



## PROBATE & ESTATE PLANNING SECTION

### **Agenda and Attachments for**

Friday, September 17, 2021

Annual Meeting of the Members of the Section,

Meeting of Committee on Special Projects (CSP)

Meeting of the Council of the Probate and Estate Planning Section

At the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

**Probate & Estate Planning Section of the  
State Bar of Michigan**

You are invited to the September meetings of the Council and Committee on Special Projects (CSP) and  
the Annual Meeting of the Probate & Estate Planning Section:

**Friday, September 17, beginning at 9 AM**  
at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

*to a Zoom meeting.*

*When: Sep 17, 2021 09:00 AM Eastern Time (US and Canada)*

*Register in advance for this meeting:*

<https://us02web.zoom.us/meeting/register/tZcpdeitrDlvHdHei9Z8e3IjbXHBxBthrKxk>

*After registering, you will receive a confirmation email containing information about joining the meeting.*

*If you are calling in by phone and will email your name and phone number to Angela Hentkowski  
[ahentkowski@stewardsheridan.com](mailto:ahentkowski@stewardsheridan.com), we will put your name in a zoom user list that will identify you by  
name when you call in.*

**Please note that the Zoom feature of these meetings entails that they will be recorded.**

This will be the annual meeting of the Probate & Estate Planning Section and a regular meeting of the Section's Council. Proceedings will begin at 9:00 AM with the Section's annual meeting followed by the CSP and Council meetings. Agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

James P. Spica  
Section Secretary

Chalgian & Tripp Law Offices, PLLC  
26211 Central Park Boulevard  
Suite 200  
Southfield, MI 48076  
PH: 248-799-2711  
FX: 248-799-9925  
EM: [spica@mielderlaw.com](mailto:spica@mielderlaw.com)

**Officers of the Council  
for 2020-2021 Term**

Office	Officer
Chairperson	David P. Lucas
Chairperson Elect	David L.J.M. Skidmore
Vice Chairperson	Mark E. Kellogg
Secretary	James P. Spica
Treasurer	Katie Lynwood

**Council Members  
for 2020-2021 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Caldwell, Christopher J.	2018 (2 <sup>nd</sup> term)	2021	No
Goetsch, Kathleen M.	2018 (2 <sup>nd</sup> term)	2021	No
Hentkowski, Angela M.	2018 (1 <sup>st</sup> term)	2021	Yes
Mysliwiec, Melisa M. W.	2018 (1 <sup>st</sup> term)	2021	Yes
Nusholtz, Neal	2018 (1 <sup>st</sup> term)	2021	Yes
Sprague, David	2020 (partial)	2021	Yes (2 terms)
Hasan, Nazneen	2019 (2 <sup>nd</sup> term)	2022	No
Labe, Robert B.	2019 (2 <sup>nd</sup> term)	2022	No
Mayoras, Andrew W.	2019 (1 <sup>st</sup> term)	2022	Yes
Mills, Richard C.	2019 (2 <sup>nd</sup> term)	2022	No
Piowowski, Nathan R.	2019 (2 <sup>nd</sup> term)	2022	No
Silver, Kenneth	2019 (1 <sup>st</sup> term)	2022	Yes
Olson, Kurt A.	2020 (2 <sup>nd</sup> term)	2023	No
Savage, Christine M.	2020 (2 <sup>nd</sup> term)	2023	No
Anderton, James F.	2020 (1 <sup>st</sup> term)	2023	Yes
David, Georgette E.	2020 (1 <sup>st</sup> term)	2023	Yes
Hilker, Daniel	2020 (1 <sup>st</sup> term)	2023	Yes
Krueger III, Warren H.	2020 (1 <sup>st</sup> term)	2023	Yes

## **Ex Officio Members of the Council**

Christopher Ballard; John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan, Marguerite Munson Lentz

State Bar of Michigan  
Probate and Estate Planning Section

2020 - 2021 Standing Committees

Standing Committee	mission	Chairperson	Members
Amicus Curiae	review litigants' applications and Courts' requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Nazneen Hasan Angela Hentkowski Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White
Annual meeting	plan the Section's Annual Meeting	David P. Lucas [as Section Chairperson]	[Chairperson only]
Awards	periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	Christopher A. Ballard [as immediately previous Section Chairperson]	Marlaine C. Teahan Marguerite Munson Lentz [as previous Section Chairpersons]
Budget	develop the Section's annual budget	James P. Spica [as immediately previous Section Treasurer]	Mark E. Kellogg Katie Lynwood [as incoming Treasurer and immediately previous Section Secretary]
Bylaws	review the Section's Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	Nazneen Hasan	Christopher A. Ballard John Roy Castillo David P. Lucas Nancy H. Welber
Charitable and Exempt Organizations	consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Christopher J. Caldwell	Celeste E. Arduino Michael Bartish Julia Dale Richard C. Mills Rebecca Wrock
Citizens Outreach	provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Kathleen Cieslik Michael J. McClory Neal Nusholtz Jessica M. Schilling Nicholas J. Vontroba

State Bar of Michigan  
 Probate and Estate Planning Section  
 2020 - 2021 Standing Committees

Committee on Special Projects	consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Nathan Piwowarski	meeting attendees
Court Rules, Forms, & Proceedings	consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Melisa M.W. Mysliwiec	JV Anderton Susan L. Chalgian Morgan E. Cole Hon. Michael L. Jaconette Warren H. Krueger, III Andrew W. Mayoras Michael J. McClory Marlaine C. Teahan
Electronic Communications	oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Neal Nusholtz	Michael G. Lichterman Amy N. Morrissey Jeanne Murphy Marlaine C. Teahan
Ethics & Unauthorized Practice of Law	consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Kurt A. Olson	William J. Ard Raymond A. Harris J. David Kerr Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Kathleen M. Goetsch	William J. Ard Michael W. Bartnik Kimberly Browning Kathleen A. Cieslik Raymond A. Harris Phillip E. Harter Hon. Michael L. Jaconette Michael J. McClory Kurt A. Olson James B. Steward Paul S. Vaidya

State Bar of Michigan  
 Probate and Estate Planning Section  
 2020 - 2021 Standing Committees

Legislation Development and Drafting	consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady	Howard H. Collens Aaron A. Bartell Kathleen M. Goetsch Nazneen Hasan Daniel S. Hilker Henry Lee Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Richard C. Mills Nathan Piwowarski Christine M. Savage James P. Spica David Sprague Marlaine C. Teahan
Legislation Monitoring & Analysis	monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Daniel S. Hilker	Christopher A. Ballard Ryan P. Bourjaily Georgette E. David Stephen Dunn Mark E. Kellogg Michael D. Shelton
Legislative Testimony	as requested and as available, the Members of this Committee will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Nathan Piwowarski [as CSP Chair]	[Chairperson only]
Membership	strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Angela Hentkowski	Robert B. Labe
Nominating	nominate candidates to stand for election as the officers of the Section and the members of the Council	Marlaine C. Teahan [as previous Section Chairperson]	Marguerite Munson Lentz Christopher A. Ballard [as previous Section Chairpersons]
Planning	periodically review and update the Section's Plan of Work	David P. Lucas [as Section Chairperson]	David L.J.M. Skidmore Mark E. Kellogg James P. Spica Katie Lynwood [as Section Officers]

State Bar of Michigan  
 Probate and Estate Planning Section  
 2020 - 2021 Standing Committees

Probate Institute	work with ICLE to plan the ICLE Probate and Estate Planning Institute	Mark E. Kellogg [as Section Vice Chairperson]	[Chairperson only]
Real Estate	consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Mark E. Kellogg	Jeffrey S. Ammon William J. Ard David S. Fry J. David Kerr Michael G. Lichterman Richard C. Mills James T. Ramer Kenneth F. Silver James B. Steward
State Bar & Section Journals	oversee the publication of the Section's Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Richard C. Mills	Nancy W. Little, Managing Editor Melisa M.W. Mysliwiec, Associate Editor Diane Kuhn Huff Molly Petijean
Tax	consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Mark DeLuca Stephen Dunn Robert B. Labe Raj A. Malviya Richard C. Mills Neal Nusholtz Christine M. Savage

The Probate and Estate Planning Section Chairperson is an ex-officio Member of each Standing Committee



State Bar of Michigan  
Probate and Estate Planning Section

2020 - 2021 Ad Hoc Committees

Ad Hoc Committee	mission	Chairperson	Members
Assisted Reproductive Technology	review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner
Community Property Trusts	review the statutes, case law, and legislative analysis of Michigan and other jurisdictions concerning community property trusts, and make recommendations to the Council regarding such matters	Neal Nusholtz	George W. Gregory David P. Lucas Nicholas Reister
Electronic Wills	review proposals for electronic wills, including the Uniform Law Commission's draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kurt A. Olson	Kimberly Browning Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Lawyer Drafter/Beneficiary	consider whether there should be some constraints on a lawyer as beneficiary under documents drafted by such lawyer, and make recommendations to the Council regarding such matters	Andrew W. Mayoras	David P. Lucas Kurt A. Olson Kenneth F. Silver
Legislation lobbying	maintain communication with Section's lobbyist and keep the Council informed of Section's lobbying activities	David P. Lucas	Daniel S. Hilker Nathan Piwowarski James P. Spica Robert P. Tiplady
Nonbanking Entity Trust Powers	consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady (co-Chairpersons)	JV Anderton Warren H. Krueger, III Richard C. Mills Joe Viviano
Premarital Agreements	consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Kathleen M. Goetsch Patricia M. Ouellette

State Bar of Michigan  
 Probate and Estate Planning Section  
 2020 - 2021 Ad Hoc Committees

Undue Influence	consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Marguerite Munson Lentz Raj A. Malviya Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Power of Attorney Act	consider the Uniform Power of Attorney Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	Christine M. Savage	Kathleen A. Cieslik Stephen Dunn David P. Lucas Alex Mallory Michael D. Shelton James P. Spica David Sprague

The Probate and Estate Planning Section Chairperson is an ex-officio Member of each Ad Hoc Committee

State Bar of Michigan  
Probate and Estate Planning Section

2020 - 2021 Liaisons

liaison to:	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Patricia M. Ouellette
Institute of Continuing Legal Education	Jeanne Murphy
Law Schools	[open]
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. Michael L. Jaconette
Probate Registers	[open]
Real Property Law Section	Kenneth Silver
Supreme Court Administrative Office	Melisa M.W. Mysliwicz
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each respective Liaison is to develop and maintain bilateral communication between such Liaison's respective association and the Probate and Estate Planning Section of the State Bar of Michigan, in matters of mutual interest and concern.

State Bar of Michigan  
Probate and Estate Planning Section  
2020 - 2021 Plan of Work

	Section Initiatives	Respond to Others' Initiatives	Outreach to Section or Community
legislation projects with a target of enactment in Spring 2021	--Omnibus EPIC legislation --PPTPA Delaware-Tax-Trap Planning Enhancement --Remote notarization and witnessing - permanent --Qualified Dispositions Amendment to Voidable Transactions Act --vehicle transfer-on-death legislation	--electronic wills	
legislation projects with a target of enactment in Fall 2021	--lawyer/drafter beneficiary legislation --Uniform Power of Attorney Act --ART legislation --fiduciary exception to attorney-client privilege --Premarital Agreements legislation --lawyer representation of fiduciaries --private trust company legislation --tenants by the entirety trusts legislation --community property trusts legislation		
in-Council projects	--Uniform Fiduciary Income and Principal Act review --undue influence - definition and evidentiary presumptions		--outreach to increase diversity (Diversity Pledge)
Ongoing	--Amicus matters --SCAO meetings --Forms and Court Rules		--annual ICLE Probate Institute --outreach to new lawyers --outreach to lawyers not already Section members --encourage attendance at Section Annual Meeting and Council meetings
Future projects	--review (and update, if necessary) supervision of charitable trusts by Michigan Attorney General --permit charity organizations to serve as trustees of charitable trusts		--Section webinars

(2021 - 02 - b)

# Annual Section Meeting Materials

**ANNUAL MEETING  
OF THE PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

September 17, 2021

**Agenda**

- I. Call to Order (David Lucas)
- II. Minutes of the September 11, 2020 Annual Meeting (Mark Kellogg)—**Attachment 1**
- III. Chairperson's Report (David Lucas) —**Attachment 2**
- IV. Treasurer's Report (Katie Lynwood)—**Attachment 3**
- V. Election of Council Members and Officers (David Lucas) / Nominating Committee's Report—**Attachment 4**
- VI. Other Business
- VII. Adjournment

# ATTACHMENT 1

**ANNUAL MEETING  
OF THE PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

September 11, 2020

REMOTE MEETING ONLY

**Minutes**

I. Call to Order

The Chair of the Section, Christopher Ballard, called the Annual Meeting of the Probate and Estate Planning Section to Order at 9:00 a.m.

The following Section members were present via remote attendance:

Christopher A. Ballard, Chairperson  
David P. Lucas, Chairperson Elect  
Mark E. Kellogg, Secretary  
James P. Spica, Treasurer  
Katie Lynwood  
Kurt A. Olson  
Christine M. Savage  
Raj A. Malviya  
Neal Nusholtz  
Nathan R. Piwowarski  
Christopher J. Caldwell  
Kenneth Silver  
Nazneen Hasan Syed  
Andrew W. Mayoras  
James F. Anderton  
Melisa M. W. Mysliwiec  
Richard C. Mills  
Hon. Michael L. Jaconette  
Kathleen Goetsch  
Marlene Teahan  
Marguerite Lentz  
Jody White  
Kathleen Cislik  
Warren Krueger  
David Sprague  
Rebecca Gorbutt  
Daniel Hilker  
Jeanne Murphy (ICLE)



Jeff Kirkey (ICLE)  
John McFarland  
Howard Collens  
David Lents  
Georgette David  
Stephen Dunn  
Susan Chalgain  
Andrea Neighbors (Administrative Assistant)

II. Minutes of the September 20, 2019 Annual Meeting of the Section

The minutes of the September 20, 2019 Annual Meeting of the Section were attached to the combined Agenda for the Annual Meeting and the September Council Meeting, which Agendas were posted to the Section's web page prior to the meeting. It was moved and seconded to approve such Minutes as posted and presented at the meeting. On voice vote, the Chair declared the motion approved.

III. Chairperson's Report – Christopher Ballard

Chris Ballard gave the Chair's report at the meeting. A written copy of the report is attached hereto. Chris commented that this was an unusual year for the Council. He expressed appreciation to Members of Council for their hard work on the Executive Order regarding use of electronic signatures and remote notarization. Chris also thanked the following outgoing Council Members for their work and significant contributions to the Council and the Section: Hon. Michael L. Jaconette, Raj A. Malviya and Michael G. Lichterman.

IV. Treasurer's Report – Jim Spica

Jim Spica gave the Treasurer's Report. A written copy of the Treasurer's Annual Report is attached.

V. Election of Council Members and Officers

Chris Ballard reported that the report of the Section's Nominating Committee was attached to the combined Agenda for the Annual Meeting and the September Council Meeting, which Agendas were posted to the Section's web page prior to the meeting.

The following were nominated as officers of the Council for a one-year term, beginning on October 1, 2020:

Chairperson Elect: David L.J.M Skidmore

Vice Chairperson: Mark E. Kellogg

Secretary: James P. Spica

Treasurer: Katie Lynwood

The following were nominated as members of Council for a second three-year term, beginning October 1, 2020:

Kurt A. Olson

Christine M. Savage

The following were nominated as members of the Council for an initial three-year term, beginning October 1, 2020:

James F. Anderton

Georgette E. David

Daniel Hilker

Warren H. Krueger, III

David Sprague

It was moved to elect the Section officers and Council members as nominated. On unanimous voice vote, with no votes against the motions and no abstentions, the Chair declared such individuals elected as Council officers and members.

#### VI. Other Business

It was moved and seconded to adopt the SBM Pledge to Achieve Diversity & Inclusion in the legal profession in Michigan. On unanimous voice vote, with no votes against the motion and no abstentions, the Chair declared the Pledge adopted by the Section.

#### VII. Adjournment

Having no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 9:13 a.m.

Respectfully Submitted,

Mark E. Kellogg, Secretary

# ATTACHMENT 2

Annual Chair's Report - David P. Lucas  
Probate and Estate Planning Section  
State Bar of Michigan

July 8, 2021

Annually, the Chair of each Section of the State Bar of Michigan provides a report to the State Bar regarding the activities of the Section. This report is for the Probate and Estate Planning Section of the State Bar, for the Section's September, 2020 through August 2021 Section year. The State Bar has requested that Chairs provide their reports in the format as appears below.

1. The Section held its annual meeting of Section Members on September 11, 2020. The Section's full Council held regular meetings on September 21, 2020, October 17, 2020, November 13, 2020, December 5, 2020, January 15, 2021, February 20, 2021, March 19, 2021, April 24, 2021, and June 25, 2021. Each of these meetings was held remotely (by Zoom). The Section's 2021 annual meeting of Members is scheduled for September 17, 2021; that meeting is scheduled to be in person.

The Probate and Estate Planning Section Council has 34 Committees. Each of these Committees is under the direction of the Chair appointed for that Committee. Some Committees hold regular meetings (for example, the Council's Committee on Special Projects meets immediately before each full Council meeting, and the Uniform Durable Power of Attorney Act Committee currently meets twice each week), and some Committees convene as issues within the ambit of that Committee arise or are foreseen. With so much of the Council's work done at the Committee level, and with so many Committees, it would be impossible to catalog all of the meeting dates of each Committee.

2. The Probate and Estate Planning Section is a co-sponsor of the Michigan Institute for Continuing Legal Education's annual Probate and Estate Planning Institute; the Institute was held partly by livestream in May, and is provided on-demand by ICLE. 20, 2021, held in May (in Acme, Michigan) and in June (in Plymouth, Michigan). The Section assists in planning the Institute, and Section Members provide many of the presentations at the Institute. The Section also co-sponsors a variety of other ICLE seminars (and Section Members provide many of the presentations at such seminars), such as the Annual Drafting Estate Planning Documents seminar.

3. The Probate and Estate Planning Section took Public Policy Positions

November, 2020

withdrawing the Section's prior Public Policy Position opposing HB 4260

December, 2020

opposing SB 0798 - S-1

opposing SBs 0464, 0465, and 0862

(2021 - 07 - a)

opposing HB 5795 H-1

January, 2021

in favor of legislative proposals regarding vehicle and watercraft transfer on death

April, 2021

at the request of the Michigan Supreme for an Amicus filing, authorizing an Amicus filing in *Von-Greif Estate*, requesting reversal of the Court of Appeals holding in that matter

Section members were significantly involved in addressing matters relating to the SARS - CoV-2 virus pandemic, especially including authorization for remote witnessing and remote notarization. The Council continued its work on behalf of Section members and the people of the State of Michigan, despite the virus pandemic, holding every scheduled meeting of the Council, and conducting meetings remotely.

projects - The Section's Council continued, or commenced, the following projects: EPIC Omnibus; vehicle TOD, Marital and Premarital Agreements 2020 - 02; 2019 - 02: Divided and Directed Trusteeships; remote witnessing of estate planning documents, protection for elders from abuse; entreties trusts; assisted reproductive technology; ongoing work on Court rules, forms, and proceedings

Michele Marquardt was inducted into the George A. Cooney Society, recognition of outstanding contributions to continuing legal education. Ms. Marquardt is one of only seven Michigan lawyers who have been so recognized.

(2021 - 07 - a)

# ATTACHMENT 3

## **Probate and Estate Planning Section - 2021 Annual Meeting**

### **Treasurer's Annual Report – Fiscal Year October 1, 2020 through September 30, 2021**

As of September 1, the Section has net income of approximately \$58,331.20 for the fiscal year ending September 30, 2021. The budget projected a deficit of \$27,550.

To date, there has been a reduction in expenses of approximately \$7,200 less for administrative support; \$12,000 less for travel; \$9,000 less for seminars; \$4,300 less for the newsletter; \$25,000 less for Litigation-Amicus Briefs and \$18,000 less for meetings.

Active membership is up by some 353 members compared to September 30, 2020, which accounts for an increase in dues income of \$6,795 from what was projected in the budget. The Section will likely end the fiscal year with a fund balance of about \$259,563.

Respectfully submitted,

Katie Lynwood, Treasurer

September 10, 2021

# ATTACHMENT 4



**Report of the Nominating Committee  
To the Probate & Estate Planning Council of the State Bar of Michigan  
June 25, 2021**

The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Marlaine C. Teahan, Marguerite Munson Lentz and Christopher A. Ballard.

The Committee reminds the Council and Section that under Sections 4.2.3 and 5.2 of the Section's By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section's annual meeting. Therefore, the Committee does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect David L.J.M. Skidmore, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their names:

Chairperson Elect	Mark E. Kellogg
Vice Chairperson	James P. Spica
Secretary	Katie Lynwood
Treasurer	Nathan Piwowski

For the Council for a second three-year term:

Angela M. Hentkowski  
Melisa M.W. Mysliwiec  
Neal Nusholtz

For the Council for an initial three-year term:

Sandra D. Glazier  
David Sprague  
Rebecca Wrock

David Sprague was initially elected to serve the remaining 1 year balance of Katie Lynwood's term as a member of the Council, which expires at the end of this fiscal year. Mr. Sprague is now eligible for election to two three-year terms of his own as a member of the Council.

If Nathan Piwowski is elected to the position of Treasurer of the Section, there will be one additional vacancy – for the remaining year of Nathan Piwowski's second three-year term. To fill that expected vacancy, the Committee nominates for following person to serve a one-year term:

Hon. Shauna L. Dunnings  
(Ingham County Probate Court)

If elected, Hon. Shauna L. Dunnings will be eligible to serve two additional 3-year terms.

Respectfully submitted,



Marlaine C. Teahan, Chair

# CSP Materials

**MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE  
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

**The Committee on Special Projects, or CSP, is our Section's  
“committee of the whole.” The CSP flexibly studies, in depth, a  
limited number of topics and makes recommendations to Council.  
All Section members are welcome to participate and are able to vote.**

**AGENDA**

Friday, September 17, 2021

9:00 – 9:45 AM

In person meeting at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

You are also welcome to participate by Zoom. Register in advance at:  
<https://us02web.zoom.us/join/zoom/register/tZcpdeitrDlvHdHei9Z8e3lJbXHBxBthrKxk>

**1. Christine Savage – Uniform Power of Attorney Act Ad Hoc Committee – 40 minutes**

Re: Committee recommendation regarding adoption of public policy position

For the reasons described in Exhibit 1A, the CSP will be asked to recommend that Council adopt a public policy position in favor of the modified Uniform Power of Attorney Act.

**2. Jim Spica – Uniform Fiduciary Income and Principal Act Ad Hoc Committee – 5 minutes**

Re: Progress Update

The committee will update the CSP regarding its efforts, including that: (1) the committee is currently reviewing the attached, draft unitrust act (which is based on Article 3 of the Uniform Fiduciary Income and Principal Act), (2) the committee expects to present—or to be patiently waiting its turn to present—a finished version to CSP in October or November, and (3) that meanwhile, the committee welcomes comments on the substance (as opposed to style) of the draft from any who may be willing to take a look and communicate while the committee is deliberating.

# **EXHIBIT 1A**

## **Uniform Power of Attorney Act Ad Hoc Committee**

### **Memorandum**

# Memo

To: Probate Council

From: Uniform Power of Attorney Act Committee

Date: September 10, 2021

Subject: Uniform Power of Attorney Act

---

The Council's Ad Hoc Uniform Power of Attorney Act Committee ("Committee") would like to share the attached adaptation of the Uniform Power of Attorney Act. (There is a redline showing the Committee's suggested changes to the uniform act along with a clean version with the Committee's changes incorporated.) This is the Committee's current proposal for the adoption of the uniform act in Michigan. By this time:

1. The Committee has completed three read-throughs of the proposal in its entirety, with review and discussion of each section;
2. The entire proposal has been submitted for review to the Attorney General's Elder Abuse Task Force, the Bank Counsel and Trust Counsel Committees of the Michigan Bankers Association, and the members, *ex officio* members and liaisons of the Council; and
3. The Committee has extensively reviewed, discussed and considered all comments submitted to date, incorporating or making adjustments to address many of them.

The Committee is now requesting a comprehensive review of the proposal by the Committee on Special Projects. The Committee hopes that CSP review will result in a version of the uniform act that the Council, together with the Elder Abuse Task Force and the Michigan Bankers Association, will support as a legislative initiative.

# **EXHIBIT 1B**

## **Uniform Power of Attorney Act Ad Hoc Committee**

### **Proposed Statute (Redline)**

**SECTION 101. SHORT TITLE.** This ~~[act]~~ shall be known and may be cited as the  
“Uniform-uniform Power-power of Attorney-attorney Act-act(2006)”.

**SECTION 102. DEFINITIONS.**

(1) As used ~~In-in~~ this [act]:

(a) “Acknowledged” means purportedly verified before a notary public or other  
individual authorized to take acknowledgements.

(b) “Actual knowledge” means knowledge in fact. A person who conducts  
activities through one or more employees is without actual knowledge of a fact relating to a  
power of attorney, a principal, or an agent if the employee conducting the transaction involving  
the power is without actual knowledge of the fact.

(4c) “Agent” means a person granted authority to act for a principal under a  
power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term  
includes an original agent, coagent, successor agent, and a person to which an agent’s authority  
is delegated.

(d) “Court” includes that term as defined in section 1103(j) of the estates and  
protected individuals code, 1998 PA 386, MCL 700.1103.

(2e) “Durable,” with respect to a power of attorney, means not terminated by the  
principal’s incapacity.

(3f) “Electronic” means relating to technology having electrical, digital,  
magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) “General power of appointment” means that term as defined in section 2(h) of  
the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(4h) “Good faith” means honesty in fact.

\_\_\_\_\_ (5i) “Incapacity” means inability of an individual to manage property or business affairs ~~because the individual~~ for either of the following reasons:

\_\_\_\_\_ (Ai) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; ~~or,~~

\_\_\_\_\_ (Bii) The individual is any of the following:

\_\_\_\_\_ (iA) ~~missing~~ Missing;

\_\_\_\_\_ (iiB) ~~detained~~ Detained, including incarcerated in a penal system; ~~or,~~

\_\_\_\_\_ (iiiC) ~~outside~~ Outside the United States and unable to return.

\_\_\_\_\_ (j) “Knowledge” means that term as defined in subsections (2) and (3).

\_\_\_\_\_ (6k) “Person” means an individual, ~~or~~ corporation, including a fiduciary of an estate or trust,<sup>1</sup> a business trust, ~~estate, trust,~~<sup>2</sup> partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

\_\_\_\_\_ (l) Unless the context requires otherwise, “power” means a power of attorney.

\_\_\_\_\_ (7m) “Power of attorney” means a ~~writing or other~~ written record<sup>3</sup> that grants authority to an agent to act in one or more matters on behalf ~~in the place~~ of the principal, whether or not the term power of attorney is used.

