relation to a beneficiary designated in a governing instrument, a person that is a grantee of a deed, devisee, trust beneficiary, beneficiary of a beneficiary designation, donee, appointee, taker in default of a power of appointment, or person in whose favor a power of attorney or power held in an individual, fiduciary, or representative capacity is exercised.

(e) "Beneficiary designation" means the naming in a governing instrument of a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(f) "Child" includes, but is not limited to, an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant.

(g) "Claim" includes, but is not limited to, in respect to a decedent's or protected individual's estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent's death or after a conservator's appointment, including funeral expenses and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent's or protected individual's title to specific property alleged to be included in the estate.

(h) "Conservator" means a person appointed by a court to manage a protected individual's estate.

(i) "Cost-of-living adjustment factor" means a fraction, the numerator of which is the United States consumer price index for the prior calendar year and the denominator of which is the United States consumer price index for 1997. As used in this subdivision, "United States consumer price index" means the annual average of the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics, or its successor agency, and as certified by the state treasurer.

(j) "Court" means the probate court or, when applicable, the family division of the circuit court.

(k) "Current trust beneficiary" means a beneficiary about which either of the following is true:

(i) The beneficiary has a current right to receive all or a portion of the income, if any, of the trust property.

(ii) The beneficiary is currently eligible to receive all or a portion of a mandatory or discretionary distribution of income or principal.

(l) "Descendant" means, in relation to an individual, all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.

(m) "Devise" means, when used as a noun, a testamentary disposition of real or personal property and, when used as a verb, to dispose of real or personal property by will.

(n) "Devisee" means a person designated in a will to receive a devise. For the purposes of article II, for a devise to a trustee of an existing trust or to a trustee under a will, the trustee is a devisee and a beneficiary is not.

(o) "Disability" means cause for a protective order as described in section 5401.

(p) "Distributee" means a person that receives a decedent's property from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent that distributed property or an increment of the distributed property remains in the trustee's hands. A testamentary trust beneficiary to whom the trustee distributes property received from a personal representative is a distributee of the personal representative. For the purposes of this subdivision, "testamentary trustee" includes a trustee to whom property is transferred by will to the extent of the devised property.

Sec. 1104. As used in this act:

(a) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.

(b) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Except when used in the term "probate estate", estate includes the right of an estate described in section 7502 to proceed against a recipient of a nonprobate transfer on death and against a trust subject to a power of revocation as necessary to enable the estate to discharge claims and family allowances.

(c) "Exempt property" means property of a decedent's estate that is described in section 2404.

(d) "Family allowance" is the allowance prescribed in section 2403.

(e) "Fiduciary" includes, but is not limited to, a personal representative, guardian, conservator, trustee, plenary or partial guardian appointed as provided in chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor fiduciary.

(f) “Financial institution” means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(g) “Foreign personal representative” means a personal representative appointed by another jurisdiction.

(h) “Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

(i) “General personal representative” means a personal representative other than a special personal representative.

(j) “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(k) “Guardian” means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5205, 5206, and 5306. Guardian does not include a guardian ad litem.

(l) “Hazardous substance” means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(m) “Heir” means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent’s property.

(n) “Homestead allowance” means the allowance prescribed in section 2402.

Sec. 1105. As used in this act:

(a) “Incapacitated individual” means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

(b) “Informal proceedings” means proceedings for probate of a will or appointment of a personal representative conducted by the probate register without notice to interested persons.

(c) “Interested person” or “person interested in an estate” includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

(d) “Interested trust beneficiary” means a person that has 1 or more of the following interests in a trust:

(i) Life estate.

(ii) Eligible recipient of a mandatory or discretionary distribution by the trustee of income or principal.

(iii) Eligible recipient of a mandatory or discretionary distribution by the trustee of income or principal upon termination of an interest of a person described in subparagraph (i) or (ii).

(iv) Presently exercisable or testamentary general or special power of appointment.

(e) “Issue” means an individual’s descendant.

(f) “Joint tenants with the right of survivorship” includes, but is not limited to, co-owners or ownership of property held under circumstances that entitle 1 or more to the whole of the property on the death of the other or others, but does not include forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party’s contribution.

(g) “Lawyer-guardian ad litem” means an attorney appointed under section 5213 or 5219 who has the powers and duties referenced by and provided in section 5213.

(h) “Lease” includes, but is not limited to, an oil, gas, or other mineral lease.

(i) “Legally incapacitated individual” means an individual, other than a minor, for whom a guardian is appointed under this act or an individual, other than a minor, who has been adjudged by a court to be an incapacitated individual.

(j) “Letters” includes, but is not limited to, letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

Sec. 1106. As used in this act:

(a) “Mental health professional” means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A social worker registered as a certified social worker under article 16 of the occupational code, 1980 PA 299, MCL 339.1601 to 339.1610.

(v) A physician's assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) "Michigan prudent investor rule" means the fiduciary investment and management rule prescribed by part 5 of this article.

(c) "Minor" means an individual who is less than 18 years of age.

(d) "Minor ward" means a minor for whom a guardian is appointed solely because of minority.

(e) "Money" means legal tender or a note, draft, certificate of deposit, stock, bond, check, or credit card.

(f) "Mortgage" means a conveyance, agreement, or arrangement in which property is encumbered or used as security.

(g) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(h) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, limited liability company, government, governmental subdivision or agency, or another legal or commercial entity.

(i) "Parent" includes, but is not limited to, an individual entitled to take, or who would be entitled to take, as a parent under this act by intestate succession from a child who dies without a will and whose relationship is in question. Parent does not include an individual who is only a stepparent, foster parent, or grandparent.

(j) "Patient advocate" means an individual designated to exercise powers concerning another individual's care, custody, and medical treatment as provided in section 5506.

(k) "Patient advocate designation" means the written document executed and with the effect as described in sections 5506 to 5512.

(l) "Payor" means a trustee, insurer, business entity, employer, government, governmental subdivision or agency, or other person authorized or obligated by law or a governing instrument to make payments.

