ESTATES AND PROTECTED INDIVIDUALS CODE
Act 386 of 1998

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.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

The People of the State of Michigan enact:

ARTICLE I
DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

PART 1
SHORT TITLE AND DEFINITIONS

700.1101 Short title.

Sec. 1101. This act shall be known and may be cited as the “estates and protected individuals code”.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1102 Applicability of definitions.

Sec. 1102. The definitions contained in this part apply throughout this act unless the context requires otherwise or unless a term defined elsewhere in this act is applicable to a specific article, part, or section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1103 Definitions; A to D.

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 XIIA 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, a person that is a trust beneficiary as defined in section 7103.

(*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.

(*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

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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 and burial expenses and costs 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 circuit court.

(k) "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.

(*l*) "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.

(m) "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.

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

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

(p) "Do-not-resuscitate order" means that term as defined in section 2 of the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1052.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.1104 Definitions; E to H.

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. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

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

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

(e) "Fiduciary" includes, but is not limited to, a personal representative, guardian, conservator, trustee, plenary guardian, partial guardian, 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, credit union, insurance company, and entity that offers mutual fund, securities brokerage, money market, or retail investment accounts.

(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) "Funeral establishment" means that term as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, and the owners, employees, and agents of the funeral establishment.

(j) "General personal representative" means a personal representative other than a special personal representative.

(k) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD

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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.

(*l*) "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.

(m) "Hazardous substance" means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(n) "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.

(o) "Homestead allowance" means the allowance prescribed in section 2402.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1105 Definitions; I to L.

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, the incumbent fiduciary; 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) "Issue" means an individual's descendant.

(e) "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.

(f) "Jurisdiction," with respect to a geographic area, includes a county, state, or country.

(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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1106 Definitions; M to P.

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 licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368,

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MCL 333.16101 to 333.18838.

(*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.

(*vi*) A licensed professional counselor licensed under part 181 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

(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, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; 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) "Partial guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(k) "Patient advocate" means an individual designated to exercise powers concerning another individual's care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual, or both, as provided in section 5506.

(*l*) "Patient advocate designation" means the written document executed and with the effect as described in sections 5506 to 5515.

(m) "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.

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

(o) "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII, who performs substantially the same function under the law governing that person's status.

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

(q) "Plenary guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(r) "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.

(s) "Professional conservator" means a person that provides conservatorship services for a fee. Professional conservator does not include a person who is an individual who is related to all but 2 of the protected individuals for whom he or she is appointed as conservator.

(t) "Professional guardian" means a person that provides guardianship services for a fee. Professional guardian does not include a person who is an individual who is related to all but 2 of the wards for whom he or she is appointed as guardian.

(u) "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.

(v) "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.

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1107 Definitions; R to T.

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

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to 600.9947.

(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) "Terms of a trust" or "terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

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

(m) "Testator" includes an individual of either gender.

(n) "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.

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1108 Definitions; U to Z.

Sec. 1108. As used in this act:

(a) “Ward” means an individual for whom a guardian is appointed.

(b) “Will” includes, but is not limited to, a codicil and a testamentary instrument that appoints a personal representative, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to the decedent's property that is passing by intestate succession.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 2
CONSTRUCTION AND GENERAL PROVISIONS

700.1201 Purposes; rules of construction.

Sec. 1201. This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

(a) To simplify and clarify the law concerning the affairs of decedents, missing individuals, protected individuals, minors, and legally incapacitated individuals.

(b) To discover and make effective a decedent's intent in distribution of the decedent's property.

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(c) To promote a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors.

(d) To make the law uniform among the various jurisdictions, both within and outside of this state.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1203 Supplementary general principles of law applicable; construction against implied repeal.

Sec. 1203. (1) Unless displaced by the particular provisions of this act, general principles of law and equity supplement this act's provisions.

(2) This act is a general act intended as a unified coverage of its subject matter and a part of it shall not be considered impliedly repealed by subsequent legislation if that result can reasonably be avoided.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1205 Discovery and remedies for fraud, embezzlement, conversion, or withholding of assets.

Sec. 1205. (1) The court may order a person to appear before the court and be examined upon the matter of a complaint that is filed with the court under oath by a fiduciary, beneficiary, creditor, or another interested person of a decedent's or ward's trust or estate alleging any of the following:

(a) The person is suspected of having, or has knowledge that another may have, concealed, embezzled, conveyed away, or disposed of the trustee's, decedent's, or ward's property.

(b) The person has possession or knowledge of a deed, conveyance, bond, contract, or other writing that contains evidence of, or tends to disclose, the right, title, interest, or claim of the trustee, decedent, or ward to any of the trust or estate.

(c) The person has possession or knowledge of a decedent's last will.

(2) If the person ordered under subsection (1) refuses to appear and be examined, or refuses to answer the interrogatories asked of the person that relate to the complaint, the judge may by warrant commit the person to the county jail to remain in custody until that person submits to the order of the court.

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. An action under this subsection shall be commenced within 2 years after the discovery of the fraud, but an action shall not be brought against a person that is not a perpetrator of the fraud later than 5 years after the time of the fraud's commission. This section does not affect a remedy relating to fraud perpetrated against a decedent during his or her lifetime that affects the succession of the decedent's estate.

(4) If a person embezzles or wrongfully converts a decedent's property before letters of authority are granted, or refuses, without colorable claim of right, to transfer possession of the decedent's property to the personal representative upon demand, that person is liable in an action brought by the personal representative for the benefit of the estate for double the value of the property embezzled, converted, or withheld.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1207 Evidence of death or status.

Sec. 1207. In addition to the rules of evidence in courts of general jurisdiction, the court shall determine death or status in accordance with the following:

(a) Death occurs when an individual is determined to be dead under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034.

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the decedent's identity and of the fact, place, date, and time of the decedent's death.

(c) A certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the individual's status and of the dates, circumstances, and places disclosed by the record or report.

(d) In the absence of prima facie evidence of death under subdivision (b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(e) The fact of death may be established under the procedure prescribed in section 1208 to establish the

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death of an individual described in that section.

(f) At the hearing upon the petition, the court upon its own motion may, or upon motion of an interested person shall, impanel a jury as provided by law. If it is established by a preponderance of the evidence presented at the hearing that an accident or disaster occurred in which the individual named in the petition was killed or may be presumed to have died, the court shall enter an order that establishes the location of the accident or disaster, the date of death, and, if possible, the time of death and that states that the individual is dead.

(g) A certified copy of an order issued under this section is sufficient when presented to the medical examiner for the preparation of a certificate of death. The medical examiner shall forward the completed certificate of death to the state registrar. The state registrar shall register the death as provided in section 2845 of the public health code, 1978 PA 368, MCL 333.2845. The state registrar shall forward a copy of the registered death record to the local registrar of the place where the death occurred as established under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1208 Procedure to establish death of accident or disaster victim.

Sec. 1208. (1) The procedure to establish the death of an individual who is an accident or disaster victim and whose remains have disappeared or are unidentifiable is as follows:

(a) If an accident or disaster occurs that apparently causes the death of the individual described in this section, any of the following individuals may petition the court for a determination of the cause and date of the presumed decedent's death:

(*i*) The medical examiner, sheriff, or prosecutor of a county described in subdivision (b).

(*ii*) The spouse or a next of kin, heir at law, devisee, personal representative named in a will, or creditor or debtor of the presumed decedent.

(b) Venue for a proceeding under this section is in 1 of the following:

(*i*) The court in a county in which the accident or disaster or any part of the accident or disaster occurs.

(*ii*) If the accident or disaster occurs upon or within the Great Lakes or their connecting waters, the court in a county adjacent to the scene of the accident or disaster.

(*iii*) If the accident or disaster did not occur in Michigan or adjoining waters, the court in the county of the presumed decedent's domicile.

(c) A petition to determine the cause and date of death as provided in this section shall not be filed less than 63 days or more than 7 years after the occurrence of the accident or disaster.

(d) A petition under this section shall set forth the facts and circumstances concerning the accident or disaster, the reasons for the belief that the presumed decedent died in the accident or disaster, that the presumed decedent has disappeared or is unidentifiable, and the names and addresses of all individuals known or believed to be heirs at law of the presumed decedent.

(e) Upon the filing of a petition under this section, the court shall fix the time and place for a hearing. The petitioner shall give or cause to be given notice of the hearing as provided by supreme court rule.

(2) An individual whose death is not otherwise established under this section or section 1207, who is absent for a continuous period of 5 years during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence to determine that death occurred earlier.

(3) In the absence of evidence disputing the time of death stated on a document described in section 1207(b), (c), or (g), a document described in section 1207(b), (c), or (g) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1209 Acts by holder of power of appointment.

Sec. 1209. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable or testamentary general or special power of appointment, including 1 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as permissible appointees, takers in default, or otherwise, are subject

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to the power.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:
"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.
"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.1210 Cost-of-living adjustment.

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) Before February 1, 2001, and annually after 2001, the department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amounts referred to in subsection (1) for decedents who die during that calendar year and in section 7414 for trusts the value of the property of which is insufficient to justify the cost of administration. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest $1,000.00 amount.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1211 Court personnel prohibited from providing legal advice.

Sec. 1211. Court personnel shall not provide or offer to provide legal advice or legal counsel to a fiduciary or an interested person and shall not complete a form, petition, or document for a fiduciary or interested person. This section does not prohibit the court from providing general information, blank forms, and information concerning the preparation of a form provided by the court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1212 Fiduciary relationship.

Sec. 1212. (1) A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7803 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.

(2) Except in response to legal process, in cases expressly required by law, or in the necessary or proper administration of the estate, a fiduciary shall not disclose facts or knowledge pertaining to property in the fiduciary's possession or to the affairs of those for whom the fiduciary is acting in any manner without the consent of the heirs, devisees, beneficiaries, protected individuals, or wards. The fiduciary of a minor or an incapacitated individual may give this consent on behalf of that individual. This subsection's restriction on disclosure does not apply in an action or proceeding in which the fiduciary and the fiduciary's heir, devisee, beneficiary, protected individual, or ward are parties adverse to each other after the identity and relationship is determined and established.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1213 Reference to unified credits, exemption, or deductions.

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 USC 2057, if that deduction is elected. Unless specifically stated otherwise, and subject to section 2723, 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2010, Act 224, Imd. Eff. Dec. 10, 2010.

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Popular name: EPIC

700.1214 Fiduciary; prohibited conduct.

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

PART 3
SCOPE, JURISDICTION, AND COURTS

700.1301 Territorial application.

Sec. 1301. Except as otherwise provided in this act, this act applies to all of the following:

(a) The affairs and estate of a decedent, missing individual, or protected individual who is domiciled in this state.

(b) A nonresident's property that is located in this state or property coming into the control of a fiduciary that is subject to the laws of this state.

(c) An incapacitated individual or minor in this state.

(d) Survivorship and related accounts in this state.

(e) A trust subject to administration in this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.1302 Exclusive subject matter jurisdiction.

Sec. 1302. The court has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

(*i*) The internal affairs of the estate.

(*ii*) Estate administration, settlement, and distribution.

(*iii*) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

(*iv*) Construction of a will.

(*v*) Determination of heirs.

(*vi*) Determination of death of an accident or disaster victim under section 1208.

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

(*i*) Appoint or remove a trustee.

(*ii*) Review the fees of a trustee.

(*iii*) Require, hear, and settle interim or final accounts.

(*iv*) Ascertain beneficiaries.

(*v*) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.

(*vi*) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

(*vii*) Release registration of a trust.

(*viii*) Determine an action or proceeding that involves settlement of an irrevocable trust.

(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

(d) A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1303 Concurrent jurisdiction; removal; policy.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1304 Register; powers.

Sec. 1304. If this act specifies that the probate register perform an act or order, the probate judge, or the probate register or a deputy probate register if authorized in accordance with section 834 of the revised judicature act of 1961, being section 600.834 of the Michigan Compiled Laws, or in accordance with supreme court rule, may perform the act or order.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1305 Appeals.

Sec. 1305. Appellate review, including the right to appellate review or interlocutory appeal and provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and the power of the appellate court, is governed by the revised judicature act of 1961 and by supreme court rule.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1306 Oath or affirmation on filed documents.

Sec. 1306. Except as otherwise specifically provided in this act or by supreme court rule, a document, including an application, petition, or demand for notice, filed with the court under this act is considered to include an oath, affirmation, or statement to the effect that the document's representations are true as far as the individual executing or filing the document knows or is informed, and penalties for perjury may follow deliberate falsification in the document.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.1307 Records and certified copies.

Sec. 1307. (1) Court records shall be maintained in accordance with section 832 of the revised judicature act of 1961, being section 600.832 of the Michigan Compiled Laws. Upon payment of the fee required by law, the probate register shall issue a certified copy of a probated will, letters issued to a personal representative, or any other record or paper filed or recorded. A certificate that relates to a probated will shall indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. A certificate that relates to letters shall show the date of appointment and the date to which the letters continued in force.

(2) A certified copy of letters of authority may be recorded in the office of the register of deeds for the county in which a written instrument that is executed by a person under authority of the letters is recorded.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1308 Breach of duty; remedies; order for accounting.

Sec. 1308. (1) A violation by a fiduciary of a duty the fiduciary owes to an heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary is a breach of duty. To remedy a breach of duty that has occurred or may occur, the court may do any of the following:

(a) Compel the fiduciary to perform the fiduciary's duties.

(b) Enjoin the fiduciary from committing a breach of duty.

(c) Compel the fiduciary to redress a breach of duty by paying money, restoring property, or other means.

(d) Order a fiduciary to account.

(e) Appoint a special fiduciary to take possession of the estate's, ward's, protected individual's, or trust property and administer the property.

(f) Suspend the fiduciary.

(g) Remove the fiduciary as provided in this act.

(h) For a fiduciary otherwise entitled to compensation, reduce or deny compensation to the fiduciary.

(i) Subject to other provisions of this act protecting persons dealing with a fiduciary, void an act of the fiduciary, impose a lien or a constructive trust on property, or trace property wrongfully disposed of and recover the property or its proceeds.

(2) In response to an interested person's petition or on its own motion, the court may at any time order a fiduciary of an estate under its jurisdiction to file an accounting. After due hearing on the accounting, the court shall enter an order that agrees with the law and the facts of the case.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1309 Appointment of special fiduciary or injunction.

Sec. 1309. Upon reliable information received from an interested person, county or state official, or other informed source, including the court's files, the court may enter an order in a proceeding to do either or both of the following:

(a) Appoint a special fiduciary to perform specified duties.

(b) Enjoin a person subject to the court's jurisdiction from conduct that presents an immediate risk of waste, unnecessary dissipation of an estate's or trust's property, or jeopardy to an interested person's interest. Under this subdivision, the court shall not enjoin a respondent in a proceeding to appoint a guardian or conservator or enjoin a ward or protected individual. An enjoined person shall be given a prompt hearing, if requested, to show cause why the order should be terminated.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 4

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

700.1401 Notice; method and time of giving.

Sec. 1401. (1) If notice of a hearing on a petition is required and except for specific notice requirements as otherwise provided by supreme court rule, the petitioner shall cause notice of the time and place of the hearing on the petition to be given to each interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Unless otherwise provided by supreme court rule, notice must be given by 1 of the following methods:

(a) Mailing a copy at least 14 days before the time set for the hearing by certified, registered, or first-class

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mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known.

(b) Delivering a copy to the person being notified personally at least 7 days before the time set for the hearing.

(c) If the address or identity of the person is not known and cannot be ascertained with reasonable diligence, publishing once a copy in a newspaper having general circulation in the county where the hearing is to be held at least 14 days before the time set for the hearing.

(2) The court for good cause shown may provide for a different method or time of giving notice for a hearing.

(3) Proof that notice was given must be made at or before the hearing and filed in the proceeding.

(4) If a person entitled to notice under section 3306, 3310, 3403, 3414, 3705, or 5426 is a resident in and a citizen of a foreign country, the person required to give notice must notify the consul of the foreign nation in the city of New York or of the district having jurisdiction, or the consul, vice-consul, or consular agent resident in this state, if there is one, of the matters and with the particulars described in the relevant section of this act.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1402 Notice; waiver; order.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1403 Formal proceeding; pleadings; parties bound by others; notice.

Sec. 1403. In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

(a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument that creates the interests, or in another appropriate manner.

(b) A person is bound by an order binding others in each of the following cases:

(*i*) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(*ii*) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(*iii*) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

(*i*) Notice as prescribed by section 1401 shall be given to every interested person or to one who can bind an

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interested person as described in subdivision (b)(*i*) or (*ii*). Notice may be given both to a person and to another who may bind the person.

(*ii*) Notice is given to an unborn or unascertained person, who is not represented under subdivision (b)(*i*) or (*ii*), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained person.

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

PART 5

PRUDENT INVESTOR RULE

700.1501 Short title of part; definitions.

Sec. 1501. (1) This part shall be known and may be cited as the "Michigan prudent investor rule". This part prescribes the Michigan prudent investor rule.

(2) As used in this part:

(a) "Governing instrument" includes, but is not limited to, a court order.

(b) "Portfolio" means all property of every kind and character held by a fiduciary on behalf of a fiduciary estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1502 Prudent investor rule.

Sec. 1502. (1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.

(2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1503 Portfolio strategy; risk and return objectives.

Sec. 1503. (1) A fiduciary's investment and management decisions with respect to individual assets shall be evaluated not in isolation, but rather in the context of the fiduciary estate portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fiduciary estate.

(2) Among circumstances that a fiduciary must consider in investing and managing fiduciary assets are all of the following that are relevant to the fiduciary estate or its beneficiaries:

(a) General economic conditions.

(b) The possible effect of inflation or deflation.

(c) The expected tax consequences of an investment decision or strategy.

(d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely-held enterprises, tangible and intangible personal property, and real property.

(e) The expected total return from income and the appreciation of capital.

(f) Other resources of the beneficiaries.

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(g) The need for liquidity, regularity of income, and preservation or appreciation of capital.

(h) An asset's special relationship or special value, if any, to the purposes of the fiduciary estate or to 1 or more of the beneficiaries.

(3) A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of fiduciary assets.

(4) A fiduciary may invest in any kind of property or type of investment consistent with the standards of the Michigan prudent investor rule. A particular investment is not inherently prudent or imprudent.

(5) A fiduciary who has special skill or expertise, or is named fiduciary in reliance upon the fiduciary's representation that the fiduciary has special skill or expertise, has a duty to use that special skill or expertise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1504 Diversification.

Sec. 1504. A fiduciary shall diversify the investments of a fiduciary estate unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the fiduciary estate are better served without diversifying.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1505 Duties at inception.

Sec. 1505. Within a reasonable time after accepting appointment as a fiduciary or receiving fiduciary assets, a fiduciary shall review the assets, and make and implement decisions concerning the retention and disposition of assets, in order to bring the fiduciary portfolio into compliance with the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate, and with the requirements of the Michigan prudent investor rule.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1506 Duties of fiduciary in interest of beneficiaries.

Sec. 1506. A fiduciary shall invest and manage fiduciary assets solely in the interest of the beneficiaries.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1507 Impartiality.

Sec. 1507. If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing, managing, and distributing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1508 Investment costs.

Sec. 1508. In investing and managing fiduciary assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the fiduciary estate, and the skills of the fiduciary.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1509 Reviewing compliance.

Sec. 1509. Compliance with the prudent investor rule is determined in light of the facts and circumstances that exist at the time of a fiduciary's decision or action, and not by hindsight. The prudent investor rule requires a standard of conduct, not outcome or performance.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1510 Delegation of investment and management functions.

Sec. 1510. (1) A fiduciary may delegate investment and management functions provided that the fiduciary exercises reasonable care, skill, and caution in all of the following:

(a) Selecting an agent.

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the

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governing instrument.

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) A fiduciary who complies with the requirements of subsection (1) is not liable to the beneficiaries or to the fiduciary estate for a decision or action of the agent to whom the function was delegated.

(3) In performing a delegated function, an agent owes a duty to the fiduciary estate to exercise reasonable care to comply with the terms of the delegation. If an agent accepts the delegation of a fiduciary function from a fiduciary that is subject to the laws of this state, the agent submits to the jurisdiction of this state's court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1511 Language invoking standard of prudent investor rule.

Sec. 1511. The following terms or similar language in a governing instrument, unless otherwise limited or modified, authorize any investment or strategy permitted under the Michigan prudent investor rule:

(a) "Investments permissible by law for investment of trust funds".

(b) "Legal investments".

(c) "Authorized investments".

(d) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".

(e) "Prudent man rule".

(f) "Prudent trustee rule".

(g) "Prudent person rule".

(h) "Prudent investor rule".

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1512 Application to existing fiduciary estates.

Sec. 1512. The Michigan prudent investor rule applies to a fiduciary estate that exists on or is created after this act's effective date. As applied to a fiduciary estate that exists on this act's effective date, the Michigan prudent investor rule governs only a decision or action that occurs after that date.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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ARTICLE II
INTESTACY, WILLS, AND DONATIVE TRANSFERS

PART 1
INTESTATE SUCCESSION

700.2101 Intestate estate.

Sec. 2101. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2102 Share of spouse.

Sec. 2102. (1) The intestate share of a decedent's surviving spouse is 1 of the following:

(a) The entire intestate estate if no descendant or parent of the decedent survives the decedent.

(b) The first $150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

(c) The first $150,000.00, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent

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survives the decedent, but a parent of the decedent survives the decedent.

(d) The first $150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has 1 or more surviving descendants who are not descendants of the decedent.

(e) The first $150,000.00, plus 1/2 of any balance of the intestate estate, if 1 or more, but not all, of the decedent's surviving descendants are not descendants of the surviving spouse.

(f) The first $100,000.00, plus 1/2 of any balance of the intestate estate, if none of the decedent's surviving descendants are descendants of the surviving spouse.

(2) Each dollar amount listed in subsection (1) shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2103 Share of heirs other than surviving spouse.

Sec. 2103. Any part of the intestate estate that does not pass to the decedent's surviving spouse under section 2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

(a) The decedent's descendants by representation.

(b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.

(c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by 1 or more grandparents or descendants of grandparents, 1/2 of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other 1/2 passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the 1/2.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2104 Requirement that heir survive decedent for 120 hours.

Sec. 2104. An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section does not apply if its application would result in a taking of the intestate estate by the state under section 2105.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2105 No taker; effect.

Sec. 2105. If there is no taker under the provisions of this article, the intestate estate passes to this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2106 Representation.

Sec. 2106. (1) If, under section 2103(a), a decedent's intestate estate or a part of the estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants and the 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 decedent.

(2) If, under section 2103(c) or (d), a decedent's intestate estate or a part of the estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is

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divided into as many equal shares as the total of the surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains 1 or more surviving descendants and the 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 decedent.

(3) As used in this section:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under section 2104.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under section 2104.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2107 Relative of half blood.

Sec. 2107. A relative of the half blood inherits the same share he or she would inherit if he or she were of the whole blood.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2108 Afterborn heirs.

Sec. 2108. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2109 Advancements.

Sec. 2109. (1) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only under either of the following circumstances:

(a) The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement.

(b) The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of property advanced fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2110 Debts to decedent.

Sec. 2110. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2111 Alienage.

Sec. 2111. An individual is not disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2113 Individuals related to decedent through two lines.

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Sec. 2113. An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2114 Parent and child relationship.

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) 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.

(*vi*) The man is determined to be the father in an action under the revocation of paternity act.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's parents marry after the conception or birth of the child.

(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 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.

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2012, Act 160, Imd. Eff. June 12, 2012.

Popular name: EPIC

PART 2
ELECTIVE SHARE OF SURVIVING SPOUSE

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700.2201 Surviving spouse's right to elective share.

Sec. 2201. Subject to sections 2203 to 2205, upon an individual's death, the individual's surviving spouse has the right described by section 2202.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2202 Election of surviving spouse.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2203 Failure to timely elect; exceptions.

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.

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History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2204 Actions not preventing election.

Sec. 2204. Filing of a petition to admit the will of a deceased spouse, failing to object or consenting to admission of the will to probate, or accepting appointment as a personal representative does not prevent a surviving spouse's election to take against the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2205 Waiver of rights by surviving spouse.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2206 Pre-existing right not created.

Sec. 2206. Sections 2201 to 2205 shall not be construed as creating an inchoate or choate right to the rights described in those sections in the property of a spouse before the death of a spouse.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 3
SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

700.2301 Entitlement of spouse; premarital will.

Sec. 2301. (1) Except as provided in subsection (2), if a testator's surviving spouse marries the testator after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

(4) A spouse who receives an intestate share under this section may also exercise the right of election under section 2202, but the intestate share received by the spouse under this section reduces the sum available to the spouse under section 2202(2)(b).

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

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Popular name: EPIC

700.2302 Omitted children.

Sec. 2302. (1) Except as provided in subsection (2), if a testator fails to provide in his or her will for a child of the testator born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as provided in 1 of the following:

(a) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had 1 or more children living when he or she executed the will, and the will devised property or an interest in property to 1 or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate subject to all of the following:

(*i*) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(*ii*) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (*i*), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(*iii*) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(*iv*) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsection (1) does not apply if either of the following applies:

(a) It appears from the will that the omission was intentional.

(b) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate under section 3902.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 4
EXEMPT PROPERTY AND ALLOWANCES

700.2401 Applicable law.

Sec. 2401. This part applies to the estate of a decedent who dies domiciled in this state. For a decedent who dies domiciled outside of this state, rights to homestead allowance, family allowance, and exempt property are governed by the law of the decedent's domicile at death.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2402 Homestead allowance.

Sec. 2402. A decedent's surviving spouse is entitled to a homestead allowance of $15,000.00, adjusted as provided in section 1210. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to $15,000.00, adjusted as provided in section 1210, divided by the number of the decedent's minor and dependent children. The homestead allowance is exempt from and has priority over all claims against the estate, except administration costs and expenses and reasonable funeral and burial expenses. A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

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700.2403 Family allowance.

Sec. 2403. (1) For their maintenance during the period of administration, a reasonable family allowance is payable to the decedent's surviving spouse and minor children whom the decedent was obligated to support, and children of the decedent or another who were in fact being supported by the decedent, which allowance shall not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The family allowance may be paid in a lump sum or in periodic installments. The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be paid partially to the child or to a fiduciary or other person having the child's care and custody, and partially to the spouse, as their needs may appear.

(2) The family allowance is exempt from and has priority over all claims except administration costs and expenses, reasonable funeral and burial expenses, and the homestead allowance. The family allowance is not chargeable against a benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of an individual entitled to family allowance terminates the right to allowances not yet paid.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2404 Exempt property.

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children are entitled jointly to the same value.

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed in this section shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2405 Selection, determination, and documentation.

Sec. 2405. (1) If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, fiduciaries or others that have the care and custody of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property.

(2) The personal representative may make those selections if the surviving spouse, the adult children, or those acting for the minor children are unable or fail to do so within a reasonable time. The personal representative may execute a deed of distribution or other instrument to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $18,000.00, adjusted as provided in section 1210, or periodic installments not exceeding 1/12 of that amount per month for 1 year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

(3) The personal representative or an interested person aggrieved by a selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

History: 1998, Act 386, Eff. Apr. 1, 2000.

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PART 5

WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

700.2501 Will; maker; sufficient mental capacity.

Sec. 2501. (1) An individual 18 years of age or older who has sufficient mental capacity may make a will.

(2) An individual has sufficient mental capacity to make a will if all of the following requirements are met:

(a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.

(b) The individual has the ability to know the nature and extent of his or her property.

(c) The individual knows the natural objects of his or her bounty.

(d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2502 Execution; witnessed wills; holographic wills.

Sec. 2502. (1) Except as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(a) In writing.

(b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

(c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting.

(3) Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2503 Writings intended as wills.

Sec. 2503. Although a document or writing added upon a document was not executed in compliance with section 2502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:

(a) The decedent's will.

(b) A partial or complete revocation of the decedent's will.

(c) An addition to or an alteration of the decedent's will.

(d) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2504 Self-proved will.

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; that I am 18 years of age
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or older and under no constraint or undue influence; and that I have sufficient mental capacity to make this will.

_____
(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, is under no constraint or undue influence, and has sufficient mental capacity to make this will.

_____
(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, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

_____
(Signature) Testator

_____
(Signature) Witness

_____
(Signature) Witness

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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, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

_____
(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, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

_____
(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

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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...".

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2505 Witnesses.

Sec. 2505. (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2506 Choice of law as to execution.

Sec. 2506. A written will is valid if executed in compliance with section 2502 or 2503, with the law at the time of execution of the place where the will is executed, or with the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2507 Revocation by writing or by act.

Sec. 2507. (1) A will or a part of a will is revoked by either of the following acts:

(a) Execution of a subsequent will that revokes the previous will or a part of the will expressly or by inconsistency.

(b) Performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subdivision, “revocatory act on the will” includes burning, tearing, canceling, obliterating, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked, and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2508 Revocation by change of circumstances.

Sec. 2508. Except as provided in sections 2802 to 2809, a change of circumstances does not revoke a will or a part of a will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2509 Revival of revoked will.

Sec. 2509. (1) If a subsequent will that wholly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of

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the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is later revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2510 Incorporation by reference.

Sec. 2510. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2511 Testamentary additions to trusts.

Sec. 2511. (1) A will may validly devise property to the trustee of a trust established or to be established in any of the following manners:

(a) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts.

(b) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the trust corpus.

(2) A devise described in subsection (1) is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a trust created by the will of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including an amendment to the trust made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2512 Events of independent significance.

Sec. 2512. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2513 Separate writing identifying devise of certain types of tangible personal property.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2514 Contracts concerning succession.

Sec. 2514. (1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:

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(a) Provisions of a will stating material provisions of the contract.

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2515 Deposit of will with court in testator's lifetime.

Sec. 2515. (1) A will in writing that is enclosed in a sealed wrapper, on which is endorsed the testator's name, place of residence, and social security number or state of Michigan driver's license number, if any, and the day on which and the name of the person by whom it is delivered, may be deposited by the individual making the will, or by a person for him or her, with the court in the county where the testator resides. The court shall receive and safely keep the will and give a certificate of the deposit of the will. For this service, the court shall charge and collect a fee as provided by supreme court rule or the revised judicature act of 1961.

(2) During the lifetime of the testator, the will shall be delivered only to the testator, or to some person authorized by the testator in writing that is duly proved by the oath of a subscribing witness. After the death of the testator and at the first session of the court after the court receives notice of the testator's death, the will shall be publicly opened and retained by the court.

(3) After the death of the testator, if jurisdiction of the will for probate belongs to a court in another county, upon request of the personal representative named in the will or another person interested in its provisions, the will shall be forwarded by registered mail to the other court or delivered to the personal representative, or to some other person interested in the provisions of the will, to be presented for probate in the other court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2516 Delivery of will or codicil by custodian.

Sec. 2516. A custodian of a will or codicil or person having possession or care of a will or codicil shall forward it to the court having jurisdiction with reasonable promptness after the death of the testator either by delivering it personally or by sending it properly addressed by registered mail. A person who neglects to perform this duty without reasonable cause is liable for damages that are sustained by the neglect. A person who willfully refuses or fails to deliver a will or codicil after being ordered by the court in a proceeding brought for the purpose of compelling delivery is guilty of contempt of court and subject to the penalty for contempt.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2517 Opening of safe deposit box.

Sec. 2517. (1) In the estate of a decedent who died before October 1, 1993, the following apply to the opening of a safe deposit box:

(a) A safe deposit box of which the decedent was an individual or joint lessee may be opened following the decedent's death only upon compliance with the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256.

(b) A safe deposit box of the decedent who was an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary in a like manner as provided by the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256, as it relates to deceased individuals.

(2) In the estate of a decedent who dies after September 30, 1993, the following apply to the opening of a safe deposit box:

(a) Whenever it appears to the court by petition of an interested person that a safe and collateral deposit company, trust company, corporation, bank, or other institution has leased to a decedent, either as an individual or joint lessee, a safe deposit box in the county in which the probate court has jurisdiction and that the safe deposit box may contain a will of the decedent or a deed to a burial plot in which the decedent is to be interred, the court may issue an order directing the institution to permit the person named in the order to examine the safe deposit box in the presence of an officer or other authorized employee of the institution. If a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, the person named in the order shall deliver the will or deed to the probate register or his or her deputy. The probate register or his or her deputy shall furnish a receipt to the person named in the order. An item contained in the safe deposit box other than the will or deed shall not be removed from the safe deposit box. At the time of the opening of

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the safe deposit box, all individuals in attendance shall execute a written statement certifying whether a will or deed to a burial plot is found and that no other items are removed, which statement shall be delivered within 7 days after execution to the probate register or his or her deputy. Before the court enters the order, there shall be paid to the probate register a fee of $10.00, which shall be credited to the general fund of the county. If the decedent's estate is administered in a probate court in the state, the party making payment of the fee may file a claim in the estate for that amount, which shall be charged as a cost of administration.

(b) The safe deposit box of an individual who is an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary and its contents removed. If the safe deposit box is jointly leased, then the fiduciary may examine the safe deposit box only in the presence of an officer or other authorized employee of the safe deposit and collateral company, trust company, corporation, bank, or other institution. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying as to what is removed from the box by the fiduciary. The fiduciary shall serve a copy of that statement on the other joint lessees within 7 days after removing the items.

(c) Notwithstanding another provision of this section, a surviving joint lessee of a joint safe deposit box has full access to the safe deposit box.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2518 Penalty clause for contest.

Sec. 2518. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2519 Statutory 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 who has sufficient mental capacity may make a will.

2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing 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. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

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.

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I live in _____ County, Michigan.
My spouse is _____.
(Insert spouse's name or write "none")
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)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, 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

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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 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 have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or

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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

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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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: As to actions taken with respect to a clerical error detected in Enrolled Senate Bill No. 1045 filed with the Secretary of State on March 30, 2000, see the following correspondence:

"September 14, 2000
"Secretary of State Candice Miller
"Department of State
"Treasury Building
"430 W. Allegan
"Lansing, MI 48918-9900
"Dear Secretary Miller:

"The purpose of this letter is to document the action I am taking in order to correct a clerical error recently detected in Enrolled Senate Bill 1045. I signed this bill on March 29, 2000. It was filed with the Secretary of State on March 30, 2000, and assigned Public Act Number 54 of 2000. This legislation made various, largely technical amendments to the Estates and Protected Individuals Code that, having been given immediate effect, took effect on April 1, 2000.

"The Secretary of the Senate and the Clerk of the House re-presented a corrected version of Enrolled Senate Bill 1045 to me on September 11, 2000, along with the accompanying letter. Apparently, a clerical error was made during the enrollment process. Specifically, Section 2519, which updated the year '19 __' to '20__' on the Michigan statutory will form was inadvertently omitted from the bill. During the 6 months this error remained undetected, an unknown and unknowable number of persons may have relied on its provisions, all but one of which are unaffected by this correction which, in effect, makes a century date change.

"The Secretary of the Senate and the Clerk of the House have recommended that I now re-sign a corrected version to be assigned the same date and public act number of the originally signed bill. Michigan case law supports this recommended procedure due to the fact that the omission was a 'clerical mistake' that dealt with a non-substantive provision of the bill.

"As the court held in Board of Control v Auditor General, 149 Mich 386, 388 (1907), '(an) omission in the enrolled bill of words not essential to its substance or effect will not render the act invalid.' Similar decisions can be found in more recent court opinions. Beacon Club v Kalamazoo Sheriff, 332 Mich 412 (1952).

"Therefore, I have affixed the revised enrolled bill with the same date as the date of my original signature. In addition, it is my expectation that the corrected enrolled bill will receive Public Act Number 54 of 2000.

"Sincerely,
"John Engler
"Governor
"cc: Michigan State Senate
"Michigan House of Representatives"
"September 10, 2000
"The Honorable John Engler
"Capitol Building
"Lansing, Michigan 48913
"Subject: PA 54 of 2000
"Dear Governor Engler:

"A clerical error has been detected in Enrolled Senate Bill 1045, which was filed with the Secretary of State on March 30, 2000, and assigned Public Act No. 54 of 2000. The bill presented to you on March 29, 2000, did not accurately reflect what was agreed to by both houses of the Legislature. Specifically, Section 2519, which updated the year from '19 __' to '20__' on the Michigan statutory will form was inadvertently omitted from the bill.

