

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN
Friday, April 10, 2026**

Regular Meeting Agenda

- I. Commencement (Nathan R. Piwowarski)
 - A. Call to Order and Welcome
 - B. Attendance:
 - 1. Zoom Roll Call
 - 2. Excused Absences: Hon. Judge Murkowski, Nicholas Reister, Daniel Borst
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meetings (Melisa Mysliwicz) – **Attachment 1**
 - C. Chair's Report (Nathan Piwowarski)
 - D. Treasurer's Report (Angela Hentkowski) – **Attachment 2**
- III. Committee Reports
 - A. Committee on Special Projects (Dan Hilker)
 - B. Amicus Curiae (Andy Mayoras) – **Attachment 3**
 - C. Annual Meeting (Nathan Piwowarski)
 - D. Awards (Katie Lynwood)
 - E. Budget (Melisa Mysliwicz)
 - F. Bylaws (David Lucas) – **Attachment 4**
 - G. Charitable and Exempt Organizations (Rebecca Wrock)
 - H. Citizens Outreach (Kathleen Goetsch)
 - I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David)
 - J. Electronic Communications (Susie Chalgian)
 - K. Ethics and Unauthorized Practice of Law (Alex Mallory)
 - L. Guardianship, Conservatorship, and End of Life (Sandy Glazier)
 - M. Legislation Development and Drafting (Rob Tiplady and Rick Mills)
 - N. Legislation Monitoring and Analysis (Mike Shelton)
 - O. Legislative Testimony (Dan Hilker)

- P. Membership (Angela Hentkowski)
- Q. Nominating (Mark Kellogg)
- R. Planning (Nathan Piwowarski)
- S. Probate Institute (Chris Savage)
- T. Real Estate (Angela Hentkowski) – **Attachment 5**
- U. State Bar and Section Journals (Melisa Mysliwicz)
- V. Tax (J.V. Anderton) – **Attachment 6**
- W. Assisted Reproductive Technology (Nancy Welber)
- X. Electronic Wills (Kathleen Martone)
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady)
- AA. Premarital Agreements (Chris Savage)
- BB. Trust Accounts (Elizabeth Luckenbach)
- CC. Uniform Community Property Disposition at Death Act (Jim Spica)
- DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Martone)
- EE. Undue Influence (Ken Silver)
- FF. Uniform Fiduciary Income and Principal Act (Jim Spica)
- GG. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume)
- IV. Good of the Order
- V. Adjournment of Regular Meeting

Roundtable (Time Permitting)

Attachment 1

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Friday, March 13, 2026

**Held in person at the University Club of Michigan State University, East Lansing, with
remote participation via Zoom
(DRAFT) Minutes**

I. Commencement (Nathan R. Piwowski)

A. Call to Order and Welcome

Chairperson Nathan R. Piwowski called the meeting of the Council of the Probate & Estate Planning Section of the State Bar of Michigan to order at approximately 10:20 a.m. and presided.

B. Attendance

Secretary Melisa Mysliwec conducted a roll call of Zoom participants and confirmed the presence of in-person attendees.

The following officers and members of the Council were present either in person or remotely via Zoom (“Z” reflects participation via Zoom):

1. Nathan R. Piwowski, Chairperson (Z)
2. Richard C. Mills, Chairperson-Elect
3. Christine M. Savage, Vice Chairperson (Z)
4. Melisa M. W. Mysliwec, Secretary (Z)
5. Angela M. Hentkowski, Treasurer (Z)
6. Ernschie Augustin (Z)
7. Daniel W. Borst (Z)
8. Susan L. Chalgian
9. Georgette E. David (Z)
10. Patricia E. Davis (Z)
11. Daniel S. Hilker
12. Elizabeth L. Luckenbach (Z)
13. Alexander S. Mallory (Z)
14. Kathleen A. Martone (Z)
15. Nicholas A. Reister (Z)
16. Michael D. Shelton (Z)
17. Hon. Sara A. Schimke

18. David Sprague (Z)
19. Rebecca Wrock (Z)

Others present either in person or remotely via Zoom:

1. Chad R. McDonald
2. Theresa Castle (Administrative Assistant) (Z)
3. Brianne M. Gidcumb (Z)
4. Dustin Foster (Z)
5. Peter Langley (Public Affairs Associates) (Z)
6. David Lucas (Ex Officio)
7. Katie Lynwood (Ex Officio) (Z)
8. James Stewart (Ex Officio) (Z)
9. Marguerite Munson Lentz (Ex Officio) (Z)
10. Lindsey DiCesare (ICLE) (Z)
11. Michael G. Lichterman (Z)
12. Amanda Knaffla (Z)
13. Austin McKee (Z)
14. Hon. Avery Rose (Z)
15. Brooks Rodino (Z)
16. Charlotte F. Shoup (Z)

C. Excused Absences

The following were noted as excused:

1. J.V. Anderton
2. Sandra D. Glazier (Z)
3. Joseph J. Viviano

D. Unexcused Absences

1. Warren H. Kreuger

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

Peter Langley presented the lobbyist's report on behalf of Public Affairs Associates. He reported that:

- House Bill 4959 remains on the House floor.
- Senate Bill 585 was referred to House Judiciary.
- House Bills 5152 and 5153 remain pending in House Economic Competitiveness Committee.
- Senate Bill 160 remains pending.

- House Bills 4033 and 4034 are pending in the Senate committee.
- House Bills 4523 and 4408 were referred to House Judiciary and may be taken up after spring break.
- House Bill 4014 passed the House and awaits action in Senate Finance.

Mr. Langley further reported that, after spring break, legislative attention is expected to shift primarily to supplemental appropriations and the budget. During discussion, the Chair noted that Representative Leitner may also take up remote notarization and witnessing legislation in May.

B. Minutes of Prior Council Meeting (Melisa Mysliwec)

The draft minutes of the February 13, 2026, Council (**Attachment 1**) meeting were presented for approval. Ms. Mysliwec noted that she prepared the draft from the transcript and materials from that meeting. Hearing no corrections, Ms. Mysliwec moved to approve the minutes. On voice vote, the motion carried. Rebecca Wrock abstained because she had been absent from that meeting, and the Chair also abstained.

C. Chair’s Report (Nathan Piwowski)

Chairperson Piwowski reported that the State Bar of Michigan Board of Commissioners had reviewed the Section’s public policy position concerning publication requirements and supported it. He also reported that he had signed and returned the sponsorship agreement with ICLE for the Probate Institute. He further noted that Brian Jenny is applying for a judgeship in Oakland County.

D. Treasurer’s Report (Angela Hentkowski)

Treasurer Hentkowski reported on the Section’s February 2026 financial materials included in the agenda packet. **Attachment 2**

III. Committee Reports

A. Committee on Special Projects (Dan Hilker)

Mr. Hilker reported on the Committee on Special Projects meeting held before the regular Council meeting.

The Committee considered the Real Estate Committee’s proposed revisions to the uncapping statute and took the following straw polls:

- The unanimous majority of CSP supports defining a “qualified family member” in the statute.
- The unanimous majority of CSP supports expanding the exemption to qualified family members to include a spouse if the transfer is to the qualified family member and a their spouse as tenants by entireties, as set forth in the Helinski case.
- The unanimous majority of CSP supports defining a spouse to include a deceased spouse, a surviving spouse, and a living spouse.
- A majority of CSP supports adding lineal descendants of the transferor’s parents to the

list of qualified family members, but there were some opposed.

The Committee participated in a discussion on whether the definition of commercial purpose should be refined so that it excludes residential real property. A few people raised public policy concerns and others raised concerns that this would negatively impact the attempt to update this statute as a whole. No straw poll was taken on this issue.

The Committee considered the Ad Hoc Committee on Various Issues Involving Death and Divorce's report and proposal to amend MCL 700.2807 to ensure that, on divorce, where the prior spouse is presumed deceased, that the State of Michigan is not a deemed heir. CSP supported moving this proposal forward to Council for a public policy position at a future meeting.

B. Amicus Curiae (Andy Mayoras)

Treasurer Hentkowski discussed the Committee's report in Andy Mayoras' absence. The Committee made a motion to authorize submission of a concise amicus brief, PEPS third amicus brief in this case, *In re Fowler Estate & Trust*, as set forth in the committee's memorandum (**Attachment 3**). A public policy position was taken authorizing submission of an amicus curiae brief, to be drafted by Andy Mayoras, setting forth the following:

1. The first question is a factual one and the PEPS takes no position as to when the assets were transferred to the trust;
2. Section 7605(1) does indeed apply to assets received post-death into a revocable living trust that became irrevocable upon death, as inherently discussed in our prior amicus brief, and more specifically, because the language of both 7605(1) and 7506(1)(b) limit the term "trust" based on revocability but do not discuss or limit application of those statutes based on when the trust received the property at issue; and,
3. If found otherwise, Section 7506(1)'s application would be governed by (1)(b) – which mirrors the application of 7605(1) – instead of (c), which applies to trusts that were irrevocable when created; otherwise, (1)(b) would have no meaning.

18 voted in support, 1 abstained, and 4 were absent and did not vote.

C. Annual Meeting (Nathan Piwowarski)

No report.

D. Awards (Katie Lynwood)

No report.

E. Budget (Melisa Mysliwicz)

No report.

F. Bylaws (David Lucas)

Chairperson Piwowski noted that he had assigned the Bylaws Committee a series of questions. The Committee, i.e. David Lucas, submitted a report shortly before the meeting. Chairperson Piwowski agrees with Ex Officio Lucas' recommendation to circulate the memo and allow more time for review, with discussion to begin at the April meeting.

G. Charitable and Exempt Organizations (Rebecca Wrock)

Ms. Wrock reported that the committee would next meet on March 26th. She thanked Chairperson Elect Mills for covering the prior meeting and said the committee is nearing completion of proposed revisions to several charitable and nonprofit statutes for eventual Council review.

H. Citizens Outreach (Kathleen Goetsch)

No report.

I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David)

No report.

J. Electronic Communications (Susie Chalgian)

No report.

K. Ethics and Unauthorized Practice of Law (Alex Mallory)

Mr. Mallory reported that the committee is reviewing an ABA ethics opinion on AI's potential issues for attorneys and plans to distill the guidance into practical takeaways for the Section.

L. Guardianship, Conservatorship, and End of Life (Sandy Glazier)

No formal report, but Ex Officio Steward reported that the committee does not recommend opposing the Uniform Guardianship Jurisdiction Act at this time, but believes it requires further review to address its interaction with Michigan law and probate court jurisdiction. Chairperson Piwowski indicated that this position would be relayed to the Section's lobbyists and that an ad hoc drafting committee may be considered.

M. Legislation Development and Drafting (Rob Tiplady and Rick Mills)

No report.

N. Legislation Monitoring and Analysis (Mike Shelton)

Mr. Shelton reported on recently introduced bills concerning electronic execution of estate planning documents, including bills addressing notarization, powers of attorney, and electronic wills. He noted that patient advocate designations do not appear to be covered and may warrant comment, and also reported on Senate Bill 819 concerning an uncapping exemption for certain spousal transfers of entity interests.

O. Legislative Testimony (Dan Hilker)

No separate report.