(m) "Person" means an individual or an organization.

(n) "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person who performs substantially the same function under the law governing that person's status.

(o) "Petition" means a written request to the court for an order after notice.

(p) "Proceeding" includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may be denominated a civil action under court rules.

(q) "Property" means anything that may be the subject of ownership, and includes both real and personal property or an interest in real or personal property.

(r) "Protected individual" means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V.

(s) "Protective proceeding" means a proceeding under the provisions of part 4 of article V.

Sec. 1107. As used in this act:

(a) "Register" or "probate register" means the official of the court designated to perform the functions of register as provided in section 1304.

(b) "Revised judicature act of 1961" means the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(c) "Security" includes, but is not limited to, a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or interest in a regulated investment company or other entity generally referred to as a mutual fund or, in general, an interest or instrument commonly known as a security, or a certificate of interest or participation for, a temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the items listed in this subdivision.

(d) "Settlement" means, in reference to a decedent's estate, the full process of administration, distribution, and closing.

(e) "Special personal representative" means a personal representative as described by sections 3614 to 3618.

(f) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(g) "Successor" means a person, other than a creditor, who is entitled to property of a decedent under the decedent's will or this act.

(h) "Successor personal representative" means a personal representative, other than a special personal representative, who is appointed to succeed a previously appointed personal representative.

(i) "Supervised administration" means the proceedings described in part 5 of article III.

(j) "Survive" means that an individual neither predeceases an event, including the death of another individual, nor is considered to predecease an event under section 2104 or 2702.

(k) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(l) "Testator" includes an individual of either sex.

(m) "Trust" includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another.

(n) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

Sec. 1213. If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero or the lowest possible amount payable by describing a portion or amount measured by reference to the unified credit, the exemption equivalent, other credits, or other deductions, then unless specifically stated otherwise, the reference to the credits, exemption, or deductions shall be considered to include a reference to the family-owned business deduction available under section 2057 of the internal revenue code of 1986, 26 U.S.C. 2057, if that deduction is elected. Unless specifically stated otherwise, the reference to the unified credit or exemption equivalent, or to the family-owned business deduction, shall be considered to refer to the credit, exemption, or deduction as it exists at the time of death of the individual.

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

Sec. 1303. (1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:

(a) Determine a property right or interest.

(b) Authorize partition of property.

(c) Authorize or compel specific performance of a contract in a joint or mutual will or of a contract to leave property by will.

(d) Ascertain if individuals have survived as provided in this act.

(e) Determine cy-pres or a gift, grant, bequest, or devise in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to 554.353.

(f) Hear and decide an action or proceeding against a distributee of a fiduciary of the estate to enforce liability that arises because the estate was liable upon some claim or demand before distribution of the estate.

(g) Impose a constructive trust.

(h) Hear and decide a claim by or against a fiduciary or trustee for the return of property.

(i) Hear and decide a contract proceeding or action by or against an estate, trust, or ward.

(j) Require, hear, or settle an accounting of an agent under a power of attorney.

(k) Bar an incapacitated or minor wife of her dower right.

(2) If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on the motion of a party to the action or proceeding and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court shall forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court shall not hear the action or proceeding, except by appeal or review as provided by law or supreme court rule, and the action or proceeding shall be prosecuted in the probate court as a probate court proceeding.

(3) The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.

Sec. 1402. (1) Except as provided in subsection (2), a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice and consent to the granting of a petition by a writing signed by the person or the person's attorney and filed in the proceeding. If every person affected by the proceeding waives notice and consents in writing to the granting of a petition, the court may enter an appropriate order on the petition without a hearing.

(2) A person for whom a guardianship or other protective order is sought, a ward, or a protected person cannot waive notice. A fiduciary shall not waive or consent on a petition, account, or report made as the fiduciary or in a different fiduciary capacity.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) Only the individual presumed to be the natural parent of a child under subdivision (a) may disprove a presumption that is relevant to their relationship, and this exclusive right to do so terminates upon the death of the presumed parent.

(c) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or, except as provided in subsection (3), the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

Sec. 2202. (1) The surviving widow of a decedent who was domiciled in this state and who dies intestate may file with the court an election in writing that she elects to take 1 of the following:

- (a) Her intestate share under section 2102.
- (b) Her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(2) The surviving spouse of a decedent who was domiciled in this state and who dies testate may file with the court an election in writing that the spouse elects 1 of the following:

- (a) That the spouse will abide by the terms of the will.
- (b) That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the testator died intestate, reduced by 1/2 of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.
- (c) If a widow, that she will take her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(3) The surviving spouse electing under subsection (1) is limited to 1 choice. Unless the testator's will plainly shows a contrary intent, the surviving spouse electing under subsection (2) is limited to 1 choice. The right of election of the surviving spouse must be exercised during the lifetime of the surviving spouse. The election must be made within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the surviving spouse, whichever is later.

(4) Notice of right of election shall be served upon the decedent's spouse, if any, as provided in section 3705(5), and proof of that notice shall be filed with the court. An election as provided by this section may be filed instead of service of notice and filing of proof.

(5) In the case of a legally incapacitated person, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the legally incapacitated person during that person's life expectancy.

(6) The surviving spouse of a decedent who was not domiciled in this state is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which the decedent was domiciled at the time of death.

(7) As used in subsection (2), "property derived by the spouse from the decedent" includes all of the following transfers:

- (a) A transfer made within 2 years before the decedent's death to the extent that the transfer is subject to federal gift or estate taxes.
- (b) A transfer made before the date of death subject to a power retained by the decedent that would make the property, or a portion of the property, subject to federal estate tax.
- (c) A transfer effectuated by the decedent's death through joint ownership, tenancy by the entireties, insurance beneficiary, or similar means.