"Therefore, we are presenting a correct Enrolled Senate Bill for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 1045 will be replaced with the correct Enrolled Senate Bill 1045 and assigned the same public act number. The inaccurate enrolled bill was signed by you on March 29, 2000, and filed with the Secretary of State on March 30, 2000. The effective date of Public Act No. 54 of 2000 will remain April 1, 2000.

"This procedure ensures that the bill as passed by both houses of the Legislature is accurately filed and effective, while this document will provide notification to the public. We apologize for any inconvenience this may have caused you and the citizens of the state of Michigan. If you have any questions, please feel free to contact us.

"Sincerely,
"Carol Morey Viventi
"Secretary of the Senate
"Gary L. Randall
"Clerk of the House of Representatives
"cc: Candice S. Miller, Secretary of State"

Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: Statutory Will

Popular name: EPIC

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PART 6

RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

700.2601 Definitions.

Sec. 2601. As used in this part:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of 1 or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or another form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes, but is not limited to, an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.

(c) "Devise" includes, but is not limited to, an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes, but is not limited to, the following:

(*i*) A class member if the devise is in the form of a class gift.

(*ii*) The beneficiary of a trust, but not the trustee.

(*iii*) An individual or class member who was deceased at the time the testator executed his or her will or an individual or class member who was living at that time, but fails to survive the testator.

(*iv*) An appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under section 2702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2602 Scope; passage of property and after-acquired property.

Sec. 2602. (1) In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

(2) A will may provide for the passage of all property that the testator owns at death and all property acquired by the estate after the testator's death.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2603 Substitute gift.

Sec. 2603. (1) If a devisee fails to survive the testator and is a grandparent, a grandparent's descendant, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subdivision (d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. Those surviving descendants take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subdivision (d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or to a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased devisee. The property to which the devisee would have been entitled had all class members survived the testator passes to the surviving devisees and the deceased devisees' surviving descendants. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who fails to survive the testator and leaves 1 or more surviving descendants.

(c) For the purposes of section 2602(1), words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a

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sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the appointee's descendants for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(2) If, under subsection (1), substitute gifts are created and not superseded with respect to more than 1 devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts take effect is resolved as follows:

(a) Except as provided in subdivision (b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) As used in this section:

(a) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(c) "Younger-generation devise" means a devise for which all of the following are true:

(*i*) Is to a descendant of a devisee of the primary devise.

(*ii*) Is an alternative devise with respect to the primary devise.

(*iii*) Is a devise for which a substitute gift is created.

(*iv*) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2604 Failure of testamentary provision.

Sec. 2604. (1) Except as provided in section 2603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in section 2603, if the residue is devised to 2 or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2605 Increase in securities; accessions.

Sec. 2605. (1) If a testator executes a will that devises securities and the testator then owns securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities are acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(a) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

(b) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(c) Securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2606 Nonademption of specific devises; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or agent.

Sec. 2606. (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and all of the following:

(a) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property.

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(b) Any amount of a condemnation award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on, or other recovery for, injury to the property.

(d) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(e) Real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property.

(f) Unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subdivisions (a) to (e).

(2) If an agent acting within the authority of a durable power of attorney for an incapacitated principal or a conservator sells or mortgages specifically devised property, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to an agent acting within the authority of a durable power of attorney for an incapacitated principal or to a conservator, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of a specific devisee under subsection (2) is reduced by a right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's disability ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, an incapacitated principal is a principal who is an incapacitated individual, an adjudication of the individual's incapacity before death is not necessary, and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2607 Nonexoneration.

Sec. 2607. A specific devise and a transfer under an exercise of a power of appointment that is equivalent to a specific devise, including the exercise of a right to withdraw specific property, passes subject to any mortgage or other security interest existing on the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2608 Ademption by satisfaction.

Sec. 2608. (1) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part only if any of the following are true:

(a) The will provides for a deduction of the gift.

(b) The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(c) The devisee acknowledges in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2603 and 2604, unless the testator's contemporaneous writing provides otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 7

RULES OF CONSTRUCTION APPLICABLE TO DONATIVE DISPOSITIONS IN WILLS AND OTHER GOVERNING INSTRUMENTS

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700.2701 Scope.

Sec. 2701. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument unless the application of a particular section is limited by its terms to a specific type of provision or governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2702 Requirement of survival by 120 hours.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2703 Protection of payors and other third parties.

Sec. 2703. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument who, under section 2702, is not entitled to the payment or item of property, or for having taken another action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed lack of entitlement under section 2702. A payor or other third party is not obligated to inquire as to whether the 120-hour survival provision of section 2702 applies to any individual or to seek evidence regarding whether that provision applies to any individual. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed lack of entitlement under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon

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the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that the beneficiary designated in the governing instrument did not survive the decedent by 120 hours. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of a claimed lack of entitlement under section 2702, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if proceedings have not been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from all claims for the value of amounts paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2702, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2704 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2704. (1) Section 2702 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit and does not make such a person liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who is entitled to it under section 2702.

(2) If section 2702 or any part of that section is preempted by federal law with respect to a payment, an item of property, or another benefit covered by section 2702, a person who, not for value, receives the payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who would have been entitled to it if section 2702 or part of that section were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2705 Choice of law as to meaning and effect of governing instrument.

Sec. 2705. The meaning and legal effect of a governing instrument other than a trust are determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or another public policy of this state otherwise applicable to the disposition.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2706 Power of appointment; meaning of specific reference requirement.

Sec. 2706. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2707 Class gifts construed to accord with intestate succession.

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Sec. 2707. (1) An adopted individual or an individual born out of wedlock, and his or her respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as “uncles”, “aunts”, “nieces”, or “nephews”, are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as “brothers”, “sisters”, “nieces”, or “nephews”, are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not a natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that natural parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not an adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2708 Definitions regarding beneficiary designation.

Sec. 2708. As used in this section and sections 2709 to 2712:

(a) “Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of 1 or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or another form.

(b) “Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent. Beneficiary includes a class member if the beneficiary designation is in the form of a class gift; an individual or class member who was deceased at the time the beneficiary designation was executed; and an individual or class member who was then living but who failed to survive the decedent. Beneficiary excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) “Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) “Class member” includes an individual who fails to survive the decedent, but who would have taken under a beneficiary designation in the form of a class gift had he or she survived the decedent.

(e) “Stepchild” means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.

(f) “Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who did not predecease the decedent and is not considered to have predeceased the decedent under section 2702.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2709 Substitute gift.

Sec. 2709. If a beneficiary fails to survive the decedent and is a grandparent, a grandparent's descendant, or the decedent's stepchild, the following apply:

(a) Except as provided in subdivision (d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subdivision (d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family” or a class described by language of similar import, a substitute gift is created in the surviving descendants of each deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent.

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For the purposes of this subdivision, “deceased beneficiary” means a class member who failed to survive the decedent and left 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship, such as in a beneficiary designation to an individual “if he survives me” or in a beneficiary designation to “my surviving children”, are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2710 Multiple substitute gifts.

Sec. 2710. (1) If, under section 2709, substitute gifts are created and not superseded with respect to more than 1 beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

(a) “Primary beneficiary designation” means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(b) “Primary substitute gift” means the substitute gift created with respect to the primary beneficiary designation.

(c) “Younger-generation beneficiary designation” means a beneficiary designation for which all of the following are true:

(*i*) Is to a descendant of a beneficiary of the primary beneficiary designation.

(*ii*) Is an alternative beneficiary designation with respect to the primary beneficiary designation.

(*iii*) Is a beneficiary designation for which a substitute gift is created.

(*iv*) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(d) “Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation beneficiary designation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2711 Protection of payors.

Sec. 2711. (1) Except as otherwise provided in this section, a payor or other third party is not liable for making a payment under the terms of a beneficiary designation. Payment made before the actual receipt of a written notice of a claim to a substitute gift discharges the payor or other third party, but not the recipient, from a claim for the amount paid. A payor or other third party is liable for a payment made 3 or more business days after the payor or other third party actually receives written notice of the claim. A payor or other third party is not obligated to inquire as to whether a substitute gift exists under sections 2709 and 2710 or to seek evidence regarding such a gift. A recipient who incorrectly receives a payment is liable for the payment received, whether or not written notice of the claim is given.

(2) A written notice of a substitute claim must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a claim to a substitute gift is being made under sections 2709 and 2710. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of a written notice of the claim, a payor or other third party may pay any amount the payor or other third party owes to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the

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county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from all claims for the amount paid.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under sections 2709 and 2710, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2712 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2712. (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated to return the payment, item of property, or benefit and is not liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under sections 2709 and 2710 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under sections 2709 and 2710.

(2) If this section and sections 2709 and 2710 are, or any part of these sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is entitled under those sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.2713 Definitions for survivorship with respect to future interests under terms of trust.

Sec. 2713. As used in this section and sections 2714 to 2716:

(a) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of 1 or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or another form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that a lapsed or failed devise is to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes, but is not limited to, an individual who failed to survive the distribution date but who would have taken under a future interest in the form of a class gift had he or she survived the distribution date.

(d) "Distribution date" means, with respect to a future interest, the time when the future interest takes 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.

(e) "Future interest" includes, but is not limited to, an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that is created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who does not predecease the distribution date and who is not considered to have predeceased the distribution date under section 2702.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2714 Survivorship required for gift under trust; substitute gift; applicability of subsection (1).

Sec. 2714. (1) Subject to subsection (2), a future interest under the terms of a trust is contingent on the

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beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in subdivision (d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subdivision (d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. As used in this subdivision, "deceased beneficiary" means a class member who fails to survive the distribution date and leaves 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or another form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(2) Subsection (1) does not apply to a future interest if the beneficiary of the interest died or irrevocably transferred the interest before April 1, 2000.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

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700.2715 Multiple substitute gifts.

Sec. 2715. (1) If, under section 2714, substitute gifts are created and not superseded with respect to more than 1 future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

(a) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(c) "Younger-generation future interest" means a future interest for which all of the following are true:

(*i*) Is to a descendant of a beneficiary of the primary future interest.

(*ii*) Is an alternative future interest with respect to the primary future interest.

(*iii*) Is a future interest for which a substitute gift is created.

(*iv*) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2716 No substitute taker; lapse.

Sec. 2716. (1) Except as provided in subsection (2), if, after the application of sections 2714 and 2715, there is no surviving taker, the property passes in the following order:

(a) If the trust is created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the

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residuary clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes to the transferor's heirs under section 2720.

(2) If, after the application of sections 2714 and 2715, there is no surviving taker and if the future interest was created by the exercise of a power of appointment, the following apply:

(a) The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes as provided in subsection (1). For purposes of subsection (1), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2717 Class gifts to "descendants,""issue," or "heirs of the body"; form of distribution if none specified.

Sec. 2717. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in the shares each class member would receive under the applicable law of intestate succession if the designated ancestor had died intestate at the time of distribution owning the subject matter of the class gift.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2718 Representation; per capita at each generation; per stirpes.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2719 Worthier-title doctrine abolished.

Sec. 2719. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs",

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“heirs at law”, “next of kin”, “distributees”, “relatives”, or “family”, or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2720 Interests in “heirs”.

Sec. 2720. If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's “heirs”, “heirs at law”, “next of kin”, “relatives”, or “family” or language of similar import, the property passes to those persons, including the state, in the shares that would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living, but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2721 Construction as to age of majority.

Sec. 2721. A provision contained in a governing instrument that makes reference to a “minor”, “age of majority”, or a similar phrase differentiating between an individual's majority and minority status shall be construed to refer to the legal age of majority in effect at the time the governing instrument was executed.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2722 Honorary trusts; trusts for pets.

Sec. 2722. (1) Except as provided by another statute and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(*i*) As directed in the terms of the trust.

(*ii*) To the settlor, if then living.

(*iii*) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(*iv*) If no taker is produced by the application of subparagraph (*i*), (*ii*), or (*iii*), to the transferor's heirs under section 2720.

(c) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the terms of the trust or, if none, by an individual appointed by a court upon petition to it by an individual. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or remove a person appointed.

(e) Except as ordered by the court or required by the terms of the trust, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

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(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the terms of the trust or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2723 Will, trust, or beneficiary designation of decedent who dies after December 31, 2009 and before January 1, 2011; presumption; retroactive effective date; "2010 federal tax relief act" defined.

Sec. 2723. (1) Except as provided in subsection (3), for purposes of interpreting a will, trust, or beneficiary designation of or by a decedent who dies after December 31, 2009 and before January 1, 2011, a will, trust, or beneficiary designation is presumed to refer to the federal estate tax and federal generation-skipping transfer tax laws as they apply to estates of decedents who die on January 1, 2010, in accordance with section 302(c) of the 2010 federal tax relief act without regard to the election permitted by section 301(c) of that act, if either of the following applies to the will, trust, or beneficiary designation:

(a) The will, trust, or beneficiary designation contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, taxable estate, gross estate, estate tax value, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the internal revenue code of 1986, 26 USC 1 to 9834, relating to the federal estate tax or generation-skipping transfer tax.

(b) The will, trust, or beneficiary designation measures a share of an estate, trust, or contractual benefit subject to a beneficiary designation based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax or based on a similar provision of federal estate tax or federal generation-skipping transfer tax law.

(2) A presumption that arises under subsection (1) is a rebuttable presumption that the decedent intended that the formula be construed as provided in subsection (1). A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption is applicable shall give notice to each beneficiary whose interest is affected by the presumption. A presumption that arises under subsection (1) does not preclude a fiduciary from making any available election, including an election under section 301(c) of the 2010 federal tax relief act. A fiduciary who has made an election under section 301(c) of the 2010 federal tax relief act may commence a proceeding to determine whether the decedent would not have intended the formula to be construed as provided in subsection (1). All interested persons affected by a presumption that arises under subsection (1) may enter into a nonjudicial settlement under section 7111 that the decedent intended the formula to be construed in a different manner from the presumption under subsection (1). A beneficiary whose interest is affected by the presumption or a fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation may commence a proceeding to determine whether the decedent intended that the formula be construed as provided under subsection (1). Solely for the purpose of determining the intent of the decedent regarding the formula under this section, the court may consider the surrounding circumstances and the rules of construction. A person who commences a proceeding under this section has the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in subsection (1). A proceeding under this subsection shall be commenced or a nonjudicial settlement under this subsection shall be executed within whichever of the following is earlier:

(a) Two years after the decedent's death.

(b) Six months after the fiduciary sent the beneficiary a notice of the presumption under this subsection or the due date for filing the federal estate tax return of the decedent, if later.

(3) A presumption under subsection (1) does not apply with respect to a will, trust, or beneficiary designation that is executed or amended after December 31, 2010, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date when no federal estate or generation-skipping transfer tax would apply.

(4) This section is a remedial response to changes in the federal estate tax and generation-skipping transfer tax and takes effect retroactively on January 1, 2010.

(5) As used in this section, "2010 federal tax relief act" means the tax relief, unemployment insurance

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reauthorization, and job creation act of 2010, Public Law 111-312.

History: Add. 2010, Act 224, Eff. Jan. 1, 2010;—Am. 2012, Act 303, Imd. Eff. Sept. 25, 2012.

Popular name: EPIC

PART 8

GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

700.2801 Effect of divorce, annulment, decree of separation, bigamy, and absence.

Sec. 2801. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of parts 1 to 4 of this article and of section 3203, a surviving spouse does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.

(c) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(d) An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.

(e) An individual who did any of the following for 1 year or more before the death of the deceased person:

(*i*) Was willfully absent from the decedent spouse.

(*ii*) Deserted the decedent spouse.

(*iii*) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.2802 Definitions relating to effect of certain criminal acts.

Sec. 2802. As used in this section and sections 2803 and 2804:

(a) "Abuse, neglect, or exploitation" means an act, the commission of which is a felony, under any of the following:

(*i*) An act that constitutes child abuse under section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(*ii*) A criminal act that is an offense under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iii*) A violation of section 174a of the Michigan penal code, 1931 PA 328, MCL 750.174a.

(*iv*) A criminal act that is an offense involving domestic violence as that term is defined in section 27b of chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.27b.

(*v*) A criminal act that constitutes abuse, neglect, or exploitation as those terms are defined in section 11 of the social welfare act, 1939 PA 280, MCL 400.11.

(b) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(c) "Felon" means the individual who was convicted of committing the abuse, neglect, or exploitation.

(d) "Governing instrument" means a governing instrument executed by the decedent.

(e) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer or felon, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer or felon and whether or not the decedent then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.2803 Forfeiture and revocation of benefits.

Sec. 2803. (1) An individual who feloniously and intentionally kills or who is convicted of committing

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abuse, neglect, or exploitation with respect to the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, a family allowance, and exempt property. If the decedent died intestate, the decedent's intestate estate passes as if the killer or felon disclaimed his or her intestate share.

(2) The felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent does all of the following:

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

(*i*) Disposition or appointment of property made by the decedent to the killer or felon in a governing instrument.

(*ii*) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer or felon.

(*iii*) Nomination of the killer or felon in a governing instrument, nominating or appointing the killer or felon to serve in a fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.

(b) Severs the interests of the decedent and killer or felon in property held by them at the time of the killing, abuse, neglect, or exploitation as joint tenants with the right of survivorship, transforming the interests of the decedent and killer or felon into tenancies in common.

(3) A severance under subsection (2)(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 killer or felon 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.

(4) A provision of a governing instrument is given effect as if the killer or felon disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer or felon predeceased the decedent.

(5) A killer's or felon's wrongful acquisition of property or interest not covered by this section shall be treated in accordance with the principle that a killer or felon cannot profit from his or her wrong.

(6) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing or the abuse, neglect, or exploitation of the decedent conclusively establishes the convicted individual as the decedent's killer or as a felon, as applicable, for purposes of this section. With respect to a claim of felonious and intentional killing, in the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(7) This section does not apply if the forfeiture, revocation, or severance would occur because of abuse, neglect, or exploitation and the decedent executed a governing instrument after the date of the conviction expressing a specific intent to allow the felon to inherit or otherwise receive the estate or property of the decedent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.2804 Protection of payors and other third parties.

Sec. 2804. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or by abuse, neglect, or exploitation, or for having taken another action in reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death. A payor or other third party is liable for a payment made or other action taken 10 or more business days after the payor or other third party actually receives written notice of a claimed forfeiture or revocation under section 2803. A payor or other third party is not obligated to determine whether the decedent was the victim of felonious killing or abuse, neglect, or exploitation or to seek evidence relating to such a killing or abuse, neglect, or exploitation even if the circumstances of the decedent's death are suspicious as to the beneficiary's participation in such a killing or if there is evidence that would raise suspicions that the decedent was the victim of abuse, neglect, or exploitation by the beneficiary. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed forfeiture or revocation under subsection (1) must be mailed to the payor's

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or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include all of the following information:

(a) The decedent's name, age, and date of birth, and 1 of the following:

(*i*) The last 4 digits of the decedent's social security number.

(*ii*) The decedent's last known address.

(b) The name of the person asserting an interest.

(c) The nature of the payment, item of property, or other benefit.

(d) A statement that a claim of forfeiture or revocation is being made under section 2803.

(e) If the claim is based on a conviction for abuse, neglect, or exploitation, a copy of the judgment of conviction.

(4) Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(5) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(6) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2803, shall disburse the money in accordance with the determination.

(7) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

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700.2805 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2805. (1) Section 2803 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2803 for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, an item of property, or another benefit to which the person is not entitled under section 2803 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2803.

(2) If this section and sections 2803 and 2804 are, or a part of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of the property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2806 Definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances.

Sec. 2806. As used in this section and sections 2807 to 2809:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

(c) "Divorced individual" includes, but is not limited to, an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by a divorced individual before the

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divorce from, or annulment of his or her marriage to, his or her former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2807 Revocation upon divorce; revocation by other changes of circumstances.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2808 Protection of payors and other third parties.

Sec. 2808. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken another action in reliance on the validity of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed revocation or severance under section 2807. A payor or other third party is not obligated to inquire as to the continued marital relationship between the decedent and a beneficiary described in this subsection or to seek evidence about such a relationship. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of the divorce, annulment, or remarriage under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or

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served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated individual occurred. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2807, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2809 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2809. (1) Section 2807 does not obligate an individual who purchases property from a former spouse, a relative of a former spouse, or another person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or another person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2807 for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or another benefit to which that person is not entitled under section 2807 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2807.

(2) If this section and sections 2807 and 2808 are, or a part of 1 of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a former spouse, relative of the former spouse, or another person who, not for value, receives a payment, an item of property, or another benefit to which that person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of 1 of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 9
DISCLAIMERS

700.2901 Short title of part; definitions.

Sec. 2901. (1) This part shall be known and may be cited as the "disclaimer of property interests law".

(2) As used in this part:

(a) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of his, her, or its authority.

(b) "Disclaimable interest" includes, but is not limited to, property, the right to receive or control property, and a power of appointment. Disclaimable interest does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property.

(c) "Effective date of a governing instrument other than a will or trust created by will" means the date on which a property right vests or a contract right arises, even though either right is subject to divestment.

(d) "Fiduciary" includes, but is not limited to, an agent, a conservator, a guardian if no conservator has

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been appointed, a guardian ad litem, a personal representative, a trustee, a probate court acting through a protective order under this act, and a temporary, successor, or foreign fiduciary.

(e) "Fiduciary power" means a management power relating to the administration or management of assets similar to those powers granted to a personal representative in section 3715 and a trustee in sections 7816 and 7817, and granted by law to a fiduciary or conferred upon a fiduciary in a governing instrument.

(f) "Governing instrument" means a deed, assignment, bill of sale, will, trust, beneficiary designation, contract, instrument creating or exercising a power of appointment or a power of attorney, or another instrument under which property devolves, a property right is created, or a contract right is created. Governing instrument includes the provable terms of an oral contract or arrangement under which property devolves or a property right is created.

(g) "Joint property" means property that is owned by 2 or more persons with rights of survivorship, and includes a tenancy by the entireties in real property, a tenancy in personal property as provided in section 1 of 1927 PA 212, MCL 557.151, a joint tenancy, a joint tenancy with rights of survivorship, and a joint life estate with contingent remainder in fee. For purposes of this part, joint property is considered to consist of a present interest and a future interest. The future interest is the right of survivorship.

(h) "Person" includes an entity and an individual, but does not include a fiduciary, an estate, or a trust.

(i) "Property" means anything that may be the subject of ownership. Property includes both real and personal property and an interest in property, including a present interest; a future interest; a legal interest; an equitable interest; an interest acquired by testate succession, by intestate or other statutory succession, by succession to a disclaimed interest, or by lapse or release of a power of appointment; or an interest that may be otherwise acquired under a governing instrument.

(j) "Trust" means a fiduciary relationship with respect to property that subjects the person who holds title to the property to equitable duties to deal with the property for the benefit of another person, which fiduciary relationship arises as a result of a manifestation of an intention to create it. Trust includes an express trust, private or charitable, with additions to the trust, whether created by will or other than by will, and includes a trust created by statute, 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2902 Right to disclaim; partial disclaimers; limitation on right to disclaim.

Sec. 2902. (1) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest in whole or in part. A trustee, with respect to the trust as a whole or with respect to a separate trust that is or will be established under the governing instrument, may disclaim a disclaimable interest, in whole or in part, but only to the extent that the governing instrument expressly gives the trustee the right to disclaim.

(2) A disclaimer may be of a specific asset, an interest in a specific asset, a pecuniary amount, a fractional or percentage share, or a limited interest or estate. A provision in a power of attorney granting the agent the authority to do whatever the principal could do, or words of similar effect, includes the authority to disclaim, unless the authority to disclaim is specifically excluded or limited. Unless the governing instrument is a trust instrument that does not authorize the trustee to disclaim or a power of attorney that denies the agent the authority to disclaim, the right to disclaim exists notwithstanding the existence of either of the following:

(a) A spendthrift provision or similar restriction that limits the interest of the disclaimant.

(b) A restriction or limitation on the right to disclaim contained in the governing instrument.

(3) A fiduciary may disclaim a fiduciary power. The right to disclaim a fiduciary power exists notwithstanding a restriction or limitation on the right to disclaim contained in the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.2903 Contents; signature.

Sec. 2903. (1) A disclaimer is not valid unless it complies with all of the following:

(a) Is in writing.

(b) Declares the disclaimer.

(c) Describes the disclaimed interest.

(d) Is signed by the disclaimant.

(e) Is delivered as provided in sections 2904, 2905, and 2906.

(2) If a disclaimable interest is disclaimed by a fiduciary on behalf of the person to whom the disclaimable interest devolves, the disclaimer must be signed by all incumbent fiduciaries. Unless the governing instrument

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requires otherwise, a disclaimer of a disclaimable interest by a trustee may be signed by less than all incumbent trustees. A disclaimer of a fiduciary power by a fiduciary may be signed by less than all incumbent fiduciaries.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2904 Delivery; timing; appropriate persons.

Sec. 2904. (1) Except as provided in section 2905, if a disclaimed interest arises under a will or trust created by will, or by the laws of intestacy, the disclaimer must be delivered after the death of the owner of the property and before any event described in section 2910. If a disclaimed interest arises under a will or by the laws of intestacy, the disclaimer must be delivered to the personal representative of the deceased owner's estate. If a disclaimed interest arises under a trust created by will, the disclaimer must be delivered to the trustee of the trust created by will or, if a trustee has not been appointed, to the personal representative of the deceased owner's estate.

(2) Except as provided in section 2905, if a disclaimed interest arises under a governing instrument other than a will or trust created by will, the disclaimer must be delivered after the effective date of the governing instrument and before any event described in section 2910. A disclaimer under this subsection must be delivered in 1 of the following manners:

(a) If the disclaimer is made by a beneficiary of a trust, the disclaimer must be delivered to the trustee.

(b) If the disclaimer is made by a donee with respect to a gift from a living donor, the disclaimer must be delivered to the donor of the gift.

(c) If the disclaimer is made by a beneficiary under a beneficiary designation, the disclaimer must be delivered to the payor.

(d) If the disclaimer is made by a trustee with respect to a separate trust that is or will be established under the governing instrument, the disclaimer must be delivered to another incumbent trustee of that trust who has not disclaimed or to all the beneficiaries of that trust who are then living and whose whereabouts are known or reasonably ascertainable.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2905 Delivery; disclaimer under power of appointment; disclaimer of joint property or fiduciary power.

Sec. 2905. (1) A disclaimed interest that is subject to, or arises under, an exercise, release, or lapse of a power of appointment, must comply with the following:

(a) A disclaimer by an appointee must be delivered to the donee, to the personal representative of the donee's estate, or to the fiduciary under the instrument that created the power of appointment. The disclaimer by the appointee must be delivered after the exercise of the power of appointment by the donee and before any event described in section 2910.

(b) A disclaimer by a taker in default must be delivered to the donee, to the fiduciary under the instrument that created the power of appointment, or to 1 of the persons entitled to the property in the event of a disclaimer. The disclaimer by a taker in default may be delivered before or after the lapse or release of the power of appointment, and must be delivered before any event described in section 2910.

(2) If the disclaimed interest arises out of joint property, the disclaimer must be delivered after creation of the joint ownership and before any event described in section 2910, to the person who created the joint property, to a remaining owner who has not disclaimed, or to the person or fiduciary entitled to the disclaimed interest in the event of a disclaimer. The barring of the right to disclaim a present interest under section 2910 does not bar the right to disclaim the future interest.

(3) A fiduciary power may be disclaimed at any time, before or after exercise of the power. The disclaimer must be delivered to the person who established the instrument that gave rise to the power or to 1 of the following:

(a) If the fiduciary is a personal representative, to all the devisees under the will who are then living and whose whereabouts are known or reasonably ascertainable.

(b) If the fiduciary is a trustee, to another incumbent trustee who has not disclaimed the power or to all the beneficiaries of the trust who are then living and whose whereabouts are known or reasonably ascertainable.

(c) If the fiduciary is a guardian or conservator, to the interested persons.

(d) If the fiduciary is an agent, to the principal or, if the principal is legally incapacitated, to the principal's presumptive heirs at law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

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700.2906 Manner of delivery; filing with court.

Sec. 2906. (1) A disclaimer must be delivered in 1 of the following manners:

(a) By personally handing it to the person to whom it is to be delivered or to a fiduciary representing that person.

(b) By enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to whom it is to be delivered or to a fiduciary representing that person, and depositing the envelope and its contents in the United States mail.

(c) By another means that is reasonably likely to accomplish delivery to the person who is to receive the disclaimer or to a fiduciary representing that person.

(2) If delivery is to be made to a fiduciary, the following apply:

(a) If a fiduciary is not currently serving, the delivery of the disclaimer is made by filing the disclaimer with the probate court that has jurisdiction to entertain proceedings to appoint or qualify the fiduciary.

(b) If the fiduciary cannot be located, the delivery of the disclaimer is made by filing the disclaimer with the probate court that has jurisdiction over the fiduciary.

(3) A copy of a disclaimer may be filed in a probate court where proceedings are pending concerning the disclaimed interest or in a probate court that would have jurisdiction if proceedings were commenced. If the disclaimed interest pertains to real property, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2907 Disposition of disclaimed interest; effect on future interest.

Sec. 2907. (1) Except as otherwise provided in this section and section 2908, if a disclaimed interest arises under a will or a trust created by will, or by the laws of intestacy, and the decedent has not provided for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. However, if by law, or under the will or trust created by will, the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent.

(2) A future interest that takes effect in possession or enjoyment upon the termination of the disclaimed interest takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

(3) Except as otherwise provided in this section and section 2908, if the disclaimed interest arises under a governing instrument other than a will or trust created by will, and the governing instrument does not provide for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. However, if by law or under the governing instrument the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the effective date of the instrument, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument.

(4) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2908 Disposition of disclaimed joint interest, trust interest, and fiduciary power.

Sec. 2908. (1) If a disclaimed interest arises out of joint property created by a governing instrument, testamentary or nontestamentary, the following apply:

(a) If the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners.

(b) If the disclaimant is not the only living owner, the disclaimed interest devolves to the other living joint owners equally or, if there is only 1 living owner, all to the other living owner.

(2) If the donee of a power of appointment or other power not held in a fiduciary capacity disclaims the power, all of the following apply:

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(a) If the donee has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes effective.

(b) If the donee has exercised the power, the disclaimer takes effect immediately after the last exercise of the power.

(c) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

(3) If all incumbent trustees disclaim a disclaimable interest, and the governing instrument does not provide for another disposition of the disclaimed interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, then the disclaimed interest devolves as if the trust with respect to which the disclaimer was made never existed. If less than all incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest under those circumstances, then the trustee who disclaims is treated as never having had any interest in or power over the disclaimed interest.

(4) If a fiduciary disclaims a fiduciary power, the fiduciary power ceases to exist as of the effective date of the disclaimer. A disclaimer of a fiduciary power by 1 of multiple incumbent fiduciaries is binding only on the fiduciary who disclaims and is not binding on the other incumbent fiduciaries or on successor fiduciaries. A disclaimer of a fiduciary power by all incumbent fiduciaries is binding on all successor fiduciaries, unless the disclaimer states otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.2909 Persons bound; effect of disclaimer.

Sec. 2909. (1) A disclaimer, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving the right to disclaim, and all persons claiming through or under him or her.

(2) A disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the disclaimed interest. The disclaimant is treated as never having received the disclaimed interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2910 Barring right to disclaim.

Sec. 2910. (1) The right to disclaim property is barred by any of the following events that occur after the event giving rise to the right to disclaim and before the disclaimer is perfected:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract for such a transaction.

(b) A written waiver of the right to disclaim.

(c) An acceptance of the disclaimable interest or a benefit under the disclaimable interest after actual knowledge that a property right has been conferred.

(d) A sale of the property under judicial sale.

(e) The expiration of the permitted applicable perpetuities period.

(2) The right to disclaim is barred to the extent provided by other applicable law. A partial bar does not preclude the disclaimant from disclaiming all or any part of the balance of the property if the disclaimant has received a portion of the property and there still remains an interest that the disclaimant is yet to receive. An act that bars the right to disclaim a present interest in joint property does not bar the right to disclaim a future interest in joint property.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.2911 Abolition of common law right.

Sec. 2911. The common law right of disclaimer or renunciation is abolished. This part does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under another statute.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2912 Effect on existing property interests.

Sec. 2912. An interest in property that exists on the effective date of this act as to which, if a present interest, the time for delivering a disclaimer under this part has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed after the effective date

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of this act and before any event described in section 2910.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 10
INTERNATIONAL WILLS

700.2951 Definitions.

Sec. 2951. As used in this part:

(a) "International will" means a will executed in conformity with this part.

(b) "Authorized individual" means an individual who by section 2959 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2952 Validity.

Sec. 2952. (1) If a will is made in the form of an international will that complies with the requirements of this part, the will is valid in regard to its form irrespective of the particular place where the will is made, of the location of assets, or of the testator's nationality, domicile, or residence.

(2) A will's invalidity as an international will does not affect its formal validity as a will of another kind.

(3) This part does not apply to the form of a testamentary disposition made by 2 or more individuals in 1 instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2953 Form and procedure; requirements.

Sec. 2953. To comply with this part as a valid international will, a will shall meet all of the following requirements regarding form and procedure:

(a) The will shall be made in writing, but does not need to be written by the testator personally. The will may be written in any language and may be written by hand or by any other means.

(b) The testator shall declare in the presence of 2 witnesses and an authorized individual that the document is the testator's will and that he or she knows its contents. The testator need not inform the witnesses or the authorized person of the will's contents.

(c) In the witnesses' and the authorized individual's presence, the testator shall sign the will or, if the testator has previously signed the will, shall acknowledge his or her signature.

(d) If the testator is unable to sign the international will, the absence of the testator's signature does not affect the will's validity if the testator indicates the reason for the inability and the authorized individual makes note of the reason on the will. In such a case, it is permissible, but not required, for another individual present, including a witness or the authorized individual, to sign the testator's name at the testator's direction, which act the authorized individual shall also note on the will.

(e) The witnesses and the authorized individual shall there and then attest the will by signing in the presence of the testator.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2954 Form and procedure; additional recommendations.

Sec. 2954. (1) To further assure an international will's acceptance, in addition to the section 2953 requirements, all of the following are recommended regarding form and procedure:

(a) The testator's, witnesses', and authorized individual's signatures should be placed at the end of the will. If the will consists of several sheets, the testator should sign each sheet. If the testator is unable to sign, the individual signing on the testator's behalf should sign each sheet or, if there is no such individual, the authorized individual should sign each sheet. In addition, each sheet should be consecutively numbered.

(b) The will's date is the date of its signature by the authorized individual. The authorized individual should note that date at the end of the will.

(c) The authorized individual should ask the testator whether he or she wishes to make a declaration concerning the will's safekeeping. If so and at the testator's express request, the place where the testator intends to have the will kept should be mentioned in the certificate provided for in section 2955.

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(2) A will executed in compliance with section 2953 is not invalid merely because it does not comply with this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2955 Certificate.

Sec. 2955. The authorized individual shall attach to the will a certificate signed by the authorized individual establishing that the will complies with the requirements of this part for valid execution of an international will. The authorized individual shall keep a copy of the certificate and deliver another to the testator. The certificate must be in substantially the following form, except the provisions of the form that are optional provisions need only be included if the circumstances of the will render them applicable:

CERTIFICATE
(Convention of October 26, 1973)

1. I, _____,
(Name, address and capacity)
a person authorized to act in connection with international wills
2. Certify that on _____ at _____
(Date) (Place)
3. (Testator) _____
(Name, address, date and place of birth)
in my presence and that of the witnesses
4. (a) _____
(Name, address, date and place of birth)
(b) _____
(Name, address, date and place of birth)
has declared that the attached document is his (or her) will and that he (or she) knows the contents thereof.
5. I furthermore certify that:
6. (a) In my presence and in that of the witnesses (1) the testator has signed the will or has acknowledged his (or her) signature previously affixed. * following a declaration of the testator stating that he (or she) (2) was unable to sign his (or her) will for the following reason _____, I have mentioned this declaration on the will * and the signature has been affixed by
_____
(Name and address)
7. (b) The witnesses and I have signed the will;
8. *(c) Each page of the will has been signed by
_____ and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) The witnesses have met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) The testator has requested me to include the following statement concerning the safekeeping of his (or her) will:
12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE and, if necessary, SEAL
* to be completed if appropriate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2956 Effect of certificate.