P. Membership (Angela Hentkowski)

Treasurer Hentkowski, on behalf of the Membership Committee, moved to authorize up to \$10,000 for Annual Probate and Estate Planning Institute scholarships and up to \$2,300 for the Section's reception in connection with the Acme Institute. The motion carried on voice vote.

Q. Nominating (Mark Kellogg)

No report. However, Chairperson Piwowski noted that nominations should be sent to Ex Officios Mark Kellogg, James Spica, or Katie Lywood.

R. Planning (Nathan Piwowski)

No report.

S. Probate Institute (Chris Savage)

Vice Chairperson Savage reported strong Probate Institute registration numbers and noted that a new mini session on the FinCEN real estate disclosure rules update has been added to the schedule.

T. Real Estate (Angela Hentkowski)

No separate report beyond the CSP discussion summarized above.

U. State Bar and Section Journals (Rebecca Wrock)

Ms. Wrock reported that the spring journal is in editing and that content is already lined up for the following issue, and she invited committee chairs and section liaisons to submit short blurbs for inclusion.

V. Tax (J.V. Anderton)

No report.

W. Assisted Reproductive Technology (Nancy Welber)

No report.

X. Electronic Wills (Kathleen Martone)

Ms. Martone reported that, in light of newly introduced House bills, the committee would review the bills and convene a committee meeting in mid-March.

Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)

No report.

Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady)

No report.

AA. Premarital Agreements (Chris Savage)

No report.

BB. Trust Accounts (Elizabeth Luckenbach)

Ms. Luckenbach reported that she had received comments that morning from Patricia Herndon of the Michigan Bankers Association on the redlined draft previously submitted, and that the committee would meet again and likely provide another update at the next Council meeting.

CC. Uniform Community Property Disposition at Death Act (Jim Spica)

No report.

DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowski and Kathleen Martone)

No report.

EE. Undue Influence (Ken Silver)

No report.

FF. Uniform Fiduciary Income and Principal Act (Jim Spica)

No report.

GG. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume)

No separate report beyond the CSP discussion summarized above.

IV. Good of the Order

The Council extended congratulations to Joseph J. Viviano on the birth of his child.

V. Adjournment

There being no further business, the regular Council meeting adjourned at 11:33am.

Respectfully submitted,

Melisa M. W. Mysliwiec, Secretary
Probate & Estate Planning Section Council
State Bar of Michigan

Attachment 2

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Sections Income Statement - Probate and Estate
Feb 2026

FINANCIAL ROW	AMOUNT (FEB 2026)	AMOUNT YTD (OCT 2025 - FEB 2026)	LAST FY YTD (OCT 2024 - FEB 2025)
Income			
40085 - Section Affiliate Dues	\$0.00	\$630.00	\$595.00
40080 - Section Dues	\$1,505.00	\$114,660.00	\$114,590.00
Total Income	\$1,505.00	\$115,290.00	\$115,185.00
Expenses			
67010 - Administrative Services	\$744.00	\$3,463.50	\$0.00
67015 - Amicus Brief	\$0.00	\$0.00	\$10,151.75
67065 - Community Support, Donations & Sponsorships	\$500.00	\$500.00	\$5,500.00
67235 - E Blast Expense	\$0.00	\$200.00	\$0.00
67115 - Legislative Consulting	\$3,000.00	\$15,000.00	\$15,000.00
62315 - Meetings	\$0.00	\$7,804.41	\$14,073.93
64055 - Miscellaneous	\$0.00	\$664.19	\$54.01
65460 - Newsletter/Publication	\$4,800.00	\$9,450.00	\$200.00
61200 - Travel	(\$500.00)	\$3,598.86	\$4,240.10
Total Expenses	\$8,544.00	\$40,680.96	\$49,219.79
Increase or Decrease in Net Position	(\$7,039.00)	\$74,609.04	\$65,965.21
Net Position, Beginning Of year	\$190,561.27	\$190,561.27	\$204,051.48
Net Position, End of Period	\$183,522.27	\$265,170.31	\$270,016.69

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Probate&Estate Section Expense Detail Report
From Oct 2025 to Feb 2026

ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
60000 - Operating Expenses - Non-Labor						\$0.00	\$0.00	\$0.00
61200 - Travel						\$0.00	\$0.00	\$0.00
	10/20/2025	Journal	JE13492	Daniel Hilker	10/17/2025 Travel	\$310.63		\$310.63
	10/29/2025	Journal	JE13685	Christine Savage	10-17-2025 meeting travel	\$327.87		\$327.87
	10/29/2025	Journal	JE13692	Marguerite Munson Lentz	10-17-2025 meeting travel	\$381.83		\$381.83
	10/29/2025	Journal	JE13694	Melisa Mysliwicz	10-17-2025 meeting travel	\$269.33		\$269.33
	10/29/2025	Journal	JE13699	Angela Hentkowski	10-17-2025 meeting travel	\$590.23		\$590.23
	11/3/2025	Journal	JE13774	James Spica	10-17-2025 Meeting Travel	\$422.63		\$422.63
	11/10/2025	Journal	JE13892	Rebecca Wrock	10-17-2025 meeting travel	\$364.28		\$364.28
	11/19/2025	Journal	JE14043	David Murkowski	10-17-2025 meeting travel	\$268.63		\$268.63
	11/19/2025	Journal	JE14046	Joseph Viviano	10-17-2025 meeting travel	\$519.23		\$519.23
	12/8/2025	Journal	JE14479	Kathleen Carignan	May 2025 Meeting Travel	\$500.00		\$500.00
	12/15/2025	Journal	JE14630	Sara Schimke	11-14-2025 Meeting travel	\$144.20		\$144.20
	2/19/2026	Journal	JE15433		K Carignan Reclass		\$500.00	-\$500.00
Total - 61200 - Travel						\$4,098.86	\$500.00	\$3,598.86
62315 - Meetings						\$0.00	\$0.00	\$0.00
	10/22/2025	Journal	JE13528	McCurdy Wotila & Porteous	10-18-2025 Probate Law Meeting	\$1,008.69		\$1,008.69
	10/22/2025	Journal	JE13527	McCurdy Wotila & Porteous	10-17-2025 Probate Law Meeting	\$3,788.52		\$3,788.52
	12/3/2025	Journal	JE14410	University Club of MSU	139481 11-14-2025 Probate Law Meeting	\$1,198.60		\$1,198.60
	1/13/2026	Journal	JE14960	University Club of MSU	139481 12-12-2025 Probate Law Meeting	\$1,808.60		\$1,808.60
Total - 62315 - Meetings						\$7,804.41	\$0.00	\$7,804.41
64055 - Miscellaneous						\$0.00	\$0.00	\$0.00
	10/22/2025	Journal	JE13526	McCurdy Wotila & Porteous	10-14-2025 Probate Law meeting supplies	\$278.29		\$278.29
	10/29/2025	Journal	JE13693	McCurdy Wotila & Porteous	10-28-2025 meeting supplies	\$68.90		\$68.90
	1/13/2026	Journal	JE14962	Prime Time Awards Inc.	Probate Law Gavel & Plaque	\$317.00		\$317.00
Total - 64055 - Miscellaneous						\$664.19	\$0.00	\$664.19
65460 - Newsletter/Publication						\$0.00	\$0.00	\$0.00
	12/2/2025	Journal	JE14364	ICLE	Probate Law Journal	\$4,650.00		\$4,650.00
	2/24/2026	Journal	JE15476	ICLE	Probate Law Journal	\$4,800.00		\$4,800.00

ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
Total - 65460 - Newsletter/Publication						\$9,450.00	\$0.00	\$9,450.00
67010 - Administrative Services						\$0.00	\$0.00	\$0.00
	11/4/2025	Journal	JE13815	Theresa Castle	October 2025 Admin	\$1,062.00		\$1,062.00
	12/1/2025	Journal	JE14336	Theresa Castle	November 2025 Admin	\$810.00		\$810.00
	1/7/2026	Journal	JE14850	Theresa Castle	December 2025 Admin	\$847.50		\$847.50
	2/10/2026	Journal	JE15314	Theresa Castle	January 2026 Admin	\$744.00		\$744.00
Total - 67010 - Administrative Services						\$3,463.50	\$0.00	\$3,463.50
67065 - Community Support, Donations & Sponsorships						\$0.00	\$0.00	\$0.00
	2/19/2026	Journal	JE15433		K Carignan Reclass	\$500.00		\$500.00
Total - 67065 - Community Support, Donations & Sponsorships						\$500.00	\$0.00	\$500.00
67115 - Legislative Consulting						\$0.00	\$0.00	\$0.00
	10/29/2025	Journal	JE13697	Public Affairs Associates	October 2025	\$3,000.00		\$3,000.00
	11/3/2025	Journal	JE13776	Public Affairs Associates	November 2025	\$3,000.00		\$3,000.00
	12/1/2025	Journal	JE14328	Public Affairs Associates	December 2025	\$3,000.00		\$3,000.00
	1/2/2026	Journal	JE14760	Public Affairs Associates	January 2026	\$3,000.00		\$3,000.00
	2/2/2026	Journal	JE15184	Public Affairs Associates	February 2026	\$3,000.00		\$3,000.00
Total - 67115 - Legislative Consulting						\$15,000.00	\$0.00	\$15,000.00
67235 - E Blast Expense						\$0.00	\$0.00	\$0.00
	10/31/2025	Journal	JE13787		10/21 Read the Summer Newsletter Now (eblast)	\$100.00		\$100.00
	1/31/2026	Journal	JE15158		1/26 Read the Winter Newsletter Now (eblast)	\$100.00		\$100.00
Total - 67235 - E Blast Expense						\$200.00	\$0.00	\$200.00
Total - 60000 - Operating Expenses - Non-Labor						\$41,180.96	\$500.00	\$40,680.96

Attachment 3

*STATE OF MICHIGAN
IN THE SUPREME COURT*

In re SHERROD ESTATE

DEDRA ELAN McBURROWS-
SHERROD, as Personal Representative of
the ESTATE OF CLYDE LAMONT
SHERROD,

Appellant,

v

MICHAEL SHERROD,

Appellee,

MSC Docket No. 168598
Court of Appeals Docket No.
369863
Oakland County Probate Court
Case No. 2022-410006-DE

**BRIEF OF *AMICUS CURIAE* PROBATE AND ESTATE PLANNING
SECTION OF THE STATE BAR OF MICHIGAN**

Submitted by:

Andrew W. Mayoras (P54896)

BARRON, ROSENBERG, MAYORAS & MAYORAS,
P.C.

*Counsel for Amicus Curiae Probate and Estate Planning
Section of the State Bar of Michigan*

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I. THE COURT OF APPEALS DID NOT APPLY THE PROPER STANDARDS FOR
WHAT CONSTITUTES A CONFIDENTIAL OR FIDUCIARY RELATIONSHIP 5

II. EVEN IF THE PRESUMPTION HAD PROPERLY BEEN FOUND NOT TO
APPLY, THE CASE SHOULD HAVE BEEN REMANDED TO PROBATE
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PROBATE & ESTATE PLANNING SECTION

PROBATE & ESTATE PLANNING SECTION

Public Policy Position

In re Sherrod Estate, MSC No. 168598

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,466 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On February 13, 2026, the Section adopted its position after a discussion and vote at a scheduled meeting. 14 members voted in favor of the Section's position, 0 members voted against this position, 2 members abstained, 7 members did not vote.