\_\_\_\_\_ (n) A power of attorney is “presented for acceptance” upon the later to occur of the following necessary conditions:

---

<sup>1</sup> Reporter protest

<sup>2</sup> Reporter initiative

<sup>3</sup> The reporter would be delighted to improve the uniform act by distinguishing between a power of attorney, on the one hand, and an instrument creating a power of attorney, on the other.



\_\_\_\_\_ (i) A person other than the principal or an agent under the power in question is asked by the principal or an agent under the power to take a specified action or actions in reliance on the power.

\_\_\_\_\_ (ii) The power of attorney itself or a copy of it is presented to, and is received by the person who is asked to take action in reliance on the power as described subparagraph (i).

\_\_\_\_\_ (8o) ~~“Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a~~ power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period is “presently” exercisable only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. ~~The term does not include a~~ power that is exercisable ~~in a fiduciary capacity or~~ only by will is not “presently” exercisable.

\_\_\_\_\_ (9p) “Principal” means an individual who grants authority to an agent in a power of attorney.

\_\_\_\_\_ (10q) “Property” means anything<sup>4</sup> that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

\_\_\_\_\_ (11r) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

\_\_\_\_\_ (12s) “Sign” means to do either of the following, with ~~present~~ intent to

---

<sup>4</sup> The reporter would be delighted to improve the uniform act by distinguishing between property (= legal rights *in rem*), on the one hand, and things that may be owned, on the other.

authenticate or adopt a record:

           ~~(Ai)~~ ~~to e~~Execute or adopt a tangible symbol; ~~or~~.

           ~~(Bii)~~ ~~to a~~Attach to or logically associate with the record an electronic sound, symbol, or process.

           ~~(13t)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

           ~~(14u)~~ “Stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner.

The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

                                  (v) An antecedent referred to by the relative pronoun “who” need not refer to an individual but may refer to anything that is a “person” within the meaning of this act.

          (2) Subject to subsection (3), a person has knowledge of a fact if one or more of the following apply:

                                  (a) The person has actual knowledge of it.

                                  (b) The person has received a notice or notification of it.

                                  (c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

          (3) An organization that conducts activities through employees has notice or knowledge of a fact involving a power of attorney, a principal, or an agent only from the time the information was received by an employee conducting a transaction involving the power or from the time the information would have been brought to the employee's attention if the organization

had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee conducting the transaction involving the power and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter concerning the transaction involving the power would be materially affected by the information.

**SECTION 103. APPLICABILITY.** This ~~act~~ applies to all powers of attorney except the following:

(~~1a~~) ~~a~~-~~A~~ power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(~~2b~~) ~~a~~-~~A~~ power to make health-care decisions;

(~~3c~~) ~~a~~-~~A~~ proxy or other delegation to exercise voting rights or management rights with respect to an entity; ~~and~~.

(~~4d~~) ~~a~~-~~A~~ power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

**SECTION 104. LIMITED PRESUMPTIONPOWER OF ATTORNEY IS DURABLEDURABILITY.** A power of attorney created ~~under~~ on or after the effective date of this ~~act~~ that is executed in accordance with subsection (2) of section 105 is durable unless it expressly provides that it is terminated by the incapacity of the principal. A power of attorney created on or after the effective date of this act that is not executed in accordance with subsection

(2) of section 105 is not durable.

**SECTION 105. EXECUTION OF POWER OF ATTORNEY.**

(1) A power of attorney created on or after the effective date of this act must be signed by the principal, or in the principal's conscious presence by another individual directed by the principal to sign the principal's name ~~on the power of attorney.~~

(2) To be durable, a power of attorney must be signed in the presence of 2 witnesses, neither of whom is an agent nominated in the power, both of whom also sign the power, and one of whom may be an individual who also acts, in the execution of the power, as a notary public or person authorized by law to take acknowledgments.

(3) A signature executing any~~on a~~ power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

**SECTION 106. VALIDITY OF POWER OF ATTORNEY.**

(a1) A power of attorney executed in this state ~~on or after [the effective date of this [act]]~~ ~~is valid if its execution complies with Section 105.~~

~~—— (b) A power of attorney executed in this state before [the effective date of this [act]] is~~ valid if, when the power was executed, the ~~its~~ execution complied with the requirements for the execution of a power of attorney under the law of this state as it existed at ~~the~~ that time ~~of execution.~~

(e2) A power of attorney that is not ~~other than~~ executed in this state is valid in this state if, when the power ~~of attorney~~ was executed, the execution complied with either of the following:

(1a) The requirements for the execution of a power of attorney under the law

of the jurisdiction that determines the meaning and effect of the power-of-attorney pursuant to ~~Section-section~~ 107; or under the law of the jurisdiction in which the principal was domiciled at the time of execution.

(~~2b~~) ~~the~~The requirements for a military power of attorney pursuant to 10 U.S.C. ~~Section-section~~ 1044b ~~[, as amended]~~.

(~~d3~~) Except as otherwise provided by statute other than this ~~[act]~~, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

**SECTION 107. MEANING AND EFFECT OF POWER OF ATTORNEY.** The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power-of-attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power-of-attorney was executed.

**SECTION 108. NOMINATION OF ~~[CONSERVATOR OR GUARDIAN]~~;  
RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.**

(~~a1~~) In a power of attorney, a principal may nominate a ~~[conservator or guardian]~~ of the principal's estate or ~~[guardian]~~ of the principal's person for ~~consideration by the court if the case in which~~ protective proceedings for the principal's estate or person are begun after the principal executes the power-of-attorney. ~~[Except for good cause shown or disqualification]~~If consistent with applicable law on priority and suitability, the court shall make its appointment in accordance with the principal's most recent nomination in a power of attorney.

(~~b2~~) If, after a principal executes a power of attorney, a court appoints a ~~[conservator or guardian]~~ of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, both of the following apply:

\_\_\_\_\_ (a) ~~the~~The agent is accountable to the fiduciary as well as to the principal.

\_\_\_\_\_ (b) ~~.[~~The power of attorney is not terminated~~]~~, and the agent's authority continues unless limited, suspended, or terminated by the court.~~]~~

#### SECTION 109. WHEN POWER OF ATTORNEY EFFECTIVE.

(a1) A power of attorney is effective when executed unless the principal provides in the power~~-of attorney~~ that it becomes effective at a specified future date or upon the occurrence of a specified future event or contingency.

(b2) If a power of attorney is intended to becomes effective upon the occurrence of a specified future event or contingency, the principal~~, in the power of attorney,~~ may, in the power, authorize one or more persons to determine in a ~~writing or other~~ record that the event or contingency has occurred.

(c3) If a power of attorney is intended to becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power~~-of attorney~~ becomes effective upon a determination in a ~~writing or other~~ record by either of the following:

(1a) ~~a~~A physician ~~[~~or licensed psychologist~~]~~ that the principal is incapacitated within the meaning of ~~Section-section~~ 102(~~5h~~)(Ai); or

(2b) ~~an~~An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of ~~Section-section~~ 102(~~5i~~)(Bii).

(d4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may, to the extent necessary or convenient in making that determination, act as the principal's personal representative pursuant to the Health Insurance

Portability and Accountability Act, ~~Sections-sections~~ 1171 through 1179 of the Social Security Act, 42 U.S.C. ~~Section-section~~ 1320d, ~~[as amended,]~~ and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

**SECTION 110. TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY.**

(a~~1~~) A power of attorney terminates when any of the following occurs:

(~~1a~~) ~~the~~ The principal dies;.

(~~2b~~) In the case of a power of attorney that is not durable, the principal becomes incapacitated, ~~if the power of attorney is not durable;~~.

(~~3c~~) ~~the~~ The principal revokes the power of attorney;.

(~~4d~~) ~~the~~ An event occurs that, according to the terms of the power of attorney, terminates the power-of attorney provides that it terminates;.

(~~5e~~) In the case of a power of attorney that is intended only for a specified, limited purpose, the specified purpose of the power ~~of attorney~~ is accomplished; ~~or~~.

(~~6f~~) ~~the~~ The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power ~~of attorney~~.

(~~b2~~) An agent's authority terminates when any of the following occurs:

(~~1a~~) ~~the~~ The principal revokes the authority;.

(~~2b~~) ~~the~~ The agent dies, becomes incapacitated, or resigns;.

(~~3c~~) ~~an~~ An action is filed for the ~~[dissolution]~~ or annulment of the agent's marriage to the principal or ~~their~~ for the legal separation of the agent and the principal, unless the

power of attorney ~~otherwise~~ provides otherwise; ~~or~~.

(~~4d~~) ~~the~~ The power of attorney terminates.

(~~e3~~) Unless the power of attorney ~~otherwise~~ provides otherwise, an agent's authority is exercisable until the authority terminates under subsection (~~b2~~), notwithstanding ~~a~~ any lapse of time since the execution of the power ~~of attorney~~.

(~~d4~~) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person ~~that~~ who, without actual knowledge of the termination, acts in good faith under or in reliance upon the power ~~of attorney~~. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(~~e5~~) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power ~~of attorney~~ as to an agent or other person ~~that~~ who, without actual knowledge of the incapacity, acts in good faith under or in reliance upon the power ~~of attorney~~. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(~~f6~~) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power ~~of attorney~~ provides that the previous power ~~of attorney~~ is revoked or that all other powers of attorney are revoked.

#### **SECTION 111. COAGENTS AND SUCCESSOR AGENTS.**

(~~a1~~) A principal may designate two or more persons to act as coagents. Unless the power of attorney ~~otherwise~~ provides otherwise, each coagent may exercise ~~its~~ the authority granted in the power independently.

(~~b2~~) A principal may designate one or more successor agents ~~to act if~~ for the case in which an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to



1 serve. A principal may grant authority to designate one or more successor agents to an agent or  
 2 other person designated by name, office, or function. Unless the power of attorney ~~otherwise~~  
 3 provides otherwise, a successor agent:

4 ~~\_\_\_\_\_ (1)~~ has the same authority as that granted to the original agent; and

5 ~~\_\_\_\_\_ (2)~~ may not act until all of the successor agent's predecessor ~~agents~~ under the  
 6 terms of the power of attorney have resigned, died, become incapacitated, are no longer qualified  
 7 to serve, or have declined to serve.

8 (e3) Except ~~as otherwise provided into the extent~~ the power ~~of attorney and subsection~~  
 9 ~~(d) provides that coagents and successor agents shall be liable for one another's misconduct~~, an  
 10 agent ~~that under a given power of attorney who~~ does not participate in or conceal a breach of  
 11 fiduciary duty committed by another agent, ~~including a predecessor agent, who is or was serving~~  
 12 under that power, including a predecessor agent under the power, is ~~not~~ liable for the actions of  
 13 the other agent only as provided in subsection (4).

14 (d4) An agent ~~that serving under a given power of attorney who~~ has actual knowledge of  
 15 a breach or imminent breach of fiduciary duty by another agent who is or was serving under that  
 16 power, including a predecessor agent under the power, shall notify the principal and, if the  
 17 principal is incapacitated, take any action reasonably appropriate in the circumstances to  
 18 safeguard the principal's best interest. An agent ~~that who~~ fails to notify the principal or take  
 19 action as required by this subsection is liable for the reasonably foreseeable damages that could  
 20 have been avoided if the agent had notified the principal or taken such action.

21 **SECTION 112. REIMBURSEMENT AND COMPENSATION OF AGENT.** Unless  
 22 the power of attorney ~~otherwise~~ provides otherwise, an agent is entitled to both of the following:

23 (a) reimbursement ~~Reimbursement~~ of expenses reasonably incurred on behalf of the

principal~~and to~~.

(b) Reasonable compensation for services rendered on behalf of the principal that is reasonable under the circumstances.

**SECTION 113. AGENT'S ACCEPTANCE.** Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority ~~or performing duties~~ as an agent or by any other assertion or conduct indicating acceptance.

**SECTION 114. AGENT'S DUTIES.**

(a1) Notwithstanding provisions to the contrary in the power of attorney, an agent ~~that~~ who has accepted appointment shall do all of the following:

(1a) ~~act~~ Act in accordance with ~~the principal's~~ reasonable expectations ~~to the extent of the principal that are~~ actually known ~~by to~~ the agent and, ~~otherwise to the extent such expectations are not actually known,~~ act in the principal's best interest~~;~~.

(2b) ~~act~~ Act in good faith~~;~~ and.

(3c) ~~act~~ Act only within the scope of authority granted by the principal in the power of attorney.

(d) Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

(b2) Except as otherwise provided in the power of attorney, an agent ~~that~~ who has accepted appointment shall do all of the following:

(1a) ~~act~~ Act loyally for the principal's benefit~~;~~.

(2b) ~~act~~ Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest~~;~~.

(3c) ~~act~~ Act with the care, competence, and diligence ~~ordinarily exercised by~~  
~~agents in similar circumstances;~~ that a prudent person would in dealing with the property of  
another.

~~————— (4) keep a record of all receipts, disbursements, and transactions made on behalf~~  
~~of the principal;~~

(5d) ~~cooperate~~ Cooperate with a person ~~that who~~ who has authority to make health-  
care decisions for the principal to carry out ~~the principal's~~ reasonable expectations ~~to the extent of~~  
the principal concerning health-care that are actually known ~~by to~~ to the agent and, to the extent  
such expectations are not actually known otherwise, to act in the principal's best interest; ~~and.~~

(6e) ~~attempt~~ Attempt to preserve the principal's estate plan; to the extent that plan  
is actually known ~~by to~~ to the agent, ~~if and~~ and preserving the plan is consistent with the principal's best  
interest based on ~~all~~ relevant factors; including all of the following:

(Ai) ~~the~~ The value and nature of the principal's property; ~~;~~

(Bii) ~~the~~ The principal's foreseeable obligations and need for  
maintenance; ~~;~~

(Ciii) ~~minimization of~~ The desirability of minimizing taxes, including  
income, estate, inheritance, generation-skipping transfer, and gift taxes; ~~and.~~

(Div) ~~eligibility~~ Eligibility for a benefit, a program, or assistance under a  
statute or regulation.

(e3) An agent ~~that who~~ who acts in good faith is not liable to any beneficiary of the  
principal's estate plan for failure to preserve the plan.

(d4) An agent ~~that who~~ who acts for the best interest of the principal with the care,  
competence, and diligence that a prudent person would in dealing with the property of another

~~for the best interest of the principal~~ is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence ~~under the circumstances~~.

(f6) ~~Absent a breach of duty to the principal, an agent is not liable if the~~ A decline in the value of the principal's property declines is not in itself sufficient to establish a breach of fiduciary duty.

(g7) An agent ~~that who~~ exercises authority to delegate to another person the authority granted by the principal or ~~that who~~ engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(h8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If a person who is authorized by the power of attorney or by this subsection to request a disclosure described in this subsection makes such a request ~~requested, within 30 days~~ the agent shall comply with the request within 30 days or provide a ~~writing or other~~ record substantiating why additional time is needed ~~and shall. In the latter case,~~

1 the agent shall comply with the request within an additional 30 days.

2 **SECTION 115. EXONERATION OF AGENT.** A provision in a power of attorney  
3 relieving an agent of liability for breach of duty is binding on the principal and the principal's  
4 successors in interest except to the extent ~~the provision~~neither of the following applies:

5 (4a) The provision relieves the agent of liability for breach of duty committed  
6 ~~dishonestly in bad faith, with an improper motive,~~ or with reckless indifference to the purposes of  
7 the power of attorney or the best interest of the principal; ~~or.~~

8 (2b) The provision was inserted as a result of an abuse of a confidential or fiduciary  
9 relationship with the principal.

10 **SECTION 116. JUDICIAL RELIEF.**

11 (a1) ~~The~~Any of the following persons may petition a court to construe a power of  
12 attorney or review the agent's conduct; and grant appropriate relief:

13 (4a) ~~the~~The principal or the agent;~~.~~

14 (2b) ~~a~~A guardian, conservator, or other fiduciary acting for the principal;~~.~~

15 (3c) ~~a~~A person ~~authorized who, at the time of the petition, is exercising authority~~  
16 to make health-care decisions for the principal;~~.~~

17 (4d) ~~the~~The principal's [spouse, parent, or descendant].<sup>5</sup>

18 (5e) ~~an~~An individual who, at the time of the petition, would ~~qualify as a~~  
19 ~~presumptive~~be an heir of the principal if the principal were to die intestate at that time.~~.~~

20 (6f) ~~a~~A person named as a beneficiary to receive any property, benefit, or  
21 contractual right on the principal's death or as a beneficiary of a trust created by or for the  
22 principal ~~that~~the trustee of which has a financial interest in the principal's estate;~~.~~

---

<sup>5</sup> See *infra* note 7 and accompanying text.

\_\_\_\_\_ (g) The personal representative of the principal's estate.

(7h) ~~a~~ A governmental agency having regulatory authority to protect the welfare of the principal;

(8i) ~~the principal's~~ A caregiver ~~or another person that~~ who demonstrates a sufficient significant affected interest in the principal's welfare or another person who demonstrates such an interest; ~~and.~~

(9j) ~~a~~ A person asked to accept the power of attorney.

(b2) Upon motion by the principal, the court shall dismiss a petition filed under ~~this section,~~ subsection (1) unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney or that the motion is the effect of undue influence, fraud, or duress.

(3) Any of the following persons may petition a court to review conduct regulated by this act on the part of a person to whom a power of attorney is presented for acceptance and to grant appropriate relief:

\_\_\_\_\_ (a) The principal or the agent.

\_\_\_\_\_ (b) A guardian, conservator, or other court-appointed fiduciary acting for the principal.

#### SECTION 117. AGENT'S LIABILITY.

\_\_\_\_\_ (1) An agent ~~that~~ who violates this ~~[act]~~ is liable to the principal or the principal's successors in interest for both of the amount required to ~~following:~~

\_\_\_\_\_ (4a) The amount required to restore the value of the principal's property to what it would have been had the violation not occurred; ~~and.~~

\_\_\_\_\_ (2b) ~~reimburse the~~ Reimbursement to the principal or the principal's successors in

interest ~~for the~~ attorney's fees and costs paid on the agent's behalf in connection with the breach.

(2) If an agent embezzles or wrongfully converts the principal's property, or refuses, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successors in interest upon demand, the agent is liable in an action brought by the principal or the principal's successors in interest for treble the value of any property embezzled, converted, or wrongfully withheld from the principal or the principal's successors in interest.

**SECTION 118. AGENT'S RESIGNATION; NOTICE.** Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal ~~and, provided that~~ if the principal is incapacitated, notice shall be given as follows:

~~(1a) to~~ To the ~~{conservator or guardian}~~, if one has been appointed for the principal, and to a coagent or successor agent; ~~or.~~

~~(2b)~~ To a coagent or successor agent if a conservator or guardian has not been appointed for the principal.

(c) if ~~If~~ there is no person described in paragraph ~~(1a)~~ or paragraph (b), to one of the following:

~~(A)~~ (A) the principal's A caregiver;  
(B) of the principal who is reasonably believed by the agent to have a significant interest in the principal's welfare or another person who is reasonably believed by the agent to have ~~suffieient~~ such an interest ~~in the principal's welfare; or.~~

~~(Cii) a~~ A governmental agency having authority to protect the welfare of the principal.

**SECTION 119. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED  
POWER OF ATTORNEY.**

~~(a1) For purposes of this section and Section 120, “acknowledged” means purportedly  
verified before a notary public or other individual authorized to take acknowledgements.~~

~~——(b)~~ A person ~~that~~ who in good faith accepts an acknowledged power of attorney without  
actual knowledge that the signature is not genuine may rely upon the presumption under ~~Section~~  
section 105 that the signature is genuine.

~~(e2)~~ A person ~~that~~ who in good faith accepts an acknowledged power of attorney without  
actual knowledge that the power ~~of attorney~~ is void, invalid, or terminated, that the purported  
agent’s authority is void, invalid, or terminated, or that the agent is exceeding ~~or improperly~~  
~~exereising~~ the agent’s authority may rely upon the power ~~of attorney~~ as if the power ~~of attorney~~  
were genuine, valid, and still in effect, the agent’s authority were genuine, valid, and still in  
effect, and the agent had not exceeded and had properly exercised the authority.

~~(d3)~~ A person ~~that~~ who is asked to accept an acknowledged power of attorney may  
request, and may rely, without further investigation, upon, any of the following ~~without further~~  
~~investigation:~~

~~(1a)~~ ~~an agent’s~~ A certification under penalty of perjury by an agent or an attorney  
at law who represents either the agent or the principal of any factual matter concerning the  
principal, agent, or power of attorney;

~~(2b)~~ an English translation of the power of attorney if the power ~~of attorney~~  
contains, in whole or in part, language other than English and the translation’s accuracy is the  
subject of either a certification or an opinion of counsel; ~~and.~~

~~(3c)~~ ~~an~~ An opinion of counsel as to any matter of law concerning the power of



attorney if the person ~~making the request~~ ing the opinion provides explains the reason for the  
request in a ~~writing or other record the reason for the request.~~

(e4) ~~Except as provided in subsection (5), An an~~ English translation or an opinion of  
counsel requested under this section must be provided at the principal's expense unless the  
request is made more than seven business days after the power of attorney is presented for  
acceptance.

(5) If a person who is asked to accept an acknowledged power of attorney requests an  
opinion of counsel under subsection (3), and a court finds that, in light of the language of the  
power, this act, and the surrounding circumstances, the reason for the request as stated in the  
required record is frivolous, the person making the request is subject to liability for reasonable  
attorney's fees and costs incurred in providing the requested opinion.

~~—— (f) For purposes of this section and Section 120, a person that conducts activities through~~  
~~employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an~~  
~~agent if the employee conducting the transaction involving the power of attorney is without~~  
~~actual knowledge of the fact.~~

## **Alternative A**

### **SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY.**

(a1) Except as otherwise provided in subsection (b3):  
~~—— (1),~~ a person shall either accept an acknowledged power of attorney or request a  
certification, a translation, or an opinion of counsel under ~~Section section~~ 119(d3) no later than  
seven business days after ~~presentation of the power~~ is presented of attorney for acceptance; and  
a person may not require an additional or different form of power of attorney for authority

granted in the acknowledged power presented.

———(2) Except as otherwise provided in subsection (3), if a person requests a certification, a translation, or an opinion of counsel under ~~Section~~section 119(~~d3~~), the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel;~~and~~

———(3) ~~a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.~~

(~~b3~~) A person is not required to accept ~~an acknowledged~~a power of attorney if any of the following applies:

(~~1a~~) ~~the~~The person is not ~~otherwise~~ required to engage in a transaction with the principal in the same circumstances~~;~~.

(~~2b~~) ~~engaging~~Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(~~3c~~) ~~the~~The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power~~;~~.

(~~4d~~) ~~a~~The person's request for a certification, a translation, or an opinion of counsel under ~~Section~~section 119(~~d3~~) is refused~~;~~.

(~~5e~~) ~~the~~The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under ~~Section~~section 119(~~d3~~) has been requested or provided~~;~~~~or~~.

(~~6f~~) ~~the~~The person in good faith makes, or has actual knowledge that another person has made, a report to the ~~[local~~ adult protective services office] stating a ~~good faith~~ belief

that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(e4) A person ~~that~~ who refuses in violation of this section to accept an acknowledged power of attorney is subject to:

~~—————(1) a court order mandating acceptance of the power of attorney; and~~

~~—————(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.~~

~~—————(5) A person who refuses in violation of this section to accept an acknowledged power of attorney after having requested and received a certification, a translation, or an opinion of counsel under section 119(3) is subject, in addition to liability described in subsection (4), to liability for reasonable attorney's fees and costs incurred in providing the requested certification, translation, or opinion of counsel.~~

#### **Alternative B**

~~—————SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED STATUTORY FORM POWER OF ATTORNEY.~~

~~—————(a) In this section, "statutory form power of attorney" means a power of attorney substantially in the form provided in Section 301 or that meets the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b [, as amended].~~

~~—————(b) Except as otherwise provided in subsection (c):~~

~~—————(1) a person shall either accept an acknowledged statutory form power of attorney or request a certification, a translation, or an opinion of counsel under Section 119(d) no later than seven business days after presentation of the power of attorney for acceptance;~~

~~\_\_\_\_\_ (2) if a person requests a certification, a translation, or an opinion of counsel under Section 119(d), the person shall accept the statutory form power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and~~

~~\_\_\_\_\_ (3) a person may not require an additional or different form of power of attorney for authority granted in the statutory form power of attorney presented.~~

~~\_\_\_\_\_ (c) A person is not required to accept an acknowledged statutory form power of attorney if:~~

~~\_\_\_\_\_ (1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;~~

~~\_\_\_\_\_ (2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;~~

~~\_\_\_\_\_ (3) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;~~

~~\_\_\_\_\_ (4) a request for a certification, a translation, or an opinion of counsel under Section 119(d) is refused;~~

~~\_\_\_\_\_ (5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Section 119(d) has been requested or provided; or~~

~~\_\_\_\_\_ (6) the person makes, or has actual knowledge that another person has made, a report to the [local adult protective services office] stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.~~

~~\_\_\_\_\_ (d) A person that refuses in violation of this section to accept an acknowledged statutory~~

~~form power of attorney is subject to:~~

~~————— (1) a court order mandating acceptance of the power of attorney; and~~

~~————— (2) liability for reasonable attorney's fees and costs incurred in any action or  
proceeding that confirms the validity of the power of attorney or mandates acceptance of the  
power of attorney.~~

**~~End of Alternatives~~**

**SECTION 121. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a  
provision of this {act}, ~~the~~ principles of law and equity supplement this {act}.

**SECTION 122. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND  
CERTAIN OTHER ENTITIES.** This {act} does not supersede any other law applicable to  
financial institutions or other regulated entities, and ~~the such~~ other law controls if to the extent it  
is inconsistent with this {act}.

**SECTION 123. REMEDIES UNDER OTHER LAW.** The remedies under this {act}  
are not exclusive and do not abrogate any right or remedy under the law of this state other than  
this {act}.

**{ARTICLE} 2**

**AUTHORITY**

**SECTION 201. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT  
OF GENERAL AUTHORITY.**

**(a1)** An agent under a power of attorney may do the following on behalf of the principal  
or with the principal's property only if the power ~~of attorney~~ expressly grants the agent the  
authority and exercise of the authority is not ~~otherwise~~ prohibited by another agreement or  
instrument to which the authority or property is subject:

(1a) ~~create~~Create, amend, revoke, or terminate an inter vivos trust~~;~~<sub>2</sub>

(2b) ~~make~~Make a gift~~;~~<sub>2</sub>

(3c) ~~create~~Create or change rights of survivorship~~;~~<sub>2</sub>

(4d) ~~create~~Create or change a beneficiary designation~~;~~<sub>2</sub>

(5e) ~~delegate~~Delegate authority granted under the power of attorney~~;~~<sub>2</sub>

(6f) ~~waive~~Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan~~;~~<sub>2</sub> ~~[or]~~<sub>2</sub>.