Sec. 2956. In the absence of evidence to the contrary, the authorized individual's certificate is conclusive of an international will's validity under this part. The absence or irregularity of a certificate does not affect the validity of a will under this part.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.2957 Revocation.

Sec. 2957. An international will is subject to the ordinary rules of revocation of wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2958 Source and construction.

Sec. 2958. Sections 2951 to 2957 derive from "Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will". In interpreting and applying this part, regard shall be had to its international origin and to the need for uniformity in its interpretation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2959 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Sec. 2959. An individual who is admitted to practice law before the courts of this state and who is in good standing as an active law practitioner of this state is an authorized individual empowered to supervise the execution of an international will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

ARTICLE III
PROBATE OF WILLS AND ADMINISTRATION

PART 1
GENERAL PROVISIONS

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700.3101 Devolution of estate at death; restrictions.

Sec. 3101. An individual's power to leave property by will, and the rights of creditors, devisees, and heirs to his or her property, are subject to the restrictions and limitations contained in this act to facilitate the prompt settlement of estates. Upon an individual's death, the decedent's property devolves to the persons to whom the property is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, disclaimer, or other circumstances affecting devolution of a testate estate, or in the absence of testamentary disposition, to the decedent's heirs or to those indicated as substitutes for them in cases involving disclaimer or other circumstances affecting devolution of an intestate estate, subject to homestead allowance, family allowance, and exempt property, to rights of creditors, to the surviving spouse's elective share, and to administration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3102 Validity of will by order of probate.

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.

History: 1998, Act 386, Eff. Apr. 1, 1998;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3103 Necessity of appointment for administration.

Sec. 3103. Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a decedent's personal representative, a person must be appointed by the register or by court order, must qualify, and must be issued letters. The issuance of letters commences an estate's administration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3104 Claim against decedent; necessity of administration.

Sec. 3104. (1) Except as otherwise provided in subsection (2), a proceeding to enforce a claim against a decedent's estate or the decedent's successors shall not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, a proceeding or action to enforce a claim against the estate is governed by the procedure prescribed by this article. After distribution, a creditor whose

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claim has not been barred may recover from the distributees as provided in section 3955 or from a former personal representative individually liable as provided in section 3956.

(2) This act does not apply to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the creditor's security except as provided in part 8 of article III and part 6 of article VII.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3105 Proceedings affecting devolution and administration.

Sec. 3105. A person interested in a decedent's estate may apply to the register for a determination in the informal proceedings provided in this article and may petition the court for orders in formal proceedings within the court's jurisdiction.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3106 Proceedings within jurisdiction of court; service; jurisdiction over persons.

Sec. 3106. In a proceeding within the court's jurisdiction in which notice is required by this act or by court rule, and in a proceeding to construe a probated will or determine heirs that concerns an estate that has not been opened for administration, an interested person may be bound by court order with respect to property in, or subject to the laws of, this state by notice in conformity with section 1401. An order is binding on all who are given notice of the proceeding, even if fewer than all interested persons are notified.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3107 Proceedings; scope; independence.

Sec. 3107. (1) Unless a proceeding involves supervised administration as described in part 5 of this article, the following apply:

(a) Each proceeding before the court or register is independent of any other proceeding involving the same estate.

(b) A petition for a formal court order may combine various requests for relief in a single proceeding if the order sought may be a final order and may be granted without delay.

(2) Except as required in this article for another proceeding, the following apply:

(a) A petition is not defective because it fails to embrace all matters that might then be the subject of a final order.

(b) A proceeding for probate of a will or an adjudication of no will may be combined with a proceeding for appointment of a personal representative.

(c) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3108 Repealed. 2000, Act 54, Eff. Apr. 1, 2000.

Compiler's note: The repealed section pertained to statutes of limitation on decedent's cause of action.

Popular name: EPIC

PART 2
VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER, AND DEMAND FOR NOTICE

700.3201 Venue for first and subsequent estate proceedings; location of property.

Sec. 3201. (1) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is 1 of the following:

(a) The county where the decedent was domiciled at the time of death.

(b) If the decedent was not domiciled in this state, in a county where property of the decedent was located at the time of death.

(2) Venue for a subsequent proceeding that is within the court's exclusive jurisdiction is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection (3), in section 856 of the revised judicature act of 1961, MCL 600.856, or by supreme court rule.

(3) If the first proceeding described in subsection (1) was informal, on application of an interested person

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and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) On motion by a party or on the court's own initiative, a proceeding's venue may be changed to another county by court order for the convenience of the parties and witnesses, for the attorneys' convenience, or if an impartial trial cannot be had in the county where the action is pending.

(5) For the purpose of aiding determinations concerning location of property that may be relevant in cases involving nondomiciliaries, other than a debt evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, a debt is located where the debtor resides or, if the debtor is a person other than an individual, at the place where the debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3202 Appointment or testacy proceedings; conflicting claim of domicile in another state.

Sec. 3202. If conflicting claims as to the decedent's domicile are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state shall stay, dismiss, or permit suitable amendment in the proceeding in this state unless it is determined that this state's proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced is determinative in this state's proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3203 Priority among persons seeking appointment as personal representative.

Sec. 3203. (1) For either formal or informal proceedings, subject to subsection (2), persons who are not disqualified have priority for appointment as personal representative in the following order:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.

(d) The decedent's surviving spouse.

(e) Other heirs of the decedent.

(f) After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.

(g) The state or county public administrator if any of the following apply:

(*i*) No interested person applied or petitioned for appointment of a personal representative within 42 days after the decedent's death.

(*ii*) The decedent died apparently leaving no known heirs.

(*iii*) There is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate.

(2) An objection to the appointment of a personal representative may be made only in a formal proceeding. If an objection is made, the priorities prescribed by subsection (1) apply except in either of the following circumstances:

(a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, on petition of creditors, the court may appoint any qualified person.

(b) If a devisee or heir who appears to have a substantial interest in the estate objects to the appointment of a person whose priority is not determined by will, the court may appoint a person who is acceptable to the devisees and heirs whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value or, if no person is acceptable to these devisees and heirs, any suitable person.

(3) A person entitled to letters under subsection (1)(b) to (e) may nominate a qualified person to act as personal representative. A person may renounce his or her right to nominate or to an appointment by filing an appropriate writing with the court. If 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3204 Representation by conservator or guardian; appointment without priority; disqualification.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3205 Demand for notice of order or filing concerning decedent's estate.

Sec. 3205. A person who wants notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the decedent's death stating the decedent's name, the nature of the person's interest in the estate, and the address of the person or the person's attorney. If a proceeding is not pending at the time a demand is filed under this section, the person filing the demand must pay the fee required to commence a proceeding. The person filing a demand shall mail a copy of the demand to the decedent's attorney, if known, to the personal representative if one has been appointed, and to the personal representative's attorney. After filing the demand, the person is an interested person entitled to notice as provided in section 1401 and the other provisions of this act.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3206 Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent's body; presumption; priority; shared rights and powers; personal representative or nominated personal representative; guardian; special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; conditions under which subsections (2) to (8) inapplicable; definitions.

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (11), a person with priority under subsections (2) to (4) or acting under subsection (5), (6), (7), or (8) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

(2) The surviving spouse or, if there is no surviving spouse, the individual or individuals 18 years of age or older, in the highest order of priority under section 2103, and related to the decedent in the closest degree of consanguinity, have the rights and powers under subsection (1).

(3) If the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2) do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being

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determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

(4) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (2) or (3), the rights and powers shall be exercised as decided by a majority of the individuals. If a majority cannot agree, any of the individuals may file a petition under section 3207.

(5) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), and if subsection (6) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(6) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(7) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), if the decedent died intestate, and if subsection (6) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(8) If there is no person under subsections (2) to (7) to exercise the rights and powers under subsection (1), 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death.

(b) If the decedent was incarcerated in a state correctional facility at the time of his or her death, the director of the department of corrections or the designee of the director.

(9) An attempt to locate a person described in subsection (2) or (3) is sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the person at his or her last known address, telephone number, or electronic mail address.

(10) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(11) If all of the following apply, subsections (2) to (8) do not apply and the designated person has the rights and the powers under subsection (1):

(a) The decedent was a service member who designated a person to direct disposition of the service member's remains according to a statute of the United States or a regulation, policy, directive, or instruction of the department of defense.

(b) The designated person is the surviving spouse, an adult blood relative, or an adoptive relative of the decedent or, if the surviving spouse, an adult blood relative, or an adoptive relative of the decedent cannot be found, a person standing in loco parentis.

(c) The designated person is able and willing to exercise the rights and powers enumerated in subsection (1).

(12) As used in this section:

(a) "Armed forces" means that term as defined in section 2 of the veteran right to employment services act, 1994 PA 39, MCL 35.1092.

(b) "Michigan national guard" means that term as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

(c) "Nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

(d) "Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan national guard.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008;—Am. 2012, Act 63, Imd. Eff. Mar. 22, 2012.

Popular name: EPIC

700.3207 Petition; venue; hearing date; notice of hearing; funeral establishment as petitioner; factors to be considered in court decision.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4) or if 1 or more of the individuals described in section 3206(2) or (3) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

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(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(2) and (3), unless the court orders that service on every such individual is not required. Unless an individual cannot be located after a reasonable good-faith effort has been made to contact the individual, service shall be made on the individual personally or in a manner reasonably designed to give the individual notice. Notice of the hearing shall include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing may waive his or her rights. If written waivers from all persons entitled to notice are filed, the court may immediately hear the petition. The court may waive or modify the notice and hearing requirements of this subsection if the decedent's body must be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and reasonable attorney fees in bringing the proceeding shall be included in the reasonable funeral and burial expenses under section 3805(1)(b) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2010, Act 325, Imd. Eff. Dec. 21, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.3208 Filing in circuit court to challenge presumption; venue.

Sec. 3208. (1) An individual other than a person with priority under subsections (2) to (4) or acting under subsection (5), (6), (7), or (8), may file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under section 3206(1).

(2) Venue for an action filed under this section is in the county in which the decedent was domiciled at the time of death.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006.

Popular name: EPIC

700.3209 Funeral establishment not civilly liable.

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) The designation of a person as described in section 3206(11) or the order of priority determined under section 3206(2) and (3) may be relied upon by a funeral establishment. A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

(3) A funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, crematory, or an officer or employee of a funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, or crematory may rely on the terms of sections 3206 and 3207 and this section and the instructions of a person described in section 3206(2) to (8) or (11), or of an individual

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determined in an action under section 3208 to be the party to exercise the rights and powers under section 3206(1), regarding funeral arrangements and the handling, disposition, or disinterment of a body and is not civilly liable to any person for the reliance if the reliance was in good faith.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2012, Act 63, Imd. Eff. Mar. 22, 2012.

Popular name: EPIC

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

700.3301 Informal probate or appointment proceedings; application; contents.

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.

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(*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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3302 Informal probate; duty of register; effect of informal probate.

Sec. 3302. Upon receipt of an application requesting informal probate of a will and after making the findings required by section 3303, the register shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. A defect in an application or procedure relating to the application that leads to informal probate of a will does not render the probate void.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3303 Informal probate; proof and findings required.

Sec. 3303. (1) In an informal proceeding for original probate of a will, the register shall determine whether all of the following are true:

(a) The application is complete.

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief.

(c) The applicant appears from the application to be an interested person.

(d) On the basis of the statements in the application, venue is proper.

(e) An original, properly executed, and apparently unrevoked will is in the register's possession.

(f) That the application is not within section 3304.

(2) The register shall deny the application if the application indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under section 2502 or 2506 have been met shall be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed, or the register may accept a sworn statement of a person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will that was previously probated elsewhere may be granted at any time upon written application by an interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where the will was first probated.

(5) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under subsection (1) may be probated in this state upon receipt by the register of a properly authenticated copy of the will and a properly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3304 Informal probate; unavailable in certain cases.

Sec. 3304. The register shall deny an application for informal probate if the probate relates to 1 or more of a known series of testamentary instruments, not including a will and 1 or more codicils to that will, the latest of which instruments does not expressly revoke the earlier.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3305 Informal probate; register not satisfied.

Sec. 3305. If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of section 3303 or 3304 or for another reason, the register may deny the application. A register's denial of informal probate is not an adjudication and does not preclude formal probate proceedings. If the application is denied, the register shall clearly state the reason for denial.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3306 Informal probate; notice requirements.

Sec. 3306. (1) Within 28 days after an informal probate is granted, the applicant shall give written information of the probate to the heirs, devisees, a person who demands it under section 3205, and other interested persons. The applicant also shall give information of the probate to the attorney general, public administration division, if the devisees under the will would not be entitled to share in the estate but for the terms of the will and the decedent died without leaving any known heirs.

(2) The information required by subsection (1) must include the applicant's name and address, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each person entitled to notice whose address is reasonably available to the applicant. There is no duty to give information as required by this section if a personal representative is appointed who is required to give the written information required by section 3705. An applicant's failure to give information as required by this section is a breach of the applicant's duty to a person entitled to notice, but does not affect the validity of the probate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3307 Informal appointment proceedings; delay in order; duty of register; effect of appointment.

Sec. 3307. (1) Upon receipt of an application for informal appointment of a personal representative, other than a special personal representative as provided in section 3614, and after making the determinations required by section 3308, the register shall appoint the person whose appointment is sought subject to qualification and acceptance. If the decedent was a nonresident, the register shall delay the order of appointment until 28 days after the death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that the estate be subject to the laws of this state.

(2) The personal representative's status and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created by the appointment, is subject to termination as provided in sections 3608 to 3612, but is not subject to retroactive vacation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3308 Informal appointment proceedings; proof and required findings.

Sec. 3308. (1) In informal appointment proceedings, the register shall determine whether all of the following are true:

(a) The application for the personal representative's informal appointment is complete.

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief.

(c) The applicant appears from the application to be an interested person.

(d) On the basis of the statements in the application, venue is proper.

(e) A will to which the requested appointment relates has been formally or informally probated. This subdivision does not apply to the appointment of a special personal representative.

(f) From the statements in the application, the person whose appointment is sought has priority to the appointment or the requirements of section 3310 have been satisfied.

(2) Unless section 3612 controls, the register shall deny the application if it indicates any of the following:

(a) That a personal representative who has not filed a written statement of resignation as provided in section 3610 has been appointed in this or another county of this state.

(b) That, unless the applicant is the domiciliary personal representative or his or her nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile.

(c) That the other requirements of this section are not met.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3309 Informal appointment proceedings; register not satisfied.

Sec. 3309. If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of section 3307 or 3308, or for another reason, the register may deny the application. A register's denial of informal appointment is not an adjudication and does

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not preclude appointment in formal proceedings. If the application is denied, the register shall clearly state the reason for denial.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3310 Informal appointment proceedings; notice requirements.

Sec. 3310. The applicant shall give notice as described by section 1401 of the applicant's intention to seek an appointment informally to each person having a prior or equal right to an appointment not waived in writing and filed with the court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3311 Informal appointment unavailable in certain cases.

Sec. 3311. If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument that may relate to property subject to the laws of this state and that is not filed for probate in this court, the register shall deny the application.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 4
FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

700.3401 Formal testacy proceedings; nature; commencement.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3402 Formal testacy or appointment; proceedings; petition; contents.

Sec. 3402. (1) A petition for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, must request a judicial order after notice and hearing, and must contain the statements required by this section. A petition for formal probate of a will must include all of the following:

(a) A request for an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and a request for an order determining the decedent's heirs.

(b) The statements required for an informal application prescribed by section 3301(1)(a) and (b)(*ii*) and (*iii*).

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(c) A statement as to whether the original of the decedent's last will is in the court's possession or accompanies the petition. If the original will is not in the court's possession or neither the original will nor an authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition must also state the will's contents and shall indicate that the will is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of a personal representative in intestacy must include all of the following:

(a) A request for a judicial finding and order that the decedent left no will and determining the heirs.

(b) The statements required by section 3301(1)(a) and (d).

(c) A statement indicating whether supervised administration is sought. A petition under this subsection may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case, the statements required by section 3301(1)(d)(*ii*) may be omitted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3403 Formal testacy proceedings; notice of hearing on petition.

Sec. 3403. (1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. The petitioner shall give notice in the manner prescribed by section 1401 to each of the following persons:

(a) The decedent's heirs.

(b) The devisees and personal representatives named in a will that is being, or has been, probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere.

(c) A personal representative of the decedent whose appointment has not been terminated.

(d) A person who has filed a demand for notice under section 3205.

(e) The trustee of a trust described in section 7605(1) as to which the decedent was settlor.

(2) Notice may be given to other persons. In addition, the petitioner shall give notice by publication to each unknown person and to each known person whose address is unknown who has an interest in the matters being litigated. If the proceeding involves a request for appointment of a personal representative and it appears that the deceased died intestate without leaving a known heir, the petitioner shall give notice to the attorney general, public administration division.

(3) If it appears by the petition or otherwise that the fact of the decedent's death may be in doubt, or on the written demand of an interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his or her last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including by any of the following methods:

(a) Inserting in 1 or more suitable periodicals a notice requesting information from anyone having knowledge of the alleged decedent's whereabouts.

(b) Notifying law enforcement officials and public welfare agencies in appropriate locations of the alleged decedent's disappearance.

(c) Engaging an investigator's services.

(4) The costs of a search conducted under subsection (3) shall be paid by the petitioner if there is no administration or by the decedent's estate if there is administration.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3404 Formal testacy proceedings; written objections to probate.

Sec. 3404. A party to a formal proceeding who opposes the probate of a will for any reason shall state in his or her pleadings the party's objections to probate of the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3405 Formal testacy proceedings; uncontested cases; hearings and proof.

Sec. 3405. (1) If a petition in a testacy proceeding is unopposed, the court may either order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought.

(2) If evidence concerning execution of the will is necessary, the sworn statement or testimony of 1 of the attesting witnesses to the instrument is sufficient. If the sworn statement or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or sworn statement. If, after diligent

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search and effort and after the signature of the testator is identified, it appears that the whereabouts of the witnesses to a will cannot be ascertained and it appears on the face of the will that the requirements in this section for a valid will have been met, a presumption arises that the will was executed in all particulars as required by law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.

Sec. 3406. (1) If evidence concerning execution of an attested will that is not self-proved is necessary in a contested case, the testimony of at least 1 of the attesting witnesses, if within the state and if competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If a will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and sworn statements annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or a sworn statement.

(3) If a witness is competent at the time he or she signs the will, the witness's subsequent incompetency from whatever cause does not prevent admission of the will to probate, if it is otherwise satisfactorily proved.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3407 Formal testacy proceedings; burdens in contested cases.

Sec. 3407. (1) All of the following apply in a contested case:

(a) A petitioner who seeks to establish intestacy has the burden of establishing prima facie proof of death, venue, and heirship.

(b) A proponent of a will has the burden of establishing prima facie proof of due execution in all cases and, if the proponent is also a petitioner, prima facie proof of death and venue.

(c) A contestant of a will has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

(d) A party has the ultimate burden of persuasion as to a matter with respect to which the party has the initial burden of proof.

(2) If a will is opposed by a petition for probate of a later will revoking the former, the court shall first determine whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, the court shall first determine whether the will is entitled to probate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3408 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.

Sec. 3408. This state's court shall accept as determinative a final order of a court of another state determining testacy, or the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons if the order includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3409 Formal testacy proceedings; order; foreign will.

Sec. 3409. (1) After the time expires for any required notice, upon proof of notice and after a hearing, if necessary, if the court finds that the testator is dead and that venue is proper, the court shall determine the decedent's domicile at death, the decedent's heirs, and the decedent's state of testacy. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

(2) A will found to be valid and unrevoked shall be formally probated. Termination of a previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3612. A will from a place that does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will is effective under the law of the other place.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3410 Formal testacy proceedings; probate of more than one instrument.

Sec. 3410. If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than 1 instrument may be probated if neither expressly revokes the other and neither contains provisions that work a total revocation by implication. If more than 1 instrument is probated, the order shall indicate which provisions control in respect to the nomination of the personal representative, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by another instrument. After a final order in a testacy proceeding has been entered, a petition for probate of another instrument of the decedent shall not be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3412.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3411 Formal testacy proceedings; partial intestacy.

Sec. 3411. If it becomes evident in the course of a formal testacy proceeding that, though 1 or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3412 Formal testacy proceedings; effect of order; vacation.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3413 Formal testacy proceedings; vacation of order for other cause.

Sec. 3413. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3414 Formal proceedings concerning appointment of personal representative.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3415 Independent applications to court.

Sec. 3415. Unless supervised administration is sought and ordered, each person interested in an estate, including a personal representative, whether appointed informally or after notice, may make 1 or more independent requests to the court so that a question or assumption relating to the estate, including the status of an estate as testate or intestate, a matter relating to 1 or more claims, a disputed title, an account of a personal representative, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of a judicial order in regard to other or further questions or assumptions.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 5
SUPERVISED ADMINISTRATION

700.3501 Supervised administration; nature of proceeding.

Sec. 3501. (1) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the court's continuing authority that extends until entry of an order approving estate distribution and discharging the personal representative or other order terminating the proceeding.

(2) A supervised personal representative is responsible to the court, as well as to the interested persons, and is subject to directions concerning the estate made by the court on its own motion or on the motion of an interested person.

(3) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3502 Supervised administration; petition; order.

Sec. 3502. (1) Any interested person or a personal representative may file a petition for supervised administration at any time, or a petition for supervised administration may be joined with a petition in a formal testacy or appointment proceeding.

(2) If a decedent's testacy or a personal representative's priority and qualification have not been previously

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adjudicated, a petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding, and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the decedent's testacy and questions relating to the personal representative's priority and qualifications in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(3) After notice to interested persons, the court shall order supervised administration of a decedent's estate in any of the following circumstances:

(a) If the decedent's will directs supervised administration, the court shall order supervised administration unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that supervised administration is not necessary.

(b) If the decedent's will directs unsupervised administration, the court shall only order supervised administration on a finding that it is necessary for protection of persons interested in the estate.

(c) In other cases, the court shall order supervised administration if the court finds that supervised administration is necessary under the circumstances.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3503 Supervised administration; effect on other proceedings.

Sec. 3503. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on a pending informal application or an informal application filed after commencement of the proceeding for supervised administration.

(2) If a will has been previously probated in informal proceedings, the filing of a petition for supervised administration has the same effect as a formal testacy proceeding under section 3401.

(3) After receipt of notice of the filing of a supervised administration petition, a personal representative who has been previously appointed shall not exercise the power to distribute the estate. The filing of such a petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of those powers and duties pending full hearing on the petition.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3504 Supervised administration; powers of personal representative.

Sec. 3504. Unless restricted by the court, a supervised personal representative has, without an interim order approving exercise of a power, all the powers of a personal representative under this act, but shall not exercise the power to make a distribution of the estate without prior court order. Any other restriction on a supervised personal representative's power that the court orders must be endorsed on the letters of appointment. Unless a restriction is endorsed as provided in this section, the restriction is ineffective as to persons dealing in good faith with the personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3505 Supervised administration; interim orders; partial distribution or other relief.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 6
PERSONAL REPRESENTATIVE AND APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

700.3601 Qualification; limitation and procedure with regard to specified assets.

Sec. 3601. (1) Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

(2) In filing the statement of acceptance, the personal representative may exclude from the scope of the personal representative's responsibility, for a period not to exceed 91 days, real estate or an ownership interest

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in a business entity if the personal representative reasonably believes the real estate or other property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used for any activity directly or indirectly involving a hazardous substance, that could result in liability to the estate or otherwise impair the value of property held in the estate. The personal representative must identify the real estate or ownership interest being excluded and shall specify the time period of exclusion.

(3) If the personal representative identifies excluded property under subsection (2), the personal representative's responsibilities extend to the excluded property at the end of the exclusion period or upon the personal representative's notice to the court of acceptance of that property, unless, before the end of the exclusion period, the personal representative requests the court to appoint a special personal representative with respect to the excluded property or to exercise administrative authority over the excluded property by direct judicial order.

(4) In response to a request by the general personal representative under subsection (3), the court may do either of the following:

(a) Appoint a special personal representative with the duty and authority to collect and manage the excluded property, but only to the extent necessary for proper settlement of the estate and to preserve, account with respect to, and distribute or otherwise dispose of the excluded property as directed by the general personal representative or other court order.

(b) Directly administer the excluded property by judicial orders without the appointment of a personal representative with respect to the property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3602 Acceptance of appointment; consent to jurisdiction.

Sec. 3602. By accepting appointment, a personal representative submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person. The interested person instituting the proceeding must give notice of the proceeding to the personal representative by personal service or by ordinary first-class mail mailed to the personal representative's address as stated in the application or petition for appointment, or as otherwise reported to the court, and if different, to the personal representative's address as then known to the interested person.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3603 Bond not required without court order; exceptions.

Sec. 3603. (1) A bond is not required of a personal representative appointed in informal proceedings, except in any of the following circumstances:

(a) A special personal representative is appointed.

(b) The personal representative is appointed to administer an estate under a will containing an express requirement of bond.

(c) Bond is required under section 3605.

(2) Except as otherwise provided in this subsection, in a formal proceeding, the court may order bond at the time of the personal representative's appointment. The court shall not order bond of the personal representative in the formal proceeding if the will relieves the personal representative of bond, unless an interested person requests bond and the court is satisfied that bond is desirable. If a will in a formal proceeding requires bond, bond may be dispensed with if the court determines it is unnecessary.

(3) Bond is not required of a personal representative who deposits, as determined by the court, cash or collateral with the county treasurer to secure performance of the fiduciary duties.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3604 Bond amount; security; procedure; reduction.

Sec. 3604. If bond is required and the provisions of the will or order do not specify the amount, unless stated in the person's application or petition, a person qualifying shall file a statement under oath with the register indicating the person's best estimate of the value of the decedent's personal estate and of the income expected from the personal and real estate during the next year, and shall execute and file a bond with the register, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or 1 or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The register may permit the amount of the bond to be reduced by the value of estate property deposited in this state with a

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financial institution in a manner that prevents the property's unauthorized disposition. On petition of the personal representative or another interested person or on the court's own motion, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3605 Demand for bond by interested person.

Sec. 3605. A person apparently having an interest in the estate worth in excess of $2,500.00 or a creditor having a claim against the estate in excess of $2,500.00 may make a written demand that a personal representative give bond. The demand must be filed with the register, and if appointment and qualification have occurred, a copy must be mailed to the personal representative. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3603 or 3604. After receipt of notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the fiduciary office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 28 days after receipt of notice is cause for removal and appointment of a successor personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3606 Requirements and provisions of bonds.

Sec. 3606. The following requirements and provisions apply to a bond required by this part:

(a) A bond shall name the state of Michigan as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court that issues letters to the primary obligor in a proceeding pertaining to the personal representative's fiduciary duties and naming the surety as a party. The petitioner shall notify a surety of a proceeding by personal service or by registered or certified mail to the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

(d) On petition of a successor personal representative, another personal representative of the same decedent, or an interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the personal representative's bond. If a fiduciary fails to perform a duty or perform a duty properly, the court may order a surety to perform an act the fiduciary should have performed or to correct an act the fiduciary performed improperly.

(e) The personal representative's bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) An action or proceeding shall not be commenced against the surety on a matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3607 Order restraining personal representative.

Sec. 3607. (1) On petition of a person who appears to be an interested person or acting on the court's own motion, the court, by temporary order, may restrain a personal representative from performing a specified act of administration, disbursement, or distribution, or from exercising a power or discharging a duty of the personal representative's office, or may make another order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner or of some other interested person. A person with whom the personal representative may transact business may be made a party.

(2) The court shall set a hearing date for a matter described in subsection (1), which hearing date shall be not more than 14 days after the date of the issuance of the temporary order, unless the parties agree otherwise. Notice shall be given as the court directs to the personal representative, to the personal representative's attorney of record, if any, and to any parties named defendant in the petition.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3608 Termination of appointment generally.

Sec. 3608. Termination of appointment of a personal representative occurs as provided in sections 3609 to 3612. Termination ends the right and power pertaining to the office of personal representative as conferred by this act or a will, except that a personal representative, at any time before distribution or until restrained or enjoined by court order, may perform an act necessary to protect the estate and may deliver property to a successor personal representative. Termination does not discharge a personal representative from liability for a transaction or omission occurring before termination, or relieve the personal representative of the duty to preserve property subject to the personal representative's control, and to account for and deliver that property. Termination does not affect the court's jurisdiction over the personal representative, but does terminate the personal representative's authority to represent the estate in a pending or future proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3609 Termination of appointment; death or disability.

Sec. 3609. The personal representative's death or a conservator's appointment for the personal representative's estate terminates the appointment of that individual. Until appointment and qualification of a successor or special personal representative to replace the deceased or protected personal representative, the personal representative of the estate of the deceased or conservator of the protected personal representative has the duty to protect the estate possessed and being administered by the decedent or ward at the time the appointment terminates, has the power to perform acts necessary for that protection, and shall account for and deliver the estate property to a successor or special personal representative upon the successor's appointment and qualification.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3610 Termination of appointment; voluntary.

Sec. 3610. (1) A personal representative's appointment terminates 1 year after the filing of a closing statement as provided in section 3954.

(2) A personal representative's appointment terminates when the court enters an order closing an estate as provided in section 3952 or 3953.

(3) After giving at least 14 days' written notice to known interested persons, a personal representative may resign by filing a written statement of resignation with the register. If no one applies or petitions for appointment of a successor personal representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and is effective only upon the appointment and qualification of a successor personal representative and delivery of the estate property to the successor personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3611 Termination of appointment by removal; cause; procedure.

Sec. 3611. (1) An interested person may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. The petitioner shall give notice to the personal representative and to other persons as the court orders. Except as otherwise ordered under section 3607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court shall also direct by order the disposition of the property remaining in the name of, or under the control of, the personal representative being removed.

(2) The court may remove a personal representative under any of the following circumstances:

(a) Removal is in the best interests of the estate.

(b) It is shown that the personal representative or the person who sought the personal representative's appointment intentionally misrepresented material facts in a proceeding leading to the appointment.

(c) The personal representative did any of the following:

(*i*) Disregarded a court order.

(*ii*) Became incapable of discharging the duties of office.

(*iii*) Mismanaged the estate.

(*iv*) Failed to perform a duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's

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domicile, incident to securing appointment of an ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer in state assets.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3612 Termination of appointment; change of testacy status.

Sec. 3612. Except as otherwise ordered in formal proceedings, the probate of a will after the appointment of a personal representative in intestacy or under a will that is superseded by formal probate of another will, or the vacation of an informal probate of a will after the appointment of the personal representative under that will, does not terminate the personal representative's appointment, although the personal representative's powers may be reduced as provided in section 3401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 28 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3613 Successor personal representative.

Sec. 3613. The appointment of a personal representative to succeed a personal representative whose appointment is terminated is governed by parts 3 and 4 of this article. After appointment and qualification, a successor personal representative must be substituted in all actions and proceedings in which the former personal representative was a party. A notice, process, or claim that was given or served upon the terminated personal representative need not be given to or served upon the successor personal representative in order to preserve a position or right the person that gave the notice or filed the claim may have obtained or preserved with reference to the former personal representative. Except as the court otherwise orders, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the appointment had not been terminated.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3614 Special personal representative; appointment.

Sec. 3614. A special personal representative may be appointed in any of the following circumstances:

(a) Informally by the register on the application of an interested person if necessary to protect the estate of a decedent before the appointment of a general personal representative or if a prior appointment is terminated as provided in section 3609.

(b) By the court on its own motion or in a formal proceeding by court order on the petition of an interested person if in either case, after notice and hearing, the court finds that the appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, the court may order the appointment without notice.

(c) By the court on its own motion or on petition by an interested person to supervise the disposition of the body of a decedent if section 3206(7) applies. The duties of a special personal representative appointed under this subdivision shall be specified in the order of appointment and may include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding where appropriate, and determining the disposition of the body by burial or cremation. The court may waive the bond requirement under section 3603(1)(a). The court may appoint the county public administrator if the county public administrator is willing to serve. If the court determines that it will not be necessary to open an estate, the court may appoint a special fiduciary under section 1309 instead of a special personal representative to perform duties under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 343, Imd. Eff. Sept. 29, 2004;—Am. 2006, Act 299, Imd. Eff. July 20, 2006.

Popular name: EPIC

700.3615 Special personal representative; who may be appointed.

Sec. 3615. (1) If a special personal representative is to be appointed pending the probate of a will that is the subject of a pending application or petition for probate, the person named personal representative in the will

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shall be appointed as the special personal representative, if available and qualified, unless the court finds the appointment is not in the best interest of the estate or the estate's beneficiaries.

(2) In any other case, the court may appoint any proper person as special personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3616 Special personal representative; appointed informally; powers and duties.

Sec. 3616. A special personal representative appointed by the register in informal proceedings as provided in section 3614 has the duty to collect and manage the estate property, to preserve and account for the property, and to deliver the property to the general personal representative upon qualification. This special personal representative has the power of a personal representative under this act necessary to perform his or her duties.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3617 Special personal representative; formal proceedings; power and duties.

Sec. 3617. A special personal representative appointed by order of the court in a formal proceeding has a general personal representative's power except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court directs.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3618 Termination of appointment; special personal representative.

Sec. 3618. A special personal representative's appointment terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In any other case, a special personal representative's appointment is subject to termination as provided in sections 3608 to 3612.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 7
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

700.3701 Time of accrual of duties and powers.

Sec. 3701. A personal representative's duties and powers commence upon appointment. A personal representative's powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment. Subject to sections 3206 to 3208, before or after appointment, a person named as personal representative in a will may carry out the decedent's written instructions relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2006, Act 299, Imd. Eff. July 20, 2006.

Popular name: EPIC

700.3702 Priority among different letters.

Sec. 3702. A person to whom general letters are issued first has exclusive authority under the letters until the appointment is terminated or modified. If, through error, general letters are afterwards issued to another person, the first appointed representative may recover estate property in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3703 General duties; relation and liability to persons interested in estate; standing to sue; accounting.

Sec. 3703. (1) A personal representative is a fiduciary who shall observe the standard of care applicable to a trustee as described by section 7803. A personal representative is under a duty to settle and distribute the decedent's estate in accordance with the terms of a probated and effective will and this act, and as

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expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by this act, the terms of the will, if any, and an order in a proceeding to which the personal representative is party for the best interests of claimants whose claims have been allowed and of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to the will's terms. Whether issued in an informal or formal proceeding, an order of appointment of a personal representative is authority to distribute apparently intestate property to the decedent's heirs if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the personal representative's duty to administer and distribute the estate in accordance with the rights of a claimant whose claim has been allowed, the surviving spouse, a minor or dependent child, or a pretermitted child of the decedent as described elsewhere in this act.

(3) Except as to a proceeding that does not survive the decedent's death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death.

(4) The personal representative shall keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3704 Personal representative to proceed without court order; exception.

Sec. 3704. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court. However, the personal representative may invoke the court's jurisdiction in a proceeding authorized by this act to resolve a question concerning the estate or its administration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3705 Duty of personal representative; information to heirs and devisees; notice to attorney general; notice of spouse's right to election; notice to friend of the court.

Sec. 3705. (1) Not later than 28 days after a personal representative's appointment or other time specified by court rule, the personal representative, except a special personal representative, shall give notice of the appointment to the decedent's heirs and devisees, except those who have executed a written waiver of notice, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative and to the trustee of a trust described in section 7605(1) as to which the decedent was settlor. The personal representative shall give the notice by personal service or by ordinary first-class mail to each person required to receive notice under this subsection whose address is reasonably available to the personal representative. However, the personal representative is not required to notify a person who was adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice required under this subsection must be in a form approved by the supreme court and must include all of the following information:

(a) That the court will not supervise the personal representative. This statement shall not be included if the appointment is made in a supervised proceeding under part 5 of this article.