Explanation:

The Probate & Estate Planning Section authorizes the filing of an amicus curiae brief advocating that: (1) the Court of Appeals applied the wrong standard for a confidential or fiduciary relationship, without addressing whether the outcome was correct, and (2) that the Court of Appeals erred in reversing the probate court, rather than remanding, in the absence of the presumption of undue influence.

Contact Person: Melisa M.W. Mysliwicz

Email: melisa.mysliwicz@btlaw.com

Position Adopted: February 13, 2026

INDEX OF AUTHORITIES

Cases

Bill and Dena Brown Trust v Garcia, 312 Mich App 686; 880 NW2d 269 (2015)4

Donovan v Bromley, 113 Mich 53; 71 NW 523 (1897)3

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BASIS OF JURISDICTION

This Court has jurisdiction over this matter pursuant to MCR 7.303(B)(1) and this Court's Order of January 14, 2026, considering the application and directing supplemental briefs as to Appellant's Application for Leave to Appeal. Appellant appeals from an Opinion of the Michigan Court of Appeals dated March 18, 2025.

STATEMENT OF RELIEF SOUGHT

The State Bar of Michigan's Probate and Estate Planning Section (the "PEPS")¹ files this *amicus curiae* brief pursuant to the Court's invitation in the January 14, 2026 Order. The PEPS respectfully requests that this Court determine that: (1) the Court of Appeals did not apply the proper standard for what constitutes a fiduciary or confidential relationship; and (2) if the presumption had properly been found not to apply, the Court of Appeals erred by reversing the Probate Court rather than remanding for a determination of whether the evidence constituted undue influence in the absence of the presumption.

The PEPS takes no position on whether the evidence submitted was sufficient to constitute a fiduciary or confidential relationship that triggered application of the presumption of undue influence.

¹ No counsel for a party authored this brief in whole or in part. No party, or counsel for a party, made a monetary contribution intended to fund the preparation or submission of this brief. No other person did so either, other than the PEPS, acting through its Council, and its members, all of whom submit dues that fund the PEPS, including *amicus curiae* briefs. It is not known if any counsel involved in this case is a member of the PEPS. MCR 7.312(H)(5).

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals applied the proper standard for what constitutes a fiduciary or confidential relationship?

The Trial Court answered: No

The Court of Appeals answered: Yes

The Appellant answers: No

The Appellee answers: Yes

The Probate and Estate Planning Section answers: No

2. Whether the Court of Appeals should have remanded the case to the Oakland County Probate Court, rather than reversed its Order, if the presumption were properly found not to apply in this case?

The Trial Court answered: N/A

The Court of Appeals answered: No

The Appellant answers: N/A (was not addressed)

The Appellee answers: N/A (was not addressed)

The Probate and Estate Planning Section answers: Yes

STATEMENT OF FACTS AND PROCEEDINGS

Pursuant to MCR 7.212(D)(3)(b), the Probate and Estate Planning Section (“PEPS”) accepts the Statements of Facts presented by the Appellants and Appellee. The PEPS is not aware of any additional facts that it believes are relevant to this appeal. The PEPS is not aware that any of the presented facts are either inaccurate or deficient.

STANDARD OF REVIEW

The Probate and Estate Planning Section adopts the standard of review presented by the Appellant.

ARGUMENT

INTRODUCTION

The presumption of undue influence is one of the oldest, and most frequently litigated, doctrines in Michigan probate law. It plays a vital role in cases involving the validity of wills and other instruments because cases in which direct evidence of improper influence exist are rare:

Direct evidence of the wrongdoer’s conduct and the donor’s subservience is rarely available to establish the actual exertion of undue influence. The contestant’s case must usually be based on circumstantial evidence, and in certain cases, is aided by a presumption of undue influence.

2 Restatement Property, 3d, Wills & Other Donative Transfers, § 8.3, comment e, p 145 (emphasis added). Michigan courts have long recognized that “circumstantial evidence may be relied on by contestants to show undue influence.” *In re Willey's Estate*, 9 Mich App 245, 257; 156 NW2d 631, 638 (1967); *In re Loree's Estate*, 158 Mich 372, 122 NW 623 (1909).

The presumption of undue influence dates to at least 1866, when the Michigan Supreme Court first utilized a presumption to more closely scrutinize instruments benefiting someone who occupied a confidential or fiduciary relationship. *Seely v Price*, 14 Mich 541, 546-47 (1866) (reasoning that courts had a duty to refrain from sanctioning a legal instrument until fully satisfied of the fairness of the transaction where the instrument benefited someone standing in a confidential relationship). In 1897, the Michigan Supreme Court applied the doctrine to a case where a single woman named the wife of her business attorney as her primary beneficiary, during a time that she lived with the attorney (who was also a judge) and his wife. *Donovan v Bromley*, 113 Mich 53, 54; 71 NW 523 (1897). A few years later, the Michigan Supreme Court further explained the doctrine in *In re Hartlerode's Will*, “there are certain cases in which the

law indulges in the presumption that undue influence has been used, as where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser.” 183 Mich 51, 60; 148 NW 774 (1914). In those circumstances, “experience has taught that if certain evidentiary facts [can] be established, there is such a strong practical likelihood that another stated fact [i.e., the occurrence of undue influence] will be true that that fact may be presumed.” *Id.*

Despite a common law history dating back 160 years or more, the doctrine continues to be confusing and inconsistently applied by Michigan probate and appellate courts alike. See, for example, the dissenting opinion’s discussion of the doctrine and its limited utility in the case of an attorney drafter who was also a beneficiary under a challenged trust instrument. *In re Mardigian Estate*, 502 Mich App 154, 917 NW2d 325 (2018) (McCormack, J., dissenting). Indeed, those very concerns led to the Probate and Estate Planning Section (“PEPS”) successfully proposing new legislation to treat gifts to attorneys, made through testamentary instruments drafted by the attorney, as void, absent certain exceptions. *See* MCL 700.1216.

Further, once the presumption of undue influence is found to apply, even if rebutted, a permissive inference remains that prevents a directed verdict ruling against the will challenger. *Widmayer v Leonard*, 422 Mich 280, 289; 373 NW2d 538 (1985). Yet the Michigan Court of Appeals issued a published opinion stating that in such circumstances, summary disposition could be granted against the will challenger, even when the presumption was found to apply. *Bill and Dena Brown Trust v Garcia*, 312 Mich App 684, 703; 880 NW2d 269 (2015). The confusing evidentiary standards that apply to this issue were discussed, but not resolved, by this Court in 2012. *In re Mortimore Estate*, 491 Mich 925 (2012) (YOUNG, C.J., dissenting).

This case presents an ideal opportunity for the Michigan Supreme Court to clarify the presumption of undue influence test for future practitioners, litigants, and the judiciary. If the presumption standards are too rigorously applied, then it becomes nearly impossible to hold a wrongdoer accountable for undue influence, except in those rare cases where direct evidence of undue influence exists. In this case, the PEPS believes that the Court of Appeals applied the wrong standard for when a confidential or fiduciary relationship exists for purposes of applying the presumption, and in doing so, artificially and improperly raised the standard to a level that cannot be met in many cases. Further, even in the absence of the presumption, the case should have been remanded to the Probate Court to determine if undue influence occurred rather than an outright reversal.

I. THE COURT OF APPEALS DID NOT APPLY THE PROPER STANDARDS FOR WHAT CONSTITUTES A CONFIDENTIAL OR FIDUCIARY RELATIONSHIP.

The Court of Appeals ruling was erroneous. It reversed the Probate Court and found that the presumption of undue influence was improperly applied. The key analysis turned on the second element of the presumption of undue influence test: existence of a confidential or fiduciary relationship. The other two elements (benefit and opportunity) clearly existed. While the Opinion accurately cited the standards set forth in seminal cases, including *In re Estate of Karmey* and *In re Wood's Estate*, it did not apply those cases correctly.

Specifically, the key portion of the Court of Appeals' Opinion analyzing the issue was as follows:

This evidence was not sufficient to support a finding of a confidential or fiduciary relationship. That decedent trusted Michael is necessary for finding that a confidential or fiduciary relationship existed between them, but trust alone is not enough. See *Knight*, 329 Mich at 28. **Rather, to establish that a confidential or**

fiduciary relationship existed between decedent and Michael, there needed to be evidence that decedent demonstrated his trust in Michael by placing reliance on Michael's judgment or advice, see *In re Jennings' Estate*, 335 Mich at 244, and there is no such evidence in the record. For instance, despite decedent's redirecting his financial statements to Michael's house, nothing in the record suggests that decedent gave Michael any control over decedent's finances such that decedent would have to trust Michael's judgment. Indeed, decedent did not even give Michael access to the funds in his DMCU account while decedent was alive—decedent only made Michael the beneficiary on his DMCU account. And while Michael drove decedent to DMCU in a trip that resulted in decedent naming Michael the beneficiary of decedent's account, this supports only that Michael had the opportunity to influence decedent; it does not support that a confidential or fiduciary relationship existed between them.

In re Sherrod Estate, unpublished per curiam opinion dated 3/18/25, Slip Op at 5, attached as Exhibit 2 in Appellee's Appendix to Supplement Brief (emphasis added).

This analysis is too narrow. In the absence of a formal fiduciary relationship, such as an agent acting under a power of attorney, an informal confidential or fiduciary relationship can exist even in the absence of evidence that the decedent placed reliance on another's judgment or advice. Specifically, the complete test set forth by this Court in *Karmey* was noted as follows:

Fiduciary relationships usually arise in one of four situations:

- (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first,
- (2) when one person assumes control and responsibility over another,
- (3) when one person has a duty to act for or give advice to another person on matters falling within the scope of the relationship, or
- (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

In re Estate of Karmey, 468 Mich 68, 74 n 2; 658 NW2d 796 (2003).

The *Karmey* Opinion in turn relied in part on this Court's 1965 Opinion from *In re Wood's Estate*, 374 Mich 278, 287; 132 NW2d 35 (1965), noting that, "Although a broad term, 'confidential or fiduciary relationship' has a focused view towards relationships of inequality." 468 Mich at 68, 74 n3. The *Karmey* Opinion elaborated:

This Court recognized in *In re Wood's Estate*, that the concept had its English origins in situations in which dominion may be exercised by one person over another. Quoting 3Pomeroy, *Equity Jurisprudence* (5th ed, 1941), § 956a, this Court said a fiduciary relationship exists as fact when "there is confidence reposed on one side, and the resulting superiority and influence on the other." Common examples this Court has recognized include where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser. In these situations, complete trust has been placed by one party in the hands of another who has the relevant knowledge, resources, power, or moral authority to control the subject matter at issue. [citations omitted].

Id.

Nowhere in this discussion, or in *Wood's Estate*, does the analysis require "evidence that the decedent placed reliance on judgment or advice" as the Court of Appeals wrongly required in this case. Rather, the critical component is one of inequality. Such inequality may exist in a number of ways, as *Karmey* recognized. The classic example is of a caregiver on whom an infirm individual physically relies, even if the individual does not rely on that person's judgment or advice. If the Court of Appeals ruling is upheld, then this relationship would no longer trigger the presumption.

