

SENATE BILL No. 1045

February 24, 2000, Introduced by Senator VAN REGENMORTER and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1103, 1105, 1106, 1107, 1303, 1402, 2114, 2202, 2203, 2205, 2504, 2519, 2702, 2807, 3102, 3204, 3301, 3401, 3412, 3414, 3505, 3806, 3807, 3901, 3902, 3917, 3921, 3956, 5101, 5204, 5213, 5219, 5308, 5406, 6306, 7206, 7409, 7501, and 7507 (MCL 700.1103, 700.1105, 700.1106, 700.1107, 700.1303, 700.1402, 700.2114, 700.2202, 700.2203, 700.2205, 700.2504, 700.2519, 700.2702, 700.2807, 700.3102, 700.3204, 700.3301, 700.3401, 700.3412, 700.3414, 700.3505, 700.3806, 700.3807, 700.3901, 700.3902, 700.3917, 700.3921, 700.3956, 700.5101, 700.5204, 700.5213, 700.5219, 700.5308, 700.5406, 700.6306, 700.7206, 700.7409, 700.7501, and 700.7507); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. As used in this act:

2 (a) "Agent" includes, but is not limited to, an
3 attorney-in-fact under a durable or nondurable power of attorney
4 and an individual authorized to make decisions as a patient advo-
5 cate concerning another's health care.

6 (b) "Application" means a written request to the probate
7 register for an order of informal probate or INFORMAL appointment
8 under part 3 of article III.

9 (c) "Beneficiary" includes, but is not limited to, the
10 following:

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

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

15 (iii) In relation to a beneficiary of a beneficiary designa-
16 tion, a person that is a beneficiary of an insurance or annuity
17 policy, of an account with POD designation, of a security regis-
18 tered in beneficiary form (TOD), of a pension, profit-sharing,
19 retirement, or similar benefit plan, or of another nonprobate
20 transfer at death.

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

1 (d) "Beneficiary designation" means the naming in a
2 governing instrument of a beneficiary of an insurance or annuity
3 policy, of an account with POD designation, of a security regis-
4 tered in beneficiary form (TOD), of a pension, profit-sharing,
5 retirement, or similar benefit plan, or of another nonprobate
6 transfer at death.

7 (e) "Child" includes, but is not limited to, an individual
8 entitled to take as a child under this act by intestate succes-
9 sion from the parent whose relationship is involved. Child does
10 not include an individual who is only a stepchild, a foster
11 child, or a grandchild or more remote descendant.

12 (f) "Claim" includes, but is not limited to, in respect to a
13 decedent's or protected individual's estate, a liability of the
14 decedent or protected individual, whether arising in contract,
15 tort, or otherwise, and a liability of the estate that arises at
16 or after the decedent's death or after a conservator's appoint-
17 ment, including funeral expenses and expenses of administration.
18 Claim does not include an estate or inheritance tax, or a demand
19 or dispute regarding a decedent's or protected individual's title
20 to specific property alleged to be included in the estate.

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

23 (h) "Cost-of-living adjustment factor" means $\frac{\quad}{\quad}$ a fraction,
24 the numerator of which is the United States consumer price index
25 for the prior calendar year and the denominator of which is the
26 United States consumer price index for 1997. As used in this
27 subdivision, "United States consumer price index" means the

1 annual average of the United States consumer price index for all
2 urban consumers as defined and reported by the United States
3 department of labor, bureau of labor statistics, or its successor
4 agency, and as certified by the state treasurer.

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

7 (j) "Current trust beneficiary" means a beneficiary about
8 which ~~it~~ EITHER of the following is true:

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

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

14 ~~(iii) The beneficiary possesses a testamentary or presently~~
15 ~~exercisable general or special power of appointment.~~

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

20 (l) "Devise" means, when used as a noun, a testamentary dis-
21 position of real or personal property and, when used as a verb,
22 to dispose of real or personal property by will.

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

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

3 (o) "Distributee" means a person that receives a decedent's
4 property from the decedent's personal representative other than
5 as a creditor or purchaser. A testamentary trustee is a distrib-
6 utee only to the extent that distributed property or an increment
7 of the distributed property remains in the trustee's hands. A
8 testamentary trust beneficiary to whom the trustee distributes
9 property received from a personal representative is a distributee
10 of the personal representative. For the purposes of this subdi-
11 vision, "testamentary trustee" includes a trustee to whom prop-
12 erty is transferred by will to the extent of the devised
13 property.

14 Sec. 1105. As used in this act:

15 (a) "Incapacitated individual" means an individual who is
16 impaired by reason of mental illness, mental deficiency, physical
17 illness or disability, chronic use of drugs, chronic intoxica-
18 tion, or other cause, not including minority, to the extent of
19 lacking sufficient understanding or capacity to make or communi-
20 cate informed decisions.

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

24 (c) "Interested person" OR "PERSON INTERESTED IN AN ESTATE"
25 includes, but is not limited to, an heir, devisee, child, spouse,
26 creditor, and beneficiary and any other person that has a
27 property right in or claim against a trust estate or the estate

1 of a decedent, ward, or protected individual; a person that has
2 priority for appointment as personal representative; and a fidu-
3 ciary representing an interested person. Identification of
4 interested persons may vary from time to time and shall be deter-
5 mined according to the particular purposes of, and matter
6 involved in, a proceeding, and by the supreme court rules.

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

9 (i) Life estate.

10 (ii) Eligible recipient of a mandatory or discretionary dis-
11 tribution by the trustee of income or principal.

12 (iii) Eligible recipient of a mandatory or discretionary
13 distribution by the trustee of income or principal upon termina-
14 tion of an interest of a person described in subparagraph (i) or
15 (ii).

16 (iv) Presently exercisable or testamentary general or spe-
17 cial power of appointment.

18 (e) "Issue" means an individual's descendant.

19 (f) "Joint tenants with the right of survivorship" ~~or~~
20 ~~"community property with the right of survivorship"~~ includes,
21 but is not limited to, co-owners or ownership of property held
22 under circumstances that entitle 1 or more to the whole of the
23 property on the death of the other or others, but does not
24 include forms of co-ownership registration in which the underly-
25 ing ownership of each party is in proportion to that party's
26 contribution.

1 (G) "LAWYER-GUARDIAN AD LITEM" MEANS AN ATTORNEY APPOINTED
2 UNDER SECTION 5213 OR 5219 WHO HAS THE POWERS AND DUTIES
3 REFERENCED BY AND PROVIDED IN SECTION 5213.

4 (H) ~~(g)~~ "Lease" includes, but is not limited to, an oil,
5 gas, or other mineral lease.

6 (I) ~~(h)~~ "Letters" includes, but is not limited to, letters
7 testamentary, letters of guardianship, letters of administration,
8 and letters of conservatorship.

9 Sec. 1106. As used in this act:

10 (A) "MENTAL HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS
11 TRAINED AND EXPERIENCED IN THE AREA OF MENTAL ILLNESS OR DEVELOP-
12 MENTAL DISABILITIES AND WHO IS 1 OF THE FOLLOWING:

13 (i) A PHYSICIAN WHO IS LICENSED TO PRACTICE MEDICINE OR
14 OSTEOPATHIC MEDICINE AND SURGERY IN THIS STATE UNDER ARTICLE 15
15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO
16 333.18838.

17 (ii) A PSYCHOLOGIST LICENSED TO PRACTICE IN THIS STATE UNDER
18 ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101
19 TO 333.18838.

20 (iii) A REGISTERED PROFESSIONAL NURSE LICENSED TO PRACTICE
21 IN THIS STATE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA
22 368, MCL 333.16101 TO 333.18838.

23 (iv) A CERTIFIED SOCIAL WORKER, A SOCIAL WORKER, OR A SOCIAL
24 WORKER TECHNICIAN REGISTERED IN THIS STATE UNDER ARTICLE 16 OF
25 THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1601 TO 339.1610.

1 (v) A LICENSED PROFESSIONAL COUNSELOR LICENSED TO PRACTICE
2 IN THIS STATE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA
3 368, MCL 333.16101 TO 333.18838.

4 (vi) A MARRIAGE AND FAMILY THERAPIST LICENSED UNDER
5 ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101
6 TO 333.18838.

7 (B) ~~(a)~~ "Michigan prudent investor rule" means the fidu-
8 ciary investment and management rule prescribed by part 5 of this
9 article.

10 (C) ~~(b)~~ "Minor" means an individual who is less than 18
11 years of age.

12 (D) ~~(c)~~ "Minor ward" means a minor for whom a guardian is
13 appointed solely because of minority.