(b) That, unless a person files a written objection to the appointment of the person named as personal representative in the notice or files a demand that bond or higher bond be posted, the person named in the notice is the personal representative without bond or with bond in the amount shown in the notice. This statement shall not be included if the personal representative is appointed in a formal appointment proceeding.

(c) The name and address of the person appointed as the estate's personal representative.

(d) That, during the course of administering the estate, the personal representative must provide all interested persons with all of the following:

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(*i*) A copy of the petition for the personal representative's appointment and a copy of the will, if any, with the notice.

(*ii*) A copy of the inventory.

(*iii*) A copy of the settlement petition or of the closing statement.

(*iv*) Unless waived, a copy of the account, including, but not limited to, fiduciary fees and attorney fees charged to the estate.

(e) That an interested person may petition the court for a court hearing on any matter at any time during the estate's administration, including, but not limited to, distribution of assets and expenses of administration.

(f) That federal and Michigan estate taxes, if any, must be paid within 9 months after the date of the decedent's death or another time period specified by law, to avoid penalties.

(g) That, if the estate is not settled within 1 year after the personal representative's appointment, within 28 days after the anniversary of the appointment, the personal representative must file with the court and send to each interested person a notice that the estate remains under administration and must specify the reason for the continuation of settlement proceedings. If such a notice is not received, an interested person may petition the court for a hearing on the necessity for continued administration or for closure of the estate.

(h) The identity and location of the court where papers relating to the estate are on file.

(2) The personal representative's failure to give the information required by subsection (1) is a breach of the personal representative's duty to the persons concerned, but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary first-class mail.

(3) A personal representative shall also give notice that includes the information described in subsection (1) to the attorney general, public administration division, under any of the following circumstances:

(a) It appears from the petition that the decedent died intestate without leaving a known heir.

(b) In the administration of an intestate estate, it appears that the decedent did not leave a known heir.

(c) In the administration of a testate estate, it appears that devisees of the purported will would not be entitled to share in the estate but for the terms of the will and that the decedent died without leaving a known heir.

(4) If notice is required to be given to the attorney general under subsection (3), the attorney general, representing this state, has all the rights of an heir to be heard and to contest the validity of a claim, the appointment of a personal representative, an action of the personal representative, an order, an appointment, or an instrument purporting to be a decedent's contract or will, and has all the rights granted or accruing to an heir, representative, or creditor by a law relating to the settlement of a testate or intestate estate in court, or by way of rehearing or appeal.

(5) Within 28 days after the personal representative's appointment or another time specified by court rule, the personal representative, except a special personal representative, shall notify the decedent's surviving spouse, if any, of the spouse's right to election under part 2 of article II and of the time within which the election must be exercised.

(6) Except as otherwise provided in this subsection, at the same time the notice required by subsection (1) is given, the personal representative shall give notice to the friend of the court for the county in which the estate is being administered, which notice identifies the decedent's surviving spouse and the individuals who are, for a testate estate, the devisees or, for an intestate estate, the heirs. The personal representative is not required to notify the friend of the court of a devise to a trustee of an existing trust or to a trustee under the will. A personal representative incurs no obligation or liability to the friend of the court or to another person for an error or omission made in good faith compliance with this subsection.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 481, Eff. Oct. 1, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3706 Duty of personal representative; inventory and appraisement.

Sec. 3706. (1) Within 91 days after appointment or other time specified by court rule, a personal representative, who is not a special personal representative or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of an encumbrance that may exist with reference to each listed item.

(2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3707 Employment of appraiser.

Sec. 3707. The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of property, the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property included in the estate. Each appraiser's name and address shall be indicated on the inventory with the item or items he or she appraised.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3708 Duty of personal representative; supplemental inventory.

Sec. 3708. If property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for an item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or description, and showing the appraiser or other data relied upon, if any. The personal representative shall furnish copies or information of the supplementary inventory to persons interested in the new information, and shall file it with the court if the original inventory was filed or submit the information contained in the supplemental inventory to the court for recalculation of the probate inventory fee.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3709 Duty of personal representative; possession of estate.

Sec. 3709. Except as otherwise provided by a decedent's will or by this section, a personal representative has a right to, and if necessary for purposes of administration, shall take possession or control of, the decedent's property, except that real property or tangible personal property may be left with or surrendered to the person presumptively entitled to that property unless or until, in the personal representative's judgment, possession of the property will be necessary for purposes of administration. A personal representative's request for delivery of property possessed by an heir or devisee is conclusive evidence, in an action against the heir or devisee for possession of that property, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of, or to determine the title to, property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3710 Power to avoid transfers.

Sec. 3710. The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means that is in law void or voidable as against the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of the decedent's unsecured debts, is exclusively in the personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3711 Powers of personal representatives generally.

Sec. 3711. Until termination of the appointment, a personal representative has the same power over the title to estate property that an absolute owner would have, in trust, however, for the benefit of creditors or others interested in the estate. This power may be exercised without notice, hearing, or court order.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3712 Improper exercise of power; breach of fiduciary duty.

Sec. 3712. If the exercise or failure to exercise a power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust. The right of purchasers and others dealing with a personal representative shall be determined as provided in sections 3713 and 3714.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3713 Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions; presumption; compliance with Michigan prudent investor rule; exceptions.

Sec. 3713. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the personal representative has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the personal representative's fiduciary and personal interests is voidable by an interested person unless any of the following are true:

(a) The will or a contract entered into by the decedent expressly authorized the transaction.

(b) The transaction is approved by the court after notice to interested persons.

(c) The transaction involves a contract entered into or claim acquired by the personal representative before the person became or contemplated becoming personal representative.

(d) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the personal representative with any of the following:

(a) The personal representative's spouse.

(b) The personal representative's descendant, sibling, or parent or the spouse of the personal representative's descendant, sibling, or parent.

(c) An agent or attorney of the personal representative.

(d) A corporation or other person or enterprise in which the personal representative, or a person that owns a significant interest in the personal representative, has an interest that might affect the personal representative's best judgment.

(3) A transaction not concerning estate property in which the personal representative engages in the personal representative's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.

(4) An investment by a personal representative in securities of an investment company or investment trust to which the personal representative, or its affiliate, provides services in a capacity other than as personal representative is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as personal representative, the personal representative may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the personal representative receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the personal representative shall at least annually notify the interested persons of the rate and method by which that compensation was determined.

(5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the personal representative shall act in the best interests of the beneficiaries. If the estate is the sole owner of a corporation or other form of enterprise, the personal representative shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the beneficiaries.

(6) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between the personal representative and the interested persons relating to the compensation of the personal representative.

(b) Payment of reasonable compensation to the personal representative.

(c) A transaction between the estate and another trust or conservatorship of which the personal representative is a fiduciary or in which a beneficiary has an interest.

(d) A deposit of estate money in a financial institution operated by or affiliated with the personal representative.

(e) An advance by the personal representative of money for the protection of the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3714 Persons dealing with personal representative; protection.

Sec. 3714. (1) A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised a power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise.

(2) Except for restrictions on powers of supervised personal representatives that are endorsed on letters as

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provided in section 3504, a provision in a will or court order purporting to limit a personal representative's power is not effective except as to a person with actual knowledge of the limit.

(3) A person is not bound to see to the proper application of estate property paid or delivered to a personal representative.

(4) The protection under this section extends to instances in which a procedural irregularity or jurisdictional defect occurs in a proceeding leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection under this section does not substitute for the protection provided by a comparable provision of law relating to a commercial transaction or a law simplifying a transfer of securities by a fiduciary. Nothing in this section discharges a lien for transfer taxes that may affect title to estate property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3715 Transactions authorized for personal representatives.

Sec. 3715. Except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to the priorities stated in section 3902, a personal representative, acting reasonably for the benefit of interested persons, may properly do any of the following:

(a) Retain property owned by the decedent pending distribution or liquidation, including property in which the personal representative is personally interested or that is otherwise improper for trust investment.

(b) Receive property from a fiduciary or another source.

(c) Perform, compromise, or refuse performance of a contract of the decedent that continues as an estate obligation, as the personal representative determines under the circumstances. If the contract is for a conveyance of land and requires the giving of warranties, the personal representative shall include in the deed or other instrument of conveyance the required warranties. The warranties are binding on the estate as though the decedent made them but do not bind the personal representative except in a fiduciary capacity. In performing an enforceable contract by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do any of the following:

(*i*) Execute and deliver a deed of conveyance for cash payment of the amount remaining due or for the purchaser's note for the amount remaining due secured by a mortgage on the land.

(*ii*) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the decedent's successors, as designated in the escrow agreement.

(d) If, in the judgment of the personal representative, the decedent would have wanted the pledge satisfied under the circumstances, satisfy a written charitable pledge of the decedent irrespective of whether the pledge constitutes a binding obligation of the decedent or is properly presented as a claim.

(e) If funds are not needed to meet a debt or expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including funds received from the sale of other property, in accordance with the Michigan prudent investor rule.

(f) Acquire or dispose of property, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon estate property.

(g) Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.

(h) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of a plat or adjust a boundary, adjust a difference in valuation on exchange or partition by giving or receiving consideration, or dedicate an easement to public use without consideration.

(i) Enter into a lease as lessor or lessee for any purpose, with or without an option to purchase or renew, for a term within or extending beyond the period of administration.

(j) Enter into a lease or arrangement for exploration and removal of minerals or another natural resource, or enter into a pooling or unitization agreement.

(k) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered or in such a condition as to be of no benefit to the estate.

(*l*) Vote stocks or another security in person or by general or limited proxy.

(m) Pay a call, assessment, or other amount chargeable or accruing against or on account of a security, unless barred by a provision relating to claims.

(n) Hold a security in the name of a nominee or in other form without disclosure of the estate's interest. However, the personal representative is liable for an act of the nominee in connection with the security so held.

(o) Insure the estate property against damage, loss, and liability and insure the personal representative

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against liability as to third persons.

(p) Borrow property with or without security to be repaid from the estate property or otherwise, and advance money for the estate's protection.

(q) Effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon another person's property, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by lien.

(r) Pay a tax, an assessment, the personal representative's compensation, or another expense incident to the estate's administration.

(s) Sell or exercise a stock subscription or conversion right.

(t) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(u) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(v) Employ, and pay reasonable compensation for reasonably necessary services performed by, a person, including, but not limited to, an auditor, investment advisor, or agent, even if the person is associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act on such a person's recommendations without independent investigation; and, instead of acting personally, employ 1 or more agents to perform an act of administration, whether or not discretionary.

(w) Employ an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative's administrative duties, even if the attorney is associated with the personal representative, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

(x) Prosecute or defend a claim or proceeding in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties.

(y) Sell, mortgage, or lease estate property or an interest in estate property for cash, credit, or part cash and part credit, and with or without security for unpaid balances.

(z) Continue a business or venture in which the decedent was engaged at the time of death as a sole proprietor or a general partner, including continuation as a general partner by a personal representative that is a corporation, in any of the following manners:

(*i*) In the same business form for a period of not more than 4 months after the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including goodwill.

(*ii*) In the same business form for an additional period of time if approved by court order in a formal proceeding to which the persons interested in the estate are parties.

(*iii*) Throughout the period of administration if the personal representative incorporates the business or converts the business to a limited liability company and if none of the probable distributees of the business who are competent adults object to its incorporation or conversion and its retention in the estate.

(aa) Change the form of a business or venture in which the decedent was engaged at the time of death through incorporation or formation as a limited liability company or other entity offering protection against or limiting exposure to liabilities.

(bb) Provide for the personal representative's exoneration from personal liability in a contract entered into on the estate's behalf.

(cc) Respond to an environmental concern or hazard affecting estate property as provided in section 3722.

(dd) Satisfy and settle claims and distribute the estate as provided in this act.

(ee) Make, revise, or revoke an available allocation, consent, or election in connection with a tax matter as appropriate in order to carry out the decedent's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:

(*i*) Electing to take expenses as estate tax or income tax deductions.

(*ii*) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.

(*iii*) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.

(*iv*) Electing the date of death or an alternate valuation date for federal estate tax purposes.

(*v*) Excluding or including property from the gross estate for federal estate tax purposes.

(*vi*) Valuing property for federal estate tax purposes.

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(*vii*) Joining with the surviving spouse or the surviving spouse's personal representative in the execution and filing of a joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.

(ff) Divide portions of the estate, including portions to be allocated into trust, into 2 or more separate portions or trusts with substantially identical terms and conditions, and allocate property between them, in order to simplify administration for generation skipping transfer tax purposes, to segregate property for management purposes, or to meet another estate or trust objective.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3716 Powers and duties of successor personal representative.

Sec. 3716. A successor personal representative has the same powers and duties as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor personal representative shall not exercise a power expressly made personal to the personal representative named in the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3717 Corepresentatives; concurrence.

Sec. 3717. If 2 or more persons are appointed personal corepresentatives and unless the will provides otherwise, the concurrence of all is required on an act connected with the estate's administration or distribution. This restriction does not apply if a personal corepresentative receives and gives a receipt for property due the estate, if the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or if a personal corepresentative has been delegated to act for the other. If actually unaware that another also has been appointed to serve or if advised by the personal representative with whom the person deals that 1 personal representative alone has authority to act for a reason mentioned in this section, a person dealing with a personal corepresentative is as fully protected as if the personal corepresentative with whom the person deals is the sole personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3718 Powers of surviving personal representative.

Sec. 3718. Unless the will provides otherwise, each power exercisable by personal corepresentatives may be exercised by the 1 or more remaining personal corepresentatives after the appointment of 1 or more is terminated. Unless the will provides otherwise, if 1 of 2 or more persons nominated as personal corepresentatives is not appointed, those or the 1 appointed may exercise all the powers incident to the office.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3719 Compensation of personal representative.

Sec. 3719. (1) A personal representative is entitled to reasonable compensation for services performed. A personal representative may pay the personal representative's own compensation periodically as earned without prior court approval.

(2) If an attorney serves as personal representative, the attorney shall maintain time records that state the identity of the person performing personal representative services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services. Upon request of an interested person affected by payment of personal representative fees, the attorney shall send the time records to the interested person.

(3) If a will provides for the personal representative's compensation and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A written contract between the decedent and the personal representative regarding compensation for estate settlement services is binding on the personal representative.

(4) A personal representative also may renounce the right to all or a part of the compensation. A written renunciation of fee may be filed with the court and shall be served on all affected interested persons.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3720 Expenses in estate litigation.

Sec. 3720. If a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3721 Employment of agents and compensation of personal representatives and employees of estate; proceedings for review.

Sec. 3721. After notice to all interested persons, on petition of an interested person, on appropriate motion if administration is supervised, or on the court's own motion, the court may review the propriety of employment of a person by a personal representative, including, but not limited to, an attorney, accountant, investment advisor, or other specialized agent or assistant, the reasonableness of such a person's compensation, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services. If the court determines that a person received excessive compensation from an estate for services rendered, the court shall order the person to pay an appropriate refund and may include in the refund amount interest and penalties as the court considers just.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3722 Authority regarding environmental matters.

Sec. 3722. (1) In response to an environmental concern or hazard, a personal representative may do any of the following:

(a) Inspect property or the operation of a business activity on property held by the personal representative, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held by the personal representative.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the personal representative, either before or after a governmental body initiates an enforcement action.

(c) Settle or compromise at any time a claim against the estate that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust or estate.

(d) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the personal representative, may cause the personal representative to incur personal liability under an environmental law.

(e) Decline to serve or resign as a personal representative if the personal representative reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the personal representative on the estate's behalf because of the type or condition of property held in the estate.

(f) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the income or principal of the estate.

(2) A personal representative is not personally liable to a beneficiary or other party for a decrease in value of estate property by reason of the personal representative's compliance with an environmental law, specifically including a reporting requirement under that law. The personal representative's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of estate property and is not to impose greater responsibility or liability on the personal representative than imposed by law absent this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 8
CREDITORS' CLAIMS

700.3801 Notice of creditors.

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Sec. 3801. (1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to present their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7605(1) as to which the decedent is settlor. For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors.

(b) If the personal representative first knows of an estate creditor less than 28 days before the expiration of the time limit in subdivision (a), within 28 days after the personal representative first knows of the creditor.

(3) If the personal representative or the attorney for the estate in good faith believes that notice to a creditor of the estate is or may be required by this section, and if the personal representative gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for having given notice.

(4) If the personal representative or the attorney for the estate in good faith believes that notice to a person is not required by this section and if the personal representative fails to give notice to that person based on that belief, neither the personal representative nor the attorney is personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3802 Statute of limitations.

Sec. 3802. (1) Unless an estate is insolvent, the personal representative, with the consent of all interested persons whose interests would be affected, may waive a statute of limitations defense available to the estate. If a statute of limitations defense is not waived, a claim that was barred by a statute of limitations at the time of the decedent's death shall not be allowed or paid.

(2) The running of a statute of limitations measured from an event other than death or publication for a claim against a decedent is suspended during the 4 months following the decedent's death but resumes after that time as to a claim not barred under this part.

(3) For purposes of a statute of limitations, the proper presentation of a claim under section 3804 is equivalent to commencement of a proceeding on the claim.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3803 Limitations on time for presentation of claims.

Sec. 3803. (1) A claim against a decedent's estate that arose before the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, if not barred earlier by another statute of limitations or nonclaim statute, is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent unless presented within 1 of the following time limits:

(a) If notice is given in compliance with section 3801 or 7608, within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, within 1 month after the subsequent sending of notice or 4 months after the date of the publication of notice to creditors, whichever is later.

(c) If the notice requirements of section 3801 or 7608 have not been met, within 3 years after the decedent's death.

(2) A claim against a decedent's estate that arises at or after the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, is barred against the estate, the personal representative, and the decedent's heirs and devisees, unless presented within 1 of the following time limits:

(a) For a claim based on a contract with the personal representative, within 4 months after performance by

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the personal representative is due.

(b) For a claim to which subdivision (a) does not apply, within 4 months after the claim arises or the time specified in subsection (1)(a), whichever is later.

(3) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien on estate property.

(b) A proceeding to establish the decedent's or the personal representative's liability for which the decedent or the personal representative is protected by liability insurance to the insurance protection limits only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the personal representative of the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3804 Manner of presentation of claims; commencement; claims by personal representative.

Sec. 3804. (1) A claimant must present a claim against a decedent's estate in either of the following ways:

(a) By delivering or mailing a written statement to the personal representative indicating the claim's basis, the claimant's name and address, and the amount claimed, or by filing with the court a written statement of the claim in the form prescribed by supreme court rule and delivering or mailing a copy of the statement to the personal representative. The claim shall be considered presented on receipt of the claim statement by the personal representative or the filing of the claim statement with the court, whichever occurs first. If a claim is not yet due, the statement shall state the date when it will become due. If the claim is contingent or unliquidated, the statement shall state the nature of the uncertainty. If the claim is secured, the statement shall describe the security. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the claim's presentation.

(b) By commencing a proceeding to obtain payment of a claim against the estate in a court in which the personal representative may be subjected to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. The presentation of a claim is not required in regard to a matter claimed in a proceeding against the decedent that is pending at the time of death.

(2) Except as otherwise provided in this subsection, if a claim is presented under subsection (1)(a), a proceeding on the claim shall not be commenced more than 63 days after the personal representative delivers or mails a notice of disallowance to the claimant. For a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 63-day period or, to avoid injustice, the court, on petition, may order an extension of the 63-day period, but an extension shall not be consented to or ordered if the extension would run beyond the applicable statute of limitations.

(3) A claim by the personal representative against the estate shall be in the form prescribed by supreme court rule. The personal representative must give a copy of the claim to all interested persons not later than 7 days after the time for the claim's original presentation expires. The claim must contain a warning that the personal representative's claim will be allowed unless a notice of objection is delivered or mailed to the personal representative within 63 days after the time for the claim's original presentation expires. This subsection does not apply to a claim for compensation for services rendered or for reimbursement of expenses advanced by the personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.3805 Priority of claim payments; insufficient assets.

Sec. 3805. (1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

(a) Costs and expenses of administration.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(e) Exempt property.

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

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(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(2) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due.

(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7605(1) for payment by the trustee in accordance with section 7606. If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances, then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7605(1), bears a proportionate share or equitable share of the total burden.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000;—Am. 2007, Act 73, Imd. Eff. Sept. 30, 2007;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3806 Allowance and disallowance of claims.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3807 Payment of claims.

Sec. 3807. (1) Upon the expiration of 4 months after the publication date of the notice to creditors, and after providing for administration costs and expenses, for reasonable funeral and burial expenses, for dower,

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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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.3808 Individual liability of personal representative.

Sec. 3808. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal his or her representative capacity and to identify the estate in the contract.

(2) A personal representative is individually liable for an obligation arising from ownership or control of the estate or for a tort committed in the course of estate administration only if the personal representative is personally at fault.

(3) A claim based on a contract entered into by a personal representative in the personal representative's fiduciary capacity, on an obligation arising from ownership or control of the estate, or on a tort committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable.

(4) An issue of liability between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3809 Secured claims.

Sec. 3809. A personal representative shall pay a secured claim on the basis of the amount allowed if the creditor surrenders the security. Otherwise, the personal representative shall pay on the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the amount of the claim allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement under which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3810 Claims not due and contingent or unliquidated claims.

Sec. 3810. (1) This section applies to a claim that will become due at a future time, a contingent claim, and an unliquidated claim.

(2) If a claim becomes due or certain before distribution of the estate and if the claim has been allowed or established by a proceeding, the claim shall be paid in the same manner as a presently due and absolute claim of the same class.

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(3) For a claim not covered by subsection (2), the personal representative or, on the personal representative's or claimant's petition in a proceeding for the purpose, the court may provide for payment in 1 of the following manners:

(a) If the claimant consents, the claimant may be paid the claim's present or agreed value, taking any uncertainty into account.

(b) Arrangement for future payment, or possible payment, on the happening of a contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3811 Counterclaims.

Sec. 3811. In allowing a claim, the personal representative may deduct a counterclaim that the estate has against the claimant. In determining a claim against an estate, the court shall reduce the amount allowed by the amount of a counterclaim and, if counterclaims exceed the claim, render a judgment against the claimant in the excess amount. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3812 Limitation on execution or levy against property of estate.

Sec. 3812. An execution shall not issue upon nor shall a levy be made against estate property under a judgment against a decedent or personal representative. This section shall not be construed to prevent the enforcement of a mortgage, pledge, or lien upon property in an appropriate proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3813 Settlement of claims.

Sec. 3813. If a claim against the estate is presented in the manner provided in section 3804 and it appears to be in the estate's best interest, the personal representative may settle the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3814 Encumbered assets.

Sec. 3814. If property of the estate is encumbered by mortgage, pledge, lien, or other security interest and it appears to be in the estate's best interest, the personal representative may pay the encumbrance or a part of the encumbrance, renew or extend an obligation secured by the encumbrance, or convey or transfer the property to the creditor in satisfaction of the lien, in whole or in part, whether or not the encumbrance holder has presented a claim. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered property unless the distributee is entitled to exoneration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3815 Effect of administration in more than one state.

Sec. 3815. (1) Estate property being administered in this state is subject to a claim, allowance, or charge existing or established against the personal representative wherever appointed.

(2) If the estate, either in this state or as a whole, is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges, and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed, either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of the claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the benefited creditor shall receive dividends from property located in this state only upon the balance of the claim after deducting the amount of the benefit.

(3) If the family exemptions, allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered in separate states and if this state is not the state of the decedent's last domicile, a claim allowed in this state shall be paid from property located in this state if that

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property is adequate for the purpose, and after that payment, the balance of that property shall be transferred to the domiciliary personal representative. If local property located in this state is not sufficient to pay all claims allowed in this state, that property shall be marshaled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from property in other jurisdictions.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

700.3901 Successors' rights in absence of administration.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3902 Distribution; order in which assets appropriated; abatement.

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 devises.

(c) General devises.

(d) Specific devises.

(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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3903 Indebtedness; set-off.

Sec. 3903. The amount of a successor's noncontingent indebtedness to the estate if due, or its present value if not due, shall be offset against the successor's interest. However, the successor has the benefit of a defense that would be available to the successor in a direct proceeding for recovery of the debt.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3904 Interest on general pecuniary devise.

Sec. 3904. Unless a contrary intent is indicated by the will, a general pecuniary devise bears interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3905 Penalty clause for contest.

Sec. 3905. In accordance with section 2518, a provision in a will purporting to penalize an interested

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person for contesting the will or instituting another proceeding relating to the estate shall not be given effect if probable cause exists for instituting a proceeding contesting the will or another proceeding relating to the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3906 Distribution in kind; valuation; method.

Sec. 3906. (1) Unless the will indicates a contrary intention, the distributable property of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the property devised to him or her, and a spouse or child who selects particular estate property as provided in section 2404 shall receive the property selected.

(b) A homestead or family allowance, or devise of a stated sum of money, may be satisfied in kind provided all of the following are true:

(*i*) The person entitled to the payment does not demand payment in cash.

(*ii*) The property distributed in kind is valued at fair market value as of its distribution date.

(*iii*) A residuary devisee does not request that the property in question remain a part of the estate residue.

(c) The residuary estate may be distributed in any equitable manner.

(2) Property described in subsection (1)(b) shall be valued in accordance with the following:

(a) A security regularly traded on recognized exchanges, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day before distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day.

(b) Property consisting of money owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the amount due with accrued interest or discounted to the distribution date.

(c) Property that does not have a readily ascertainable value is valued as of a date not more than 28 days before the distribution date, if otherwise reasonable.

(d) For purposes of facilitating distribution, the personal representative may ascertain property value as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the property may have been previously appraised.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3907 Pecuniary bequests and trust interests.

Sec. 3907. (1) This section governs a distribution in kind in satisfaction, wholly or partly, of a pecuniary bequest or transfer in trust of a pecuniary amount.

(2) Whether a devise or transfer in trust is pecuniary in character depends upon the testator's or settlor's intention.

(3) If the fiduciary elects to satisfy wholly or partly in kind a pecuniary devise or transfer in trust of a pecuniary amount, unless the governing instrument otherwise expressly provides, the property the fiduciary selects for that purpose shall be valued at its value on the distribution date.

(4) If a will or a trust agreement requires the personal representative or trustee to value the property the fiduciary selects for distribution as of a date other than the distribution date, unless the governing instrument otherwise expressly provides, the property selected to satisfy the pecuniary devise or transfer in trust, together with any cash distributed, shall have an aggregate value on the distribution date amounting to not less than, and to the extent practicable to not more than, the amount of the devise or transfer in trust as stated in, or determined by, the formula stated in the governing instrument.

(5) As used in this section, "pecuniary bequest" and "transfer in trust of a pecuniary amount" mean a devise in a will or a transfer under a trust agreement to, or for the benefit of, the testator's or settlor's spouse of a specific amount of money which amount is either expressly stated in the instrument or determinable by means of a formula that is stated in the instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3908 Proposed distribution.

Sec. 3908. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of a distributee to object to the proposed distribution on the basis of the kind or value of property the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in a writing

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received by the personal representative within 28 days after mailing or delivery of the proposal.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3909 Distribution in kind; evidence.

Sec. 3909. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the property to the distributee as evidence of the distributee's title to the property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3910 Distribution; right or title of distributee.

Sec. 3910. Proof that a distributee has received an instrument or deed of distribution of property in kind, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed property, as against all persons interested in the estate, except that the personal representative may recover the property or its value if the distribution was improper.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3911 Improper distribution; liability of distributee.

Sec. 3911. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property that is improperly distributed or paid, or a claimant that is improperly paid, is liable to return the property improperly received and its income since distribution if the recipient has the property. If the recipient does not have the property, then the recipient is liable to return the value as of the disposition date of the property improperly received and its income and gain received by the recipient.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3912 Purchasers from distributees protected.

Sec. 3912. (1) If property distributed in kind or a security interest in that property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such a distributee, the purchaser or lender takes title free of rights of an interested person in the estate and incurs no personal liability to the estate, or to an interested person, whether or not the distribution was proper or supported by court order or the personal representative's authority was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself or herself, as well as a purchaser from or lender to another distributee or his or her transferee. To be protected under this section, a purchaser or lender does not need to inquire whether a personal representative acted properly making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

(3) A recorded instrument described in this section on which an exemption listed in section 5 of 1966 PA 135, MCL 207.505, or section 6 of the state real estate transfer tax act, 1993 PA 330, MCL 207.526, is not noted is prima facie evidence that the transfer is made for value. Notwithstanding this section, a purchaser or lender takes title free of the lien for Michigan estate tax only to the extent provided by section 43 of the Michigan estate tax act, 1899 PA 188, MCL 205.243.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3913 Partition for purpose of distribution.

Sec. 3913. If 2 or more heirs or devisees are entitled to distribution of an undivided interest in estate property, the personal representative or 1 or more of the heirs or devisees may petition the court to make partition before the formal or informal closing of the estate. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by law for a civil action of partition. The court may direct the personal representative to sell property that cannot be partitioned without prejudice to the owners and that cannot conveniently be allotted to 1 party.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3914 Agreements among successors to decedent binding on personal representative.

Sec. 3914. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written agreement executed by all who are affected by its provisions. If there is, or may be, an interested person to the agreement who is a minor or incapacitated individual or if there is an inalienable estate or future contingent interest, after notice to the representative of the individual or interest as provided by supreme court rule, the court having jurisdiction of the matter may, if the agreement is made in good faith and appears just and reasonable for the individual or interest, direct the representative of the individual or interest to sign and enter into the agreement. The personal representative shall abide by the agreement's terms subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the fiduciary office's responsibilities for the benefit of a successor of the decedent who is not a party.

(2) A personal representative of a decedent's estate is not required to see to the performance of a trust if the trustee of the trust is another person who is willing to accept the trust. Accordingly, a trustee of a trust created by will is a successor for the purposes of this section. Nothing in this section relieves a trustee of a duty owed to a trust beneficiary.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3915 Distribution to trustee.

Sec. 3915. (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 7814.

(2) If the terms of the trust do not excuse the trustee from giving bond, or if the trustee is not a financial institution qualified to do trust business in this state, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative reasonably believes that a bond is needed to protect the interests of the beneficiaries. A personal representative may withhold distribution until the court acts on the petition.

(3) An inference of negligence on the personal representative's part shall not be drawn from failure to exercise the authority conferred by subsections (1) and (2).

(4) If it becomes necessary or convenient in the settlement or distribution of a decedent's estate to appoint a trustee to take charge of or invest and distribute a portion of the estate, the court may appoint a trustee upon the request of the personal representative or another interested person.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.3916 Disposition of unclaimed assets.

Sec. 3916. (1) In exchange for suitable receipts and following a court order if the administration is supervised, a fiduciary making final distribution shall deposit with the county treasurer the money or personal property the fiduciary has that belongs to any of the following:

(a) An heir, devisee, trust beneficiary, or claimant whose whereabouts the fiduciary cannot ascertain after diligent inquiry.

(b) An heir, devisee, trust beneficiary, or claimant who declines to accept the money awarded to the person.

(c) A person if the right of the person is the subject of appeal from an order of the court.

(2) As an alternative to deposit with the county treasurer under subsection (1), if the amount involved for a person described under subsection (1)(a) or (b) is $250.00 or less, the fiduciary may distribute the amount as part of the residue of the decedent's estate or to those entitled to the trust fund balance. If the fiduciary has property other than money that belongs to a person described in subsection (1)(a) or (b), the fiduciary may sell the property for the purpose of reducing it to money to be deposited with the county treasurer.

(3) The fiduciary shall retain or file the county treasurer's receipt for property deposited under this section in the same fashion as though the fiduciary paid or delivered the money or property to, and received a receipt from, the heir, devisee, trust beneficiary, or claimant.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3917 Duties of county treasurer.

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. The county treasurer shall, at the end of each year, render to the court, and to the county board of commissioners, a true account of that money.

(2) 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.

(3) 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 and interest earned on the money, less the fee of the county treasurer, to the claimant.

(4) 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 and interest earned on 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.3918 Distribution to person under disability.

Sec. 3918. (1) A personal representative may discharge the personal representative's obligation to distribute to an individual under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to an individual under legal disability as authorized by section 5102 or another statute. If the personal representative knows that a conservator has been appointed for an individual or that a proceeding for appointment of a conservator for the individual is pending, the personal representative is authorized to distribute only to the conservator. If the personal representative knows that a guardian of the estate of an individual with a developmental disability has been appointed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a proceeding for appointment of a guardian of the estate for the individual with the developmental disability is pending, the personal representative is authorized to distribute only to the guardian of the estate.

(3) If the heir or devisee is under legal disability other than minority, the personal representative is authorized to distribute to any of the following:

(a) A trustee appointed by the court under section 3915(4).

(b) An attorney in fact who has authority under a power of attorney to receive property for that person.

(c) The spouse, parent, or other close relative with whom the individual under legal disability resides if both of the following are true:

(*i*) A conservator has not been appointed for the individual.

(*ii*) The distribution is in amounts not exceeding $5,000.00 a year or property not exceeding $5,000.00 in value, unless the court authorizes a higher amount or value.

(4) A person receiving money or property for an individual under legal disability shall use the money or property only for that individual's support and for reimbursement of out-of-pocket expenses for goods and services necessary for that individual's support. Excess money and property shall be preserved for the individual's future support. The personal representative is not responsible for the proper use of money or property by the recipient if distribution is made under the authority of this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3919 Final distribution to domiciliary representative.

Sec. 3919. (1) If there is a personal representative of the decedent's domicile willing to receive it, a nonresident decedent's estate being administered by a personal representative appointed in this state shall be

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distributed to the domiciliary personal representative for the benefit of the decedent's successors unless any of the following apply:

(a) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified under the law of this state without reference to the law of the decedent's domicile.

(b) After reasonable inquiry, this state's personal representative is unaware of the existence or identity of a domiciliary personal representative.

(c) The court orders otherwise in a proceeding for a closing order under section 3952 or incident to the closing of a supervised administration.

(2) If subsection (1) is not applicable to an estate, distribution of the decedent's estate shall be made in accordance with the other provisions of this article.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.3920 Apportionment of death taxes.

Sec. 3920. (1) An estate, inheritance, or other death tax levied or assessed under the laws of this or another state, political subdivision, or country or under a United States revenue act concerning property included in the gross estate under the law, but excluding taxes for which sources of payment are provided within sections 2206, 2207, 2207A, 2207B, and 2603 of the internal revenue code, 26 USC 2206, 2207, 2207A, 2207B, and 2603, shall be apportioned in the following manner:

(a) If a part of the property concerning which the tax is levied or assessed passed under a will, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(*i*) If any portion of that property passed under the will as a devise to be satisfied by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the residuary estate without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary estate is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(*ii*) The net amount of a tax attributable to the residuary estate shall be apportioned pro rata among the residuary beneficiaries based on the value of the residuary interests generating the tax. If a residuary interest is a temporary interest, the tax attributable to it shall be charged to principal and not apportioned between temporary and remainder interests.

(b) If a part of the property concerning which the tax is levied or assessed is held under the terms of an inter vivos trust, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(*i*) If a portion of the trust is directed to pass or to be held in further trust by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the principal of the residuary share of the trust without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary share of the trust is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(*ii*) The net amount of tax attributable to the residuary share of the trust shall be charged as follows:

(A) The net amount of tax attributable to each residuary temporary interest shall be charged to that portion of residuary principal that supports the temporary interest without apportionment.

(B) The net amount of tax attributable to the balance of the residuary share shall be apportioned pro rata among the residuary beneficiaries by charge to the principal of their interest based on the value of the residuary interests.

(c) Except as otherwise directed by the governing instrument, tax liability remaining after the application of subdivisions (a) and (b), including, but not limited to, a tax imposed with respect to property passing by beneficiary designation, survivorship, or intestacy, or to an annuity not created under a will or an inter vivos trust, shall be apportioned pro rata among, and paid by, the recipients and beneficiaries of the properties or interests, based on the value of the properties and interests generating the tax. Except as otherwise directed by the governing instrument, with respect to a temporary interest not in trust, the amount charged to the recipients or beneficiaries shall not be apportioned between temporary and remainder interests, but shall be charged to and paid out of the principal of the property or fund.