The Third Restatement of Property, Wills and Donative Transfers² provides useful

² While the Supreme Court has not directly adopted the Restatement of Property's approach to undue influence cases, it has generally accepted and applied the Restatement's approach to many tort issues, among many other legal principles. *See, generally, Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 1 NW3d 44 (2023).

commentary and insight into this issue. It discusses three separate categories to meet the test of confidential relationship:

The term “confidential relationship” embraces three sometimes distinct relationships--fiduciary, reliant, or dominant-subservient. For purposes of clarity, this Restatement refers to these relationships separately, although any one of them can be called “confidential” and give rise to a presumption of undue influence.

A fiduciary relationship is one in which the confidential relationship arises from a settled category of fiduciary obligations. . . .

* * *

Whether a reliant relationship exists is a question of fact. The contestant must establish that there was a relationship based on special trust and confidence, for example, that the donor was accustomed to be guided by the judgment or advice of the alleged wrongdoer or was justified in placing confidence in the belief that the alleged wrongdoer would act in the interest of the donor. Examples might include the relationship between a financial adviser and customer or between a doctor and patient.

Whether a dominant-subservient relationship exists is a question of fact. The contestant must establish that the donor was subservient to the alleged wrongdoer’s dominant influence. Such a relationship might exist between a hired caregiver and an ill or feeble donor or between an adult child and an ill or feeble parent.

In a particular case, these three relationships might overlap. That is, the alleged wrongdoer might be in a fiduciary, reliant, and dominant-subservient relationship with the donor. In another case, however, the relationships might not overlap. **For example, an ill or feeble donor might be suspicious of the motives of a hired caregiver, but still be in a subservient relationship with that person, feeling that “I must do what he or she says.”**

2 Restatement Property, 3d, Wills & Other Donative Transfers, § 8.3, comment g, p 146-7 (emphasis added).

This commentary highlights the problem with the narrow application of the presumption that the Court of Appeals utilized. The first category requires a formal fiduciary relationship,

like an attorney/client or an agent acting under a power of attorney. It clearly is not at issue in this case. The second category is consistent with the Court of Appeals' analysis, of one person relying on the judgment or advice of another. But the Court of Appeals completely ignored the third category of dominant-subservient, such as a caregiver for someone infirm. That category was certainly worthy of analysis in this case. Most notably – particularly in this case – a caregiver of an ill or feeble donor, who feels compelled to do what the caregiver states, would be able to exercise undue influence and enjoy the fruits of wrongdoing, unless the caregiver happens to leave behind direct evidence of the influence – which again, is exceedingly rare.

In this case, the Appellee was admittedly not a hired caregiver, and the assistance provided was short-term in nature. But that assistance included driving the decedent – who was clearly ill and, at least at times, feeble -- to the police station and the bank, as well as sitting in the room while the challenged account documents were executed. He also received bank statements. The Probate Court clearly analyzed these factors in determining if the presumption applied, but the Court of Appeals did not by applying the test too narrowly.

The PEPS takes no position on whether or not that evidence was sufficient to justify the Probate Court's findings of undue influence. However, that evidence clearly should have been evaluated without a rigid rejection of it due to an absence of evidence of a reliant relationship. The facts of this case may very well have been sufficient to justify a dominant-subservient relationship, which is well within the critical "inequality" analysis that both *Karmey* and *Wood's Estate* highlighted as the key element of the applicable test on this issue.

Other Michigan appellate courts have found the existence of a confidential or fiduciary relationship in similar circumstances. For instance, just over a year ago, the Michigan Court of

Appeals addressed a case where a son functioned as his mother's caregiver, including acting as "caretaker, house manager, driver, monitor [sic] of her medication and holder of her bank card". *In re Jones Estate*, unpublished per curiam opinion of the Court of Appeals, issued 12/20/24 (Docket No 365288), slip op at 3, a copy of which is attached hereto as Exhibit A. Making no mention of reliance on judgment or advice, the Court affirmed the Probate Court's finding that the presumption of undue influence applied. *Id.*

Similarly, in *In re Estate of Leone*, 168 Mich App 321, 423 NW2d 652 (1988), the Court of Appeals found a prima facie case in favor of the presumption, noting that despite conflicting evidence, the gift recipient had a great deal of influence of his mother, lived with her, took care of her needs and ran errands for her, and drove her wherever she needed to go due to poor eyesight. 168 Mich App at 324-25.

Finally, in *In re Estate of Swantek*, 172 Mich App 509, 514; 432 NW2d 307 (1988), the Court of Appeals ruled that, "A confidential relationship exists when a person enfeebled by poor health relies on another to conduct banking or other financial transactions." There, the Court found that a donor in the hospital had entrusted a person to deposit checks into the donor's individual bank account, but he instead deposited them into a joint account. This evidence alone was found sufficient to support a jury's decision to infer a confidential relationship existed. *Id.*

In other words, under the Court of Appeals analysis in this case – requiring evidence of reliance in the recipient's advice or judgment – the outcomes of each of these cases would have been different. Such an outcome is inconsistent with *Karmey*, *Wood's Estate*, and the Restatement. As such, the Court of Appeals Opinion should be reversed and/or remanded and the proper, broad test focused on inequality, not just reliance on judgment or advice, should be

applied.

II. EVEN IF THE PRESUMPTION HAD PROPERLY BEEN FOUND NOT TO APPLY, THE CASE SHOULD HAVE BEEN REMANDED TO PROBATE COURT, INSTEAD OF REVERSED.

The Court of Appeals exercised unusual authority in reversing the Probate Court's finding of undue influence, rather than remanding for its determination of whether the finding would have changed without application of the presumption. In doing so, the Court of Appeals noted that the outcome "strikes us as unfair" but that this "perceived unfairness does not justify court intervention." *In re Sherrod Estate*, unpublished per curiam opinion dated 3/18/25, Slip Op at 6 n 2, attached as Exhibit 2 in Appellee's Appendix to Supplement Brief. However, whether court intervention was appropriate turned in large part in evaluation of the testimony and the credibility of the witnesses, for which deference must be given to the trial court. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Appellate courts "defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

This is especially true in undue influence cases, where the burden of persuasion remains on the challenger, even when the presumption applies, as correctly noted by the Probate Court during its ruling. *See* 2/5/24 TR 6-8; attached as Exhibit 5 in Appellee's Appendix, at 216-17; see also *Kar v Hogan*, 399 Mich 529, 251 NW2d 77 (1976). In analyzing the evidence, the Probate Court noted that the testimony of the main treating physician was a one of the "very key

parts” of the testimony, establishing that the decedent had weakness of mind and was highly susceptible to undue influence. *Id* at 9 (218). The Court also found that there was no evidence that his daughter was stealing from the decedent, but that “these thoughts were in [his] head.” *Id* at 10 (219). The Court also found that the Appellee “lacked credibility” and that much of his testimony was directly contrary to other credible independent witnesses and testimony. *Id* at 13-14 (222-23). Finally, it noted that the brothers did not have a close relationship that was the type that would justify a change to a significant part of the decedent’s estate plan in this manner. *Id* at 15 (224).

While the Probate Court’s ruling was based on the presumption of undue influence, it also turned, in large measure, on the credibility of the witnesses. Given the foregoing portions of the Court’s ruling, the Court of Appeals should have remanded the case to the Probate Court for a further determination of whether the challenged transaction should have been set aside based on undue influence even in the absence of the presumption. For instance, Appellant, in her Supplement Brief, discusses a number of facts introduced at trial that might have been sufficient to support a finding of undue influence even without the presumption. *See* Appellant’s Supplemental Brief at 6-13.

These facts appear to raise a question of fact for the Court to resolve, even with no presumption or direct evidence of undue influence. As the Michigan Supreme Court held, “[u]nquestionably undue influence may be shown by indirect and circumstantial evidence, but it must be evidence of probative force beyond mere suspicion” *In re Langlois Estate*, 361 Mich 646, 652; 106 NW2d 132 (1960). “Undue influence may be insidious and not in front of witness, but fair inferences can be drawn from the facts.” *In re Persons Estate*, 346

Mich 517, 532; 78 NW2d 235 (1956). “The question of credibility is always one for the jury who may not accept all or any part of testimony that they believe to be true.” *Id.*

Here, sufficient evidence was presented to support a remand rather than reversal, even if the Court of Appeals had correctly applied the presumption of undue influence test. There was no jury and the probate judge functioned as trier of fact. The Probate Court should have been permitted to address the indirect and circumstantial evidence, in light of its expressed concerns with credibility of the Appellee, and issue a ruling based on its evaluation of the evidence in the absence of the presumption, even if the Court of Appeals had properly applied the test.

CONCLUSION

The Probate and Estate Planning Section of the State Bar of Michigan advocates for the reversal of the Court of Appeals Opinion because of the improper application of the confidential or fiduciary relationship prong of the presumption of undue influence test, without taking a position on whether the evidence in this case would have met the test if it had been applied properly. Further, even in the absence of the presumption, the Court of Appeals should have remanded the case to the Oakland County Probate Court to issue a new ruling on the issue in the dispute.

Respectfully submitted,

*Counsel for Amicus Curiae Probate and
Estate Planning Section of the State Bar of
Michigan*

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Dated: March 31, 2026

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Michigan Court Rules 7.212(B)(1) and (3) because, excluding the parts of the document exempted, this document contains no more than 16,000 words. This document contains 4437 words.

Dated: March 31, 2026

By: /s/ Andrew W. Mayoras
Andrew W. Mayoras (P54896)

EXHIBIT A

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

**STATE OF MICHIGAN
COURT OF APPEALS**

In re JONES ESTATE.

LINDA DUNN, as Personal Representative of the
ESTATE OF HELEN AGNES JONES, CAROLYN
MCGINNIS, and MAUREEN D. PHILLIPS,

Appellees,

v

HENRY JONES,

Appellant.

UNPUBLISHED
December 20, 2024
8:30 AM

No. 365288
Wayne Probate Court
LC No. 2019-853230-DE

Before: N. P. HOOD, P.J., and CAMERON and LETICA, JJ.

PER CURIAM.

Appellant appeals the probate court's order declaring decedent's, Helen Jones's, 2018 will invalid because of undue influence. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1984, Helen executed a will bequeathing her estate to her husband, Henry Jones, Sr. In the event Jones predeceased her, Helen's estate was to be distributed equally among her five children: appellant, appellees, and their nonparty sister, Deborah. Jones died in 2016, and appellant moved into Helen's home in 2017. Appellant had a history of violence and abuse against Helen, and was formerly banned from the home by Jones for many years. After appellant moved in, he became Helen's primary caregiver, managing her home, health, and daily life. Then, in September 2018, appellant took Helen to an attorney to change her will. The 2018 will did not disinherit the other children, but bequeathed Helen's house solely to appellant. After Helen's death, appellees argued the 2018 will was invalid due to undue influence. The probate court agreed, invalidated the 2018 will, and deemed the 1984 will operative. Appellant now appeals.

II. STANDARD OF REVIEW

This Court reviews “the probate court’s dispositional rulings for an abuse of discretion.” *In re Guardianship of Redd*, 321 Mich App 398, 403; 909 NW2d 289 (2017). “A probate court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes.” *Id.* (quotation marks and citation omitted). This Court reviews “the probate court’s findings of fact for clear error.” *Id.* “A factual finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made.” *Id.* (quotation marks and citation omitted).

III. ANALYSIS

Appellant argues that the probate court erred when it concluded a presumption of undue influence existed and that appellant failed to rebut it. We disagree.