(7g) ~~exercise~~Exercise fiduciary powers that the principal has authority to delegate~~;~~<sub>2</sub> ~~[or]~~<sub>2</sub>.

(8h) ~~exercise~~Exercise authority over the content of electronic communications, as defined in 18 U.S.C. ~~Section~~section 2510(12)~~[, as amended,]~~ sent or received by the principal~~;~~<sub>2</sub>

~~or~~<sub>2</sub>

~~\_\_\_\_\_ (9) disclaim property, including a power of appointment].~~

(b2) Notwithstanding a grant of authority to do an act described in subsection (a1), unless the power of attorney ~~otherwise~~ provides otherwise, an agent [that who is not an ancestor, spouse, or descendant of the principal] [who is not the principal's spouse] [that is not an ancestor, spouse, or descendant of the principal]<sup>6</sup> may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(e3) Subject to subsections (a1), (b2), (d4), and (e5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority

---

<sup>6</sup> A sometime member of the Committee was firmly of the opinion that this provision should read, "an agent who is not the principal's spouse may not . . . ."

described in ~~Sections-sections~~ 204 ~~through to~~ 216.

(~~d4~~) Unless the power of attorney ~~otherwise~~ provides otherwise, a grant of authority to make a gift is subject to ~~Section-section~~ 217.

(~~e5~~) Subject to subsections (a1), (b2), and (~~d4~~), if the subjects over which authority is granted ~~in-by~~ a power of attorney are similar or overlap, the broadest authority controls.

(~~f6~~) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power ~~of attorney~~ is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power ~~of attorney~~ is executed in this state.

(~~g7~~) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

## SECTION 202. INCORPORATION OF AUTHORITY.

(a1) An agent has authority described in this {article} if the power of attorney does either of the following:

~~\_\_\_\_\_ (a) refers to general authority with respect to the descriptive term for the subjects stated in Sections 204 through 217 or cites~~ Cites the section in which the authority is described.

~~\_\_\_\_\_ (b) Refers to general authority by the descriptive term, for example, "real property" or "tangible personal property," used in this article to indicate the subject of any of the sections 204 to 217.~~

(b2) A ~~reference in a~~ power of attorney that incorporates by reference to general authority with respect to the descriptive term for a subject in Sections 204 through 217 or a citation to a any section of ~~Sections-sections~~ 204 ~~through to~~ 217 pursuant to subsection (1)

incorporates the entire section as if ~~it~~ that section were set out in full in the power ~~of attorney~~.

(~~e3~~) A principal may modify authority incorporated by reference.

**SECTION 203. CONSTRUCTION OF AUTHORITY GENERALLY.** Except as otherwise provided in the power of attorney, by executing a power ~~of attorney~~ that incorporates by reference a subject described in ~~Sections~~ sections 204 ~~through to~~ 217 pursuant to subsection (1) or that grants to an agent authority to do all acts that a principal could do pursuant to ~~Section~~ section 201(~~e3~~), a principal authorizes the agent, with respect to that subject, to do all the following:

(~~1a~~) ~~demand~~ Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended~~;~~.

(~~2b~~) ~~contract~~ Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal~~;~~.

(~~3c~~) ~~execute~~ Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney~~;~~.

(~~4d~~) ~~initiate~~ Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim~~;~~.

(~~5e~~) ~~seek~~ Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney~~;~~.



(6f) ~~engage~~Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor~~;~~.

(7g) ~~prepare~~Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation~~;~~.

(8h) ~~communicate~~Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal~~;~~.

(9i) ~~access~~Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means~~;~~and.

(10j) ~~do~~Do any lawful act with respect to the subject and all property related to the subject.

**SECTION 204. REAL PROPERTY.** Unless the power of attorney~~-otherwise~~ provides ~~otherwise~~, language in a power~~-of attorney~~ granting general authority with respect to real property authorizes the agent to do all the following:

(1a) ~~demand~~Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property~~;~~.

(2b) ~~sell~~Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property~~;~~.

(3c) ~~pledge~~Pledge or mortgage an interest in real property or right incident to real

property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4d) ~~release~~Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5e) ~~manage~~Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all of the following:

(Ai) ~~insuring~~Insuring against liability or casualty or other loss;

(Bii) ~~obtaining~~Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(Ciii) ~~paying~~Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; ~~and~~.

(Div) ~~purchasing~~Purchasing supplies, hiring ~~assistance or~~ labor, and making repairs or alterations to the real property;

(6f) ~~use~~Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7g) ~~participate~~Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following:

(Ai) ~~selling~~Selling or otherwise disposing of them;

(Bii) ~~exereising~~Exercising or selling an option, right of conversion, or similar

right with respect to them;~~and.~~

(~~Ciii~~) ~~exercising~~ Exercising any voting rights in person or by proxy~~;~~

(~~8h~~) ~~change~~ Change the form of title of an interest in or right incident to real property~~;~~

~~and.~~

(~~9i~~) ~~dedicate~~ Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

**SECTION 205. TANGIBLE PERSONAL PROPERTY.** Unless the power of

attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to tangible personal property authorizes the agent to do all the following:

(~~1a~~) ~~demand~~ Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in<sup>7</sup> tangible personal property~~;~~

(~~2b~~) ~~sell~~ Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property~~;~~

(~~3c~~) ~~grant~~ Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal~~;~~

(~~4d~~) ~~release~~ Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property~~;~~

---

<sup>7</sup> See *supra* note 4.

(~~5e~~) ~~manage~~Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(~~AI~~) ~~insuring~~Insuring against liability or casualty or other loss~~;~~.

(~~Bii~~) ~~obtaining~~Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise~~;~~.

(~~Ciii~~) ~~paying~~Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments~~;~~.

(~~Div~~) ~~moving~~Moving the property from place to place~~;~~.

(~~Ey~~) ~~storing~~Storing the property for hire or on a gratuitous bailment~~;~~and.

(~~Fvi~~) ~~using~~Using and making repairs, alterations, or improvements to the property~~;~~and.

(~~6f~~) ~~change~~Change the form of title of an interest in tangible personal property.

**SECTION 206. STOCKS AND BONDS.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to stocks and bonds authorizes the agent to do all the following:

(~~1a~~) ~~buy~~Buy, sell, and exchange stocks and bonds~~;~~.

(~~2b~~) ~~establish~~Establish, continue, modify, or terminate an account with respect to stocks and bonds~~;~~.

(~~3c~~) ~~pledge~~Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal~~;~~.

(~~4d~~) ~~reeeive~~Receive certificates and other evidences of ownership with respect to stocks and bonds~~;~~and.

(~~5e~~) ~~exereise~~Exercise voting rights with respect to stocks and bonds in person or by

proxy, enter into voting trusts, and consent to limitations on the right to vote.

**SECTION 207. COMMODITIES AND OPTIONS.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power-~~of attorney~~ granting general authority with respect to commodities and options authorizes the agent to do either of the following:

(~~1a~~) ~~buy~~Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange;~~and.~~

(~~2b~~) ~~establish~~Establish, continue, modify, and terminate option accounts.

**SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power-~~of attorney~~ granting general authority with respect to banks and other financial institutions authorizes the agent to do all the following:

(~~1a~~) ~~continue~~Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;~~.~~

(~~2b~~) ~~establish~~Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;~~.~~

(~~3c~~) ~~contract~~Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;~~.~~

(~~4d~~) ~~withdraw~~Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;~~.~~

(~~5e~~) ~~reeeive~~Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;~~.~~

(~~6f~~) ~~enter~~Enter a safe deposit box or vault and withdraw or add to the contents;~~.~~

(7g) ~~borrow~~Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;;

(8h) ~~make~~Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;;

(9i) ~~reeive~~Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;;

(10j) ~~apply~~Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;~~and~~;

(11k) ~~consent~~Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

**SECTION 209. OPERATION OF ENTITY OR BUSINESS.** Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to operation of an entity or business authorizes the agent to do all the following:

(1a) ~~operate~~Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;;

(2b) ~~perform~~Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;;

(3c) ~~enforce~~Enforce the terms of an ownership agreement<sub>;</sub>

(4d) ~~initiate~~Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest<sub>;</sub>

(5e) ~~exereise~~Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds<sub>;</sub>

(6f) ~~initiate~~Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds<sub>;</sub>

(7g) ~~with~~With respect to an entity or business owned solely by the principal do all of the following:

(Ai) ~~continue~~Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney<sub>;</sub>

(Bii) ~~determine~~Determine all of the following:

(iA) ~~the~~The location of the entity or business's operation<sub>;</sub>

(iiB) ~~the~~The nature and extent of ~~its~~the business<sub>;</sub>

(iiiC) ~~the~~The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the entity or business's operation<sub>;</sub>

(ivD) ~~the~~The amount and types of insurance carried<sub>;</sub> ~~and~~<sub>;</sub>

(vE) ~~the~~The mode of engaging, compensating, and dealing with the entity or business's employees and accountants, attorneys, or other advisors<sub>;</sub>

(Ciii) ~~change~~Change the name or form of organization under which the entity or business is operated ~~and or~~ enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business;~~and~~.

(Div) ~~demand~~Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business~~;~~.

(8h) ~~put~~Put additional capital into an entity or business in which the principal has an interest~~;~~.

(9i) ~~join~~Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business~~;~~.

(10j) ~~sell~~sell or liquidate all or part of an entity or business~~;~~.

(11k) ~~establish~~Establish the value of an entity or business under a buy-out agreement to which the principal is a party~~;~~.

(12l) ~~prepare~~Prepare, sign, file, and deliver reports, compilations of information, returns, or other ~~papers-records~~ with respect to an entity or business and make related payments;~~and~~.

(13m) ~~pay~~Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

**SECTION 210. INSURANCE AND ANNUITIES.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to insurance and annuities authorizes the agent to do all the following:

(1a) ~~continue~~Continue, pay the premium or make a contribution on, modify, exchange,



rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2b) ~~procure~~ Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

(3c) ~~pay~~ Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4d) ~~apply~~ Apply for and receive a loan secured by a contract of insurance or annuity;

(5e) ~~surrender~~ Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6f) ~~exercise~~ Exercise an election;

(7g) ~~exercise~~ Exercise investment powers available under a contract of insurance or annuity;

(8h) ~~change~~ Change the manner of paying premiums on a contract of insurance or annuity;

(9i) ~~change~~ Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10j) ~~apply~~ Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11k) ~~collect~~ Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(12l) ~~select~~ Select the form and timing of the payment of proceeds from a contract of

insurance or annuity; ~~and.~~

(~~13m~~) ~~pay~~Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

## SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS.

(~~a1~~) ~~In this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.~~

~~—(b)~~ Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all the following:

(~~1a~~) ~~accept~~Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest; ~~2~~

(~~2b~~) ~~demand~~Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise; ~~3~~

(~~3c~~) ~~exercise~~Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal; ~~4~~

(~~4d~~) ~~initiate~~Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; ~~5~~

(5e) ~~initiate~~Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary~~;~~.

(6f) ~~conserve~~Conserve, invest, disburse, or use anything received for an authorized purpose~~;~~ ~~[and]~~.

(7g) ~~transfer~~Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor ~~;~~ ~~and~~.

(8h) ~~rejeet~~Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest~~;~~.

(2) As used in this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

**SECTION 212. CLAIMS AND LITIGATION.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to claims and litigation authorizes the agent to do all the following:

(1a) ~~assert~~Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief~~;~~.

(2b) ~~bring~~Bring an action to determine adverse claims or intervene or otherwise participate in litigation~~;~~.

(3c) ~~seek~~Seek an attachment, garnishment, order of arrest, or other preliminary,

provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4d) ~~make~~ Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(5e) ~~submit~~ Submit to alternative dispute resolution, settle, and propose or accept a compromise;

(6f) ~~waive~~ Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon ~~which~~ whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7g) ~~aet~~ Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8h) ~~pay~~ Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; ~~and~~.

(9i) ~~receive~~ Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

**SECTION 213. PERSONAL AND FAMILY MAINTENANCE.**

(a) Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to personal and family maintenance authorizes the agent to do all the following:

(1a) ~~perform~~ Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether they are living when the power of attorney is executed or ~~later are~~ born later:

(Ai) ~~the~~ The principal's children; ~~and~~

(Bii) ~~other individuals~~ Individuals legally entitled to be supported by the principal; ~~and~~

(Ciii) ~~the individuals~~ Individuals whom the principal has customarily supported or indicated the intent to support; ~~and~~

(2b) ~~make~~ Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party; ~~and~~

(3c) ~~provide~~ Provide living quarters for the individuals described in paragraph (1a) by doing either of the following:

(Ai) ~~purchase~~ Purchase, lease, or other contract; ~~or~~

(Bii) ~~paying~~ Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals; ~~and~~

(4d) ~~provide~~ Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph

(~~4a~~);

(~~5e~~) ~~pay~~ Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (~~4a~~);.

(~~6f~~) ~~act~~ Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, ~~Sections-sections~~ 1171 ~~through to~~ 1179 of the Social Security Act, 42 U.S.C. ~~Section-section~~ 1320d, ~~[as amended,]~~ and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;.

(~~7g~~) ~~continue~~ Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (~~4a~~);.

(~~8h~~) ~~maintain~~ Maintain credit and debit accounts for the convenience of the individuals described in paragraph (~~4a~~) and open new accounts ~~for that purpose; and.~~

(~~9i~~) ~~continue~~ Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue ~~an established pattern of~~ contributions to those organizations.

(~~b2~~) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this ~~[act].~~

## **SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE.**

(~~a1~~) ~~In this section, "benefits from governmental programs or civil or military service"~~

1 ~~means any benefit, program or assistance provided under a statute or regulation including Social~~  
2 ~~Security, Medicare, and Medicaid.~~

3 ~~——(b)~~ Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of~~  
4 ~~attorney~~ granting general authority with respect to benefits from governmental programs or civil  
5 or military service authorizes the agent to do all the following:

6 (1a) ~~exeeute~~Execute vouchers in the name of the principal for allowances and  
7 reimbursements payable by the United States or a foreign government or by a state or  
8 subdivision of a state to the principal, including allowances and reimbursements for  
9 transportation of the individuals described in ~~Section~~section 213(a1)(1a), and for shipment of  
10 their household effects;

11 (2b) ~~take~~Take possession and order the removal and shipment of property of the  
12 principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either  
13 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,  
14 shipping ticket, certificate, or other instrument for that purpose;

15 (3c) ~~enroll~~Enroll in, apply for, select, reject, change, amend, or discontinue, on  
16 the principal's behalf, a benefit or program;

17 (4d) ~~prepare~~Prepare, file, and maintain a claim of the principal for a benefit or  
18 assistance, financial or otherwise, to which the principal may be entitled under a statute or  
19 regulation;

20 (5e) ~~initiate~~Initiate, participate in, submit to alternative dispute resolution, settle,  
21 oppose, or propose or accept a compromise with respect to litigation concerning any benefit or  
22 assistance the principal may be entitled to receive under a statute or regulation; ~~and~~.

23 (6f) ~~receive~~Receive the financial proceeds of a claim described in paragraph (4d)

and conserve, invest, disburse, or use for a lawful purpose anything so received.

(2) As used in this section, “benefits from governmental programs or civil or military service” means any benefit, program, or other assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.

## **SECTION 215. RETIREMENT PLANS.**

~~(a) In this section, “retirement plan” means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:~~

~~————— (1) an individual retirement account under Internal Revenue Code Section 408, 26 U.S.C. Section 408 [, as amended];~~

~~————— (2) a Roth individual retirement account under Internal Revenue Code Section 408A, 26 U.S.C. Section 408A [, as amended];~~

~~————— (3) a deemed individual retirement account under Internal Revenue Code Section 408(q), 26 U.S.C. Section 408(q) [, as amended];~~

~~————— (4) an annuity or mutual fund custodial account under Internal Revenue Code Section 403(b), 26 U.S.C. Section 403(b) [, as amended];~~

~~————— (5) a pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a) [, as amended];~~

~~————— (6) a plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section 457(b) [, as amended]; and~~

~~————— (7) a nonqualified deferred compensation plan under Internal Revenue Code Section 409A, 26 U.S.C. Section 409A [, as amended].~~



1 ~~\_\_\_\_\_ (b) Unless the power of attorney otherwise provides otherwise, language in a power of~~  
2 ~~attorney granting general authority with respect to retirement plans authorizes the agent to do all~~  
3 ~~the following:~~

4 ~~(1a) select-Select~~ the form and timing of payments under a retirement plan and  
5 withdraw benefits from a plan;

6 ~~(2b) make-Make~~ a rollover, ~~including or~~ a ~~direct~~ trustee-to-trustee  
7 ~~rollover, transfer~~ of benefits from one retirement plan to another;

8 ~~(3c) establish-Establish~~ a retirement plan in the principal's name;

9 ~~(4d) make-Make~~ contributions to a retirement plan;

10 ~~(5e) exercise-Exercise~~ investment powers available under a retirement plan; ~~and~~

11 ~~(6f) borrow-Borrow~~ from, sell assets to, or purchase assets from a retirement plan  
12 ~~as permitted by the plan.~~

13 ~~\_\_\_\_\_ (2) In this section, "retirement plan" means a plan or account created by an employer, the~~  
14 ~~principal, or another individual to provide retirement benefits or deferred compensation of which~~  
15 ~~the principal is a participant, beneficiary, or owner, including a plan or account under any of the~~  
16 ~~following sections of the Internal Revenue Code:~~

17 ~~\_\_\_\_\_ (a) An individual retirement account under Internal Revenue Code section 408,~~  
18 ~~26 U.S.C. section 408.~~

19 ~~\_\_\_\_\_ (b) A Roth individual retirement account under Internal Revenue Code section~~  
20 ~~408A, 26 U.S.C. section 408A.~~

21 ~~\_\_\_\_\_ (c) A deemed individual retirement account under Internal Revenue Code section~~  
22 ~~408(q), 26 U.S.C. section 408(q).~~

23 ~~\_\_\_\_\_ (d) An annuity or mutual fund custodial account under Internal Revenue Code~~

section 403(b), 26 U.S.C. section 403(b).

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code section 401(a), 26 U.S.C. section 401(a).

(f) A plan under Internal Revenue Code section 457(b), 26 U.S.C. section 457(b).

(g) A nonqualified deferred compensation plan under Internal Revenue Code section 409A, 26 U.S.C. section 409A.

**SECTION 216. TAXES.** Unless the power of attorney ~~otherwise~~ provides otherwise, language in a power ~~of attorney~~ granting general authority with respect to taxes authorizes the agent to do all the following:

(~~1a~~) ~~prepare~~ Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code ~~Section-section~~ 2032A, 26 U.S.C. ~~Section-section~~ 2032A, ~~[as amended,]~~ closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years~~;~~.

(~~2b~~) ~~pay~~ Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority~~;~~.

(~~3c~~) ~~exereise~~ Exercise any election available to the principal under federal, state, local, or foreign tax law, including consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. section 2513, to the splitting of one or more gifts made by the principal's spouse; ~~and.~~

(~~4d~~) ~~aet~~ Act for the principal in all tax matters for all periods before the Internal Revenue

Service, or other taxing authority.

## SECTION 217. GIFTS.

(a) ~~In this section, a gift “for the benefit of” a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act (1983/1986), and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529 [, as amended].~~

~~Unless the power of attorney otherwise provides otherwise, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:~~

~~(1) make outright gifts of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, to, or for the benefit of, a person or persons, a gift of any of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b), [as amended,] without regard to whether the federal gift tax exclusion applies to the gift, or if the principal’s spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, 26 U.S.C. 2513, [as amended,] in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and~~

~~(2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513, [as amended,] to the splitting of a gift made by the principal’s spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.~~

~~(c) An agent may make a gift of the principal’s property only as the agent determines is consistent with the principal’s objectives if actually known by the agent and, to the extent the~~

principal's objectives are if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including the following:

(~~4a~~) ~~the~~ The value and nature of the principal's property~~;~~.

(~~2b~~) ~~the~~ The principal's foreseeable obligations and need for maintenance~~;~~.

(~~3c~~) The desirability of minimizing~~minimization of~~ taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes~~;~~.

(~~4d~~) ~~eligibility~~ Eligibility for a benefit, a program, or assistance under a statute or regulation~~;~~ and.

(~~5e~~) ~~the~~ The principal's personal history of making ~~or joining in making~~ gifts.

(2) As used in this section, a gift "for the benefit of" a person includes, without limitation,<sup>8</sup> a gift in trust, an account under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. section 529, and an ABLE account as defined under Internal Revenue Code section 529A, 26 U.S.C. section 529A.

### ~~{~~ARTICLE~~}~~ 3

## STATUTORY FORMS

**SECTION 301. STATUTORY FORM POWER OF ATTORNEY.** A document substantially in the following form may be used to create a statutory form power of attorney ~~that~~

<sup>8</sup> Reporter protest: This article of contract legalese (*viz.*, "without limitation") is superfluous in light of the principle of statutory construction according to which the *definiens* of an interpretation provision whose main verb is "includes" is nonexclusive.

Modern statutes frequently contain (usually, in the case of English statutes, at the end) a set of provisions with the marginal note 'Interpretation.' These usually take one of two forms, stating either that a particular word or phrase 'means . . . ' (or 'has the meaning hereby assigned to it') or that a particular word or phrase 'includes . . . ' [W]hen an interpretation section states that a word or phrase 'means . . . ', any other meaning is excluded, whereas the word 'includes' indicates an extension of the ordinary meaning which continues to apply in appropriate cases.

Rupert Cross, *Statutory Interpretation* 119 (John Bell & George Engle eds., 3d ed. 2005).

~~has~~whose terms have the meaning and effect prescribed by this [act].

~~[INSERT NAME OF JURISDICTION]~~MICHIGAN

## STATUTORY FORM POWER OF ATTORNEY

### IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The ~~meaning extent~~ of your agent's authority over subjects listed on this form is explained in the ~~Uniform-uniform Power-power~~ of ~~Attorney-attorney Act-act~~, 202 PA \_\_\_, MCL \_\_\_. ~~[insert citation]~~.

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent and you should ask yourself as you review each section of this form, whether you have chosen the right person(s) to act in that capacity. If your signature on this form is witnessed as provided below, then Unless-unless you specify otherwise, ~~generally~~ the agent's authority will generally continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of ~~one-an~~ agent and successor agent(s) who serve one at a time, as opposed to coagents who serve simultaneously. If you wish to name ~~more than one agent~~coagents, you may ~~name a coagent~~do so in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

**If you have questions about the power of attorney or the authority ~~you are granting it~~ grants to your agent, you should seek legal advice before signing this form.**

### DESIGNATION OF AGENT

I \_\_\_\_\_ name the following  
(Name of Principal)

person as my agent:

Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Agent's Telephone Number: \_\_\_\_\_

### DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

Successor Agent's Telephone Number: \_\_\_\_\_

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: \_\_\_\_\_

Second Successor Agent's Address: \_\_\_\_\_

Second Successor Agent's Telephone Number: \_\_\_\_\_

### GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the uniform power of attorney act, 202 PA \_\_\_, MCL \_\_\_. ~~Uniform Power of Attorney Act [insert citation]:~~

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may simply initial "All Preceding Subjects." ~~instead of initialing each subject.~~)

- ☐ Real Property
- ☐ Tangible Personal Property
- ☐ Stocks and Bonds
- ☐ Commodities and Options
- ☐ Banks and Other Financial Institutions
- ☐ Operation of Entity or Business
- ☐ Insurance and Annuities
- ☐ Estates, Trusts, and Other Beneficial Interests
- ☐ Claims and Litigation
- ☐ Personal and Family Maintenance
- ☐ Benefits from Governmental Programs or Civil or Military Service
- ☐ Retirement Plans
- ☐ Taxes

( ) All Preceding Subjects (regardless of whether any of the preceding subjects is initialed)

### GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

**(CAUTION:** Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you have questions about the wisdom of granting any specific authority to your agent, you should seek legal advice before signing this form. If you are inclined to grant specific authority but have questions about the wisdom of granting that authority to a particular person you have designated as your agent or successor agent, you should ask yourself whether you have designated the right person(s).)

( ) Create, amend, revoke, or terminate an inter vivos trust

( ) Make a gift, ~~subject to the limitations of as limited by~~ the uniform power of attorney act, 202 PA \_\_\_, MCL \_\_\_. Uniform Power of Attorney Act [insert citation to Section 217 of the act] and any special instructions in this power of attorney

( ) Create or change rights of survivorship

( ) Create or change a beneficiary designation

( ) ~~Authorize Temporarily delegate to~~ another person ~~to exercise the~~ authority granted under this power of attorney

( ) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

( ) Exercise fiduciary powers that the principal has authority to delegate

( ) Access the content of electronic communications

~~[( ) Disclaim or refuse an interest in property, including a power of appointment]~~

### LIMITATION ON AGENT'S AUTHORITY

An agent ~~that who~~ is not my [ancestor, spouse, or descendant]<sup>9</sup> MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

### SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

---

---

---

---

---

<sup>9</sup> This class of potential actors is bracketed pending the Committee's second discussion of section 201 of the act.

**EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

**NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)**

If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or [guardian] of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for [guardian] of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

**RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows ~~it~~ that the power has terminated or is invalid.

**SIGNATURE, SIGNATURES OF WITNESSES, AND ACKNOWLEDGMENT**

This form will create a "durable" power of attorney if you sign it in the presence of two witnesses neither of whom is designated as your agent or successor agent, both of whom sign below (and one of whom may be the notary public or other person authorized by law to take acknowledgments who also signs below in his or her official capacity). The power's being "durable" means that unless the power is revoked or the agent's authority is otherwise terminated beforehand, the agent's authority will continue during any period in which you are incapacitated. If you have questions about the wisdom of making this power durable, you should seek legal advice before signing this form.

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date



1 Your Name Printed

2  
3  
4 Your Address

5  
6  
7  
8  
9 Your Telephone Number

10  
11  
12  
13 Witness No. 1's Signature

Date

14  
15  
16 Witness No. 1's Name Printed

17  
18  
19 Witness No. 1's Address

20  
21  
22  
23  
24 Witness No. 2's Signature

Date

25  
26  
27 Witness No. 2's Name Printed

28  
29  
30 Witness No. 2's Address

31  
32  
33  
34  
35 State of \_\_\_\_\_  
36 [County] of \_\_\_\_\_

37  
38 This document was acknowledged before me on \_\_\_\_\_  
39 (Date)

40 by \_\_\_\_\_.  
41 (Name of Principal)

42  
43 (Seal, if any)

44  
45 Signature of Notary \_\_\_\_\_  
46

My commission expires: \_\_\_\_\_

{This document prepared by:

\_\_\_\_\_  
\_\_\_\_\_ }

## IMPORTANT INFORMATION FOR AGENT

### Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power ~~of attorney or your authority under it~~ is terminated by a termination event described in the uniform power of attorney act, 202 PA \_\_\_\_, MCL \_\_\_\_. ~~or revoked.~~ You must:

- (1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) act in good faith;
- ~~(3)~~ (3) do nothing beyond the authority granted in this power of attorney;
- ~~(3)(4)~~ (4) keep a record of receipts, disbursements, and transactions made on behalf of the principal; and
- ~~(4)(5)~~ (5) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- ~~(1)~~ (1) act loyally for the principal's benefit;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) act with care, competence, and diligence;
- ~~(4)~~ (4) ~~keep a record of all receipts, disbursements, and transactions made on behalf of the principal;~~
- ~~(5)~~ (5) cooperate with any person ~~that~~ who has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- ~~(6)(5)~~ (6)(5) attempt, to the extent of the powers you have been granted as agent, to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

## Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under ~~this power of attorney~~. Events that terminate a power of attorney or your authority to act under a such ~~power of attorney~~ include:

- (1) death of the principal;
- (2) the principal's revocation of the power of attorney or your authority;
- (3) the occurrence of a termination event stated in the ~~power of attorney~~;
- (4) if the power is intended only for a specified, limited purpose and the specified purpose of the power of attorney is fully accomplished; or
- (5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

## Liability of Agent

The meaning of the authority granted to you is defined in the uniform power of attorney act, 202 PA , MCL . Uniform Power of Attorney Act [insert citation]. If you violate ~~the Uniform Power of Attorney Act [insert citation]~~ that act or ~~act outside the authority granted the terms of this power~~, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties under it that you do not understand, you should seek legal advice.

