



PROBATE & ESTATE PLANNING SECTION

Agenda and Attachments for

Friday, April 14, 2023

Meeting of Committee on Special Projects (CSP),

and

Meeting of the Council of the Probate and Estate Planning Section

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

Or *via* Zoom

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

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

Friday, April 14, beginning at 9 AM
at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

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

to a Zoom meeting.

When: Apr 14, 2023, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

https://us02web.zoom.us/meeting/register/tZEsd-irqDkvHtDpGOn_fRyKbkPzLx0lv7pY

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

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

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

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Nathan Piwowarski
Section Secretary

Nathan Piwowarski
McCurdy, Wotila, and Porteous, PC
120 West Harris Street
Cadillac, MI 49601
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<http://www.mwplegal.com/attorneys/nathan-piwowarski>

**Officers of the Council
for 2022-2023 Term**

Office	Officer
Chairperson	Mark E. Kellogg
Chairperson Elect	James P. Spica
Vice Chairperson	Katie Lynwood
Secretary	Nathan R. Piwowarski
Treasurer	Richard C. Mills

**Council Members
for 2022-2023 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Olson, Kurt A.	2020 (2 nd term)	2023	No
Savage, Christine M.	2020 (2 nd term)	2023	No
Anderton V, James F.	2020 (1 st term)	2023	Yes
David, Georgette E.	2020 (1 st term)	2023	Yes
Hilker, Daniel	2020 (1 st term)	2023	Yes
Krueger III, Warren H.	2020 (1 st term)	2023	Yes
Wrock, Rebecca K.	2021 (1 st term)	2024	Yes
Glazier, Sandra D.	2021 (1 st term)	2024	Yes
Hentkowski, Angela M.	2021 (2 nd term)	2024	No
Mysliwiec, Melisa M. W.	2021 (2 nd term)	2024	No
Nusholtz, Neal	2021 (2 nd term)	2024	No
Sprague, David	2021 (1 st term)	2024	Yes
Mayoras, Andrew W.	2022 (2 nd term)	2025	No
Silver, Kenneth	2022 (2 nd term)	2025	No
Dunnings, Hon. Shauna L.	2022 (1 st term)	2025	Yes
Chalgian, Susan L.	2022 (1 st term)	2025	Yes
Shelton, Michael D.	2022 (1 st term)	2025	Yes
Borst, Daniel W.	2022 (1 st term)	2025	Yes

Ex Officio Members of the Council

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

State Bar of Michigan
 Probate and Estate Planning Section
 2022 - 2023 Standing Committees

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

State Bar of Michigan
 Probate and Estate Planning Section
 2022 - 2023 Standing Committees

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

State Bar of Michigan
 Probate and Estate Planning Section
 2022 - 2023 Standing Committees

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

State Bar of Michigan
 Probate and Estate Planning Section
 2022 - 2023 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Katie Lynwood [as Section Vice Chairperson]	[Chairperson only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Carlos Alvarado-Jorquera Jeffrey S. Ammon William J. Ard Leslie A. Butler J. David Kerr Angela Hentkowski Michael G. Lichterman Richard C. Mills James B. Steward
State Bar & Section Journals	Oversee the publication of the Section's Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwicz, Managing Editor	Nancy W. Little Neil J. Marchand Richard C. Mills Diane Kuhn Huff Molly P. Petijean Rebecca K. Wrock Kurt A. Olson
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Stephen Dunn John McFarland Richard C. Mills Neal Nusholtz Robert Labe Christine M. Savage

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

State Bar of Michigan
Probate and Estate Planning Section

2022 - 2023 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner Nazneen Hasan Christina Lejowski
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission's draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kurt A. Olson	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady (co-Chairpersons)	JV Anderton Laura L. Brownfield Warren H. Krueger, III Richard C. Mills Mark K. Harder Kathleen Cieslik Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Sandra Glazier Kathleen M. Goetsch Patricia M. Ouellette
Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague

Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague
Uniform Power of Attorney Act	Consider the Uniform Power of Attorney Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	Christine M. Savage	Kathleen A. Cieslik David P. Lucas Alex Mallory Michael D. Shelton James P. Spica David Sprague
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should "affinity" be defined to prevent elimination of stepchildren's gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Andy Mayoras Hon. Shauna Dunning Georgette David Katie Lynwood Elizabeth Siefker

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

State Bar of Michigan
 Probate and Estate Planning Section

2022 - 2023 Liaisons

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

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

CSP Materials

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

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

AGENDA

Friday, April 14, 2023

9:00 – 9:45 AM

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

Remote participation by Zoom is available. Register in advance at:
us02web.zoom.us/meeting/register/...

After registering, you will receive a confirmation email containing information about joining the meeting. If you are calling in by phone, please email your name and phone number to Angela Hentkowski at ahentkowski@stewardsheridan.com. We will put your name in a Zoom user list that will identify you by name when you call in.

1. Sandy Glazier – Guardianship, Conservatorship and End of Life Committee – 15 minutes

Re: Committee Recommendation Regarding Adoption of Public Policy Position

The Committee has reviewed HB 4297, HB 4295, SB 213, and HB 4301, as part of a larger bill package and seek a public policy position in regard to the same. Specifically, CSP will be asked to recommend that Council adopt a public policy position in favor of clarifying the right of an emancipated minor to wed in the bill package.

The Committee's report is attached as Ex 1A, the Committee's supplement to its report is attached as Ex 1B, HB 4297 is attached as Ex 1C, HB 4295 is attached as Ex 1D, SB 213 is attached as Ex 1E, and HB 4301 is attached as Ex 1F.

2. Christine Savage – Premarital and Marital Agreement Ad Hoc Committee – 30 minutes

Re: Committee Recommendation Regarding Adoption of Public Policy Position

The Committee has prepared a redline of its suggested changes to the Uniform Premarital and Marital Agreements Act. The Committee has also reviewed the revisions proposed by the Family Law Section. Both are attached as exhibits to the Committee's report, which is attached as Exhibit 2A.

At the conclusion of a review and discussion of the Committee's redlines, CSP will be requested to take a public policy in favor of the Committee's modified Uniform Premarital and Marital Agreements Act.

EXHIBIT 1A

Guardianship, Conservatorship and End of Life Committee

Committee Report

**Report of the Guardianship, Conservatorship and End of Life Committee
Regarding HB 4293-4297 Relating to Elimination of Ability of Minors to Wed**

To: Mark Kellogg/Melisa Mysliwicz

Cc: Josh Ard, Kathleen Goetsch, Liz Graziano & Michael Shelton

From: Sandy Glazier

Dated: March 24, 2023

A meeting of the Guardianship, Conservatorship and End of Life Committee was held on March 24, 2023 commencing at 12:35 p.m. to discuss HB 4297 & 4295 in particular (but also in the broader context of the package of bills to which those bills are tie barred).

Present via Zoom were: Sandy Glazier, Josh Ard, Kathleen Goetsch, Liz Graziano, and Michael Shelton.

All in attendance felt that, from a policy perspective, an emancipated minor should continue to be permitted to marry. Once emancipated a minor is for all other purposes treated as an adult and able to contract. Because the issue of whether someone is legally married (as well as whether any such marriage is void or voidable) can have impact whether a survivor will be entitled to claim certain statutory rights and benefits, as well as impact the ability (or inability) of the probate court to invalidate the marriage post-mortem, we felt clarification of this issue was key to any position the committee might propose council consider.

We felt that the bills should, therefore, clearly indicate that an emancipated minor will not be precluded from marrying should they so desire.

If the right of an emancipated minor to wed is clarified in the bill package, then none of the members in attendance at our committee meeting had any concerns about eliminating the ability of a guardian (under HB 4297) or the court (under HB 4295) to authorize the marriage of a minor. If this is clarified, once a minor is emancipated there would be no further need for a guardianship or court approval.

We weren't sure if this report needs to come before CSP or whether this is something that might be addressed directly at the council meeting on April 14th, as I understand that these bills are on a fast track.

Respectfully submitted,

Sandra D. Glazier, Chair of the Guardianship, Conservatorship and End of Life Committee

EXHIBIT 1B

Guardianship, Conservatorship and End of Life Committee

Supplement to Committee Report

Melisa Mysliwicz

From: Sandy Glazier <SGLazier@lipsonneilson.com>
Sent: Wednesday, March 29, 2023 4:41 PM
To: Mark Kellogg; Melisa Mysliwicz
Cc: Michael D. Shelton; Elizabeth Graziano; josh@ardlaw.com; attorneygoetsch@gmail.com
Subject: RE: 00305106.DOCX- report of the guardianship, conservatorship & end of life committee 3-24-23 are minor marriage bills

Based upon the position taken at the meeting of our committee, there would be opposition to SB 213, introduced on 3/16/23 (and HB 4301), which specifically eliminate the right of an emancipated minor to marry. Please add this to our report.

-Sandy

Sandra D. Glazier, Esq.
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From: Sandy Glazier
Sent: Friday, March 24, 2023 1:49 PM
To: Mark Kellogg <mkellogg@fraserlawfirm.com>; Melisa Mysliwicz <mmysliwicz@fraserlawfirm.com>
Cc: Michael D. Shelton <Michael@fw-pc.com>; Elizabeth Graziano <graziano@mielderlaw.com>; josh@ardlaw.com; attorneygoetsch@gmail.com
Subject: 00305106.DOCX- report of the guardianship, conservatorship & end of life committee 3-24-23 are minor marriage bills

Mark,

At your suggestion, the committee met to analyze and discuss HB 4295 and 4297. A copy of my report is appended. I have copied the members in attendance so that might advise me if they believe any corrections to the report are required.

I have also copied Melisa, as I wasn't sure if you want to address this during CSP or have it directly addressed during the April 14th council meeting.

Let me know if you have any questions, comments or concerns.

-Sandy

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EXHIBIT 1C

Guardianship, Conservatorship and End of Life Committee

House Bill 4297

HOUSE BILL NO. 4297

March 16, 2023, Introduced by Reps. Edwards, Young, Grant, McKinney, Breen, Byrnes, Hoskins, Morgan, Skaggs, Paiz, Brabec and Hope and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 2519, 5103, 5204, 5206, and 5215 (MCL 700.2519, 700.5103, 700.5204, 700.5206, and 700.5215), section 2519 as amended by 2010 PA 325, section 5103 as amended by 2016 PA 483, section 5204 as amended by 2005 PA 204, and section 5215 as amended by 2020 PA 365.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2519. (1) A will executed in the form prescribed by
2 subsection (2) and otherwise in compliance with the terms of the

1 Michigan statutory will form is a valid will. A person printing and
 2 distributing the Michigan statutory will shall print and distribute
 3 the form verbatim as it appears in subsection (2). The notice
 4 provisions ~~shall~~**must** be printed in 10-point boldfaced type.

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

6 MICHIGAN STATUTORY WILL NOTICE

7 1. An individual age 18 or older who has sufficient mental
 8 capacity may make a will.

9 2. There are several kinds of wills. If you choose to complete
 10 this form, you will have a Michigan statutory will. If this will
 11 does not meet your wishes in any way, you should talk with a lawyer
 12 before choosing a Michigan statutory will.

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

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

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

20 6. This will treats adopted children and children born outside
 21 of wedlock who would inherit if their parent died without a will
 22 the same way as children born or conceived during marriage.

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

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

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INSTRUCTIONS:

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

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

MICHIGAN STATUTORY WILL OF _____

(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils. I live in _____ County, Michigan.

My spouse is _____.

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

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

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

1 _____
 2 (Insert name of person or charity)
 3 _____
 4 (Insert address)
 5 AMOUNT OF GIFT (In figures): \$ _____
 6 AMOUNT OF GIFT (In words): _____ Dollars

7 _____
 8 (Your signature)
 9 Full name and address of person or charity to receive cash gift
 10 (Name only 1 person or charity):

11 _____
 12 (Insert name of person or charity)
 13 _____
 14 (Insert address)
 15 AMOUNT OF GIFT (In figures): \$ _____
 16 AMOUNT OF GIFT (In words): _____ Dollars

17 _____
 18 (Your signature)

19 2.2 PERSONAL AND HOUSEHOLD ITEMS.

20 I may leave a separate list or statement, either in my
 21 handwriting or signed by me at the end, regarding gifts of specific
 22 books, jewelry, clothing, automobiles, furniture, and other
 23 personal and household items.

24 I give my spouse all my books, jewelry, clothing, automobiles,
 25 furniture, and other personal and household items not included on
 26 such a separate list or statement. If I am not married at the time
 27 I sign this will or if my spouse dies before me, my personal
 28 representative shall distribute those items, as equally as
 29 possible, among my children who survive me. If no children survive

1 me, these items shall be distributed as set forth in paragraph 2.3.

2 2.3 ALL OTHER ASSETS.

3 I give everything else I own to my spouse. If I am not married
4 at the time I sign this will or if my spouse dies before me, I give
5 these assets to my children and the descendants of any deceased
6 child. If no spouse, children, or descendants of children survive
7 me, I choose 1 of the following distribution clauses by signing my
8 name on the line after that clause. If I sign on both lines, if I
9 fail to sign on either line, or if I am not now married, these
10 assets will go under distribution clause (b).