A. PRESUMPTION OF UNDUE INFLUENCE

The trial court did not err by finding a presumption of undue influence.

To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. [*In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003) (quotation marks and citation omitted).]

Additionally:

The presumption of undue influence is brought to life upon the introduction of evidence which would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary or an interest which he represents benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Id.* at 73 (quotation marks and citation omitted).]

There is no dispute that appellee satisfies the second and third factors. He would certainly benefit from inheriting the house, and had the opportunity to influence Helen’s decision because he was her caregiver and lived in her home. As such, the only issue is whether appellee’s relationship with Helen constituted a confidential or fiduciary relationship.

“Although a broad term, “confidential or fiduciary relationship” has a focused view toward relationships of inequality.” *Id.* at 74 n 3. “[A] fiduciary relationship exists as fact when there is confidence reposed on one side, and the resulting superiority and influence on the other.” *Id.* (quotation marks and citation omitted). “Common examples this Court has recognized include where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser.” *Id.* “In these situations, complete trust has been placed by one party in the hands of another who has the relevant knowledge, resources, power, or moral authority to control the subject matter at issue.”

In *Salvner v Salvner*, 349 Mich 375, 383-384; 84 NW2d 871 (1957), our Supreme Court concluded that no fiduciary relationship existed between a father and his children, who “unquestionably did many things to assist their father, a perfectly natural course of conduct in view of his physical condition[,]” because “the record [fell] short of establishing that [the father] was governed by their advice or that he depended on them in the making of decisions concerning his business affairs, or otherwise.” The Court reasoned that it was clear that the father, “notwithstanding his physical condition, was able to determine for himself what he wished to do and to refuse to act against his own inclinations.” *Id.* at 384. Thus, “[w]hat [the children] did to assist [their father] amounted to no more than would be prompted normally by the existing relationship.” *Id.* at 384.

On appeal, appellant claims that the probate court concluded a fiduciary relationship existed merely because they were mother and son. Appellant mischaracterizes the trial court’s reasoning. Unlike in *Salvner*, in which the children had no more than what appeared to be a standard parent-child relationship with their father, appellant had a profound role in Helen’s life. The trial court noted that, appellant, “in his role the last two (2) years of his mother’s life as her caretaker, house manager, driver, the monitor [sic] of her medication and holder of her bank card was unquestionably in a trusted and confidential or fiduciary relationship with [Helen] until she died.” The probate court’s reasoning was supported by appellant’s own testimony that Helen had relied on him extensively for her day-to-day activities. He cooked her meals, washed her clothes, washed her feet, shopped for groceries, occasionally took her to medical appointments and picked up her prescriptions, monitored her medications, and had access to her debit card to use if they “needed something[.]” like groceries. Additionally, appellant testified he had spent his own money buying furniture for the house after moving in with Helen, and stated he was responsible for maintaining the house from “[t]op to bottom.” By appellant’s own testimony, it is clear that he served as, and understood himself to be, Helen’s caregiver. Indeed, it was appellant who drove Helen to the meeting with the attorney to change her will.

Appellant’s relationship with Helen was demonstrably one of inequality, *Karmey*, 468 Mich at 74 n 3, not because it was a mother-son relationship, but because “there [was] confidence reposed on one side and the resulting superiority and influence on the other.” *Id.* (quotation marks and citation omitted). The record supports the conclusion that appellant had a confidential or fiduciary relationship with Helen. Thus, the probate court did not err when it found a presumption of undue influence.

B. REBUTTAL OF UNDUE INFLUENCE

The trial court also did not err in finding that appellant failed to rebut the presumption of undue influence.

“Even when the presumption arises, the ultimate burden of proving undue influence remains on the party alleging that it occurred.” *Bill & Dena Brown Trust v Garcia*, 312 Mich App 684, 701; 880 NW2d 269 (2015). “But the presumption satisfies the burden of persuasion, so if a party opposing the allegation of undue influence fails to offer sufficient rebuttal evidence, then the party alleging undue influence will have met its burden of persuasion, i.e., its burden of showing the occurrence of undue influence.” *Id.* (quotation marks and citation omitted).

The probate court reasoned that appellant had failed to rebut the presumption of undue influence because “there [was] little question” that appellant was Helen’s “ ‘caretaker’ when this Will was executed[,]” given appellant’s own testimony regarding just how dependent on him Helen was. Additionally, Helen, “at the time this Will was created suffered from serious physical and mental health problems which made her very susceptible to such influence.” Appellant relied on the medical conclusion that Helen was not incompetent, but, as the probate court noted, the record “clearly established that [Helen] suffered from severe anxiety and depression, a narcotics addiction, hypertension, diabetes, and edema in her lower extremities, all of which made her a vulnerable adult.” That she was not formally declared incompetent does not negate the numerous circumstances the probate court considered rendered Helen “a vulnerable adult.”

Appellant also relies heavily on the testimony of the attorney who drafted the 2018 will that nothing in her meeting with Helen and appellant gave her cause for concern for Helen’s mental health or wellbeing and that she felt Helen entered the will “freely and willingly and knowingly.” But, the attorney’s limited insight into Helen’s circumstances undermines her testimony. The record demonstrates that, in the short amount of time she spent with Helen and appellant, the attorney did not delve deep into Helen’s situation. Indeed, the attorney lacked important information regarding Helen’s mental health diagnoses and treatments, was unaware that Helen had an earlier will, and did not know that appellant, “a felon, had only recently come to live with [Helen].” The attorney’s testimony also did not sufficiently rebut the evidence presented that appellant had anger management issues and was pushing Helen, who was afraid of him, to change her will. Testimony was even presented that Helen was forced to leave her home out of fear of appellant and that she expressed regret after executing the 2018 will. In sum, while the attorney’s testimony may have been able to rebut a small fraction of the evidence against him, it was insufficient in the face of the extensive evidence provided by appellants.¹

Affirmed.

/s/ Noah P. Hood
 /s/ Thomas C. Cameron
 /s/ Anica Letica

¹ We note that appellant also argues that his own testimony rebutted the presumption of undue influence. But, as appellees correctly note, the probate court found appellees to be more credible than appellant, and this Court “defer[s] to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to [a] reviewing court.” *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

Appellant also argues that the probate court “relied on strictly circumstantial evidence” and that there was no direct evidence of undue influence. But, it has long been held that circumstantial evidence may be used to demonstrate undue influence so long as it is “evidence of probative force beyond mere suspicion[.]” *In re Fay’s Estate*, 197 Mich 675, 686; 164 NW 523 (1917). As the probate court noted, appellees presented sufficient circumstantial evidence of undue influence to adequately satisfy their burden of persuasion.

Attachment 4

To: Nathan Piwowarski
From: PEPS Bylaws Committee Chair
Date: March 12, 2026
Re: PEPS Bylaws amendment; PEPS Council policies

The Bylaws Committee of the Probate and Estate Planning Section Council was asked to consider whether the Section's Bylaws should be amended to include bylaws addressing;

1. factors that the Council's Nominating Committee should consider in selecting nominees for Council members and Council officers;
2. protocols for submission of materials for consideration at Council meetings; and
3. Council member meeting attendance standards.

I. Process for amending the Section's Bylaws

As background, the Article 9 of the Section's Bylaws includes details regarding amendment of the Bylaws. In order to amend the Section's Bylaws, Article 9 requires that: (i) the proposed amendment be submitted to the Council by three Council members; (ii) the Council approve the proposed amendment; (iii) the Council provide Section members with the text of the proposed amendment and recommendations regarding the amendment at least 30 days before the meeting of the Section at which the proposed amendment will be considered; (iv) at least two-thirds of the Section members present and voting must approve the adoption of the proposed amendment; and (v) the proposed amendment be presented to the Commissioners of the State Bar of Michigan for approval by the Commissioners. After all of these steps are taken, and approvals are properly given, the Section's Bylaws will have been amended to include the proposed amendment.

II. Factors to consider in nominating Council members and officers

The Committee feels that it is important, and will be helpful, for the Nominating Committee to have a list of factors to consider in selecting nominees for Council membership and Council officers. However, the Committee does not feel that a list of such factors is appropriate for inclusion in the Section's Bylaws. Rather, the Committee recommends that the Council adopt a list of factors as guidance for the Nominating Committee.

The Committee feels that such guidance should include the following factors for the Nominating Committee to consider in nominating individuals for roles as Council members and as Council officers:

- (i) a potential nominee's interest in accepting the position, demonstrated by participation in the Council's committees, attendance at Council meetings, and direct inquiry of such potential nominee;
- (ii) recommendations from Council members;
- (iii) a potential nominee's activity relating to professional development of Section members, such as presentations at professional seminars and publications in professional journals
- (iv) whether the group of potential nominees reflects the composition of the Section, and encourages the participation of Section members who are under-represented on the Council
- (v) geographic dispersion of Council members;
- (vi) for Council members considered for nomination for a second term, the extent of such individual's attendance at Council meetings and participation in Council activities during such individual's initial term.
- (vii) whether the potential nominee has been subject to adverse professional, criminal, or civil action (such as formal professional disciplinary action)
- (viii) whether the potential nominee has engaged in activity that would reflect poorly on the Section or the Council

III. Protocols for submission of materials for consideration at Council meetings

The Committee feels that it is important that materials for consideration at a Council meeting be provided reasonably enough in advance so that Council members, and other individuals interested, will have time to consider the materials, and develop responses and questions about the materials submitted. However, the Committee does not feel that a protocol for material submission is appropriate for inclusion in the Section's Bylaws. The Committee's concern in this respect is the difficulty in enforcing such a bylaw, and the types of sanctions that would, or could, be imposed in connection with non-compliance with such a protocol. Therefore, the Committee recommends that the Council adopt a materials-submission policy. The Committee recommends that such a policy include the following:

- a. materials for consideration and action at a Council meeting, and for consideration at a Committee on Special Projects meeting must be submitted to the Council's Secretary at least two weeks before the meeting at which such materials will be considered and acted upon
- b. the Chair of the Council has complete discretion as to whether any materials will be scheduled for discussion at any Council meeting and at any meeting of the Committee on Special Projects; in exercising such discretion, the Council Chair should consider the timeliness of submission of materials, complexity of the materials submitted, the exigency of action on such materials, and the other materials which have been timely-submitted for discussion. The Council Chair's discretion should be freely-exercised;
- c. subject to the Council Chair's exercise of discretion, the Chair of the Committee on Special Projects has discretion as to whether any materials will be scheduled for discussion at any meeting of the Committee on Special Projects, considering the same factors that the Council Chair's exercise discretion, described above.

IV. Council member meeting attendance standards

The Committee feels that it is important that Council members regularly attend Council meetings, and participate in Council meeting discussions and actions. Council members have been elected with the intent and expectations that, as members, they will actively participate in Council meetings and vote on matters brought to the Council; obviously, such intent and fulfillment of such expectations requires attendance at Council meetings. Attendance at Council meetings tends to develop collegiality among Council members and other meeting attendees.

Section 6.9 of the Section's Bylaws, captioned "Absences," provides: "Any member of the Council (except Past Chairpersons) who are [sic] absent without having been excused by the Chairperson at three meetings of the Council during a year may be removed at the discretion of the Chairperson and the vacancy created by the member's removal will be filled by the Council. The 'year' for this purpose begins on the first day of the fiscal year of the Section, and ends on the last day of the fiscal year of the Section." The Committee feels that removal of a Council member under section 6.9 is difficult for the Chair to exercise, and that it will be more palatable to vest the Council with the power to exercise discretion to retain a non-attending member.