14 (E) ~~(d)~~ "Mortgage" means a conveyance, agreement, or
15 arrangement in which property is encumbered or used as security.

16 (F) ~~(e)~~ "Nonresident decedent" means a decedent who was
17 domiciled in another jurisdiction at the time of his or her
18 death.

19 (G) ~~(f)~~ "Organization" means a corporation, business
20 trust, estate, trust, partnership, joint venture, association,
21 limited liability company, government, governmental subdivision
22 or agency, or another legal or commercial entity.

23 (H) ~~(g)~~ "Parent" includes, but is not limited to, an indi-
24 vidual entitled to take, or who would be entitled to take, as a
25 parent under this act by intestate succession from a child who
26 dies without a will and whose relationship is in question.

1 Parent does not include an individual who is only a stepparent,
2 foster parent, or grandparent.

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

6 (J) ~~(i)~~ "Patient advocate designation" means the written
7 document executed and with the effect as described in sections
8 5506 to 5512.

9 (K) ~~(j)~~ "Payor" means a trustee, insurer, business entity,
10 employer, government, governmental subdivision or agency, or
11 other person authorized or obligated by law or a governing
12 instrument to make payments.

13 (L) ~~(k)~~ "Person" means an individual ~~, partnership, cor=~~
14 ~~poration, association, governmental entity, or other legal~~
15 ~~entity~~ OR AN ORGANIZATION.

16 (M) ~~(l)~~ "Personal representative" includes, but is not
17 limited to, an executor, administrator, successor personal repre-
18 sentative, and special personal representative, and any other
19 person who performs substantially the same function under the law
20 governing that person's status.

21 (N) ~~(m)~~ "Petition" means a written request to the court
22 for an order after notice.

23 (O) ~~(n)~~ "Proceeding" includes an application and a peti-
24 tion, and may be an action at law or a suit in equity. A pro-
25 ceeding may be denominated a civil action under court rules.

1 (P) ~~(o)~~ "Property" means anything that may be the subject
2 of ownership, and includes both real and personal property or an
3 interest in real or personal property.

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

8 (R) ~~(q)~~ "Protective proceeding" means a proceeding under
9 the provisions of part 4 of article V.

10 Sec. 1107. As used in this act:

11 (a) "Register" or "probate register" means the official of
12 the court designated to perform the functions of register as pro-
13 vided in section 1304.

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

16 (c) "Security" includes, but is not limited to, a note,
17 stock, treasury stock, bond, debenture, evidence of indebtedness,
18 certificate of interest or participation in an oil, gas, or
19 mining title or lease or in payments out of production under such
20 a title or lease, collateral trust certificate, transferable
21 share, voting trust certificate, or interest in a regulated
22 investment company or other entity generally referred to as a
23 mutual fund or, in general, an interest or instrument commonly
24 known as a security, or a certificate of interest or participa-
25 tion for, a temporary or interim certificate, receipt, or certif-
26 icate of deposit for, or any warrant or right to subscribe to or

1 purchase any of the ~~foregoing~~ ITEMS LISTED IN THIS
2 SUBDIVISION.

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

5 (e) "Special personal representative" means a personal rep-
6 resentative as described by sections 3614 to 3618.

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

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

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

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

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

23 ~~Survive includes its derivatives, such as survives, survived,~~
24 ~~survivor, and surviving.~~

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

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

2 (m) "Trust" includes, but is not limited to, an express
3 trust, private or charitable, with additions to the trust, wher-
4 ever and however created. Trust includes, but is not limited to,
5 a trust created or determined by judgment or decree under which
6 the trust is to be administered in the manner of an express
7 trust. Trust does not include a constructive trust or a result-
8 ing trust, conservatorship, personal representative, custodial
9 arrangement under the Michigan uniform ~~gifts to minors act, 1959~~
10 ~~PA 172, MCL 554.451 to 554.461~~ TRANSFERS TO MINORS ACT, 1998 PA
11 433, MCL 554.521 TO 554.552, business trust providing for a cer-
12 tificate to be issued to a beneficiary, common trust fund, voting
13 trust, security arrangement, liquidation trust, or trust for the
14 primary purpose of paying debts, dividends, interest, salaries,
15 wages, profits, pensions, or employee benefits of any kind, or
16 another arrangement under which a person is a nominee or escrowee
17 for another.

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

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

24 (a) Determine a property right or interest.

25 (b) Authorize partition of property.

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

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

6 (e) Determine cy-pres or a gift, grant, bequest, or devise
7 in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to
8 554.353.

9 (f) Hear and decide an action or proceeding against a dis-
10 tributee of a fiduciary of the estate to enforce liability that
11 arises because the estate was liable upon some claim or demand
12 before distribution of the estate.

13 (g) Impose a constructive trust.

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

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

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

20 (K) BAR AN INCAPACITATED OR MINOR WIFE OF HER DOWER RIGHT.

21 (2) If the probate court has concurrent jurisdiction of an
22 action or proceeding that is pending in another court, on the
23 motion of a party to the action or proceeding and after a finding
24 and order on the jurisdictional issue, the other court may order
25 removal of the action or proceeding to the probate court. If the
26 action or proceeding is removed to the probate court, the other
27 court shall forward to the probate court the original of all

1 papers in the action or proceeding. After that transfer, the
2 other court shall not hear the action or proceeding, except by
3 appeal or review as provided by law or supreme court rule, and
4 the action or proceeding shall be prosecuted in the probate court
5 as a probate court proceeding.

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

11 Sec. 1402. (1) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A
12 person, including a guardian ad litem, conservator, or other
13 fiduciary, may waive notice and consent to the granting of a
14 petition by a writing signed by the person or the person's attor-
15 ney and filed in the proceeding. IF EVERY PERSON AFFECTED BY THE
16 PROCEEDING WAIVES NOTICE AND CONSENTS IN WRITING TO THE GRANTING
17 OF A PETITION, THE COURT MAY ENTER AN APPROPRIATE ORDER ON THE
18 PETITION WITHOUT A HEARING.

19 (2) A person for whom a guardianship or other protective
20 order is sought, a ward, or a protected person ~~may not~~ CANNOT
21 waive notice. A fiduciary shall not waive or consent on a peti-
22 tion, account, or report made as the fiduciary or in a different
23 fiduciary capacity.

24 Sec. 2114. (1) Except as provided in subsections (2), (3),
25 and (4), for purposes of intestate succession by, through, or
26 from an individual, an individual is the child of his or her
27 natural parents, regardless of their marital status. The parent

1 and child relationship may be established in any of the following
2 manners:

3 (a) If a child is born or conceived during a marriage, both
4 spouses are presumed to be the natural parents of the child for
5 purposes of intestate succession. A child conceived by a married
6 woman with the consent of her husband following utilization of
7 assisted reproductive technology is considered as their child for
8 purposes of intestate succession. Consent of the husband is pre-
9 sumed unless the contrary is shown by clear and convincing
10 evidence. If a man and a woman participated in a marriage cere-
11 mony in apparent compliance with the law before the birth of a
12 child, even though the attempted marriage ~~is~~ MAY BE void, the
13 child is presumed to be their child for purposes of intestate
14 succession.

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

19 (c) If a child is born out of wedlock or if a child is born
20 or conceived during a marriage but is not the issue of that mar-
21 riage, a man is considered to be the CHILD'S natural father ~~of~~
22 ~~that child~~ for purposes of intestate succession if any of the
23 following occur:

24 (i) The man joins with the CHILD'S mother ~~of the child~~ and
25 acknowledges that child as his child by completing an acknowledg-
26 ment of parentage as prescribed in the acknowledgment of
27 parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

1 (ii) The man joins the mother in a written request for a
2 correction of certificate of birth pertaining to the child that
3 results in issuance of a substituted certificate recording the
4 CHILD'S birth. ~~of the child.~~

5 (iii) The man and child have ~~borne~~ ESTABLISHED a mutually
6 acknowledged relationship of parent and child that begins before
7 the child becomes age 18 and continues until terminated by the
8 death of either.

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

12 (v) REGARDLESS OF THE CHILD'S AGE OR WHETHER OR NOT THE
13 ALLEGED FATHER HAS DIED, THE COURT WITH JURISDICTION OVER PROBATE
14 PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE DETERMINES THAT THE
15 MAN IS THE CHILD'S FATHER, USING THE STANDARDS AND PROCEDURES
16 ESTABLISHED UNDER THE PATERNITY ACT, 1956 PA 205, MCL 722.711 TO
17 722.730.