(2) As used in this section and sections 3921 to 3923:

(a) "Governing instrument" means a will, trust agreement, or other document that controls the devolution of property at death with respect to which the tax is being levied.

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(b) “Net estate” means the gross estate, as defined by the estate, inheritance, or death tax law of the particular state, country, or political subdivision whose tax is being apportioned, less the deductions allowed.

(c) “Temporary interest” means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events.

(d) “Value” means the pecuniary worth of the interest involved as finally determined for purposes of the tax then under consideration, without regard to a diminution of the interest by reason of the charge of a part of the tax.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.3921 Tax on separate interests; governing instrument provisions.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3922 Credit for foreign tax paid; payment and recovery of tax; delayed distribution; court determination of apportionment.

Sec. 3922. (1) Unless the governing instrument provides otherwise, if a credit is given under the United States estate tax laws for a tax paid to another country or a political subdivision, the credit shall be apportioned under sections 3920 to 3923 among the recipients or interests finally charged with the payment of the foreign tax in reduction of a United States estate tax chargeable to the recipients or interests, whether or not the United States estate tax is attributable to the foreign interests. An excess of the credit shall be applied in reduction of the part of United States estate tax chargeable to the residue, and an excess of the credit over the United States estate tax chargeable to the residue shall be apportioned pro rata among those persons or interests finally charged with the balance of the payment of United States estate tax.

(2) Unless otherwise directed by the governing instrument, the personal representative shall pay the tax out of the estate, or if a personal representative is not acting under appointment, a person receiving or holding an

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interest generating the tax shall pay the tax. In a case in which property required to be included in the gross estate does not come into the personal representative's possession, the personal representative shall recover from the following persons the proportionate amount of tax chargeable to them under this act:

(a) From the fiduciary in possession of the trust principal or of property subject to the power of appointment in cases in which inter vivos trust property or property subject to a power of appointment is included in the gross estate.

(b) In all other cases, from the recipients or beneficiaries of property or interests with respect to which the tax is levied or assessed.

(3) Subsection (2) does not authorize the recovery of taxes from a company issuing insurance included in the gross estate, or from a bank, trust company, savings and loan association, or similar institution with respect to an account in the name of the decedent and another person that passed by operation of law on the decedent's death. If the fiduciary brings an action to recover a share of tax apportioned to an interest not within the fiduciary's control, the judgment that the fiduciary obtains may include costs and reasonable attorney fees.

(4) A personal representative or other fiduciary is not required to transfer property until the amount of a tax due from the transferee is paid or, if apportionment of the tax has not been determined, until adequate security is furnished for the payment. The fiduciary is not required to distribute property that the fiduciary reasonably anticipates may be necessary to pay a state or federal tax and related interest or penalties.

(5) On petition of the person required to pay a tax, the probate court having jurisdiction over the administration of a decedent's estate may determine the apportionment of the tax. If there are no probate proceedings, on the petition of a person required to pay a tax, the probate court of the county where the decedent was domiciled at death shall determine the apportionment of the tax.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3923 Allocation of penalty and interest.

Sec. 3923. (1) If the probate court finds that it is inequitable to apportion taxes, credits, interest, and penalties in the manner provided in sections 3920 to 3922 because of special circumstances, the court may direct apportionment in the manner it finds equitable.

(2) If the probate court finds that the assessment of penalties and interest assessed in relation to a tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(3) In an action or proceeding to recover from a person interested in the estate the amount of a tax apportioned to the person in accordance with this act, the court's determination in respect to the apportionment is prima facie correct.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.3924 Survival and wrongful death actions; court approval of settlement and distribution.

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

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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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 10
CLOSING ESTATES

700.3951 Notice of continued administration.

Sec. 3951. (1) If the personal representative does not complete estate administration within 1 year after the original appointment by petitioning for a settlement order under section 3952 or 3953 or by filing a sworn statement under section 3954, the personal representative shall file with the court and send to all interested persons a notice that the estate remains under administration and specifying the reason for continuation of administration. This notice of continued administration must be filed not later than 28 days after the anniversary of the personal representative's appointment and, if administration remains incomplete, not later than 28 days after each subsequent anniversary of the appointment.

(2) If the notice described in subsection (1) is not filed, an interested person may petition the court for a hearing on the necessity for continued administration or petition for a settlement order under either section 3952 or 3953. In response to such a petition, the court may issue appropriate orders to assure prompt estate settlement.

(3) If the notice described in subsection (1) is not filed and an interested person's petition is not pending, the court may notify the personal representative and all interested persons that the court will close the estate administration and terminate the personal representative's authority within 63 days unless within that time period any of the following occur:

(a) The personal representative files a notice under subsection (1), a petition for settlement under either section 3952 or 3953, or a sworn statement under section 3954.

(b) An interested person files a petition requesting a hearing on the necessity for continued administration or a petition for an order of settlement under either section 3952 or 3953.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3952 Formal proceedings terminating administration testate or intestate; order of general protection.

Sec. 3952. (1) A personal representative or an interested person may petition for an order of complete estate settlement. The personal representative may petition at any time, and an interested person may petition after 1 year from the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

(2) A petition under this section may request the court to determine testacy, if not previously determined, to consider the final account, to compel or approve an accounting and distribution, to construe a will or determine heirs, and to adjudicate the estate's final settlement and distribution. After notice to all interested persons and a hearing, the court may enter an order or orders, on appropriate conditions, determining the

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persons entitled to distribution of the estate, and as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of an interested person.

(3) If 1 or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, on proper petition for an order of complete estate settlement under this section and after notice to the omitted or unnotified persons and other interested persons determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, the court may determine testacy as it affects the omitted persons, and confirm or alter the previous testacy order as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceeding determined this fact.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3953 Formal proceedings terminating testate administration; order construing will without adjudicating testacy.

Sec. 3953. (1) A personal representative administering an estate under an informally probated will or a devisee under an informally probated will may petition for a settlement order for the estate that does not adjudicate the decedent's testacy status. The personal representative may petition at any time, and a devisee may petition after 1 year after the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

(2) A petition under this section may request the court to consider the final account, to compel or approve an accounting and distribution, to construe the will, or to adjudicate the estate's final settlement and distribution. After notice to all devisees and the personal representative and a hearing, the court may enter appropriate orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of a devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 3952.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3954 Closing estate by sworn statement of personal representative.

Sec. 3954. (1) Unless prohibited by court order and except for an estate being administered in a supervised administration proceeding, a personal representative may close an estate by filing with the court, no earlier than 5 months after the date of a general personal representative's original appointment, a sworn statement stating that the personal representative or a previous personal representative has done all of the following:

(a) Determined that notice was published and the time limited for presentation of creditors claims has expired.

(b) Fully administered the decedent's estate by making payment, settlement, or other disposition of all claims that were presented, of administration and estate expenses, and of estate, inheritance, and other death taxes, except as specified in the statement, including distribution of the estate property to the persons entitled. If a claim remains undischarged, the statement shall state whether the personal representative distributed the estate subject to possible liability with the distributee's agreement or shall state in detail other arrangements that have been made to accommodate outstanding liabilities.

(c) Sent a copy of the statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

(d) Furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected by the administration. The account shall clearly state the amount paid out of the estate in fiduciary fees, attorney fees, and other professional fees.

(2) If a proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed, the personal representative's appointment terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3955 Liability of distributees to claimants.

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Sec. 3955. After estate property is distributed and subject to section 3957, an undischarged claim not barred may be prosecuted in a proceeding against 1 or more distributees. A distributee is not liable to a claimant for an amount received as exempt property or as a homestead or family allowance, or for an amount in excess of the value of the distributee's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of an unbarred claim as if the claim had been satisfied in the course of administration. If a distributee fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in a proceeding in which the claim is asserted, the distributee loses the right of contribution against other distributees.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3956 Limitations on proceedings against personal representative.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3957 Limitations on actions and proceedings against distributees.

Sec. 3957. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling a personal representative's accounts, or otherwise barred, a claimant's claim to recover from a distributee who is liable to pay the claim and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from a distributee are forever barred at the later of 3 years after the decedent's death or 1 year after the time of the property's distribution. However, all claims of the decedent's creditors are barred in accordance with the time periods specified in section 3803. This section does not bar an action to recover property or value received as a result of fraud.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3958 Certificate of completion.

Sec. 3958. If an objection to the closing statement is not filed within 28 days after the filing date, the personal representative, the personal representative's sureties, or a successor of either is entitled to receive a certificate from the register that the personal representative appears to have fully administered the estate in question. The certificate is evidence of discharge of a lien on property given to secure the personal representative's obligation in lieu of bond or a surety. The certificate does not preclude action against the personal representative or the surety.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3959 Subsequent administration.

Sec. 3959. If estate property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed, or if there is other good cause to reopen a previously administered estate, including an estate administratively closed, upon petition of an interested person and notice as the court directs, the court may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this act apply as appropriate. A claim previously barred shall not be asserted in the subsequent administration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 11
COLLECTION OF PERSONAL PROPERTY BY SWORN STATEMENT, SMALL ESTATES, AND SUMMARY ADMINISTRATIVE PROCEEDINGS

700.3981 Delivery of cash not exceeding $500 and decedent's wearing apparel.

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Sec. 3981. A hospital, convalescent or nursing home, morgue, or law enforcement agency holding $500.00 or less and wearing apparel of a decedent may deliver the money and wearing apparel to an individual furnishing identification and a sworn statement that the individual is the decedent's spouse, child, or parent and that there is no application or petition pending for administration of the decedent's estate. The hospital, home, morgue, or law enforcement agency making the delivery is released to the same extent as if delivery were made to a legally qualified personal representative of the decedent's estate and is not required to see to the property's disposition. The individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3982 Court order distributing small estates.

Sec. 3982. (1) Upon a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial and if the balance of a decedent's gross estate consists of property of the value of $15,000.00 or less, the court may order that the property be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(2) Upon a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of $15,000.00 or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(3) Other than a surviving spouse who qualifies for allowances under this act or the decedent's minor children, an heir who receives property through an order under this section is responsible, for 63 days after the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order. The court shall state in the order the condition on the distribution of property provided by this subsection.

(4) If a decedent's estate meets the criteria for using the procedure under either this section or section 3983 and if a person is authorized by this act to use either procedure, a person, other than the court, shall not require the authorized person to use 1 procedure rather than the other.

(5) A dollar amount prescribed by this section shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3983 Collection of personal property by sworn statement.

Sec. 3983. (1) After 28 days after a decedent's death, a person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the indebtedness or deliver the tangible personal property or the instrument to a person claiming to be the decedent's successor upon being presented with the decedent's death certificate and a sworn statement made by or on behalf of the successor stating all of the following:

(a) The estate does not include real property and the value of the entire estate, wherever located, net of liens and encumbrances, does not exceed $15,000.00, adjusted as provided in section 1210.

(b) Twenty-eight days have elapsed since the decedent's death.

(c) An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.

(d) The claiming successor is entitled to payment or delivery of the property.

(e) The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

(2) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of a sworn statement as provided in subsection (1).

(3) The state court administrative office shall develop and make available a standardized form for use as a sworn statement that can be used for the procedure authorized under subsection (1). The form shall include a notice that a false statement may subject the person swearing to the statement to prosecution for perjury.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.3984 Effect of sworn statement.

Sec. 3984. (1) A person paying, delivering, transferring, or issuing personal property or the evidence of personal property under a sworn statement as provided in section 3983 is discharged and released to the same extent as if the person dealt with the decedent's personal representative. The person is not required to see to the application of the personal property or evidence of the application, or to inquire into the truth of a statement in the sworn statement.

(2) If a person to whom a sworn statement is delivered under section 3983 refuses to pay, deliver, transfer, or issue personal property or evidence of personal property, the property may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of a person's right to the property in a proceeding brought for the purpose by or on behalf of the persons entitled to the property. A person to whom payment, delivery, transfer, or issuance is made is answerable and accountable for the property to a personal representative of the estate or to another person having a superior right.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.3987 Summary administrative proceedings.

Sec. 3987. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in section 3988.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.3988 Closing by sworn statement of personal representative.

Sec. 3988. (1) Unless prohibited by court order and except for an estate being administered by a supervised personal representative, a personal representative may close an estate administered under the summary procedures of section 3987 by filing with the court, at any time after disbursement and distribution of the estate, a sworn statement stating all of the following:

(a) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness.

(b) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled to the estate.

(c) The personal representative has sent a copy of the closing statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, and has furnished a full account in writing of the estate administration to the distributees whose interests are affected.

(2) The sworn statement filed under this section has the same effect as a sworn statement filed under section 3954. If an objection to the sworn statement is not filed within 28 days after the filing date, the register shall issue a certificate described in section 3958.

(3) If an action or proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed under this section, the personal representative's appointment terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

ARTICLE IV
FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

PART 1
DEFINITIONS

700.4101 Definitions.

Sec. 4101. As used in this article:

(a) “Local administration” means administration by a personal representative appointed in this state under

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an appointment proceeding described in article III.

(b) "Local personal representative" includes a personal representative appointed in this state under an appointment proceeding described in article III and excludes a foreign personal representative who acquires the power of a local personal representative under section 4203.

(c) "Resident creditor" means a person domiciled or doing business in this state that is, or could be, a claimant against a nonresident decedent's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

700.4201 Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

Sec. 4201. At any time after the expiration of 63 days after a nonresident decedent's death, a person indebted to the nonresident decedent, or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the nonresident decedent, may pay the debt or deliver the personal property or the instrument to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the domiciliary personal representative's appointment and a sworn statement made by or on behalf of the representative stating all of the following:

(a) The date of the nonresident decedent's death.

(b) That local administration, or an application or petition for local administration, is not pending in this state.

(c) That the domiciliary foreign personal representative is entitled to payment or delivery.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4202 Payment discharges; effect of resident creditor notice.

Sec. 4202. (1) Payment or delivery made in good faith on the basis of proof of authority and a sworn statement as provided in section 4201 releases the debtor or person having possession of the personal property to the same extent as if payment or delivery is made to a local personal representative.

(2) Payment or delivery under section 4201 shall not be made if a resident creditor of the nonresident decedent notifies the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4203 Proof of authority; bond.

Sec. 4203. (1) If local administration, or an application or petition for local administration, is not pending in this state, a domiciliary foreign personal representative may file with a court in this state, in a county in which property belonging to the decedent is located, authenticated copies of the representative's appointment and of any official bond the representative has given.

(2) As to property in this state, a domiciliary foreign personal representative who complies with this section may exercise the power of a local personal representative, including, but not limited to, the execution and delivery of a deed under and in satisfaction of a land contract for the purchase of real property located in this state, a discharge of a mortgage, or a discharge of a security interest or financing statement or both, and may maintain an action or proceeding in this state subject to any conditions imposed upon nonresident parties generally.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4204 Power of representatives in transition.

Sec. 4204. (1) A domiciliary foreign personal representative's power under sections 4201 and 4203 shall be exercised only if estate administration or an application for administration is not pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 4203, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

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(2) A person who, before receiving actual notice of a pending local administration, changes his or her position in reliance upon a foreign personal representative's power shall not be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations that have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in an action or proceeding in this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4205 Ancillary and other local administrations; provisions governing.

Sec. 4205. In respect to a nonresident decedent, article III governs all of the following:

(a) A proceeding in a court of this state for probate of the will, for appointment, removal, supervision, and discharge of the local personal representative, and for another order concerning the estate.

(b) The status, powers, duties, and liabilities of a local personal representative and a right of a claimant, purchaser, distributee, and another in regard to a local administration.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 3
JURISDICTION OVER FOREIGN REPRESENTATIVES

700.4301 Jurisdiction by act of foreign personal representative.

Sec. 4301. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in a proceeding relating to the estate by doing any of the following:

(a) Filing an authenticated copy of appointment as provided in section 4203.

(b) Receiving payment of money or taking delivery of personal property under section 4201.

(c) Doing an act as a personal representative in this state that would give the state jurisdiction over an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4302 Jurisdiction by act of decedent.

Sec. 4302. In addition to jurisdiction conferred by section 4301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that the representative's decedent was subject to that jurisdiction immediately before death.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.4303 Service on foreign personal representative.

Sec. 4303. (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to the representative's last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the representative's decedent immediately before death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the representative is allowed not less than 28 days within which to appear or respond.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 4
JUDGMENTS AND PERSONAL REPRESENTATIVE

700.4401 Effect of adjudication for or against personal representative.

Sec. 4401. An adjudication rendered in any jurisdiction in favor of or against a personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

ARTICLE V

PROTECTION OF AN INDIVIDUAL UNDER DISABILITY AND HIS OR HER PROPERTY

PART 1

GENERAL PROVISIONS

700.5101 General definitions.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5102 Payment or delivery.

Sec. 5102. (1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed $5,000.00 each year, to any of the following:

(a) The minor if he or she is married.

(b) An individual having the care and custody of the minor with whom the minor resides.

(c) A guardian of the minor.

(d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor's estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor's support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. An excess amount shall be preserved for the minor's future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is

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attained. A person who pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5103 Delegation of powers by parent or guardian.

Sec. 5103. (1) 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.

(2) If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the thirty-first day after the end of the deployment.

(3) 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 93, Imd. Eff. May 7, 2004.

Popular name: EPIC

700.5104 Request or notice; interested person.

Sec. 5104. (1) An interested person who desires to be notified before an order is made in a guardianship proceeding, including a proceeding subsequent to the appointment of a guardian under section 5312, or in a protective proceeding under section 5401 must file a request for notice with the register of the court in which the proceeding is pending and with the attorney of record of the guardian or conservator or, if none, with the guardian or conservator, if any. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to a proceeding that occurs after the filing. If a guardianship or protective proceeding is not pending at the time a person files a request for notice as authorized by this subsection, the person shall pay a fee for filing the request, which fee shall be in the same amount as, but is separate from, the fee required to commence such a proceeding.

(2) A governmental agency paying benefits to the individual to be protected or before whom an application for benefits is pending is an interested person in a protective proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5105 Kidney donation by minor.

Sec. 5105. The court has jurisdiction of the matter described in this section. If authorized by order of the court that has jurisdiction of the prospective donor, a person 14 years of age or older may give 1 of his or her 2 kidneys to a father, mother, son, daughter, brother, or sister for a transplantation needed by the intended donee. A guardian, parent, spouse, child, or other next of kin of the prospective donor, other than the intended donee, may file a petition for an order under this section. If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests. The court shall hold a hearing on the petition and cause notice of the hearing to be given. The prospective donor shall be present at the hearing and shall be examined by the petitioner or the court, or both. If the court determines that the prospective donor is sufficiently sound of mind to understand the needs and probable consequences of the gift to both the donor and donee and agrees to the gift, the court may enter an order authorizing the making of the gift.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; appointment of nonbanking corporation to act as fiduciary in state.

Sec. 5106. (1) Subject to the other provisions of this section, the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under

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subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond shall be as provided in sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within 3 months after the professional guardian's appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5107 Entry into or removal from LEIN.

Sec. 5107. (1) Upon entry of an order finding that an individual is legally incapacitated, the court shall immediately order the department of state police to enter the order into the law enforcement information network.

(2) Upon entry of an order finding that an individual is no longer legally incapacitated, the court shall immediately order the department of state police to remove from the law enforcement information network the court order entered into the law enforcement information network under subsection (1) that found that the individual was legally incapacitated.

(3) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5108 Appointment of guardian ad litem; preference prohibited.

Sec. 5108. The person that commences an action or procedure under this article, or that makes a motion for, or in another manner requests, the appointment of a guardian ad litem under this article, shall not choose or indicate in any manner the person's preference as to a particular person for appointment as guardian ad litem.

History: Add. 2000, Act 465, Eff. June 1, 2001.

Popular name: EPIC

700.5109 Release for injury of minor during recreational activity.

Sec. 5109. (1) Before a minor participates in recreational activity, a parent or guardian of the minor may release a person from liability for economic or noneconomic damages for personal injury sustained by the minor during the specific recreational activity for which the release is provided.

(2) This section only applies to a recreational activity sponsored or organized by a nongovernmental, nonprofit organization.

(3) Either or both of the following may be released from liability under this section:

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(a) The sponsor or organizer of the recreational activity.

(b) An individual who is paid or volunteers to coach or assists in conducting the recreational activity.

(4) A release under this section only releases the sponsor, organizer, owner, lessee, or other person released from liability for injury or death that results solely from the inherent risks of the recreational activity. A release under this section does not limit the liability of the sponsor, organizer, owner, lessee, or other person released for the sponsor's, organizer's, owner's, lessee's, or other person's own negligence or the negligence of its employees or agents that causes or contributes to the injury or death.

(5) A release under this section shall be in writing.

(6) This section does not restrict the limitation of liability afforded by section 73301 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.73301, or 1964 PA 170, MCL 691.1401 to 691.1419.

(7) As used in this section, "recreational activity" means active participation in an athletic or recreational sport.

History: Add. 2011, Act 61, Imd. Eff. June 21, 2011.

Popular name: EPIC

PART 2

GUARDIANS OF MINORS

700.5201 Appointment and status of guardians of minor.

Sec. 5201. A person may become a minor's guardian by parental appointment or court appointment. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5202 Parental appointment of guardian for minor.

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 the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5202a Appointment of guardian in another state as temporary guardian.

Sec. 5202a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

History: Add. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

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700.5203 Objection by minor of 14 years or older to parental appointment.

Sec. 5203. A minor 14 years of age or older who is the subject of a parental appointment may prevent an appointment or cause it to terminate by filing with the court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 28 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the parental nominee or another suitable person.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5204 Court appointment of guardian of minor; conditions for appointment.

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 a guardian appointed in a manner described in section 5202 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5205 Court appointment of limited guardian; requirements.

Sec. 5205. (1) The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent or parents if all of the following requirements are met:

(a) The parents with custody of the minor consent or, in the case of only 1 parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.

(b) The parent or parents voluntarily consent to the suspension of their parental rights.

(c) The court approves a limited guardianship placement plan agreed to by both of the following parties:

(*i*) The parents with custody of the minor or, in the case of only 1 parent having custody of the minor, the sole parent who has custody of the minor.

(*ii*) The person or persons whom the court will appoint as the minor's limited guardian.

(2) A minor's parent or parents who desire to have the court appoint a limited guardian for that minor and the person or persons who desire to be appointed limited guardian for that minor must develop a limited guardianship placement plan. The parties must use a limited guardianship placement plan form prescribed by the state court administrator. A limited guardianship placement plan form must include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights under chapter XIIA of 1939 PA 288, MCL 712A.1 to 712A.32. The proposed limited guardianship placement plan shall be attached to the petition requesting the court to appoint a limited guardian. The limited guardianship placement plan shall include provisions concerning all of the following:

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(a) The reason the parent or parents are requesting the court to appoint a limited guardian for the minor.

(b) Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.

(c) The duration of the limited guardianship.

(d) Financial support for the minor.

(e) Any other provisions that the parties agree to include in the plan.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5206 Review modification of plan; powers and duties of limited guardian.

Sec. 5206. (1) The court shall review a proposed limited guardianship placement plan filed with the court under section 5205 and shall do 1 of the following:

(a) Approve the proposed plan.

(b) Disapprove the proposed plan.

(c) On its own motion, modify a proposed plan and approve it as modified, if the parties agree to the modification. The modified plan shall be filed with the court.

(2) A limited guardianship placement plan that has been approved by the court may be modified upon agreement of the parties and approval of the court. A modified limited guardianship placement plan shall be filed with the court.

(3) The voluntary suspension of parental rights under section 5205 does not prevent the parent or parents from filing a petition to terminate the limited guardianship at any time as provided in section 5208. Appointment of a limited guardian under this section is a continuing appointment.

(4) A limited guardian appointed under this section has all of the powers and duties enumerated in section 5215 except that a minor's limited guardian shall not consent to marriage or adoption of the minor ward or to the release of the minor ward for adoption.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5207 Review of guardianship of minor.

Sec. 5207. (1) The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if the minor is under 6 years of age. In conducting the review, the court shall consider all of the following factors:

(a) The parent's and guardian's compliance with either of the following, as applicable:

(*i*) A limited guardianship placement plan.

(*ii*) A court-structured plan under subsection (3)(b)(*ii*)(B) or section 5209(2)(b)(*ii*).

(b) Whether the guardian has adequately provided for the minor's welfare.

(c) The necessity of continuing the guardianship.

(d) The guardian's willingness and ability to continue to provide for the minor's welfare.

(e) The effect upon the minor's welfare if the guardianship is continued.

(f) Any other factor that the court considers relevant to the minor's welfare.

(2) The court may order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the factors listed in subsection (1).

(3) Upon completion of a guardianship review, the court may do either of the following:

(a) Continue the guardianship.

(b) Schedule and conduct a hearing on the guardianship's status and do any of the following:

(*i*) If the guardianship is a limited guardianship, do either of the following:

(A) Continue the limited guardianship.

(B) Order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship.

(*ii*) If the guardianship was established under section 5204, do either of the following:

(A) Continue the guardianship.

(B) Order the parties to follow a court-structured plan designed to resolve the conditions identified at the review hearing.

(*iii*) Take an action described in section 5209(2).

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5208 Petition to terminate guardianship of minor.

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Sec. 5208. (1) A minor's parent or parents may petition the court to terminate a guardianship for the minor as follows:

(a) If the guardianship is a limited guardianship, the parents or the sole parent with a right to custody of the minor.

(b) If the guardianship was established under section 5204, the minor's parent or parents.

(2) If a petition is filed to terminate a guardianship under this section, the court may do 1 or more of the following:

(a) Order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.

(b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.

(c) Appoint a guardian ad litem or attorney to represent the minor.

(d) Take any other action considered necessary in a particular case.

(3) This section and section 5209 apply to all guardianships established before, on, or after the effective date of this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5209 Court action on petition to terminate guardianship of minor.

Sec. 5209. (1) After notice and hearing on a petition under section 5208 to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the termination.

(2) For a petition to terminate a guardianship in which subsection (1) does not apply, after notice and hearing, the court may do any of the following:

(a) Terminate the guardianship if the court determines that it is in the best interests of the minor, and do any of the following:

(*i*) Enter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination.

(*ii*) Order the family independence agency to supervise the transition period when the minor is being reintegrated into his or her parent's home.

(*iii*) Order the family independence agency to provide services to facilitate the minor's reintegration into his or her parent's home.

(b) Continue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor, and do any of the following:

(*i*) If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:

(A) The limited guardianship placement plan.

(B) A court-modified limited guardianship placement plan.

(C) If the limited guardianship was established before December 20, 1990, a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(*ii*) If the guardianship is ordered under section 5204, order the parent or parents to follow a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(*iii*) If a guardianship is continued under subparagraph (*i*) or (*ii*), schedule and conduct a hearing to review the guardianship before the expiration of the period of time that the guardianship is continued and either terminate the guardianship or limited guardianship or proceed under subdivision (c) or (d).

(c) If the minor resides with the guardian or limited guardian for not less than 1 year and if the court finds that the minor's parent or parents have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor.

(d) Appoint an attorney to represent the minor or refer the matter to the family independence agency. The attorney or the family independence agency may file a complaint on behalf of the minor requesting the family division of the circuit court to take jurisdiction of the minor under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.

History: 1998, Act 386, Eff. Apr. 1, 2000.

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700.5210 Order for termination of guardianship of minor.

Sec. 5210. Upon receipt of a copy of a judgment or an order of disposition in a child custody action regarding a minor that is sent to the court as provided in section 6b of the child custody act of 1970, 1970 PA 91, MCL 722.26b, the court shall terminate the guardianship or limited guardianship for that minor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5211 Venue.

Sec. 5211. The venue for a guardianship proceeding for a minor is in the place where the minor resides or is present at the time the proceeding is commenced.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5212 Court appointment of guardian of minor; qualifications; priority of minor's nominee.

Sec. 5212. The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5213 Procedure for court appointment of guardian, temporary guardian, or lawyer-guardian ad litem for minor.

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.

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History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5214 Consent to service by acceptance of appointment; notice.

Sec. 5214. By accepting a parental or court appointment as guardian, a guardian submits personally to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. The petitioner shall cause notice of a proceeding to be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address listed in the court records and to the address then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by court order or parental nomination.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5215 Powers and duties of guardian of minor.

Sec. 5215. A minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons by reason of the parental relationship for the ward's acts. A guardian has all of the following powers and duties:

(a) The guardian shall take reasonable care of a ward's personal effects and commence a protective proceeding if necessary to protect the ward's other property. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(b) The guardian may receive money payable for the ward's support to the ward's parent, guardian, or custodian under the terms of a statutory benefit or insurance system, or a private contract, devise, trust, conservatorship, or custodianship. The guardian may receive the ward's money or property paid or delivered under section 5102. Money or property received under that section shall be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator is appointed for the ward's estate, in which case the excess shall be paid over at least annually to the conservator. The guardian shall not use that money or property for compensation for the guardian's services except as approved by court order or as determined by a duly appointed conservator other than the guardian. A guardian may institute a proceeding to compel a person's performance of a duty to support the ward or to pay money for the ward's welfare.

(c) The guardian shall facilitate the ward's education and social or other activities, and shall authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would be illegal for a parent to have consented.

(d) A guardian may consent to a minor ward's marriage.

(e) Subject to the conditions and restrictions of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a guardian may consent to marriage or adoption of a minor ward or to the release of a minor ward for adoption.

(f) A guardian must report the condition of the ward and of the ward's estate that is subject to the guardian's possession or control as ordered by the court on petition of a person interested in the minor's welfare or as required by court rule. The report must detail the condition of the ward, medical or mental health treatment or care to which the ward was subjected, and what reason, if any, exists for the continuation of the guardianship.

(g) Within 14 days after a change in the ward's place of residence, the guardian shall give to the court notice of the ward's new address.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 469, Eff. June 1, 2001.

Popular name: EPIC

700.5216 Compensation; claim for burial expense.

Sec. 5216. (1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by court order.

(2) If a minor dies while under guardianship and a conservator has not been appointed for the minor's estate and if the guardian has possession of any money of the deceased minor, upon petition of the guardian

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and with or without notice, the court may hear a claim for burial expenses or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the minor's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5217 Termination of appointment of guardian.

Sec. 5217. A guardian's authority and responsibility terminate upon the guardian's death, resignation, or removal or upon the minor's death, adoption, marriage, or attainment of majority. However, a termination does not affect the guardian's liability for prior acts or the obligation to account for the ward's money and property. The guardian's resignation does not terminate the guardianship until it is approved by the court. A parental appointment under an unprobated or informally probated will terminates if the will is later denied probate in a formal proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5218 Proceedings subsequent to appointment; venue.

Sec. 5218. (1) The court at the place where the ward resides has concurrent jurisdiction over resignation, removal, accounting, or another proceeding relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental appointment was filed.

(2) If the court located where the ward resides is neither the appointing court nor the court in which acceptance of appointment is filed, the court in which a proceeding subsequent to appointment is commenced in all appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever will serve the ward's welfare. A copy of an order accepting a resignation or removing a guardian shall be sent to the appointing court or the court in which acceptance of appointment is filed.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5219 Resignation, removal, and other post-appointment proceedings.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 3
GUARDIANS OF INCAPACITATED INDIVIDUALS

700.5301 Appointment of guardian for incapacitated person by will or other writing.

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 containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is

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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 containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed 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 or a testamentary nominating instrument made by a testator who is not deceased, 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5301a Appointment of guardian in another state as temporary guardian.

Sec. 5301a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

History: Add. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

700.5302 Guardianship proceedings; venue.

Sec. 5302. The venue for a guardianship proceeding for an incapacitated individual is in the place where the incapacitated individual resides or is present. If the incapacitated individual is admitted to an institution by order of a court of competent jurisdiction, venue is also in the county in which that court is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.

Sec. 5303. (1) An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian. The petition shall contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

(2) Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

(3) Upon the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of

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incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 468, Eff. June 1, 2001;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5304 Evaluation and report; hearing.

Sec. 5304. (1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303. A report prepared as provided in this subsection shall not be made a part of the proceeding's public record, but shall be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at his or her own expense or, if indigent, at the expense of the state. Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable.

(3) A report prepared under this section shall contain all of the following:

(a) A detailed description of the individual's physical or psychological infirmities.

(b) An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.

(c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.

(d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.

(e) The signatures of all individuals who performed the evaluations upon which the report is based.

(4) The individual alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon the individual's condition. If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site.

(5) The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury.

(6) The issue of incapacity may be determined at a closed hearing without a jury if requested by the individual alleged to be incapacitated or that individual's legal counsel.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5305 Guardian ad litem; duties; compensation; legal counsel.

Sec. 5305. (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

(a) Personally visiting the individual.

(b) Explaining to the individual the nature, purpose, and legal effects of a guardian's appointment.

(c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, all of the following:

(*i*) The right to contest the petition.

(*ii*) The right to request limits on the guardian's powers, including a limitation on the guardian's power to execute a do-not-resuscitate order on behalf of the ward.

(*iii*) The right to object to a particular person being appointed guardian.

(*iv*) The right to be present at the hearing.

(*v*) The right to be represented by legal counsel.

(*vi*) The right to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(e) Informing the individual of the name of each person known to be seeking appointment as guardian.

(f) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.

(g) Making determinations, and informing the court of those determinations, on all of the following:

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(*i*) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

(C) Execution of a patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or duration.

(*ii*) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(*iii*) Whether the individual wishes to be present at the hearing.

(*iv*) Whether the individual wishes to contest the petition.

(*v*) Whether the individual wishes limits placed on the guardian's powers.

(*vi*) Whether the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(*vii*) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001;—Am. 2012, Act 210, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation.

Sec. 5306. (1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

(2) The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual. If the court is aware that an individual has executed a patient advocate designation under section 5506, the court shall not grant a guardian any of the same powers that are held by the patient advocate. A court order establishing a guardianship shall specify any limitations on the guardian's powers and any time limits on the guardianship.

(3) If the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian.

(4) If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian.

(5) If an individual executed a patient advocate designation under section 5506 before the time the court determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical or mental health treatment decisions that the patient advocate is designated to make. If, however, a petition for guardianship or for modification under section 5310 alleges

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and the court finds that the patient advocate designation was not executed in compliance with section 5506, that the patient advocate is not complying with the terms of the designation or with the applicable provisions of sections 5506 to 5515, or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to grant those powers to the guardian.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5306a Rights of individual for whom guardian is sought or appointed; form.

Sec. 5306a. (1) An individual for whom a guardian is sought or has been appointed under section 5306 has all of the following rights:

(a) To object to the appointment of a successor guardian by will or other writing, as provided in section 5301.

(b) To have the guardianship proceeding commenced and conducted in the place where the individual resides or is present or, if the individual is admitted to an institution by a court, in the county in which the court is located, as provided in section 5302.

(c) To petition on his or her own behalf for the appointment of a guardian, as provided in section 5303.

(d) To have legal counsel of his or her own choice represent him or her on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305.

(e) If he or she is not represented by legal counsel, to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.

(f) To an independent evaluation of his or her capacity by a physician or mental health professional, at public expense if he or she is indigent, as provided in section 5304.

(g) To be present at the hearing on the petition to appoint a guardian and to have all practical steps taken to ensure this, including, if necessary, moving the hearing site, as provided by section 5304.

(h) To see or hear all the evidence presented in the hearing on the petition to appoint a guardian, as provided in section 5304.

(i) To present evidence and cross-examine witnesses in the hearing on the petition to appoint a guardian, as provided in section 5304.

(j) To a trial by jury on the petition to appoint a guardian, as provided in section 5304.

(k) To a closed hearing on the petition to appoint a guardian, as provided in section 5304.

(*l*) If a guardian ad litem is appointed, to be personally visited by the guardian ad litem, as provided in section 5305.

(m) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the nature, purpose, and legal effects of a guardian's appointment, as provided in section 5305.

(n) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the individual's rights in the hearing procedure, as provided in section 5305.

(o) If a guardian ad litem is appointed, to be informed by the guardian ad litem of the right to contest the petition, to request limits on the guardian's powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed if the individual is unable to afford legal counsel, as provided in section 5305.