## SECTION 302. ~~AGENT'S CERTIFICATION~~ BY AGENT OR ATTORNEY AT

LAW. The following optional form may be used by an agent or an attorney at law who represents either the agent or the principal to certify facts concerning a power of attorney.

### ~~AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY~~ AND AGENT'S AUTHORITY

State of \_\_\_\_\_  
[County] of \_\_\_\_\_

I, \_\_\_\_\_ (Name of certifier ~~Agent~~), ~~[certify]~~  
under penalty of perjury that \_\_\_\_\_ (Name of  
Principal) granted \_\_\_\_\_ (Name of Agent) ~~me~~  
authority as an agent or successor agent in a power of attorney dated \_\_\_\_\_.

I further ~~[certify]~~ that to my knowledge:

- (1) the Principal is alive and has not revoked the Power of Attorney or the Agent's my  
authority to act under the ~~Power of Attorney~~ and the ~~Power of Attorney~~ and the Agent's my

authority to act under the Power ~~of Attorney~~ have not otherwise terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of ~~an a~~ specified event or contingency, the specified event or contingency has occurred;

(3) if the Agent~~I~~ was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

(Insert other relevant statements. You may attach separate sheets if additional space is needed.)

### SIGNATURE AND ACKNOWLEDGMENT

Certifier's~~Agent's~~ Signature

\_\_\_\_\_ Date

Certifier's~~Agent's~~ Name Printed

Certifier's Capacity (as Agent, attorney at law for Agent, or attorney at law for Principal)

Certifier's~~Agent's~~ Address

Certifier's~~Agent's~~ Telephone Number

This document was acknowledged before me on \_\_\_\_\_,  
(Date)

by \_\_\_\_\_  
(Name of Certifier~~Agent~~)

(Seal, if any)

Signature of Notary

My commission expires: \_\_\_\_\_

{This document prepared by:

}

**{ARTICLE} 4**

**MISCELLANEOUS PROVISIONS**

**SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

applying and construing this ~~uniform~~ act, consideration ~~must~~should be given to the need to promote uniformity of the law with respect to ~~its~~the act's subject matter among the states that enact ~~it~~the uniform act on which this act is based.

**SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

**AND NATIONAL COMMERCE ACT.** This {act} modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ~~Section-sections~~ 7001 ~~et seq.to~~ 7006, but does not modify, limit, or supersede ~~Section-section~~ 101(c) of that act, 15 U.S.C. ~~Section-section~~ 7001(c), or authorize electronic delivery of any of the notices described in ~~Section-section~~ 103(b) of that act, 15 U.S.C. ~~Section-section~~ 7003(b).

**SECTION 403. EFFECT ON EXISTING POWERS OF ATTORNEY.** Except as

otherwise provided in this {act}, on {the effective date of this {act}} all of the following apply:

(~~1a~~) ~~this-Except as provided in subsection (c), this~~ {act} applies to a power of attorney created before, on, or after {the effective date of this {act}}.

(~~2b~~) ~~this-This~~ {act} applies to a judicial proceeding concerning a power of attorney commenced on or after {the effective date of this {act}}.

(~~3c~~) ~~this-This~~ {act} applies to a judicial proceeding concerning a power of attorney commenced before {the effective date of this {act}} unless the court finds that application of a provision of this {act} would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case, that provision does not apply and the superseded law applies; ~~and~~.

(4d) ~~an~~An act done before ~~[the effective date of this {act}]~~ is not affected by this ~~{act}~~.

**SECTION 404. REPEAL.** Sections 5501 to 5505 of the estates and protected individuals code, 1998 PA 386, MCL 700.5501 to 700.5505~~The following~~ are repealed:

———~~(1) [Uniform Durable Power of Attorney Act]~~

———~~(2) [Uniform Statutory Form Power of Attorney Act]~~

———~~(3) [Article 5, Part 5 of the Uniform Probate Code].~~

**SECTION 405. EFFECTIVE DATE.** This ~~{act}~~ takes effect \_\_\_\_\_.

# **EXHIBIT 1C**

## **Uniform Power of Attorney Act Ad Hoc Committee**

### **Proposed Statute (Clean Copy)**

1           **SECTION 101. SHORT TITLE.** This act shall be known and may be cited as the  
2   “uniform power of attorney act”.

3           **SECTION 102. DEFINITIONS.**

4           (1) As used in this act:

5                   (a) “Acknowledged” means purportedly verified before a notary public or other  
6   individual authorized to take acknowledgements.

7                   (b) “Actual knowledge” means knowledge in fact. A person who conducts  
8   activities through one or more employees is without actual knowledge of a fact relating to a  
9   power of attorney, a principal, or an agent if the employee conducting the transaction involving  
10   the power is without actual knowledge of the fact.

11                  (c) “Agent” means a person granted authority to act for a principal under a power  
12   of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an  
13   original agent, coagent, successor agent, and a person to which an agent’s authority is delegated.

14                  (d) “Court” includes that term as defined in section 1103(j) of the estates and  
15   protected individuals code, 1998 PA 386, MCL 700.1103.

16                  (e) “Durable,” with respect to a power of attorney, means not terminated by the  
17   principal’s incapacity.

18                  (f) “Electronic” means relating to technology having electrical, digital, magnetic,  
19   wireless, optical, electromagnetic, or similar capabilities.

20                  (g) “General power of appointment” means that term as defined in section 2(h) of  
21   the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

22                  (h) “Good faith” means honesty in fact.

23                  (i) “Incapacity” means inability of an individual to manage property or business



affairs for either of the following reasons:

(i) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.

(ii) The individual is any of the following:

(A) Missing.

(B) Detained, including incarcerated in a penal system.

(C) Outside the United States and unable to return.

(j) “Knowledge” means that term as defined in subsections (2) and (3).

(k) “Person” means an individual or corporation, including a fiduciary of an estate or trust,<sup>1</sup> a business trust, <sup>2</sup>partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(l) Unless the context requires otherwise, “power” means a power of attorney.

(m) “Power of attorney” means a written record<sup>3</sup> that grants authority to an agent to act in one or more matters on behalf of the principal, whether or not the term power of attorney is used.

(n) A power of attorney is “presented for acceptance” upon the later to occur of the following necessary conditions:

(i) A person other than the principal or an agent under the power in question is asked by the principal or an agent under the power to take a specified action or actions in reliance on the power.

---

<sup>1</sup> Reporter protest

<sup>2</sup> Reporter initiative

<sup>3</sup> The reporter would be delighted to improve the uniform act by distinguishing between a power of attorney, on the one hand, and an instrument creating a power of attorney, on the other.

(ii) The power of attorney itself or a copy of it is presented to, and is received by the person who is asked to take action in reliance on the power as described subparagraph (i).

(o) A power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period is “presently” exercisable only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. A power that is exercisable only by will is not “presently” exercisable.

(p) “Principal” means an individual who grants authority to an agent in a power of attorney.

(q) “Property” means anything<sup>4</sup> that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(r) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(s) “Sign” means to do either of the following with intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic sound, symbol, or process.

(t) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

---

<sup>4</sup> The reporter would be delighted to improve the uniform act by distinguishing between property (= legal rights *in rem*), on the one hand, and things that may be owned, on the other.

(u) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

(v) An antecedent referred to by the relative pronoun "who" need not refer to an individual but may refer to anything that is a "person" within the meaning of this act.

(2) Subject to subsection (3), a person has knowledge of a fact if one or more of the following apply:

(a) The person has actual knowledge of it.

(b) The person has received a notice or notification of it.

(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(3) An organization that conducts activities through employees has notice or knowledge of a fact involving a power of attorney, a principal, or an agent only from the time the information was received by an employee conducting a transaction involving the power or from the time the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee conducting the transaction involving the power and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter concerning the transaction involving the power would be materially affected by the information.

**SECTION 103. APPLICABILITY.** This act applies to all powers of attorney except the following:

(a) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.

(b) A power to make health-care decisions.

(c) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.

(d) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

**SECTION 104. LIMITED PRESUMPTION OF DURABILITY.** A power of attorney created on or after the effective date of this act that is executed in accordance with subsection (2) of section 105 is durable unless it expressly provides that it is terminated by the incapacity of the principal. A power of attorney created on or after the effective date of this act that is not executed in accordance with subsection (2) of section 105 is not durable.

**SECTION 105. EXECUTION OF POWER OF ATTORNEY.**

(1) A power of attorney created on or after the effective date of this act must be signed by the principal, or in the principal's conscious presence by another individual directed by the principal to sign the principal's name.

(2) To be durable, a power of attorney must be signed in the presence of 2 witnesses, neither of whom is an agent nominated in the power, both of whom also sign the power, and one of whom may be an individual who also acts, in the execution of the power, as a notary public or person authorized by law to take acknowledgments.

(3) A signature executing any power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

**SECTION 106. VALIDITY OF POWER OF ATTORNEY.**

(1) A power of attorney executed in this state is valid if, when the power was executed, the execution complied with the requirements for the execution of a power of attorney under the law of this state as it existed at that time.

(2) A power of attorney that is not executed in this state is valid in this state if, when the power was executed, the execution complied with either of the following:

(a) The requirements for the execution of a power of attorney under the law of the jurisdiction that determines the meaning and effect of the power pursuant to section 107 or under the law of the jurisdiction in which the principal was domiciled at the time of execution.

(b) The requirements for a military power of attorney pursuant to 10 U.S.C. section 1044b.

(3) Except as otherwise provided by statute other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

**SECTION 107. MEANING AND EFFECT OF POWER OF ATTORNEY.** The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power was executed.

**SECTION 108. NOMINATION OF CONSERVATOR OR GUARDIAN;  
RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.**

(1) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for the case in which protective proceedings for the principal's estate or person are begun after the principal executes the power. If consistent with applicable law on priority and suitability, the court shall make its appointment in accordance with the principal's most recent nomination in a power of attorney.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, both of the following apply:

(a) The agent is accountable to the fiduciary as well as to the principal.

(b) The power of attorney is not terminated, and the agent's authority continues unless limited, suspended, or terminated by the court.

#### **SECTION 109. WHEN POWER OF ATTORNEY EFFECTIVE.**

(1) A power of attorney is effective when executed unless the principal provides in the power that it becomes effective at a specified future date or upon the occurrence of a specified future event or contingency.

(2) If a power of attorney is intended to become effective upon the occurrence of a specified future event or contingency, the principal may, in the power, authorize one or more persons to determine in a record that the event or contingency has occurred.

(3) If a power of attorney is intended to become effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power becomes effective upon a determination in a record by either of the following:

(a) A physician or licensed psychologist that the principal is incapacitated within

the meaning of section 102(h)(i); or

(b) An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of section 102(i)(ii).

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may, to the extent necessary or convenient in making that determination, act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. section 1320d, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

**SECTION 110. TERMINATION OF POWER OF ATTORNEY OR AGENT'S  
AUTHORITY.**

(1) A power of attorney terminates when any of the following occurs:

(a) The principal dies.

(b) In the case of a power of attorney that is not durable, the principal becomes incapacitated.

(c) The principal revokes the power of attorney.

(d) An event occurs that, according to the terms of the power of attorney, terminates the power.

(e) In the case of a power of attorney that is intended only for a specified, limited purpose, the specified purpose of the power is accomplished.

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power.

(2) An agent's authority terminates when any of the following occurs:

(a) The principal revokes the authority.

(b) The agent dies, becomes incapacitated, or resigns.

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or for the legal separation of the agent and the principal, unless the power of attorney provides otherwise.

(d) The power of attorney terminates.

(3) Unless the power of attorney provides otherwise, an agent's authority is exercisable until the authority terminates under subsection (2), notwithstanding any lapse of time since the execution of the power.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person who, without actual knowledge of the termination, acts in good faith under or in reliance upon the power. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power as to an agent or other person who, without actual knowledge of the incapacity, acts in good faith under or in reliance upon the power. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power provides that the previous power is revoked or that all other powers of attorney are revoked.

## **SECTION 111. COAGENTS AND SUCCESSOR AGENTS.**

(1) A principal may designate two or more persons to act as coagents. Unless the power



of attorney provides otherwise, each coagent may exercise the authority granted in the power independently.

(2) A principal may designate one or more successor agents for the case in which an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney provides otherwise, a successor agent has the same authority as that granted to the original agent and may not act until all of the successor agent's predecessors under the terms of the power of attorney have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except to the extent the power provides that coagents and successor agents shall be liable for one another's misconduct, an agent under a given power of attorney who does not participate in or conceal a breach of fiduciary duty committed by another agent who is or was serving under that power, including a predecessor agent under the power, is liable for the actions of the other agent only as provided in subsection (4).

(4) An agent serving under a given power of attorney who has knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power, including a predecessor agent under the power, shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

**SECTION 112. REIMBURSEMENT AND COMPENSATION OF AGENT.** Unless the power of attorney provides otherwise, an agent is entitled to both of the following:

1 (a) Reimbursement of expenses reasonably incurred on behalf of the principal.

2 (b) Reasonable compensation for services rendered on behalf of the principal.

3 **SECTION 113. AGENT’S ACCEPTANCE.** Except as otherwise provided in the  
4 power of attorney, a person accepts appointment as an agent under a power of attorney by  
5 exercising authority as an agent or by any other assertion or conduct indicating acceptance.

6 **SECTION 114. AGENT’S DUTIES.**

7 (1) Notwithstanding provisions to the contrary in the power of attorney, an agent who  
8 has accepted appointment shall do all of the following:

9 (a) Act in accordance with reasonable expectations of the principal that are  
10 actually known to the agent and, to the extent such expectations are not actually known, act in  
11 the principal’s best interest.

12 (b) Act in good faith.

13 (c) Act only within the scope of authority granted by the principal.

14 (d) Keep reasonable records of receipts, disbursements, and transactions made by  
15 the agent on behalf of the principal.

16 (2) Except as otherwise provided in the power of attorney, an agent who has accepted  
17 appointment shall do all of the following:

18 (a) Act loyally for the principal’s benefit.

19 (b) Act so as not to create a conflict of interest that impairs the agent’s ability to  
20 act impartially in the principal’s best interest.

21 (c) Act with the care, competence, and diligence that a prudent person would in  
22 dealing with the property of another.

23 (d) Cooperate with a person who has authority to make health-care decisions for

1 the principal to carry out reasonable expectations of the principal concerning health-care that are  
2 actually known to the agent and, to the extent such expectations are not actually known, to act in  
3 the principal's best interest.

4 (e) Attempt to preserve the principal's estate plan to the extent that plan is  
5 actually known to the agent and preserving the plan is consistent with the principal's best interest  
6 based on relevant factors including all of the following:

7 (i) The value and nature of the principal's property.  
8 (ii) The principal's foreseeable obligations and need for maintenance.  
9 (iii) The desirability of minimizing taxes, including income, estate,  
10 inheritance, generation-skipping transfer, and gift taxes.

11 (iv) Eligibility for a benefit, a program, or assistance under a statute or  
12 regulation.

13 (3) An agent who acts in good faith is not liable to any beneficiary of the principal's  
14 estate plan for failure to preserve the plan.

15 (4) An agent who acts for the best interest of the principal with the care, competence,  
16 and diligence that a prudent person would in dealing with the property of another is not liable  
17 solely because the agent also benefits from the act or has an individual or conflicting interest in  
18 relation to the property or affairs of the principal.

19 (5) If an agent is selected by the principal because of special skills or expertise possessed  
20 by the agent or in reliance on the agent's representation that the agent has special skills or  
21 expertise, the special skills or expertise must be considered in determining whether the agent has  
22 acted with care, competence, and diligence.

23 (6) A decline in the value of the principal's property is not in itself sufficient to establish

1 a breach of fiduciary duty.

2 (7) An agent who exercises authority to delegate to another person the authority granted  
3 by the principal or who engages another person on behalf of the principal is not liable for an act,  
4 error of judgment, or default of that person if the agent exercises care, competence, and diligence  
5 in selecting and monitoring the person.

6 (8) Except as otherwise provided in the power of attorney, an agent is not required to  
7 disclose receipts, disbursements, or transactions conducted on behalf of the principal unless  
8 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary  
9 acting for the principal, a governmental agency having authority to protect the welfare of the  
10 principal, or, upon the death of the principal, by the personal representative or successor in  
11 interest of the principal's estate. If a person who is authorized by the power of attorney or by  
12 this subsection to request a disclosure described in this subsection makes such a request, the  
13 agent shall comply with the request within 30 days or provide a record substantiating why  
14 additional time is needed. In the latter case, the agent shall comply with the request within an  
15 additional 30 days.

16 **SECTION 115. EXONERATION OF AGENT.** A provision in a power of attorney  
17 relieving an agent of liability for breach of duty is binding on the principal and the principal's  
18 successors in interest except to the extent either of the following applies:

19 (a) The provision relieves the agent of liability for breach of duty committed in bad faith  
20 or with reckless indifference to the purposes of the power of attorney or the best interest of the  
21 principal.

22 (b) The provision was inserted as a result of an abuse of a confidential or fiduciary  
23 relationship with the principal.

**SECTION 116. JUDICIAL RELIEF.**

(1) Any of the following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) The principal or the agent.

(b) A guardian, conservator, or other fiduciary acting for the principal.

(c) A person who, at the time of the petition, is exercising authority to make health-care decisions for the principal.

(d) The principal's [spouse, parent, or descendant].<sup>5</sup>

(e) An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time.

(f) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal the trustee of which has a financial interest in the principal's estate.

(g) The personal representative of the principal's estate.

(h) A governmental agency having regulatory authority to protect the welfare of the principal.

(i) A caregiver who demonstrates a significant affected interest in the principal's welfare or another person who demonstrates such an interest.

(j) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under subsection (1) unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney or that the motion is the effect of undue influence, fraud, or duress.

---

<sup>5</sup> See *infra* note 7 and accompanying text.

(3) Any of the following persons may petition a court to review conduct regulated by this act on the part of a person to whom a power of attorney is presented for acceptance and to grant appropriate relief:

(a) The principal or the agent.

(b) A guardian, conservator, or other court-appointed fiduciary acting for the principal.

#### **SECTION 117. AGENT'S LIABILITY.**

(1) An agent who violates this act is liable to the principal or the principal's successors in interest for both of the following:

(a) The amount required to restore the value of the principal's property to what it would have been had the violation not occurred.

(b) Reimbursement to the principal or the principal's successors in interest of attorney's fees and costs paid on the agent's behalf in connection with the breach.

(2) If an agent embezzles or wrongfully converts the principal's property, or refuses, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successors in interest upon demand, the agent is liable in an action brought by the principal or the principal's successors in interest for treble the value of any property embezzled, converted, or wrongfully withheld from the principal or the principal's successors in interest.

**SECTION 118. AGENT'S RESIGNATION; NOTICE.** Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal provided that if the principal is incapacitated, notice shall be given as follows:

(a) To the conservator or guardian if one has been appointed for the principal and to a

coagent or successor agent.

(b) To a coagent or successor agent if a conservator or guardian has not been appointed for the principal.

(c) If there is no person described in paragraph (a) or paragraph (b), to one of the following:

(i) A caregiver of the principal who is reasonably believed by the agent to have a significant interest in the principal's welfare or another person who is reasonably believed by the agent to have such an interest.

(ii) A governmental agency having authority to protect the welfare of the principal.

**SECTION 119. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY.**

(1) A person who in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 105 that the signature is genuine.

(2) A person who in good faith accepts an acknowledged power of attorney without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding the agent's authority may rely upon the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(3) A person who is asked to accept an acknowledged power of attorney may request and may rely, without further investigation, upon any of the following:

1 (a) A certification under penalty of perjury by an agent or an attorney at law who  
2 represents either the agent or the principal of any factual matter concerning the principal, agent,  
3 or power of attorney.

4 (b) an English translation of the power of attorney if the power contains, in whole  
5 or in part, language other than English and the translation's accuracy is the subject of either a  
6 certification or an opinion of counsel.

7 (c) An opinion of counsel as to any matter of law concerning the power of  
8 attorney if the person requesting the opinion explains the reason for the request in a record.

9 (4) Except as provided in subsection (5), an English translation or an opinion of counsel  
10 requested under this section must be provided at the principal's expense unless the request is  
11 made more than seven business days after the power of attorney is presented for acceptance.

12 (5) If a person who is asked to accept an acknowledged power of attorney requests an  
13 opinion of counsel under subsection (3), and a court finds that, in light of the language of the  
14 power, this act, and the surrounding circumstances, the reason for the request as stated in the  
15 required record is frivolous, the person making the request is subject to liability for reasonable  
16 attorney's fees and costs incurred in providing the requested opinion.

17  
18 **SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED**  
19 **POWER OF ATTORNEY.**

20 (1) Except as otherwise provided in subsection (3), a person shall either accept an  
21 acknowledged power of attorney or request a certification, a translation, or an opinion of counsel  
22 under section 119(3) no later than seven business days after the power is presented for  
23 acceptance, and a person may not require an additional or different form of power of attorney for



1 authority granted in the acknowledged power presented.

2 (2) Except as otherwise provided in subsection (3), if a person requests a certification, a  
3 translation, or an opinion of counsel under section 119(3), the person shall accept the power of  
4 attorney no later than five business days after receipt of the certification, translation, or opinion  
5 of counsel.

6 (3) A person is not required to accept a power of attorney if any of the following applies:

7 (a) The person is not required to engage in a transaction with the principal in the  
8 same circumstances.

9 (b) Engaging in a transaction with the agent or the principal in the same  
10 circumstances would be inconsistent with federal law;

11 (c) The person has actual knowledge of the termination of the agent's authority or  
12 of the power of attorney before exercise of the power.

13 (d) The person's request for a certification, a translation, or an opinion of counsel  
14 under section 119(3) is refused.

15 (e) The person in good faith believes that the power is not valid or that the agent  
16 does not have the authority to perform the act requested, whether or not a certification, a  
17 translation, or an opinion of counsel under section 119(3) has been requested or provided.

18 (f) The person in good faith makes, or has actual knowledge that another person  
19 has made, a report to the adult protective services office stating a belief that the principal may be  
20 subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a  
21 person acting for or with the agent.

22 (4) A person who refuses in violation of this section to accept an acknowledged power of  
23 attorney is subject to a court order mandating acceptance of the power and liability for

1 reasonable attorney's fees and costs incurred in any action or proceeding that confirms the  
2 validity of the power or mandates acceptance of the power.

3 (5) A person who refuses in violation of this section to accept an acknowledged power of  
4 attorney after having requested and received a certification, a translation, or an opinion of  
5 counsel under section 119(3) is subject, in addition to liability described in subsection (4), to  
6 liability for reasonable attorney's fees and costs incurred in providing the requested certification,  
7 translation, or opinion of counsel.

8  
9 **SECTION 121. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a  
10 provision of this act, principles of law and equity supplement this act.

11 **SECTION 122. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND**  
12 **CERTAIN OTHER ENTITIES.** This act does not supersede any other law applicable to  
13 financial institutions or other regulated entities, and such other law controls to the extent it is  
14 inconsistent with this act.

15 **SECTION 123. REMEDIES UNDER OTHER LAW.** The remedies under this act are  
16 not exclusive and do not abrogate any right or remedy under the law of this state other than this  
17 act.

## 18 **ARTICLE 2**

### 19 **AUTHORITY**

20 **SECTION 201. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT**  
21 **OF GENERAL AUTHORITY.**

22 (1) An agent under a power of attorney may do the following on behalf of the principal  
23 or with the principal's property only if the power expressly grants the agent the authority and  
24 exercise of the authority is not prohibited by another agreement or instrument to which the

1 authority or property is subject:

2 (a) Create, amend, revoke, or terminate an inter vivos trust.

3 (b) Make a gift.

4 (c) Create or change rights of survivorship.

5 (d) Create or change a beneficiary designation.

6 (e) Delegate authority granted under the power of attorney.

7 (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity,  
8 including a survivor benefit under a retirement plan.

9 (g) Exercise fiduciary powers that the principal has authority to delegate.

10 (h) Exercise authority over the content of electronic communications, as defined  
11 in 18 U.S.C. section 2510(12) sent or received by the principal.

12 (2) Notwithstanding a grant of authority to do an act described in subsection (1), unless  
13 the power of attorney provides otherwise, an agent [who is not an ancestor, spouse, or  
14 descendant of the principal] [who is not the principal's spouse] [~~that is not an ancestor, spouse,~~  
15 ~~or descendant of the principal~~]<sup>6</sup> may not exercise authority under a power of attorney to create in  
16 the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in  
17 the principal's property, whether by gift, right of survivorship, beneficiary designation,  
18 disclaimer, or otherwise.

19 (3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent  
20 authority to do all acts that a principal could do, the agent has the general authority described in  
21 sections 204 to 216.

22 (4) Unless the power of attorney provides otherwise, a grant of authority to make a gift is

---

<sup>6</sup> A sometime member of the Committee was firmly of the opinion that this provision should read, "an agent who is not the principal's spouse may not . . ."

subject to section 217.

(5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted by a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

## **SECTION 202. INCORPORATION OF AUTHORITY.**

(1) An agent has authority described in this article if the power of attorney does either of the following:

(a) Cites the section in which the authority is described.

(b) Refers to general authority by the descriptive term, for example, "real property" or "tangible personal property," used in this article to indicate the subject of any of the sections 204 to 217.

(2) A power of attorney that incorporates by reference any section of sections 204 to 217 pursuant to subsection (1) incorporates the entire section as if that section were set out in full in the power.

(3) A principal may modify authority incorporated by reference.

## **SECTION 203. CONSTRUCTION OF AUTHORITY GENERALLY.** Except as

otherwise provided in the power of attorney, by executing a power that incorporates by reference

1 a subject described in sections 204 to 217 pursuant to subsection (1) or that grants to an agent  
2 authority to do all acts that a principal could do pursuant to section 201(3), a principal authorizes  
3 the agent, with respect to that subject, to do all the following:

4 (a) Demand, receive, and obtain by litigation or otherwise, money or another thing of  
5 value to which the principal is, may become, or claims to be entitled, and conserve, invest,  
6 disburse, or use anything so received or obtained for the purposes intended.