11 Distribution clause, if no spouse, children, or descendants of
12 children survive me.

13 (Select only 1)

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

17 _____

18 (Your signature)

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

21 _____

22 (Your signature)

23 ARTICLE 3. NOMINATIONS OF PERSONAL
24 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

25 Personal representatives, guardians, and conservators have a
26 great deal of responsibility. The role of a personal representative
27 is to collect your assets, pay debts and taxes from those assets,
28 and distribute the remaining assets as directed in the will. A
29 guardian is a person who will look after the physical well-being of

1 a child. A conservator is a person who will manage a child's assets
2 and make payments from those assets for the child's benefit. Select
3 them carefully. Also, before you select them, ask them whether they
4 are willing and able to serve.

5 3.1 PERSONAL REPRESENTATIVE.

6 (Name at least 1)

7 I nominate _____

8 (Insert name of person or eligible financial institution)

9 of _____ to serve as personal representative.

10 (Insert address)

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

12 _____

13 (Insert name of person or eligible financial institution)

14 of _____ to serve as personal representative.

15 (Insert address)

16 3.2 GUARDIAN AND CONSERVATOR.

17 Your spouse may die before you. Therefore, if you have a child
18 under age 18, name an individual as guardian of the child, and an
19 individual or eligible financial institution as conservator of the
20 child's assets. The guardian and the conservator may, but need not
21 be, the same person.

22 If a guardian or conservator is needed for a child of mine, I
23 nominate _____

24 (Insert name of individual)

25 of _____ as guardian and

26 (Insert address)

27 _____

28 (Insert name of individual or eligible financial institution)

29 of _____ to serve as conservator.

1 (Insert address)

2 If my first choice cannot serve, I nominate

3 _____

4 (Insert name of individual)

5 of _____ as guardian and

6 (Insert address)

7 _____

8 (Insert name of individual or eligible financial institution)

9 of _____ to serve as conservator.

10 (Insert address)

11 3.3 BOND.

12 A bond is a form of insurance in case your personal
13 representative or a conservator performs improperly and jeopardizes
14 your assets. A bond is not required. You may choose whether you
15 wish to require your personal representative and any conservator to
16 serve with or without bond. Bond premiums would be paid out of your
17 assets. (Select only 1)

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

20 _____

21 (Your signature)

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

24 _____

25 (Your signature)

26 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

27 Definitions and additional clauses found at the end of this
28 form are part of this will.

29 I sign my name to this Michigan statutory will on

1 _____ , 20____.

2 _____

3 (Your signature)

4 NOTICE REGARDING WITNESSES

5 You must use 2 adults as witnesses. It is preferable to have 3
6 adult witnesses. All the witnesses must observe you sign the will,
7 have you tell them you signed the will, or have you tell them the
8 will was signed at your direction in your presence.

9 STATEMENT OF WITNESSES

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

16 _____

17 (Print Name)

18 _____

19 (Signature of witness)

20 _____

21 (Address)

22 _____

23 (City) (State) (Zip)

24 _____

25 (Print name)

26 _____

27 (Signature of witness)

28 _____

29 (Address)

1 _____
2 (City) (State) (Zip)

3 _____
4 (Print name)

5 _____
6 (Signature of witness)

7 _____
8 (Address)

9 _____
10 (City) (State) (Zip)

11 DEFINITIONS

12 The following definitions and rules of construction apply to
13 this Michigan statutory will:

14 (a) "Assets" means all types of property you can own, such as
15 real estate, stocks and bonds, bank accounts, business interests,
16 furniture, and automobiles.

17 (b) "Descendants" means your children, grandchildren, and
18 their descendants.

19 (c) "Descendants" or "children" includes individuals born or
20 conceived during marriage, individuals legally adopted, and
21 individuals born out of wedlock who would inherit if their parent
22 died without a will.

23 (d) "Jointly held assets" means those assets to which
24 ownership is transferred automatically upon the death of 1 of the
25 owners to the remaining owner or owners.

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

28 (f) Whenever a distribution under a Michigan statutory will is
29 to be made to an individual's descendants, the assets are to be

1 divided into as many equal shares as there are then living
 2 descendants of the nearest degree of living descendants and
 3 deceased descendants of that same degree who leave living
 4 descendants. Each living descendant of the nearest degree ~~shall~~
 5 **will** receive 1 share. The remaining shares, if any, are combined
 6 and then divided in the same manner among the surviving descendants
 7 of the deceased descendants as if the surviving descendants who
 8 were allocated a share and their surviving descendants had
 9 predeceased the descendant. In this manner, all descendants who are
 10 in the same generation will take an equal share.

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

14 (h) "Person" includes individuals and institutions.

15 (i) Plural and singular words include each other, where
 16 appropriate.

17 (j) If a Michigan statutory will states that a person shall
 18 perform an act, the person is required to perform that act. If a
 19 Michigan statutory will states that a person may do an act, the
 20 person's decision to do or not to do the act ~~shall~~**must** be made in
 21 ~~good faith~~**good-faith** exercise of the person's powers.

22 ADDITIONAL CLAUSES

23 Powers of personal representative

24 1. A personal representative has all powers of administration
 25 given by Michigan law to personal representatives and, to the
 26 extent ~~funds are~~**money is** not needed to meet debts and expenses
 27 currently payable and are not immediately distributable, the power
 28 to invest and reinvest the estate from time to time in accordance
 29 with the Michigan prudent investor rule. In dividing and

1 distributing the estate, the personal representative may distribute
 2 partially or totally in kind, may determine the value of
 3 distributions in kind without reference to income tax bases, and
 4 may make non-pro rata distributions.

5 2. The personal representative may distribute estate assets
 6 otherwise distributable to a minor beneficiary to the minor's
 7 conservator or, in amounts not exceeding \$5,000.00 per year, either
 8 to the minor, if married **before the effective date of the 2023**
 9 **amendatory act that amended this sentence;** to a parent or another
 10 adult with whom the minor resides and who has the care, custody, or
 11 control of the minor; or to the guardian. The personal
 12 representative is free of liability and is discharged from further
 13 accountability for distributing assets in compliance with ~~the~~
 14 ~~provisions of~~ this paragraph.

15 POWERS OF GUARDIAN AND CONSERVATOR

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

20 Sec. 5103. (1) By a properly executed power of attorney, a
 21 parent or guardian of a minor or a guardian of a legally
 22 incapacitated individual may delegate to another person, for a
 23 period not exceeding 180 days, any of the parent's or guardian's
 24 powers regarding care, custody, or property of the minor child or
 25 ward, except the power to consent to ~~marriage or~~ adoption of a
 26 minor ward or to release of a minor ward for adoption.

27 (2) A parent shall not knowingly and intentionally delegate
 28 his or her powers under this section regarding care and custody of
 29 the parent's minor child for longer than 180 days for the purpose

1 of permanently transferring custody of the child in violation of
 2 section 136c(3) of the Michigan penal code, 1931 PA 328, MCL
 3 750.136c.

4 (3) If a parent or guardian is serving in the armed forces of
 5 the United States and is deployed to a foreign nation, and if the
 6 power of attorney so provides, a delegation under this section is
 7 effective until the thirty-first day after the end of the
 8 deployment.

9 (4) If a guardian for a minor or legally incapacitated
 10 individual delegates any power under this section, the guardian
 11 shall notify the court within 7 days after execution of the power
 12 of attorney and provide the court the name, address, and telephone
 13 number of the attorney-in-fact.

14 Sec. 5204. (1) A person interested in the welfare of a minor,
 15 or a minor if 14 years of age or older, may petition for the
 16 appointment of a guardian for the minor. The court may order the
 17 ~~family independence agency~~ **department of health and human services**
 18 or a court employee or agent to conduct an investigation of the
 19 proposed guardianship and file a written report of the
 20 investigation.

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

23 (a) The parental rights of both parents or the surviving
 24 parent are terminated or suspended by prior court order, by
 25 judgment of divorce or separate maintenance, by death, by judicial
 26 determination of mental incompetency, by disappearance, or by
 27 confinement in a place of detention.

28 (b) The parent or parents permit the minor to reside with
 29 another person and do not provide the other person with legal

1 authority for the minor's care and maintenance, and the minor is
 2 not residing with his or her parent or parents when the petition is
 3 filed.

4 (c) All of the following:

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

7 (ii) The minor's parent who has custody of the minor dies or is
 8 missing and the other parent has not been granted legal custody
 9 under court order.

10 (iii) The person whom the petition asks to be appointed guardian
 11 is related to the minor within the fifth degree by marriage, blood,
 12 or adoption.

13 (3) A minor's limited guardian may petition to be appointed a
 14 guardian for that minor, except that the petition ~~shall~~**must** not be
 15 based ~~upon~~**on** suspension of parental rights by the order that
 16 appointed that person the limited guardian for that minor.

17 (4) A guardian appointed under section 5202 whose appointment
 18 is not prevented or nullified under section 5203 has priority over
 19 a guardian who may be appointed by the court. The court may proceed
 20 with an appointment ~~upon~~**on** a finding that a guardian appointed in
 21 a manner described in section 5202 has failed to accept the
 22 appointment within 28 days after the notice of the guardianship
 23 proceeding.

24 (5) For the minor ward's welfare, the court may at any time
 25 order the minor ward's parents to pay reasonable support and order
 26 reasonable parenting time and contact of the minor ward with his or
 27 her parents.

28 Sec. 5206. (1) The court shall review a proposed limited
 29 guardianship placement plan filed with the court under section 5205

1 and shall do 1 of the following:

2 (a) Approve the proposed plan.

3 (b) Disapprove the proposed plan.

4 (c) On its own motion, modify a proposed plan and approve it
5 as modified, if the parties agree to the modification. The modified
6 plan ~~shall~~**must** be filed with the court.

7 (2) A limited guardianship placement plan that has been
8 approved by the court may be modified ~~upon~~**on** agreement of the
9 parties and approval of the court. A modified limited guardianship
10 placement plan ~~shall~~**must** be filed with the court.

11 (3) The voluntary suspension of parental rights under section
12 5205 does not prevent the parent or parents from filing a petition
13 to terminate the limited guardianship at any time as provided in
14 section 5208. Appointment of a limited guardian under this section
15 is a continuing appointment.

16 (4) A limited guardian appointed under this section has all of
17 the powers and duties enumerated in section 5215 except that a
18 minor's limited guardian shall not consent to ~~marriage or~~ adoption
19 of the minor ward or to the release of the minor ward for adoption.

20 Sec. 5215. A minor's guardian has the powers and
21 responsibilities of a parent who is not deprived of custody of the
22 parent's minor and unemancipated child, except that a guardian is
23 not legally obligated to provide for the ward from the guardian's
24 own money and is not liable to third persons because of the
25 parental relationship for the ward's acts. A guardian has all of
26 the following powers and duties:

27 (a) The guardian shall take reasonable care of a ward's
28 personal effects and commence a protective proceeding if necessary
29 to protect the ward's other property. If a guardian commences a

1 protective proceeding because the guardian believes that it is in
2 the ward's best interest to sell or otherwise dispose of the ward's
3 real property or interest in real property, the court may appoint
4 the guardian as special conservator and authorize the special
5 conservator to proceed under section 5423(3). A guardian shall not
6 otherwise sell the ward's real property or interest in real
7 property.

8 (b) The guardian may receive money payable for the ward's
9 support to the ward's parent, guardian, or custodian under the
10 terms of a statutory benefit or insurance system, or a private
11 contract, devise, trust, conservatorship, or custodianship. The
12 guardian may receive the ward's money or property paid or delivered
13 under section 5102. Money or property received under section 5102
14 must be applied to the ward's current needs for support, care, and
15 education. The guardian shall exercise due care to conserve any
16 excess for the ward's future needs unless a conservator is
17 appointed for the ward's estate, in which case the excess must be
18 paid over at least annually to the conservator. The guardian shall
19 not use that money or property for compensation for the guardian's
20 services except as approved by court order or as determined by an
21 appointed conservator other than the guardian. A guardian may
22 institute a proceeding to compel a person's performance of a duty
23 to support the ward or to pay money for the ward's welfare.

24 (c) The guardian shall facilitate the ward's education and
25 social or other activities, and shall authorize medical or other
26 professional care, treatment, or advice. A guardian is not liable
27 because of this consent for injury to the ward resulting from the
28 negligence or acts of third persons unless it would be illegal for
29 a parent to have consented.

1 ~~(d) A guardian may consent to a minor ward's marriage.~~

2 (d) ~~(e)~~ Subject to the conditions and restrictions of chapter
3 X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a
4 guardian may consent to ~~marriage or~~ adoption of a minor ward or to
5 the release of a minor ward for adoption.

6 (e) ~~(f)~~ A guardian must report the condition of the ward and
7 of the ward's estate that is subject to the guardian's possession
8 or control as ordered by the court on petition of a person
9 interested in the minor's welfare or as required by court rule. The
10 report must detail the condition of the ward, medical or mental
11 health treatment or care to which the ward was subjected, and what
12 reason, if any, exists for the continuation of the guardianship.

13 (f) ~~(g)~~ Within 14 days after a change in the ward's place of
14 residence, the guardian shall give to the court notice of the
15 ward's new address.