18 (2) An adopted individual is the child of his or her adop-
19 tive parent or parents and not of his or her natural parents, but
20 adoption of a child by the spouse of either natural parent has no
21 effect on either the relationship between the child and that nat-
22 ural parent or, except as provided in subsection (3), the right
23 of the child or a descendant of the child to inherit from or
24 through the other natural parent. An individual is considered to
25 be adopted for purposes of this subsection when a court of compe-
26 tent jurisdiction enters an interlocutory decree of adoption that
27 is not vacated or reversed.

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

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

15 Sec. 2202. (1) THE SURVIVING WIDOW OF A DECEDENT WHO WAS
 16 DOMICILED IN THIS STATE AND WHO DIES INTESTATE MAY FILE WITH THE
 17 COURT AN ELECTION IN WRITING THAT SHE ELECTS TO TAKE 1 OF THE
 18 FOLLOWING:

19 (A) HER INTESTATE SHARE UNDER SECTION 2102.

20 (B) HER DOWER RIGHT UNDER SECTIONS 1 TO 29 OF 1846 RS 66,
 21 MCL 558.1 TO 558.29.

22 (2) ~~(1)~~ The surviving spouse of a decedent who was domi-
 23 ciled in this state and who dies testate may file with the court
 24 an election in writing that the spouse elects 1 of the
 25 following:

26 (a) That the spouse will abide by the terms of the will.

1 (b) That the spouse will take 1/2 of the sum or share that
2 would have passed to the spouse had the testator died intestate,
3 reduced by 1/2 of the value of all property derived by the spouse
4 from the decedent by any means other than testate or intestate
5 succession upon the decedent's death.

6 (c) If a widow, that she will take her dower right under
7 sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

8 (3) ~~(2)~~ The surviving spouse ~~is entitled to only 1 elec-~~
9 ~~tion choice~~ ELECTING under subsection (1) ~~unless the contrary~~
10 ~~plainly appears by the will to be intended by the testator~~ IS
11 LIMITED TO 1 CHOICE. UNLESS THE TESTATOR'S WILL PLAINLY SHOWS A
12 CONTRARY INTENT, THE SURVIVING SPOUSE ELECTING UNDER SUBSECTION
13 (2) IS LIMITED TO 1 CHOICE. The right of election of the surviv-
14 ing spouse must be exercised during the lifetime of the surviving
15 spouse. The election must be made within 63 days after the date
16 for presentment of claims or within 63 days after ~~the filing of~~
17 ~~proof of~~ service of the inventory upon the surviving spouse,
18 whichever is later.

19 (4) ~~(3)~~ Notice of right of election shall be served upon
20 the decedent's spouse, if any, as provided in section 3705(5),
21 and proof of that notice shall be filed with the court. An elec-
22 tion as provided by this section may be filed instead of service
23 of notice and filing of proof.

24 (5) ~~(4)~~ In the case of a legally incapacitated person, the
25 right of election may be exercised only by order of the court in
26 which a proceeding as to that person's property is pending, after
27 finding that exercise is necessary to provide adequate support

1 for the legally incapacitated person during that person's life
2 expectancy.

3 (6) ~~—(5)—~~ The surviving spouse of a decedent who was not
4 domiciled in this state is entitled to election AGAINST THE
5 INTESTATE ESTATE OR against the will only as may be provided by
6 the law of the place in which the decedent was domiciled at the
7 time of death.

8 (7) ~~—(6)—~~ As used in subsection ~~—(1)—~~ (2), "property derived
9 by the spouse from the decedent" includes all of the following
10 transfers:

11 (a) A transfer made within 2 years before the decedent's
12 death to the extent that the transfer is subject to federal gift
13 or estate taxes.

14 (b) A transfer made before the date of death subject to a
15 power retained by the decedent that would make the property, or a
16 portion of the property, subject to federal estate tax.

17 (c) A transfer effectuated by the decedent's death through
18 joint ownership, tenancy by the entireties, insurance beneficia-
19 ry, or similar means.

20 Sec. 2203. If a surviving spouse fails to make an election
21 within the time specified in section 2202, it is conclusively
22 presumed that ~~—the—~~ AN INTESTATE DECEDENT'S WIDOW ELECTS HER
23 INTESTATE SHARE OR THAT A TESTATE DECEDENT'S spouse elects to
24 abide by the terms of the will, except in either of the following
25 instances:

26 (a) If an election is not made and the principal
27 administration is closed, and if after that administration is

1 closed it appears to the court that assets belonging to the
2 estate are discovered and administration is granted, the election
3 may be made out of the newly discovered assets only upon good
4 cause shown at any time before that administration is closed.

5 (b) Before the estate is closed, upon petition of the spouse
6 and after notice to all interested persons, the court may permit
7 the spouse to make an election to which the spouse was entitled
8 as though the spouse had done so within the time specified in
9 section 2202, if the court considers it proper on account of
10 litigation connected with the estate or the establishment of fur-
11 ther claims against the deceased, or for other cause. The court
12 shall limit the time within which the spouse may make an election
13 under this subdivision.

14 Sec. 2205. The rights of the surviving spouse to A SHARE
15 UNDER INTESTATE SUCCESSION, homestead allowance, election, DOWER,
16 exempt property, or family allowance may be waived, wholly or
17 partially, before or after marriage, by a written contract,
18 agreement, or waiver signed by the party waiving after fair
19 disclosure. Unless it provides to the contrary, a waiver of "all
20 rights" in the property or estate of a present or prospective
21 spouse or a complete property settlement entered into after or in
22 anticipation of separate maintenance is a waiver of all rights to
23 homestead allowance, election, DOWER, exempt property, and family
24 allowance by the spouse in the property of the other and is an
25 irrevocable renunciation by the spouse of all benefits that would
26 otherwise pass to the spouse from the other spouse by intestate

1 succession or by virtue of a will executed before the waiver or
2 property settlement.

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

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

19 _____

20 (Signature) Testator

21 We, _____ and _____,
22 the witnesses, sign our names to this document and have taken an
23 oath, administered by the officer whose signature and seal appear
24 on this document, to swear that all of the following statements
25 are true: the individual signing this document as the testator
26 executes the document as his or her will, signs it willingly or

1 willingly directs another to sign for him or her, and executes it
2 as his or her voluntary act for the purposes expressed in this
3 will; each of us, in the testator's presence, signs this will as
4 witness to the testator's signing; and, to the best of our knowl-
5 edge, the testator is 18 years of age or older, of sound mind,
6 and under no constraint or undue influence.

7 _____

8 (Signature) Witness

9 _____

10 (Signature) Witness

11 The State of _____

12 County of _____

13 Sworn to and signed in my presence by _____, the

14 testator, and sworn to and signed in my presence by

15 _____ and _____, witnesses, on

16 _____, _____.

17 _____ month/day _____ year

18 _____

19 (SEAL) (Signed)

20 _____

21 (official capacity of officer)

22 (2) An attested will may be made self-proved at any time

23 after its execution by the acknowledgment of the will by the

1 testator and the sworn statements of the witnesses to the will,
2 each made before an officer authorized to administer oaths under
3 the laws of the state in which the acknowledgment occurs and evi-
4 denced by the officer's certificate, under the official seal,
5 attached or annexed to the will in substantially the following
6 form:

7 The State of _____

8 County of _____

9 We, _____, _____, and

10 _____, the testator and the witnesses, respective-
11 ly, whose names are signed to the attached will, sign this docu-
12 ment and have taken an oath, administered by the officer whose
13 signature and seal appear on this document, to swear that all of
14 the following statements are true: the individual signing this
15 document as the will's testator executed the will as his or her
16 will, signed it willingly or willingly directed another to sign
17 for him or her, and executed it as his or her voluntary act for
18 the purposes expressed in the will; each witness, in the
19 testator's presence, signed the will as witness to the testator's
20 signing; and, to the best of the witnesses' knowledge, the testa-
21 tor, at the time of the will's execution, was 18 years of age or
22 older, of sound mind, and under no constraint or undue
23 influence.

24 _____

25 (Signature) Testator

1 _____

2 (Signature) Witness

3 _____

4 (Signature) Witness

5 Sworn to and signed in my presence by _____, the
6 testator, and sworn to and signed in my presence by

7 _____ and _____, witnesses, on _____

8 _____, _____.

9 _____ month/day _____ year

10 _____

11 (SEAL) (Signed)

12 _____

13 (official capacity of officer)

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

21 I, _____, the testator, sign my name to this docu-
22 ment on _____, _____. I have taken an oath, administered by
23 the officer whose signature and seal appear on this document,
24 swearing that the statements in this document are true. I

1 declare to that officer that this document is a codicil to my
2 will; that I sign it willingly or willingly direct another to
3 sign for me; that I execute it as my voluntary act for the pur-
4 poses expressed in this codicil; and that I am 18 years of age or
5 older, of sound mind, and under no constraint or undue
6 influence.