The Committee also feels that excuse from attendance at Council meetings is freely given. However, even several excused absences denies the Council the input and action of the excused member.

To address issues relating to attendance at Council meetings, the Committee proposes the following amendment:

Section 6.9 of the Section's Bylaws is amended to provide that:

"Any member of the Council (except Past Chairpersons) who is absent without having been excused by the Chairperson at two meetings of the Council during a year will be removed as a member, effective as of the end of the second of such meetings from which such member has not been excused, unless the Council acts to permit such member to retain membership on the Council.

Any member of the Council (except Past Chairpersons) who is absent with excuse for three consecutive meetings of the Council during a year will be removed as a member, effective as of the end of the third of such meetings from which such member has been excused, unless the Council acts to permit such member to retain membership on the Council.

Any vacancy created by a member's removal under this section 6.9 will be filled by the Council for a term ending with the next following meeting of the Section. The 'year' for this purpose begins on the first day of the fiscal year of the Section, and ends on the last day of the fiscal year of the Section."

V. Clarification regarding Council's Committees composition

The Committee feels that appointment of members to the Council's Committees should be clarified. Section 6.2 of the Section's Bylaws, captioned "Committees," provides: "The Council may authorize the Chairperson, with the Chairperson-Elect, to appoint committees and their chairpersons from Section members to perform such duties and exercise such powers as the Council may direct. The Chairperson, on direction from the Council, will remove any chairperson or member from such committees and fill vacancies on such committees created by removal or resignation." The experience of the Committee members is that, in the appointment of members to a committee, the Council will invite individuals to express interest in membership on a committee, and that the Council rarely takes formal action to authorize the Chairperson to appoint committees and their chairpersons.

To clarify the authority to appoint members of Council Committees, the Committee proposes the following amendment:

Section 6.2 of the Section's Bylaws is amended to provide that:

"The Council may authorize the Chairperson, with the Chairperson-Elect, to appoint committees and their chairpersons from Section members to perform such duties and exercise such powers as the Council may direct. When not in contravention of action by the Council, the Chairperson has the power to appoint the chairperson and the members of a committee which has been established by the Council. The Chairperson, on direction from the Council will, or by the Chairperson's action which is not in contravention of the Council may, remove any chairperson or member from such committees. The Chairperson may fill vacancies on such committees created by removal or resignation."

(2026 – 02 – b)

Attachment 5

MEMORANDUM

TO: PROBATE COUNCIL

**FROM: ANGELA HENTKOWSKI
REAL ESTATE COMMITTEE**

RE: SB 819

DATE: APRIL 1, 2026

The committee met via Zoom to review SB 819.

Summary of Bill:

Senate Bill 819 aims to amend the General Property Tax Act to prevent the “uncapping” of taxable value when ownership interests in legal entities are transferred between spouses (including a decedent’s spouse).

Committee Recommendations:

While SB 819 correctly addresses direct interspousal transfers of entity interests, it does not clearly account those same interests are held in trust.

In practice, many married couples hold membership or ownership interests in LLCs, partnerships, or other entities through Trusts.

Transfers involving these trust-held entity interests, such as moving an LLC interest from one spouse’s trust to another’s, or restructuring beneficial interests between spouses, are economically identical to direct interspousal transfers. However, absent clarification, such transactions may be treated as transfers of ownership, triggering unintended uncapping.

Therefore, we recommend supporting SB 819 with an amendment to include entity interests held in Trusts are transferred between spouses.

SENATE BILL NO. 819

March 04, 2026, Introduced by Senators BAYER, CHANG and SHINK and referred to Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1893 PA 206, entitled
"The general property tax act,"
by amending section 27a (MCL 211.27a), as amended by 2016 PA 375.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 27a. (1) Except as otherwise provided in this section,
2 property ~~shall~~**must** be assessed at 50% of its true cash value under
3 section 3 of article IX of the state constitution of 1963.

4 (2) Except as otherwise provided in subsection (3), for taxes
5 levied in 1995 and for each year after 1995, the taxable value of

1 each parcel of property is the lesser of the following:

2 (a) The property's taxable value in the immediately preceding
3 year minus any losses, multiplied by the lesser of 1.05 or the
4 inflation rate, plus all additions. For taxes levied in 1995, the
5 property's taxable value in the immediately preceding year is the
6 property's state equalized valuation in 1994.

7 (b) The property's current state equalized valuation.

8 (3) Upon a transfer of ownership of property after 1994, the
9 property's taxable value for the calendar year following the year
10 of the transfer is the property's state equalized valuation for the
11 calendar year following the transfer.

12 (4) If the taxable value of property is adjusted under
13 subsection (3), a subsequent increase in the property's taxable
14 value is subject to the limitation set forth in subsection (2)
15 until a subsequent transfer of ownership occurs. If the taxable
16 value of property is adjusted under subsection (3) and the assessor
17 determines that there had not been a transfer of ownership, the
18 taxable value of the property ~~shall~~**must** be adjusted at the July or
19 December board of review. Notwithstanding the limitation provided
20 in section 53b(1) on the number of years for which a correction may
21 be made, the July or December board of review may adjust the
22 taxable value of property under this subsection for the current
23 year and for the 3 immediately preceding calendar years. A
24 corrected tax bill ~~shall~~**must** be issued for each tax year for which
25 the taxable value is adjusted by the local tax collecting unit if
26 the local tax collecting unit has possession of the tax roll or by
27 the county treasurer if the county has possession of the tax roll.
28 For purposes of section 53b, an adjustment under this subsection
29 ~~shall~~**must** be considered the correction of a clerical error.

1 (5) Assessment of property, as required in this section and
 2 section 27, is inapplicable to the assessment of property subject
 3 to the levy of ad valorem taxes within voted tax limitation
 4 increases to pay principal and interest on limited tax bonds issued
 5 by any governmental unit, including a county, township, community
 6 college district, or school district, before January 1, 1964, if
 7 the assessment required to be made under this act would be less
 8 than the assessment as state equalized prevailing on the property
 9 at the time of the issuance of the bonds. This inapplicability
 10 continues until levy of taxes to pay principal and interest on the
 11 bonds is no longer required. The assessment of property required by
 12 this act applies for all other purposes.

13 (6) As used in this act, "transfer of ownership" means the
 14 conveyance of title to or a present interest in property, including
 15 the beneficial use of the property, the value of which is
 16 substantially equal to the value of the fee interest. Transfer of
 17 ownership of property includes, but is not limited to, the
 18 following:

19 (a) A conveyance by deed.

20 (b) A conveyance by land contract. The taxable value of
 21 property conveyed by a land contract executed after December 31,
 22 1994 ~~shall~~**must** be adjusted under subsection (3) for the calendar
 23 year following the year in which the contract is entered into and
 24 ~~shall~~**must** not be subsequently adjusted under subsection (3) when
 25 the deed conveying title to the property is recorded in the office
 26 of the register of deeds in the county in which the property is
 27 located.

28 (c) A conveyance to a trust after December 31, 1994, except
 29 under any of the following conditions:

1 (i) If the settlor or the settlor's spouse, or both, conveys
2 the property to the trust and the sole present beneficiary or
3 beneficiaries are the settlor or the settlor's spouse, or both.

4 (ii) Beginning December 31, 2014, for residential real
5 property, if the settlor or the settlor's spouse, or both, conveys
6 the residential real property to the trust and the sole present
7 beneficiary or beneficiaries are the settlor's or the settlor's
8 spouse's mother, father, brother, sister, son, daughter, adopted
9 son, adopted daughter, grandson, or granddaughter and the
10 residential real property is not used for any commercial purpose
11 following the conveyance. Upon request by the department of
12 treasury or the assessor, the sole present beneficiary or
13 beneficiaries shall furnish proof within 30 days that the sole
14 present beneficiary or beneficiaries meet the requirements of this
15 subparagraph. If a present beneficiary fails to comply with a
16 request by the department of treasury or assessor under this
17 subparagraph, that present beneficiary is subject to a fine of
18 \$200.00.

19 (d) A conveyance by distribution from a trust, except under
20 any of the following conditions:

21 (i) If the distributee is the sole present beneficiary or the
22 spouse of the sole present beneficiary, or both.

23 (ii) Beginning December 31, 2014, a distribution of residential
24 real property if the distributee is the settlor's or the settlor's
25 spouse's mother, father, brother, sister, son, daughter, adopted
26 son, adopted daughter, grandson, or granddaughter and the
27 residential real property is not used for any commercial purpose
28 following the conveyance. Upon request by the department of
29 treasury or the assessor, the sole present beneficiary or

1 beneficiaries shall furnish proof within 30 days that the sole
 2 present beneficiary or beneficiaries meet the requirements of this
 3 subparagraph. If a present beneficiary fails to comply with a
 4 request by the department of treasury or assessor under this
 5 subparagraph, that present beneficiary is subject to a fine of
 6 \$200.00.

7 (e) A change in the sole present beneficiary or beneficiaries
 8 of a trust, except under any of the following conditions:

9 (i) A change that adds or substitutes the spouse of the sole
 10 present beneficiary.

11 (ii) Beginning December 31, 2014, for residential real
 12 property, a change that adds or substitutes the settlor's or the
 13 settlor's spouse's mother, father, brother, sister, son, daughter,
 14 adopted son, adopted daughter, grandson, or granddaughter and the
 15 residential real property is not used for any commercial purpose
 16 following the conveyance. Upon request by the department of
 17 treasury or the assessor, the sole present beneficiary or
 18 beneficiaries shall furnish proof within 30 days that the sole
 19 present beneficiary or beneficiaries meet the requirements of this
 20 subparagraph. If a present beneficiary fails to comply with a
 21 request by the department of treasury or assessor under this
 22 subparagraph, that present beneficiary is subject to a fine of
 23 \$200.00.

24 (f) A conveyance by distribution under a will or by intestate
 25 succession, except under any of the following conditions:

26 (i) If the distributee is the decedent's spouse. **For purposes**
 27 **of this subparagraph, a conveyance by distribution to a decedent's**
 28 **spouse includes, but is not limited to, the conveyance of an**
 29 **ownership interest in a legal entity as described in subdivision**

1 (h), no matter the percentage of that ownership interest.

2 (ii) Beginning December 31, 2014, for residential real
 3 property, if the distributee is the decedent's or the decedent's
 4 spouse's mother, father, brother, sister, son, daughter, adopted
 5 son, adopted daughter, grandson, or granddaughter and the
 6 residential real property is not used for any commercial purpose
 7 following the conveyance. Upon request by the department of
 8 treasury or the assessor, the sole present beneficiary or
 9 beneficiaries shall furnish proof within 30 days that the sole
 10 present beneficiary or beneficiaries meet the requirements of this
 11 subparagraph. If a present beneficiary fails to comply with a
 12 request by the department of treasury or assessor under this
 13 subparagraph, that present beneficiary is subject to a fine of
 14 \$200.00.