16 (g) ~~(h)~~ A guardian may execute a do-not-resuscitate order on
17 behalf of the ward as provided in section 3a of the Michigan do-
18 not-resuscitate procedure act, 1996 PA 193, MCL 333.1053a.

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. ____ or House Bill No. 4293 (request no.
21 01334'23 *) of the 102nd Legislature is enacted into law.

EXHIBIT 1D

Guardianship, Conservatorship and End of Life Committee

House Bill 4295

HOUSE BILL NO. 4295

March 16, 2023, Introduced by Reps. Farhat, Hope, Brixie, Young, Hill, Grant, Breen, Byrnes, Hoskins, Morgan, Skaggs, Paiz, Brabec and McKinney and referred to the Committee on Judiciary.

A bill to amend 1897 PA 180, entitled

"An act to provide for the issuance of marriage licenses and certificates without publicity in certain cases; and to provide criminal and civil penalties for violation of this act,"

by amending section 1 (MCL 551.201), as amended by 1983 PA 199.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) When ~~a person~~**an individual** desires to keep the
2 exact date of his or her marriage to ~~a person~~**an individual** of the
3 opposite sex a secret, the **probate** judge ~~of probate~~ may issue,
4 without publicity, a marriage license to any ~~person~~**individual**
5 making application, under oath, if there is good reason expressed

1 in the application and determined to be sufficient by the **probate**
 2 judge. ~~of probate.~~

3 ~~(2) The judge of probate may marry, without publicity, persons~~
 4 ~~under marriageable age, as provided in section 3 of Act No. 128 of~~
 5 ~~the Public Acts of 1887, being section 551.103 of the Michigan~~
 6 ~~Compiled Laws, if the application for the license is accompanied by~~
 7 ~~1 of the following:~~

8 ~~(a) A written request of all of the biological or adopting~~
 9 ~~living parents of both parties, and their guardian or guardians if~~
 10 ~~either or both of the parents are dead.~~

11 ~~(b) A written request of the parents or guardians of the party~~
 12 ~~under marriageable age if only 1 party to the marriage is under the~~
 13 ~~marriageable age.~~

14 ~~(3) If the noncustodial parent has been given notice of the~~
 15 ~~request for consent by personal service or registered mail at his~~
 16 ~~or her last known address and the noncustodial parent fails to~~
 17 ~~enter an objection within 5 days after receipt of notice, then the~~
 18 ~~consent shall be required only of a parent to whom custody of a~~
 19 ~~child has been awarded by a court. The consent shall not be~~
 20 ~~required of a parent confined under sentence in a state or federal~~
 21 ~~penal institution or confined in a mental hospital under~~
 22 ~~adjudication of legal incapacity by a court of competent~~
 23 ~~jurisdiction or upon the return of process by the sheriff of the~~
 24 ~~county in which the parent was last known to reside made not less~~
 25 ~~than 5 nor more than 14 days after issuance of the process~~
 26 ~~certifying that after diligent search the parent cannot be found~~
 27 ~~within the county.~~

28 ~~(2) (4)~~ The **probate** judge ~~of probate~~ may authorize an order
 29 nunc pro tunc regarding the date to appear on the marriage license.

1 Enacting section 1. This amendatory act does not take effect
2 unless all of the following bills of the 102nd Legislature are
3 enacted into law:

4 (a) Senate Bill No. _____ or House Bill No. 4293 (request no.
5 01334'23 *).

6 (b) Senate Bill No. _____ or House Bill No. 4294 (request no.
7 01334'23 a *).

8 (c) Senate Bill No. _____ or House Bill No. 4296 (request no.
9 01334'23 c *).

10 (d) Senate Bill No. _____ or House Bill No. 4297 (request no.
11 01334'23 d *).

EXHIBIT 1E

Guardianship, Conservatorship and End of Life Committee

Senate Bill 213

SENATE BILL NO. 213

March 16, 2023, Introduced by Senators BAYER, GEISS, POLEHANKI, MCMORROW, CHERRY, SANTANA, IRWIN, SHINK, HERTEL, KLINEFELT, CHANG, JOHNSON and HUIZENGA and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1968 PA 293, entitled

"An act to establish the status of minors; to define the rights and duties of parents; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; and to establish the conditions for emancipation of minors,"

by amending sections 4 and 4e (MCL 722.4 and 722.4e), section 4 as amended by 1998 PA 509 and section 4e as added by 1988 PA 403.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) Emancipation may occur by operation of law or
2 ~~pursuant~~**-according** to a petition filed by a minor with the family

1 division of circuit court as provided in this act.

2 (2) An emancipation occurs by operation of law under any of
3 the following circumstances:

4 ~~(a) When a minor is validly married.~~

5 (a) ~~(b) When a person~~ **an individual** reaches ~~the age of 18~~
6 years **of age**.

7 (b) ~~(c) During the period when the minor is on active duty~~
8 with the ~~armed forces of the United States.~~ **United States Armed**
9 **Forces**.

10 (c) ~~(d) For the purposes of consenting to routine, nonsurgical~~
11 medical care or emergency medical treatment to a minor, when the
12 minor is in the custody of a law enforcement agency and the minor's
13 parent or guardian cannot be promptly located. The minor or the
14 minor's parent ~~shall remain~~ **remains** responsible for the cost of any
15 medical care or treatment rendered ~~pursuant to~~ **under** this
16 subdivision. An emancipation ~~pursuant to~~ **under** this subdivision
17 ~~shall end~~ **ends** upon the termination of medical care or treatment or
18 upon the minor's release from custody, whichever occurs first.

19 (d) ~~(e) For the purposes of consenting to his or her own~~
20 preventive health care or medical care including surgery, dental
21 care, or mental health care, except vasectomies or any procedure
22 related to reproduction, during the period when the minor is a
23 prisoner committed to the jurisdiction of the department of
24 corrections and is housed in a state correctional facility operated
25 by the department of corrections or in a youth correctional
26 facility operated by the department of corrections or a private
27 vendor under section 20g of **the corrections code of 1953**, 1953 PA
28 232, MCL 791.220g; or the period when the minor is a probationer
29 residing in a special alternative incarceration unit established

1 under the special alternative incarceration act, 1988 PA 287, MCL
 2 798.11 to 798.18. This subdivision applies only if a parent or
 3 guardian of the minor cannot promptly be located by the department
 4 of corrections or, in the case of a youth correctional facility
 5 operated by a private vendor, by the responsible official of the
 6 youth correctional facility.

7 (3) An emancipation occurs by court order ~~pursuant to~~**under** a
 8 petition filed by a minor with the family division of circuit court
 9 as provided in sections 4a to 4e.

10 Sec. 4e. (1) A minor emancipated by operation of law or by
 11 court order ~~shall be considered to have~~**has** the rights and
 12 responsibilities of an adult, except for those specific
 13 constitutional and statutory age requirements regarding voting, use
 14 of alcoholic beverages, and other health and safety regulations
 15 relevant to him or her because of his or her age. A minor ~~shall be~~
 16 **is** considered emancipated for the purposes of, but not limited to,
 17 all of the following:

18 (a) The right to enter into enforceable contracts, including
 19 apartment leases.

20 (b) The right to sue or be sued in his or her own name.

21 (c) The right to retain his or her own earnings.

22 (d) The right to establish a separate domicile.

23 (e) The right to act autonomously, and with the rights and
 24 responsibilities of an adult, in all business relationships,
 25 including, but not limited to, property transactions and obtaining
 26 accounts for utilities, except for those estate or property matters
 27 that the court determines may require a conservator or guardian ad
 28 litem.

29 (f) The right to earn a living, subject only to the health and

1 safety regulations designed to protect those under the age of
2 majority regardless of their legal status.

3 (g) The right to authorize his or her own preventive health
4 care, medical care, dental care, and mental health care, without
5 parental knowledge or liability.

6 (h) The right to apply for a ~~driver's~~**driver** license or other
7 state licenses for which he or she might be eligible.

8 (i) The right to register for school.

9 ~~(j) The right to marry.~~

10 **(j)** ~~(k)~~The right to apply to the medical assistance program
11 administered under the social welfare act, ~~Act No. 280 of the~~
12 ~~Public Acts of 1939, being sections 400.1 to 400.121 of the~~
13 ~~Michigan Compiled Laws, 1939 PA 280, MCL 400.1 to 400.119b,~~ if
14 needed.

15 **(k)** ~~(l)~~The right to apply for other ~~welfare~~**public** assistance,
16 ~~including general assistance and aid to families with dependent~~
17 ~~children administered under Act No. 280 of the Public Acts of 1939,~~
18 **the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b,** if
19 needed.

20 **(l)** ~~(m)~~The right, if a parent, to make decisions and give
21 authority in caring for his or her own minor child.

22 **(m)** ~~(n)~~The right to make a will.

23 (2) The parents of a minor emancipated by court order are
24 jointly and severally obligated to support the minor. ~~However, the~~
25 **The** parents of a minor emancipated by court order are not liable
26 for any debts incurred by the minor during the period of
27 emancipation.

EXHIBIT 1F

Guardianship, Conservatorship and End of Life Committee

House Bill 4301

HOUSE BILL NO. 4301

March 16, 2023, Introduced by Reps. Young, Hope, Brixie, Hill, Grant, Breen, Byrnes, Hoskins, Morgan, Skaggs, Paiz, Brabec and McKinney and referred to the Committee on Judiciary.

A bill to amend 1968 PA 293, entitled

"An act to establish the status of minors; to define the rights and duties of parents; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; and to establish the conditions for emancipation of minors,"

by amending sections 4 and 4e (MCL 722.4 and 722.4e), section 4 as amended by 1998 PA 509 and section 4e as added by 1988 PA 403.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) Emancipation may occur by operation of law or
2 ~~pursuant~~**-according** to a petition filed by a minor with the family

1 division of circuit court as provided in this act.

2 (2) An emancipation occurs by operation of law under any of
3 the following circumstances:

4 ~~(a) When a minor is validly married.~~

5 (a) ~~(b) When a person~~ **an individual** reaches ~~the age of 18~~
6 years **of age**.

7 (b) ~~(c) During the period when the minor is on active duty~~
8 with the ~~armed forces of the United States.~~ **United States Armed**
9 **Forces**.

10 (c) ~~(d) For the purposes of consenting to routine, nonsurgical~~
11 medical care or emergency medical treatment to a minor, when the
12 minor is in the custody of a law enforcement agency and the minor's
13 parent or guardian cannot be promptly located. The minor or the
14 minor's parent ~~shall remain~~ **remains** responsible for the cost of any
15 medical care or treatment rendered ~~pursuant to~~ **under** this
16 subdivision. An emancipation ~~pursuant to~~ **under** this subdivision
17 ~~shall end~~ **ends** upon the termination of medical care or treatment or
18 upon the minor's release from custody, whichever occurs first.

19 (d) ~~(e) For the purposes of consenting to his or her own~~
20 preventive health care or medical care including surgery, dental
21 care, or mental health care, except vasectomies or any procedure
22 related to reproduction, during the period when the minor is a
23 prisoner committed to the jurisdiction of the department of
24 corrections and is housed in a state correctional facility operated
25 by the department of corrections or in a youth correctional
26 facility operated by the department of corrections or a private
27 vendor under section 20g of **the corrections code of 1953**, 1953 PA
28 232, MCL 791.220g; or the period when the minor is a probationer
29 residing in a special alternative incarceration unit established

1 under the special alternative incarceration act, 1988 PA 287, MCL
 2 798.11 to 798.18. This subdivision applies only if a parent or
 3 guardian of the minor cannot promptly be located by the department
 4 of corrections or, in the case of a youth correctional facility
 5 operated by a private vendor, by the responsible official of the
 6 youth correctional facility.

7 (3) An emancipation occurs by court order ~~pursuant to~~**under** a
 8 petition filed by a minor with the family division of circuit court
 9 as provided in sections 4a to 4e.

10 Sec. 4e. (1) A minor emancipated by operation of law or by
 11 court order ~~shall be considered to have~~**has** the rights and
 12 responsibilities of an adult, except for those specific
 13 constitutional and statutory age requirements regarding voting, use
 14 of alcoholic beverages, and other health and safety regulations
 15 relevant to him or her because of his or her age. A minor ~~shall be~~
 16 **is** considered emancipated for the purposes of, but not limited to,
 17 all of the following:

18 (a) The right to enter into enforceable contracts, including
 19 apartment leases.

20 (b) The right to sue or be sued in his or her own name.

21 (c) The right to retain his or her own earnings.

22 (d) The right to establish a separate domicile.

23 (e) The right to act autonomously, and with the rights and
 24 responsibilities of an adult, in all business relationships,
 25 including, but not limited to, property transactions and obtaining
 26 accounts for utilities, except for those estate or property matters
 27 that the court determines may require a conservator or guardian ad
 28 litem.

29 (f) The right to earn a living, subject only to the health and

1 safety regulations designed to protect those under the age of
2 majority regardless of their legal status.

3 (g) The right to authorize his or her own preventive health
4 care, medical care, dental care, and mental health care, without
5 parental knowledge or liability.

6 (h) The right to apply for a ~~driver's~~**driver** license or other
7 state licenses for which he or she might be eligible.

8 (i) The right to register for school.