7 _____

8 (Signature) Testator

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

21 _____

22 (Signature) Witness

23 _____

1 (Signature) Witness

2 The State of _____

3 County of _____

4 Sworn to and signed in my presence by _____, the
5 testator, and sworn to and signed in my presence by

6 _____ and _____, witnesses, on _____

7 _____, _____.

8 _____ month/day _____ year

9 _____

10 (SEAL) (Signed)

11 _____

12 (official capacity of officer)

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

16 (5) INSTEAD OF THE TESTATOR AND WITNESSES EACH MAKING A
17 SWORN STATEMENT BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS
18 AS PRESCRIBED IN SUBSECTIONS (1) TO (3), A WILL OR CODICIL MAY BE
19 MADE SELF-PROVED BY A WRITTEN STATEMENT THAT IS NOT A SWORN
20 STATEMENT. THIS STATEMENT SHALL STATE, OR INCORPORATE BY REFER-
21 ENCE TO AN ATTESTATION CLAUSE, THE FACTS REGARDING THE TESTATOR
22 AND THE FORMALITIES OBSERVED AT THE SIGNING OF THE WILL OR CODI-
23 CIL AS PRESCRIBED IN SUBSECTIONS (1) TO (3). THE TESTATOR AND
24 WITNESSES SHALL SIGN THE STATEMENT, WHICH MUST INCLUDE ITS
25 EXECUTION DATE AND MUST BEGIN WITH SUBSTANTIALLY THE FOLLOWING

1 LANGUAGE: "I CERTIFY (OR DECLARE) UNDER PENALTY FOR PERJURY
2 UNDER THE LAW OF THE STATE OF MICHIGAN THAT..."

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

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

10 MICHIGAN STATUTORY WILL NOTICE

11 1. An individual age 18 or older and of sound mind may sign
12 a will.

13 2. There are several kinds of wills. If you choose to com-
14 plete this form, you will have a Michigan statutory will. If
15 this will does not meet your wishes in any way, you should talk
16 with a lawyer before choosing a Michigan statutory will.

17 3. Warning! It is strongly recommended that you do not add
18 or cross out any words on this form except for filling in the
19 blanks because all or part of this will may not be valid if you
20 do so.

21 4. This will has no effect on jointly held assets, on
22 retirement plan benefits, or on life insurance on your life if
23 you have named a beneficiary who survives you.

24 5. This will is not designed to reduce estate taxes.

25 6. This will treats adopted children and children born
26 outside of wedlock who would inherit if their parent died without

1 a will the same way as children born or conceived during
2 marriage.

3 7. You should keep this will in your safe deposit box or
4 other safe place. By paying a small fee, you may file this will
5 in your county's probate court for safekeeping. You should tell
6 your family where the will is kept.

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

10 INSTRUCTIONS:

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

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

19 MICHIGAN STATUTORY WILL OF _____

20 (Print or type your full name)

21 ARTICLE 1. DECLARATIONS

22 This is my will and I revoke any prior wills and codicils.

23 I live in _____ County, Michigan.

1 My spouse is _____.

2 (Insert spouse's name or write "none")

3 My children now living are:

4 _____

5 _____

6 _____

7 (Insert names or write "none")

8 ARTICLE 2. DISPOSITION OF MY ASSETS

9 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

10 (Optional)

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

17 _____

18 (Insert name of person or charity)

1 _____

2 (Insert address)

3 AMOUNT OF GIFT (In figures): \$ _____

4 AMOUNT OF GIFT (In words): _____ Dollars

5 _____

6 (Your signature)

7 Full name and address of person or charity to receive cash gift

8 (Name only 1 person or charity):

9 _____

10 (Insert name of person or charity)

11 _____

12 (Insert address)

13 AMOUNT OF GIFT (In figures): \$ _____

14 AMOUNT OF GIFT (In words): _____ Dollars

15 _____

16 (Your signature)

1 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

6 I give my spouse all my books, jewelry, clothing, automo-
7 biles, furniture, and other personal and household items not
8 included on such a separate list or statement. If I am not mar-
9 ried at the time I sign this will or if my spouse dies before me,
10 my personal representative shall distribute those items, as
11 equally as possible, among my children who survive me. If no
12 children survive me, these items shall be distributed as set
13 forth in paragraph 2.3.

14 2.3 ALL OTHER ASSETS.

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

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

25 (Select only 1)

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

4 _____

5 (Your signature)

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

8 _____

9 (Your signature)

10 GUARDIAN, AND CONSERVATOR

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

20 3.1 PERSONAL REPRESENTATIVE.

21 (Name at least 1)

1 I nominate _____

2 (Insert name of person or eligible financial
3 institution)

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

6 If my first choice does not serve, I nominate _____

7 _____

8 (Insert name of person or eligible financial institution)

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

11 3.2 GUARDIAN AND CONSERVATOR.

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

17 If a guardian or conservator is needed for a child of mine,
18 I nominate _____

19 (Insert name of individual)

20 of _____ as guardian and

1 (Insert address)

2 _____

3 (Insert name of individual or eligible financial institution)

4 of _____

5 (Insert address)

6 to serve as conservator.

7 If my first choice cannot serve, I nominate

8 _____

9 (Insert name of individual)

10 of _____ as guardian and

11 (Insert address)

12 _____

13 (Insert name of individual or eligible financial institution)

14 of _____

15 (Insert address)

16 to serve as conservator.

1 3.3 BOND.

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

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

10 _____

11 (Your signature)

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

14 _____

15 (Your signature)

16 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

19 I sign my name to this Michigan statutory will on

20 _____, ~~19~~ 20____.

21 _____

1 (Your signature)

2 NOTICE REGARDING WITNESSES

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

8 STATEMENT OF WITNESSES

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

15 _____

16 (Print Name)

17 _____

18 (Signature of witness)

19 _____

20 (Address)

21 _____

1 (City) (State) (Zip)

2 _____

3 (Print name)

4 _____

5 (Signature of witness)

6 _____

7 (Address)

8 _____

9 (City) (State) (Zip)

10 _____

11 (Print name)

12 _____

13 (Signature of witness)

14 _____

15 (Address)

16 _____

17 (City) (State) (Zip)

DEFINITIONS

1

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

4 (a) "Assets" means all types of property you can own, such
5 as real estate, stocks and bonds, bank accounts, business inter-
6 ests, furniture, and automobiles.

7 (b) "Descendants" means your children, grandchildren, and
8 their descendants.

9 (c) "Descendants" or "children" includes individuals born or
10 conceived during marriage, individuals legally adopted, and indi-
11 viduals born out of wedlock who would inherit if their parent
12 died without a will.

13 (d) "Jointly held assets" means those assets to which owner-
14 ship is transferred automatically upon the death of 1 of the
15 owners to the remaining owner or owners.

16 (e) "Spouse" means your husband or wife at the time you sign
17 this will.

18 (f) Whenever a distribution under a Michigan statutory will
19 is to be made to an individual's descendants, the assets are to
20 be divided into as many equal shares as there are then living
21 descendants of the nearest degree of living descendants and
22 deceased descendants of that same degree who leave living
23 descendants. Each living descendant of the nearest degree shall
24 receive 1 share. The remaining shares, if any, are combined and
25 then divided in the same manner among the surviving descendants
26 of the deceased descendants as if the surviving descendants who
27 were allocated a share and their surviving descendants had

1 predeceased the descendant. In this manner, all descendants who
2 are in the same generation will take an equal share.

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

6 (h) "Person" includes individuals and ~~institutions~~
7 ORGANIZATIONS.

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

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

15 ADDITIONAL CLAUSES

16 Powers of personal representative

17 1. A personal representative has all powers of administra-
18 tion given by Michigan law to personal representatives and, to
19 the extent ~~funds are~~ MONEY IS not needed to meet debts and
20 expenses currently payable and ~~are~~ IS not immediately distribu-
21 table, the power to invest and reinvest the estate from time to
22 time in accordance with the Michigan prudent investor rule. In
23 dividing and distributing the estate, the personal representative
24 may distribute partially or totally in kind, may determine the

1 value of distributions in kind without reference to income tax
2 bases, and may make non-pro rata distributions.