7 (b) Contract in any manner with any person, on terms agreeable to the agent, to  
8 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,  
9 release, or modify the contract or another contract made by or on behalf of the principal.

10 (c) Execute, acknowledge, seal, deliver, file, or record any instrument or communication  
11 the agent considers desirable to accomplish a purpose of a transaction, including creating at any  
12 time a schedule listing some or all of the principal's property and attaching it to the power of  
13 attorney.

14 (d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
15 propose or accept a compromise with respect to a claim existing in favor of or against the  
16 principal or intervene in litigation relating to the claim.

17 (e) Seek on the principal's behalf the assistance of a court or other governmental agency  
18 to carry out an act authorized in the power of attorney.

19 (f) Engage, compensate, and discharge an attorney, accountant, discretionary investment  
20 manager, expert witness, or other advisor.

21 (g) Prepare, execute, and file a record, report, or other document to safeguard or promote  
22 the principal's interest under a statute or regulation.

23 (h) Communicate with any representative or employee of a government or governmental

subdivision, agency, or instrumentality, on behalf of the principal.

(i) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.

(j) Do any lawful act with respect to the subject and all property related to the subject.

**SECTION 204. REAL PROPERTY.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to real property authorizes the agent to do all the following:

(a) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.

(b) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property.

(c) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(d) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted.

(e) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all of the following:

(i) Insuring against liability or casualty or other loss.

(ii) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise.

(iii) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them.

(iv) Purchasing supplies, hiring labor, and making repairs or alterations to the real property.

(f) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(g) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following:

(i) Selling or otherwise disposing of them.

(ii) Exercising or selling an option, right of conversion, or similar right with respect to them.

(iii) Exercising any voting rights in person or by proxy.

(h) Change the form of title of an interest in or right incident to real property.

(i) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

**SECTION 205. TANGIBLE PERSONAL PROPERTY.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to tangible personal property authorizes the agent to do all the following:

(a) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in<sup>7</sup> tangible personal property.

(b) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property.

(c) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(d) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(e) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(i) Insuring against liability or casualty or other loss.

(ii) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise.

(iii) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(iv) Moving the property from place to place.

(v) Storing the property for hire or on a gratuitous bailment.

---

<sup>7</sup> See *supra* note 4.



(vi) Using and making repairs, alterations, or improvements to the property.

(f) Change the form of title of an interest in tangible personal property.

**SECTION 206. STOCKS AND BONDS.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to stocks and bonds authorizes the agent to do all the following:

(a) Buy, sell, and exchange stocks and bonds.

(b) Establish, continue, modify, or terminate an account with respect to stocks and bonds.

(c) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(d) Receive certificates and other evidence of ownership with respect to stocks and bonds.

(e) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

**SECTION 207. COMMODITIES AND OPTIONS.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to commodities and options authorizes the agent to do either of the following:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange.

(b) Establish, continue, modify, and terminate option accounts.

**SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to banks and other financial institutions authorizes the agent to do all the following:

1 (a) Continue, modify, and terminate an account or other banking arrangement made by  
2 or on behalf of the principal.

3 (b) Establish, modify, and terminate an account or other banking arrangement with a  
4 bank, trust company, savings and loan association, credit union, thrift company, brokerage firm,  
5 or other financial institution selected by the agent.

6 (c) Contract for services available from a financial institution, including renting a safe  
7 deposit box or space in a vault.

8 (d) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property  
9 of the principal deposited with or left in the custody of a financial institution.

10 (e) Receive statements of account, vouchers, notices, and similar documents from a  
11 financial institution and act with respect to them.

12 (f) Enter a safe deposit box or vault and withdraw or add to the contents.

13 (g) Borrow money and pledge as security personal property of the principal necessary to  
14 borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt  
15 guaranteed by the principal.

16 (h) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,  
17 checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the  
18 principal or the principal's order, transfer money, receive the cash or other proceeds of those  
19 transactions, and accept a draft drawn by a person upon the principal and pay it when due.

20 (i) Receive for the principal and act upon a sight draft, warehouse receipt, or other  
21 document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument.

22 (j) Apply for, receive, and use letters of credit, credit and debit cards, electronic  
23 transaction authorizations, and traveler's checks from a financial institution and give an

1 indemnity or other agreement in connection with letters of credit.

2 (k) Consent to an extension of the time of payment with respect to commercial paper or a  
3 financial transaction with a financial institution.

4 **SECTION 209. OPERATION OF ENTITY OR BUSINESS.** Subject to the terms of  
5 a document or an agreement governing an entity or an entity ownership interest, and unless the  
6 power of attorney provides otherwise, language in a power granting general authority with  
7 respect to operation of an entity or business authorizes the agent to do all the following:

8 (a) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.

9 (b) Perform a duty or discharge a liability and exercise in person or by proxy a right,  
10 power, privilege, or option that the principal has, may have, or claims to have.

11 (c) Enforce the terms of an ownership agreement.

12 (d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
13 propose or accept a compromise with respect to litigation to which the principal is a party  
14 because of an ownership interest.

15 (e) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,  
16 privilege, or option the principal has or claims to have as the holder of stocks and bonds.

17 (f) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
18 propose or accept a compromise with respect to litigation to which the principal is a party  
19 concerning stocks and bonds.

20 (g) With respect to an entity or business owned solely by the principal do all of the  
21 following:

22 (i) Continue, modify, renegotiate, extend, and terminate a contract made by or on  
23 behalf of the principal with respect to the entity or business before execution of the power of

1 attorney.

2 (ii) Determine all of the following:

3 (A) The location of the entity or business's operation.

4 (B) The nature and extent of the business.

5 (C) The methods of manufacturing, selling, merchandising, financing,  
6 accounting, and advertising employed in the entity or business's operation.

7 (D) The amount and types of insurance carried.

8 (E) The mode of engaging, compensating, and dealing with the entity or  
9 business's employees and accountants, attorneys, or other advisors.

10 (iii) Change the name or form of organization under which the entity or business  
11 is operated or enter into an ownership agreement with other persons to take over all or part of the  
12 operation of the entity or business.

13 (iv) Demand and receive money due or claimed by the principal or on the  
14 principal's behalf in the operation of the entity or business and control and disburse the money in  
15 the operation of the entity or business.

16 (h) Put additional capital into an entity or business in which the principal has an interest.

17 (i) Join in a plan of reorganization, consolidation, conversion, domestication, or merger  
18 of the entity or business.

19 (j) sell or liquidate all or part of an entity or business.

20 (k) Establish the value of an entity or business under a buy-out agreement to which the  
21 principal is a party.

22 (l) Prepare, sign, file, and deliver reports, compilations of information, returns, or other  
23 records with respect to an entity or business and make related payments.

(m) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

**SECTION 210. INSURANCE AND ANNUITIES.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to insurance and annuities authorizes the agent to do all the following:

(a) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(c) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(d) Apply for and receive a loan secured by a contract of insurance or annuity.

(e) Surrender and receive the cash surrender value on a contract of insurance or annuity.

(f) Exercise an election.

(g) Exercise investment powers available under a contract of insurance or annuity.

(h) Change the manner of paying premiums on a contract of insurance or annuity.

(i) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section.

(j) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.

(k) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.

(l) Select the form and timing of the payment of proceeds from a contract of insurance or annuity.

(m) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

**SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS.**

(1) Unless the power of attorney provides otherwise, language in a power granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all the following:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest.

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise.

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest

of the principal.

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.

(f) Conserve, invest, disburse, or use anything received for an authorized purpose.

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

(h) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

(2) As used in this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

**SECTION 212. CLAIMS AND LITIGATION.** Unless the power of attorney provides otherwise, language in a power granting general authority with respect to claims and litigation authorizes the agent to do all the following:

(a) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims or intervene or otherwise participate in litigation.

(c) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree.

(d) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation.

(e) Submit to alternative dispute resolution, settle, and propose or accept a compromise.

(f) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(g) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(h) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation.

(i) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

### **SECTION 213. PERSONAL AND FAMILY MAINTENANCE.**



(1) Unless the power of attorney provides otherwise, language in a power granting general authority with respect to personal and family maintenance authorizes the agent to do all the following:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether they are living when the power of attorney is executed or are born later:

- (i) The principal's children.
- (ii) Individuals legally entitled to be supported by the principal.
- (iii) Individuals whom the principal has customarily supported or indicated the intent to support.

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.

(c) Provide living quarters for the individuals described in paragraph (a) by doing either of the following:

- (i) Purchase, lease, or other contract.
- (ii) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals.

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (a);

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (a).

(f) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 to 1179 of the Social Security Act, 42 U.S.C. section 1320d, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.

(g) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (a).

(h) Maintain credit and debit accounts for the convenience of the individuals described in paragraph (a) and open new accounts for that purpose.

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue an established pattern of contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this act.

**SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE.**

(1) Unless the power of attorney provides otherwise, language in a power granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to do all the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for

1 transportation of the individuals described in section 213(1)(a), and for shipment of their  
2 household effects.

3 (b) Take possession and order the removal and shipment of property of the  
4 principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either  
5 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,  
6 shipping ticket, certificate, or other instrument for that purpose.

7 (c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the  
8 principal's behalf, a benefit or program.

9 (d) Prepare, file, and maintain a claim of the principal for a benefit or assistance,  
10 financial or otherwise, to which the principal may be entitled under a statute or regulation.

11 (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,  
12 or propose or accept a compromise with respect to litigation concerning any benefit or assistance  
13 the principal may be entitled to receive under a statute or regulation.

14 (f) Receive the financial proceeds of a claim described in paragraph (d) and  
15 conserve, invest, disburse, or use for a lawful purpose anything so received.

16 (2) As used in this section, "benefits from governmental programs or civil or military  
17 service" means any benefit, program, or other assistance provided under a statute or regulation  
18 including Social Security, Medicare, and Medicaid.

19 **SECTION 215. RETIREMENT PLANS.**

20 (1) Unless the power of attorney provides otherwise, language in a power granting  
21 general authority with respect to retirement plans authorizes the agent to do all the following:

22 (a) Select the form and timing of payments under a retirement plan and withdraw  
23 benefits from a plan.

1 (b) Make a rollover or a trustee-to-trustee transfer of benefits from one retirement  
2 plan to another.

3 (c) Establish a retirement plan in the principal's name.

4 (d) Make contributions to a retirement plan.

5 (e) Exercise investment powers available under a retirement plan.

6 (f) Borrow from, sell assets to, or purchase assets from a retirement plan as  
7 permitted by the plan.

8 (2) In this section, "retirement plan" means a plan or account created by an employer, the  
9 principal, or another individual to provide retirement benefits or deferred compensation of which  
10 the principal is a participant, beneficiary, or owner, including a plan or account under any of the  
11 following sections of the Internal Revenue Code:

12 (a) An individual retirement account under Internal Revenue Code section 408,  
13 26 U.S.C. section 408.

14 (b) A Roth individual retirement account under Internal Revenue Code section  
15 408A, 26 U.S.C. section 408A.

16 (c) A deemed individual retirement account under Internal Revenue Code section  
17 408(q), 26 U.S.C. section 408(q).

18 (d) An annuity or mutual fund custodial account under Internal Revenue Code  
19 section 403(b), 26 U.S.C. section 403(b).

20 (e) A pension, profit-sharing, stock bonus, or other retirement plan qualified  
21 under Internal Revenue Code section 401(a), 26 U.S.C. section 401(a).

22 (f) A plan under Internal Revenue Code section 457(b), 26 U.S.C. section 457(b).

23 (g) A nonqualified deferred compensation plan under Internal Revenue Code

1 section 409A, 26 U.S.C. section 409A.

2 **SECTION 216. TAXES.** Unless the power of attorney provides otherwise, language in  
3 a power granting general authority with respect to taxes authorizes the agent to do all the  
4 following:

5 (a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property,  
6 Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for  
7 extension of time, petitions regarding tax matters, and any other tax-related documents, including  
8 receipts, offers, waivers, consents, including consents and agreements under Internal Revenue  
9 Code section 2032A, 26 U.S.C. section 2032A, closing agreements, and any power of attorney  
10 required by the Internal Revenue Service or other taxing authority with respect to a tax year upon  
11 which the statute of limitations has not run and the following 25 tax years.

12 (b) Pay taxes due, collect refunds, post bonds, receive confidential information, and  
13 contest deficiencies determined by the Internal Revenue Service or other taxing authority.

14 (c) Exercise any election available to the principal under federal, state, local, or foreign  
15 tax law, including consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. section  
16 2513, to the splitting of one or more gifts made by the principal's spouse.

17 (d) Act for the principal in all tax matters for all periods before the Internal Revenue  
18 Service, or other taxing authority.

19 **SECTION 217. GIFTS.**

20 (1) Unless the power of attorney provides otherwise, language in a power granting  
21 general authority with respect to gifts authorizes the agent to make outright gifts of the  
22 principal's property, including by the exercise of a presently exercisable general power of  
23 appointment held by the principal, to, or for the benefit of, a person or persons as the agent

determines is consistent with the principal's objectives if actually known by the agent and, to the extent the principal's objectives are unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including the following:

(a) The value and nature of the principal's property.

(b) The principal's foreseeable obligations and need for maintenance.

(c) The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.

(d) Eligibility for a benefit, a program, or assistance under a statute or regulation.

(e) The principal's personal history of making gifts.

(2) As used in this section, a gift "for the benefit of" a person includes, without limitation,<sup>8</sup> a gift in trust, an account under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. section 529, and an ABLE account as defined under Internal Revenue Code section 529A, 26 U.S.C. section 529A.

### ARTICLE 3

#### STATUTORY FORMS

**SECTION 301. STATUTORY FORM POWER OF ATTORNEY.** A document substantially in the following form may be used to create a statutory form power of attorney

---

<sup>8</sup> Reporter protest: This article of contract legalese (*viz.*, "without limitation") is superfluous in light of the principle of statutory construction according to which the *definiens* of an interpretation provision whose main verb is "includes" is nonexclusive.

Modern statutes frequently contain (usually, in the case of English statutes, at the end) a set of provisions with the marginal note 'Interpretation.' These usually take one of two forms, stating either that a particular word or phrase 'means . . .' (or 'has the meaning hereby assigned to it') or that a particular word or phrase 'includes . . .' [W]hen an interpretation section states that a word or phrase 'means . . .', any other meaning is excluded, whereas the word 'includes' indicates an extension of the ordinary meaning which continues to apply in appropriate cases.

Rupert Cross, *Statutory Interpretation* 119 (John Bell & George Engle eds., 3d ed. 2005).

whose terms have the meaning and effect prescribed by this act.

## MICHIGAN

### STATUTORY FORM POWER OF ATTORNEY

#### IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The extent of your agent's authority over subjects listed on this form is explained in the uniform power of attorney act, 202\_ PA \_\_\_, MCL \_\_\_.\_\_\_.

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent and you should ask yourself as you review each section of this form, whether you have chosen the right person(s) to act in that capacity. If your signature on this form is witnessed as provided below, then unless you specify otherwise, the agent's authority will generally continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of an agent and successor agent(s) who serve one at a time, as opposed to coagents who serve simultaneously. If you wish to name coagents, you may do so in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

**If you have questions about the power of attorney or the authority it grants to your agent, you should seek legal advice before signing this form.**

#### DESIGNATION OF AGENT

I \_\_\_\_\_ name the following  
(Name of Principal)  
person as my agent:  
Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Agent's Telephone Number: \_\_\_\_\_

**DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

Successor Agent's Telephone Number: \_\_\_\_\_

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: \_\_\_\_\_

Second Successor Agent's Address: \_\_\_\_\_

Second Successor Agent's Telephone Number: \_\_\_\_\_

**GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the uniform power of attorney act, 202\_ PA \_\_\_, MCL \_\_\_.\_\_\_:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may simply initial "All Preceding Subjects.")

☐ Real Property

☐ Tangible Personal Property

☐ Stocks and Bonds

☐ Commodities and Options

☐ Banks and Other Financial Institutions

☐ Operation of Entity or Business

☐ Insurance and Annuities

☐ Estates, Trusts, and Other Beneficial Interests

☐ Claims and Litigation

☐ Personal and Family Maintenance

☐ Benefits from Governmental Programs or Civil or Military Service

☐ Retirement Plans

☐ Taxes

☐ All Preceding Subjects (regardless of whether any of the preceding subjects is initialed)

**GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**



My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

**(CAUTION:** Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. **If you have questions about the wisdom of granting any specific authority to your agent, you should seek legal advice before signing this form. If you are inclined to grant specific authority but have questions about the wisdom of granting that authority to a particular person you have designated as your agent or successor agent, you should ask yourself whether you have designated the right person(s).)**

- ☐ Create, amend, revoke, or terminate an inter vivos trust
- ☐ Make a gift as limited by the uniform power of attorney act, 202\_ PA \_\_\_, MCL \_\_\_. \_\_\_ and any special instructions in this power of attorney
- ☐ Create or change rights of survivorship
- ☐ Create or change a beneficiary designation
- ☐ Temporarily delegate to another person authority granted under this power of attorney
- ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ☐ Exercise fiduciary powers that the principal has authority to delegate
- ☐ Access the content of electronic communications

#### LIMITATION ON AGENT'S AUTHORITY

An agent who is not my [ancestor, spouse, or descendant]<sup>9</sup> MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

#### SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

---

---

---

---

---

---

---

#### EFFECTIVE DATE

<sup>9</sup> This class of potential actors is bracketed pending the Committee's second discussion of section 201 of the act.

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

**NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for guardian of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

**RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows that the power has terminated or is invalid.

**SIGNATURE, SIGNATURES OF WITNESSES, AND ACKNOWLEDGMENT**

This form will create a "durable" power of attorney if you sign it in the presence of two witnesses neither of whom is designated as your agent or successor agent, both of whom sign below (and one of whom may be the notary public or other person authorized by law to take acknowledgments who also signs below in his or her official capacity). The power's being "durable" means that unless the power is revoked or the agent's authority is otherwise terminated beforehand, the agent's authority will continue during any period in which you are incapacitated. **If you have questions about the wisdom of making this power durable, you should seek legal advice before signing this form.**

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Your Name Printed

\_\_\_\_\_  
Your Address

\_\_\_\_\_  
\_\_\_\_\_  
Your Telephone Number

\_\_\_\_\_  
Witness No. 1's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness No. 1's Name Printed

\_\_\_\_\_  
Witness No. 1's Address

\_\_\_\_\_  
Witness No. 2's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness No. 2's Name Printed

\_\_\_\_\_  
Witness No. 2's Address

State of \_\_\_\_\_  
[County] of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_  
(Date)

by \_\_\_\_\_.  
(Name of Principal)

\_\_\_\_\_  
(Seal, if any)

Signature of Notary \_\_\_\_\_

My commission expires: \_\_\_\_\_

This document prepared by:

**IMPORTANT INFORMATION FOR AGENT****Agent's Duties**

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power or your authority under it is terminated by a termination event described in the uniform power of attorney act, 202\_ PA \_\_\_, MCL \_\_\_. You must:

- (1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) act in good faith;
- (3) do nothing beyond the authority granted in this power of attorney;
- (4) keep a record of receipts, disbursements, and transactions made on behalf of the principal; and
- (5) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) act loyally for the principal's benefit;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) act with care, competence, and diligence;
- (4) cooperate with any person who has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (5) attempt, to the extent of the powers you have been granted as agent, to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

**Termination of Agent's Authority**

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under it. Events that terminate a power of attorney or your authority to act under a such power include:

- (1) death of the principal;
- (2) the principal's revocation of the power of attorney or your authority;
- (3) the occurrence of a termination event stated in the power;
- (4) if the power is intended only for a specified, limited purpose and the specified purpose of the power is fully accomplished; or
- (5) if you are married to the principal, a legal action is filed with a court to end your

marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

#### **Liability of Agent**

The meaning of the authority granted to you is defined in the uniform power of attorney act, 202\_ PA \_\_\_, MCL \_\_\_. If you violate that act or the terms of this power, you may be liable for any damages caused by your violation.

**If there is anything about this document or your duties under it that you do not understand, you should seek legal advice.**

#### **SECTION 302. CERTIFICATION BY AGENT OR ATTORNEY AT LAW.** The

following optional form may be used by an agent or an attorney at law who represents either the agent or the principal to certify facts concerning a power of attorney.

#### **CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

State of \_\_\_\_\_  
[County] of \_\_\_\_\_]

I, \_\_\_\_\_ (Name of certifier), certify under penalty of perjury that \_\_\_\_\_ (Name of Principal) granted \_\_\_\_\_ (Name of Agent) authority as an agent or successor agent in a power of attorney dated \_\_\_\_\_.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or the Agent's authority to act under the Power and the Agent's authority to act under the Power have not otherwise terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of a specified event or contingency, the specified event or contingency has occurred;

(3) if the Agent was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Insert other relevant statements. You may attach separate sheets if additional space is needed.)

**SIGNATURE AND ACKNOWLEDGMENT**

\_\_\_\_\_  
Certifier's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Certifier's Name Printed

\_\_\_\_\_  
Certifier's Capacity (as Agent, attorney at law for Agent, or attorney at law for Principal)

\_\_\_\_\_  
Certifier's Address

\_\_\_\_\_  
Certifier's Telephone Number

This document was acknowledged before me on \_\_\_\_\_,  
(Date)

by \_\_\_\_\_  
(Name of Certifier)

\_\_\_\_\_  
Signature of Notary

(Seal, if any)

My commission expires: \_\_\_\_\_

This document prepared by:  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 4**

**MISCELLANEOUS PROVISIONS**

**SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In**

applying and construing this act, consideration should be given to the need to promote  
uniformity of the law with respect to the act's subject matter among the states that enact the  
uniform act on which this act is based.

1           **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
2   **AND NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the federal  
3   Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sections 7001 to 7006,  
4   but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or  
5   authorize electronic delivery of any of the notices described in section 103(b) of that act, 15  
6   U.S.C. section 7003(b).

7           **SECTION 403. EFFECT ON EXISTING POWERS OF ATTORNEY.** Except as  
8   otherwise provided in this act, on the effective date of this act all of the following apply:

9           (a) Except as provided in subsection (c), this act applies to a power of attorney created  
10   before, on, or after the effective date of this act.

11          (b) This act applies to a judicial proceeding concerning a power of attorney commenced  
12   on or after the effective date of this act.

13          (c) This act applies to a judicial proceeding concerning a power of attorney commenced  
14   before the effective date of this act unless the court finds that application of a provision of this  
15   act would substantially interfere with the effective conduct of the judicial proceeding or  
16   prejudice the rights of a party, in which case, that provision does not apply and the superseded  
17   law applies.

18          (d) An act done before the effective date of this act is not affected by this act.

19           **SECTION 404. REPEAL.** Sections 5501 to 5505 of the estates and protected  
20   individuals code, 1998 PA 386, MCL 700.5501 to 700.5505 are repealed.

21           **SECTION 405. EFFECTIVE DATE.** This act takes effect \_\_\_\_\_.

# **EXHIBIT 2A**

## **Uniform Fiduciary Income and Principal Act Ad Hoc Committee**

### **Proposed Statute (Redline)**



AN ACT to allow certain fiduciaries, without court approval, to convert income trusts to unitrusts, to convert express unitrusts to income trusts, and to change the percentage or method used to calculate unitrust amounts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

**[555.2101 Short title]**

**SECTION 1. SHORT TITLE.** This act shall be known and may be cited as the “unitrust act”.

**SECTION 2. DEFINITIONS.** As used in this act:

- (a) “Applicable value” means the measure of the net fair market value of a trust taken into account under section 11.
- (b) “Entity” means a person other than an individual.
- (c) “Express unitrust” means a trust for which, under the terms of the trust without regard to this act, income or net income must or may be calculated as a unitrust amount.
- (d) “Fiduciary” means that term as defined in section 102 of UPIA, MCL 555.502.
- (e) “Income” means that term as defined in section 102 of UPIA, MCL 555.502.
- (f) “Income beneficiary” means that term as defined in section 102 of UPIA, MCL 555.502.
- (g) “Income trust” means a trust that is not a unitrust.
- (h) “Independent person” means a person that is not any of the following:
  - (i) In the case of a trust, a qualified trust beneficiary, a settlor of the trust, or an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust.
  - (ii) In the case of an estate, a beneficiary.
  - (iii) A spouse, parent, brother, sister, or issue of an individual described in

subparagraph (i) or (ii).

(iv) A corporation, partnership, limited liability company, or other entity in which persons described in subparagraphs (i) to (iii), in the aggregate, have voting control.

(v) An employee of a person described in subparagraph (i), (ii), (iii), or (iv).

(i) “Net fair market value of a trust” means the fair market value of the assets of the trust less the noncontingent liabilities to which those assets are subject in the hands of the trustee.

(j) “Net income” means term as defined in section 102 of UPIA, MCL 555.502.

(k) “Person” means an individual or corporation, including a fiduciary of an estate or trust, a business trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(l) “Principal” means that term as defined in section 102 of UPIA, MCL 555.502.

(m) “Qualified trust beneficiary” means that term as defined in section 7103(g) of the estates and protected individuals code, 1998 PA 386, MCL 700.7103(g).

(n) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) “Settlor” means that term as defined in section 7103(i) of the estates and protected individuals code, 1998 PA 386, MCL 700.7103(i).

(p) “Special tax benefit” means any of the following:

(i) Exclusion of a transfer to a trust from gifts described in section 2503(b) of the internal revenue code of 1986, 26 U.S.C. 2503(b), because of the qualification of an income interest in the trust as a present interest in property.

(ii) Status as a qualified subchapter S trust described in section 1361(d)(3) of the

internal revenue code of 1986, 26 U.S.C. 1361(d)(3), at a time the trust holds stock of an S corporation described in section 1361(a)(1) of the internal revenue code of 1986, 26 U.S.C. 1361(a)(1).

(iii) An estate or gift tax marital deduction for a transfer to a trust under section 2056 or 2523 of the internal revenue code of 1986, 26 U.S.C. 2056, 2523, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust.

(iv) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by section 2601 of the internal revenue code of 1986, 26 U.S.C. 2601, because the trust was irrevocable on September 25, 1985, if there is any possibility that either of the following could happen:

(A) A taxable distribution, as defined in section 2612(b) of the internal revenue code of 1986, 26 U.S.C. 2612(b), could be made from the trust.

(B) A taxable termination, as defined in section 2612(a) of the internal revenue code of 1986, 26 U.S.C. 2612(a), could occur with respect to the trust.

(v) An inclusion ratio, as defined in section 2642(a) of the internal revenue code of 1986, 26 U.S.C. 2642(a), of the trust which is less than one, if there is any possibility that either of the following could happen:

(A) a taxable distribution, as defined in section 2612(b) of the internal revenue code of 1986, 26 U.S.C. 2612(b), could be made from the trust.