9 ~~(j) The right to marry.~~

10 (j) ~~(k)~~The right to apply to the medical assistance program
11 administered under the social welfare act, ~~Act No. 280 of the~~
12 ~~Public Acts of 1939, being sections 400.1 to 400.121 of the~~
13 ~~Michigan Compiled Laws, 1939 PA 280, MCL 400.1 to 400.119b,~~ if
14 needed.

15 (k) ~~(l)~~The right to apply for other ~~welfare~~**public** assistance,
16 ~~including general assistance and aid to families with dependent~~
17 ~~children administered under Act No. 280 of the Public Acts of 1939,~~
18 **the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b,** if
19 needed.

20 (l) ~~(m)~~The right, if a parent, to make decisions and give
21 authority in caring for his or her own minor child.

22 (m) ~~(n)~~The right to make a will.

23 (2) The parents of a minor emancipated by court order are
24 jointly and severally obligated to support the minor. ~~However, the~~
25 **The** parents of a minor emancipated by court order are not liable
26 for any debts incurred by the minor during the period of
27 emancipation.

EXHIBIT 2A

Premarital and Marital Agreement Ad Hoc Committee

Committee Report

Memo

To: Probate Council

From: Marital Agreement Ad Hoc Committee

Date: April 14, 2023

Subject: Uniform Premarital and Marital Agreement Act

The Council's Ad Hoc Premarital and Marital Agreement Committee ("Committee") has reviewed the Uniform Premarital and Marital Agreements Act ("Act"). The Committee has made few changes in an effort to stay consistent with the terms of the Uniform Act. A copy of the Act, with the Committee's revisions redlined, is attached at Exhibit 1.

Attached at Exhibit 2 is Section 5 of the Act which includes the revisions proposed by the Family Law Section. As those revisions are based on the Allard decision, a summary of those cases is at Exhibit 3.

The Committee is planning a discussion with the Family Law Section regarding the Act. Prior to that meeting, the Committee is requesting a review and discussion of the Act by the CSP. If appropriate based on the CSP discussion, the Committee is requesting that Council take a policy position on the Act, to enable the Committee to negotiate that position when meeting with the Family Law Section prior to the introduction of the Act to the legislature.

EXHIBIT 1

Uniform Premarital and Marital Agreement Act with Committee Revisions

1
2
3 **UNIFORM PREMARITAL AND MARITAL**
4 **AGREEMENTS ACT**
5
6

7
8 Drafted by the
9

10
11 NATIONAL CONFERENCE OF COMMISSIONERS
12 ON UNIFORM STATE LAWS
13

14
15 and by it
16

17
18 APPROVED AND RECOMMENDED FOR ENACTMENT
19 IN ALL THE STATES
20

21
22
23 at its
24

25
26 ANNUAL CONFERENCE
27 MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
28 NASHVILLE, TENNESSEE
29 JULY 13 - JULY 19, 2012
30

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34 *WITH PREFATORY NOTE AND COMMENTS*
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41 NATIONAL CONFERENCE OF COMMISSIONERS
42 ON UNIFORM STATE LAWS
43
44

45
January 2, 2013

1
2 **ABOUT ULC**
3

4 The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners
5 on Uniform State Laws (NCCUSL), now in its 121st year, provides states with non-partisan,
6 well-conceived and well-drafted legislation that brings clarity and stability to critical areas of
7 state statutory law.

8
9 ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges,
10 legislators and legislative staff and law professors, who have been appointed by state
11 governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to
12 research, draft and promote enactment of uniform state laws in areas of state law where
13 uniformity is desirable and practical.

- 14
- 15 • ULC strengthens the federal system by providing rules and procedures that are consistent
16 from state to state but that also reflect the diverse experience of the states.
 - 17
 - 18 • ULC statutes are representative of state experience, because the organization is made up
19 of representatives from each state, appointed by state government.
 - 20
 - 21 • ULC keeps state law up-to-date by addressing important and timely legal issues.
 - 22
 - 23 • ULC's efforts reduce the need for individuals and businesses to deal with different laws
24 as they move and do business in different states.
 - 25
 - 26 • ULC's work facilitates economic development and provides a legal platform for foreign
27 entities to deal with U.S. citizens and businesses.
 - 28
 - 29 • Uniform Law Commissioners donate thousands of hours of their time and legal and
30 drafting expertise every year as a public service, and receive no salary or compensation
31 for their work.
 - 32
 - 33 • ULC's deliberative and uniquely open drafting process draws on the expertise of
34 commissioners, but also utilizes input from legal experts, and advisors and observers
35 representing the views of other legal organizations or interests that will be subject to the
36 proposed laws.

37
38 ULC is a state-supported organization that represents true value for the states, providing services
39 that most states could not otherwise afford or duplicate.

1 **DRAFTING COMMITTEE ON UNIFORM PREMARITAL AND MARITAL**
2 **AGREEMENTS ACT**

3 The Committee appointed by and representing the National Conference of Commissioners on
4 Uniform State Laws in drafting this Act consists of the following individuals:

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34 Copies of this Act may be obtained from:

35 NATIONAL CONFERENCE OF COMMISSIONERS
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1 **UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT**

2 **TABLE OF CONTENTS**

3 Prefatory Note..... 1
4 SECTION 1. SHORT TITLE.....3
5 SECTION 2. DEFINITIONS3
6 SECTION 3. SCOPE.....6
7 SECTION 4. GOVERNING LAW7
8 SECTION 5. PRINCIPLES OF LAW AND EQUITY8
9 SECTION 6. FORMATION REQUIREMENTS9
10 SECTION 7. WHEN AGREEMENT EFFECTIVE 10
11 SECTION 8. VOID MARRIAGE..... 10
12 SECTION 9. ENFORCEMENT 11
13 SECTION 10. UNENFORCEABLE TERMS 17
14 SECTION 11. LIMITATION OF ACTION 19
15 SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION20
16 SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
17 NATIONAL COMMERCE ACT20
18 [SECTION 14. REPEALS; CONFORMING AMENDMENTS.....20
19 SECTION 15. EFFECTIVE DATE20
20

1 (Third) of Property, Section 9.4 (2003); Model Marital Property Act, Section IO (1983); and
2 Internal Revenue Code, Sections 40I and 4I7 (stating when a surviving spouse's waiver of rights
3 to a qualified plan would be valid).
4

5 The general approach of this act is that parties should be free, within broad limits, to
6 choose the financial terms of their marriage. The limits are those of due process in formation, on
7 the one hand, and certain minimal standards of substantive fairness, on the other. Because a
8 significant minority of states authorizes some form of fairness review based on the parties'
9 circumstances at the time the agreement is to be enforced, a bracketed provision in Section 9(f)
10 offers the option of refusing enforcement based on a finding of substantial hardship at the time of
11 enforcement. And because a few states put the burden of proof on the party seeking enforcement
12 of marital (and, more rarely, premarital) agreements, a Legislative Note after Section 9 suggests
13 alternative language to reflect that burden of proof.
14

15 This act chooses to treat premarital agreements and marital agreements under the same
16 set of principles and requirements. A number of states currently treat premarital agreements and
17 marital agreements under different legal standards, with higher burdens on those who wish to
18 enforce marital agreements. See, e.g., Sean Hannon Williams, "Postnuptial Agreements," 2007
19 Wisconsin Law Review 827, 838-845; Brian H. Bix, "The ALI Principles and Agreements:
20 Seeking a Balance Between Status and Contract," in Reconceiving the Family: Critical
21 Reflections on the American Law Institute's Principles of the Law of Family Dissolution (Robin
22 Fretwell Wilson, ed., Cambridge University Press, 2006), pp. 372-39I, at pp. 382-387; Barbara
23 Atwood, "Marital Contracts and the Meaning of Marriage," 54 Arizona Law Review II (20I2).
24 However, this act follows the American Law Institute, in its Principles of the Law of Family
25 Dissolution (2002), in treating the two types of agreements under the same set of standards.
26 While this act, like the American Law Institute's Principles before it, recognizes that different
27 sorts of risks may predominate in the different transaction types -risks of unfairness based on
28 bounded rationality and changed circumstances for premarital agreements, and risks of duress
29 and undue influence for marital agreements (Principles of the Law of Family Dissolution,
30 Section 7.0I, comment e, at pp. 953-954) -this act shares the American Law Institute's view
31 that the resources available through this act and common law principles are sufficient to deal
32 with the likely problems related to either type of transaction.

1 **UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Premarital and
3 Marital Agreements Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) "Amendment" means a modification or revocation of a premarital agreement or
6 marital agreement.

7 (2) "Marital agreement" means an agreement between spouses who intend to
8 remain married which affirms, modifies, or waives a marital right or obligation during the
9 marriage or at separation, marital dissolution, death of one of the spouses, or the
10 occurrence or nonoccurrence of any other event. The term includes an amendment, signed
11 after the spouses marry, of a premarital agreement or marital agreement.

12 (3) "Marital dissolution" means the ending of a marriage by court decree. The term
13 includes a divorce, dissolution, and annulment.

14 (4) "Marital right or obligation" means any of the following rights or obligations arising
15 between spouses because of their marital status:

16 (A) spousal support;

17 (B) a right to property, including characterization, management, and ownership;

18 (C) responsibility for a liability;

19 (D) a right to property and responsibility for liabilities at separation, marital
20 dissolution, or death of a spouse; or

21 (E) award and allocation of attorney's fees and costs.

22 (5) "Premarital agreement" means an agreement between individuals who intend to marry
23 which affirms, modifies, or waives a marital right or obligation during the marriage or at

1 separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence
2 of any other event. The term includes an amendment, signed before the individuals marry, of a
3 premarital agreement.

4 (6) "Property" means anything that may be the subject of ownership, whether real or
5 personal, tangible or intangible, legal or equitable, or any interest therein.

6 (7) "Record" means information that is inscribed on a tangible medium or that is stored in
7 an electronic or other medium and is retrievable in perceivable form.

8 (8) "Sign" means with present intent to authenticate or adopt a record:

9 (A) to execute or adopt a tangible symbol; or

10 (B) to attach to or logically associate with the record an electronic symbol, sound,
11 or process.

12 (9) "State" means a state of the United States, the District of Columbia, Puerto Rico,
13 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
14 of the United States.

15 *Legislative Note: If your state recognizes nonmarital relationships, such as civil unions and*
16 *domestic partnerships, consider whether these definitions need to be amended.*

17 **Comment**

18
19
20 The definition of "amendment" includes "amendments" of agreements, narrowly
21 understood, and also revocations.

22
23 The definitions of "premarital agreement" and "marital agreement" are part of the effort
24 to clarify that this act is not intended to cover cohabitation agreements, separation agreements,
25 or conventional day-to-day commercial transactions between spouses. Marital agreements and
26 separation agreements (sometimes called "marital settlement agreements") are usually
27 distinguished based on whether the couple at the time of the agreement intends for their marriage
28 to continue, on the one hand, or whether a court-decreed separation, permanent physical
29 separation or dissolution of the marriage is imminent or planned, on the other. To avoid
30 deception of the other party or the court regarding intentions, one jurisdiction refuses to enforce
31 a marital agreement if it is quickly followed by an action for legal separation or dissolution of
32 the marriage. *See Minnesota Statutes § 519.11, subd. 1a(d)*(marital agreement presumed to be

1 unenforceable if separation or dissolution sought within two years; in such a case, enforcement is
2 allowed only if the spouse seeking enforcement proves that the agreement was fair and
3 equitable).

4
5 While most premarital agreements and marital agreements will be stand-alone
6 documents, a fragment of a writing that deals primarily with other topics could also constitute a
7 premarital agreement or marital agreement for the purpose of this act.
8

9 With premarital agreements, the nature and timing of the agreement (between parties who
10 are about to marry) reduces the danger that the act's language will accidentally include types of
11 transactions that are not thought of as premarital agreements and should not be treated as
12 premarital agreements (but see the discussion of *Mahr* agreements, below). There is a greater
13 concern with marital agreements, since (a) spouses enter many otherwise enforceable financial
14 transactions, most of which are not problematic and should not be made subject to special
15 procedural or substantive constraints; and (b) there are significant questions about how to deal
16 with agreements whose primary intention may not be to waive one spouse's rights at dissolution
17 of the marriage or the other spouse's death, but where the agreement nonetheless has that effect.
18 In the terms of another uniform act, the purpose of the definition of "marital agreement" is to
19 exclude from coverage "acts and events that have significance apart from their effect" upon
20 rights at dissolution of the marriage or at the death of one of the spouses. *See Uniform Probate*
21 *Code*, Section 2-512 ("Events of Independent Significance"). Such transactions might include
22 the creation of joint and several liability through real estate mortgages, motor vehicle financing
23 agreements, joint lines of credit, overdraft protection, loan guaranties, joint income tax returns,
24 creation of joint property ownership with a right of survivorship, joint property with payment-on-
25 death provisions or transfer-on-death provisions, durable power of attorney or medical power of
26 attorney, buy-sell agreements, agreements regarding the valuation of property, the placing of
27 marital property into an irrevocable trust for a child, etc.
28

29 The shorter definition of "premarital agreement" used by the Uniform Premarital
30 Agreement Act (in its Section 1(1): "an agreement between prospective spouses made in
31 contemplation of marriage and to be effective upon marriage") had the disadvantage of
32 encompassing agreements that were entered by couples about to marry but that were not intended
33 to affect the parties' existing legal rights and obligations upon divorce or death, e.g., Islamic
34 marriage contracts, with their deferred *Mahr* payment provisions. See Nathan B. Oman,
35 "Bargaining in the Shadow of God's Law: Islamic *Mahr* Contracts and the Perils of Legal
36 Specialization," 45 *Wake Forest Law Review* 579 (2010); Brian H. Bix, "*Mahr* Agreements:
37 Contracting in the Shadow of Family Law (and Religious Law) -A Comment on Oman," 1
38 *Wake Forest Law Review Online* 61 (2011), available at <http://wakeforestlawreview.com/>.