Sec. 2203. If a surviving spouse fails to make an election within the time specified in section 2202, it is conclusively presumed that an intestate decedent's widow elects her intestate share or that a testate decedent's spouse elects to abide by the terms of the will, except in either of the following instances:

- (a) If an election is not made and the principal administration is closed, and if after that administration is closed it appears to the court that assets belonging to the estate are discovered and administration is granted, the election may be made out of the newly discovered assets only upon good cause shown at any time before that administration is closed.
- (b) Before the estate is closed, upon petition of the spouse and after notice to all interested persons, the court may permit the spouse to make an election to which the spouse was entitled as though the spouse had done so within the time specified in section 2202, if the court considers it proper on account of litigation connected with the estate or the establishment of further claims against the deceased, or for other cause. The court shall limit the time within which the spouse may make an election under this subdivision.

Sec. 2205. The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, dower, exempt property, or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, dower, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

Sec. 2504. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this will; each of us, in the testator's presence, signs this will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____ .
month/day year

(SEAL) (Signed)

(official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

(Signature) Witness

(Signature) Witness

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____ .
month/day year

(SEAL) (Signed)

(official capacity of officer)

(3) A codicil to a will may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____, _____ month/day _____ year.

(SEAL) (Signed)

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that..."

Sec. 2513. Whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be either in the testator's handwriting or signed by the testator at the end, and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

Sec. 2519. (1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

- 1. An individual age 18 or older and of sound mind may sign a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will.
3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.
4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.
5. This will is not designed to reduce estate taxes.
6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.
7. You should keep this will in your safe deposit box or other safe place.
8. You may make and sign a new will at any time.

INSTRUCTIONS:

- 1. To have a Michigan statutory will, you must complete the blanks on the will form.
2. Read the entire Michigan statutory will carefully before you begin filling in the blanks.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.
I live in _____ County, Michigan.
My spouse is _____
(My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.
(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift (Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

If my first choice does not serve, I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine,
I nominate _____
(Insert name of individual)
of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

If my first choice cannot serve, I nominate

(Insert name of individual)
of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on

_____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults who will not receive assets under this will as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to be of sound mind and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) “Assets” means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) “Descendants” means your children, grandchildren, and their descendants.

(c) “Descendants” or “children” includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.

(d) “Jointly held assets” means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(e) “Spouse” means your husband or wife at the time you sign this will.

(f) Whenever a distribution under a Michigan statutory will is to be made to an individual’s descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g) “Heirs” means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.

(h) “Person” includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person’s decision to do or not to do the act shall be made in good faith exercise of the person’s powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor’s conservator or, in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

Sec. 2702. (1) For the purposes of this act, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) Except as provided in subsection (4), if it is not established by clear and convincing evidence that 1 of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the co-owned property passes as if 1 had survived by 120 hours and 1/2 as if the other had survived by 120 hours. If there are more than 2 co-owners and it is not established by clear and convincing evidence that at least 1 of them survived the others by 120 hours, the property passes in the proportion that 1 bears to the whole number of co-owners. For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles 1 or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required under any of the following circumstances:

(a) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case. Language dealing explicitly with simultaneous deaths includes language in a governing instrument that creates a presumption that applies if the evidence is not sufficient to determine the order of deaths.

(b) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. Survival of the event or the specified period, however, must be established by clear and convincing evidence.

(c) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 2(1)(a), (2)(a), or (3)(a) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72, or to become invalid under section 2(1)(b), (2)(b), or (3)(b) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72.

(d) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. Survival, however, must be established by clear and convincing evidence.

Sec. 2718. (1) If an applicable statute or a governing instrument calls for the property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor that contains 1 or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date. This rule of construction applies to documents originally created on and after April 1, 2000, and to all instruments amended on and after April 1, 2000, that use the phrase "by representation" or "per capita at each generation". If an amendment uses either phrase, the rule of this section applies to the entire instrument.

(2) If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child, if any, is allocated 1 share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) For the purposes of subsections (1) and (2), a deceased individual who left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

(4) As used in this section:

(a) "Deceased child" or "deceased descendant" means a child or descendant who either predeceases the distribution date or is considered to predecease the distribution date under section 2702.

(b) “Distribution date” means, with respect to an interest, the time when the interest is to take effect in possession or enjoyment. The distribution date does not need to occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(c) “Surviving ancestor”, “surviving child”, or “surviving descendant” means an ancestor, a child, or a descendant who does not predecease the distribution date and is not considered to have predeceased the distribution date under section 2702.

Sec. 2807. (1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual’s former spouse.

(ii) A provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual’s former spouse or on a relative of the divorced individual’s former spouse.

(iii) A nomination in a governing instrument, nominating a divorced individual’s former spouse or a relative of the divorced individual’s former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, trustee, conservator, agent, or guardian.

(b) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(2) A severance under subsection (1)(b) does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(3) Each provision of a governing instrument is given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(4) Each provision revoked solely by this section is revived by the divorced individual’s remarriage to the former spouse or by a nullification of the divorce or annulment.

(5) No change of circumstances other than as described in this section and in sections 2803 to 2805, 2808, and 2809 causes a revocation.

Sec. 3102. Except to collect assets under section 3983, to be effective to prove the transfer of property or to nominate a personal representative, a will must be declared valid by a register’s order of informal probate or by a court’s adjudication of probate.

Sec. 3204. (1) A conservator of a protected individual’s estate or, if there is no conservator, a guardian of a minor or legally incapacitated individual may exercise the same right to nominate, to object to another’s appointment, or to participate in determining the preference of a majority in interest of the devisees and heirs that the protected individual or ward would have if qualified for appointment.

(2) Except as provided in sections 3308(1)(f) and 3310, a person who does not have priority, including priority resulting from renunciation or nomination determined under this section or section 3203, shall be appointed only in a formal proceeding. Before appointing a person without priority, the court shall determine that persons having priority have been notified of the proceedings and have failed to request appointment or to nominate another person for appointment, and that administration is necessary.

(3) A person is not qualified to serve as a personal representative if the person is either under the age of 18 or is a person whom the court finds unsuitable in formal proceedings.