(p) To be informed of the name of each person known to be seeking appointment as guardian, including, if a guardian ad litem is appointed, to be informed of the names by the guardian ad litem as provided in section 5305.

(q) To require that proof of incapacity and the need for a guardian be proven by clear and convincing evidence, as provided in section 5306.

(r) To the limitation of the powers and period of time of a guardianship to only the amount and time that is necessary, as provided in section 5306.

(s) To a guardianship designed to encourage the development of maximum self-reliance and independence as provided in section 5306.

(t) To prevent the grant of powers to a guardian if those powers are already held by a valid patient advocate, as provided in section 5306.

(u) To periodic review of the guardianship by the court, including the right to a hearing and the appointment of an attorney if issues arise upon the review of the guardianship, as provided in section 5309.

(v) To, at any time, seek modification or termination of the guardianship by informal letter to the judge, as provided in section 5310.

(w) To a hearing within 28 days of requesting a review, modification, or termination of the guardianship, as provided in section 5310.

(x) To the same rights on a petition for modification or termination of the guardianship including the

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appointment of a visitor as apply to a petition for appointment of a guardian, as provided in section 5310.

(y) To personal notice of a petition for appointment or removal of a guardian, as provided in section 5311.

(z) To written notice of the nature, purpose, and legal effects of the appointment of a guardian, as provided in section 5311.

(aa) To choose the person who will serve as guardian, if the chosen person is suitable and willing to serve, as provided in section 5313.

(bb) To consult with the guardian about major decisions affecting the individual, if meaningful conversation is possible, as provided in section 5314.

(cc) To quarterly visits by the guardian, as provided in section 5314.

(dd) To have the guardian notify the court within 14 days of a change in the individual's residence, as provided in section 5314.

(ee) To have the guardian secure services to restore the individual to the best possible state of mental and physical well-being so that the individual can return to self-management at the earliest possible time, as provided in section 5314.

(ff) To have the guardian take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects, as provided in section 5314.

(2) A guardian ad litem shall inform the ward in writing of his or her rights enumerated in this section. The state court administrative office and the office of services to the aging created in section 5 of the older Michiganians act, 1981 PA 180, MCL 400.585, shall promulgate a form to be used to give the written notice under this section, which shall include space for the court to include information on how to contact the court or other relevant personnel with respect to the rights enumerated in this section.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5307 Jurisdiction over guardian.

Sec. 5307. By accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address as listed in the court records and to his or her address as then known to the petitioner.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5308 Termination of guardian's authority and responsibility.

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 an unprobated will or a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5309 Review of guardianship.

Sec. 5309. The court shall review a guardianship not later than 1 year after the guardian's appointment and not later than every 3 years after each review.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5310 Resignation or removal of guardian.

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

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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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5311 Appointment or removal of guardian; notice of hearing.

Sec. 5311. (1) In a proceeding for the appointment or removal of an incapacitated individual's guardian, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing must be given to each of the following:

(a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.

(b) A person who is serving as the guardian or conservator or who has the individual's care and custody.

(c) If known, a person named as attorney in fact under a durable power of attorney.

(d) If no other person is notified under subdivision (a), (b), or (c), at least 1 of the individual's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated individual. Notice to all other persons must be given as prescribed by court rule. Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor.

(3) In a proceeding for a guardian's appointment under sections 5303 and 5304, a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

(a) The nature, purpose, and legal effects of the appointment of a guardian.

(b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5312 Court exercise of power of guardian; temporary guardian.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5313 Guardian; qualifications.

Sec. 5313. (1) The court may appoint a competent person as 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, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

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(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is 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 a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2000, Act 463, Eff. June 1, 2001;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

Popular name: EPIC

700.5314 Powers and duties of guardian.

Sec. 5314. Whenever meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the 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 previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order:

(a) The custody of the person of the ward and the power to establish the ward's place of residence within or without this state. The guardian shall visit the ward within 3 months after the guardian's appointment and not less than once within 3 months after each previous visit. The guardian shall notify the court within 14 days of a change in the ward's place of residence or a change in the guardian's place of residence.

(b) If entitled to custody of the ward, the duty to make provision for the ward's care, comfort, and maintenance and, when appropriate, arrange for the ward's training and education. The guardian shall secure 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 shall 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 needs protection. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(c) The power to give the consent or approval that is necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. The power of a guardian to execute a do-not-resuscitate order under subdivision (d) does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.

(d) The power of a guardian to execute, reaffirm, and revoke a do-not-resuscitate order on behalf of a ward is subject to this subdivision. A guardian shall not execute a do-not-resuscitate order unless the guardian does all of the following:

(*i*) Not more than 14 days before executing the do-not-resuscitate order, the guardian visits the ward and, if

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meaningful communication is possible, consults with the ward about executing the do-not-resuscitate order.

(*ii*) The guardian consults directly with the ward's attending physician as to the specific medical indications that warrant the do-not-resuscitate order.

(e) If a guardian executes a do-not-resuscitate order under subdivision (d), not less than annually after the do-not-resuscitate order is first executed, the guardian shall do all of the following:

(*i*) Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the do-not-resuscitate order.

(*ii*) Consult directly with the ward's attending physician as to specific medical indications that may warrant reaffirming the do-not-resuscitate order.

(f) If a conservator for the ward's estate is not appointed, the power to do any of the following:

(*i*) Institute a proceeding to compel a person under a duty to support the ward or to pay money 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.

(g) 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. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision shall contain all of the following:

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

(*ii*) 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 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*) Whether the guardian has executed, reaffirmed, or revoked a do-not-resuscitate order on behalf of the ward during the past year.

(*vii*) Services received by the ward.

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

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

(h) If a conservator is appointed, the duty to 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.

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History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 313, Eff. Jan. 1, 2001;—Am. 2000, Act 467, Eff. June 1, 2001;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5315 Payments for care of ward; claims at death.

Sec. 5315. (1) To the extent granted by the court under section 5306, the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to a third person or institution for the ward's care and maintenance.

(2) If a ward dies while under guardianship and a conservator has not been appointed for the ward's estate and if the guardian has possession of money of the deceased ward, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or any other claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of the claim and may provide in the order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the ward's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

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700.5316 Partial management of property by ward.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5317 Guardianship proceedings; concurrent jurisdiction.

Sec. 5317. (1) The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed.

(2) If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward. After this determination is made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report must be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5318 Third person dealing with guardian.

Sec. 5318. If a third person is dealing with a guardian or is assisting a guardian in the conduct of a transaction, the third person may assume the existence of trust powers and their proper exercise by the guardian without inquiry. The third person is not bound to inquire whether the guardian may act or is properly exercising the power. Unless the third person has actual knowledge that the guardian is exceeding the guardian's powers or improperly exercising them, a third person is fully protected in dealing with the guardian as if the guardian possessed and properly exercised the powers the guardian purports to exercise. A third person is not bound to assume the proper application of estate assets paid or delivered to the guardian. This section does not apply to a third person dealing with a limited guardian.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5319 Appointment of conservator or protective order; report of amount of additional cash or property.

Sec. 5319. (1) If the court determines that financial protection is required for the ward, the court may order the guardian to petition for the appointment of a conservator or for another protective order under part 4 of this article in relation to the ward's estate.

(2) If a conservator has not been appointed for a ward's estate and the guardian determines that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the guardian ad litem and reported to the court, the guardian shall report the amount of the additional cash or property to the court.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

PART 4

PROTECTION OF PROPERTY OF AN INDIVIDUAL UNDER DISABILITY OR OF A MINOR

700.5401 Protective proceedings.

Sec. 5401. (1) Upon petition and after notice and hearing in accordance with this part, the court may appoint a conservator or make another protective order for cause as provided in this section.

(2) The court may appoint a conservator or make another protective order in relation to a minor's estate and affairs if the court determines that the minor owns money or property that requires management or protection

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that cannot otherwise be provided, has or may have business affairs that may be jeopardized or prevented by minority, or needs money for support and education and that protection is necessary or desirable to obtain or provide money.

(3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

(4) The court may appoint a conservator in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 466, Eff. June 1, 2001.

Popular name: EPIC

700.5402 Protective proceedings; jurisdiction.

Sec. 5402. After the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court in which the petition is filed has the following jurisdiction:

(a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated.

(b) Exclusive jurisdiction to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected individual or any of the protected individual's dependents or other claimants.

(c) Concurrent jurisdiction to determine the validity of a claim against the protected individual or the protected individual's estate, and questions of title concerning estate property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5403 Venue.

Sec. 5403. Venue for a proceeding under this part is as follows:

(a) In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.

(b) If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5404 Original petition for appointment or protective order.

Sec. 5404. (1) The individual to be protected, a person who is interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property and business affairs may petition for a conservator's appointment or for another appropriate protective order.

(2) The petition must set forth to the extent known the petitioner's interest; the name, age, residence, and address of the individual to be protected; the name and address of the guardian, if any; the name and address of the nearest relative known to the petitioner; a general statement of the individual's property with an estimate of the value of the property, including compensation, insurance, a pension, or an allowance to which the individual is entitled; and the reason why a conservator's appointment or another protective order is necessary. If a conservator's appointment is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of the claim to priority for appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5405 Notice.

Sec. 5405. (1) On a petition for a conservator's appointment or another protective order, the requirements for notice described in section 5311 apply, subject to the following:

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(a) If the individual to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the individual shall be given by mail or publication as provided in section 1401.

(b) If the individual to be protected is a minor, section 5213(1) also applies.

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

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5406 Procedure concerning hearing and order on original petition.

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) A guardian ad litem, physician, mental health professional, or visitor appointed under this section who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

(a) Consider whether there is an appropriate alternative to a conservatorship.

(b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.

(c) Report to the court based on the considerations required in subdivisions (a) and (b).

(5) 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.

(6) 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.

(7) 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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001.

Popular name: EPIC

700.5407 Permissible court orders.

Sec. 5407. (1) The court shall exercise the authority conferred in this part to encourage the development of maximum self-reliance and independence of a protected individual and shall make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure. Accordingly, the court may authorize a protected individual to function without the consent or supervision of the individual's 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

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individual is mentally competent.

(2) The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

(a) While a petition for a conservator's appointment or another protective order is pending and after preliminary hearing and without notice to others, the court has the power to preserve and apply property of the individual to be protected as may be required for the support of the individual or the individual's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the minor's estate and business affairs that are or may be necessary for the best interests of the minor and members of the minor's immediate family.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:

(*i*) To make gifts.

(*ii*) To convey or release a contingent or expectant interest in property including marital property rights and a right of survivorship incident to joint tenancy or tenancy by the entirety.

(*iii*) To exercise or release a power held by the protected individual as personal representative, custodian for a minor, conservator, or donee of a power of appointment.

(*iv*) To enter into a contract.

(*v*) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the protected individual.

(*vi*) To exercise an option of the protected individual to purchase securities or other property.

(*vii*) To exercise a right to elect an option and change a beneficiary under an insurance or annuity policy and to surrender the policy for its cash value.

(*viii*) To exercise a right to an elective share in the estate of the individual's deceased spouse.

(*ix*) To renounce or disclaim an interest by testate or intestate succession or by inter vivos transfer.

(3) The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual either is incapable of consenting or has consented to the proposed exercise of the power:

(a) To exercise or release a power of appointment of which the protected individual is donee.

(b) To renounce or disclaim an interest.

(c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.

(d) To change a beneficiary under an insurance and annuity policy.

(4) A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.5408 Protective arrangements and single transactions authorized.

Sec. 5408. (1) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of money or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, contract for life care, deposit contract, or contract for training and education; or an addition to or establishment of a suitable trust.

(2) If it is established in a proper proceeding that a basis exists as described in section 540l for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the protected individual's best interests.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of the protected individual's creditors and dependents and, in view of the disability, whether the protected individual needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of a protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and serves until discharged by order after reporting to the court on all matters done under the appointment order.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5409 Appointment of conservator.

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

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

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5410 Bond.

Sec. 5410. (1) The court may require a conservator to furnish a bond. If the court determines that the value of cash and property that is readily convertible into cash in the estate and in the conservator's control exceeds the limit for administering a decedent's estate under section 3982, adjusted in the manner provided under section 1210 for the year in which the conservator is appointed, the court shall require the conservator to furnish a bond, unless 1 or more of the following apply:

(a) The estate contains no property readily convertible to cash and the cash is in a restricted account with a financial institution.

(b) The conservator has been granted trust powers under section 4401 of the banking code of 1999, 1999 PA 276, MCL 487.14401.

(c) The court determines that requiring a bond would impose a financial hardship on the estate.

(d) The court states on the record the reasons why a bond is not necessary.

(2) A bond furnished under this section shall be conditioned upon faithful discharge of all duties of the conservator's trust according to law, with sureties as the court specifies. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the estate property in the conservator's control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring a court order for their removal and the value of land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. Instead of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5411 Terms and requirements of bonds.

Sec. 5411. (1) The following requirements and provisions apply to a bond required under section 5410:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, a surety consents to the jurisdiction of the court that issued letters to the primary obligor in a proceeding pertaining to the conservator's fiduciary duties and naming the surety as a party respondent. Notice of a proceeding must be delivered to the surety or mailed by registered or certified mail to the address listed with the court where the bond is filed and to the address as

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then known to the petitioner.

(c) On petition of a successor conservator or an interested person, a proceeding may be initiated against a surety for breach of the obligation of the conservator's bond.

(d) The conservator's bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) A proceeding shall not be commenced against a surety on a matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5412 Qualification; limitation and procedure with regard to specified assets; consent to jurisdiction.

Sec. 5412. (1) Before receiving letters, a conservator must qualify by filing with the appointing court a required bond and a statement of acceptance of the duties of the office.

(2) In filing the statement of acceptance, the conservator may exclude from the scope of the conservator's responsibility, for a period not exceeding 91 days, real estate or an ownership interest in a business entity if the conservator reasonably believes the real estate or property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used for an activity directly or indirectly involving a hazardous substance that could result in liability to the estate or otherwise impair the value of property held in the estate. The conservator shall identify the real estate or ownership interest being excluded and specify the time period of exclusion.

(3) If the conservator identifies excluded property under subsection (2), the conservator's responsibilities extend to the excluded property at the end of the exclusion period or upon prior notice of acceptance of that property filed by the conservator with the court, unless, before the end of the exclusion period, the conservator requests the court to appoint a special conservator with respect to the excluded property or to exercise administrative authority over the excluded property by direct judicial order.

(4) In response to a request by the general conservator under subsection (3), the court may do either of the following:

(a) Appoint a special conservator with the duty and authority to collect and manage the excluded property, but only to the extent necessary for proper settlement of the estate, to preserve the property, to account with respect to the property, and to distribute or otherwise dispose of the property as directed by the general conservator or other court order.

(b) Direct administration of the excluded property by judicial order without the appointment of a conservator with respect to the property.

(5) By accepting appointment, a conservator submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person. Notice of a proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address listed in the petition for appointment or as reported to the court after appointment and to the address as then known to the petitioner.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5413 Compensation and expenses.

Sec. 5413. If not otherwise compensated for services rendered, a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed in a protective proceeding, is entitled to reasonable compensation from the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5414 Death, resignation, or removal of conservator.

Sec. 5414. The court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5415 Petitions for orders subsequent to appointment.

Sec. 5415. (1) A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:

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(a) Require bond or security or additional bond or security, or reduce bond.
(b) Require an accounting for the administration of the trust.
(c) Direct distribution.
(d) Remove the conservator and appoint a temporary or successor conservator.
(e) Grant other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning fiduciary responsibility. Upon notice and hearing, the court may give appropriate instructions or make an appropriate order.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5416 General duty of conservator.

Sec. 5416. In relation to powers conferred by this part or implicit in the title acquired by virtue of the proceeding, a conservator shall act as a fiduciary and observe the standard of care applicable to a trustee.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5417 Inventory and records.

Sec. 5417. (1) Within 56 days after appointment or within another time period specified by court rule, a conservator shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits. The conservator shall provide a copy of the inventory to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

(2) The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

Popular name: EPIC

700.5418 Accounts.

Sec. 5418. (1) A conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(2) The conservator shall provide a copy of an account to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

Popular name: EPIC

700.5419 Conservators; title by appointment.

Sec. 5419. (1) Appointment of a conservator vests in the conservator title as trustee to all of the protected individual's property, or to the part of that property specified in the order, held at the time of or acquired after the order, including title to property held for the protected individual by a custodian or attorney-in-fact. An order specifying that only a part of the protected individual's property vests in the conservator creates a limited conservatorship.

(2) Except as otherwise provided in this act, the protected individual's interest in property vested in a conservator by this section is not transferable or assignable by the protected individual. Though ineffective to affect property rights, an attempted transfer or assignment by the protected individual may generate a claim for restitution or damages that, subject to presentation and allowance, may be satisfied as provided in section 5429.

(3) Property vested in a conservator by this section and the protected individual's interest in that property is not subject to levy, garnishment, or similar process other than an order issued in the protective proceeding made as provided in section 5429.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5420 Recording of conservator's letters.

Sec. 5420. (1) Letters of conservatorship are evidence of transfer of all of the protected individual's property, or the part of that property specified in the letters, to the conservator. An order terminating a conservatorship is evidence of transfer of the property subjected to the conservatorship from the conservator to the protected individual or that individual's successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship or an order terminating a conservatorship may be filed or recorded to give record notice of title as between the conservator and the protected individual.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5421 Sale, encumbrance, or transaction involving conflict of interest; voidable; presumption; compliance with Michigan prudent investor rule; exceptions.

Sec. 5421. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the conservator has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the conservator's fiduciary and personal interests, is voidable unless any of the following are true:

(a) The transaction is approved by the court after notice as directed by the court.

(b) The transaction involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator.

(c) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the conservator with any of the following:

(a) The conservator's spouse.

(b) The conservator's descendant, sibling, or parent or the spouse of the conservator's descendant, sibling, or parent.

(c) An agent or attorney of the conservator.

(d) A corporation or other person or enterprise in which the conservator, or a person that owns a significant interest in the conservator, has an interest that might affect the conservator's best judgment.

(3) A transaction not concerning estate property in which the conservator engages in the conservator's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.

(4) An investment by a conservator in securities of an investment company or investment trust to which the conservator, or its affiliate, provides services in a capacity other than as conservator is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as conservator, the conservator may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the conservator receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the conservator shall at least annually notify the court of the rate and method by which that compensation was determined.

(5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the conservator shall act in the best interests of the estate. If the estate is the sole owner of a corporation or other form of enterprise, the conservator shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the estate.

(6) This section does not preclude the following transactions, if fair to the estate:

(a) An agreement relating to the compensation of the conservator.

(b) Payment of reasonable compensation to the conservator.

(c) A transaction between the estate and another trust or conservatorship of which the conservator is a fiduciary or in which the estate or protected individual has an interest.

(d) A deposit of estate money in a financial institution operated by or affiliated with the conservator.

(e) An advance by the conservator of money for the protection of the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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700.5422 Persons dealing with conservators; protection.

Sec. 5422. (1) A person who in good faith either assists or deals with a conservator for value in a transaction, other than a transaction that requires a court order as provided in section 5407 or 5423(3), is protected as if the conservator properly exercised the power. Except as provided in subsection (3), the fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but a restriction on a conservator's powers that is endorsed on letters as provided in section 5427 is effective as to third persons. A person is not bound to see to the proper application of estate property paid or delivered to a conservator.

(2) The protection expressed in this section extends to a procedural irregularity or jurisdictional defect that occurs in a proceeding leading to the issuance of letters and is not a substitution for protection provided by a comparable provision of the law relating to a commercial transaction or to simplifying a transfer of securities by a fiduciary.

(3) A conservator shall record an order allowing the sale, disposal, mortgage, or pledge of or placement of a lien on real property under section 5423 in the records of the register of deeds for the county in which the real estate is located. Unless the order has been recorded or a person to whom an interest in the real estate is transferred has been given a copy of the order, the person is not entitled to present that the conservator has the power to sell or otherwise dispose of the real property, or to mortgage, pledge, or cause a lien to be placed on the protected individual's real property, as applicable.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5423 Powers of conservator in administration.

Sec. 5423. (1) Subject to a limitation imposed under section 5427, a conservator has all of the powers conferred in this section and the additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the powers, responsibilities, and duties of a guardian described in section 5215 until the individual is no longer a minor or marries. The parental rights conferred on a conservator by this section do not preclude a guardian's appointment as provided in part 2.

(2) Acting reasonably in an effort to accomplish the purpose of the appointment and without court authorization or confirmation, a conservator may do any of the following:

(a) Collect, hold, or retain estate property, including land in another state, until the conservator determines that disposition of the property should be made. Property may be retained even though it includes property in which the conservator is personally interested.

(b) Receive an addition to the estate.

(c) Continue or participate in the operation of a business or other enterprise.

(d) Acquire an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest.

(e) Invest or reinvest estate property. If the conservator exercises the power conferred by this subdivision, the conservator must invest or reinvest the property in accordance with the Michigan prudent investor rule.

(f) Deposit estate money in a state or federally insured financial institution including one operated by the conservator.

(g) Except as provided in subsection (3), acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or manage, develop, improve, exchange, partition, change the character of, or abandon estate property.

(h) Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.

(i) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of a plat or adjust a boundary; adjust a difference in valuation on exchange or partition by giving or receiving consideration; or dedicate an easement to public use without consideration.

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.

(k) Enter into a lease or arrangement for exploration and removal of a mineral or other natural resource or enter into a pooling or unitization agreement.

(*l*) Grant an option involving disposition of estate property or take an option for the acquisition of property.

(m) Vote a security, in person or by general or limited proxy.

(n) Pay a call, assessment, or other amount chargeable or accruing against or on account of a security.

(o) Sell or exercise stock subscription or conversion rights.

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(p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. However, the conservator is liable for an act of the nominee in connection with the stock so held.

(r) Insure the estate property against damage or loss or the conservator against liability with respect to third persons.

(s) Borrow money to be repaid from estate property or otherwise.

(t) Advance money for the protection of the estate or the protected individual, and for all expense, loss, or liability sustained in the estate's administration or because of the holding or ownership of estate property. The conservator has a lien on the estate as against the protected individual for such an advance.

(u) Pay or contest a claim; settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible.

(v) Pay a tax, assessment, conservator's compensation, or other expense incurred in the estate's collection, care, administration, and protection.

(w) Allocate an item of income or expense to either estate income or principal, as provided by law, including creation of a reserve out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber property.

(x) Pay money distributable to a protected individual or the protected individual's dependent by paying the money to the distributee or by paying the money for the use of the distributee to the distributee's guardian, or if none, to a relative or other person having custody of the distributee.

(y) Employ a person, including an auditor, investment advisor, or agent, even though the person is associated with the conservator, to advise or assist in the performance of an administrative duty; act upon the person's recommendation without independent investigation; and, instead of acting personally, employ an agent to perform an act of administration, whether or not discretionary.

(z) Employ an attorney to perform necessary legal services or to advise or assist the conservator in the performance of the conservator's administrative duties, even if the attorney is associated with the conservator, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

(aa) Prosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.

(bb) Execute and deliver an instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

(cc) Respond to an environmental concern or hazard affecting property as provided in section 5424.

(3) A conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the court. The court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5424 Powers regarding environmental matters.

Sec. 5424. (1) To respond to an environmental concern or hazard affecting property, the conservator may do any of the following:

(a) Inspect property and the operation of business activity on property held by the conservator, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company for the purpose of determining compliance with environmental law affecting the property, and respond to an actual or threatened violation of an environmental law affecting property held by the conservator.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the conservator, either before or after the initiation of an enforcement action by a governmental body.

(c) Settle or compromise at any time a claim against the estate that is asserted by a governmental body or private party involving the alleged violation of an environmental law affecting property held in the trust or

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estate.

(d) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the conservator, may cause the conservator to incur personal liability under an environmental law.

(e) Decline to serve or resign as a conservator if the conservator reasonably believes that there is or may be a conflict of interest between the conservator in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the conservator on behalf of the estate because of the type or condition of property held in the estate.

(f) Charge the cost of an inspection, review, abatement, response, cleanup, claim settlement, or remedial action authorized in this section against the estate income or principal.

(2) The powers listed in subsection (1) are by way of enumeration and not limitation on the conservator's power to respond to an environmental concern or hazard.

(3) A conservator is not personally liable to a beneficiary or other party for a decrease in the value of estate property by reason of the conservator's compliance with an environmental law, specifically including a reporting requirement under such a law. Neither the acceptance by the conservator of property nor a failure by the conservator to inspect property or a business operation creates an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of estate property and is not to impose greater responsibility or liability on the conservator than imposed by law absent these provisions.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5425 Distributive duties and powers of conservator.

Sec. 5425. A conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the protected individual or the protected individual's dependents in accordance with the following principles:

(a) The conservator shall consider a recommendation relating to the appropriate standard of support, education, and benefit for the protected individual or a dependent made by a parent or guardian, if any. The conservator shall not be surcharged for money paid to a person or organization furnishing support, education, or care to the protected individual or a dependent in compliance with the recommendation of the protected individual's parent or guardian unless the conservator knows that the parent or guardian derives personal financial benefit from that payment, including a benefit by relief from a personal duty of support, or that the recommendation is clearly not in the protected individual's best interests.

(b) The conservator shall expend or distribute money reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent with due regard to all of the following:

(*i*) The estate size, the conservatorship's probable duration, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate.

(*ii*) The accustomed standard of living of the protected individual and the dependents.

(*iii*) Other money or sources used for the protected individual's support.

(c) The conservator may expend estate money for the support of an individual legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(d) The conservator may pay money to be expended under this section to any person, including the protected individual, to reimburse for an expenditure that the conservator might have made or in advance for a service to be rendered to the protected individual, if it is reasonable to expect the service will be performed and an advance payment is customary or reasonably necessary under the circumstances.

(e) In discharging a responsibility conferred by court order or this part, a conservator shall implement the principles described in section 5407(1) to the extent possible.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5426 Gifts; distribution to formerly protected individual; death of protected individual.

Sec. 5426. (1) If the estate is more than sufficient to provide for the purposes implicit in the distributions authorized by section 5425, a conservator for the protected individual, other than a minor, has the power to make a gift to charity or another object, as the protected individual might have been expected to make, in amounts that do not exceed an annual total of 20% of the estate income.

(2) If a minor who has not been adjudged disabled under section 5401(3) attains majority, after the conservator meets all claims and expenses of administration and accounts to the court if required to do so by

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the court or by court rule, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(3) If satisfied that a protected individual's disability, other than minority, has ceased, and after meeting all claims and expenses of administration, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(4) If a protected individual dies, the conservator shall deliver to the court for safekeeping a will of the deceased protected individual that has come into the conservator's possession, shall inform the personal representative or a beneficiary named in the will of the delivery, and shall retain the estate for delivery to a duly appointed personal representative of the decedent or another person entitled to the delivery. If within 42 days after the protected individual's death another person is not appointed personal representative and an application or petition for appointment is not before the court, the conservator may petition to exercise a personal representative's powers and duties in order to be able to proceed to administer and distribute the decedent's estate. Upon petition for an order granting a personal representative's powers to a conservator, after notice to a person nominated as personal representative by a will of which the petitioner is aware and after notice as described in section 1401, the court may grant the petition upon determining that there is no objection and may endorse the letters of the conservator to note that the formerly protected individual is deceased and that the conservator has all of the powers and duties of a personal representative. An order made and entered under this section has the effect of an order for a personal representative's appointment as provided in section 3307 and parts 6 to 10 of article III. However, after administration, the estate in the conservator's name may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5427 Expansion or limitation of powers of conservator.

Sec. 5427. Subject to the restrictions in section 5407(3), at the time of appointment or later, the court may confer on a conservator, in addition to the powers conferred by sections 5423 to 5426, any power that the court itself could exercise under section 5407(2)(b) and (c). At the time of appointment or later, the court may limit the powers of a conservator otherwise conferred by sections 5423 to 5426 or previously conferred by the court, and may at any time remove or modify a limitation. If the court limits a power conferred on the conservator by sections 5423 to 5426 or specifies, as provided in section 5419(1), that title to some, but not all, of the protected individual's property vests in the conservator, the limitation or specification of property subject to the conservatorship shall be endorsed upon the letters of appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5428 Preservation of estate plan; right to examine.

Sec. 5428. (1) When doing any of the following, the conservator and the court shall take into account the protected individual's estate plan as known to them, including a will, a revocable trust of which the individual is settlor, and a contract, transfer, or joint ownership arrangement originated by the protected individual with provisions for payment or transfer of a benefit or interest at the individual's death to another or others:

(a) Investing the estate.

(b) Selecting estate property for distribution under section 5425 or 5426(1).

(c) Utilizing a power of revocation or withdrawal available for the protected individual's support and exercisable by the conservator or the court.

(2) The conservator may examine the protected individual's will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5429 Claims against protected individual; enforcement.

Sec. 5429. (1) A conservator may pay or secure from the estate a claim against the estate or against the protected individual arising before or during the conservatorship upon the presentation of the claim and allowance in accordance with the priorities in subsection (4). A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and mailing address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim with the court in the form prescribed by court rule and may deliver or mail a copy of the statement to the conservator.

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(2) The court shall consider a claim presented when the conservator receives the written statement of claim or when the claim is filed with the court, whichever happens first. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 63 days after the presentation of the claim. The presentation of a claim tolls a statute of limitations relating to the claim until 28 days after the claim's disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and, upon due proof, may procure an order for the claim's allowance, payment, or security from the estate. If a proceeding is pending against a protected individual at the time of the appointment of a conservator or is initiated against the protected individual after the appointment, the moving party shall give notice of the proceeding to the conservator if the proceeding could result in creating a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(a) Costs and expenses of administration.

(b) Claims of the federal or state government having priority under law.

(c) Claims incurred by the conservator for care, maintenance, and education that were previously provided to the protected individual or the protected individual's dependents.

(d) Claims arising before the conservatorship.

(e) All other claims.

(5) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due. However, if it appears that the assets of the conservatorship are adequate to meet all existing claims, acting in the protected individual's best interest, the court may order the conservator to give a mortgage or other security on the conservatorship estate to secure payment at some future date of any or all claims listed in subsection (4)(e).

(6) If a protected individual dies while under conservatorship, upon petition of the conservator and with or without notice, the court may hear a claim for burial expense or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it shall be paid immediately if payment can be made without injury or serious inconvenience to the protected individual's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5430 Personal liability of conservator.

Sec. 5430. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in a fiduciary capacity in the course of estate administration unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(2) A conservator is personally liable for an obligation arising from ownership or control of estate property or for torts committed in the course of estate administration only if personally at fault.

(3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from ownership or control of the estate, or a tort committed in the course of estate administration may be asserted against the estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is personally liable for the claim.

(4) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5431 Termination of proceeding.

Sec. 5431. The protected individual, conservator, or another interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship. Upon termination, title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate instruments to evidence the transfer.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.5432 Payment of debt and delivery of property to foreign conservator without local proceedings.

Sec. 5432. (1) A person indebted to a protected individual or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected individual may pay or deliver the money, property, or instrument to a conservator, guardian of the estate, or other similar fiduciary appointed by a court of the protected individual's state of residence upon being presented with proof of appointment and a sworn statement made by or on behalf of the fiduciary stating both of the following:

(a) That no protective proceeding that relates to the protected individual is pending in this state.

(b) That the foreign fiduciary is entitled to payment or to receive delivery.

(2) If the person to whom the sworn statement is presented is not aware of a protective proceeding pending in this state, payment or delivery in response to the demand and sworn statement discharges the debtor or possessor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5433 Appointment of conservator in another state as temporary conservator.

Sec. 5433. (1) If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary conservator under subsection (1), the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly.

(3) If an objection is filed to a conservatorship under this section, the conservatorship continues unless a court in this state enters an order removing the conservator.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

Popular name: EPIC

PART 5
DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

700.5501 Durable power of attorney; definition; attorney-in-fact.

Sec. 5501. (1) A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in a writing that contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective upon the disability or incapacity of the principal", or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

(2) A durable power of attorney under this section shall be dated and signed voluntarily by the principal or signed by a notary public on the principal's behalf pursuant to section 33 of the Michigan notary public act, 2003 PA 238, MCL 55.293. The durable power of attorney shall be 1 or both of the following:

(a) Signed in the presence of 2 witnesses, neither of whom is the attorney-in-fact, and both of whom also sign the durable power of attorney.

(b) Acknowledged by the principal before a notary public, who endorses on the durable power of attorney a certificate of that acknowledgment and the true date of taking the acknowledgment.

(3) An attorney-in-fact designated and acting under a durable power of attorney has the authority, rights, responsibilities, and limitations as provided by law with respect to a durable power of attorney, including, but not limited to, all of the following:

(a) Except as provided in the durable power of attorney, the attorney-in-fact shall act in accordance with the standards of care applicable to fiduciaries exercising powers under a durable power of attorney.

(b) The attorney-in-fact shall take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, the attorney-in-fact shall keep the principal informed of the attorney-in-fact's actions. The attorney-in-fact shall provide an accounting to the principal upon request of the

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principal, to a conservator or guardian appointed on behalf of the principal upon request of the guardian or conservator, or pursuant to judicial order.

(d) The attorney-in-fact shall not make a gift of all or any part of the principal's assets, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, the attorney-in-fact, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and the attorney-in-fact.

(f) The attorney-in-fact shall maintain records of the attorney-in-fact's actions on behalf of the principal, including transactions, receipts, disbursements, and investments.

(g) The attorney-in-fact may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate the attorney-in-fact of any liability to the principal for breach of fiduciary duty except for actions committed by the attorney-in-fact in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of an abuse by the attorney-in-fact of a fiduciary or confidential relationship to the principal.

(h) The attorney-in-fact may receive reasonable compensation for the attorney-in-fact's services if provided for in the durable power of attorney.

(4) Before exercising authority under a durable power of attorney, an attorney-in-fact shall execute an acknowledgment of the attorney-in-fact's responsibilities that contains all of the substantive statements in substantially the following form:

I, _____, have been appointed as attorney-in-fact for _____, the principal, under a durable power of attorney dated _____. By signing this document, I acknowledge that if and when I act as attorney-in-fact, all of the following apply:

(a) Except as provided in the durable power of attorney, I must act in accordance with the standards of care applicable to fiduciaries acting under durable powers of attorney.

(b) I must take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, I must keep the principal informed of my actions. I must provide an accounting to the principal upon request of the principal, to a guardian or conservator appointed on behalf of the principal upon the request of that guardian or conservator, or pursuant to judicial order.

(d) I cannot make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, I, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and me.

(f) I must maintain records of my transactions as attorney-in-fact, including receipts, disbursements, and investments.

(g) I may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate me of any liability to the principal for breach of fiduciary duty except for actions committed by me in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of my abuse of a fiduciary or confidential relationship to the principal.

(h) I may be subject to civil or criminal penalties if I violate my duties to the principal.

Signature: _____ Date: _____

(5) A third party is not liable to the principal or any other person because the third party has complied in good faith with instructions from an attorney-in-fact named in a durable power of attorney whether or not the attorney-in-fact has executed an acknowledgment that complies with subsection (4). A third party is not liable to the principal or any other person if the third party requires an attorney-in-fact named in a durable power of attorney to execute an acknowledgment that complies with subsection (4) before recognizing the durable power of attorney.

(6) An attorney-in-fact's failure to comply with subsection (4) does not affect the attorney-in-fact's authority to act for the principal as provided for in the durable power of attorney and does not affect the attorney-in-fact's responsibilities or potential liability to the principal.

(7) Subsections (2) to (6) do not apply to any of the following:

(a) A durable power of attorney executed before October 1, 2012.

(b) A delegation under section 5103 or a similar power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child or ward.

(c) A patient advocate designation or a similar power of attorney relating to the principal's health care.

(d) A durable power of attorney that is coupled with an interest in the subject matter of the power.

(e) A durable power of attorney that is contained in or is part of a loan agreement, security agreement,

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pledge agreement, escrow agreement, or other similar transaction.