39 The definition of "property" is adapted from the *Uniform Trust Code*, Section 103(12).

40 This act does not define "separation agreement," leaving this to the understanding, rules,
41 and practices of the states, noting that the practices do vary from state to state (e.g., that in many
42 states separation agreements require judicial approval while in other states they can be valid
43 without judicial approval).

1 A premarital agreement or marital agreement may include terms not in violation of
2 public policy of this state, including terms relating to: (1) rights of either or both spouses to
3 interests in a trust, inheritance, devise, gift, and expectancy created by a third party; (2)
4 appointment of fiduciary, guardian, conservator, personal representative, or agent for person or
5 property; (3) a tax matter; (4) the method for resolving a dispute arising under the agreement;
6 (5) choice of law governing validity, enforceability, interpretation, and construction of the
7 agreement; or (6) formalities required to amend the agreement in addition to those required by
8 this act.

9
10 **SECTION 3. SCOPE.**

11 (a) This [act] applies to a premarital agreement or marital agreement signed on or after
12 [the effective date of this [act]].

13 (b) This [act] does not affect any right, obligation, or liability arising under a premarital
14 agreement or marital agreement signed before [the effective date of this [act]].

15 (c) This [act] does not apply to:

16 (1) an agreement between spouses which affirms, modifies, or waives a marital
17 right or obligation and requires court approval to become effective; or

18 (2) an agreement between spouses who intend to obtain a marital dissolution or
19 court-decreed separation which resolves their marital rights or obligations and is signed when a
20 proceeding for marital dissolution or court-decreed separation is anticipated or pending.

21 (d) This [act] does not affect adversely the rights of a bona fide purchaser for value to the
22 extent that this [act] applies to a waiver of a marital right or obligation in a transfer
23 or conveyance of property by a spouse to a third party.

24
25 **Comment**

26
27 This section distinguishes marital agreements, which are subject to this act, both from
28 agreements that parties might enter at a time when they intend to obtain a divorce or legal
29 separation or to live permanently apart, and also from the conventional transfers of property in
30 which state law requires one or both spouses waive rights that would otherwise accrue at the
31 death of the other spouse.

32
33 Subsection (c) is meant to exclude "separation agreements" and "marital settlement
34 agreements" from the scope of the act. These tend to have their own established standards for

1
2 enforcement. The reference to "a waiver of a marital right or obligation" in Subsection (d)
3 would include the release of dower, curtesy, or homestead rights that often accompanies the
4 conveyance of real property. In general, the enforceability of agreements in Subsections (b), (c)
5 and (d) is left to other law in the state.
6

7 This section is not meant to restrict third-party beneficiary standing where it would
8 otherwise apply.
9

10 **SECTION 4. GOVERNING LAW.** The validity, enforceability, interpretation, and
11 construction of a premarital agreement or marital agreement are determined:

12 (1) by the law of the jurisdiction designated in the agreement if the jurisdiction has a
13 significant relationship to the agreement or either party and the designated law is not contrary to
14 a fundamental public policy of this state; or

15 (2) absent an effective designation described in paragraph (1), by the law of this state,
16 including the choice-of-law rules of this state.

17 **Comment**

18
19 This section is adapted from the *Uniform Trust Code*, Section 107. It is consistent with
20 *Uniform Premarital Agreement Act*, Section 3(a)(7), but is broader in scope. The section reflects
21 traditional conflict of laws and choice of law principles relating to the enforcement of contracts.
22 See *Restatement (Second) of Conflict of Laws*, Sections 186-188 (1971). Section 187(2)(a) of
23 that *Restatement* expressly states that the parties' choice of law is not to be enforced if "the
24 chosen state has no substantial relationship to the parties or the transaction and there is no other
25 reasonable basis for the parties' choice" Section 187(2)(b) of the same *Restatement* holds that
26 the parties' choice of law is not to be enforced if "application of the law of the chosen state
27 would be contrary to a fundamental policy of a state which has a materially greater interest than
28 the chosen state in the determination of the particular issue" The limitation of choice of law
29 provisions to jurisdictions having some connection with the parties or the transaction tracks a
30 similar restriction in the *Uniform Commercial Code*, which restricts choice of law provisions to
31 states with a reasonable relation to the transaction (this was Section 1-105 under the UCC before
32 the 2001 revisions; and Section 1-301 in the (2001) Revised UCC Article 1).
33

34 "Significant relation" and "fundamental public policy" are to be understood under
35 existing state principles relating to conflict of laws, and "contrary to ... fundamental public
36 policy" means something more than that the law of the other jurisdiction differs from that of the
37 forum state. See, e.g., *International Hotels Corporation v. Golden*, 15 N.Y.2d 9, 14, 254
38 N.Y.S.2d 527, 530, 203 N.E.2d 210, 212-13 (1964); *Capital One Bank v. Fort*, 255 P.3d 508,
39 510-513 (Or. App. 2011) (court refused to apply law under choice of law provision because

1 contrary to "fundamental public policy" of forum state); Russell J. Weintraub, *Commentary on*
2 *the Conflict of Laws* 118-125 (6th ed., Foundation Press, 2010).

3
4 For examples of choice of law and conflict of law principles operating in this area, see,
5 e.g., *Bradley v. Bradley*, 164 P.3d 537, 540-544 (Wyo. 2007) (premarital agreement had choice
6 of law provision selecting Minnesota law; amendment to agreement held invalid because it did
7 not comply with Minnesota law for modifying agreements); *Gamache v. Smurro*, 904 A.2d 91,
8 95-96 (Vt. 2006) (applying California law to prenuptial agreement signed in California); *Black v.*
9 *Powers*, 628 S.E.2d 546, 553-556 (Va. App. 2006) (Virginia couple drafted agreement in
10 Virginia, but signed it during short stay in the Virgin Islands before their wedding there; the
11 agreement was held to be covered by Virgin Islands law because there was no clear party
12 intention that Virginia law apply and because Virgin Island law was not contrary to the forum
13 state's public policy); cf *Davis v. Miller*, 7 P.3d 1223, 1229-1230 (Kan. 2000) (parties can use
14 choice of law provision to choose the state version of the Uniform Premarital Agreement Act to
15 apply to a marital agreement, even though that Act would otherwise not apply).

16
17 **SECTION 5. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a
18 provision of this [act], principles of law and equity supplement this [act].

19 **Comment**

20
21 This section is similar to Section 106 of the *Uniform Trust Code* and Section 1-103(b) of
22 the *Uniform Commercial Code*, and incorporates the case-law that has developed to interpret and
23 apply those provisions. Because this act contains broad, amorphous defenses to enforcement like
24 "voluntariness" and "unconscionability" (Section 9), there is a significant risk that parties, and
25 even some courts, might assume that other conventional doctrinal contract law defenses are not
26 available because preempted. This section is intended to make clear that common law contract
27 doctrines and principles of equity continue to apply where this act does not displace them. Thus,
28 it is open to parties, e.g., to resist enforcement of premarital agreements and marital agreements
29 based on legal incompetency, misrepresentation, duress, undue influence, unconscionability,
30 abandonment, waiver, etc. For example, a premarital agreement presented to one of the parties
31 for the first time hours before a marriage (where financial commitments have been made and
32 guests have arrived from far away) clearly raises issues of duress, and might be voidable on that
33 ground. Cf *In re Marriage of Balcof*, 141 Cal.App.4th 1509, 1519-1527, 47 Cal.Rptr.3d 183,
34 190-196 (2006) (marital agreement held unenforceable on the basis of undue influence and
35 duress); *Bakos v. Bakos*, 950 So.2d 1257, 1259 (Fla. App. 2007) (affirming trial court conclusion
36 that premarital agreement was voidable for undue influence).

37
38 The application of doctrines like duress varies greatly from jurisdiction to jurisdiction:
39 e.g., on whether duress can be shown even in the absence of an illegal act, e.g. *Farm Credit*
40 *Services of Michigan's Heartland v. Weldon*, 591 N.W.2d 438, 447 (Mich. App. 1998) (illegal
41 act required for claim of duress under Michigan law), and whether the standard of duress should
42 be applied differently in the context of domestic agreements compared to commercial
43 agreements. This act is not intended to change state law and principles relating to these matters.

1 Rules of construction, including rules of severability of provisions, are also to be taken
2 from state rules and principles. *Cf. Rivera v. Rivera*, 243 P.3d 1148, 1155 (N.M. App. 2010),
3 *cert. denied*, 243 P.3d 1146 (N.M. 2010) (premarital agreement that improperly waived the right
4 to alimony and that contained no severability clause deemed invalid in its entirety); *Sanford v.*
5 *Sanford*, 694 N.W.2d 283, 291-294 (S.D. 2005) (applying state principles of severability to
6 conclude that invalid alimony waiver in premarital agreement severable from valid provisions
7 relating to property division); *Bratton v. Bratton*, 136 S.W.3d 595, 602 (Tenn. 2004) (property
8 division provision in marital agreement not severable from provision waiving alimony).
9 Additionally, state rules and principles will govern the ability of parties to include elevated
10 formalities for the revocation or amendment of their agreements.

11
12 **SECTION 6. FORMATION REQUIREMENTS.** A premarital agreement or marital
13 agreement must be in a record and signed by both parties. The agreement is enforceable without
14 consideration.

15 Comment

16
17 This section is adapted from *Uniform Premarital Agreement Act*, Section 2. Almost all
18 jurisdictions currently require premarital agreements to be in writing. A small number of courts
19 have indicated that an oral premarital agreement might be enforced based on partial performance,
20 e.g., *In re Marriage of Benson*, 7 Cal. Rptr. 3d 905 (App. 2003), *rev'd*, 36 Cal.4th 1096, 116 P.3d
21 1152 (Cal. 2005) (ultimately holding that the partial performance exception to statute of frauds
22 did not apply to transmutation agreement), and at least one jurisdiction has held that a premarital
23 agreement could be amended or rescinded by actions alone. *Marriage of Baxter*, 911 P.2d 343,
24 345-346 (Or. App. 1996), review denied, 918 P.2d 847 (Or. 1996). One court, in an unpublished
25 opinion, enforced an oral agreement that a written premarital agreement would become void
26 upon the birth of a child to the couple. *Ehlert v. Ehlert*, No. 354292, 1997 WL 53346 (Conn.
27 Super. 1997). While this act affirms the traditional rule that formation, amendment, and
28 revocation of premarital agreements and marital agreements need to be done through signed
29 written documents, states may obviously construe their own equitable doctrines (application
30 through Section 5) to warrant enforcement or modification without a writing in exceptional cases.

31
32 It is the consensus view of jurisdictions and commentators that premarital agreements are
33 or should be enforceable without (additional) consideration (the agreement to marry or the act of
34 marrying is often treated as sufficient consideration). Additionally, most modern approaches to
35 premarital agreements have by-passed the consideration requirement entirely: e.g., *Uniform*
36 *Premarital Agreement Act*, Section 2; American Law Institute, *Principles of the Law of Family*
37 *Dissolution*, Section 7.01(4) (2002); *Restatement (Third) of Property*, Section 9.4(a) (2003).

38
39 In some states, courts have raised concerns relating to the consideration for marital
40 agreements. The view of this act is that marital agreements, otherwise valid, should not be made
41 unenforceable on the basis of lack of consideration. As the American Law Institute wrote on the
42 distinction (not requiring additional consideration for enforcing premarital agreements, but

1 requiring it for marital agreements): "This distinction is not persuasive in the context of a legal
2 regime of no-fault divorce in which either spouse is legally entitled to end the marriage at any
3 time." *Principles of the Law of Family Dissolution*, Section 7.01, Comment c, at 947-948
4 (2002). The consideration doctrine is sometimes used as an indirect way to ensure minimal
5 fairness in the agreement, and the seriousness of the parties. See, e.g., Lon L. Fuller,
6 "Consideration and Form," 41 *Columbia Law Review* 799 (1941). Those concerns for marital
7 agreements are met in this act directly by other provisions. On the conclusion that consideration
8 should not be required for marital agreements, see also *Restatement (Third) of Property*, Section
9 9.4(a) (2003), and *Model Marital Property Act*, Section 10 (1983).

10
11 **SECTION 7. WHEN AGREEMENT EFFECTIVE.** A premarital agreement is

12 effective on marriage. A marital agreement is effective on signing by both parties.