(4) A personal representative appointed by a court of the decedent’s domicile has priority over all other persons except if the decedent’s will nominates different persons to be personal representatives in this state and in the state of domicile. The domiciliary personal representative may nominate another person, who then has the same priority as the domiciliary personal representative.

(5) This section and section 3203 govern priority for appointment of a successor personal representative, but do not apply to the selection of a special personal representative.

Sec. 3301. (1) An application for informal probate or informal appointment shall be made by an interested person and directed to the register. If an application is not filed within 28 days after the decedent's death, a person that has a right or cause of action that cannot be enforced without administration or appointment may file an application. An applicant shall swear that the application is accurate and complete to the best of the applicant's knowledge and belief as to all of the following information:

(a) In an application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, all of the following:

(i) A statement of the applicant's interest.

(ii) The decedent's name, date of death, and age; the decedent's county and state of domicile at the time of death; and the names and addresses of the spouse, children, devisees, and heirs with the ages of those who are minors so far as known or ascertainable with reasonable diligence by the applicant.

(iii) If the decedent was not domiciled in the state at the time of the decedent's death, a statement showing venue.

(iv) A statement identifying and indicating the address of a personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated.

(b) In an application for informal probate of a will, in addition to the statements and information required by subdivision (a), all of the following:

(i) That the original of the decedent's last will is in the court's possession or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application.

(ii) That, to the best of the applicant's knowledge, the will was validly executed.

(iii) That, after the exercise of reasonable diligence, the applicant is unaware of an instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will.

(c) In an application for informal appointment of a personal representative to administer an estate under a will, all of the following:

(i) A description of the will by date of execution.

(ii) The time and place of probate or of the pending application for probate.

(iii) A statement adopting the statements in the application or petition for probate.

(iv) The name, address, and priority for appointment of the person whose appointment is sought.

(d) In an application for informal appointment of a personal representative in intestacy, in addition to the statements and information required by subdivision (a), all of the following:

(i) That, after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property located in this state under section 1301, or a statement why such an instrument of which the applicant is aware is not being probated.

(ii) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3203.

(e) In an application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status, all of the following:

(i) A reference to the order in the most recent testacy proceeding.

(ii) The name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted.

(iii) A description of the applicant's priority.

(f) In an application for appointment of a personal representative to succeed a personal representative who tenders a resignation as provided in section 3610 or whose appointment is terminated by death or removal, all of the following:

(i) A statement adopting the statements in the application or petition that led to the appointment of the person being succeeded, except as specifically changed or corrected.

(ii) The name and address of the person who seeks appointment as successor.

(iii) A description of the applicant's priority.

(2) By swearing to an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application or for perjury that may be instituted against the applicant.

Sec. 3401. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. An interested person or a person that has a right or cause of action that cannot be enforced without administration may commence a formal testacy proceeding by filing 1 of the following:

(a) A petition described in section 3402(1) in which the petitioner requests that after notice and hearing, the court enter an order probating a will.

(b) A petition to set aside a will's informal probate or to prevent a will's informal probate that is the subject of a pending application.

(c) A petition in accordance with section 3402(2) for an order that the decedent died intestate.

(2) A petitioner may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the register shall not act upon an application for informal probate of a will of the decedent or an application for informal appointment of a personal representative of the decedent.

(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, after receipt of notice of the commencement of a formal probate proceeding, a previously appointed personal representative shall refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding may also request an order restraining the acting personal representative from exercising that office's powers and may request the appointment of a special personal representative. In the absence of a request under this subsection or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

Sec. 3412. (1) Subject to appeal and subject to vacation as provided in this section and section 3413, a formal testacy order under sections 3409 to 3411, including an order that the decedent did not leave a valid will and that determines heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of that will's existence at the time of the earlier proceeding, or were unaware of the earlier proceeding and were given no notice of it, except by publication.

(b) If intestacy of all or part of the estate has been ordered, the determination of the decedent's heirs may be reconsidered if it is shown that an individual was omitted from the determination and that the omitted individual was unaware of his or her relationship to the decedent, was unaware of the decedent's death, or was not given notice of any proceeding concerning the decedent's estate, except by publication.

(2) A petition for vacation filed under subsection (1) shall be filed before the earlier of the following time limits:

(a) If a personal representative is appointed for the estate, the time of entry of an order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement.

(b) One year after the entry of the order sought to be vacated.

(3) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(4) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his or her last known address and the court finds that a search was made as required by section 3403.

(5) If the alleged decedent is not dead, even if notice was sent and the search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

Sec. 3414. (1) An interested person or a person that has a right or cause of action that cannot be enforced without appointment may file a petition for a formal proceeding regarding the priority or qualification of a prospective or appointed personal representative.

(2) If an issue concerning the decedent's testacy is or may be involved, a formal proceeding for adjudication regarding the priority or qualification of an individual who is seeking appointment as personal representative or who was previously appointed personal representative in informal proceedings is governed by this section and section 3402. In other cases, the petition must contain or adopt the statements required by section 3301(1)(a) and shall describe the question relating to the personal representative's priority or qualification that is to be resolved.

(3) If a formal proceeding precedes the appointment of a personal representative, the formal proceeding stays an informal appointment proceeding that is pending or that is commenced after the formal proceeding's commencement. If the formal proceeding is commenced after the appointment of a personal representative and after the personal representative receives notice of the commencement, the personal representative shall not exercise a power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(4) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, a previously appointed personal representative, a person having or claiming priority for appointment as personal representative, and any other person described in section 3403(1) or (2), the court shall determine who is entitled to appointment under section 3203, make a proper appointment, and, if appropriate, terminate a prior appointment found to be improper as provided in cases of removal under section 3611.

Sec. 3505. Unless otherwise ordered by the court, supervised administration is terminated by an order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under section 3952. The court may issue an interim order approving or directing a partial distribution or granting other relief at any time during the pendency of a supervised administration on the petition of the personal representative or an interested person.