(f) A durable power of attorney in connection with a transaction with a joint venture, limited liability company, partnership, limited partnership, limited liability partnership, corporation, condominium, condominium association, condominium trust, or similar entity, including, without limitation, a voting agreement, voting trust, joint venture agreement, royalty agreement, license agreement, proxy, shareholder's agreement, operating agreement, partnership agreement, management agreement, subscription agreement, certification of incorporation, bylaws, or other agreement that primarily relates to such an entity.

(g) A power of attorney given primarily for a business or a commercial purpose.

(h) A power of attorney created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 141, Imd. Eff. May 22, 2012.

Popular name: EPIC

700.5502 Durable power of attorney not affected by lapse of time, disability, or incapacity; legal description of real estate not required.

Sec. 5502. An act done by an attorney in fact under a durable power of attorney during a period of disability or incapacity of the principal has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a termination time, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. A durable power of attorney that authorizes the agent to convey or otherwise exercise power over real estate does not need to contain the real estate's legal description.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5503 Relation of attorney in fact to court-appointed fiduciary.

Sec. 5503. (1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, estate guardian, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

(2) By a durable power of attorney, a principal may nominate the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if a protective proceeding for the principal's person or estate is commenced after execution of the power of attorney. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5504 Power of attorney not revoked until notice.

Sec. 5504. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's death, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(2) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's disability or incapacity, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal and his or her successors in interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5505 Proof of continuance of durable and other powers of attorney by affidavit.

Sec. 5505. (1) If an attorney in fact acts in good-faith reliance on a power of attorney, durable or otherwise, and executes a sworn statement stating that, at the time of the action, the attorney in fact did not have actual knowledge of the principal's death, disability, or incapacity or of the power's termination by revocation, the sworn statement is, in the absence of fraud, conclusive proof of the power's nontermination or nonrevocation.

(2) If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the sworn statement when authenticated for record is also recordable.

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(3) This section does not affect a provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5506 Designation of patient advocate; "community mental health services program or hospital" defined.

Sec. 5506. (1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2) For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3) A patient advocate designation under this section must be in writing, signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4) A patient advocate designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5507 Patient advocate designation; statement; acceptance.

Sec. 5507. (1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift that the patient could have exercised on his or her own behalf.

(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate

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who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(3) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

(4) The acceptance of a designation as a patient advocate must include substantially all of the following statements:

1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.

2. A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

3. This patient advocate designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

5. A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.

7. A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

9. A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

10. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5508 Determination of advocate's authority to act.

Sec. 5508. (1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the

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hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

(3) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5509 Authority and responsibilities of patient advocate; suspension.

Sec. 5509. (1) An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.

(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.

(c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(d) The designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

(e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(f) A patient advocate may choose to have the patient placed under hospice care.

(g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

(h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415, if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under section 5508 or 5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 1999, Act 52, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5510 Revocation of patient advocate designation.

Sec. 5510. (1) A patient advocate designation is revoked by 1 or more of the following:

(a) The patient's death, except that part of the patient advocate designation, if any, that authorizes the patient advocate to make an anatomical gift of all or part of the deceased patient's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(b) An order of removal by the probate court under section 5511(5).

(c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been

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designated.

(d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. If the revocation is not in writing, an individual who witnesses a revocation of a patient advocate designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician, mental health professional, or health facility has notice of the patient's revocation of a patient advocate designation, the physician, mental health professional, or health facility shall note the revocation in the patient's records and bedside chart and shall notify the patient advocate.

(e) A subsequent patient advocate designation that revokes the prior patient advocate designation either expressly or by inconsistency.

(f) The occurrence of a provision for revocation contained in the patient advocate designation.

(g) If a patient advocate designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the patient advocate designation is suspended during the pendency of an action for separate maintenance, annulment, or divorce and is revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate. If a successor patient advocate is named, that individual acts as the patient advocate.

(2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the patient advocate designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the patient advocate designation, he or she did not have actual knowledge of the revocation of the patient advocate designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5511 Binding effect; liability of provider; exception; dispute.

Sec. 5511. (1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

(4) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:

(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.

(b) The treatment requested is not reasonably available.

(c) Compliance is not consistent with applicable law.

(d) Compliance is not consistent with court-ordered treatment.

(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

(5) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the

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patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5512 Restrictions.

Sec. 5512. (1) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

(2) A health care provider shall not require a patient advocate designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical or mental health treatment.

(3) A life or health insurer shall not do any of the following because of the execution or implementation of a patient advocate designation or because of the failure or refusal to execute or implement such a designation:

(a) Refuse to provide or continue coverage to the patient.

(b) Limit the amount of coverage available to a patient.

(c) Charge a patient a different rate.

(d) Consider the terms of an existing policy of life or health insurance to have been breached or modified.

(e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(4) A patient advocate designation shall not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

(5) Except as provided in subsections (2) and (3), sections 5506 to 5515 only apply to or affect an individual who has executed a patient advocate designation or an individual acting for or on behalf of another individual who has executed a patient advocate designation.

(6) Nothing in sections 5506 to 5515 shall be considered to authorize or compel care, custody, or medical or mental health treatment decisions for a patient who objects on religious grounds.

(7) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but is subject to section 5506(1) and sections 5507 to 5515; must be in writing, signed, witnessed or notarized, dated, and executed voluntarily; and, before its implementation, must be made part of the patient's medical or, as applicable, mental health treatment record.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5513 Repealed. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Compiler's note: The repealed section pertained to conflict with provision of mental health code.

Popular name: EPIC

700.5515 Revocation of patient advocate designation; waiver; exercise of power by patient advocate; conditions.

Sec. 5515. (1) A patient may waive the right to revoke a patient advocate designation as to the power to exercise mental health treatment decisions by making the waiver as part of the document containing the designation. However, mental health treatment provided to a patient who has communicated his or her intent to revoke a designation in which the patient has waived his or her right to revoke shall not continue for more than 30 consecutive days, and the waiver does not affect the patient's rights under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate may exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certify, in writing and after examination of the patient, that the patient is unable to give informed consent to mental health treatment. The patient may, in the document containing the patient advocate designation, designate a physician, a mental health practitioner, or both, to make the determination under this subsection. If a physician or mental health practitioner designated by the patient is unable or unwilling to conduct the examination and make the determination required by this subsection within a reasonable time, the examination and determination shall be made by another physician or mental health practitioner, as applicable.

History: Add. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5520 Guardian making medical or mental health decisions; designation of another individual prohibited.

Sec. 5520. A legally incapacitated individual who has a guardian with responsibility for making medical or

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mental health treatment decisions cannot then designate another individual to make medical or mental health treatment decisions for the legally incapacitated individual.

History: Add. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

ARTICLE VI
NONPROBATE TRANSFERS ON DEATH

PART 1
EFFECT OF DEATH

700.6101 Effect of death.

Sec. 6101. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of similar nature is nontestamentary. This subsection includes a written provision in the instrument that is intended to result in 1 or more of the following:

(a) Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person, including a trustee of a trust created by will, whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.

(c) Property the decedent controls or owns before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(2) This section does not limit creditors' rights under another law of this state or another state or under federal law.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

PART 3
UNIFORM TOD SECURITY REGISTRATION

700.6301 Definitions.

Sec. 6301. As used in this part:

(a) “Beneficiary form” means a registration of a security that indicates the present owner of the security and the owner's intention regarding the person who will become the security's owner upon the owner's death.

(b) “Register” means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) “Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, uncertificated security, and security account.

(e) “Security account” includes all of the following:

(*i*) A reinvestment account associated with a security.

(*ii*) a securities account with a broker, financial institution, or subsidiary or affiliate of a financial institution.

(*iii*) A cash balance in an account with a broker, financial institution, or subsidiary or affiliate of a financial institution, whether or not credited to the account before the owner's death.

(*iv*) Cash, interest, earnings, or dividends earned or declared on a security in an account, reinvestment account, or account with a broker, financial institution, or subsidiary or affiliate of a financial institution, whether or not credited to the account before the owner's death.

(*v*) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

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History: 1998, Act 386, Eff. Apr. 1, 2000.

Compiler's note: At the beginning of subdivision (e)(*ii*), the lowercase "a" evidently should be an uppercase "A".

Popular name: EPIC

700.6302 Registration in beneficiary form; sole or joint tenancy ownership.

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 entireties, and not as tenants in common.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6303 Registration in beneficiary form; applicable law.

Sec. 6303. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, or the office of its transfer agent or its office making the registration or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6304 Origination of registration in beneficiary form.

Sec. 6304. Whether evidenced by certificate or account, a security is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6305 Form of registration in beneficiary form.

Sec. 6305. Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD”, or by the words “pay on death” or the abbreviation “POD”, after the name of the registered owner and before the name of a beneficiary.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6306 Effect of registration in beneficiary form.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6307 Ownership on death of owner.

Sec. 6307. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survived all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6308 Protection of registering entity.

Sec. 6308. (1) A registering entity is not required to offer or to accept a request for security registration in

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beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the deceased owner's death as provided in this part.

(3) A registering entity is discharged from all claims to a security by a deceased owner's estate, creditors, heirs, or devisees if the entity registers a transfer of the security in accordance with section 6307 and does so in good-faith reliance on all of the following:

(a) The registration.

(b) This part.

(c) Information provided to it by a sworn statement of the deceased owner's personal representative, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(4) This part's protections do not extend to a reregistration or payment made after a registering entity receives written notice from a claimant to an interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.

(5) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6309 Nontestamentary transfer on death.

Sec. 6309. (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part, and is not testamentary.

(2) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.6310 Terms, conditions, and forms for registration.

Sec. 6310. (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form or for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving a problem concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death.

(2) Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for “lineal descendants per stirpes”. This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by an intestate's descendants. Other forms of identifying beneficiaries who are to take on 1 or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation or registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(3) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) Sole owner-sole beneficiary:

“John S. Brown TOD or POD John S. Brown Jr.”

(b) Multiple owners-sole beneficiary:

“John S. Brown and Mary B. Brown JT TEN TOD John S. Brown Jr.”

(c) Multiple owners-primary and secondary substituted beneficiaries:

“John S. Brown and Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown” or “John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.”

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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ARTICLE VII
MICHIGAN TRUST CODE

PART 1
GENERAL PROVISIONS AND DEFINITIONS

700.7101 Short title of article.

Sec. 7101. This article shall be known and may be cited as the "Michigan trust code".

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7102 Scope.

Sec. 7102. This article applies to trusts as defined in section 1107.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7103 Definitions.

Sec. 7103. As used in this article:

(a) "Action", with respect to a trustee or a trust protector, includes an act or a failure to act.

(b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.

(c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).

(d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:

(*i*) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.

(*ii*) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.

(*iii*) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.

(*iv*) Whether the distribution of trust property is from income or principal or both of the trust.

(*v*) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.

(e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.

(f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:

(*i*) Exercisable by a trustee and limited by an ascertainable standard.

(*ii*) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(g) "Qualified trust beneficiary" means a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:

(*i*) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(*ii*) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (*i*) terminated on that date without causing the trust to terminate.

(*iii*) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

(i) "Settlor" means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of

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appointment to be treated as a settlor of the trust.

(j) "Spendthrift provision" means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary's interest.

(k) "Support provision" means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a support provision, but rather is a discretionary trust provision.

(*l*) "Trust beneficiary" means a person to whom 1 or both of the following apply:

(*i*) The person has a present or future beneficial interest in a trust, vested or contingent.

(*ii*) The person holds a power of appointment over trust property in a capacity other than that of trustee.

(m) "Trust instrument" means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

(n) "Trust protector" means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

(*i*) The settlor of a trust.

(*ii*) The holder of a power of appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7104 Notice or knowledge of fact.

Sec. 7104. (1) Subject to subsection (2), a person has knowledge of a fact if 1 or more of the following apply:

(a) The person has actual knowledge of it.

(b) The person has received a notice or notification of it.

(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or from the time the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7105 Duties and powers of trustee; provisions of law prevailing over terms of trust.

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

(a) The requirements under section 7401 for creating a trust.

(b) The duty of a trustee to administer a trust in accordance with section 7801.

(c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

(e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

(f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

(g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

(h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).

(i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the

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existence of the trust and the identity of the trustee.

(j) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

(k) The effect of an exculpatory term under section 7809(8) or 7908.

(*l*) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(m) Periods of limitation under this article for commencing a judicial proceeding.

(n) The power of the court to take action and exercise jurisdiction.

(o) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(p) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.7107 Governing law.

Sec. 7107. The meaning and effect of the terms of a trust are determined by the following:

(a) The law of the jurisdiction designated in the terms of the trust unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.

(b) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7108 Principal place of administration.

Sec. 7108. (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either of the following applies:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

(b) All or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 7704.

(7) The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and

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the place of administration.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7109 Notice; methods; waiver.

Sec. 7109. (1) Notice to a person under this article or the sending of a document to a person under this article shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed and identified facsimile or electronic message.

(2) Notice otherwise required under this article or a document otherwise required to be sent under this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this article or the sending of a document under this article may be waived in writing by the person to be notified or sent the document.

(4) Notice of a judicial proceeding shall be given as provided in sections 1401 to 1403 and as otherwise provided by court rule.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7110 Others treated as qualified beneficiaries.

Sec. 7110. (1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 2722 has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7111 Nonjudicial settlement agreement.

Sec. 7111. (1) Except as otherwise provided in subsection (2), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(2) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement agreement shall not be used to accomplish the termination or modification of the trust.

(3) Matters that may be resolved by a nonjudicial settlement agreement include any of the following:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee's report or accounting.

(c) Direction to a trustee to perform or to refrain from performing a particular act or to grant to or to withhold from a trustee any power.

(d) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(e) Transfer of a trust's principal place of administration.

(f) Liability of a trustee for an action relating to the trust.

(4) Any interested person or trustee may request the court to approve or disapprove a nonjudicial

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settlement agreement. On a determination that the representation as provided in part 3 was adequate, that the agreement does not violate a material purpose of the trust, and that the agreement contains terms and conditions the court could have properly approved, the court shall enter an order approving the agreement.

(5) As used in this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7112 Rules of construction.

Sec. 7112. The rules of construction in sections 2605 to 2608 that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7113 Penalty clause for contest of trust.

Sec. 7113. A provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7114 Trustee having insurable interest under life insurance policy; conditions.

Sec. 7114. A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued, both of the following are true:

(a) The insured is 1 of the following:

(*i*) A settlor of the trust.

(*ii*) An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(b) The life insurance proceeds are primarily for the benefit of 1 or more trust beneficiaries that have 1 of the following:

(*i*) An insurable interest in the life of the insured.

(*ii*) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (*i*), who are 1 of the following:

(A) Related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or affinity, to the insured.

(B) Stepchildren of the insured.

History: Add. 2014, Act 8, Imd. Eff. Feb. 11, 2014.

Popular name: EPIC

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PART 2
JUDICIAL PROCEEDINGS

700.7201 Role of court in administration of trust.

Sec. 7201. (1) A court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee's fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.

(3) A proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and a determination regarding the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do any of the

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following:

(a) Appoint or remove a trustee.

(b) Review the fees of a trustee.

(c) Require, hear, and settle interim or final accounts.

(d) Ascertain beneficiaries.

(e) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a trust.

(f) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

(g) Release registration of a trust.

(h) Determine an action or proceeding that involves settlement of an irrevocable trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7202 Jurisdiction over trustee and beneficiaries.

Sec. 7202. (1) By registering a trust or accepting the trusteeship of a registered trust or a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust. Notice of a proceeding shall be given to the trustee in accordance with section 1401 at the trustee's address as stated in the registration or as reported to the court and to the trustee's address then known to the petitioner.

(2) For purposes of a proceeding commenced by a trust beneficiary before registration, a trustee of a trust that is not registered in a proper place is subject to the personal jurisdiction of a court in which the trust could have been registered. In addition, a trustee who, within 28 days after receipt of a written demand by a trust settlor or beneficiary, fails to register a trust as required by the terms of the trust is subject to removal and denial of compensation or to surcharge as the court may direct.

(3) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration or having been properly registered in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person who receives property from the trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7203 Subject matter jurisdiction.

Sec. 7203. (1) The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust as provided in section 1302(b) and (d).

(2) The court has concurrent jurisdiction with other courts of this state of other proceedings that involve a trust as provided in section 1303.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7204 Venue.

Sec. 7204. (1) Except as otherwise provided in subsection (2), venue for a proceeding involving a trust is as follows:

(a) For a proceeding under section 7203 involving a registered trust, in the place of registration.

(b) For a proceeding under section 7203 involving a trust not registered in this state, in any place where the trust properly could be registered and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) As otherwise specified by court rule.

(2) If a trust has no trustee and has not been registered, venue for a judicial proceeding for the appointment of a trustee is as follows:

(a) In a county in this state in which a trust beneficiary resides.

(b) In a county in which any trust property is located.

(c) If the trust is created by will, in the county in which the decedent's estate was or is being administered.

(d) As otherwise provided by court rule.

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History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7205 Trust proceedings; dismissal of matters relating to foreign trusts.

Sec. 7205. (1) If a party objects, the court shall not entertain a proceeding under section 7203 that involves a trust that is registered or that has its principal place of administration in another state, unless either of the following applies:

(a) All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration.

(b) The interests of justice would otherwise be seriously impaired.

(2) The court may condition a stay or dismissal of a proceeding under this section on the consent of a party to jurisdiction of the state in which the trust is registered or has its principal place of business, grant a continuance, or enter another appropriate order.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7206 Court; concurrent jurisdiction of litigation involving trusts and third parties.

Sec. 7206. The court where a trust is registered has concurrent jurisdiction with other courts of this state of an action or proceeding to determine the existence or nonexistence of the trust if created other than by will, of an action or proceeding against a creditor or debtor of the trust, and of another action or proceeding that involves a trustee and a third party.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7207 Proceedings; review of employment of agents and compensation of trustee and employees of trustee.

Sec. 7207. On petition of an interested person, after notice to all other interested persons, the court may review the propriety of the employment of a person by a trustee including an attorney, auditor, investment advisor, or other specialized agent or assistant and the reasonableness of the compensation of the person so employed or the reasonableness of the compensation determined by the trustee for the trustee's own services. The court may order a person who receives excessive compensation from a trust to make an appropriate refund.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7208 Trust proceedings; initiation by notice; interested persons.

Sec. 7208. A proceeding under section 7203 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.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7209 Registration of trust.

Sec. 7209. (1) The trustee of a trust that has its principal place of administration in this state may register the trust in the court at the place designated in the terms of the trust or, if none is designated, then at the principal place of administration. For purposes of this article, the principal place of the trust's administration is the trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee does not have such a place of business. For a corporate trustee, the usual place of business is the business location of the primary trust officer for the trust.

(2) For cotrustees, if not designated in the terms of the trust, the principal place of administration is 1 of the following:

(a) If there is only 1 corporate cotrustee, the corporate trustee's usual place of business.

(b) If there is only 1 professional fiduciary who is an individual and no corporate trustee, the professional fiduciary's usual place of business or residence.

(c) If neither subdivision (a) nor (b) applies, the usual place of business or residence of any of the cotrustees as agreed upon by them.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

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Popular name: EPIC

700.7210 Registration procedures.

Sec. 7210. (1) A trust is registered by the filing of a statement that states the trustee's name and address and in which the trustee acknowledges the trusteeship. The statement shall indicate if the trust has been registered elsewhere. The statement shall identify the trust in 1 of the following manners:

(a) For a trust created by will, by the name of the testator and the date and place of domiciliary probate.

(b) For a written inter-vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument and all amendments existing on the date of registration.

(c) For an oral trust, by information identifying the settlor or other source of property and describing the trust's time and manner of creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

(2) The trust instrument is not required to be filed with the court as part of the registration of a trust. If a trust is registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where that registration occurred or by an instrument executed by the trustee and all qualified trust beneficiaries. The order or instrument shall be filed with the registration in this state.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7211 Registration; qualification of foreign trustee.

Sec. 7211. A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains a trust's principal place of administration in this state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required for the trustee to receive distribution from a local estate, to hold, invest in, manage, or acquire property located in this state, or to maintain litigation. This section does not affect a determination of what other acts require qualification as doing business in this state.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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PART 3
REPRESENTATION

700.7301 Representation; effect.

Sec. 7301. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in section 7602, a person who under this part may represent a settlor who lacks capacity may receive notice and for purposes of section 7602 may give a binding consent on the settlor's behalf.

(4) A settlor may not represent or bind a trust beneficiary under this part with respect to the termination or modification of a trust under section 7411(1).

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7302 Representation; holder of power of revocation or amendment or power of appointment.

Sec. 7302. The holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment may represent and bind a person whose interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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700.7303 Representation by fiduciaries and parents.

Sec. 7303. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.

(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.

(d) A trustee may represent and bind the beneficiaries of the trust.

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(f) A parent may represent and bind the parent's minor or unborn child if a conservator, plenary guardian, or partial guardian has not been appointed.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7304 Representation by person having substantially identical interest.

Sec. 7304. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7305 Appointment of representative.

Sec. 7305. (1) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(2) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this article, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a guardian ad litem may consider the general benefit accruing to the living members of the individual's family.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7306-700.7308 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

Compiler's note: The repealed section pertained to personal liability of trustees, limitations on proceedings against trustees, and duties and liabilities of successor trustees.

Popular name: EPIC

PART 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

700.7401 Creating trust; methods.

Sec. 7401. (1) A trust may be created by any of the following:

(a) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death.

(b) Declaration by the owner of property that the owner holds identifiable property as trustee.

(c) Exercise of a power of appointment in favor of a trustee.

(d) Exercise of a power described in section 7820a.

(e) A promise by 1 person to another person, whose rights under the promise are to be held in trust for a third person.

(2) The instrument establishing the terms of a trust is not rendered invalid because property or an interest

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in property is not transferred to the trustee or made subject to the terms of the trust concurrently with the signing of the instrument. Until property or an interest in property is transferred to the trustee or made subject to the terms of the trust, the person nominated as trustee has no fiduciary or other obligations under the instrument establishing the terms of the trust except as may have been specifically agreed by the settlor and the nominated trustee.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7402 Creating trust; requirements.

Sec. 7402. (1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

(*i*) A charitable trust.

(*ii*) A trust for a noncharitable purpose or for the care of an animal, as provided in section 2722.

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A trust beneficiary is definite if the trust beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a trust beneficiary from an indefinite class is valid only in a charitable trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7403 Trusts created in other jurisdictions.

Sec. 7403. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of a jurisdiction to which, at the time of creation, any of the following applied:

(a) The settlor was domiciled, had a place of abode, or was a national in the jurisdiction.

(b) A trustee was domiciled or had a place of business in the jurisdiction.

(c) Any trust property was located in the jurisdiction.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7404 Trust purposes.

Sec. 7404. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7405 Charitable trusts; purposes; enforcement.

Sec. 7405. (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes, any purpose described in section 501(c)(3) of the internal revenue code, 26 USC 501, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not identify a particular charitable purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor, a named beneficiary, or the attorney general of this state, among others, may maintain a proceeding to enforce a charitable trust. The right of the settlor of a charitable trust to enforce the trust is personal to the settlor and may not be exercised by any of the following:

(a) The settlor's heirs, assigns, or beneficiaries.

(b) The settlor's fiduciary, other than the trustee of the charitable trust the enforcement of which is being sought.

(c) An agent of the settlor acting pursuant to a durable power of attorney, unless the right to enforce the trust is expressly conferred on the agent by the power of attorney.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

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Popular name: EPIC

700.7406 Creation of trust induced by fraud, duress, or undue influence.

Sec. 7406. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7407 Evidence of oral trust.

Sec. 7407. Except as required by a statute other than this article, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7408, 700.7409 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

History: The repealed sections pertained to trustee authority regarding tax matters and payment provisions..

Popular name: EPIC

700.7410 Modification or termination of trust; procedures for approval or disapproval.

Sec. 7410. (1) In addition to the methods of termination prescribed by sections 7411 to 7414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become impossible to achieve or are found by a court to be unlawful or contrary to public policy.

(2) A proceeding to confirm the termination of a trust under subsection (1) or to approve or disapprove a proposed modification or termination under sections 7411 to 7416 or trust combination or division under section 7417 may be commenced by a trustee or beneficiary. A proceeding to modify a charitable trust under section 7413 may be commenced by the persons with the power to enforce the terms of a charitable trust pursuant to section 7405.

History: Add. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7411 Modification or termination of noncharitable trust; consent; "settlor's representative" defined.

Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court upon the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) Upon the consent of the qualified trust beneficiaries and a trust protector who is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or trust protector to whom a power to direct the termination or modification of the trust has been given by the terms of a trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010.

(3) Notice of any proceeding to terminate or modify a trust shall be given to the settlor, the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust protector, if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) Upon termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the agent is known to the petitioner, or, if an agent has not been appointed, the settlor's

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conservator, plenary guardian, or partial guardian.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:
"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.
"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.7412 Modification or termination of trust; unanticipated circumstances or inability to administer effectively.

Sec. 7412. (1) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(2) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention.

(3) If a trust is terminated under this section, the trustee shall distribute the trust property as ordered by the court.

(4) Notice of any proceeding to terminate or modify a trust shall be given in the manner described in section 7411(3).

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7413 Cy pres.

Sec. 7413. (1) Except as otherwise provided in subsections (2) or (3), if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, no alternative taker is named or provided for, and the court finds the settlor had a general, rather than a specific, charitable intent, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's general charitable intent.

(2) If the terms of a charitable trust confer a power on the trustee, or another person designated in the trust or gift, to modify or terminate either the charitable trust, a charitable gift to the trust, or the charitable purpose of the trust or gift in favor of another charitable trust, gift, or purpose, the terms of the trust prevail over the power of the court to apply cy pres to modify or terminate the trust.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court to apply cy pres to modify or terminate the trust only if, when the provision takes effect, either of the following applies:

(a) The trust property is to revert to the settlor and the settlor is still living.

(b) Less than 50 years have elapsed since the date of the trust's creation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7414 Termination or modification of noncharitable trust; section inapplicable to easement for conservation or preservation.

Sec. 7414. (1) After 63 days after notice to the qualified trust beneficiaries and, if the trust is a charitable trust, to the attorney general of this state, the trustee of a trust consisting of trust property having a total value less than $50,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The $50,000.00 amount expressed in this section shall be adjusted each year as provided in section 1210.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a noncharitable trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court. Upon termination of a charitable trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) This section does not apply to an easement for conservation or preservation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

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Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.7415 Reformation to correct mistakes.

Sec. 7415. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7416 Modification to achieve settlor's tax objectives; retroactive effect.

Sec. 7416. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7417 Division or consolidation of trusts.

Sec. 7417. (1) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may divide trust property into 2 or more separate portions or trusts and allocate property between them if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(2) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may consolidate 2 or more trusts and administer them as 1 trust if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. If the rule against perpetuities speaks from different dates with reference to the trusts or if there are other variations in terms, consolidation may still take place, but the property of the trusts shall be maintained in separate accounts if necessary to recognize and give effect to the differences.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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PART 5
CREDITOR'S CLAIMS; SPENDTHRIFT, SUPPORT, AND DISCRETIONARY TRUSTS

700.7501 Application; purposes.

Sec. 7501. This part applies to a creditor's or transferee's claims with respect to spendthrift, support, and discretionary trusts.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7502 Spendthrift provision.

Sec. 7502. (1) A spendthrift provision is valid and enforceable.

(2) A term of a trust providing that the interest of a trust beneficiary is held subject to a "spendthrift trust," or words of similar import, restrains both voluntary and involuntary transfer of the trust beneficiary's interest.

(3) Except as provided in sections 7504, 7506, and 7507, the trust beneficiary's interest in a trust may not be transferred in violation of a valid spendthrift provision and trust property is not subject to enforcement of a judgment until distributed directly to the trust beneficiary.

(4) Notwithstanding the existence of a spendthrift provision in the terms of the trust, a trustee is not liable to the beneficiaries of the trust for making a distribution to which a trust beneficiary is otherwise entitled pursuant to the direction of the trust beneficiary.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7503 Trust for support.

Sec. 7503. (1) The interest of a trust beneficiary that is subject to a support provision may not be transferred and the trust property is not subject to the enforcement of a judgment until income or principal, or

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both, is distributed directly to the trust beneficiary. After a distribution to a trust beneficiary whose interest is subject to a support provision, the income and principal distributed are subject to the enforcement of a judgment only to the extent that the income or principal, or both, is not necessary for the health, education, support, or maintenance of the trust beneficiary.

(2) The use or enjoyment of trust property by a trust beneficiary whose interest is subject to a support provision may not be transferred and is not subject to the enforcement of a judgment against the trust beneficiary.

(3) Subsections (1) and (2) do not apply under circumstances described in section 7504, 7506, or 7507.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7504 Spendthrift provision or support provision; exceptions; "child" defined.

Sec. 7504. (1) The interest of a trust beneficiary that is subject to a spendthrift provision, a support provision, or both may be reached in satisfaction of an enforceable claim against the trust beneficiary by any of the following:

(a) A trust beneficiary's child or former spouse who has a judgment or court order against the trust beneficiary for support or maintenance.

(b) A judgment creditor who has provided services that enhance, preserve, or protect a trust beneficiary's interest in the trust.

(c) This state or the United States.

(2) The court shall order the trustee to satisfy all or part of a judgment described in subsection (1) only out of all or part of distributions of income or principal as they become due.

(3) Notwithstanding that the terms of the trust include a spendthrift provision, this section does not apply to the interest of a trust beneficiary that is subject to a discretionary trust provision.

(4) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7505 Discretionary trust; effect of standard; right of transferee or creditor.

Sec. 7505. The transferee or creditor of the beneficiary of a discretionary trust provision does not have a right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion, and trust property is not subject to the enforcement of a judgment until income or principal, or both, is distributed directly to the trust beneficiary.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7506 Creditor's claim against settlor; "settlor" explained.

Sec. 7506. (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

(c) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:

(*i*) The claim of the creditor or assignee.

(*ii*) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the settlor's lifetime.

(2) If a trust has more than 1 settlor, the amount a creditor or assignee of a particular settlor may reach under subsection (1)(c) shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) A trust beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.

(4) An individual who creates a trust shall not be considered a settlor with regard to the individual's retained beneficial interest in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:

(a) The individual creates, or has created, the trust for the benefit of the individual's spouse.

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(b) The trust is treated as qualified terminable interest property under section 2523(f) of the internal revenue code, 26 USC 2523.

(c) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7507 Overdue distribution; "mandatory distribution" defined.

Sec. 7507. (1) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a trust beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the trust beneficiary within a reasonable time after the designated distribution date.

(2) As used in this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a trust beneficiary under the terms of the trust, including a distribution upon termination of the trust. Mandatory distribution does not include a distribution subject to the exercise of the trustee's discretion even if either of the following applies:

(a) The direction is expressed in the form of a standard of distribution.

(b) The terms of the trust authorizing a distribution use language of discretion and language of direction.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7508 Personal obligations of trustee.

Sec. 7508. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7509-700.7511 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

Compiler's note: The repealed sections pertained to secured claims, claims not due, contingent claims, liquidated claims, and counterclaims.

Popular name: EPIC

PART 6
REVOCABLE TRUSTS

700.7601 Capacity of settlor of revocable trust.

Sec. 7601. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7602 Revocation or amendment of revocable trust.

Sec. 7602. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to any of the following:

(a) A trust created under a trust instrument executed before April 1, 2010.

(b) A trust created by the exercise of a power described in section 7820a.

(c) A trust created by the exercise of a power of appointment held by a trustee in a fiduciary capacity.

(2) If a revocable trust is created or funded by more than 1 settlor, all of the following apply:

(a) To the extent that the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent that the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) Upon notification by the settlor of the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust in any of the following ways:

(a) By substantially complying with a method provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly

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made exclusive, in either of the following ways:

(*i*) If the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor's intent to revoke or amend the trust.

(*ii*) If the trust is an oral trust, by any method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a durable power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(6) A conservator or plenary guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by the terms of the trust and with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or the settlor's successors in interest, including the trust beneficiaries, for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7603 Powers of settlor; exceptions; settlor as incapacitated individual; powers of withdrawal; actions by predecessor trustee.

Sec. 7603. (1) Subject to subsection (2), while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. This subsection does not apply to either of the following:

(a) A trust created by the exercise of a power described in section 7820a.

(b) A trust created by the exercise of a power of appointment held by a trustee in a fiduciary capacity.

(2) If the trustee reasonably believes that the settlor of a revocable trust is an incapacitated individual, the trustee shall keep the settlor's designated agent or, if there is no designated agent or if the sole agent is a trustee, each beneficiary who, if the settlor were then deceased, would be a qualified trust beneficiary informed of the existence of the trust and reasonably informed of its administration.

(3) While a trust is not revocable and while a person has a currently exercisable power of withdrawal over the entire principal of the trust, the duties of a trustee are owed exclusively to the person.

(4) A person who succeeds to the position of trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also the trust settlor is not liable for an action of the settlor while the settlor was serving as trustee.

(5) With respect to a predecessor trustee who was also the settlor, the successor trustee has no responsibility to investigate a transaction by the predecessor trustee, to review an account, to review an action of the predecessor trustee, or to take action for a breach of trust by the predecessor trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7604 Proceeding to contest validity of revocable trust; limitation; distribution of property; liability.

Sec. 7604. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(a) Two years after the settlor's death.

(b) Six months after the trustee sent the person a notice informing the person of all of the following:

(*i*) The trust's existence.

(*ii*) The date of the trust instrument.

(*iii*) The date of any amendments known to the trustee.

(*iv*) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.

(*v*) The settlor's name.

(*vi*) The trustee's name and address.

(*vii*) The time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless either of the following applies:

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(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.

(b) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 63 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7605 Liability of trust for expenses, claims, and allowances.

Sec. 7605. (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, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401, 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, 26 USC 414.

(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).

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7606 Payment of expenses and obligations of settlor's estate; duty of trustee.

Sec. 7606. (1) A trustee of a trust described in section 7605(1) shall pay to the personal representative of the settlor's estate the amount that the personal representative certifies in writing to the trustee is required to pay the administration expenses of the settlor's estate; an enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; and homestead, family, and exempt property allowances. The trustee may rely on the certificate of the personal representative without liability to a trust beneficiary or another party. If a personal representative is not appointed for the settlor's estate, the trustee shall pay directly to the creditor an enforceable and timely served claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses. If a personal representative is not appointed for the settlor's estate within 4 months after the date of the publication of notice to creditors, a trust described in section 7605(1) is not liable for payment of homestead, family, or exempt property allowances. A payment made by a trustee is subject to this section, but the payment shall be made exclusively out of property, or the proceeds of property, that is includable in the settlor's gross estate for federal estate tax purposes, other than assets described in section 7605(2) to (4).

(2) Subject to section 7607, unless a settlor provides in his or her will or, in the absence of such a provision, designates in the trust the money or property passing under a trust to be used as described in section 7605(1), the administration expenses of the settlor's estate; an enforceable and timely filed claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; or homestead, family, and exempt property allowances, to be paid in accordance with subsection (1), shall be paid from the property of the trust in the following order:

(a) Property of the trust residue remaining after all distributions that are to be satisfied by reference to a specific property or type of property, fund, money, or statutory amount.

(b) Property that is not to be distributed out of specified or identified property or a specified or identified item of property.

(c) Property that is to be distributed out of specified or identified property or a specified or identified item

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of property.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7607 Rules regarding payment of expenses and obligations; priority; decedent as settlor of more than 1 trust.

Sec. 7607. (1) The following rules apply to section 7606(2):

(a) Upon the failure or insufficiency of money or property out of which payment should be made, to the extent of the insufficiency, a distribution of property from the trust that is to be satisfied out of specified or identified property shall be classed as a distribution to be satisfied out of the general trust property not otherwise disposed of in the terms of the trust.

(b) A distribution of property from the trust given for valuable consideration abates with other distributions of the same class only to the extent of the excess over the amount of the value of the consideration until all others of the same class are exhausted.

(c) Except as otherwise provided in this section, distributions of property from the trust abate equally and ratably and without preference or priority as between real and personal property.