(B) A taxable termination, as defined in section 2612(a) of the internal revenue code of 1986, 26 U.S.C. 2612(a), could occur with respect to the trust.

(q) "Terms of a trust" means that term as defined in section 102 of UPIA, MCL 555.502.

(r) “Trustee” means that term as defined in section 102 of UPIA, MCL 555.502.

(s) “Unitrust” means a trust for which net income is a unitrust amount. The term includes an express unitrust.

(t) “Unitrust amount” means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.

(u) “Unitrust policy” means a policy described in sections 8 to 13 and adopted pursuant to section 6.

(v) “Unitrust rate” means the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy.

(w) “UPIA” means the uniform principal and income act, 2004 PA 159, MCL 555.501 to 555.1006.

(x) An antecedent referred to by the relative pronoun “who” need not refer to an individual but may refer to anything that is a “person” within the meaning of this act.

**SECTION 3. GOVERNING LAW.** Except as otherwise provided in the terms of a trust or this act, this act applies when this state is the principal place of administration of a trust or of an estate to which the act may be relevant by virtue of section 4(5).

**SECTION 4. APPLICATION; DUTIES AND REMEDIES.**

(1) Except as otherwise provided in subsection (2), this act applies to both of the following:

(a) An income trust, unless the terms of the trust expressly prohibit use of this act by a specific reference to this act or an explicit expression of intent that net income is not to be calculated as a unitrust amount.

(b) An express unitrust, except to the extent the terms of the trust explicitly do any of the following:

- (i) Prohibit use of this act by a specific reference to this act.
- (ii) Prohibit conversion to an income trust.
- (iii) Limit changes to the method of calculating the unitrust amount.

(2) This act does not apply to a trust described in section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code of 1986 26 U.S.C. 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b).

(3) Subject to subsections (4) and (5), the terms of a trust prevail over any provision of this act.

(4) For the purposes of subsection (1), references in the terms of a trust to income, net income, unitrust amounts, or to the trustee's discretion in distributing any of these are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this act or to the doing of anything this act authorizes a fiduciary to do.

(5) Substituting a unitrust amount for net income, or vice versa, pursuant to this act does not otherwise affect terms of the trust concerning distributions, including discretionary terms.

(6) This act applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed in the same manner as would be possible under this act if the trust's interest in the estate were a separate trust.

(7) This act does not create a duty to take or consider action pursuant to this act or to inform a beneficiary about the applicability of this act apart from the notice conditionally

required under section 6(2)(a).

(8) A fiduciary who in good faith takes an action pursuant to this act is not liable to a person affected by the action.

**SECTION 5. JUDICIAL REVIEW OF EXERCISE OF DISCRETIONARY POWER; REQUEST FOR INSTRUCTION.**

(1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may, by following the rules provided in section 105(3)(a)–(c) of UPIA, MCL 555.505(3)(a)–(c), place the beneficiaries in the positions they would have occupied if the discretion had not been abused.

(3) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion.

**SECTION 6. AUTHORITY OF FIDUCIARY.**

(1) By complying with subsections (2) and (5), a fiduciary may do any of the following:

(a) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing both of the following:

(i) That in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this act.

(ii) The percentage and method used to calculate the unitrust amount.

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount.

(c) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this act rather than a unitrust amount.

(2) A fiduciary may take an action pursuant to subsection (1) if all of the following conditions are satisfied:

(a) The fiduciary sends a notice in a record, in the manner required by section 7, describing and proposing to take the action.

(b) At least one member of each class of the qualified trust beneficiaries receiving the notice under paragraph (a) is one of the following:

(i) A legally competent individual.

(ii) An existing entity.

(iii) Represented in the manner provided in part 3 of article VII of the estates and protected individuals code, 1998 PA 386, MCL 700.7301 to 700.7305.

(c) The fiduciary does not receive, by the date specified in the notice as required under section 7(4)(d), an objection in a record to the action proposed pursuant to subsection (1) from a person to whom the notice required under subsection (2)(a) is sent.

(3) A person described in section 7(1) may oppose the proposed action in a court proceeding whether or not the person did either of the following:

(a) Consented under section 7(3).

(b) Objected pursuant to section 7(4)(c).

(4) If, after sending a notice under subsection (2), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in section 7(1) of the decision not to take the action and the reasons for the decision.

(5) In deciding how to take an action authorized by subsection (1), a fiduciary shall consider all factors relevant to the purposes of the trust and the interests of the beneficiaries.

(6) A fiduciary may release or delegate the power to convert an income trust to a unitrust pursuant to subsection (1)(a), change the percentage or method used to calculate a unitrust amount pursuant to subsection (1)(b), or convert a unitrust to an income trust pursuant to subsection (1)(c), for reasons analogous to the reasons for releasing a power to adjust between principal and income described in section 104(6) of UPIA, MCL 555.504(6). The release may be permanent or for a specified period, including a period measured by the life of an individual.

## **SECTION 7. NOTICE.**

(1) A notice required by section 6(2)(a) must be sent in a manner authorized by section 7109 of the estates and protected individuals code, 1998 PA 386, MCL 700.7109 to all of the following:

(a) The qualified trust beneficiaries.

(b) Each person acting as trust director described in section 7703a(24)(f) of the estates and protected individuals code, 1998 PA 386, MCL 700.7703a(24)(f).

(c) Each person who is not then either a trustee or person described in paragraph (b) but who has a then exercisable power under the terms of the trust to appoint or remove a trustee or person described in paragraph (b).



(2) The representation provisions of part 3 of article VII of the estates and protected individuals code, 1998 PA 386, MCL 700.7301 to 700.7305 apply to notice under this section.

(3) A person may consent in a record at any time to action proposed pursuant to section 6(1). A notice required by section 6(2)(a) need not be sent to a person who consents in a record.

(4) A notice required by section 6(2)(a) must include all of the following:

(a) The action proposed pursuant to section 6(1).

(b) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted pursuant to section 6(1)(a), or for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted pursuant to section 6(1)(b).

(c) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary.

(d) The date by which an objection described in paragraph (c) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent.

(e) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect.

(f) The name and contact information of the fiduciary.

(g) The name and contact information of a person who may be contacted for additional information.

## **SECTION 8. UNITRUST POLICY.**

(1) In administering a unitrust under this act, a fiduciary shall follow a unitrust policy adopted pursuant to section 6(1)(a) or (b) or amended or replaced pursuant to section 6(1)(b).

(2) A unitrust policy must provide all of the following:

- (a) The unitrust rate or the method for determining the unitrust rate under section 10;
- (b) The method for determining the applicable value under section 11.
- (c) The rules described in sections 9 through 13 which apply in the administration of the unitrust, either because they are mandatory, as provided in sections 11(1) and 12(1), or because they are optional, as provided elsewhere in sections 10 to 13, and the fiduciary has elected to adopt them.

**SECTION 9. SPECIAL RULES CONCERNING TAX BENEFITS AND NON-INDEPENDENT FIDUCIARIES.** If a trust qualifies for a special tax benefit or a fiduciary is not an independent person all of the following apply:

- (a) The unitrust rate established under section 10 may not be less than three percent or more than five percent.
- (b) A fiduciary's latitude to provide, in a unitrust policy under section 11, methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value is limited to the following:
  - (i) Obtaining an appraisal of any asset for which fair market value is not readily available.
  - (ii) Identification and treatment of cash or property held for distribution.
  - (iii) Use of an average of fair market values over a stated number of preceding periods.
  - (iv) Determining the liabilities of the trust, including treatment of liabilities to

conform with the treatment of assets under paragraphs (i) through (iii).

(c) The only period that may be selected under section 12 for use under sections 10 and 11 is the calendar year.

(d) A fiduciary's latitude to provide standards for excluding and prorating periods under section 12(2) is limited to the following:

(i) Using fewer preceding periods under section 11(2)(e)(i) if the trust was not in existence in a preceding period.

(ii) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

#### **SECTION 10. UNITRUST RATE.**

(1) Except as otherwise provided in section 9(a), a unitrust rate may be either of the following:

(a) A fixed unitrust rate.

(b) A unitrust rate that is determined for each period using either of the following:

(i) A market index or other published data.

(ii) A mathematical blend of market indices or other published data over a stated number of preceding periods.

(2) Except as otherwise provided in section 9(a), a unitrust policy may provide one or more of the following:

(a) A limit on how high the unitrust rate determined under subsection (1)(b) may rise.

(b) A limit on how low the unitrust rate determined under subsection (1)(b) may

fall.

(c) A limit on how much the unitrust rate determined under subsection (1)(b) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods.

(d) A limit on how much the unitrust rate determined under subsection (1)(b) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods.

(e) A mathematical blend of any of the unitrust rates determined under subsection (1)(b) and paragraphs (a) through (d) of this subsection (2).

#### **SECTION 11. APPLICABLE VALUE.**

(1) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including both of the following:

(a) The frequency of valuing the asset, which need not require a valuation in every period.

(b) The date for valuing the asset in each period in which the asset is valued.

(2) Except as otherwise provided in section 9(b), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including one or more of the following:

(a) Obtaining an appraisal of an asset for which fair market value is not readily available.

(b) Exclusion of specific assets or groups or types of assets.

(c) Other exceptions or modifications of the treatment of specific assets or groups or types of assets.

(d) Identification and treatment of cash or property held for distribution.

(e) Use of either of the following:

(i) An average of fair market values over a stated number of preceding periods.

(ii) Another mathematical blend of fair market values over a stated number of preceding periods.

(f) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over either of the following:

(i) The corresponding applicable value for the preceding period.

(ii) A mathematical blend of applicable values over a stated number of preceding periods.

(g) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below either of the following:

(i) The corresponding applicable value for the preceding period.

(ii) A mathematical blend of applicable values over a stated number of preceding periods.

(h) The treatment of accrued income and other features of an asset that affect value.

(i) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under paragraphs (a) through (h).

## **SECTION 12. PERIOD.**

(1) A unitrust policy must provide the period used under sections 10 and 11. Except as otherwise provided in section 9(c), the period may be any of the following:

- (a) A calendar year.
- (b) A 12-month period other than a calendar year.
- (c) A calendar quarter.
- (d) A three-month period other than a calendar quarter.
- (e) Another period.

(2) Except as otherwise provided in section 9, a unitrust policy may provide standards for any of the following:

(a) Using fewer preceding periods under section 10(1)(b)(ii) or (2)(c) or (2)(d) in either of the following situations:

- (i) The trust was not in existence in a preceding period.
- (ii) Market indices or other published data are not available for a preceding period.

(b) Using fewer preceding periods under section 11(2)(e)(i) or (ii), (2)(f)(ii), or (2)(g)(ii) in either of the following situations:

- (i) The trust was not in existence in a preceding period.
  - (ii) Fair market values are not available for a preceding period.
- (c) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

**SECTION 13. OTHER FEATURES OF UNITRUST POLICY.** A unitrust policy may do one or more of the following:

- (a) Provide methods and standards for one or more of the following:
  - (i) Determining the timing of distributions.

(ii) Making distributions in cash or in kind or partly in cash and partly in kind.

(iii) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount.

(b) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid.

(c) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

#### **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this act, consideration should be given to the need to promote uniformity of the law with respect to the act's subject matter among states that enact the uniform law on which this act is based, namely Article 3 of the Uniform Fiduciary Income and Principal Act.

**SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT .** This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 to 7006, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

**SECTION 16. APPLICATION TO TRUST OR ESTATE.** This act applies to a trust or estate existing or created on or after the effective date of this act.

**SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . . .

# **EXHIBIT 2B**

## **Uniform Fiduciary Income and Principal Act Ad Hoc Committee**

### **UFIPA Article 3**



income and principal because certain tax advantages might be jeopardized, the trustee's adjustment between income and principal does not necessarily determine or affect the amount of income that will be subject to federal income tax. Income for federal tax purposes is different from income for purposes of trust administration. As Treasury Reg. §1.643(b)-1 warns, "[t]rust provisions that depart fundamentally from traditional principles of income and principal will generally not be recognized" for income tax purposes.

Section 203(e)(9) provides that the power to adjust is not available for a unitrust under Article 3.

**Release or delegation of the power to adjust.** Like Section 104(e) of the 1997 Act, Section 203(g) of the 2018 Act permits a fiduciary to release all or part of the power to adjust in circumstances in which the possession or exercise of the power might deprive the trust of a benefit or impose a burden or risk. In addition, Section 203 allows delegation of the power in such a case. Section 203(h) provides that a release or delegation may be limited to income, to principal, or in other ways, or may apply only for a limited time, which may be measured by a life or lives. If not limited, the default under Section 203(h) is that the release or delegation is complete and permanent.

**Trust terms that limit a power to adjust.** Like Section 104(f) of the 1997 Act, Section 203(i) of the 2018 Act acknowledges that the terms of a trust may limit the power to adjust, but only if the limitation expressly applies to "the power to adjust under subsection (a)."

## **[ARTICLE] 3**

### **UNITRUST**

#### **SECTION 301. DEFINITIONS.** In this [article]:

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under Section 307.

(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this [article], income or net income must or may be calculated as a unitrust amount.

(3) "Income trust" means a trust that is not a unitrust.

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.

(5) "Unitrust" means a trust for which net income is a unitrust amount. The term includes an express unitrust.

(6) “Unitrust amount” means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.

(7) “Unitrust policy” means a policy described in Sections 305 through 309 and adopted under Section 303.

(8) “Unitrust rate” means the rate used to compute the unitrust amount under paragraph (6) for a unitrust administered under a unitrust policy.

### Comment

**Background.** The word “unitrust” can be traced at least to the literature of the mid-1960s. Lovell, “The Unitrust: A New Concept to Meet an Old Problem,” 105 Trusts & Estates 215 (1966); Del Cotto & Joyce, “Taxation of the Trust Annuity: The Unitrust Under the Constitution and the Internal Revenue Code,” 23 Tax L. Rev. 257 (1968). For many estate planners and charitable giving planners, the first introduction to the word may be in the term “charitable remainder unitrust” introduced by Congress in section 664, added to the Internal Revenue Code by the Tax Reform Act of 1969. The word was reprised following the enactment of section 2702 in Treasury Reg. § 25.2702-3(c), governing “qualified unitrust interests” in grantor retained unitrusts (“GRUTs”) (which are hardly ever used, if they are used at all).

While the precise origin or intent of the word is not totally clear, it appears derived from the notion that the trust consists of a *unified* fund—“a single fund [in which] there would be no distinction between income and principal,” only between “receipts” and “payouts.” Lovell, *supra*. The “unitrust” can be thought of as a trust in which there is a “unity” of interest between the current income beneficiary and the successor beneficiary, because both benefit from a higher value of the trust assets.

Thus, in current legal usage, a “unitrust” is simply a trust in which the periodic payout to the current income beneficiary is determined with reference to a percentage of the net value of the trust assets, determined from time to time, regardless of how much income is produced by the trust assets or the growth of the trust assets. As the value of the trust assets increases, the unitrust amount increases. As the value decreases, the unitrust amount decreases.

The “unity” of interest between the current income beneficiaries and the remainder or successor beneficiaries will enable the trustee to invest the assets for long-term growth to the benefit of all beneficiaries. This will permit the mission of the trustee and investment team to be more focused. Investment decisions can be based on the needs and risk tolerances of the beneficiaries, and there is less likelihood of dissension between the current and future beneficiaries over investment policy. In addition, to the extent that a unitrust approach obviates discretionary invasions of principal, the trustee is protected against challenges by the remainder beneficiaries that any discretionary principal distributions were excessive. Similarly, a unitrust

approach eliminates the need to make adjustments between income and principal under Section 203 and thus avoids or minimizes controversy over whether such adjustments are proper.

By the end of 2016, 36 states (Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming) had enacted statutes, some as part of their Principal and Income Acts and some separately, permitting a trustee to convert a trust to a unitrust. Some of those statutes refer to unitrusts as “total return unitrusts” (a term not used in Article 3).

**Response by the Internal Revenue Service.** In February 2001, the Internal Revenue Service published proposed regulations it described in part as follows: “This document contains proposed regulations revising the definition of income under section 643(b) of the Internal Revenue Code to take into account changes in the definition of trust accounting income under state laws.” The preamble to the proposed regulations noted:

These [then current] statutory and regulatory provisions [under section 643] date back to a time when, under state statutes, dividends and interest were considered income and were allocated to the income beneficiaries while capital gains were allocated to the principal of the trust. Changes in the types of available investments and in investment philosophies have caused states to revise, or to consider revising, these traditional concepts of income and principal....

To ensure that the income beneficiaries are not penalized if a trustee adopts a total return investment strategy, many states have made, or are considering making, revisions to the definitions of income and principal. Some state statutes permit the trustee to make an equitable adjustment between income and principal if necessary to ensure that both the income beneficiaries and the remainder beneficiaries are treated impartially, based on what is fair and reasonable to all the beneficiaries. Thus, a receipt of capital gains that previously would have been allocated to principal may be allocated by the trustee to income if necessary to treat both parties impartially. Conversely, a receipt of dividends or interest that previously would have been allocated to income may be allocated by the trustee to principal if necessary to treat both parties impartially.

Other states are proposing legislation that would allow the trustee to pay a unitrust amount to an income beneficiary in satisfaction of that beneficiary’s right to the income from the trust. This unitrust amount will be a fixed percentage, sometimes required to be within a range set by state statute, of the fair market value of the trust assets determined annually.

Questions have arisen concerning how these state statutory changes affect the definition of income provided in section 643(b) and the other Code provisions that rely on the section 643(b) definition of income. This definition of income affects trusts including, but not limited to, ordinary trusts, charitable remainder trusts, pooled income funds, and qualified subchapter S trusts.

In short, revision of the regulations was proposed to respond to changes in circumstances, including changes in the pressures on a trustee faced with an obligation to invest for total return under the prudent investor rule and faced with the remedies of principal-income adjustments under the 1997 Revised Uniform Principal and Income Act and of conversion to a total return unitrust.

The final regulations were released on December 30, 2003. Treasury Reg. §1.643(b)-1 states, in part:

[A]n allocation of amounts between income and principal pursuant to applicable local law will be respected if local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, including ordinary and tax-exempt income, capital gains, and appreciation. For example, a state statute providing that income is a unitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis, is a reasonable apportionment of the total return of the trust.

**Article 3.** The typical state unitrust statute limits unitrust conversions to the parameters in the Treasury Regulations – “a unitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis.” Article 3 borrows heavily from that existing state legislation, but it is broader and more flexible than the laws of most states. The 2018 Act does not limit state law by these specialized federal regulations and includes in Article 3 many more features and refinements than only a 3-to-5-percent range and the potential for annual averaging, to permit a unitrust to even better serve the objective of achieving more stability and predictability for beneficiaries.

One such refinement is to provide that the trust distribute a percentage of its market value determined on the basis of a rolling average of values for periods other than years. Twelve quarters is an example. This can reduce potential fluctuations in distributions caused by short-swing movements in the stock market. Although the rate of increase in the unitrust distribution to the current income beneficiary will lag the performance of the portfolio, the current income beneficiary will benefit in down years. Another similar refinement designed to reduce risk to all the beneficiaries is to place a ceiling and/or a floor on the unitrust payout amount, or on the size of fluctuation of the unitrust amount from year to year or period to period. More fundamental refinements include a variable unitrust rate itself, perhaps drawn from specified market data, and different treatment for different types of assets, including the total exclusion of certain assets and the income therefrom. Sections 305-309(a) allow all variations of that kind. To afford a trustee the benefit of the safe harbor in the Treasury regulations in situations where it applies, Section 309(b) limits the parameters in those situations to the parameters specified in that safe harbor. The situations where Section 309(b) applies, described as situations in which the trust offers a “special tax benefit,” which is defined in Section 102(19), are built around situations addressed in the 2003 Treasury Regulations.

Because of the broad flexibility Article 3 allows, it is not necessary to provide specific statutory fixes for specific identified challenges, including computational challenges like the treatment of accrued but unpaid income and the treatment of property that is personally used and not invested.

In addition to the requirements in Sections 303(b)(2) and 304 for sending notice of a proposed conversion to or from a unitrust or change to a unitrust, some state statutes also require the trustee to send a copy of the state unitrust statute. If the other, somewhat more detailed, requirements of this Article 3 are followed, that seems unnecessary, although any state that chooses may still add it.

Like some state unitrust statutes, Article 3 applies to “express unitrusts,” defined in Section 301(2) to be “a trust for which, under the terms of the trust without regard to this [article], income or net income must or may be calculated as a unitrust amount.” This scope of Article 3 is confirmed in Section 301(5), which includes an express unitrust in the general definition of a “unitrust,” in Section 301(6), in which the definition of a “unitrust amount” “includes” the unitrust amount determined under Article 3 but also covers any “amount computed by multiplying a determined value of a trust by a determined percentage” (as in an express unitrust), and in Section 302(a)(2), which includes an express unitrust in the application of Article 3. This definition and scope are carried out in Section 303(a)(2) and (3), which provides that any unitrust (which includes an express unitrust under Section 301(5)) may be changed (Section 303(a)(2)) or converted (not just “converted *back*”) to an income trust (Section 303(a)(3)). Thus the Comments to this act refer to “the power to convert to or from a unitrust or change a unitrust,” although the act itself (in Sections 201(d) and 202(a)(2) and (c)(2)) is more formal.

As in the case of the power to adjust between income and principal provided in Section 203 and discussed in the Comment to Section 203, Section 302(c) provides that a trust may be converted to a unitrust regardless of the terms of the trust governing distributions – that is, even though distributions are not defined or limited by the amount of net income of the trust. This is a departure from current state laws, but it reflects the overall commitment to flexibility in the 2018 Act that is discussed in the Comment to Section 302. Like the power to adjust, Section 303(b)(1) makes the power to convert to or from a unitrust or change a unitrust available when “the fiduciary determines that the action will *assist* the fiduciary to administer a trust impartially.”

## **SECTION 302. APPLICATION; DUTIES AND REMEDIES.**

(a) Except as otherwise provided in subsection (b), this [article] applies to:

(1) an income trust, unless the terms of the trust expressly prohibit use of this [article] by a specific reference to this [article] or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(2) an express unitrust, except to the extent the terms of the trust explicitly:

(A) prohibit use of this [article] by a specific reference to this [article];

(B) prohibit conversion to an income trust; or

(C) limit changes to the method of calculating the unitrust amount.

(b) This [article] does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b)[, as amended].

(c) An income trust to which this [article] applies under subsection (a)(1) may be converted to a unitrust under this [article] regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this [article] does not affect other terms of the trust concerning distributions of income or principal.

(d) This [article] applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this [article].

(e) This [article] does not create a duty to take or consider action under this [article] or to inform a beneficiary about the applicability of this [article].

(f) A fiduciary that in good faith takes or fails to take an action under this [article] is not liable to a person affected by the action or inaction.

**Legislative Note:** *A United States Code citation (U.S.C.) follows a reference to the federal Internal Revenue Code in subsection (b). The United States Code citation is included as an aid to the reader. If the state's convention is to omit the United States Code citation, simply delete the United States Code citation. In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be omitted.*

### Comment

Section 302(a)(2) includes "express unitrusts" within the scope of Article 3. Section 302(b) excludes charitable lead annuity trusts and unitrusts (CLATs and CLUTs), pooled income funds (PIFs), charitable remainder annuity trusts and unitrusts (CRATs and CRUTs), personal residence trusts and qualified personal residence trusts (PRTs and QPRTs), and grantor retained

annuity trusts and unitrusts (GRATs and GRUTs).

Section 302(c) confirms that conversion of an income trust to a unitrust does not depend on the terms of the trust concerning distributions. In other words, a unitrust conversion is available even for a trust in which a trustee may accumulate income or invade principal. This works both ways under Section 302(c). Discretion over distributions does not disqualify an income trust from converting to a unitrust, and neither does conversion to a unitrust change the trustee's discretion to accumulate income (even the unitrust amount, although that may be unusual) or invade principal above the unitrust amount. This carries out the objective of the 2018 Act, explained in the Prefatory Note and in the Comment to Section 203, to allow a fiduciary to respect the simple, predictable, and reassuring notion of "income" (in this case a unitrust amount) without necessarily relying on accumulations of income or invasions of principal as a first resort.

Section 302(d) provides that Article 3 applies to a decedent's estate only to the extent a trust is a beneficiary of the estate. To that extent, the estate, or part of the estate, is treated for all purposes the same as a trust under Article 3. Thus, there are no other references to estates in Article 3.

Section 302(e) rejects any creation of an affirmative duty to act under Article 3 or to inform beneficiaries of the actions available under Article 3. And Section 302(f) exonerates a fiduciary that in good faith acts or fails to act under Article 3.

### **SECTION 303. AUTHORITY OF FIDUCIARY.**

(a) A fiduciary, without court approval, by complying with subsections (b) and (f), may:

(1) convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(A) that in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this [article]; and

(B) the percentage and method used to calculate the unitrust amount;

(2) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(3) convert a unitrust to an income trust if the fiduciary adopts in a record a



determination that, in administering the trust, the net income of the trust will be net income determined without regard to this [article] rather than a unitrust amount.

(b) A fiduciary may take an action under subsection (a) if:

(1) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(2) the fiduciary sends a notice in a record, in the manner required by Section 304, describing and proposing to take the action;

(3) the fiduciary sends a copy of the notice under paragraph (2) to each settlor of the trust which is:

(A) if an individual, living; or

(B) if not an individual, in existence;

(4) at least one member of each class[ of the qualified beneficiaries determined under [Uniform Trust Code Section 103(13)], other than [the Attorney General],] receiving the notice under paragraph (2) is:

(A) if an individual, legally competent; [or]

(B) if not an individual, in existence; [or]

(C) represented in the manner provided in Section 304(b);] and

(5) the fiduciary does not receive, by the date specified in the notice under Section 304[(d)(5)][(c)(5)], an objection in a record to the action proposed under paragraph (2) from a person to which the notice under paragraph (2) is sent.

(c) If a fiduciary receives, not later than the date stated in the notice under Section 304[(d)(5)][(c)(5)], an objection in a record described in Section 304[(d)(4)][(c)(4)] to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action



taken as proposed, taken with modifications, or prevented. A person described in Section 304(a) may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(1) consented under Section 304[(c)][(b)]; or

(2) objected under Section 304[(d)(4)][(c)(4)].

(d) If, after sending a notice under subsection (b)(2), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in Section 304(a) of the decision not to take the action and the reasons for the decision.

(e) If a beneficiary requests in a record that a fiduciary take an action described in subsection (a) and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(f) In deciding whether and how to take an action authorized by subsection (a), or whether and how to respond to a request by a beneficiary under subsection (e), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in Section 201(e).

(g) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subsection (a)(1), change the percentage or method used to calculate a unitrust amount under subsection (a)(2), or convert a unitrust to an income trust under subsection (a)(3), for a reason described in Section 203(g) and in the manner described in Section 203(h).