Sec. 3806. (1) If a claim is presented in the manner described in section 3804 and within the time limit prescribed in section 3803, the personal representative may deliver or mail a notice to a claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim is barred. A claim that the personal representative disallows in whole or in part is barred to the extent disallowed unless the claimant commences a proceeding against the personal representative not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

(2) The personal representative's failure to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation expires or within 63 days after the personal representative's appointment, whichever is later, constitutes a notice of allowance. An interested person's failure to deliver or mail to the personal representative notice of an objection to a personal representative's claim within 63 days after the time the claim's original presentation expires constitutes a notice of allowance.

(3) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this subsection. Before payment of a claim, the personal representative may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing the claim's payment. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After a claim is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(4) Upon the personal representative's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subsection (1). Upon an interested person's petition concerning a personal representative's claim, the court may allow in whole or in part the personal representative's claim properly presented in due time and not previously allowed under subsection (1).

(5) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(6) Unless otherwise provided in a judgment in another court entered against the personal representative, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for the claim's original presentation expires unless based on a contract providing for interest, in which case the claim bears interest in accordance with the contract.

Sec. 3807. (1) Upon the expiration of 4 months after the publication date of the notice to creditors, and after providing for dower, for the homestead, family, and exempt property allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration, the personal representative shall pay the claims allowed against the estate in the order of priority as provided in this act. A claimant whose claim has been allowed, but not paid as provided in this section, may petition the court to secure an order directing the personal representative to pay the claim to the extent that property of the estate is available for the payment.

(2) The personal representative may pay a claim that is not barred at any time, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the personal representative fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed, but the claimant's whereabouts are unknown at the time the personal representative attempts to pay the claim, upon petition by the personal representative and after notice that the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

Sec. 3901. In the absence of administration, the decedent's heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. A devisee may establish title by the probated will to devised property. An individual entitled to property by homestead allowance, exemption, or intestacy may establish title to the property by proof of the decedent's ownership, the decedent's death, and the individual's relationship to the decedent. A successor takes subject to charges for administration, including the creditors' claims and the surviving spouse's and dependent children's allowances, and subject to the rights of others resulting from abatement, retainer, advancement, or ademption.

Sec. 3902. (1) Subject to subsections (2) and (3) and except as provided in section 2301(3) or 2302(1)(b)(iv), distributees' shares abate, without a preference or priority between real and personal property, in the following order:

- (a) Property not disposed of by the will.
- (b) Residuary devisees.
- (c) General devisees.
- (d) Specific devisees.

(2) For purposes of abatement, a general devise charged on specific property is a specific devise to the extent of the value of that specific property and, upon the failure or insufficiency of the property on which the devise is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amount of property each beneficiary would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses a different order of abatement, the will controls. If the testamentary plan or the devise's express or implied purpose would be defeated by the order of abatement stated in subsection (1), the distributees' shares abate as found necessary to give effect to the testator's intention.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Sec. 3917. (1) The county treasurer shall receive and safely keep money deposited under authority of this act in a separate fund and keep a separate account for each distributee or claim. The county treasurer shall deposit the money in a county depository at the current rate of interest, shall pay out from the fund upon the order of the court, and shall turn over any surplus left in the treasurer's hands at the termination of the treasurer's term of office to the treasurer's successor.

(2) At the commencement of each term of office and before receiving money under authority of this act, the county treasurer shall give a bond running to the judge and the judge's successor in office, with 2 or more sufficient sureties approved by the court. The bond shall be in the amount the judge directs, conditioned that the county treasurer and his or her deputy shall do all of the following:

(a) Pay out the money only on court order, whether the money was turned over to the treasurer by his or her predecessor in office, or deposited with the treasurer during the term that he or she is then commencing or during a prior term of office.

(b) At the end of each year, render to the court, and to the county board of commissioners, a true account of that money.

(c) Deliver over to his or her successor in office the money deposited under authority of this act and books, papers, and other records relating to that money.

(3) The court may at any time require the county treasurer to give new or additional bond, as the court considers necessary, conditioned as provided in subsection (2). A bond deposited by the county treasurer and his or her sureties on the bond are discharged from further liability under the bond upon the filing of a new bond by a successor to the office who is named on the new bond, unless the county treasurer fails to account for any money as required in this article, or fails to turn that money over to the successor in office.

(4) For the care of the money received under authority of this act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds \$1,000.00, in which case the county treasurer shall take \$10.00 plus 1/2 of 1% of the excess of the amount over \$1,000.00.

(5) A person entitled to the money may petition the court having jurisdiction for an order directing the county treasurer to pay over money that is deposited with the county treasurer. Upon receiving the petition, the court shall make an order as to notice of the hearing as the court considers proper. Upon satisfactory proof being made to the court of the claimant's right to the money, the court shall order the county treasurer to pay the money to the claimant.

(6) If a person whose whereabouts are unknown or who declined to accept the money does not make a claim to money deposited by a fiduciary before the expiration of 3 years after the deposit date, the money that would be distributed under this section to the person, if alive, less expenses, shall be distributed by court order to each person who would be entitled to the money if the person had died before the date that he or she became entitled to the money, and the person is forever barred from all claim or right to the money.

(7) An action on the bond given by the county treasurer under this section may be started in the name of the state, for the use and benefit of anyone interested, in the same manner and with the same effect as allowed by law upon fiduciary bonds.

Sec. 3921. (1) Unless specific directions to that effect are contained in the governing instrument under which the fiduciary is acting, section 3920 shall not be construed to require the personal representative or other concerned fiduciary to pay an estate, inheritance, or other death tax levied or assessed by a foreign country.