3 2. The personal representative may distribute estate assets
4 otherwise distributable to a minor beneficiary to the minor's
5 conservator or, in amounts not exceeding \$5,000.00 per year,
6 either to the minor, if married; to a parent or another adult
7 with whom the minor resides and who has the care, custody, or
8 control of the minor; or to the MINOR'S guardian. The personal
9 representative is free of liability and is discharged from fur-
10 ther accountability for distributing assets in compliance with
11 the provisions of this paragraph.

12 POWERS OF GUARDIAN AND CONSERVATOR

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

17 Sec. 2702. (1) For the purposes of this act, except as pro-
18 vided in subsection (4), an individual who is not established by
19 clear and convincing evidence to have survived an event, includ-
20 ing the death of another individual, by 120 hours is considered
21 to have predeceased the event.

22 (2) Except as provided in subsection (4), for purposes of a
23 provision of a governing instrument that relates to an individual
24 surviving an event, including the death of another individual, an
25 individual who is not established by clear and convincing

1 evidence to have survived the event by 120 hours is considered to
2 have predeceased the event.

3 (3) Except as provided in subsection (4), if it is not
4 established by clear and convincing evidence that 1 of 2
5 co-owners with right of survivorship survived the other co-owner
6 by 120 hours, 1/2 of the co-owned property passes as if 1 had
7 survived by 120 hours and 1/2 as if the other had survived by 120
8 hours. If there are more than 2 co-owners and it is not estab-
9 lished by clear and convincing evidence that at least 1 of them
10 survived the others by 120 hours, the property passes in the pro-
11 portion that 1 bears to the whole number of co-owners. For the
12 purposes of this subsection, "co-owners with right of
13 survivorship" includes joint tenants, tenants by the entireties,
14 and other co-owners of property or accounts held under circum-
15 stances that entitles 1 or more to the whole of the property or
16 account on the death of the other or others.

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

19 (a) The governing instrument contains language dealing
20 explicitly with simultaneous deaths or deaths in a common
21 disaster and that language is operable under the facts of the
22 case. LANGUAGE DEALING EXPLICITLY WITH SIMULTANEOUS DEATHS
23 INCLUDES LANGUAGE IN A GOVERNING INSTRUMENT THAT CREATES A PRE-
24 SUMPTION THAT APPLIES IF THE EVIDENCE IS NOT SUFFICIENT TO DETER-
25 MINE THE ORDER OF DEATHS.

26 (b) The governing instrument expressly indicates that an
27 individual is not required to survive an event, including the

1 death of another individual, by any specified period or expressly
2 requires the individual to survive the event by a specified
3 period. Survival of the event or the specified period, however,
4 must be established by clear and convincing evidence.

5 (c) The imposition of a 120-hour requirement of survival
6 would cause a nonvested property interest or a power of appoint-
7 ment to fail to qualify for validity under section 2(1)(a),
8 (2)(a), or (3)(a) of the uniform statutory rule against perpetu-
9 ities, 1988 PA 418, MCL 554.72, or to become invalid under
10 section 2(1)(b), (2)(b), or (3)(b) of the uniform statutory rule
11 against perpetuities, 1988 PA 418, MCL 554.72.

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

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

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

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

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

5 (iii) A nomination in a governing instrument, nominating a
6 divorced individual's former spouse or a relative of the divorced
7 individual's former spouse to serve in a fiduciary or representa-
8 tive capacity, including, but not limited to, a personal repre-
9 sentative, executor, trustee, conservator, agent, or guardian.

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

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

23 (3) Each provision of a governing instrument is given effect
24 as if the former spouse and relatives of the former spouse dis-
25 claimed all provisions revoked by this section or, in the case of
26 a revoked nomination in a fiduciary or representative capacity,

1 as if the former spouse and relatives of the former spouse died
2 immediately before the divorce or annulment.

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

6 (5) No change of circumstances other than as described in
7 this section and in sections 2803 to 2805, 2808, and 2809
8 ~~affects~~ CAUSES a revocation.

9 Sec. 3102. ~~To~~ EXCEPT TO COLLECT ASSETS UNDER SECTION
10 3983, TO be effective to prove the transfer of property or to
11 nominate a personal representative, a will must be declared valid
12 by a register's order of informal probate or by a court's adjudi-
13 cation of probate.

14 Sec. 3204. (1) ~~A~~ EXCEPT AS PROVIDED IN
15 SECTIONS 3308(1)(F) AND 3310, A conservator of a protected
16 individual's estate or, if there is no conservator, a guardian of
17 a minor or incapacitated individual may exercise the same right
18 to nominate, to object to another's appointment, or to partici-
19 pate in determining the preference of a majority in interest of
20 the devisees and heirs that the protected individual or ward
21 would have if qualified for appointment.

22 (2) A person who does not have priority, including priority
23 resulting from renunciation or nomination determined under this
24 section or section 3203, shall be appointed only in a formal
25 proceeding. Before appointing a person without priority, the
26 court shall determine that persons having priority have been
27 notified of the proceedings and have failed to request

1 appointment or to nominate another person for appointment, and
2 that administration is necessary.

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

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

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

16 Sec. 3301. (1) An application ~~for informal probate or~~
17 ~~informal appointment~~ shall be made by an interested person and
18 directed to the register. ~~The~~ IF AN APPLICATION IS NOT FILED
19 WITHIN 28 DAYS AFTER THE DECEDENT'S DEATH, A PERSON THAT HAS A
20 RIGHT OR CAUSE OF ACTION THAT CANNOT BE ENFORCED WITHOUT ADMINIS-
21 TRATION OR APPOINTMENT MAY FILE AN APPLICATION. AN applicant
22 shall swear that the application is accurate and complete to the
23 best of the applicant's knowledge and belief as to all of the
24 following information:

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

- 1 (i) A statement of the applicant's interest.
- 2 (ii) The decedent's name, date of death, and age; the
3 decedent's county and state of domicile at the time of death; and
4 the names and addresses of the spouse, children, devisees, and
5 heirs with the ages of ~~any~~ THOSE who are minors so far as known
6 or ascertainable with reasonable diligence by the applicant.
- 7 (iii) If the decedent was not domiciled in the state at the
8 time of the decedent's death, a statement showing venue.
- 9 (iv) A statement identifying and indicating the address of a
10 personal representative of the decedent appointed in this state
11 or elsewhere whose appointment has not been terminated.
- 12 (b) In an application for informal probate of a will, in
13 addition to the statements and information required by
14 subdivision (a), all of the following:
- 15 (i) That the original of the decedent's last will is in the
16 court's possession or accompanies the application, or that an
17 authenticated copy of a will probated in another jurisdiction
18 accompanies the application.
- 19 (ii) That, to the best of the applicant's knowledge, the
20 will was validly executed.
- 21 (iii) That, after the exercise of reasonable diligence, the
22 applicant is unaware of an instrument revoking the will and that
23 the applicant believes that the instrument that is the subject of
24 the application is the decedent's last will.
- 25 (c) In an application for informal appointment of a personal
26 representative to administer an estate under a will, all of the
27 following:

- 1 (i) A description of the will by date of execution.
- 2 (ii) The time and place of probate or OF the pending
3 application. ~~for probate.~~
- 4 (iii) A statement adopting the statements in the application
5 or petition for probate.
- 6 (iv) The name, address, and priority for appointment of the
7 person whose appointment is sought.
- 8 (d) In an application for informal appointment of a personal
9 representative in intestacy, in addition to the statements and
10 information required by subdivision (a), all of the following:
- 11 (i) That, after the exercise of reasonable diligence, the
12 applicant is unaware of any unrevoked testamentary instrument
13 relating to property located in this state under section 1301, or
14 a statement why such an instrument of which the applicant is
15 aware is not being probated.
- 16 (ii) The priority of the person whose appointment is sought
17 and the names of any other persons having a prior or equal right
18 to the appointment under section 3203.
- 19 (e) In an application for appointment of a personal repre-
20 sentative to succeed a personal representative appointed under a
21 different testacy status, all of the following:
- 22 (i) A reference to the order in the most recent testacy
23 proceeding.
- 24 (ii) The name and address of the person whose appointment is
25 sought and of the person whose appointment will be terminated if
26 the application is granted.

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

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

6 (i) A statement adopting the statements in the application
7 or petition that led to the appointment of the person being suc-
8 ceeded, except as specifically changed or corrected.

9 (ii) The name and address of the person who seeks appoint-
10 ment as successor.