13 **Comment**

14
15 This section is adapted from *Uniform Premarital Agreement Act*, Section 4. The
16 effective date of an agreement (premarital agreement at marriage, marital agreement at signing)
17 does not foreclose the parties from agreeing that certain provisions within the agreement will not
18 go into force until a later time, or will go out of force at that later time. For example, a
19 premarital agreement may grant a spouse additional rights should the marriage last a specified
20 number of years.

21
22 Parties sometimes enter agreements that are part cohabitation agreement and part
23 premarital agreement. This act deals only with the provisions triggered by marriage, without
24 undermining whatever enforceability the cohabitation agreement has during the period of
25 cohabitation.

26
27 **SECTION 8. VOID MARRIAGE.** If a marriage is determined to be void, a premarital

28 agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable
29 result.

30 **Comment**

31
32 This section is adapted from *Uniform Premarital Agreement Act*, Section 7. For example,
33 if John and Joan went through a marriage ceremony, preceded by a premarital agreement, but,
34 unknown to Joan, John was still legally married to Martha, the marriage between John and Joan
35 would be void, and whether their premarital agreement should be enforced would be left to the
36 discretion of the court, taking into account whether enforcement in whole or in part would be
37 required to avoid an inequitable result.

38
39 This section is intended to apply primarily to cases where a marriage is void due to the
40 pre-existing marriage of one of the partners. Situations where one partner is seeking a civil
41 annulment (see Section 2(3)) relating to some claims of misrepresentation or mutual mistake

1 would usually be better left to the main enforcement provisions of Sections 9 and 10.

2 **SECTION 9. ENFORCEMENT.**

3 (a) A premarital agreement or marital agreement is unenforceable if a party against whom
4 enforcement is sought proves:

5 (1) the party's consent to the agreement was involuntary or the result of duress;

6 (2) the party did not have access to independent legal representation under
7 subsection (b);

8 (3) unless the party had independent legal representation at the time the agreement
9 was signed, the agreement did not include a notice of waiver of rights under subsection (c) or an
10 explanation in plain language of the marital rights or obligations being modified or waived by
11 the agreement; or

12 (4) before signing the agreement, the party did not receive adequate financial
13 disclosure under subsection (d).

14 (b) A party has access to independent legal representation if:

15 (1) before signing a premarital or marital agreement, the party has a reasonable
16 time to:

17 (A) decide whether to retain a lawyer to provide independent legal
18 representation; and

19 (B) locate a lawyer to provide independent legal representation, obtain the
20 lawyer's advice, and consider the advice provided; and

21 (2) the other party is represented by a lawyer and the party has the financial
22 ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of
23 independent legal representation.

1 (c) A notice of waiver of rights under this section requires language,
2 conspicuously displayed, substantially similar to the following, as applicable to the
3 premarital agreement or marital agreement:

4 "If you sign this agreement, you may be:

5 Giving up your right to be supported by the person you are marrying or to
6 whom you are married.

7 Giving up your right to ownership or control of money and property.

8 Agreeing to pay bills and debts of the person you are marrying or to whom you
9 are married.

10 Giving up your right to money and property if your marriage ends or the
11 person to whom you are married dies.

12 Giving up your right to have your legal fees paid."

13 (d) A party has adequate financial disclosure under this section if the party:

14 (1) receives a reasonably accurate description and good-faith estimate of
15 value of the property, liabilities, and income of the other party;

16 (2) expressly waives, in a separate signed record, the right to financial
17 disclosure beyond the disclosure provided; or

18 (3) has adequate knowledge or a reasonable basis for having adequate
19 knowledge of the information described in paragraph (1).

20 (e) If a premarital agreement or marital agreement modifies or eliminates spousal
21 support and the modification or elimination causes a party to the agreement to be eligible for
22 support under a program of public assistance at the time of separation or marital dissolution,
23 a court, on request of that party, may require the other party to provide support to the extent
24 necessary to

1 avoid that eligibility.

2 (f) A court may refuse to enforce a term of a premarital agreement or marital
3 agreement if, in the context of the agreement taken as a whole[;]

4 ~~[(1)]~~ the term was unconscionable at the time of signing or the time of
5 enforcement[; or

6 (2) enforcement of the term would result in substantial hardship for a party
7 because of a material change in circumstances arising after the agreement was signed].

8 (g) The court shall decide a question of unconscionability [or substantial hardship]
9 under subsection (f) as a matter of law.

10 *Legislative Note: Section 9(a) places the burden of proof on the party challenging a*
11 *premarital agreement or a marital agreement. Amendments are required if your state wants to*
12 *(1) differentiate between the two categories of agreements and place the burden of proof on a*
13 *party seeking to enforce a marital agreement, or (2) place the burden of proof on a party*
14 *seeking to enforce either a premarital agreement or marital agreement.*

15 *If your state wants to permit review for "substantial hardship" caused by a premarital*
16 *agreement or marital agreement at the time of enforcement, Section 9(f), including the bracketed*
17 *language, should be enacted.*

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20 Comment

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This section is adapted from *Uniform Premarital Agreement Act*, Section 6. While this section gives a number of defenses to the enforcement of premarital agreements and marital agreements, other defenses grounded in the principles of law and equity also are available. See Section 5.

The use of the phrase "involuntary or the result of duress" in Subsection (a)(1) is not meant to change the law. There is significant and quite divergent caselaw that has developed under the "voluntariness" standard of the Uniform Premarital Agreement Act and related law – e.g., compare *Marriage of Bernard*, 204 P.3d 907, 910-913 (Wash. 2009) (finding agreement "involuntary?" when significantly revised version of premarital agreement was presented three days before the wedding) and *Peters-Riemers v. Riemers*, 644 N.W.2d 197, 205-207 (N.D. 2002) (agreement presented three days before wedding found to be "involuntary"; court also emphasized absence of independent counsel and adequate financial disclosure) with *Brown v. Brown*, No. 2050748, 19 So.3d 920 (Table) (Ala. App. 2007) (agreement presented day before wedding; court held assent to be "voluntary"), *aff'd sub. nom Ex parte Brown*, 26 So.3d 1222, 1225-1228 (Ala. 2009) and *Binek v. Binek*, 673 N.W.2d 594, 597-598 (N.D. 2004) (agreement sufficiently "voluntary" to be enforceable despite being presented two days before the wedding); see also *Mamot v. Mamot*, 813 N.W.2d 440, 447 (Neb. 2012) (summarizing five-factor test many

1 courts use to evaluate "voluntariness" under the UPAA); *see generally* Judith T. Younger,
2 "Lovers' Contracts in the Courts: Forsaking the Minimal Decencies," 13 *William & Mary*
3 *Journal of Women and the Law* 349, 359-400 (2007) (summarizing the divergent interpretations
4 of "voluntary" and related concepts under the UPAA); Oldham, "With All My Worldly Goods,"
5 *supra*, at 88-99 (same). This act is not intended either to endorse or override any of those
6 decisions. One factor that courts should certainly consider: the presence of domestic violence
7 would be of obvious relevance to any conclusion about whether a party's consent to an
8 agreement was "involuntary or the result of duress."
9

10 The requirement of "access to independent counsel" in Subsections (a)(2) and (b)
11 represents the view that representation by independent counsel is crucial for a party waiving
12 important legal rights. The act stops short of requiring representation for an agreement to be
13 enforceable, *cf California Family Code* § 1612(c) (restrictions on spousal support allowed only
14 if the party waiving rights consulted with independent counsel); *California Probate Code* §
15 143(a) (waiver of rights at death of other spouse unenforceable unless the party waiving was
16 represented by independent counsel); *Ware v. Ware*, 687 S.E.2d 382, 387-391 (W. Va. 2009)
17 (access to independent counsel required, and *presumption of validity* for premarital agreement
18 available only where party challenging the agreement actually consulted with independent
19 counsel). When a party has an obligation to make funds available for the other party to retain a
20 lawyer, under Subsection (b)(2), this refers to the cost of a lawyer competent in this area of law,
21 not necessarily the funds needed to retain as good or as many lawyers as the first party may
22 have.
23

24 The notice of waiver of rights of Subsections (a)(3) and (c) is adapted from the
25 *Restatement (Third) of Property*, Section 9.4(c)(3) (2003), and it is also similar in purpose to
26 *California Family Code* §1615(c)(3). It creates a safe harbor when dealing with unrepresented
27 parties by use of the applicable designated warning language of Subsection (c), or language
28 substantially similar, but also allows enforcement where there has been an explanation in plain
29 language of the rights and duties being modified or waived by the agreement.
30

31 The requirement of reasonable financial disclosure of Subsection (a)(4) and (d) pertains
32 only to assets of which the party knows or reasonably should know. There will be occasions
33 where the valuation of an asset can only be approximate, or may be entirely unknown, and this
34 can and should be noted as part of a reasonable disclosure. Disclosure will qualify as
35 "reasonably accurate" even if a value is approximate or difficult to determine, and even if there
36 are minor inaccuracies. As the Connecticut Supreme Court stated, after reviewing cases from
37 many jurisdictions on the comparable standard of "fair and reasonable disclosure," "[t]he
38 overwhelming majority of jurisdictions that apply this standard do not require financial
39 disclosure to be exact or precise. ... [The standard] requires each contracting party to provide the
40 other with a general approximation of their income, assets and liabilities" *Friezo v. Friezo*,
41 914 A.2d 533, 549, 550 (Conn. 2007). Under Subsection (d)(1), an estimate of value of
42 property, liabilities, and income made in good faith would satisfy this act even if it were later
43 found to be inaccurate.
44

45 Some commentators have urged that a waiver of the right of financial disclosure (or the
46 right of financial disclosure beyond what has already been disclosed) be valid only if the waiver
47 were signed after receiving legal advice. The argument is that it is too easy to persuade an

1 unrepresented party to sign or initial a waiver provision, and that the party waiving that right
2 would then likely be ignorant of the magnitude of what was being given up. Even when notified
3 in the abstract of the rights being given up, it would make a great deal of difference if the party
4 thinks that what was being given up was a claim to a portion of \$80,000, when in fact what was
5 being given up was a claim to a portion of \$80,000,000. However, this act follows the current
6 consensus among the states in not requiring legal representation for a waiver. One reason for not
7 requiring legal advice is that this might effectively require legal representation for all premarital
8 agreements and marital agreements. Under a requirement of legal representation, parties
9 entering agreements might reasonably worry that even if there were significant disclosure, it
10 would always be open to the other party at the time of enforcement to challenge the agreement on
11 the basis that the disclosure was not sufficient, and that any waiver of disclosure beyond the
12 amount given was invalid because of a lack of legal representation. In general, there was a
13 concern that a requirement of legal representation would create an invitation to strategic behavior
14 and unnecessary litigation.

15
16 "Conspicuously displayed" in Subsection (c) follows the language and standard of
17 Uniform Commercial Code § 1-201(10), and incorporates the case-law regarding what counts as
18 "conspicuous."

19
20 Reference in Subsection (d)(3) to "adequate knowledge" includes at least approximate
21 knowledge of the value of the property, liabilities, and income in question.

22
23 Subsection (e) as adapted from the *Uniform Premarital Agreement Act*, Section 6(b).
24 Other jurisdictions have in the past chosen even more significant protections for vulnerable
25 parties. *See, e.g., N M Stat.* § 40-3A-4(B) (premarital agreement may not affect spouse's right
26 to support); *Matter of Estate of Spurgeon*, 572 N.W.2d 595, 599 (Iowa 1998) (widow's spousal
27 allowance could be awarded, even in the face of express provision in premarital agreement
28 waiving that right); *In re Estate of Thompson*, No. 11-0940, 812 N.W.2d 726 (Table), 2012 WL
29 469985 (Iowa App. 2012) (same); *Hall v. Hall*, 4 So.3d 254, 256-257 (La. App. 2009), writ
30 denied, 9 So.3d 166 (La. 2009) (waiver of interim support in premarital agreement
31 unenforceable as contrary to public policy). This act attempts to give vulnerable parties
32 significant procedural and substantive protections (protections far beyond what was given in the
33 original *Uniform Premarital Agreement Act*), while maintaining an appropriate balance between
34 such protection and freedom of contract.

35
36 The reference in Subsection (f) to the unconscionability of (or substantial hardship caused
37 by) a term is meant to allow a court to strike particular provisions of the agreement while
38 enforcing the remainder of the agreement – consistent with the normal principles of severability
39 in that state (see Section 5 and its commentary). However, this language is not meant to prevent
40 a court from concluding that the agreement was unconscionable as a whole, and to refuse
41 enforcement to the entire agreement.

42
43 Subsection (f) includes a bracketed provision for states that wish to include a "second
44 look," considering the fairness of enforcing an agreement relative to the time of enforcement.
45 The suggested standard is one of whether "enforcement of the term would result in substantial
46 hardship for a party because of a material change in circumstances arising after the agreement

1 was signed." This language broadly reflects the standard applied in a number of states. *E.g.*,
2 *Connecticut Code* §46b-36g(2) (whether premarital agreement was "unconscionable . . . when
3 enforcement is sought"); *New Jersey Statutes* § 37:2-38(b) (whether premarital agreements was
4 "unconscionable at the time enforcement is sought"); *North Dakota Code* § 14-03.1-07
5 ("enforcement of a premarital agreement would be clearly unconscionable"); *Ansin v. Craven-*
6 *Ansin*, 929 N.E.2d 955, 964 (Mass. 2010) ("the terms of the [marital] agreement are fair and
7 reasonable ... at the time of divorce"); *Bedrick v. Bedrick*, 17 A.3d 17, 27 (Conn. 2011) ("the
8 terms of the [marital] agreement are . . . not unconscionable at the time of dissolution").
9 However, it should be noted that even in such "second look" states, case law invalidating
10 premarital agreements and marital agreements at the time of enforcement almost universally
11 concerns rights at divorce. There is little case law invalidating waivers of rights arising at the
12 death of the other spouse grounded on the unfairness at the time of enforcement.