(2) The net amount of tax attributable to the interests encompassed by subdivision (a), subdivision (b), or subdivision (c) of section 3920(1) considered separately shall be the part of the net amount of tax as finally determined, with any interest and penalties on that amount, as the value of the interests generating the tax and included in the subdivision bears to the amount of the net estate. However, for an inheritance or similar tax, the tax that is imposed on each beneficiary's interest, as determined under the law of the state, country, or political subdivision then under consideration, shall be considered the tax attributable to the interest. In prorating taxes within each subdivision of section 3920(1) based on the value of those interests generating the tax, each separate tax that an interest may incur shall be prorated in the same manner. In determining the proportion that each interest bears to the total value of all interests generating each tax, only interests generating that particular tax are considered. Property or interests generating a tax do not include property or interests, whether passing under a will, trust, or otherwise, to the extent the property or interest is exempt or is initially deductible from the gross estate, without regard to any subsequent diminution of the deduction by reason of the charge of a part of the tax to the property or interest.

(3) A direction in a governing instrument for tax allocation and payment in a manner different from that provided in sections 3920 to 3923 is effective to allocate and pay tax only from property whose devolution is subject to that instrument's control and with respect to which the tax is being levied. If the governing instrument was signed on or after September 6, 1963 and before April 1, 2000 and directs apportionment of taxes by reference to the uniform estate tax apportionment act, which was former 1963 PA 144, or by reference to another law of this state that was in effect when the instrument was executed, the apportionment rules provided in the referenced law control the apportionment of taxes under that governing instrument.

(4) A direction to allocate and pay tax contained in a will is effective to allocate and pay tax even if the will does not control the devolution of property at death with respect to which the tax is being levied, including a direction in a will to allocate and pay tax from a trust of which the testator was the settlor and that was revocable by the settlor, or would have been revocable if the settlor was not incapacitated, until the settlor's death. If there is a conflict between directions in a will to allocate and pay tax and the terms of another governing instrument, the directions in the will control.

(5) A tax apportionment based on the net estate under sections 3920 to 3923 shall be determined without regard to a diminution in deductions resulting from the charge of a part of the tax to a deductible interest.

Sec. 3924. (1) For the purpose of settling a claim as to which an action is not pending in another court for damages for wrongful death or for a claim existing under this state's laws relating to the survival of actions, if a personal representative petitions the court in writing asking leave to settle the claim and after notice to all persons who may be entitled to damages as provided in section 2922 of the revised judicature act of 1961, being section 600.2922 of the Michigan Compiled Laws, the court may conduct a hearing and approve or reject the settlement.

(2) The proceeds of a court settlement of a cause of action for wrongful death shall be distributed in accordance with all of the following:

(a) The personal representative shall file with the court a petition for authority to distribute the proceeds. Upon the filing of the petition, the court shall order a hearing.

(b) Unless waived, notice of hearing must be given to all persons who may be entitled to damages as provided in section 2922 of the revised judicature act of 1961. A notice under this subdivision must contain both of the following:

(i) The name and address of the personal representative and of the personal representative's attorney.

(ii) A statement that, to recover damages under this section, the person who may be entitled to damages must present a claim for damages to the personal representative on or before the date set for hearing on the petition for distribution of the proceeds, and that failure to present a claim for damages within the time provided bars the person from making a claim to any of the proceeds.

(c) If an interested person is a minor, disappeared person, or incapacitated individual for whom a fiduciary is not appointed, the court shall first appoint a fiduciary or guardian ad litem, and the notice as provided in subdivision (b) shall be given to the fiduciary or guardian ad litem.

(d) After a hearing on the personal representative's petition, the court shall order payment from the proceeds of the decedent's reasonable medical, hospital, funeral, and burial expenses for which the estate is liable. The proceeds shall not be applied to the payment of any other charges against the decedent's estate. The court shall then enter an order distributing the proceeds to those persons designated in section 2922 of the revised judicature act of 1961 who suffered damages and to the decedent's estate for compensation for conscious pain and suffering, if any, in the amount the court considers fair and equitable considering the relative damages sustained by each of the persons and the decedent's estate.

(e) If none of the persons entitled to the proceeds is a minor, disappeared person, or legally incapacitated individual and all of the persons entitled to the proceeds execute a sworn stipulation or agreement in writing in which each person's portion of the proceeds is specified, the court order shall be entered in accordance with the stipulation or agreement.

(f) A person who may be entitled to damages under this section must present a claim for damages to the personal representative on or before the date set for hearing on the petition for distribution of the proceeds. Failure to present a claim for damages within the time provided by this section bars the person from making a claim to any of the proceeds.

(g) If a claim for wrongful death is pending in another court, the procedures prescribed in section 2922 of the revised judicature act of 1961 are applicable to the distribution of proceeds of a settlement or judgment.

Sec. 3956. Unless previously barred by adjudication and except as provided in the closing statement, the right of a successor or creditor whose right is not otherwise barred against the personal representative for breach of fiduciary duty is barred unless a proceeding to assert the right is commenced within 6 months after the filing of the closing statement. The right barred under this section does not include the right to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Sec. 5101. As used in parts 1 to 4 of this article:

(a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(i) The love, affection, and other emotional ties existing between the parties involved and the child.

(ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.

(iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence, as a family unit, of the existing or proposed custodial home.

(vi) The moral fitness of the parties involved.

(vii) The mental and physical health of the parties involved.

(viii) The child's home, school, and community record.

(ix) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(x) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(xi) Domestic violence regardless of whether the violence is directed against or witnessed by the child.

(xii) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

(b) "Claim" includes, in respect to a protected individual, a liability of the protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the appointment of a conservator, including expenses of administration.

(c) "Conservator" includes, but is not limited to, a limited conservator described in section 5419(1).

(d) "Visitor" means an individual appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

Sec. 5103. By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption. If a guardian for a minor or legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney, and provide the court the name, address, and telephone number of the attorney-in-fact.

Sec. 5202. (1) The parent of an unmarried minor may appoint a guardian for the minor by will or by another writing signed by the parent and attested by at least 2 witnesses.

(2) Subject to the right of the minor under section 5203, if both parents are dead or have been adjudged to be legally incapacitated or the surviving parent has no parental rights or has been adjudged to be legally incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which a nominating instrument is probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(3) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(4) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.