**Legislative Note:** In subsection (b)(4), refer to Uniform Trust Code Section 103(13), or modify subsection (b)(4) appropriately or refer to the corresponding provision of the state's trust law if the state has not enacted the Uniform Trust Code.

In subsections (b)(5) and (c), use the reference in the first set of brackets if Alternative A of Section 304 is used and use the reference in the second set of brackets if Alternative B of Section 304 is used.

## Comment

Section 303 sets forth, in effect, the road map for action under Article 3: the options under Section 303(a), a determination that impartiality will be assisted under Section 303(b)(1), notice to beneficiaries under Section 303(b)(2) with a copy to the settlor or settlors under Section 303(b)(3), existence of a competent potential party under Section 303(b)(4), a wait for a prescribed time before acting under Section 303(b)(5), and an opportunity to ask for court approval under Section 303(c) if there is a timely objection. There is also an opportunity under Section 303(e) for a beneficiary to seek the help of the court if the beneficiary asks the fiduciary to act under Article 3 and the fiduciary refuses or fails to act.

Although the recipients of the required notice are set forth in detail in Section 304, settlors are included only here in Section 303(b)(3) and are said to receive only “a copy of the notice.” This is done to avoid unintentionally making the settlor of an irrevocable trust over which he or she has relinquished all power a party to a proceeding with a voice in the matter that could be construed as retained control of the trust. See Section 303(c), which provides that “[a] person described in Section 304(a) may oppose the proposed action in the proceeding under this subsection,” and Section 304[(d)][(c)](4), which requires the notice to state that everyone who receives the notice “may object to the proposed action.” This is a departure from the Uniform Trust Decanting Act (UTDA), for example, which includes the requirement for notice to the settlor in the same list, indeed at the head of the list (Section 7(c)(1)), of all persons entitled to notice. But there may be reasons unique to decanting to give formal notice to the settlor. Section 19(b)(10) of UTDA, for example, allows a settlor to block a fiduciary’s decanting proposal if the decanting would reduce the settlor’s power to avoid or terminate grantor trust status, which typically would not be implicated by a unitrust conversion.

Section 303(a)(1)(A) states that in a unitrust “the net income of the trust will be a unitrust amount rather than net income determined without regard to this [article].” Thus, for example, because “net income” already reflects the disbursements made from income, there will be no deductions from the unitrust amount for expenses unless the unitrust policy expressly allows it.

Like the power to adjust, the power to convert to or from a unitrust or change a unitrust is governed by consideration of the same factors under Sections 303(f) and 201(e), and a fiduciary may release or delegate the power under Section 303(g).

### **SECTION 304. NOTICE.**

#### **Alternative A**

(a) A notice required by Section 303(b)(2) must be sent in a manner authorized under [Uniform Trust Code Section 109] to:

(1) the qualified beneficiaries determined under [Uniform Trust Code Section 103(13)], other than [the Attorney General]; [and]

(2) [each person acting as trust director of the trust under the Uniform Directed Trust Act][each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(A) including a:

(i) power over the investment, management, or distribution of trust property or other matters of trust administration; and

(ii) power to appoint or remove a trustee or person described in this paragraph; and

(B) excluding a:

(i) power of appointment;

(ii) power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by the beneficiary under [Uniform Trust Code Sections 301 through 305] with respect to the exercise or nonexercise of the power; and

(iii) power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the Internal Revenue Code of 1986[, as amended,] 26 U.S.C.[, as amended]]]; and

(3) each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in paragraph (2), to the extent the power is exercisable when the person that exercises the power is not then serving as a trustee or person described in paragraph (2)].

(b) The representation provisions of [Uniform Trust Code Sections 301 through 305]

apply to notice under this section.

### **Alternative B**

(a) A notice required by Section 303(b)(2) must be sent to:

(1) all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised; [and]

(2) [each person acting as trust director of the trust under the Uniform Directed Trust Act][each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(A) including a:

(i) power over the investment, management, or distribution of trust property or other matters of trust administration; and

(ii) power to appoint or remove a trustee or person described in this paragraph; and

(B) excluding a:

(i) power of appointment;

(ii) power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary; and

(iii) power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the Internal Revenue Code of 1986[, as amended,] 26 U.S.C.[, as amended]]]; and

(3) each person that is granted a power by the terms of the trust to appoint or

remove a trustee or person described in paragraph (2), to the extent the power is exercisable when the person that exercises the power is not then serving as a trustee or person described in paragraph (2)].

### **End of Alternatives**

[(c)][(b)] A person may consent in a record at any time to action proposed under Section 303(b)(2). A notice required by Section 303(b)(2) need not be sent to a person that consents under this subsection.

[(d)][(c)] A notice required by Section 303(b)(2) must include:

- (1) the action proposed under Section 303(b)(2);
- (2) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under Section 303(a)(1);
- (3) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under Section 303(a)(2);
- (4) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;
- (5) the date by which an objection under paragraph (4) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;
- (6) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;
- (7) the name and contact information of the fiduciary; and
- (8) the name and contact information of a person that may be contacted for

additional information.

**Legislative Note:** Use Alternative A and the designations in the first set of brackets if the state has enacted the Uniform Trust Code. Use Alternative B and the subsection designations in the second set of brackets if the state has not enacted the Uniform Trust Code.

*A United States Code citation (U.S.C.) follows a reference to the federal Internal Revenue Code in subsection (a)(2)(B)(iii). The United States Code citation is included as an aid to the reader. If the state's convention is to omit the United States Code citation, simply delete the United States Code citation. In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be omitted.*

*In Alternative A or B, modify subsection (a)(2) to refer to the Uniform Directed Trust Act and include subsection (a)(3) if the state has enacted the Uniform Directed Trust Act, or modify subsection (a)(2) appropriately and omit subsection (a)(3) if the state has not enacted the Uniform Directed Trust Act.*

### Comment

Section 304 provides details of the fiduciary's notice to beneficiaries. Subsection (a) is offered in two Alternatives, Alternative A for a state that has enacted the Uniform Trust Code and Alternative B for a state that hasn't. Alternative A also includes a subsection (b) that affirms the application of the UTC representation rules. Generally, a detailed notice goes to "qualified beneficiaries" in the UTC sense, as both current and successor beneficiaries are affected by the administration of a trust as a unitrust. Subsection (d) (in the UTC case) or (c) (in the non-UTC case) requires, in paragraphs (7) and (8), the name and contact information of the fiduciary and of a person that may be contacted for additional information. "Contact information" is left open-ended, to accommodate any reasonably accessible technology or medium.

### SECTION 305. UNITRUST POLICY.

(a) In administering a unitrust under this [article], a fiduciary shall follow a unitrust policy adopted under Section 303(a)(1) or (2) or amended or replaced under Section 303(a)(2).

(b) A unitrust policy must provide:

(1) the unitrust rate or the method for determining the unitrust rate under Section 306;

(2) the method for determining the applicable value under Section 307; and

(3) the rules described in Sections 306 through 309 which apply in the administration of the unitrust, whether the rules are:

(A) mandatory, as provided in Sections 307(a) and 308(a); or

(B) optional, as provided in Sections 306, 307(b), 308(b), and 309(a), to

the extent the fiduciary elects to adopt those rules.

### **Comment**

Section 305 provides for a “unitrust policy,” which will include a few mandatory details spelled out in Sections 306 through 308 and may include many more optional details mentioned in those sections. It is in those sections where broad flexibility is encountered, including a unitrust rate under Section 306 that may be less than 3 percent or more than 5 percent and a period under Section 308 that may be something other than a calendar year. For exceptions to that flexibility in certain cases, see Section 309 and the Comment thereto.

### **SECTION 306. UNITRUST RATE.**

(a) Except as otherwise provided in Section 309(b)(1), a unitrust rate may be:

(1) a fixed unitrust rate; or

(2) a unitrust rate that is determined for each period using:

(A) a market index or other published data; or

(B) a mathematical blend of market indices or other published data over a

stated number of preceding periods.

(b) Except as otherwise provided in Section 309(b)(1), a unitrust policy may provide:

(1) a limit on how high the unitrust rate determined under subsection (a)(2) may rise;

(2) a limit on how low the unitrust rate determined under subsection (a)(2) may fall;

(3) a limit on how much the unitrust rate determined under subsection (a)(2) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(4) a limit on how much the unitrust rate determined under subsection (a)(2) may

decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(5) a mathematical blend of any of the unitrust rates determined under subsection (a)(2) and paragraphs (1) through (4).

#### **SECTION 307. APPLICABLE VALUE.**

(a) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

(1) the frequency of valuing the asset, which need not require a valuation in every period; and

(2) the date for valuing the asset in each period in which the asset is valued.

(b) Except as otherwise provided in Section 309(b)(2), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(1) obtaining an appraisal of an asset for which fair market value is not readily available;

(2) exclusion of specific assets or groups or types of assets;

(3) other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(4) identification and treatment of cash or property held for distribution;

(5) use of:

(A) an average of fair market values over a stated number of preceding periods; or

(B) another mathematical blend of fair market values over a stated number



of preceding periods;

(6) a limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(A) the corresponding applicable value for the preceding period; or

(B) a mathematical blend of applicable values over a stated number of preceding periods;

(7) a limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(A) the corresponding applicable value for the preceding period; or

(B) a mathematical blend of applicable values over a stated number of preceding periods;

(8) the treatment of accrued income and other features of an asset which affect value; and

(9) determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under paragraphs (1) through (8).

### **Comment**

In determining the amount to which the unitrust rate is applied to determine the unitrust amount, a fiduciary first determines the fair market value of *each* asset that is not excluded under Section 307(b)(2). Fair market value is just that, fair market value in the usual sense. Next, the fiduciary adds the fair market values of *all* those assets together and subtracts the noncontingent liabilities of the trust to determine “net fair market value of the trust,” as defined in Section 301(4). Finally, the fiduciary applies the actions described in Section 307(b)(3) through (9), to the extent provided by the unitrust policy (as well as other actions provided by the unitrust policy under Section 309(a)(3)), to determine the “applicable value.” It is the applicable value that is multiplied by the unitrust rate to determine the unitrust amount, which is deemed to be the net income of the trust under Section 303(a)(1)(A) or (2). Thus, unlike fair market value, the “applicable value” may be affected by the actions taken under Section 307(b)(3) through (9). Those actions may be somewhat artificial, in that they are not produced by the market as is “fair market value.” In fact, most of those actions are intended to counterbalance the effects of the market to provide a smoother and more predictable unitrust amount from year to year.

Like the “terms of *a* trust” and “terms of *the* trust” discussed in the Comment to Section 102, “net fair market value of *a* trust” (in Section 301(1) and (4)) and “net fair market value of *the* trust” in Section 307(b) are used interchangeably, depending on whether there has been a reference to a trust, either explicitly or indirectly, previously in the subsection or paragraph. In Section 307(b), that previous reference to a trust is imbedded in the term “unitrust policy.”

#### **SECTION 308. PERIOD.**

(a) A unitrust policy must provide the period used under Sections 306 and 307. Except as otherwise provided in Section 309(b)(3), the period may be:

- (1) a calendar year;
- (2) a 12-month period other than a calendar year;
- (3) a calendar quarter;
- (4) a three-month period other than a calendar quarter; or
- (5) another period.

(b) Except as otherwise provided in Section 309(b), a unitrust policy may provide standards for:

- (1) using fewer preceding periods under Section 306(a)(2)(B) or (b)(3) or (4) if:
  - (A) the trust was not in existence in a preceding period; or
  - (B) market indices or other published data are not available for a preceding period;
- (2) using fewer preceding periods under Section 307(b)(5)(A) or (B), (6)(B), or (7)(B) if:
  - (A) the trust was not in existence in a preceding period; or
  - (B) fair market values are not available for a preceding period; and
- (3) prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

## **SECTION 309. SPECIAL TAX BENEFITS; OTHER RULES.**

(a) A unitrust policy may:

(1) provide methods and standards for:

(A) determining the timing of distributions;

(B) making distributions in cash or in kind or partly in cash and partly in

kind; or

(C) correcting an underpayment or overpayment to a beneficiary based on

the unitrust amount if there is an error in calculating the unitrust amount;

(2) specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

(3) provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

(b) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(1) the unitrust rate established under Section 306 may not be less than three percent or more than five percent;

(2) the only provisions of Section 307 which apply are Section 307(a) and (b)(1), (4), (5)(A), and (9);

(3) the only period that may be used under Section 308 is a calendar year under Section 308(a)(1); and

(4) the only other provisions of Section 308 which apply are Section 308(b)(2)(A) and (3).

### **Comment**

Section 309(a) provides that a unitrust policy may include details beyond even the broad scope of Sections 306 through 308. One specific example, in paragraph (2), is to “specify sources and the order of sources, including categories of income for federal income tax purposes, from

which distributions of a unitrust amount are paid.” Approximately two-thirds of the state unitrust statutes include a default “ordering rule,” although five of those default rules are limited to net accounting income or ordinary income and leave the ordering of short- and long-term capital gains, for example, to the fiduciary’s discretion. Although the 2018 Act does not include such an ordering rule, Section 309(a)(2) makes it clear that the fiduciary may include an ordering rule in a proposed unitrust policy.

Importantly, Section 309(b) addresses trusts that qualify for a “special tax benefit” defined in Section 102(19) – the annual gift tax exclusion, eligibility of a qualified subchapter S trust (QSST), an estate or gift tax marital deduction, or exemption from generation-skipping transfer tax (GST tax) – and trusts with a fiduciary that is not an “independent person” defined in Section 102(11). For those trusts, much of the expanded flexibility of Article 3 is denied, and, specifically, the unitrust rate is limited to 3-5 percent and the period used for calculation is limited to a calendar year. This protects the trust under the following safe harbor in Treasury Reg. §1.643(b)-1 (Dec. 30, 2003) (emphasis added):

[A]n allocation of amounts between income and principal pursuant to applicable local law will be respected if local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, including ordinary and tax-exempt income, capital gains, and appreciation. For example, *a state statute providing that income is a unitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis*, is a reasonable apportionment of the total return of the trust.

Although two of the “special tax benefits” – the gift tax exclusion and the marital deduction – are short-term, and there are often alternatives to QSSTs and non-independent trustees, GST tax exemption is anything but short-term, is unavoidable, and is often crucial in the type of large long-term or even perpetual trust that is perhaps the most typical candidate for a unitrust conversion. And although “no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis” is explicitly offered in the Treasury regulation only as an “example,” it is expressly incorporated into the regulations for GST-grandfathered trusts (Treasury Reg. §26.2601-1(b)(4)(i)(D)(2) & (E), *Example 11*), and the GST tax stakes are typically so high that few fiduciaries or beneficiaries would want to assume the risk. The focus of the regulation is on what the “state statute provid[es].” Therefore, Section 309(b) respects this safe harbor for such trusts.

## **[ARTICLE] 4**

### **ALLOCATION OF RECEIPTS**

#### **[PART] 1**

#### **RECEIPTS FROM ENTITY**

#### **SECTION 401. CHARACTER OF RECEIPTS FROM ENTITY.**

(a) In this section:

# **EXHIBIT 2C**

## **Uniform Fiduciary Income and Principal Act Ad Hoc Committee**

### **Parallel Tables**

## UFIPA / [Proposed] Unitrust Act Parallel Tables

UFIPA Art. 3 to Unitrust Act		Unitrust Act to UFIPA [or other]	
UFIPA Art. 3 §	Unitrust Act §	Unitrust Act §	UFIPA [or other] §
301(1)	2(a)	1	e.g., 101
301(2)	2(c)		
301(3)	2(g)	2(a)	301(1)
301(4)	2(i)	2(b)	
301(5)–(8)	2(s)–(v)	2(c)	301(2)
		2(d)–(f)	
302(a)	4(1)	2(g)	301(3)
302(b)	4(2)–(3)	2(h)	102(11)
302(c)	4(4)	2(i)	301(4)
302(d)–(f)	4(5)–(7)	2(j)–(m)	
		2(n)	102(17)
303(a)	6(1)	2(o)	
303(b)(1)		2(p)	102(19)
303(b)(2)	6(2)(a)	2(q)–(r)	
303(b)(3)		2(s)–(v)	301(5)–(8)
303(b)(4)–(5)	6(2)(b)–(c)	2(w)–(x)	
303(c)	6(3) partially		
303(d)	6(4)	3	104
303(e)			
303(f)	6(5) partially	4(1)–(2)	302(a)–(b)
303(g)	6(6)	4(3)	e.g., 201(a)(3)
		4(4)	[e.g., MCL 700.2714(1)(c)]
304(a)–(d)(1)	7(1)–(4)(a)	4(5)	302(c) in part
304(d)(2)–(3)	7(4)(b)	4(6)–(8)	302(d)–(f)
304(d)(4)–(8)	7(4)(c)–(g)		
		5	[MCL § 555.505]
305	8		
		6(1)	303(a)
306	10	6(2)(a)	303(b)(2)
		6(2)(b)–(c)	303(b)(4)–(5)
307	11	6(3)	303(c) in part
		6(4)	303(d)
308	12	6(5)	303(f) in part
		6(6)	303(g) [203(g)–(h)]
309(a)	13		
309(b)	9	7(1)–(4)(a)	304(a)–(d)(1)

[illegible]

# Council Materials



**MEETING OF THE COUNCIL OF THE  
PROBATE & ESTATE PLANNING SECTION OF THE  
STATE BAR OF MICHIGAN**

Friday, September 17, 2021

**Agenda**

- I. Call to Order and Welcome (David Lucas)
- II. Zoom Roll Call Confirmation of Attendees (David Lucas)
- III. Excused Absences (David Lucas)
- IV. Chair Transition (David Lucas, David Skidmore)
- V. Lobbyist's Report (Public Affairs Associates)
- VI. Monthly Reports:
  - A. Minutes of Prior Council Meeting (Jim Spica, Katie Lynwood)—**Attachment 1**
  - B. Chair's Report (David Skidmore)
  - C. Committee on Special Projects (Nathan Piwowarski)
  - D. Tax Committee (J.V. Anderton/Neal Nusholtz)—**Attachment 2**
- VII. Written Report Only:
  - A. Treasurer's Report (Katie Lynwood)—**Attachment 3**
  - B. State Bar & Section Journals (Nancy Little)—**Attachment 4**
  - C. Tax Liaison Reports—**Attachment 5**
- VIII. Other Business
- IX. Adjournment

The next Probate & Estate Planning Council meeting will be **Saturday, October 9, 2021**. The Council meeting will begin (almost) immediately after the Committee on Special Projects meeting, which begins at 9:00 AM.

# ATTACHMENT 1

**MEETING OF THE COUNCIL OF THE  
OF THE PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

Friday, June 25, 2021 @ 9:50 AM  
REMOTE MEETING ONLY

**Minutes**

**I. Call to order and Welcome:** Chairperson David Lucas called the meeting to order at 9:50 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

**II. Zoom Roll Call Confirmation of Attendees**

A. The following officers and members of the Council were “present” (by remote):

1. David P. Lucas, Chairperson
2. David L.J.M. Skidmore, Chairperson Elect
3. Mark E. Kellogg, Vice Chairperson
4. James P. Spica, Secretary
5. Katie Lynwood, Treasurer
6. Neal Nusholtz
7. Nathan R. Piwowarski
8. Kathleen M. Goetsch
9. Richard C. Mills
10. Daniel S. Hilker
11. Warren H. Krueger, III
12. Robert B. Labe
13. Christine Savage
14. David D. Sprague
15. Angela M. Hentkowski
16. Nazneen S. Hasan
17. Christopher J. Caldwell
18. Kurt A. Olson
19. Melisa M.W. Mysliwicz
20. James F. Anderton
21. Georgette David

B. It was noted that a quorum was “present.”

C. Others “present”:

Kathleen A. Cieslik  
Christine Caswell  
Rebecca K. Wrock  
Marguerite Munson Lentz  
Mara Kent  
Rebecca Gorbett  
Susan L. Chalgian

David W. Lentz  
Kenneth E. Tiews  
Susan L. Chalgian  
Diane Kuhn Huff  
James B. Steward  
Kristen R. Gross  
Ponce D. Clay  
Dawn Santamarina  
Elizabeth Marie-Rachel Siefker  
Gabrielle C. Lawrence  
James A. Carolan  
James B. Steward  
Jeanne Murphy (ICLE)  
John T. McFarland  
Hon. David M. Murkowski  
Marlaine Teahan  
Hon. Michael L. Jaconette  
Michael G. Lichterman  
Michael J. McClory  
Rebecca Bechler (Public Affairs Associates)  
Jim Ryan (Public Affairs Associates)  
Robert P. Tiplady  
Sandra D. Glazier  
Charlotte F. Shoup  
Andrea Neighbors (Administrative Assistant)

**III. Excused Absences:** Kenneth F. Silver and Andrew Mayoras

**IV. Lobbyist Report (Public Affairs Associates):** Becky Bechler reported that:

- A. The Delaware-tax-trap-facility proposal (amending the Personal Property Trust Perpetuities Act), has been introduced as HB 4619 by Rep. Haadsma and is on the house floor.
- B. The qualified-depositions-in-trust amendment to the Voidable Transaction Act has been introduced by Rep. Haadsma as HB 4618 and is on the house floor.
- C. The Omnibus package (amending the Estate and Protected Individuals Code et al.) has been introduced and has been referred to the House Judiciary Committee.
- D. The vehicle TOD drafts have come back from the Legislative Service Bureau (LSB) and need some work with the drafters.

**V. Monthly Reports**

**A. Minutes of Prior Council Meeting:** Secretary Jim Spica asked for a motion to accept

the minutes of the March Council meeting (Attachment 1 to the 6/25/2021 Council agenda).

It was so moved by David Sprague, and seconded by Ponce Clay, whereupon the corrected minutes were accepted without objection.

**B. Chairperson's Report:** A copy of Chairperson David Lucas's report is attached to these minutes.

**C. Committee on Special Projects (CSP):** Committee Chair Nathan Piwowarski reported that:

1. CSP considered a report from the Ad Hoc Committee on the Uniform Real Property TOD Act. The committee recommended that the section not pursue the adoption of that uniform law in Michigan. Baring contrary instruction from the Council, the committee is going to retire.
2. CSP considered a report from the Legislation Development and Drafting Committee. Additional issues have been raised by the LSB draftsman for the motor-vehicle TOD proposal. A vote was not taken, but the general sentiment of CSP is that it desirable to give the Committee's draftspersons additional authority to deal with designations of trustees as beneficiaries in TODs and to provide additional statutory instructional requirements regarding the use of a certificate of trust existence and authority in connection with vehicle transfers.
3. Remote notarization and witnessing workgroup took a straw poll regarding the savings clause in the proposal which was raised by the draftsman at LSB for our sponsor through Rep. Lightner.

Jim Spica moved, seconded by Rick Mills, that Rob Tiplady, Katie Lynwood, and Georgette David be authorized to make substantive changes to the motor- vehicle TOD designation proposal regarding whether and how the trustees of a trust can be designated as TOD beneficiaries of a motor vehicle. The Secretary recorded a vote of 18 in favor of the motion, 0 opposed, 0 abstaining, and 5 not voting. Chair Lucas declared the motion carried.

**D. Guardianship Committee:** Committee member Kathleen Goetsch summarized the written report (Attachment 2 to the 6/25/2021 Council agenda).

On behalf of the Guardianship Committee, Kathy moved to oppose SB 526 and SB 527 as written with that comment that the section has concerns regarding potentially unintended consequences in our focus on vulnerable adults. After a vote by Council members, the Chairperson declared that the motion was unanimously approved.

Dan Hilker moved that the council adopt the following position with regard to SB 503-506 and HB 4847-4850. The Chair or the Chair Designee to communicate with the legislators on SB 503-506 and HB 4847-4850 to indicate that the section needs further time to consider that legislation. The section will have substantive amendments. Nathan Piwowarski seconded the motion. Chairperson Lucas asked for a voice vote on the completion of which, he declared that the motion had carried.

**E. Nominating Committee:** Committee Chairperson Marlaine Teahan summarized the written report (Attachment 3 to the 6/25/2021 Council agenda). Nomination for Council Officers and Member are closed as of the end of the council meeting on 6/25/2021.

**F. Outreach Committee Report:** Committee Chairperson Kathleen Goetsch summarized the written report (Attachment 4 to the 6/25/2021 Council agenda).

**G. Tax Committee:** Committee member Robert Labe summarized the written report (Supplemental Attachment to the 6/25/2021 Council agenda).

**VI. Other Business:** Dan Hilker, Chairperson of the Legislative Monitoring and Analysis Committee reported that:

1. On behalf of the Legislative Monitoring and Analysis Committee, Dan moved that the section oppose HB 4164 and send an interested member to testify before the legislature. The Secretary recorded a vote of 17 in favor of the motion, 0 opposed, 0 abstaining, and 6 not voting. Chair Lucas declared the motion carried.
2. On behalf of the Legislative Monitoring and Analysis Committee, Dan moved that the section formally requests that the State Bar oppose HB 4164. The Secretary recorded a vote of 17 in favor of the motion, 0 opposed, 0 abstaining, and 6 not voting. The motion carried.
3. On behalf of the Legislative Monitoring and Analysis Committee, Dan moved to oppose HB 4542 and send an interested member to testify before the

legislature. The Secretary recorded a vote of 17 in favor of the motion, 0 opposed, 0 abstaining, and 6 not voting. The motion carried.

4. On behalf of the Legislative Monitoring and Analysis Committee, Dan moved to support HB 4237 with explanation: The section supports the repeal of the Michigan Estate Tax, the current law has no practical effect. The Michigan Estate Tax Act depends on the existence of the federal estate tax credit for state-to-state taxes. The credit was repealed in 2001 and is unlikely to be reenacted by congress. The Secretary recorded a vote of 17 in favor of the motion, 0 opposed, 0 abstaining, and 6 not voting. The motion carried.
5. Dan Hilker summarized the Legislative Monitoring and Analysis Committee report.
6. Melissa Mysliwicz reported that SCAO is updating a substantial number of their forms.
7. Chris Savage reported that the Uniform Power of Attorney Committee has provided the Bankers Association and the AG Elder Law Task Force, as well as Council members, ex officio members et al., a redline version of Uniform Act. Substantive comments on the redline are welcome as the Committee prepares to introduce its adaptation of the uniform act to the Council through the CSP this fall.

## **VII. Written Report Only:**

- A. **Treasurer's Report** (Katie Lynwood) - (Attachment 5 to the 6/25/2021 Council agenda)
- B. **Tax Committee, Tax Nugget Revision** (Neal Nusholtz) - (Attachment 6 to the 6/25/2021 Council agenda)

**VII. Adjournment:** There being no other business before the Council, the Chairperson declared the meeting adjourned at 12:21 PM.

Respectfully Submitted,

James P. Spica, Secretary

The next Council meeting will be held on Friday, September 17, 2021.