13
14 Among the states that allow challenges based on the circumstances at the time of
15 enforcement, the terminology and the application vary greatly from state to state. Courts
16 characterize the inquiry differently, referring variously to "fairness," "hardship," "undue
17 burden," "substantial injustice" (the term used by the American Law Institute's *Principles of the*
18 *Law of Family Dissolution* § 7.05 (2002)), or just "unconscionability" at the time of
19 enforcement. In determining whether to enforce the agreement or not under this sort of review,
20 courts generally look to a variety of factors, including the duration of the marriage, the purpose
21 of the agreement, the current income and earning capacity of the parties, the parties' current
22 obligations to children of the marriage and children from prior marriages, the age and health of
23 the parties, the parties' standard of living during the marriage, each party's financial and home-
24 making contributions during the marriage, and the disparity between what the parties would
25 receive under the agreement and what they would likely have received under state law in the
26 absence of an agreement. See Brett R. Turner & Laura W. Morgan, *Attacking and Defending*
27 *Marital Agreements* (2nd ed., ABA Section of Family Law, 2012), p. 417. The American Law
28 Institute argued that courts generally were (and should be) more receptive to claims when the
29 marriage had lasted a long time, children had been born to or adopted by the couple, or there
30 had been "a change of circumstances that has a substantial impact on the parties ... [and that]
31 the parties probably did not anticipate either the change, or its impact" at the time the agreement
32 was signed. American Law Institute, *Principles of the Law of Family Dissolution* § 7.05(2)
33 (2002). One court listed the type of circumstances under which enforcement might be refused as
34 including: "an extreme health problem requiring considerable care and expense; change in
35 employability of the spouse; additional burdens placed upon a spouse by way of responsibility
36 to children of the parties; marked changes in the cost of providing the necessary maintenance of
37 the spouse; and changed circumstance of the standards of living occasioned by the marriage,
38 where a return to the prior living standard would work a hardship upon a spouse." *Gross v.*
39 *Gross*, 464 N.E.2d 500, 509-510 n.11 (Ohio 1984).

40
41 Subsection (g) characterizes questions of unconscionability (or substantial hardship) as
42 questions of law for the court. This follows the treatment of unconscionability in conventional
43 commercial contracts. See *UCC* § 2-302(1) & Comment 3; *Restatement (Second) of Contracts* §
44 208, comment f (1981). This subsection is not intended to establish or modify the standards of
45 review under which such conclusions are considered on appeal under state law.

1 Waiver or modification of claims relating to a spouse's pension is subject to the
2 constraints of applicable state and federal law, including ERISA (Employee Retirement Income
3 Security Act of 1974, 29 U.S.C. 1001 *et seq.*). *See, e.g., Robins v. Geisel*, 666 F.Supp.2d 463,
4 467-468 (D. N.J. 2009) (wife's premarital agreement waiving her right to any of her husband's
5 separate property did not qualify as a waiver of her spousal rights as beneficiary under ERISA);
6 *Strong v. Dubin*, 901 N.Y.S.2d 214, 217-220 (N.Y. App. Div. 2010) (waiver in premarital
7 agreement conforms with ERISA waiver requirement and is enforceable).

8
9 In contrast to the approach of the act, some jurisdictions put the burden of proof on the
10 party seeking enforcement of an agreement. *See, e.g., Randolph v. Randolph*, 937 S.W.2d 815,
11 820-821 (Tenn. 1996) (party seeking to enforce premarital agreement had burden of showing, in
12 general, that other party entered agreement "knowledgeably": in particular, that a full and fair
13 disclosure of assets was given or that it was not necessary due to the other party's independent
14 knowledge); *Stancil v. Stancil*, No. E2011-00099-COA-R3-CV, 2012 WL 112600 (Tenn. Ct.
15 App., Jan. 13, 2012) (same); *In re Estate of Cassidy*, 356 S.W.3d 339, 345 (Mo. App. 2011)
16 (parties seeking to enforce waivers of rights at the death of the other spouse have the burden of
17 proving that procedural and substantive requirements were met). The Legislative Note directs a
18 state to amend Subsection (a) appropriately if the state wants to place the burden of proof on the
19 party seeking enforcement of a marital agreement, a premarital agreement, or both. In those
20 jurisdictions, Subsection (a) should provide that the agreement is unenforceable unless the party
21 seeking to enforce the agreement proves each of the required elements.

22
23 Many jurisdictions impose greater scrutiny or higher procedural safeguards for marital
24 agreements as compared to premarital agreements. *See, e.g., Ansin v. Craven-Ansin*, 929 N.E.2d
25 955, 961-964 (Mass. 2010); *Redrick v. Redrick*, 17 A.3d 17, 23-25 (Conn. 2011). Those
26 jurisdictions view agreements in the midst of marriage as being especially at risk of coercion
27 (the analogue of a "hold up" in a commercial arrangement) or overreaching. Additionally, these
28 conclusions are sometimes based on the view that parties already married are in a fiduciary
29 relationship in a way that parties about to marry, and considering a premarital agreement, are not.
30 Linda J. Ravdin, *Premarital Agreements: Drafting and Negotiation* (American Bar Association,
31 2011), pp. 16-18. Also, some jurisdictions have distinguished "reconciliation agreements"
32 entered during marriage with other marital agreements, giving more favorable treatment to
33 reconciliation agreements. *See, e.g., Bratton v. Bratton*, 136 S.W.3d 595, 599-600 (Tenn. 2004)
34 (summarizing the prior law in Tennessee under which reconciliation agreements were
35 enforceable but other marital agreements were void). Many other jurisdictions and The
36 American Law Institute (in its *Principles of the Law of Family Dissolution*, Section 7.01(3) &
37 Comment *b* (2002)) treat marital agreements under the same standards as premarital agreements.
38 This is the approach adopted by this act.

39
40 **SECTION 10. UNENFORCEABLE TERMS.**

41 (a) In this section, "custodial responsibility" means physical or legal custody, parenting
42 time, access, visitation, or other custodial right or duty with respect to a child.

43 (b) A term in a premarital agreement or marital agreement is not enforceable to the extent

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that it:

- (1) adversely affects a child's right to support;
- (2) limits or restricts a remedy available to a victim of domestic violence under law of this state other than this [act];
- (3) purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this [act]; or
- (4) penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

(c) A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding custodial responsibility is not binding on the court.

Legislative Note: A state may vary the terminology of "custodial responsibility" to reflect the terminology used in the law of this state other than this act.

Comment

This section lists provisions that are not binding on a court (this contrasts with the agreements mentioned in Section 3, where the point was to distinguish agreements whose regulation fell outside this act). They include some provisions (e.g., regarding the parents' preferences regarding custodial responsibility) that, even though not binding on a court, a court might consider by way of guidance.

There is a long-standing consensus that premarital agreements may not bind a court on matters relating to children: agreements cannot determine custody or visitation, and cannot limit the amount of child support (though an agreed *increase* of child support may be enforceable). *E.g.*, In re *Marriage of Best*, 901 N.E.2d 967, 970 (Ill. App. 2009) ("Premarital agreements limiting child support are ... improper"), appeal denied, 910 N.E.2d 1126 (Ill. 2009); *cf Pursley Pursley*, 144 S.W.3d 820, 823-826 (Ky. 2004) (agreement by parties in a separation agreement to child support well in excess of guideline amounts is enforceable; it is not unconscionable or contrary to public policy). The basic point is that parents and prospective parents do not have the power to waive the rights of third parties (their current or future children), and do not have the power to remove the jurisdiction or duty of the courts to protect the best interests of minor children. Subsection (b)(1) applies also to step-children, to whatever extent the state imposes child-support obligation on step-parents.

There is a general consensus in the caselaw that courts will not enforce premarital agreement provisions relating to topics beyond the parties' financial obligations *inter se*. And

1 while some courts have refused to enforce provisions in premarital agreements and marital
2 agreements that regulate (or attach financial penalties to) conduct during the marriage, e.g.,
3 *Diosdado v. Diosdado*, 118 Cal. Rptr.2d 494, 496-497 (Cal. App. 2002) (refusing to enforce
4 provision in agreement imposing financial penalty for infidelity); *In re Marriage of Mehren &*
5 *Dargan*, 118 Cal.App.4th 1167, 13 Cal.Rptr.3d 522 (Cal. App. 2004) (refusing to enforce
6 provision that penalized husband's drug use by transfer of property); *see also* Brett R. Turner and
7 Laura W. Morgan, *Attacking and Defending Marital Agreements* 379 (2nd ed., ABA Section on
8 Family Law, 2012) ("It has been generally held that antenuptial agreements attempting to set the
9 terms of behavior during the marriage are not enforceable" (footnote omitted)), this act does not
10 expressly deal with such provisions, in part because a few courts have chosen to enforce
11 premarital agreements relating to one type of marital conduct: parties' cooperating in obtaining
12 religious divorces or agreeing to appear before a religious arbitration board. *E.g., Avitzur v.*
13 *Avitzur*, 446 N.E.2d 136, 138-139 (N.Y. 1983) (holding enforceable religious premarital
14 agreement term requiring parties to appear before religious tribunal and accept its decision
15 regarding a religious divorce). Also, while there appear to be scattered cases in the distinctly
16 different context of separation agreements where a court has enforced the parties' agreement to
17 avoid fault grounds for divorce, e.g., *Massar v. Massar*, 652 A.2d 219, 221-223 (N.J. App. Div.
18 1994); *cf Eason v. Eason*, 682 S.E.2d 804, 806-808 (S.C. 2009) (agreement not to use adultery
19 as defense to alimony claim enforceable); *see generally* Linda J. Ravdin, *Premarital Agreements:*
20 *Drafting and Negotiation* (ABA, 2011), p. 111 ("In some fault states, courts may enforce a
21 provision [in a premarital agreement] that waives fault"), there appears to be no case law
22 enforcing an agreement to avoid *no-fault grounds*. This act follows the position of the American
23 Law Institute (*Principles of the Law of Family Dissolution*, Section 7.08(1) (2002)), that
24 agreements affecting divorce grounds in any way should not be enforceable.

25
26 It is common to include escalator clauses and sunset provision in premarital agreements
27 and marital agreements, making parties' property rights vary with the length of the marriage. *Cf*
28 *Peterson v. Sykes-Peterson*, 37 A.3d 173, 177-178 (Conn. App. 2012), cert. denied, 42 A.3d 390
29 (Conn. 2012) (rejecting argument that sunset provision in premarital agreement is unenforceable
30 because contrary to public policy). Subsection (b)(4), which makes provisions unenforceable
31 that penalize one party's initiating an action that leads to the dissolution of a marriage, does not
32 cover such escalator clauses. Additionally, nothing in this provision is intended to affect the
33 rights of parties who enter valid covenant marriages in states that make that alternative form of
34 marriage available.

35
36 Section 10 does not purport to list all the types of provisions that are unenforceable.
37 Other provisions which are contrary to public policy would also be unenforceable. See Section
38 5.

39 SECTION 11. LIMITATION OF ACTION. A statute of limitations applicable to an
40 action asserting a claim for relief under a premarital agreement or marital agreement is tolled
41 during the marriage of the parties to the agreement, but equitable defenses limiting the time for
42 enforcement, including laches and estoppel, are available to either party.

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Comment

This Section is adapted from *Uniform Premarital Agreement Act*, Section 8. As the Comment to that Section stated: "In order to avoid the potentially disruptive effect of compelling litigation between the spouses in order to escape the running of an applicable statute of limitations, Section 8 tolls any applicable statute during the marriage of the parties However, a party is not completely free to sit on his or her rights because the section does preserve certain equitable defenses."

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

~~**SECTION 14. REPEALS; CONFORMING AMENDMENTS.**~~

~~(a) [Uniform Premarital Agreement Act] is repealed.~~

~~(b) [Uniform Probate Code Section 2-213 (Waiver of Right to Elect and of Other Rights)] is repealed.~~

~~(e) [...]~~

SECTION 15. EFFECTIVE DATE. This [act] takes effect ...

EXHIBIT 2

Section 5, Uniform Premarital and Marital Agreement Act with Family Section Revisions

contrary to “fundamental public policy” of forum state); Russell J. Weintraub, *Commentary on the Conflict of Laws* 118-125 (6th ed., Foundation Press, 2010).