Sec. 5204. (1) A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor. The court may order the family independence agency or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation.

(2) The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:

(a) The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

(b) The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.

(c) All of the following:

(i) The minor's biological parents have never been married to one another.

(ii) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

(3) A minor's limited guardian may petition to be appointed a guardian for that minor, except that the petition shall not be based upon suspension of parental rights by the order that appointed that person the limited guardian for that minor.

(4) A guardian appointed under section 5202 whose appointment is not prevented or nullified under section 5203 has priority over a guardian who may be appointed by the court. The court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the appointment within 28 days after the notice of the guardianship proceeding.

(5) For the minor ward's welfare, the court may at any time order the minor ward's parents to pay reasonable support and order reasonable parenting time and contact of the minor ward with his or her parents.

Sec. 5213. (1) The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

(a) The minor, if 14 years of age or older.

(b) The person who had the principal care and custody of the minor during the 63 days preceding the date of the petition.

(c) Each living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5204 or of sections 5205 and 5206 are satisfied, and the minor's welfare will be served by the requested appointment, the court shall make the appointment. In other cases, the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare.

(3) If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the temporary guardian's authority shall not exceed 6 months.

(4) If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving a consideration to the preference of the minor if the minor is 14 years of age or older.

(5) A lawyer-guardian ad litem appointed under this act represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act. In addition, both of the following apply under this act:

(a) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(b) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of a lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem shall not be paid a fee unless the court first reviews and approves the fee.

(6) To assist the court in determining a child's best interest, the court may appoint a guardian ad litem for a child involved in a proceeding under this section.

Sec. 5219. (1) A person interested in a ward's welfare or, if 14 years of age or older, the ward may petition for the removal of a guardian on the ground that removal would serve the ward's welfare or for another order that would serve the ward's welfare. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for a successor guardian's appointment.

(2) Notice of a hearing on a petition for an order after a guardian's appointment must be given to the ward, the guardian, and any other person as ordered by the court or as provided by court rule.

(3) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make further order that may be appropriate.

(4) If the court determines at any time in a proceeding that the ward's interest is or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Sec. 5301. (1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

(4) Upon the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317.

Sec. 5308. The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5310. Testamentary appointment of a guardian under a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

Sec. 5310. (1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

(2) The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

(3) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, shall not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

Sec. 5312. (1) If an individual does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the court shall provide notice to the individual alleged to be incapacitated and shall hold a hearing. Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court. A hearing with notice as provided in section 5311 shall be held within 28 days after the court has acted under this subsection.

(2) If an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally incapacitated individual for a specified period not to exceed 6 months.

(3) A temporary guardian is entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make reports as the court requires. In other respects, the provisions of this act concerning guardians apply to temporary guardians.

Sec. 5313. (1) A competent person, including a nonprofit corporation described in section 5106, may be appointed guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, or social services to the legally incapacitated individual.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney in fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by the person who is caring for the individual or paying benefits to the individual.

(4) If none of the persons listed in subsection (3) is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve.

Sec. 5314. Whenever meaningful communication is possible, a legally incapacitated individual's guardian should consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. Except as limited under section 5306, a legally incapacitated individual's guardian is responsible for the ward's care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward's acts. In particular and without qualifying the foregoing, a guardian has all of the following powers and duties, except as modified by court order:

(a) To the extent that it is consistent with the terms of an order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the guardian's ward and may establish the ward's place of residence within or without this state. The guardian must notify the court within 14 days of a change in the ward's place of residence.

(b) If entitled to custody of the ward, the guardian must make provision for the ward's care, comfort, and maintenance and, when appropriate, arrange for the ward's training and education. The guardian has the responsibility of securing services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward's person, the guardian must take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence a protective proceeding if the ward's other property is in need of protection.

(c) A guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If a conservator for the ward's estate is not appointed, a guardian may:

(i) Institute a proceeding to compel a person under a duty to support the ward or to pay sums for the ward's welfare to perform that duty.

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for the ward's support, care, and education. The guardian shall not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by court order made upon notice to at least 1 of the ward's next of kin, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

(e) The guardian shall report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, but not less often than annually. A report under this subdivision must contain all of the following:

(i) The ward's current mental, physical, and social condition.

(ii) Any improvement or deterioration in the ward's mental, physical, and social condition that occurred during the past year.

(iii) The ward's present living arrangement and any changes in his or her living arrangement that occurred during the past year.

(iv) Whether the guardian recommends a more suitable living arrangement for the ward.

(v) Medical treatment received by the ward.

(vi) Services received by the ward.

(vii) A list of the guardian's visits with, and activities on behalf of, the ward.

(viii) A recommendation as to the need for continued guardianship.

(f) If a conservator is appointed, the guardian shall pay to the conservator, for management as provided in this act, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current support, care, and education. The guardian shall account to the conservator for the amount expended.

Sec. 5316. To encourage self-reliance and independence in a legally incapacitated individual, the court may authorize the individual to function without the consent or supervision of the individual's guardian or conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

Sec. 5406. (1) Upon receipt of a petition for a conservator's appointment or another protective order because of minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the minor's choice if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court may send a visitor to interview the individual to be protected. The visitor may be a guardian ad litem or a court officer or employee.

(3) The court may utilize, as an additional visitor, the service of a public or charitable agency to evaluate the condition of the individual to be protected and make appropriate recommendations to the court.

(4) The individual to be protected is entitled to be present at the hearing in person. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary,

moving the site of the hearing. The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including a court-appointed physician or other qualified person and a visitor, and to trial by jury. The issue may be determined at a closed hearing or without a jury if the individual to be protected or counsel for the individual so requests.

(5) Any person may request for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served by granting the request. The court may attach appropriate conditions to the permission.

(6) After hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order.

Sec. 6302. Only an individual whose registration of a security shows sole ownership by 1 individual or multiple ownership by 2 or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship or as tenants by the entirety, and not as tenants in common.