15 (g) A conveyance by lease if the total duration of the lease,
 16 including the initial term and all options for renewal, is more
 17 than 35 years or the lease grants the lessee a bargain purchase
 18 option. As used in this subdivision, "bargain purchase option"
 19 means the right to purchase the property at the termination of the
 20 lease for not more than 80% of the property's projected true cash
 21 value at the termination of the lease. After December 31, 1994, the
 22 taxable value of property conveyed by a lease with a total duration
 23 of more than 35 years or with a bargain purchase option ~~shall~~**must**
 24 be adjusted under subsection (3) for the calendar year following
 25 the year in which the lease is entered into. This subdivision does
 26 not apply to personal property except buildings described in
 27 section 14(6) and personal property described in section 8(h), (i),
 28 and (j). This subdivision does not apply to that portion of the
 29 property not subject to the leasehold interest conveyed.

1 (h) Except as otherwise provided in this subdivision,
2 **subdivision (f) (i), and subsection (7) (a)**, a conveyance of an
3 ownership interest in a corporation, partnership, sole
4 proprietorship, limited liability company, limited liability
5 partnership, or other legal entity if the ownership interest
6 conveyed is more than 50% of the corporation, partnership, sole
7 proprietorship, limited liability company, limited liability
8 partnership, or other legal entity. Unless notification is provided
9 under subsection (10), the corporation, partnership, sole
10 proprietorship, limited liability company, limited liability
11 partnership, or other legal entity shall notify the assessing
12 officer on a form provided by the state tax commission not more
13 than 45 days after a conveyance of an ownership interest that
14 constitutes a transfer of ownership under this subdivision. Both of
15 the following apply to a corporation subject to 1897 PA 230, MCL
16 455.1 to 455.24:

17 (i) A transfer of stock of the corporation is a transfer of
18 ownership only with respect to the real property that is assessed
19 to the transferor lessee stockholder.

20 (ii) A cumulative conveyance of more than 50% of the
21 corporation's stock does not constitute a transfer of ownership of
22 the corporation's real property.

23 (i) A transfer of property held as a tenancy in common, except
24 that portion of the property not subject to the ownership interest
25 conveyed.

26 (j) A conveyance of an ownership interest in a cooperative
27 housing corporation, except that portion of the property not
28 subject to the ownership interest conveyed.

29 (k) Notwithstanding the provisions of section 7ee(5), at the

1 request of a property owner, an assessor's establishment of a
 2 separate tax parcel for a portion of a parcel that ceases to be
 3 qualified agricultural property but is not subject to a land
 4 division under the land division act, 1967 PA 288, MCL 560.101 to
 5 560.293, or any local ordinance. For purposes of this subdivision,
 6 a transfer of ownership occurs only as to that portion of the
 7 parcel established as a separate tax parcel and only that portion
 8 ~~shall~~**must** have its taxable value adjusted under subsection (3) and
 9 ~~shall be~~**is** subject to the recapture tax provided for under the
 10 agricultural property recapture act, 2000 PA 261, MCL 211.1001 to
 11 211.1007. The adjustment under subsection (3) ~~shall~~**must** be made as
 12 of the December 31 in the year that the portion of the parcel
 13 established as a separate tax parcel ceases to be qualified
 14 agricultural property. A portion of a parcel subject to this
 15 subdivision is considered a separate tax parcel only for those
 16 purposes described in this subdivision.

17 (7) Transfer of ownership does not include the following:

18 (a) The transfer of property, **including, but not limited to,**
 19 **an ownership interest in a legal entity as described in subsection**
 20 **(6) (h), no matter the percentage of that ownership interest,** from 1
 21 spouse to the other spouse or from a decedent to a surviving
 22 spouse.

23 (b) A transfer from ~~a husband, a wife, or a married couple~~**1**
 24 **or both spouses** creating or disjoining a tenancy by the entireties
 25 in the grantors or the grantor and ~~his or her~~**the grantor's** spouse.

26 (c) Subject to subdivision (d), a transfer of that portion of
 27 property subject to a life estate or life lease retained by the
 28 transferor, until expiration or termination of the life estate or
 29 life lease. That portion of property transferred that is not

1 subject to a life lease ~~shall~~**must** be adjusted under subsection
2 (3).

3 (d) Beginning December 31, 2014, a transfer of that portion of
4 residential real property that had been subject to a life estate or
5 life lease retained by the transferor resulting from expiration or
6 termination of that life estate or life lease, if the transferee is
7 the transferor's or transferor's spouse's mother, father, brother,
8 sister, son, daughter, adopted son, adopted daughter, grandson, or
9 granddaughter and the residential real property is not used for any
10 commercial purpose following the transfer. Upon request by the
11 department of treasury or the assessor, the transferee shall
12 furnish proof within 30 days that the transferee meets the
13 requirements of this subdivision. If a transferee fails to comply
14 with a request by the department of treasury or assessor under this
15 subdivision, that transferee is subject to a fine of \$200.00.

16 (e) A transfer through foreclosure or forfeiture of a recorded
17 instrument under chapter 31, 32, or 57 of the revised judicature
18 act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701
19 to 600.5759, or through deed or conveyance in lieu of a foreclosure
20 or forfeiture, until the mortgagee or land contract vendor
21 subsequently transfers the property. If a mortgagee does not
22 transfer the property within 1 year of the expiration of any
23 applicable redemption period, the property ~~shall~~**must** be adjusted
24 under subsection (3).

25 (f) A transfer by redemption by the person to whom taxes are
26 assessed of property previously sold for delinquent taxes.

27 (g) A conveyance to a trust if the settlor or the settlor's
28 spouse, or both, conveys the property to the trust and any of the
29 following conditions are satisfied:

1 (i) If the sole present beneficiary of the trust is the settlor
2 or the settlor's spouse, or both.

3 (ii) Beginning December 31, 2014, for residential real
4 property, if the sole present beneficiary of the trust is the
5 settlor's or the settlor's spouse's mother, father, brother,
6 sister, son, daughter, adopted son, adopted daughter, grandson, or
7 granddaughter and the residential real property is not used for any
8 commercial purpose following the conveyance. Upon request by the
9 department of treasury or the assessor, the sole present
10 beneficiary or beneficiaries shall furnish proof within 30 days
11 that the sole present beneficiary or beneficiaries meet the
12 requirements of this subparagraph. If a present beneficiary fails
13 to comply with a request by the department of treasury or assessor
14 under this subparagraph, that present beneficiary is subject to a
15 fine of \$200.00.

16 (h) A transfer pursuant to a judgment or order of a court of
17 record making or ordering a transfer, unless a specific monetary
18 consideration is specified or ordered by the court for the
19 transfer.

20 (i) A transfer creating or terminating a joint tenancy between
21 2 or more persons if at least 1 of the persons was an original
22 owner of the property before the joint tenancy was initially
23 created and, if the property is held as a joint tenancy at the time
24 of conveyance, at least 1 of the persons was a joint tenant when
25 the joint tenancy was initially created and that person has
26 remained a joint tenant since the joint tenancy was initially
27 created. A joint owner at the time of the last transfer of
28 ownership of the property is an original owner of the property. For
29 purposes of this subdivision, a person is an original owner of

1 property owned by that person's spouse.

2 (j) A transfer for security or an assignment or discharge of a
3 security interest.

4 (k) A transfer of real property or other ownership interests
5 among members of an affiliated group. As used in this subsection,
6 "affiliated group" means 1 or more corporations connected by stock
7 ownership to a common parent corporation. Upon request by the state
8 tax commission, a corporation shall furnish proof within 45 days
9 that a transfer meets the requirements of this subdivision. A
10 corporation that fails to comply with a request by the state tax
11 commission under this subdivision is subject to a fine of \$200.00.

12 (l) Normal public trading of shares of stock or other ownership
13 interests that, over any period of time, cumulatively represent
14 more than 50% of the total ownership interest in a corporation or
15 other legal entity and are traded in multiple transactions
16 involving unrelated individuals, institutions, or other legal
17 entities.

18 (m) A transfer of real property or other ownership interests
19 among corporations, partnerships, limited liability companies,
20 limited liability partnerships, or other legal entities if the
21 entities involved are commonly controlled. Upon request by the
22 state tax commission, a corporation, partnership, limited liability
23 company, limited liability partnership, or other legal entity shall
24 furnish proof within 45 days that a transfer meets the requirements
25 of this subdivision. A corporation, partnership, limited liability
26 company, limited liability partnership, or other legal entity that
27 fails to comply with a request by the state tax commission under
28 this subdivision is subject to a fine of \$200.00.

29 (n) A direct or indirect transfer of real property or other

1 ownership interests resulting from a transaction that qualifies as
 2 a tax-free reorganization under section 368 of the internal revenue
 3 code, 26 USC 368. Upon request by the state tax commission, a
 4 property owner shall furnish proof within 45 days that a transfer
 5 meets the requirements of this subdivision. A property owner who
 6 fails to comply with a request by the state tax commission under
 7 this subdivision is subject to a fine of \$200.00.

8 (o) Except as provided in subsection (6)(k), a transfer of
 9 qualified agricultural property, if the person to whom the
 10 qualified agricultural property is transferred files an affidavit
 11 with the assessor of the local tax collecting unit in which the
 12 qualified agricultural property is located and with the register of
 13 deeds for the county in which the qualified agricultural property
 14 is located attesting that the qualified agricultural property will
 15 remain qualified agricultural property. The affidavit under this
 16 subdivision ~~shall~~**must** be in a form prescribed by the department of
 17 treasury. An owner of qualified agricultural property shall inform
 18 a prospective buyer of that qualified agricultural property that
 19 the qualified agricultural property is subject to the recapture tax
 20 provided in the agricultural property recapture act, 2000 PA 261,
 21 MCL 211.1001 to 211.1007, if the qualified agricultural property is
 22 converted by a change in use, as that term is defined in section 2
 23 of the agricultural property recapture act, 2000 PA 261, MCL
 24 211.1002. If property ceases to be qualified agricultural property
 25 at any time after a transfer subject to this subdivision, all of
 26 the following ~~shall occur~~**apply**:

27 (i) The taxable value of that property, or, if subsection
 28 (6)(k) applies, a portion of it established as a separate tax
 29 parcel, ~~shall~~**must** be adjusted under subsection (3) as of the

1 December 31 in the year that the property, or, if subsection (6)(k)
 2 applies, a portion of it established as a separate tax parcel,
 3 ceases to be qualified agricultural property.