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

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

17 Sec. 3401. (1) A formal testacy proceeding is litigation to
18 determine whether a decedent left a valid will. An interested
19 person OR A PERSON THAT HAS A RIGHT OR CAUSE OF ACTION THAT
20 CANNOT BE ENFORCED WITHOUT ADMINISTRATION may commence a formal
21 testacy proceeding by filing 1 of the following:

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

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

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

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

7 (3) During the pendency of a formal testacy proceeding, the
8 register shall not act upon an application. ~~for informal probate~~
9 ~~of a will of the decedent or an application for informal appoint-~~
10 ~~ment of a personal representative of the decedent.~~

11 (4) Unless a petition in a formal testacy proceeding also
12 requests confirmation of the previous informal appointment, after
13 receipt of notice of the commencement of a formal probate pro-
14 ceeding, a previously appointed personal representative shall
15 refrain from exercising the power to make any further distribu-
16 tion of the estate during the pendency of the formal proceeding.
17 A petitioner who seeks the appointment of a different personal
18 representative in a formal proceeding may also request an order
19 restraining the acting personal representative from exercising
20 that office's powers and may request the appointment of a special
21 personal representative. In the absence of a request under this
22 subsection or if the request is denied, the commencement of a
23 formal proceeding has no effect on the powers and duties of a
24 previously appointed personal representative other than those
25 relating to distribution.

26 Sec. 3412. (1) Subject to appeal and subject to vacation as
27 provided in this section and section 3413, a formal testacy order

1 under sections 3409 to 3411, including an order that the decedent
2 did not leave a valid will and that determines heirs, is final as
3 to all persons with respect to all issues concerning the
4 decedent's estate that the court considered or might have consid-
5 ered incident to its rendition relevant to the question of
6 whether the decedent left a valid will and to the determination
7 of heirs, except that:

8 (a) The court shall entertain a petition for modification or
9 vacation of its order and probate of another will of the decedent
10 if it is shown that the proponents of the later-offered will were
11 unaware of that will's existence at the time of the earlier pro-
12 ceeding, or were unaware OF THE EARLIER PROCEEDING and were given
13 no notice of ~~that earlier proceeding~~ IT, except by
14 publication.

15 (b) If intestacy of all or part of the estate has been
16 ordered, the determination of the decedent's heirs may be recon-
17 sidered if it is shown that an individual was omitted from the
18 determination and that the omitted individual was unaware of his
19 or her relationship to the decedent, was unaware of the
20 decedent's death, or was not given notice of any proceeding con-
21 cerning the decedent's estate, except by publication.

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

24 (a) If a personal representative is appointed for the
25 estate, the time of entry of an order approving final distribu-
26 tion of the estate or, if the estate is closed by statement, 6
27 months after the filing of the closing statement.

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

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

7 (4) The finding of the fact of death is conclusive as to the
8 alleged decedent only if notice of the hearing on the petition in
9 the formal testacy proceeding was sent by registered ~~or~~
10 ~~certified~~ mail addressed to the alleged decedent at his or her
11 last known address and the court finds that a search was made
12 ~~under section 3403(3)~~ AS REQUIRED BY SECTION 3403.

13 (5) If the alleged decedent is not dead, even if notice was
14 sent and the search was made, the alleged decedent may recover
15 estate assets in the hands of the personal representative. In
16 addition to any remedies available to the alleged decedent by
17 reason of any fraud or intentional wrongdoing, the alleged dece-
18 dent may recover any estate or its proceeds from distributees
19 that is in their hands, or the value of distributions received by
20 them, to the extent that any recovery from distributees is equi-
21 table in view of all of the circumstances.

22 Sec. 3414. (1) AN INTERESTED PERSON OR A PERSON THAT HAS A
23 RIGHT OR CAUSE OF ACTION THAT CANNOT BE ENFORCED WITHOUT APPOINT-
24 MENT MAY FILE A PETITION FOR A FORMAL PROCEEDING REGARDING THE
25 PRIORITY OR QUALIFICATION OF A PROSPECTIVE OR APPOINTED PERSONAL
26 REPRESENTATIVE.

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

11 (3) ~~(2)~~ If a formal proceeding precedes the appointment of
12 a personal representative, the formal proceeding stays an infor-
13 mal appointment proceeding that is pending or that is commenced
14 after the formal proceeding's commencement. If the formal pro-
15 ceeding is commenced after the appointment of a personal repre-
16 sentative and after the personal representative receives notice
17 of the commencement, the personal representative shall not exer-
18 cise a power of administration except as necessary to preserve
19 the estate or unless the court orders otherwise.

20 (4) ~~(3)~~ After notice to interested persons, including all
21 persons interested in the administration of the estate as succes-
22 sors under the applicable assumption concerning testacy, a previ-
23 ously appointed personal representative, a person having or
24 claiming priority for appointment as personal representative, and
25 any other person described in section 3403(1) or (2), the court
26 shall determine who is entitled to appointment under section
27 3203, make a proper appointment, and, if appropriate, terminate a

1 prior appointment found to be improper as provided in cases of
2 removal under section 3611.

3 Sec. 3505. Unless otherwise ordered by the court, super-
4 vised administration is terminated by an order in accordance with
5 time restrictions, notices, and contents of orders prescribed for
6 proceedings under section ~~3951~~ 3952. The court may issue an
7 interim order approving or directing a partial distribution or
8 granting other relief at any time during the pendency of a super-
9 vised administration on the petition of the personal representa-
10 tive or an interested person.

11 Sec. 3806. (1) If a claim is presented in the manner
12 described in section 3804 and within the time limit prescribed in
13 section 3803, the personal representative may deliver or mail a
14 notice to a claimant stating that the claim has been disallowed
15 in whole or in part. If, after allowing or disallowing a claim,
16 the personal representative changes a decision concerning the
17 claim, the personal representative shall notify the claimant.
18 The personal representative shall not change a decision disallow-
19 ing a claim if the time for the claimant to ~~file a petition~~
20 COMMENCE A PROCEEDING for allowance ~~passes~~ EXPIRES or if the
21 time to commence a proceeding on the claim expires and the claim
22 is barred. A claim that the personal representative disallows in
23 whole or in part is barred to the extent disallowed unless the
24 claimant ~~files a petition for allowance in the court or~~ com-
25 mences a proceeding against the personal representative not later
26 than 63 days after the mailing of the notice of disallowance or

1 partial allowance if the notice warns the claimant of the
2 impending bar.

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

12 (3) After allowing or disallowing a claim, the personal rep-
13 resentative may change the allowance or disallowance as provided
14 in this subsection. Before payment of a claim, the personal rep-
15 resentative may change the allowance to a disallowance in whole
16 or in part, but not after allowance by a court order or judgment
17 or an order directing the claim's payment. The personal repre-
18 sentative shall notify the claimant of the change to disallow-
19 ance, and the disallowed claim is then subject to bar as provided
20 in subsection (1). The personal representative may change a dis-
21 allowance to an allowance, in whole or in part, until it is
22 barred under subsection (1). After a claim is barred, it may be
23 allowed and paid only if the estate is solvent and all successors
24 whose interests would be affected consent.

25 (4) Upon the personal representative's or a claimant's
26 ~~petition~~ COMMENCEMENT OF A PROCEEDING, the court may allow in
27 whole or in part a claim properly presented in due time and not

1 barred by subsection (1). Upon an interested person's petition
2 concerning a personal representative's claim, the court may allow
3 in whole or in part the personal representative's claim properly
4 presented in due time and not previously allowed under subsection
5 (1).

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

9 (6) Unless otherwise provided in a judgment in another court
10 entered against the personal representative, an allowed claim
11 bears interest at a rate determined under section 6013 of the
12 revised judicature act of 1961, ~~1961 PA 236,~~ MCL 600.6013, for
13 the period commencing 63 days after the time for the claim's
14 original presentation expires unless based on a contract provid-
15 ing for interest, in which case the claim bears interest in
16 accordance with the contract.

17 Sec. 3807. (1) Upon the expiration of 4 months after the
18 publication date of the notice to creditors, and after providing
19 FOR DOWER, for the homestead, family, and exempt property allow-
20 ances, for claims already presented that have not yet been
21 allowed or whose allowance has been appealed, and for unbarred
22 claims that may yet be presented, including costs and expenses of
23 administration, the personal representative shall pay the claims
24 allowed against the estate in the order of priority as provided
25 in this act. A claimant whose claim has been allowed, but not
26 paid as provided in this section, may petition the court to
27 secure an order directing the personal representative to pay the

1 claim to the extent that property of the estate is available for
2 the payment.

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

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

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

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

21 Sec. 3901. In the absence of administration, the decedent's
22 heirs and devisees are entitled to the estate in accordance with
23 the terms of a probated will or the laws of intestate
24 succession. A devisee may establish title by the probated will
25 to devised property. An individual entitled to property by home-
26 stead allowance, exemption, or intestacy may establish title to
27 the property by proof of the decedent's ownership, the decedent's

1 death, and the individual's relationship to the decedent. A
2 successor takes subject to charges for administration, including
3 the creditors' claims and the surviving spouse's and dependent
4 children's allowances, and subject to the rights of others
5 resulting from abatement, retainer, advancement, or ~~redemption~~
6 ADEMPITION.