Sec. 6306. The designation of a TOD beneficiary on a registration in beneficiary form does not affect ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all the surviving owners without the consent of the beneficiary.

Sec. 7206. A proceeding under section 7201 is initiated by filing a petition in the court and giving notice to interested persons as provided in section 1401. The court may order notification of additional persons. A judgment or order binds each person who is given notice of the proceeding even if not all interested persons are notified.

Sec. 7303. (1) Subject to subsection (2), the trustee of a revocable trust shall keep the settlor reasonably informed of the trust and its administration. Unless otherwise provided in the trust instrument, the trustee of a revocable trust does not have a duty to inform a trust beneficiary of the trust and its administration, other than the settlor or, if the settlor is an incapacitated person, the settlor's designated agent.

(2) Unless otherwise provided in the trust instrument, if the trustee reasonably believes the settlor of a revocable trust is an incapacitated person and has no designated agent, the trustee shall keep each beneficiary, who, if the settlor were then deceased, would be a current trust beneficiary, reasonably informed of the trust and its administration. Notwithstanding the provisions of the trust instrument, upon good cause shown, the court may order the trustee to keep other beneficiaries reasonably informed of the trust and its administration.

(3) For a revocable trust, within 28 days after acceptance of trust or the death of the settlor, whichever is later, and for all other trusts, within 28 days after acceptance of the trust, the trustee shall inform in writing each interested trust beneficiary of the trust's existence, of the court in which the trust is registered, if it is registered, of the trustee's name and address, and of the interested trust beneficiary's right to request and receive both a copy of the trust's terms that describe or affect the interested trust beneficiary's interest and relevant information about the trust property. In addition, all of the following apply:

(a) Upon reasonable request, the trustee shall provide a beneficiary with a copy of the trust's terms that describe or affect the beneficiary's interest and with relevant information about the trust property.

(b) Unless the settlor directs or requests in the trust instrument that the trustee provide accounts to less than all interested trust beneficiaries, all of the following apply:

(i) At least annually and on termination of the trust or a change of the trustee, the trustee shall provide a statement of account to each current trust beneficiary and shall keep each current trust beneficiary informed of the trust and its administration.

(ii) Upon reasonable request, the trustee shall provide a statement of account to each interested trust beneficiary who is not also a current trust beneficiary and shall keep each of those persons reasonably informed of the trust and its administration.

(iii) The trustee shall provide a statement of account and other information to a beneficiary as the court directs.

(iv) In the trustee's discretion, the trustee may provide a statement of account and other information to any beneficiary.

(c) If the settlor requests or directs the trustee in the trust instrument to provide accounts and information to less than all interested trust beneficiaries, the trustee shall provide statements of account and information as provided in the trust instrument. At the court's direction, the trustee shall provide statements of account and other information to persons excluded by the settlor's request or direction to the extent and in the manner the court directs.

Sec. 7409. (1) A trustee may act under section 7401(2)(gg) by paying money or other property to 1 or more of the following:

(a) The minor or incapacitated individual directly.

(b) A person or institution providing support, maintenance, education, or medical, surgical, hospital, or other institutional care for the minor or incapacitated individual in direct payment for those services.

(c) The legal or natural guardian of the minor or incapacitated individual.

(d) A person, whether or not appointed guardian by a court, who shall in fact have the care and custody of the minor or incapacitated individual.

(e) A custodian for the minor or incapacitated individual under a uniform gifts or transfers to minors act.

(2) If the trustee exercises due care in the selection of the person to whom a payment is made under this section, including a minor or incapacitated individual, the trustee does not have a duty to see to the payment's application. The person's receipt for the payment completely discharges the trustee.

Sec. 7501. (1) The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:

(a) The administration expenses of the settlor's estate.

(b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.

(c) Homestead, family, and exempt property allowances.

(2) A trust established as part of, and all payments from, an employee annuity described in section 403 of the internal revenue code, an individual retirement account described in section 408 of the internal revenue code, a Keogh (HR-10 plan), or a retirement or other plan that is qualified under section 401 of the internal revenue code shall not be considered to be a trust described in subsection (1).

(3) This section does not impair a right that an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the internal revenue code.

(4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).

Sec. 7507. If there is no personal representative appointed for the settlor's estate and notice is given in accordance with section 7504, the allowance or disallowance of a claim presented in the manner described in section 7505(1) and within a time period described in section 7506 is governed by the following provisions:

(a) The trustee may deliver or mail a notice to the claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the trustee changes a decision concerning the claim, the trustee shall notify the claimant. The trustee shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim has been barred. A claim that is disallowed in whole or in part by the trustee is barred to the extent not allowed unless the claimant commences a proceeding against the trustee not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure by the trustee to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation has expired constitutes a notice of allowance.

(b) After allowing or disallowing a claim, the trustee may change the allowance or disallowance as provided in this subdivision. Before payment, the trustee may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment, or an order directing payment of the claim. The trustee shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subdivision (a). The trustee may change a disallowance to an allowance, in whole or in part, until it is barred under subdivision (a). After a claim is barred, it may be allowed and paid only if the trust is solvent and all whose interests would be affected consent.

(c) Upon the trustee's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subdivision (a).

(d) A judgment in a proceeding in another court against a trustee to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(e) Unless otherwise provided in a judgment in another court entered against the trustee, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for original presentation of the claim has expired, unless based on a contract that provides for interest, in which case the claim bears interest in accordance with the contract.

Enacting section 1. The following acts and parts of acts are repealed:

(a) 1966 PA 185, MCL 555.81 to 555.84.

(b) 1937 PA 177, MCL 555.201 to 555.203.

(c) Section 3108 of the estates and protected individuals code, 1998 PA 386, MCL 700.3108.

(d) The uniform estate tax apportionment act, 1963 PA 144, MCL 720.11 to 720.21.

Enacting section 2. This amendatory act takes effect April 1, 2000.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.