(d) If a specified or identified item of property that has been designated for distribution in the terms of the trust or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the trust beneficiary whose property is sold or taken, and, before distribution, the trustee shall determine the amounts of the respective contributions, which shall be paid or withheld before distribution is made.

(2) Costs and expenses of trust administration, including trustee compensation and attorney fees, shall be paid by the trustee before and in preference to the administration costs and expenses of the settlor's estate, an enforceable and timely filed claim of a creditor of the settlor, and homestead, family, and exempt property allowances. If, after paying costs and expenses of trust administration, the trust property is insufficient to pay in full all charges for which the trust is liable under section 7605(1), the trustee shall make payment in the following order of priority:

(a) Costs and expenses of administration of the decedent's estate.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(e) Exempt property.

(f) Debts and taxes with priority under federal law.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including compensation of a person attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(3) A preference shall not be given in the payment of a charge over another charge of the same class under subsection (2), and a charge due and payable is not entitled to a preference over a charge not due.

(4) If the decedent was the settlor of more than 1 trust described in section 7605(1), the charges described in that section are payable pro rata from those trusts based on the gross values of the respective trusts on the date of the decedent's death. Each trustee is entitled to right of contribution as necessary to effect the pro rata liability. The allocation and contribution, however, are subject to provisions in the trusts regarding the allocation and burden of the charges. If there is conflict between the terms of the trusts regarding the allocation and burden of the charges, the decedent's will controls.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7608 Duty of trustee to give notice.

Sec. 7608. If there is no personal representative of the settlor's estate to whom letters of administration have been issued so that the publication and notice requirements of section 3801 have not been discharged, each trustee of a trust described in section 7605(1) shall publish and serve a notice to creditors in the same manner, with the same duties, and with the same protection for the trustee and the attorney for the trustee as described in section 3801 for a personal representative. The notice shall comply with applicable court rules and contain the name of the trust's deceased settlor; the trust's name or other designation, if any; the date the trust was established; the name and address of each trustee serving at the time of or as a result of the settlor's death; and the name and address of the trustee's attorney, if any. The notice shall state the date of publication.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

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Popular name: EPIC

700.7609 Presentation of claims against trust.

Sec. 7609. (1) Subject to section 7611, if notice to claimants is given by a trustee as provided in section 7608, a claimant shall present a claim against a trust described in section 7605(1) in either of the following ways:

(a) The claimant may mail or deliver to the trustee a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented on the trustee's receipt of the claim. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate a claim's presentation.

(b) The claimant may commence a proceeding to obtain payment of a claim against the trust in a court where the trustee is subject to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. Presentation of a claim is not required in regard to matters claimed in proceedings against the trust or settlor that were pending at the time of the settlor's death.

(2) If a personal representative is appointed for the settlor's estate, presentation of a claim against the settlor's estate shall be made in the manner described in section 3804, and such a presentation is sufficient to assert liability against a trust described in section 7605(1) without an additional presentation of the claim against the trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7610 Presentation of claims to assert liability; time limitation; exceptions.

Sec. 7610. (1) Subject to section 7611, if not barred earlier by another statute of limitations, a claim against the settlor of a trust described in section 7606(1) that arose at or before the settlor's death that a person seeks to recover from the trust is barred against the trust, each trustee of the trust, and a trust beneficiary, unless presented within 1 of the following times:

(a) If notice is given in compliance either with section 3801 or section 7608, within 4 months after the date of publication of notice to creditors.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, or known to the trustee at or during such a time if publication occurred under section 7608, within 28 days after the subsequent sending of notice or 4 months after the date of publication of notice to creditors, whichever is later.

(c) If the notice requirements of either section 3801 or section 7608 are not met, within 3 years after the settlor's death.

(2) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien upon property held in the trust.

(b) A proceeding to establish the settlor's or the trustee's liability for which the settlor or the trustee is protected by liability insurance to the limits of the insurance protection only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the trustee or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7611 Allowance or disallowance of claims against revocable trust.

Sec. 7611. If there is no personal representative appointed for the settlor's estate and notice is given in accordance with section 7608, the allowance or disallowance of a claim presented in the manner described in section 7609(1) and within a time period described in section 7610 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.

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(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.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7612 Payment of claims by trustee.

Sec. 7612. (1) Upon the expiration of 4 months after the date of the publication of the notice to creditors, the trustee shall proceed to pay the claims allowed against the trust in the order of priority prescribed in section 7607(2)(f) to (i), after making provision for costs and expenses of trust administration, for reasonable funeral and burial expenses, for each claim already presented that is not yet allowed or whose allowance is appealed, and for each unbarred claim that may yet be presented. A claimant whose claim is allowed, but not paid as provided in this section, may petition the court to secure an order directing the trustee to pay the claim to the extent that money of the trust is available for the payment.

(2) At any time, the trustee may pay a claim that is not barred, 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 trustee 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 trustee, in a manner that deprives the injured claimant of priority.

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

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7613 Secured claims; payment; basis.

Sec. 7613. Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders the security. Otherwise, payment shall be upon the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the claim amount allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or does not do so, upon the claim amount allowed less the value of the security as determined by converting it into money according to the terms of the agreement under which the security is delivered to the creditor, or as determined by the creditor and trustee by agreement, arbitration, compromise, or litigation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7614 Claims due at future time, contingent claim, or unliquidated claim.

Sec. 7614. A claim that will become due at a future time, a contingent claim, or an unliquidated claim is governed by the following:

(a) If a claim becomes due or certain before the distribution of the trust, and if the claim is allowed or established by a proceeding, the claim shall be paid in the same manner as presently due and absolute claims

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of the same class.

(b) For a claim not covered by subdivision (a), the trustee or, on petition of the trustee or the claimant in a proceeding for the purpose, the court may provide for payment as follows:

(*i*) If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account.

(*ii*) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7615 Counterclaims of trustee.

Sec. 7615. In allowing a claim, the trustee may deduct a counterclaim that the trustee has against the claimant. In determining a claim against a trust, the court shall reduce the amount allowed by the amount of a counterclaim and, if the total counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

PART 7

OFFICE OF TRUSTEE

700.7701 Acceptance or rejection of trusteeship.

Sec. 7701. (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship by doing either of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do all of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified trust beneficiary.

(b) Exercise all powers set forth under section 7818(1)(a).

(c) Inspect or investigate trust property to determine potential liability under other law or for any other purpose.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7702 Trustee's bond.

Sec. 7702. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the trust beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A financial institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7703 Cotrustees; powers and duties.

Sec. 7703. (1) Cotrustees shall act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is

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unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

(5) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated pursuant to section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

(6) Unless a delegation under subsection (5) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection shall be in writing and shall be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation shall be given to the qualified trust beneficiaries within 28 days after the revocation.

(7) If 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

(a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.

(b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.

(c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each faction is entitled to vote the securities proportionately.

(8) A trustee is not liable for the action or omission of a cotrustee if all of the following apply:

(a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.

(b) The trustee is aware of but does not join in the action or omission of the cotrustee.

(c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.

(9) A trustee who is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.

(10) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7704 Vacancy in trusteeship; manner of filling; priority; appointment by court of additional trustee or fiduciary.

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

(a) A person designated as trustee rejects the trusteeship.

(b) A person designated as trustee cannot be identified or does not exist.

(c) A trustee resigns.

(d) A trustee is disqualified or removed.

(e) A trustee dies.

(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy shall be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy shall be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person selected by the charitable organizations expressly designated to receive distributions under

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the terms of the trust if the attorney general concurs in the selection.

(c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7705 Resignation of trustee; circumstances; issuance of orders and conditions; liability.

Sec. 7705. (1) A trustee may resign in either of the following circumstances:

(a) Upon at least 28 days' notice to the qualified trust beneficiaries, the holders of powers of appointment, and all cotrustees.

(b) With the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7706 Removal of trustee.

Sec. 7706. (1) The settlor, a cotrustee, or a qualified trust beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if 1 or more of the following occur:

(a) The trustee commits a serious breach of trust.

(b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.

(c) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the purposes of the trust.

(d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, to the extent it is not inconsistent with a material purpose of the trust, the court may order any appropriate relief under section 7901(2) that is necessary to protect the trust property or the interests of the trust beneficiaries.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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700.7707 Delivery of property by former trustee.

Sec. 7707. (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property in the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7708 Compensation of trustee.

Sec. 7708. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if either of the following apply:

(a) The duties of the trustee are substantially different from those contemplated when the trust was created.

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7709 Reimbursement of expenses; advance of money as lien; advances and reimbursement not as self-dealing or breach of fiduciary duty.

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Sec. 7709. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for both of the following:

(a) Expenses that were properly incurred in the administration of the trust.

(b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(3) Advances and reimbursement under this section are not considered self-dealing by the trustee and are not a breach of the trustee's fiduciary duty.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

PART 8

DUTIES AND POWERS OF TRUSTEE

700.7801 Administration of trust; duties of trustee.

Sec. 7801. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7802 Duty of loyalty.

Sec. 7802. (1) A trustee shall administer the trust solely in the interests of the trust beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 7912, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a substantial conflict between the trustee's fiduciary and personal interests is voidable by a trust beneficiary affected by the transaction unless 1 or more of the following apply:

(a) The transaction was authorized by the terms of the trust.

(b) The transaction was approved by the court after notice to the interested persons.

(c) The trust beneficiary did not commence a judicial proceeding within the time allowed by section 7905.

(d) The trust beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7909.

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(f) The transaction is otherwise permitted by statute.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with any of the following:

(a) The trustee's spouse.

(b) The trustee's descendant, sibling, or parent or the spouse of a descendant, sibling, or parent.

(c) An agent or attorney of the trustee.

(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction that does not concern trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 7814 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of

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enterprise, the trustee shall act in the best interests of the trust beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interests of the trust beneficiaries.

(7) This section does not preclude the following transactions, if fair to the trust beneficiaries:

(a) An agreement between a trustee and a trust beneficiary relating to the appointment or compensation of the trustee.

(b) Payment of reasonable compensation to the trustee.

(c) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a trust beneficiary has an interest.

(d) A deposit of trust money in a financial institution operated by or affiliated with the trustee.

(e) An advance by the trustee of money for the protection of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7803 Impartiality; use of standards of Michigan prudent investor rule.

Sec. 7803. The trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7808 Settlor's power to direct contrary to trust terms.

Sec. 7808. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7809 Trust protector; exercise of powers.

Sec. 7809. (1) A trust protector, other than a trust protector who is a beneficiary of the trust, is subject to all of the following:

(a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.

(b) In exercising or refraining from exercising any power, duty, or discretion, the trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(c) The trust protector is liable for any loss that results from the breach of his or her fiduciary duties.

(2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(3) Except as otherwise provided in subsection (4), the trustee shall act in accordance with a trust protector's exercise of the trust protector's specified powers and is not liable for so acting.

(4) If either of the following applies to a trust protector's attempted exercise of a specified power, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives prior direction from the court:

(a) The exercise is contrary to the terms of the trust.

(b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.

(5) A trustee is not liable for any loss that results from any of the following:

(a) The trustee's compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (4).

(b) The trustee's failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization.

(c) Seeking a determination from the court regarding the trust protector's actions or directions.

(d) The trustee's refraining from action pursuant to subsection (4).

(6) The terms of a trust may confer upon a trustee or other person a power to direct the modification or

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termination of the trust.

(7) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.

(8) A term of a trust that relieves a trust protector from liability for breach of his or her fiduciary duties is unenforceable to the extent that either of the following applies:

(a) The term relieves the trust protector of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trust protector of a fiduciary or confidential relationship to the settlor.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7810 Control and protection of trust property.

Sec. 7810. A trustee shall take reasonable steps to take control of and protect the trust property.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7811 Recordkeeping and identification of trust property.

Sec. 7811. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4), to the extent that property is held by someone other than the trustee, the trustee shall cause the trust's interest in the trust's property to appear in records maintained by the party holding the trust property.

(4) A trustee may do any of the following:

(a) Invest as a whole the property of 2 or more separate trusts, provided the trustee maintains records clearly indicating the respective interests.

(b) Hold trust property in nominee form.

(c) If the trust is revocable by the settlor, cause the trust's interest in the trust's property to appear in records in the manner directed by the settlor.

(d) Not reflect the trust's interest in the trust's property when the nature of the property is such that it is not possible or practicable to do so.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7812 Enforcement and defense of claims.

Sec. 7812. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7813 Duty to locate trust property and compel delivery; retention of reserve for payment of expenses; improper distribution or payment from trust; wrongful conversion.

Sec. 7813. (1) A trustee shall take reasonable steps to locate trust property and to compel a former trustee or other person to deliver trust property to the trustee.

(2) A resigning trustee or a trustee being replaced by a successor may retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) Unless the distribution or payment can no longer be questioned because of adjudication, estoppel, or other limitation, a distributee or claimant that receives property that is improperly distributed or paid from a trust shall return the property and any income and gain from the property since distribution, if the recipient has the property. If the recipient does not have the property, the recipient shall pay the value of the property as of the date of distribution or payment and any income and gain from the property since distribution.

(4) If a person embezzles or wrongfully converts trust property, or refuses, without colorable claim of right, to transfer possession of trust property to the current trustee upon demand, the person is liable in an action brought by the current trustee, or the beneficiary of the trust for the benefit of the trust, for double the

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value of any property embezzled, converted, or wrongfully withheld from the current trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7814 Duty to inform and report.

Sec. 7814. (1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

(b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.

(d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified trust beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values, and, if applicable, any disclosure required under section 7802(5). In the trustee's discretion, the trustee may provide the report to any trust beneficiary. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified trust beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified trust beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.

(5) A trust beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A trust beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, an irrevocable trust created, or a revocable trust that becomes irrevocable on or after the effective date of the amendatory act that added this section.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7815 Discretionary powers; abuse; liability to beneficiary; rules; effect of limited or prohibited powers; exceptions.

Sec. 7815. (1) A beneficiary of a discretionary trust provision as described in section 7505 has no property right in a trust interest that is subject to a discretionary trust provision, and has no right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion. However, except as provided in subsection (2) and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee does any of the following:

(a) Acts dishonestly.

(b) Acts with an improper motive, even though not a dishonest motive.

(c) Fails to exercise the trustee's judgment in accordance with the terms and purposes of the trust.

(2) Unless the trust instrument expressly provides otherwise, a trustee is not liable to a beneficiary for failure to exercise the power described in section 7820a or the power described in section 5a of the powers of

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appointment act of 1967, 1967 PA 224, MCL 556.115a.

(3) Subject to subsection (5), the following rules apply to a trustee's exercise of a power unless the terms of the trust expressly indicate that the rule does not apply:

(a) A person other than a settlor who is a trust beneficiary and trustee of a trust that confers on the trustee a power to make distributions pursuant to a discretionary trust provision to or for the trustee's benefit may exercise the power only in accordance with an ascertainable standard.

(b) A trustee may not exercise a power to make distributions pursuant to a discretionary trust provision in a manner to satisfy a legal obligation of support that the trustee personally owes another person.

(4) A power whose exercise is limited or prohibited by subsection (3) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(5) Subsection (3) does not apply to any of the following:

(a) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the internal revenue code, 26 USC 2056 and 2523, was previously allowed.

(b) Any trust during any period that the trust may be revoked or amended by its settlor.

(c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the internal revenue code, 26 USC 2503.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7816 General powers of trustee.

Sec. 7816. (1) A trustee, without authorization by the court, may exercise all of the following:

(a) Powers conferred by the terms of the trust.

(b) Except as limited by the terms of the trust, all of the following:

(*i*) All powers over the trust property that an unmarried competent owner has over individually owned property.

(*ii*) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.

(*iii*) Any other powers conferred by this article.

(2) The exercise of a power is subject to the fiduciary duties prescribed by this article.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7817 Specific powers of trustee.

Sec. 7817. Without limiting the authority conferred by section 7816, a trustee has all of the following powers:

(a) To take possession, custody, or control of property transferred to the trust and accept or reject additions to the trust.

(b) To retain property that the trustee receives, including property in which the trustee is personally interested, in accordance with the Michigan prudent investor rule.

(c) To receive property from a fiduciary or another source that is acceptable to the trustee.

(d) To perform, compromise, or refuse to perform a contract of the settlor that is an obligation of the trust, as the trustee may determine under the circumstances. In performing an enforceable contract by the settlor to convey or lease land, if the contract for a conveyance requires the giving of a warranty, the deed or other instrument of conveyance to be given by the trustee shall contain the warranty required. The warranty is binding on the trust as though made by the settlor, but does not bind the trustee except in the trustee's fiduciary capacity. The trustee, among other possible courses of action, may do either of the following:

(*i*) Execute and deliver a deed of conveyance for cash payment of money remaining due or the purchaser's note for the money remaining due secured by a mortgage on the land.

(*ii*) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the trustee, as designated in the escrow agreement.

(e) To satisfy a settlor's written charitable pledge irrespective of whether the pledge constitutes a binding obligation of the settlor or was properly presented as a claim, if in the trustee's judgment the settlor would have wanted the pledge completed under the circumstances.

(f) To deposit trust property in a financial institution, including a financial institution operated by or affiliated with the trustee and to invest and reinvest trust property as would a prudent investor acting in accordance with the Michigan prudent investor rule and to deposit securities with a depositary or other

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financial institution.

(g) To acquire property, including property in this or another state or country, in any manner for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, or change the character of trust property.

(h) To make an ordinary or extraordinary repair or alteration in a building or another structure, to demolish an improvement, or to raze an existing or erect a new party wall or building.

(i) To subdivide, develop, or dedicate land to public use; to make or obtain the vacation of a plat or adjust a boundary; to adjust a difference in valuation on exchange or partition by giving or receiving consideration; or to dedicate an easement to public use without consideration.

(j) To enter for any purpose into a lease as lessor or lessee, with or without an option to purchase or renew, for a period within or extending beyond the duration of the trust.

(k) To enter into a lease or arrangement for exploration and removal of minerals or another natural resource or to enter into a pooling or unitization agreement for a period within or extending beyond the duration of the trust.

(*l*) To abandon or decline to administer property if, in the trustee's opinion, the property is valueless, or is so encumbered or in such a condition that it is of no benefit to the trust.

(m) To vote a stock or other security in person, by general or limited proxy, or in another manner provided by law, or enter into or continue a voting trust agreement.

(n) To pay a call, assessment, or other amount chargeable or accruing against or on account of a security, and sell or exercise stock subscription or conversion rights.

(o) To hold property in the name of a nominee or in another form without disclosure of the interest of the trust. However, the trustee is liable for an act of the nominee in connection with the property so held.

(p) To insure the trust property against damage, loss, or liability and to insure the trustee, the trustee's agents, and the trust beneficiaries against liability arising from the administration of the trust.

(q) To borrow property, with or without security, for any purpose from the trustee or others and to mortgage or pledge trust property for a period within or extending beyond the duration of the trust.

(r) To effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the trust. If the trustee holds a mortgage, pledge, or another lien on property of another person, the trustee may, instead of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by a lien.

(s) To pay a tax, an assessment, the trustee's compensation, or another expense incident to the administration of the trust.

(t) To sell or exercise a subscription or conversion right or to consent, directly or through a committee or another agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a business enterprise.

(u) To allocate an item of income or expense to either trust income or principal, as permitted or provided by law.

(v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.

(w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

(x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subdivision for the trustee's protection in the performance of the trustee's duties.

(y) To sell, exchange, partition, or otherwise dispose of, or grant an option with respect to, trust property for any purpose upon any terms or conditions for a period within or extending beyond the duration of the trust.

(z) To continue or participate in a business or enterprise in any manner, in any form, and for any length of time.

(aa) To change the form, in any manner, of a business or enterprise in which the settlor was engaged at the time of death.

(bb) To provide for exoneration of the trustee from personal liability in a contract entered into on behalf of the trust.

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(cc) To respond to environmental concerns and hazards affecting trust property as provided in section 7818.

(dd) To collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust, including a claim against the trust by the trustee.

(ee) To respond to a tax matter as provided in section 7819.

(ff) To make a payment of money, or other property instead of money, to or for a minor or incapacitated trust beneficiary as provided in section 7820.

(gg) To make a distribution or division of trust property in cash or in kind, or both; to allot a different kind or disproportionate portion of, or an undivided interest in, trust property among beneficiaries and determine the value of allotted trust property; or to distribute an unclaimed share in the same manner as described in section 3916.

(hh) To transfer the property of a trust to another jurisdiction and appoint, compensate, or remove a successor trustee, individual or corporate, for trust property in another jurisdiction, with any trust powers set out in this part that the trustee delegates to the successor trustee.

(ii) To execute and deliver an instrument that accomplishes or facilitates the exercise of a power vested in the trustee.

(jj) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(kk) To make loans out of trust property, including loans to a trust beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of loans made under this subdivision.

(*ll*) To pledge trust property to guarantee loans made by others to the trust beneficiary.

(mm) To resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(nn) On termination of the trust, to exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.7818 Environmental concerns or hazards; powers of trustee.

Sec. 7818. (1) In connection with an environmental concern or hazard, a trustee may do any of the following:

(a) Inspect property or the operation of a business activity on property, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held or tendered to the trustee.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the trustee, either before or after a governmental body initiates an enforcement action.

(c) Refuse to accept property in trust if the trustee determines that the property to be transferred to the trust either is or may be contaminated by a hazardous substance or has been or is being used for an activity directly or indirectly involving a hazardous substance that could result in liability to the trust or otherwise impair the value of the trust property.

(d) Settle or compromise at any time a claim against the trust that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust.

(e) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the trustee, may cause the trustee to incur personal liability under an environmental law.

(f) Decline to serve or resign as a trustee if the trustee reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the trustee on the trust's behalf because of the type or condition of property held in trust.

(g) Appoint an independent special trustee to hold title to, and take a reasonably required action, as

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provided in this section, relating to environmental law in regard to, property tendered to the trust, until the time that the trustee determines that no substantial risk exists if the tendered property becomes part of the trust property or abandons the tendered property.

(h) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the trust property.

(2) A trustee is not personally liable to a trust beneficiary or other party for a decrease in value of trust property by reason of the trustee's compliance with an environmental law, specifically including a reporting requirement under that law. The trustee's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of trust property and is not to impose greater responsibility or liability on the trustee than imposed by law absent this section.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7819 Tax matters; powers of trustee.

Sec. 7819. (1) A trustee may do any of the following in connection with a tax matter:

(a) Make, revise, or revoke an available allocation, consent, or election affecting a tax that is appropriate in order to carry out the settlor's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:

(*i*) Electing to take expenses as estate tax or income tax deductions.

(*ii*) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.

(*iii*) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.

(*iv*) Electing the date of death or an alternate valuation date for federal estate tax purposes.

(b) Exclude or include property from the gross estate for federal estate tax purposes.

(c) Value property for federal estate tax purposes.

(d) Join with the surviving spouse or the surviving spouse's personal representative in the execution and filing of a joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.

(2) A trustee's decision on a matter described in subsection (1)(a) binds all beneficiaries.

(3) After making a decision described in subsection (1)(a), a trustee may make compensating adjustments between principal and income in the manner provided by the uniform principal and income act, 2004 PA 159, MCL 555.501 to 555.1005.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7820 Payment provisions; facility.

Sec. 7820. (1) A trustee may act under section 7817(ff) 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) A trustee also may manage an amount distributable to a trust beneficiary who is a minor or incapacitated individual as a separate fund on the trust beneficiary's behalf, subject to the trust beneficiary's continuing right to withdraw the distribution.

(3) 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.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7820a Irrevocable trust including discretionary trust provision; distribution; definitions.

Sec. 7820a. (1) If an irrevocable trust includes a discretionary trust provision, the trustee of the trust may,

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unless the terms of the first trust expressly provide otherwise, distribute by written instrument all or part of the property subject to that provision to the trustee of a second trust, provided that both of the following conditions are satisfied:

(a) The terms of the second trust do not materially change the beneficial interests of the beneficiaries of the first trust.

(b) If the governing instrument of the first trust expressly indicates an intention that the first trust qualify for a tax benefit or the terms of the first trust are clearly designed to qualify the first trust for a tax benefit, and if the first trust would qualify for the intended tax benefit, the governing instrument of the second trust is not inconsistent with the tax planning that informed the first trust.

(2) A distribution of property to the trustee of a second trust under subsection (1) shall not result in any of the following:

(a) An increase in or a change in the method of determining the compensation of a trustee, unless the increase or change has been consented to in writing by all beneficiaries entitled to receive reports regarding the first trust.

(b) A charge of a fee or commission on the transfer of assets from the first trust to the second trust, unless the fee or commission has been consented to in writing by all beneficiaries entitled to receive reports regarding the first trust.

(c) A reduction in the standard of care applicable to the trustee's actions or an expansion of exoneration of the trustee.

(d) A diminution in the authority of a person who has a power exercisable in a fiduciary capacity to direct or remove the trustee.

(3) For purposes of this section, all of the following apply:

(a) In determining whether a trust is irrevocable, a settlor's lack of capacity to exercise a power of revocation negates the power unless an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving and the agent, conservator, or guardian is authorized to exercise the power of revocation.

(b) An increase in the maximum period during which the vesting of a future interest may be suspended or postponed under applicable law does not constitute a material change in the interest of a beneficiary.

(c) An increase in compensation arising solely because the duration of the second trust is longer than the duration of the first trust does not constitute an increase in or a change in the method of determining the compensation of the trustee.

(4) The distribution power described in subsection (1) shall not be exercised over any portion of the first trust as to which the exercising trustee is the settlor, unless the exercising trustee was acting in a fiduciary capacity when he or she created the first trust.

(5) The trustee of the second trust may be the trustee of the first trust, the second trust may be a trust under the governing instrument of the first trust or another governing instrument, the governing instrument may be created by the trustee of the first trust, and the governing instrument may be the instrument that exercises the power described in subsection (1).

(6) The second trust instrument may provide 1 or both of the following:

(a) That assets of the first trust discovered after exercise of the power described in subsection (1) shall be property of the first trust if that trust is to continue in existence after exercise of the power, or that assets of the first trust discovered after exercise of the power shall be property of the second trust if the first trust terminates upon exercise of the power.

(b) For indemnification of the trustee of the first trust, except as limited by section 7908.

(7) A trustee of the first trust may exercise the power described in subsection (1) without the consent of that trust's settlor, any beneficiary, or a court. However, the trustee shall give written notice of an intended exercise of the power to the settlors of the first trust, if living, and qualified trust beneficiaries no later than 63 days before exercise of the power. The notice required by this section shall include a copy of the proposed instrument of exercise. If the living settlors and qualified trust beneficiaries waive the 63-day notice period in writing, a distribution under subsection (1) may be made before expiration of the notice period.

(8) The period during which the vesting of a future interest may be suspended or postponed by the exercise of the power described in subsection (1) is determined under the powers of appointment act of 1967, 1967 PA 224, MCL 556.111 to 556.133, treating the power under subsection (1) as a power of appointment for purposes of this subsection.

(9) This section shall not abridge the right of a trustee who has a power to distribute trust property in further trust under the terms of a trust instrument, any other statute, or the common law. The provisions of this section shall not abridge any right of a trustee who has a power to amend or terminate a trust.

(10) As used in this section:

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(a) "First trust" means an irrevocable trust that has a discretionary trust provision that is exercised as described in subsection (1).

(b) "Tax benefit" means a federal or state tax deduction, exemption, exclusion, or other particular tax attribute. The term tax benefit does not include grantor trust status. A trust has grantor trust status to the extent that the assets of the trust are treated, for federal income tax purposes, as owned by the grantor or another person under sections 671 to 679 of the internal revenue code, 26 USC 671 to 679.

History: Add. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7821 Distribution upon termination.

Sec. 7821. (1) Upon termination or partial termination of a trust, the trustee may send to the trust beneficiaries a proposal for distribution. The right of any trust beneficiary to object to the proposed distribution terminates if the trust beneficiary does not notify the trustee of an objection within 28 days after the proposal was sent, but only if the proposal informed the trust beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) A release by a trust beneficiary of a trustee from liability for breach of trust is invalid to the extent either of the following applies:

(a) The release was induced by improper conduct of the trustee.

(b) The trust beneficiary, at the time of the release, did not know of the material facts relating to the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

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PART 9

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

700.7901 Remedies for breach of trust.

Sec. 7901. (1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:

(a) Compel the trustee to perform the trustee's duties.

(b) Enjoin the trustee from committing a breach of trust.

(c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.

(d) Order a trustee to account.

(e) Appoint a special fiduciary to take possession of the trust property and administer the trust.

(f) Suspend the trustee.

(g) Remove the trustee as provided in section 7706.

(h) Reduce or deny compensation to the trustee.

(i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.

(j) Order any other appropriate relief.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7902 Breach of trust; liability; damages.

Sec. 7902. A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.

(b) The profit the trustee made by reason of the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

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Popular name: EPIC

700.7903 Damages in absence of breach.

Sec. 7903. (1) A trustee is accountable to an affected trust beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a trust beneficiary for a loss or depreciation in the value of trust property, for failure to generate income, or for not having made a profit.

(3) This section does not do either of the following:

(a) Limit a trustee's right to compensation under section 7708 or payments allowed under section 7802(5).

(b) Make a trustee accountable to an affected beneficiary in connection with a matter to which section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7904 Attorney fees and costs; receipt of expenses and disbursements; reduction or denial of claim with respect to breach of trust.

Sec. 7904. (1) In a proceeding involving the administration of a trust, the court, as justice and equity require, may award costs and expenses, including reasonable attorney fees, to any party who enhances, preserves, or protects trust property, to be paid from the trust that is the subject of the proceeding.

(2) Subject to subsection (3), if a trustee participates in a civil action or proceeding in good faith, whether successful or not, the trustee is entitled to receive from trust property all expenses and disbursements including reasonable attorney fees that the trustee incurs in connection with its participation.

(3) A court may reduce or deny a trustee's claim for compensation, expenses, or disbursements with respect to a breach of trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7905 Commencement of proceedings; limitations.

Sec. 7905. (1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in which the alleged breach occurred.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

(3) If subsection (1) does not apply, a judicial proceeding by a trust beneficiary against a trustee for breach of trust shall be commenced within 5 years after the first of the following to occur:

(a) The removal, resignation, or death of the trustee.

(b) The termination of the trust beneficiary's interest in the trust.

(c) The termination of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7906 Reliance on trust instrument.

Sec. 7906. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a trust beneficiary for a breach of trust to the extent the breach resulted from the reliance.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7907 Event affecting administration or distribution.

Sec. 7907. If the happening of an event, including, but not limited to, marriage, divorce, performance of

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educational requirements, attainment of a specific age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7908 Exculpation of trustee.

Sec. 7908. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that either of the following applies:

(a) The term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure to diversify investments are enforceable.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7909 Beneficiary's consent, release, or ratification of transaction.

Sec. 7909. A trustee is not liable to a trust beneficiary for breach of trust if the trust beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless either of the following applies:

(a) The consent, release, or ratification of the trust beneficiary was induced by improper conduct of the trustee.

(b) At the time of the consent, release, or ratification, the trust beneficiary did not know of 1 or more of the material facts relating to the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7910 Personal liability of trustee; limitation.

Sec. 7910. (1) Unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal the trustee's representative capacity.

(2) A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of the trust estate, or on a tort committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.7911 Interest as general partner.

Sec. 7911. (1) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108, or was known by the other party to the contract.

(2) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

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(3) The immunity provided by this section does not apply with respect to a general partnership interest held in any capacity other than as trustee.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7912 Protection of person dealing with trustee.

Sec. 7912. (1) A person other than a trust beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a trust beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of the powers.

(3) A person who in good faith delivers assets to a trustee need not ensure the proper application of the assets.

(4) A person other than a trust beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7913 Certificate of trust.

Sec. 7913. (1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust containing all of the following information:

(a) The name of the trust and the date of the trust instrument and any amendments.

(b) The name and address of the currently acting trustee.

(c) The powers of the trustee relating to the purposes for which the certificate is being offered.

(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(e) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.

(2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate shall be in the form of an affidavit.

(3) A certificate of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certificate of trust to be incorrect.

(4) A certificate of trust need not contain the dispositive terms of the trust.

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(6) A person who acts in reliance upon a certificate of trust without knowledge that the representations contained in the certificate are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certificate.

(7) A person who in good faith enters into a transaction in reliance upon a certificate of trust may enforce the transaction against the trust property as if the representations contained in the certificate were correct.

(8) A person making a demand for the trust instrument in addition to a certificate of trust or excerpts is liable for damages, costs, expenses, and legal fees if the court determines that the person was not acting pursuant to a legal requirement in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

ARTICLE VIII
MISCELLANEOUS PROVISIONS

PART 1

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EFFECTIVE DATE AND REPEALER

700.8101 Effective date; applicable provisions.

Sec. 8101. (1) This act takes effect April 1, 2000.

(2) Except as provided elsewhere in this act, on this act's effective date, all of the following apply:

(a) The act applies to a governing instrument executed by a decedent dying after that date.

(b) The act applies to a proceeding in court pending on that date or commenced after that date regardless of the time of the decedent's death except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of applying this act's procedure.

(c) A fiduciary, including a person administering the estate of a minor or incompetent, holding an appointment on that date continues to hold the appointment, but has only the powers conferred by this act and is subject to the duties imposed with respect to an event occurring or action taken after that date.

(d) This act does not impair an accrued right or an action taken before that date in a proceeding. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that commences to run by the provision of a statute before this act's effective date, the provision remains in force with respect to that right.

(e) A rule of construction or presumption provided in this act applies to a governing instrument executed before that date unless there is a clear indication of a contrary intent.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.8102 Repeal of certain acts.

Sec. 8102. The following acts and parts of acts are repealed:

(a) Disclaimer of property interests act, 1996 PA 131, MCL 554.871 to 554.890.

(b) Uniform testamentary additions to trusts act, 1962 PA 83, MCL 555.461 to 555.464.

(c) Revised probate code, 1978 PA 642, MCL 700.1 to 700.993.

(d) Uniform simultaneous death act, 1941 PA 73, MCL 720.101 to 720.108.

(e) 1996 PA 433, MCL 451.471 to 451.481.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 2

MICHIGAN TRUST CODE MISCELLANEOUS PROVISIONS; EFFECTIVE DATE

700.8201 Construction of article VII.

Sec. 8201. (1) Article VII shall be construed and applied to promote its underlying purposes and policies.

(2) The following are the underlying purposes and policies of article VII:

(a) To make more comprehensive and to clarify the law governing trusts in this state.

(b) To permit the continued expansion and development of trust practices through custom, usage, and agreement of the parties.

(c) To foster certainty in the law so that settlors of trusts will have confidence that their instructions will be carried out as expressed in the terms of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.8202 Electronic records and signatures.

Sec. 8202. The provisions of article VII governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of electronic records or signatures, conform to the requirements of section 102 of the electronic signatures in global and national commerce act, 15 USC 7002, and supersede, modify, and limit the requirements of the electronic signatures in global and national commerce act, 15 USC 7001 to 7031.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.8204 Effective date.

Sec. 8204. The amendments and additions to article VII enacted by the amendatory act that added this section take effect on April 1, 2010.

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History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.8206 Application to existing relationships.

Sec. 8206. (1) Except as otherwise provided in article VII, all of the following apply on the effective date of the amendatory act that added this section:

(a) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all trusts created before, on, or after that effective date.

(b) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all judicial proceedings concerning trusts commenced on or after that effective date.

(c) The amendments and additions to article VII enacted by the amendatory act that added this section apply to judicial proceedings concerning trusts commenced before that effective date unless the court finds that application of a particular provision of the amendments and additions would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the amendments and additions does not apply and the superseded provisions apply.

(d) Any rule of construction or presumption provided in the amendments and additions to article VII enacted by the amendatory act that added this section applies to trust instruments executed before that effective date unless there is a clear indication of a contrary intent in the terms of the trust.

(2) The amendments and additions to article VII enacted by the amendatory act that added this section do not impair an accrued right or affect an act done before that effective date. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before that effective date, that statute continues to apply to the right even if it has been repealed or superseded.

(3) If any provision of the amendments and additions to article VII enacted by the amendatory act that added this section conflicts with any provision of 1846 RS 63, MCL 555.1 to 555.27, the provision of article VII prevails.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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