7 Sec. 3902. (1) Subject to ~~subsection (2) and except as~~
8 ~~provided in connection with the share of the surviving spouse who~~
9 ~~elects to take an elective share~~ SUBSECTIONS (2) AND (3) AND
10 EXCEPT AS PROVIDED IN SECTION 2301(3) OR 2302(1)(B)(iv),
11 distributees' shares abate, without a preference or priority
12 between real and personal property, in the following order:

13 (a) Property not disposed of by the will.

14 (b) Residuary devisees.

15 (c) General devisees.

16 (d) Specific devisees.

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

25 (3) If the will expresses a different order of abatement,
26 the will controls. If the testamentary plan or the devise's
27 express or implied purpose would be defeated by the order of

1 abatement stated in subsection (1), the distributees' shares
2 abate as found necessary to give effect to the testator's
3 intention.

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

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

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

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

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

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

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

15 (4) For the care of the ~~fund~~ MONEY received under author-
16 ity of this act, the county treasurer may take 1% from the dif-
17 ferent amounts paid out under court order unless the amount paid
18 out to a single individual exceeds \$1,000.00, in which case the
19 county treasurer shall take \$10.00 plus 1/2 of 1% of the excess
20 of the amount over \$1,000.00.

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

1 the money, the court shall order the county treasurer to pay the
2 money to the claimant.

3 (6) If a person WHOSE WHEREABOUTS ARE UNKNOWN OR WHO
4 DECLINED TO ACCEPT THE MONEY does not make a claim to ~~funds~~
5 MONEY deposited by a fiduciary before the expiration of 3 years
6 after the deposit date, the money that would be distributed under
7 this section to the person, if alive, less expenses, shall be
8 distributed by court order to each person who would be entitled
9 to the money if the person ~~were deceased~~ HAD DIED BEFORE THE
10 DATE THAT HE OR SHE BECAME ENTITLED TO THE MONEY, and the person
11 is forever barred from all claim or right to the money.

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

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

22 (2) The net amount of tax attributable to the interests
23 encompassed by subdivision (a), subdivision (b), or subdivision
24 (c) of section 3920(1) considered separately shall be the part of
25 the net amount of tax as finally determined, with any interest
26 and penalties on that amount, as the value of the interests
27 generating the tax and included in the subdivision bears to the

1 amount of the net estate. However, for an inheritance or similar
2 tax, the tax that is imposed on each beneficiary's interest, as
3 determined under the law of the state, country, or political sub-
4 division then under consideration, shall be considered the tax
5 attributable to the interest. In prorating taxes within each
6 subdivision of section 3920(1) based on the value of those inter-
7 ests generating the tax, each separate tax that an interest may
8 incur shall be prorated in the same manner. In determining the
9 proportion that each interest bears to the total value of all
10 interests generating each tax, only interests generating that
11 particular tax are considered. Property or interests generating
12 a tax do not include property or interests, whether passing under
13 a will, trust, or otherwise, to the extent the property or inter-
14 est is exempt or is initially deductible from the gross estate,
15 without regard to any subsequent diminution of the deduction by
16 reason of the charge of a part of the tax to the property or
17 interest.

18 (3) A direction in a governing instrument for tax ~~—~~ allo-
19 cation ~~—~~ and payment in a manner different from that provided
20 in sections 3920 to 3923 is effective to allocate and pay tax
21 only from property whose devolution is subject to that
22 instrument's control and with respect to which the tax is being
23 levied. However, a direction to allocate and pay tax contained
24 in a will is effective to allocate and pay tax even if the will
25 does not control the devolution of property at death with respect
26 to which the tax is being levied, including a direction in a will
27 to allocate and pay tax from a trust of which the testator was

1 the settlor and that was revocable by the settlor, or would have
2 been revocable if the settlor was not incapacitated, until the
3 settlor's death. If there is a conflict between directions in a
4 will to allocate and pay tax and the terms of another governing
5 instrument, the directions in the will control.

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

10 Sec. 3956. Unless previously barred by adjudication and
11 except as provided in the closing statement, the right of a suc-
12 cessor or creditor whose ~~claim~~ RIGHT is not otherwise barred
13 against the personal representative for breach of fiduciary duty
14 is barred unless a proceeding to assert the ~~claim~~ RIGHT is com-
15 menced within 6 months after the filing of the closing
16 statement. The right barred under this section does not include
17 the right to recover from a personal representative for fraud,
18 misrepresentation, or inadequate disclosure related to the set-
19 tlement of the decedent's estate.

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

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

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

26 (ii) The capacity and disposition of the parties involved to
27 give the child love, affection, and guidance and to continue

1 educating and raising the child in the child's religion or creed,
2 if any.

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

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

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

12 (vi) The moral fitness of the parties involved.

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

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

16 (ix) The child's reasonable preference, if the court consid-
17 ers the child to be of sufficient age to express a preference.

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

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

23 (xii) Any other factor considered by the court to be rele-
24 vant to a particular dispute regarding termination of a guardian-
25 ship, removal of a guardian, or parenting time.

26 (b) "Claim" includes, in respect to a protected individual,
27 a liability of the protected individual, whether arising in

1 contract, tort, or otherwise, and a liability of the estate that
2 arises at or after the appointment of a conservator, including
3 expenses of administration.

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

6 ~~(d) "Mental health professional" means a person who is
7 trained and experienced in the area of mental illness and who is
8 any of the following:~~

9 ~~(i) A physician who is licensed to practice medicine or
10 osteopathic medicine in this state.~~

11 ~~(ii) A psychologist who has been granted a full or limited
12 license to practice in this state.~~

13 ~~(iii) A social worker who is registered as a certified
14 social worker in this state.~~

15 ~~(iv) A registered nurse who is licensed to practice nursing
16 in this state and who is a graduate of a state-approved school of
17 nursing.~~

18 (D) ~~(e)~~ "Money" means legal tender or a note, draft, cer-
19 tificate of deposit, stock, bond, check, or credit card.

20 (E) ~~(f)~~ "Visitor" means an individual appointed in a
21 guardianship or protective proceeding who is trained in law,
22 nursing, or social work, is an officer, employee, or special
23 appointee of the court, and has no personal interest in the
24 proceeding.

25 Sec. 5204. (1) A person interested in the welfare of a
26 minor, or a minor if 14 years of age or older, may petition for
27 the appointment of a guardian for the minor. The court may order

1 the family independence agency or a court employee or agent to
2 conduct an investigation of the proposed guardianship and file a
3 written report of the investigation.

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

6 (a) The parental rights of both parents or the surviving
7 parent are terminated or suspended by prior court order, by judg-
8 ment of divorce or separate maintenance, by death, by judicial
9 determination of mental incompetency, by disappearance, or by
10 confinement in a place of detention.

11 (b) The parent or parents permit the minor to reside with
12 another person and do not provide the other person with legal
13 authority for the minor's care and maintenance, AND THE MINOR IS
14 NOT RESIDING WITH HIS OR HER PARENT OR PARENTS WHEN THE PETITION
15 IS FILED.

16 (c) All of the following:

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

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

22 (iii) The person whom the petition asks to be appointed
23 guardian is related to the minor within the fifth degree by mar-
24 riage, blood, or adoption.

25 (3) A minor's limited guardian may petition to be appointed
26 a guardian for that minor, except that the petition shall not be

1 based upon suspension of parental rights by the order that
2 appointed that person the limited guardian for that minor.

3 (4) A guardian appointed under section 5202 whose appoint-
4 ment is not prevented or nullified under section 5203 has prior-
5 ity over a guardian who may be appointed by the court. The court
6 may proceed with an appointment upon a finding that the testamen-
7 tary guardian has failed to accept the appointment within 28 days
8 after the notice of the guardianship proceeding.

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

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

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

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

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

21 (2) Upon hearing, if the court finds that a qualified person
22 seeks appointment, venue is proper, the required notices have
23 been given, the requirements of section 5204 ~~—~~ or OF sections
24 5205 and 5206 ~~—~~ are satisfied, and the minor's welfare will be
25 served by the requested appointment, the court shall make the
26 appointment. In other cases, the court may dismiss the

1 proceeding or make another disposition of the matter that will
2 serve the minor's welfare.