4 (ii) The property, or, if subsection (6)(k) applies, a portion
 5 of it established as a separate tax parcel, is subject to the
 6 recapture tax provided for under the agricultural property
 7 recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

8 (p) A transfer of qualified forest property, if the person to
 9 whom the qualified forest property is transferred files a qualified
 10 forest taxable value affidavit with the assessor of the local tax
 11 collecting unit in which the qualified forest property is located
 12 and with the register of deeds for the county in which the
 13 qualified forest property is located attesting that the qualified
 14 forest property will remain qualified forest property. The
 15 qualified forest taxable value affidavit under this subdivision
 16 ~~shall~~**must** be in a form prescribed by the department of agriculture
 17 and rural development. The qualified forest taxable value affidavit
 18 ~~shall~~**must** include a legal description of the qualified forest
 19 property, the name of the new property owner, the year the transfer
 20 of the property occurred, a statement indicating that the property
 21 owner is attesting that the property for which the exemption is
 22 claimed is qualified forest property and will be managed according
 23 to the approved forest management plan, and any other information
 24 pertinent to the parcel and the property owner. The property owner
 25 shall provide a copy of the qualified forest taxable value
 26 affidavit to the department. The department shall provide 1 copy of
 27 the qualified forest taxable value affidavit to the local tax
 28 collecting unit, 1 copy to the conservation district, and 1 copy to
 29 the department of treasury. These copies may be sent

1 electronically. The exception to the recognition of a transfer of
 2 ownership, as ~~herein stated~~, **provided in this subdivision**, extends
 3 to the land only of the qualified forest property. If qualified
 4 forest property is improved by buildings, structures, or land
 5 improvements, then those improvements ~~shall~~**must** be recognized as a
 6 transfer of ownership, in accordance with the provisions of section
 7 7jj[1]. An owner of qualified forest property shall inform a
 8 prospective buyer of that qualified forest property that the
 9 qualified forest property is subject to the recapture tax provided
 10 in the qualified forest property recapture tax act, 2006 PA 379,
 11 MCL 211.1031 to 211.1036, if the qualified forest property is
 12 converted by a change in use, as that term is defined in section 2
 13 of the qualified forest property recapture tax act, 2006 PA 379,
 14 MCL 211.1032. If property ceases to be qualified forest property at
 15 any time after being transferred, all of the following ~~shall~~
 16 ~~occur~~**apply**:

17 (i) The taxable value of that property ~~shall~~**must** be adjusted
 18 under subsection (3) as of the December 31 in the year that the
 19 property ceases to be qualified forest property, except to the
 20 extent that the transfer of the qualified forest property would not
 21 have been considered a transfer of ownership under this subsection.

22 (ii) Except as otherwise provided in subparagraph (iii), the
 23 property is subject to the recapture tax provided for under the
 24 qualified forest property recapture tax act, 2006 PA 379, MCL
 25 211.1031 to 211.1036.

26 (iii) Beginning June 1, 2013 and ending November 30, 2013,
 27 owners of property enrolled as qualified forest property before
 28 January 1, 2013 may execute a new qualified forest taxable value
 29 affidavit with the department of agriculture and rural development.

1 If a landowner elects to execute a qualified forest taxable value
 2 affidavit, that owner is not required to pay the \$50.00 fee
 3 required under section 7jj[1](2). If a landowner elects not to
 4 execute a qualified forest taxable value affidavit, the existing
 5 affidavit ~~shall~~**must** be rescinded, without subjecting the property
 6 to the recapture tax provided for under the qualified forest
 7 property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036,
 8 and the taxable value of that property ~~shall~~**must** be adjusted under
 9 subsection (3).

10 (q) Beginning on December 8, 2006, a transfer of land, but not
 11 buildings or structures located on the land, ~~which~~**that** meets 1 or
 12 more of the following requirements:

13 (i) The land is subject to a conservation easement under
 14 subpart 11 of part 21 of the natural resources and environmental
 15 protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in
 16 this subparagraph, "conservation easement" means that term as
 17 defined in section 2140 of the natural resources and environmental
 18 protection act, 1994 PA 451, MCL 324.2140.

19 (ii) A transfer of ownership of the land or a transfer of an
 20 interest in the land is eligible for a deduction as a qualified
 21 conservation contribution under section 170(h) of the internal
 22 revenue code, 26 USC 170.

23 (r) A transfer of real property or other ownership interests
 24 resulting from a consolidation or merger of a domestic nonprofit
 25 corporation that is a ~~boy~~**Boy** or ~~girl scout~~**Girl Scout** or ~~camp fire~~
 26 ~~girls~~**Camp Fire Girls** organization, a 4-H club or foundation, a
 27 ~~young men's~~**Young Men's** Christian association, ~~Association~~, or a
 28 ~~young women's~~**Young Women's** Christian association ~~Association~~ and
 29 at least 50% of the members of that organization or association are

1 residents of this state.

2 (s) A change to the assessment roll or tax roll resulting from
3 the application of section 16a of 1897 PA 230, MCL 455.16a.

4 (t) Beginning December 31, 2013 through December 30, 2014, a
5 transfer of residential real property if the transferee is related
6 to the transferor by blood or affinity to the first degree and the
7 use of the residential real property does not change following the
8 transfer.

9 (u) Beginning December 31, 2014, a transfer of residential
10 real property if the transferee is the transferor's or the
11 transferor's spouse's mother, father, brother, sister, son,
12 daughter, adopted son, adopted daughter, grandson, or granddaughter
13 and the residential real property is not used for any commercial
14 purpose following the conveyance. Upon request by the department of
15 treasury or the assessor, the transferee shall furnish proof within
16 30 days that the transferee meets the requirements of this
17 subdivision. If a transferee fails to comply with a request by the
18 department of treasury or assessor under this subdivision, that
19 transferee is subject to a fine of \$200.00.

20 (v) Beginning December 31, 2014, for residential real
21 property, a conveyance from a trust if the person to whom the
22 residential real property is conveyed is the settlor's or the
23 settlor's spouse's mother, father, brother, sister, son, daughter,
24 adopted son, adopted daughter, grandson, or granddaughter and the
25 residential real property is not used for any commercial purpose
26 following the conveyance. Upon request by the department of
27 treasury or the assessor, the sole present beneficiary or
28 beneficiaries shall furnish proof within 30 days that the sole
29 present beneficiary or beneficiaries meet the requirements of this

1 subdivision. If a present beneficiary fails to comply with a
 2 request by the department of treasury or assessor under this
 3 subdivision, that present beneficiary is subject to a fine of
 4 \$200.00.

5 (w) Beginning on March 31, 2015, a conveyance of land by
 6 distribution under a will or trust or by intestate succession, but
 7 not buildings or structures located on the land, which meets 1 or
 8 more of the following requirements:

9 (i) The land is made subject to a conservation easement under
 10 subpart 11 of part 21 of the natural resources and environmental
 11 protection act, 1994 PA 451, MCL 324.2140 to 324.2144, ~~prior to~~
 12 **before** the conveyance by distribution under a will or trust or by
 13 intestate succession. As used in this subparagraph, "conservation
 14 easement" means that term as defined in section 2140 of the natural
 15 resources and environmental protection act, 1994 PA 451, MCL
 16 324.2140.

17 (ii) The land or an interest in the land is made eligible for a
 18 deduction as a qualified conservation contribution under section
 19 170(h) of the internal revenue code, 26 USC 170, ~~prior to~~ **before**
 20 the conveyance by distribution under a will or trust or by
 21 intestate succession.

22 (x) A conveyance of property under section 2120a(6) of the
 23 natural resources and environmental protection act, 1994 PA 451,
 24 MCL 324.2120a.

25 (8) If all of the following conditions are satisfied, the
 26 local tax collecting unit shall revise the taxable value of
 27 qualified agricultural property taxable on the tax roll in the
 28 possession of that local tax collecting unit to the taxable value
 29 that qualified agricultural property would have had if there had

1 been no transfer of ownership of that qualified agricultural
2 property since December 31, 1999 and there had been no adjustment
3 of that qualified agricultural property's taxable value under
4 subsection (3) since December 31, 1999:

5 (a) The qualified agricultural property was qualified
6 agricultural property for taxes levied in 1999 and each year after
7 1999.

8 (b) The owner of the qualified agricultural property files an
9 affidavit with the assessor of the local tax collecting unit under
10 subsection (7) (o).

11 (9) If the taxable value of qualified agricultural property is
12 adjusted under subsection (8), the owner of that qualified
13 agricultural property is not entitled to a refund for any property
14 taxes collected under this act on that qualified agricultural
15 property before the adjustment under subsection (8).

16 (10) The register of deeds of the county where deeds or other
17 title documents are recorded shall notify the assessing officer of
18 the appropriate local taxing unit not less than once each month of
19 any recorded transaction involving the ownership of property and
20 shall make any recorded deeds or other title documents available to
21 that county's tax or equalization department. Unless notification
22 is provided under subsection (6), the buyer, grantee, or other
23 transferee of the property shall notify the appropriate assessing
24 office in the local unit of government in which the property is
25 located of the transfer of ownership of the property within 45 days
26 of the transfer of ownership, on a form prescribed by the state tax
27 commission that states the parties to the transfer, the date of the
28 transfer, the actual consideration for the transfer, and the
29 property's parcel identification number or legal description. Forms

1 filed in the assessing office of a local unit of government under
 2 this subsection ~~shall~~**must** be made available to the county tax or
 3 equalization department for the county in which that local unit of
 4 government is located. This subsection does not apply to personal
 5 property except buildings described in section 14(6) and personal
 6 property described in section 8(h), (i), and (j).

7 (11) As used in this section:

8 (a) "Additions" means that term as defined in section 34d.

9 (b) "Beneficial use" means the right to possession, use, and
 10 enjoyment of property, limited only by encumbrances, easements, and
 11 restrictions of record.

12 (c) "Commercial purpose" means used in connection with any
 13 business or other undertaking intended for profit, but does not
 14 include the rental of residential real property for a period of
 15 less than 15 days in a calendar year.

16 (d) "Inflation rate" means that term as defined in section
 17 34d.

18 (e) "Losses" means that term as defined in section 34d.

19 (f) "Qualified agricultural property" means that term as
 20 defined in section 7dd.

21 (g) "Qualified forest property" means that term as defined in
 22 section 7jj[1].

23 (h) "Residential real property" means real property classified
 24 as residential real property under section 34c.

25 Enacting section 1. This amendatory act is curative and
 26 intended to correct any misinterpretation of legislative intent in
 27 the court of appeals decision in *FCB Associates, LLC, v. City of*
 28 *Ann Arbor*, No. 366685. This amendatory act further expresses the
 29 original intent of the legislature as to the application of section

- 1 27a of the general property tax act, 1893 PA 206, MCL 211.27a, to
- 2 interspousal transfers of ownership interests in legal entities.

Attachment 6

Tax Nugget

April 2026

Warren H. Krueger

A recent federal court ruling demonstrates another way a Domestic Asset Protection Trust (“DAPT”) may fail to provide creditor protection.

On March 3, 2026, the United States District Court for the Eastern District of California issued an opinion in the case of *United States v. Huckaby*, No 2:23-cv-00587-DAD-JDP (2026 WL 587784). The Court granted summary judgment for the government, which sought to enforce a judgment it had previously obtained against Robert Huckaby for “failure to honor IRS levies” against real property located in California that Huckaby had funded to a Nevada DAPT.

Although the trust instrument provided that Nevada law applied to the Trust, the Court applied California law under conflict of law principles reasoning that the issue before the Court was not a matter of trust interpretation but rather whether land held in a trust can be reached by a plaintiff creditor. Citing to the Restatement (Second) of Conflict of Laws § 280, the Court said it “finds § 280 to be persuasive in stating that “[w]hether the interest of a beneficiary of a trust of an interest in land is assignable by him *and can be reached by his creditors*, is determined by the law that would be applied by the courts of the situs.”

Applying California law (the law of the situs of the real property), the Court determined that a settlor of such a trust cannot also act as a beneficiary of the trust (i.e., California law prohibits “self-settled” trusts). Thus, Huckaby’s California real property funded to a self-settled trust was reachable by the government to satisfy IRS levies.

The basic takeaway is that whether a DAPT may serve its primary function – creditor protection – depends on the nature and location of property funded to the DAPT.