

HOUSE BILL No. 4414

March 9, 1989, Introduced by Reps. Fitzgerald, Bandstra, Power, Camp, Runco, Willis Bullard, Strand, Palamara, Law, Martin, Wallace, Honigman, Profit, Nye, Gubow and Hillegonds and referred to the Committee on Judiciary.

A bill to amend sections 5, 665, and 814 of Act No. 642 of the Public Acts of 1978, entitled as amended

"Revised probate code,"

being sections 700.5, 700.665, and 700.814 of the Michigan Compiled Laws; to add section 811a; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5, 665, and 814 of Act No. 642 of the
2 Public Acts of 1978, being sections 700.5, 700.665, and 700.814
3 of the Michigan Compiled Laws, are amended and section 811a is
4 added to read as follows:

5 Sec. 5. (1) "Fiduciary" includes a conservator, guardian,
6 personal representative, or a successor fiduciary. ~~Fiduciary~~
7 ~~includes a testamentary trustee until section 598 applies.~~

8 Fiduciary includes a plenary guardian or partial guardian

1 appointed as provided in chapter 6 of Act No. 258 of the Public
2 Acts of 1974, as amended, being sections 330.1600 to 330.1642 of
3 the Michigan Compiled Laws.

4 (2) The following are fiduciaries:

5 (a) Conservator.

6 (b) Foreign personal representative.

7 (c) Guardian.

8 (d) Personal representative including an independent per-
9 sonal representative.

10 ~~(e) Trustee, to the extent included in subsection (1).~~

11 (3) When used as part of the title of any fiduciary listed
12 in subsection (2):

13 (a) "Successor" fiduciary means a fiduciary who is appointed
14 to succeed a previously appointed fiduciary.

15 (b) "Temporary" fiduciary means a person acting by authority
16 of the court for a brief time until a regular fiduciary is
17 appointed or in the place of a fiduciary whose powers have been
18 suspended or revoked by the court, such as a temporary personal
19 representative or temporary guardian.

20 (4) Whenever the term fiduciary is used in this act, unless
21 otherwise specifically provided, any grant of authority to a
22 fiduciary with respect to property is limited to a fiduciary
23 serving as a personal representative ~~, trustee,~~ or
24 conservator.

25 Sec. 665. (1) Subject to confirmation by the court, the
26 fiduciary of an estate may mortgage or pledge an interest in the
27 estate for any of the following purposes:

1 (a) To pay the debts of any deceased person or ward or
2 against the estate of a deceased person or ward.

3 (b) To pay the devises provided in the last will of any
4 deceased person.

5 (c) To support a ward.

6 (d) To complete the erection of buildings begun by the
7 deceased person or ward or by some person in his OR HER behalf or
8 for his OR HER benefit.

9 (e) To mortgage a ward's interest by entirety or as a joint
10 tenant.

11 ~~(2) Subject to confirmation by the court and subject to the~~
12 ~~limitations and restrictions contained in the will or other~~
13 ~~instrument creating the testamentary trust, the fiduciary may~~
14 ~~mortgage or pledge an interest in the trust estate for any of the~~
15 ~~following purposes:~~

16 ~~(a) To pay taxes or assessment levied or assessed on the~~
17 ~~trust estate or the expenses of the management of the estate.~~

18 ~~(b) To pay the expense of erecting, altering, completing,~~
19 ~~repairing, or improving a building on the estate.~~

20 ~~(c) To pay an existing lien or mortgage on the trust estate,~~
21 ~~or on a part thereof, or a debt chargeable against the trust~~
22 ~~estate or for which it is liable.~~

23 ~~(d) To raise money for any purpose in order to carry out the~~
24 ~~provisions of the will or other instrument creating the trust.~~

25 (2) ~~(3)~~ The authority given in ~~subsections~~ SUBSECTION
26 (1) ~~and (2)~~ to mortgage or pledge property for the payment of
27 debts and devises extends to the estate only as might be sold for

1 the purpose, unless a mortgage or other lien exists against the
2 homestead of the deceased person or ward, in which event the
3 fiduciary may be authorized to mortgage the homestead for suffi-
4 cient funds to pay the mortgage or other lien and the necessary
5 expenses connected with the proceedings.

6 ~~-(4) A testamentary trustee may be authorized to make an~~
7 ~~agreement for the extension or renewal of an existing mortgage.~~

8 SEC. 811A. A TRUSTEE OF A TESTAMENTARY TRUST WHO IS NAMED
9 IN A WILL WHICH HAS BEEN ADMITTED TO PROBATE MAY QUALIFY TO SERVE
10 AS TRUSTEE OF THE TRUST BY FILING AN ACCEPTANCE OF TRUST. THE
11 COURT SHALL NOT ENTER AN ORDER OR ISSUE LETTERS OF AUTHORITY FOR
12 A TESTAMENTARY TRUST WHICH HAS BEEN ADMITTED TO PROBATE AND TO
13 WHICH A TRUSTEE HAS FILED AN ACCEPTANCE OF TRUST.

14 Sec. 814. (1) The trustee shall keep the presently vested
15 beneficiaries of the trust reasonably informed of the trust and
16 its administration.

17 (2) Within 30 days after ~~his~~ acceptance of the trust BY
18 THE TRUSTEE OF AN IRREVOCABLE INTER VIVOS TRUST, WITHIN 30 DAYS
19 AFTER AN INTER VIVOS TRUST BECOMES IRREVOCABLE, OR WITHIN 30 DAYS
20 AFTER THE QUALIFICATION OF THE TRUSTEE OF A TESTAMENTARY TRUST,
21 the trustee shall inform in writing the presently vested benefi-
22 ciaries and if possible, 1 or more persons who may represent ben-
23 eficiaries with future interests, of ~~his~~ THE TRUSTEE'S name and
24 address and of the court in which the trust is registered or pro-
25 bated, and ~~, further,~~ SHALL advise the beneficiary that he OR
26 SHE has the right to request and receive a copy of the terms of
27 the trust which describe or affect his OR HER interest and

1 relevant information about the assets and administration of the
2 trust.

3 (3) Upon reasonable request, the trustee shall provide the
4 beneficiary with a copy of the terms of the trust which describe
5 or affect his OR HER interest and with relevant information about
6 the assets of the trust and the particulars relating to the
7 administration.

8 (4) The trustee shall provide to each presently vested bene-
9 ficiary a statement of the accounts of the trust annually and on
10 termination of the trust or change of the trustee.

11 (5) ~~The~~ A trustee of a testamentary trust ~~shall~~ IS NOT
12 REQUIRED TO file a copy of any statement required by subsection
13 (4). ~~, together with a verified statement that a copy of the~~
14 ~~filed statement has been provided to each presently vested~~
15 ~~beneficiary.~~

16 Section 2. Sections 598 and 637 of Act No. 642 of the
17 Public Acts of 1978, being sections 700.598 and 700.637 of the
18 Michigan Compiled Laws, are repealed.