### Chairperson's report

1. I hope that this will be the last "remote-only" meeting of the Council. There are no Council meetings in July and August, and the September meeting will be in-person, at the U-Club, on Friday, September 17; the Section Annual Meeting will be held immediately before the Council meeting on Friday, September 17

2. It has been unclear to me how involved individuals who have an interest in a matter should be in Council discussions regarding that matter, and I have had inquiries about the Council's policy. As an example, the Council had several discussions regarding the Mardigian case, when several Council members were involved in the matter.

So, after the last Council meeting, I referred the matter to the Bylaws Committee for consideration of several matters, including recommendations regarding what such a policy might be, and how formalized such a policy should be. Nazneen, as Chair of the Bylaws Committee reported to me that the Committee recommends that a policy be in effect, and recommended that the policy be adopted by the Chairperson. Based on those recommendations, as Chairperson, I have adopted a policy; the policy is:

"When the Council is considering an application for the Section to file an amicus brief in an action pending in any Michigan court, the applicant may not address the Council with regard to the application (beyond submitting the written application). No attorney who is representing any party in the action or is affiliated with a firm representing any party in the action may address the Council with regard to the application. All attendees at the meeting who are affiliated with a firm representing any party in the action shall be excused from the meeting during consideration of the application."

This policy does not extend to the Amicus Committee, and I anticipate that the Committee will consider and present the information that the Committee feels will be helpful to the Council, in the Council's debate.

I expect that this matter will be a subject for further discussion by the Council, and subject to change by the incoming Chairperson.

3. I have received many reports from Committee Chairs, and I thank you. If, as a Committee Chair, you haven't yet provided me with a report of your Committee's activities in this Council year, please do so. My report to the State Bar is due in early July.



# ATTACHMENT 2

## Tax Nugget

### Facilitative Expenses and Distributable Net Income

By Neal Nusholtz

#### The Curious Case of Adding Expenses to a Trust Tax Return that Cause Taxes to Go Up

Whether income is to be taxable on a trust tax return or on the tax return of a beneficiary is determined by the distributable net income deduction under IRC §643. The distributable net income deduction determines how much of the trust income is taxed at the trust level and how much is taxed to the beneficiary to whom it is distributed.<sup>1</sup> The distributable net income deduction taxes trust income off the trust tax return and puts it on the tax returns of beneficiaries via the K-1 they receive telling them how much income to report and how to report it.

The distributable net income deduction is affected by whether a trust is required to distribute out all of its income. Trusts that are required to distribute out all of their income are called “simple” trusts. Trusts which can accumulate income without such distributions are called “complex” trusts.<sup>2</sup> A simple trust that is required to annually distribute all of its income is entitled to a distributable net income tax deduction equal to the amount of income required to be distributed.<sup>3</sup> Complex trusts, on the other hand, are entitled to a deduction under IRC §661 only for amounts of income actually paid out to beneficiaries during the tax year.<sup>4</sup>

Thus, beneficiaries pay tax on trust income which is either required to be distributed or actually distributed. And the trust does not pay tax on income required to be distributed or actually distributed.

The Distributable Net Income is deduction is limited to “income.” Internal Revenue Code (“IRC”) §643(a). Income is defined under IRC §643(b) as income determined “under the terms of the governing instrument and applicable local law.” Sometimes “income” is called accounting income. See lines 8 and 11 below from Schedule B of the Form 1041.

Schedule B		Income Distribution Deduction	
1	Adjusted total income. See instructions . . . . .		
2	Adjusted tax-exempt interest . . . . .		
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions . . . . .		
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion) . . . . .		
5	Capital gains for the tax year included on Schedule A, line 1. See instructions . . . . .		
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number . . . . .		
7	<b>Distributable net income.</b> Combine lines 1 through 6. If zero or less, enter -0- . . . . .		
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law . . . . .	8	
9	Income required to be distributed currently . . . . .		
10	Other amounts paid, credited, or otherwise required to be distributed . . . . .		
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions . . . . .		
12	Enter the amount of tax-exempt income included on line 11 . . . . .		
13	Tentative income distribution deduction. Subtract line 12 from line 11 . . . . .		
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0- . . . . .		
15	<b>Income distribution deduction.</b> Enter the smaller of line 13 or line 14 here and on page 1, line 18 . . . . .		

Deductible expenses will reduce both taxable income (the income upon which a trust pays tax) and they will reduce accounting income. Non deductible expense will only reduce accounting income. Federal taxes, for example are not tax deductible and will reduce accounting income.

That's the problem. Nondeductible expenses will cause a tax in a simple trust because they lower accounting income and that reduces distributable net income. So, if a simple trust has \$50,000.00 of taxable income, but paid a federal tax of \$6,000 on April 15<sup>th</sup>, it's accounting income will be \$44,000.00 and the trust will have to pay tax on at least \$6,000.00. If it had not paid federal taxes, it would have had a zero tax.

The Tax Cuts Jobs Act Eliminated Miscellaneous Itemized Deductions for the tax years 2018 through 2025. Miscellaneous deductions include expenses for the production or maintenance of income under IRC §212. (Miscellaneous deductions are defined under IRC §67(b). Brokerage fees are an example of a miscellaneous deduction.)

Imagine a Simple Trust (all income is required to be distributed) with the following income and brokerage fees every year.

Interest				\$ 50,000.00
LT Cap Gain				\$ 50,000.00
Brokerage Fees				\$ 30,000.00

Here are the taxes, income and distributable net income for three years in a row:

	<b>Income</b>	<b>DNI</b>	<b>Tax</b>
Year 1	\$100,000.00	\$70,000.00	\$ 9,964.00
Year 2	\$100,000.00	\$60,036.00	\$ 14,028.00
Year 3	\$100,000.00	\$55,972.00	\$ 15,687.00

Below is the calculation of the Income Distribution Deduction in year 3.

Schedule B Income Distribution Deduction			
1	Adjusted total income. See instructions	1	100,000
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	50,000
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5	0
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	-50,000
7	Distributable net income. Combine lines 1-6. If zero or less, enter -0-	7	100,000
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8	
9	Income required to be distributed currently	9	55,972
10	Other amounts paid, credited, or otherwise required to be distributed	10	0
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	55,972

### General Rule

It has long been recognized, as a general matter, that costs incurred in the acquisition or disposition of a capital asset are to be treated as capital expenditures. The most familiar example of such treatment is the capitalization of brokerage fees for the sale or purchase of securities, as explicitly provided by a longstanding Treasury regulation. *Woodward v. Comm'r*, 397 U.S. 572, 575, (1970).

§1.263(a)-2(f)(ii) defines facilitative costs paid to acquire property and they include brokerage fees under section (I)

§1.263(a)-2(f)(ii). An amount is paid in the process of investigating or otherwise pursuing the acquisition of real or personal property if the amount is inherently facilitative. An amount is inherently facilitative if the amount is paid for...

Treas. Reg. § 1.263(a)-1(e) provides:

#### *(e) Amounts paid to sell property -*

(1) *In general. Commissions and other transaction costs paid to facilitate the sale of property are not currently deductible under section 162 or 212. Instead, the amounts are capitalized costs that reduce the amount realized in the taxable year in which the sale occurs.*

Formatted: Font: Italic

If the brokerage fee were treated as a capital loss the taxes in every year would be zero.

Calculation of Income Distribution deduction with \$30,000 facilitative costs.

Schedule B Income Distribution Deduction		
1	Adjusted total income. See instructions	70,000
2	Adjusted tax-exempt interest	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	20,000
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	0
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	-20,000
7	Distributable net income. Combine lines 1-6. If zero or less, enter -0-	70,000
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	
9	Income required to be distributed currently	70,000
10	Other amounts paid, credited, or otherwise required to be distributed	0
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	70,000
12	Enter the amount of tax-exempt income included on line 11	70,000
13	Tentative income distribution deduction. Subtract line 12 from line 11	70,000
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	70,000
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 10	70,000

### Two Caveats

#### PLR 2007210

IRC §266 allows a taxpayer to elect to capitalize “carrying charges.”

In PLR 2007210, a taxpayer asked if a flat fee paid to a brokerage firm would qualify as a carrying charge that a taxpayer could elect to capitalize under IRC §266. The answer was “no.”

In the PLR, the brokerage firm had agreed to act as a discretionary investment advisor and a custodian for the assets held in taxpayer's account. Among other things, the brokerage firm agreed to review and evaluate taxpayer's investment objectives and to hire an unaffiliated manager to invest all or a portion of the assets in taxpayer's account. Under Treas. Reg. §1.266-1(b)(iv) carrying charges are charges with respect to property, otherwise deductible, which in the opinion of the Commissioner are, under

sound accounting principles, chargeable to capital account.” Because “carrying charges” were not precisely defined in the tax law, the PLR approached the definition of carrying charges from multiple analogous angles and finally concluded that advisory fees were not carrying charges because “consulting and advisory fees are not closely analogous to common carrying costs, such as insurance, storage, and transportation. See e.g., § 263(b).”

#### Basis of Stock Sold

When a stock is sold, a taxpayer will need to be able to prove their basis in the stock. How should the brokerage fee be allocated to the basis of a particular stock?

There is more than one way to skin a stock basis and the best way to allocate investment fees to stocks in an investment portfolio could be a matter of opinion. The ultimate issue is the burden of proving stock basis. Generally, the taxpayer has the burden of proof in Tax Court. (Rule 142(a)). A taxpayer can shift the burden of proof under IRC §7491. Under §7491(a)(1), “If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.” Additional

requirements are: “(1) under IRC §7491(a)(2)(A), the taxpayer has complied with the requirements under this title to substantiate any item; and (2) under IRC §7491(a)(2)(B), the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews...”

A prudent tax return preparer may not want to allocate investment fees to a stock portfolio every year under an ad hoc formula subject to the possibility that the IRS will take the position in an audit that the fees cannot be so allocated. However, if a particular client is already under an IRS audit, it would definitely be a good time to assert the issue and you will need adequate record keeping to do so – and be cooperative under IRC §7491.

<sup>1</sup> Treas. Reg. 1.643(a)-(0)

<sup>2</sup> 26 CFR (“Treas. Reg.”) §1.651(a)

<sup>3</sup> IRC § 651 (a)

<sup>4</sup> IRC § 662(a)



# ATTACHMENT 3

# Probate and Estate Planning Section: 2020-2021

## Treasurer's Monthly Activity Report

Carry-Over Fund Balance from 2019-2020	Carry Over Balance
1-5-00-775-0001 Fund Bal-Probate/Estate Plan	\$ 201,232.05

Revenue		August 2021	YTD Revenue (2020-2021)	Proposed Budget (2020-2021)
1-7-99-775-1050 Probate/Estate Planning Dues		\$ 140.00	\$ 116,795.00	\$ 110,000.00
1-7-99-775-1055 Probate/Estate Stud/Affil Dues		\$ -	\$ 595.00	\$ 800.00
1-7-99-775-1330 Subscription to Newsletter		\$ -	\$ -	\$ -
1-7-99-775-1470 Publishing Agreement Account		\$ -	\$ -	\$ 200.00
1-7-99-775-1755 Pamphlet Sales Revenue		\$ -	\$ -	\$ -
1-7-99-775-1935 Miscellaneous Revenue		\$ -	\$ 975.00	\$ -
<b>Total Revenue</b>		<b>\$ 140.00</b>	<b>\$ 118,365.00</b>	<b>\$ 111,000.00</b>

Expenses		August 2021	Cumulative Expenses	Proposed Budget (2020-2021)
1-9-99-775-1111 Administrative Expenses		\$ -	\$ 2,748.50	\$ 10,000.00
1-9-99-775-1127 Multi-Section Lobbying Group		\$ 6,000.00	\$ 36,000.00	\$ 36,000.00
1-9-99-775-1145 ListServ		\$ -	\$ -	\$ -
1-9-99-775-1276 Meetings		\$ -	\$ -	\$ 18,000.00
1-9-99-775-1283 Seminars		\$ -	\$ 11,000.00	\$ 20,000.00
1-9-99-775-1297 Annual Meeting Expenses		\$ -	\$ -	\$ 1,000.00
1-9-99-775-1493 Travel		\$ -	\$ -	\$ 12,000.00
1-9-99-775-1528 Telephone		\$ -	\$ -	\$ 100.00
1-9-99-775-1549 Books & Subscriptions		\$ -	\$ -	\$ 750.00
1-9-99-775-1822 Litigation-Amicus Curiae Brief		\$ -	\$ -	\$ 25,000.00
1-9-99-775-1833 Newsletter		\$ -	\$ 8,900.00	\$ 13,200.00
1-9-99-775-1861 Printing		\$ -	\$ -	\$ -
1-9-99-775-1868 Postage		\$ -	\$ -	\$ -
1-9-99-775-1987 Miscellaneous		\$ -	\$ 1,385.30	\$ 2,500.00
<b>Total Expenses</b>		<b>\$ 6,000.00</b>	<b>\$ 60,033.80</b>	<b>\$ 138,550.00</b>

<b>Net Income</b>		<b>\$ (5,860.00)</b>	<b>\$ 58,331.20</b>	<b>\$ (27,550.00)</b>
<b>General Fund plus Net Income (Running Total)</b>		<b>\$ 259,563.25</b>	<b>\$ 259,563.25</b>	<b>\$ 173,682.05</b>

<b>Hearts and Flowers Fund Carry Over Balance</b>	<b>Carry Over Balance</b>	<b>August 2021</b>		
<b>Beginning Deposit Fund Balance</b>	<b>\$ 772.81</b>	<b>\$ 736.07</b>		
<b>Revenue</b>		<b>\$ -</b>		
<b>Withdrawals</b>		<b>\$ 180.00</b>		
<b>Total Fund</b>		<b>\$ 556.07</b>		

# ATTACHMENT 4

Re: Tax Liaison Report from Tax Council to Probate Council  
Date: February 25, 2021 Zoom Tax Council Meeting  
Time: 9:00 a.m. – 10:30 a.m.  
From: Neal Nusholtz, Probate Council Tax Council Liaison

---

---

The committees in the tax section are looking into meal gift cards, including delivery and coffee gift cards as incentives for attendance at remote webinars. IRS Chief Counsel's Office reports that as a result of virtual Tax Court dockets, the Detroit office is handling cases in seven states. Their offices will be completely moved in April to 985 Michigan Avenue.

- The Employee Benefits Committee intends to have a roundtable discussion on what practitioners are seeing, advising, and have open questions on. They are planning on having a coffee break type discussion on March 23<sup>rd</sup> at 9 a.m., with Starbucks gift cards to be sent to attendees afterwards.
- small business succession planning and wealth transfer/estate planning under the Biden administration's tax plans is planned for some time near the end of April.
- doing business with REITs, planned for a date in August.
- discussion on PPP loan expense deductibility and the employee retention credit planned for Wednesday (March 3<sup>rd</sup>) or Thursday (March 4<sup>th</sup>) if it works for the group.

Find out more by going to the SBM Taxation section website. Click on "Event" at the top, then "Annual Conference" and look down the page to click on "ConferenceorSeminar"

Brochure for the 5/27/21 33rd Annual Tax Conference is attached.

PLATINUM SPONSOR

plante moran

GOLD SPONSOR

DykEMA

SILVER SPONSORS

DICKINSON WRIGHT PLLC

Howard & Howard  
law for business®

## Your Registration Is All-Access

Experts from Across Michigan and Beyond	22 Speakers	Starting May 27, 2021
All Livestreamed Content	5 Sessions	Live via Zoom on May 27, 2021
All On-Demand Content	15 Sessions	Available July 8, 2021*
Electronic Materials <i>Individual access to video recordings, written materials, and PowerPoints</i>	3-Year Access	Available July 8, 2021
Discounts**	✓	<a href="http://www.icle.org/tax">www.icle.org/tax</a>

\*Includes 4 recorded livestreams.

\*\*Special deals for section members, new lawyers, 4+ from the same firm, and more.

### SAVE MORE WITH ICLE

Learn about how this event can help you save on malpractice insurance: [www.icle.org/cna](http://www.icle.org/cna)  
2% major event savings is limited to one event per year.

Please make your payment online with credit card at [www.icle.org/tax](http://www.icle.org/tax)

Need help? Call ICLE at 877-229-4350. During COVID-19, we are not able to accept credit card payment by phone or mail.

#### Alternate payment option:

If you need to pay by check, please mail form with payment to: PO Box 1343, Ann Arbor, MI 48106.

Check No. \_\_\_\_\_ Payable to: ICLE

**Taxation Section Tax Conference, 33rd Annual**  
*Includes electronic materials. Get individual on-demand access to video recordings, written materials, and PowerPoints for three years starting 07/08/21. Plus five livestreamed sessions on 05/27/21.*

#### Prices Reduced This Year Only

- ☐ \$225 General  
☐ \$145 Cosponsor Section Member  
☐ \$225 ICLE Partner  
☐ \$95 New Lawyer  
(0-3 Years in Practice P82231+)  
☐ \$135 per Registrant  
(4+ Registrants from the Same Firm)<sup>1</sup>

#### Livestreamed Sessions Registration | 05/27/21

- ☐ YES, I will attend the livestreamed sessions.

#### Special Registration

- ☐ FREE Judges<sup>2</sup>

21CI-7420

Name \_\_\_\_\_  
MI Bar # \_\_\_\_\_  
ICLE P'ship # \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_

Cannot combine discounts.<sup>1</sup>Please attach additional sheet listing registrants attending. All registrations must be submitted and paid for at the same time.<sup>2</sup>Current sitting state court judges (limit 40) attend free and must call ICLE or submit order form to register.  
**Complete Seminar Policies:** [www.icle.org/info/seminarpolicies](http://www.icle.org/info/seminarpolicies). **Cancellation Policy:** For a full refund, notify ICLE by 05/26/21.  
No refunds will be issued after 05/26/21. **Terms and Conditions:** Access to online seminar materials for an ICLE institute/conference/summit or an on-demand event (including the materials, video, and audio files) is granted only to me, the customer registered for the event, and I am not permitted to share my access. See [www.icle.org/info/termsconditions](http://www.icle.org/info/termsconditions).

1BQ



THE UNIVERSITY OF MICHIGAN  
INSTITUTE OF CONTINUING LEGAL EDUCATION  
1020 Greene Street  
Ann Arbor, MI 48109-1444

NONPROFIT ORG.  
U.S. POSTAGE  
PAID  
ANN ARBOR, MI  
PERMIT NO. 106

ADDRESS SERVICE REQUESTED

LIVESTREAMS 05/27/21 & ON-DEMAND EVENT AVAILABLE 07/08/21

## Taxation Section 33RD ANNUAL TAX CONFERENCE



## Master the Latest Tax Developments

Presented by  
Taxation Section of the State Bar of Michigan

In cooperation with  
THE INSTITUTE OF CONTINUING LEGAL EDUCATION

REGISTER TODAY

[www.icle.org/tax](http://www.icle.org/tax) | 877-229-4350

9-17-2021 Annual Meeting, CSP, & Probate Council Meeting  
Probate and Estate Planning Section  
page 197 of 199

# Master the Latest Tax Developments

Stay on top of evolving issues in tax law—from changes on the national front to state and local developments. Get complete coverage of emerging cannabis tax issues and in-depth analysis of Michigan tax policy and administration. New this year: an ethics session covering the latest with Circular 230 and a joint session discussing the latest developments on estate planning with retirement assets. There's something for everyone, regardless of your professional perspective.

CLE: <sup>1,2</sup> CFTA Credit: Call ICLE\* CPE Credit: Call ICLE Level: Intermediate/Advanced

## Livestreams (NOTE: "Morning Coffee Mixer" is livestreamed only; other sessions also available on demand.)

**Morning Coffee Mixer** (Livestream Only 05/27/21, 8:15am–9:00am)  
join seminar faculty, Taxation Section council members, sponsors, and fellow registrants for a lively online morning networking experience with small group breakout sessions • participants will receive a Starbucks e-gift card after the event to use in the future

**Washington Update: Current Tax Legislative Developments**  
(Livestream 05/27/21, 9:00am–10:00am)

Biden administration tax priorities • makeup and priorities of the new Congress • possible federal tax changes • expiring TCJA provisions  
Patrick Robertson, Confluence Government Relations, *Washington, DC*

**Emerging Cannabis Tax Issues**

(Livestream 05/27/21, 10:15am–11:15am)  
IRC Section 280E and how it impacts cannabis businesses • expenses that are COGS under 280E and those that are not • best practices and planning strategies to minimize tax burdens • update on the latest 280E tax court

outcomes and their impacts • outlook with the Biden administration's tax priorities related to cannabis • COVID relief matters  
Marc A. Claybon, Crowe LLP, *Denver, CO*; Nick Richards, Greenspoon Marder LLP, *Denver, CO*

**Michigan Tax Policy and Administration <sup>2</sup> 02 1**  
(Livestream 05/27/21, 11:30am–12:30pm)

what's new at Treasury • legislative update • litigation update • administrative update • looking ahead  
Rachael Eubanks, Michigan Department of Treasury, *Lansing*; Lance R. Wilkinson, Tax Policy Division, Michigan Department of Treasury, *Lansing*

**Tax Ethics <sup>2</sup> 02 1** (Livestream 05/27/21, 1:15pm–2:00pm)

identify ethical concerns using real-world hypotheticals • best practices to resolve ethical dilemmas • Circular 230—what constitutes "practice before the IRS"? • what is adequate diligence in the context of tax law practice? • what's the deal with FMV?

Peter J. Kulick, Dickinson Wright PLLC, *Lansing*

## On-Demand Sessions (SESSION DURATIONS: Each runs 30-60 minutes on average.)

State and Local Tax Committee	Federal Income Tax Committee	Estates and Trusts Committee	Employee Benefits Committee
<p><b>The Latest Updates on Excise Taxes</b></p> <p>excise tax trends across states, including the Netflix tax, gambling/betting tax, marijuana tax, and e-cigarette/vaping tax • proposed and implemented Michigan Excise taxes</p> <p>Jackie J. Cook, The Mike Cox Law Firm PLLC, <i>Livonia</i></p> <p><b>The Latest on City Income Taxes</b></p> <p>municipal finance reform in 2021 • why cities are looking at city income taxes now • pending critical court decisions • potential changes to state law</p> <p>Chris Hackbarth, Michigan Municipal League, <i>Lansing</i>; Jennifer Woodard, City of Grand Rapids, <i>Grand Rapids</i></p> <p><b>Taxation/Valuation of Alternative Energy Systems</b></p> <p>update on wind/solar/biomass/storage systems in MI • differences between alternative energy systems and a fossil fuel or nuclear plant • valuation under the cost/income/sales comparison approaches • recent Michigan Tax Tribunal wind turbine litigation • proposed solar "payment in lieu of tax" legislation</p> <p>John D. Miller, The DTE Energy Company, <i>Detroit</i></p>	<p><b>What Every Tax Lawyer Must Know About Revenue Recognition</b></p> <p>overview of IRC Section 451(b) and discussion of impacts to taxpayers • overview of the tax impacts of ASC 606 • summary of tax accounting method change options related to IRC Section 451(b) and ASC 606</p> <p>Brendan Sullivan, BDO, <i>Troy</i>; Bret Trombly, BDO, <i>Troy</i></p> <p><b>Rollover Equity Transactions in M&amp;A Deals</b></p> <p>overview of the tax aspects of structuring rollover equity transactions • structuring for taxable versus tax-deferred rollover transactions • tax considerations in rollover transactions from both the buyer and seller perspectives</p> <p>Ilan Napchan, Honigman LLP, <i>Chicago, IL</i>; Allison Stelter, Honigman LLP, <i>Ann Arbor</i></p> <p><b>Transactional Issues When Buying or Selling Companies With Losses</b></p> <p>comparison of asset and stock transactions • impact of tax rates on analysis, including potential new rates • impact of losses on the structure of the transaction • calculation of IRC Section 382 limitations on net operating losses • unified loss rules and elections—trap for the unwary • emerging transactional issues</p> <p>Josh Bemis, Plante Moran PLLC, <i>Clinton Township</i>; Michael P. Monaghan, Plante Moran PLLC, <i>Clinton Township</i></p>	<p><b>Income Tax Issues Relating to Step-up in Basis for Surviving Spouses and Other Heirs</b></p> <p>four benefits from basis step-up on death • planning for basis step-ups in multiple situations, including: 1) first spousal death in a nuclear family, 2) the second spousal death with A/B trusts, and 3) the second spousal death with blended marriages</p> <p>Neal Nusholtz, Neal Nusholtz PC, <i>Troy</i></p> <p><b>Charitable Entities in Estate Planning</b></p> <p>overview of charitable legacy planning • choice of outright or endowment gifts • private foundation considerations • supporting organization overview • the donor-advised fund option</p> <p>Robin D. Ferriby, Clark Hill PLC, <i>Birmingham</i></p>	<p><b>ERISA Supreme Court and Legislative Update</b></p> <p>stock-drop litigation • "actual knowledge" impact on statute of limitations • defined benefit plan standing to assert claims • preemption of state law regulation of pharmacy benefit managers (PBMs) • key legislative changes</p> <p>Adrean Taylor, Honigman LLP, <i>Detroit</i></p> <p><b>Employee Benefits Issues for Cannabis, Hemp, and CBD Companies</b></p> <p>solutions for providing qualified retirement benefits • payroll and banking challenges • equity and incentive compensation strategies</p> <p>Eric W. Gregory, Dickinson Wright PLLC, <i>Detroit</i></p>
<p><b>Joint Session—Estates and Trusts Committee &amp; Employee Benefits Committee</b></p> <p><b>Estate Planning with Retirement Assets After the SECURE Act</b></p> <p>significant changes made by the SECURE Act • Required Minimum Distribution (RMD) rules • trusts as beneficiaries • charities as beneficiaries</p> <p>Amy N. Morrissey, Westerman &amp; Morrissey PC, <i>Ann Arbor</i>; Robert P. Tiplady, Dykema, <i>Ann Arbor</i></p>			

\*33rd Annual Tax Conference has been submitted for CFTA credits. This statement should not be viewed as an endorsement of this program or its sponsor.

## Featured Speakers



Jackie J. Cook  
The Mike Cox Law Firm PLLC,  
*Livonia*



Rachael Eubanks  
Michigan Department of Treasury,  
*Lansing*



Patrick Robertson  
Confluence Government Relations,  
*Washington, DC*

Re: Tax Liaison Report from Tax Council to Probate Council  
Date: August 26, 2021 Zoom Tax Council Meeting  
Time: 9:00 a.m. – 10:30 a.m.  
From: Neal Nusholtz, Probate Council Tax Council Liaison

---

---

The Tax Section is still flush with cash and looking for places to spend it on the members of the tax section. The annual dinner will be a virtual wine tasting where remote attendees will receive a bottle of wine on September 30<sup>th</sup> at 5:00 p.m. or 5:30 p.m.

Jeff Kirkey said that ICLE has found that remote events run attendance at 42 - 55% of in person events.

The Tax Section Fundamentals program will be October 28, 2021.

The 34<sup>th</sup> Annual Tax Conference will be May 26, 2022. Topics are being discussed. A politician is being sought to speak on current legislative developments.