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

6 (4) If, at any time in the proceeding, the court determines
7 that the minor's interests are or may be inadequately represent-
8 ed, the court may appoint ~~an attorney~~ A LAWYER-GUARDIAN AD
9 LITEM to represent the minor, giving a consideration to the pref-
10 erence of the minor if the minor is 14 years of age or older.

11 (5) A LAWYER-GUARDIAN AD LITEM REPRESENTS THE CHILD AND HAS
12 POWERS AND DUTIES IN RELATION TO THAT REPRESENTATION AS SET FORTH
13 IN SECTION 17D OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939
14 PA 288, MCL 712A.17D. ALL PROVISIONS OF SECTION 17D OF CHAPTER
15 XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.17D,
16 APPLY TO A LAWYER-GUARDIAN AD LITEM APPOINTED UNDER THIS ACT: IN
17 ADDITION, BOTH OF THE FOLLOWING APPLY UNDER THIS ACT:

18 (A) IN A PROCEEDING IN WHICH A LAWYER-GUARDIAN AD LITEM REP-
19 RESENTS A CHILD, HE OR SHE MAY FILE A WRITTEN REPORT AND
20 RECOMMENDATION. THE COURT MAY READ THE REPORT AND
21 RECOMMENDATION. THE COURT SHALL NOT, HOWEVER, ADMIT THE REPORT
22 AND RECOMMENDATION INTO EVIDENCE UNLESS ALL PARTIES STIPULATE THE
23 ADMISSION. THE PARTIES MAY MAKE USE OF THE REPORT AND RECOMMEN-
24 DATION FOR PURPOSES OF A SETTLEMENT CONFERENCE.

25 (B) AFTER A DETERMINATION OF ABILITY TO PAY, THE COURT MAY
26 ASSESS ALL OR PART OF THE COSTS AND REASONABLE FEES OF A
27 LAWYER-GUARDIAN AD LITEM AGAINST 1 OR MORE OF THE PARTIES

1 INVOLVED IN THE PROCEEDINGS OR AGAINST THE MONEY ALLOCATED FROM
2 MARRIAGE LICENSE FEES FOR FAMILY COUNSELING SERVICES UNDER SEC-
3 TION 3 OF 1887 PA 128, MCL 551.103. A LAWYER-GUARDIAN AD LITEM
4 SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST REVIEWS AND
5 APPROVES THE FEE.

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

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

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

20 (4) If the court determines at any time in a proceeding that
21 the ward's interest is or may be inadequately represented, the
22 court may appoint ~~an attorney~~ A LAWYER-GUARDIAN AD LITEM to
23 represent the minor, giving consideration to the preference of
24 the minor if the minor is 14 years of age or older.

25 Sec. 5308. The guardian's authority and responsibility for
26 an incapacitated individual terminates upon the death of the
27 guardian or ward, upon the determination of incapacity of the

1 guardian, or upon removal or resignation as provided in section
2 5310. Testamentary appointment of a guardian under a will
3 INFORMALLY probated under article III terminates if the will is
4 later denied probate ~~under a supervised probate proceeding~~ IN A
5 FORMAL TESTACY PROCEEDING.

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

15 (2) Upon receipt of a petition for a conservator's appoint-
16 ment or another protective order for a reason other than minori-
17 ty, the court shall set a date for hearing. Unless the individ-
18 ual to be protected has chosen counsel or is mentally competent
19 but aged or physically infirm, the court shall appoint a guardian
20 ad litem to represent the person in the proceeding. If the
21 alleged disability is mental illness, mental deficiency, physical
22 illness or disability, chronic use of drugs, or chronic intoxica-
23 tion, the court may direct that the individual alleged to need
24 protection be examined by a physician or mental health profes-
25 sional appointed by the court, preferably a physician or mental
26 health professional who is not connected with an institution in
27 which the individual is a patient or is detained. The individual

1 alleged to need protection has the right to secure an independent
2 evaluation at his or her own expense. The court may send a vis-
3 itor to interview the individual to be protected. The visitor
4 may be a guardian ad litem or a court officer or employee.

5 (3) The court may utilize, as an additional visitor, the
6 service of a public or charitable agency to evaluate the condi-
7 tion of the individual to be protected and make appropriate rec-
8 ommendations to the court.

9 (4) The individual to be protected is entitled to be present
10 at the hearing in person. ~~—and~~ IF THE INDIVIDUAL WISHES TO BE
11 PRESENT AT THE HEARING, all practical steps must be taken to
12 ensure the individual's presence including, if necessary, moving
13 the site of the hearing. The individual is entitled to be repre-
14 sented by counsel, to present evidence, to cross-examine wit-
15 nesses, including a court-appointed physician or other qualified
16 person and a visitor, and to trial by jury. The issue may be
17 determined at a closed hearing or without a jury if the individ-
18 ual to be protected or counsel for the individual so requests.

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

25 (6) After hearing, upon finding that a basis for a
26 conservator's appointment or another protective order is

1 established by clear and convincing evidence, the court shall
2 make the appointment or other appropriate protective order.

3 Sec. 6306. The designation of a TOD beneficiary on a regis-
4 tration in beneficiary form does not ~~effect~~ AFFECT ownership
5 until the owner's death. A registration of a security in benefi-
6 ciary form may be canceled or changed at any time by the sole
7 owner or all the surviving owners without the consent of the
8 beneficiary.

9 Sec. 7206. A proceeding under section 7201 is initiated by
10 filing a petition in the court and giving notice to interested
11 persons as provided in section 1401. The court may order notifi-
12 cation of additional persons. A judgment or order ~~is valid for~~
13 BINDS each person who is given notice of the proceeding even if
14 not all interested persons are notified.

15 Sec. 7409. (1) A trustee may act under section
16 ~~7401(1)(gg)~~ 7401(2)(GG) by paying money or other property to 1
17 or more of the following:

18 (a) The minor or incapacitated individual directly.

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

23 (c) The legal or natural guardian of the minor or incapaci-
24 tated individual.

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

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

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

8 Sec. 7501. (1) The property of a trust over which the set-
9 tlor has the right WITHOUT REGARD TO THE SETTLOR'S MENTAL
10 CAPACITY, at his or her death, either alone or in conjunction
11 with another person, to revoke the trust and ~~reinvest~~ REVEST
12 principal in himself or herself is subject to all of the follow-
13 ing, but only to the extent that the settlor's property subject
14 to probate administration is insufficient to satisfy the follow-
15 ing expenses, claims, and allowances:

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

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

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

21 (2) A trust established as part of, and all payments from,
22 an employee annuity described in section 403 of the internal rev-
23 enue code, an individual retirement account described in section
24 408 of the internal revenue code, a Keogh (HR-10 plan), or a
25 retirement or other plan that is qualified under section 401 of
26 the internal revenue code shall not be considered to be a trust
27 described in subsection (1).

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

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

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

19 (a) The trustee may deliver or mail a notice to the claimant
20 stating that the claim has been disallowed in whole or in part.
21 If, after allowing or disallowing a claim, the trustee changes a
22 decision concerning the claim, the trustee shall notify the
23 claimant. The trustee ~~may~~ SHALL not change a decision disal-
24 lowing a claim if the time for the claimant to ~~file a petition~~
25 COMMENCE A PROCEEDING for allowance ~~has passed~~ EXPIRES or if
26 the time to commence a proceeding on the claim ~~has run~~ EXPIRES
27 and the claim has been barred. A claim that is disallowed in

1 whole or in part by the trustee is barred to the extent not
2 allowed unless the claimant ~~files a petition for allowance in~~
3 ~~the court or~~ commences a proceeding against the trustee not
4 later than 63 days after the mailing of the notice of disallow-
5 ance or partial allowance if the notice warns the claimant of the
6 impending bar. Failure by the trustee to deliver or mail to a
7 claimant notice of action on the claim within 63 days after the
8 time for the claim's presentation has expired constitutes a
9 notice of allowance.

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

22 (c) Upon the trustee's or a claimant's ~~petition~~
23 COMMENCEMENT OF A PROCEEDING, the court may allow in whole or in
24 part a claim properly presented in due time and not barred by
25 subdivision (a).

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

4 (e) Unless otherwise provided in a judgment in another court
5 entered against the trustee, an allowed claim bears interest at a
6 rate determined under section 6013 of the revised judicature act
7 of 1961, ~~1961 PA 236,~~ MCL 600.6013, for the period commencing
8 63 days after the time for original presentation of the claim has
9 expired, unless based on a contract that provides for interest,
10 in which case the claim bears interest in accordance with the
11 contract.

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

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

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

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

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

20 Enacting section 2. This amendatory act takes effect April
21 1, 2000.