

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

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.

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