For examples of choice of law and conflict of law principles operating in this area, see, e.g., *Bradley v. Bradley*, 164 P.3d 537, 540-544 (Wyo. 2007) (premarital agreement had choice of law provision selecting Minnesota law; amendment to agreement held invalid because it did not comply with Minnesota law for modifying agreements); *Gamache v. Smurro*, 904 A.2d 91, 95-96 (Vt. 2006) (applying California law to prenuptial agreement signed in California); *Black v. Powers*, 628 S.E.2d 546, 553-556 (Va. App. 2006) (Virginia couple drafted agreement in Virginia, but signed it during short stay in the Virgin Islands before their wedding there; the agreement was held to be covered by Virgin Islands law because there was no clear party intention that Virginia law apply and because Virgin Island law was not contrary to the forum state’s public policy); cf. *Davis v. Miller*, 7 P.3d 1223, 1229-1230 (Kan. 2000) (parties can use choice of law provision to choose the state version of the Uniform Premarital Agreement Act to apply to a marital agreement, even though that Act would otherwise not apply).

SECTION 5. PRINCIPLES OF LAW AND EQUITY. Unless displaced by a provision of this [act], principles of law and equity supplement this [act], including a court’s authority under MCL 552.23(1) and MCL 552.401, but only to the extent necessary to achieve the purposes of the statutes. Imposition of a remedy under either statute does not invalidate the entire marital agreement unless the agreement otherwise fails to meet the requirements of this act.

Comment

This section is similar to Section 106 of the *Uniform Trust Code* and Section 1-103(b) of the *Uniform Commercial Code*, and incorporates the case-law that has developed to interpret and apply those provisions. Because this act contains broad, amorphous defenses to enforcement like “voluntariness” and “unconscionability” (Section 9), there is a significant risk that parties, and even some courts, might assume that other conventional doctrinal contract law defenses are not available because preempted. This section is intended to make clear that common law contract doctrines and principles of equity continue to apply where this act does not displace them. Thus, it is open to parties, e.g., to resist enforcement of premarital agreements and marital agreements based on legal incompetency, misrepresentation, duress, undue influence, unconscionability, abandonment, waiver, etc. For example, a premarital agreement presented to one of the parties for the first time hours before a marriage (where financial commitments have been made and guests have arrived from far away) clearly raises issues of duress, and might be voidable on that ground. Cf. *In re Marriage of Balcof*, 141 Cal.App.4th 1509, 1519-1527, 47 Cal.Rptr.3d 183, 190-196 (2006) (marital agreement held unenforceable on the basis of undue influence and duress); *Bakos v. Bakos*, 950 So.2d 1257, 1259 (Fla. App. 2007) (affirming trial court conclusion that premarital agreement was voidable for undue influence).

The application of doctrines like duress varies greatly from jurisdiction to jurisdiction:

contrary to “fundamental public policy” of forum state); Russell J. Weintraub, *Commentary on e.g., on whether duress can be shown even in the absence of an illegal act, e.g. Farm Credit Services of Michigan’s Heartland v. Weldon*, 591 N.W.2d 438, 447 (Mich. App. 1998) (illegal act required for claim of duress under Michigan law), and whether the standard of duress should be applied differently in the context of domestic agreements compared to commercial agreements. This act is not intended to change state law and principles relating to these matters. Nor is this act intended to change the law established by the several *Allard* decisions affirming the court’s authority to invade assets declared separate property in a marital agreement for the limited purpose of MCL 552.23(1) [award “part of the real and personal estate” of the one party “if the estate and effects awarded to either party are insufficient for the suitable support and maintenance” of the other party] and MCL 552.401 [award the separate property of one party to the other party if “the party contributed to the acquisition, improvement, or accumulation of the property”].

Rules of construction, including rules of severability of provisions, are also to be taken from state rules and principles. *Cf. Rivera v. Rivera*, 243 P.3d 1148, 1155 (N.M. App. 2010), *cert. denied*, 243 P.3d 1146 (N.M. 2010) (premarital agreement that improperly waived the right to alimony and that contained no severability clause deemed invalid in its entirety); *Sanford v. Sanford*, 694 N.W.2d 283, 291-294 (S.D. 2005) (applying state principles of severability to conclude that invalid alimony waiver in premarital agreement severable from valid provisions relating to property division); *Bratton v. Bratton*, 136 S.W.3d 595, 602 (Tenn. 2004) (property division provision in marital agreement not severable from provision waiving alimony). Additionally, state rules and principles will govern the ability of parties to include elevated formalities for the revocation or amendment of their agreements.

SECTION 6. FORMATION REQUIREMENTS. A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration.

Comment

This section is adapted from *Uniform Premarital Agreement Act*, Section 2. Almost all jurisdictions currently require premarital agreements to be in writing. A small number of courts have indicated that an oral premarital agreement might be enforced based on partial performance, e.g., *In re Marriage of Benson*, 7 Cal. Rptr. 3d 905 (App. 2003), *rev'd*, 36 Cal.4th 1096, 116 P.3d 1152 (Cal. 2005) (ultimately holding that the partial performance exception to statute of frauds did not apply to transmutation agreement), and at least one jurisdiction has held that a premarital agreement could be amended or rescinded by actions alone. *Marriage of Baxter*, 911 P.2d 343, 345-346 (Or. App. 1996), review denied, 918 P.2d 847 (Or. 1996). One court, in an unpublished opinion, enforced an oral agreement that a written premarital agreement would become void upon the birth of a child to the couple. *Ehlert v. Ehlert*, No. 354292, 1997 WL 53346 (Conn. Super. 1997). While this act affirms the traditional rule that formation, amendment, and revocation of premarital agreements and marital agreements need to be done through signed written documents, states may obviously construe their own equitable doctrines (application through Section 5) to warrant enforcement or modification without a writing in exceptional cases.

It is the consensus view of jurisdictions and commentators that premarital agreements are or should be enforceable without (additional) consideration (the agreement to marry or the act of marrying is often treated as sufficient consideration). Additionally, most modern approaches to premarital agreements have by-passed the consideration requirement entirely: e.g., *Uniform Premarital Agreement Act*, Section 2; American Law Institute, *Principles of the Law of Family Dissolution*, Section 7.01(4) (2002); *Restatement (Third) of Property*, Section 9.4(a) (2003).

In some states, courts have raised concerns relating to the consideration for marital agreements. The view of this act is that marital agreements, otherwise valid, should not be made unenforceable on the basis of lack of consideration. As the American Law Institute wrote on the distinction (not requiring additional consideration for enforcing premarital agreements, but

EXHIBIT 3
Allard Caselaw Summary

Memo

To: Probate Council

From: Premarital and Marital Agreement Committee

Date: April 12, 2019

Subject: Uniform Premarital and Marital Agreements Act

The Premarital and Marital Agreement Committee ("Committee") has reviewed the Uniform Premarital and Marital Agreements Act ("Act"). This review has included an examination of the current law in Michigan relating to premarital and marital agreements, along with the review of the provisions of the Act during the CSP meetings.

The Committee expects that the current state of the law in Michigan relating to premarital and marital agreements as a result of Allard, will be a primary point of discussion when making revisions, if any, to the Act. In anticipation of potential revisions to address Allard, the Committee thought it would be efficient to have the Allard discussion prior to proceeding with revisions to or introduction of the Act. This will enable Council to take a position relating to Allard and provide the Committee with direction as to how to proceed with the Act.

A summary of the Allard caselaw is as follows:

FACTS: The parties signed a premarital agreement two days before their wedding. Approximately 10 days before their wedding, Husband gave Wife a draft of a premarital agreement. Husband and Wife discussed that Husband's father had insisted on a premarital agreement prior to leaving Husband an inheritance. Husband expressed to Wife that his father was adamant that if she did not sign a premarital agreement there would be no wedding. Wife then signed the premarital agreement. Wife did not consult with her own attorney. Wife claimed that she wanted to write "signed under duress" on the document but was not permitted to do so by Husband's attorney.

The applicable provisions of the premarital agreement are as follows:

4 Each party shall during his or her lifetime keep and retain sole ownership, control, and enjoyment of all real, personal, intangible, or mixed property now owned, free and clear of any claim by the other party. However, provided that nothing herein contained shall be construed to prohibit the parties

from at any time creating interests in real estate as tenants by the entireties or in personal property as joint tenants with rights of survivorship and to the extent that said interest is created, it shall, in the event of divorce, be divided equally between the parties. At the death of the first of the parties hereto, any property held by the parties as such tenants by the entireties or joint tenants with rights of survivorship shall pass to the surviving party.

5. In the event that the marriage . . . terminate[s] as a result of divorce, then, in full satisfaction, settlement, and discharge of any and all rights or claims of alimony, support, property division, or other rights or claims of any kind, nature, or description incident to marriage and divorce (including any right to payment of legal fees incident to a divorce), under the present or future statutes and laws of common law of the state of Michigan or any other jurisdiction (all of which are hereby waived and released), the parties agree that all property acquired after the marriage between the parties shall be divided between the parties with each party receiving 50 percent of the said property. However, notwithstanding the above, the following property acquired after the marriage will remain the sole and separate property of the party acquiring the property and/or named on the property:

a. As provided in paragraphs Two and Three of this antenuptial agreement, any increase in the value of any property, rents, profits, or dividends arising from property previously owned by either party shall remain the sole and separate property of that party.

b. Any property acquired in either party's individual capacity or name during the marriage, including any contributions to retirement plans (including but not limited to IRAs, 401(k) plans, SEP IRAs, IRA rollovers, and pension plans), shall remain the sole and separate property of the party named on the account or the party who acquired the property [***6] in his or her individual capacity or name.

8. Each party shall, without compensation, join as grantor in any and all conveyances of property made by the other party or by his or her heirs, devisees, or personal representatives, thereby relinquishing all claim to the property so conveyed, including without limitation any dower or homestead rights, and each party shall further, upon the other's request, take any and all steps and execute, acknowledge, and deliver to the other party any and all further instruments necessary or expedient to effectuate the purpose and intent of this agreement.

10. Each party acknowledges that the other party has advised him or her of the other party's means, resources, income, and the nature and extent of the other party's properties and holdings (including, but not limited to, the financial

information set forth in exhibit A attached hereto and incorporated herein by reference) and that there is a likelihood for substantial appreciation of those assets subsequent to the marriage of the parties.

Included with the agreement was Husband's disclosure statement, which indicated that he already had approximately \$400,000 in net worth.

During the course of the marriage, Husband and Wife held a joint checking account. There were no other joint assets. Wife worked at two different advertising agencies during the first years of the marriage. At the end of her employment, she earned approximately \$30,000 per year. After Wife became pregnant with their second child, Wife stopped working and did not seek further employment.

Husband received numerous cash gift from his parents during the marriage, often totaling \$20,000 per year. Husband also received loans from his father during the marriage, and claims that he used those funds to acquire some of the real estate he purchased during the marriage. Husband also formed 6 single member LLC's during the marriage.

Husband used at least some of the LLCs as a vehicle to purchase and convey numerous real estate holdings. In addition, the marital home, which husband owned before the marriage, was conveyed to one of the LLCs. Husband asserted in the trial court that Wife never incurred any liability as a result of the obligations arising from these multiple transactions, and that, as required by the premarital agreement, Wife signed warranty deeds when properties were sold to release any dower rights she might have acquired. However, despite contending that Wife willfully released her dower rights in accordance with the terms of the premarital agreement, Husband also asserted that Wife never gained any ownership interest in any of the properties.

After 16 years of marriage, Husband filed for divorce. Husband argued that the premarital agreement governed and was dispositive of all issues except for custody, parenting time and child support. Wife argued that the premarital agreement was void because the terms of the agreement were unconscionable, Wife did not have the benefit of independent counsel, and also because the premarital agreement was signed under duress on the day of the wedding rehearsal. Wife also contended that a change of circumstances supported the setting aside of the premarital agreement, asserting that she was abused by Husband during the marriage and that Husband never intended to create a marital partnership.

1. Allard v Allard, Trial Court.

a. The Trial Court held as follows: (i) Wife could not establish that the premarital agreement was signed under duress because there was no evidence of any illegal action, (ii) the agreement was not unconscionable because its terms did not shock the conscience of the court, and (iii) there was no change of circumstances that would make enforcement of the premarital agreement unfair and unreasonable. The Trial Court noted that the length of marriage and the growth of assets are not unforeseeable and therefore cannot qualify as a change of circumstances.

b. The Trial Court awarded Husband the six LLCs, the stock he owned, and all Bank accounts presently titled in his name were titled in the name of his single member LLCs. The Trial Court awarded Wife the stock she owned an IRA account, and all bank accounts that were in her name. The value of the assets awarded to Husband was in excess of \$900,000, the assets awarded to Wife were valued at approximately \$95,000.

c. The Trial Court rejected Wife's argument to invade the separate property holding that allowing invasion would violate the parties right to "freely contract".

2. Allard v Allard, 308 Mich App 536 (2014) (Allard I).

a. The Court of Appeals relied on Reed v Reed when it held that premarital agreements "may be voided (1) when obtained through fraud, duress, mistake, or misrepresentation or nondisclosure of a material fact, (2) if it was unconscionable when executed, or (3) when the facts and circumstances are so changed since the agreement was executed that the enforcement would be unfair and unreasonable". The Court of Appeals further reasoned based on Woodington v Shokoohi that "to determine if a prenuptial agreement is unenforceable because of a change in circumstances, the focus is on whether the changed circumstances were reasonably foreseeable either before or during the signing of the prenuptial agreement".

b. The Court of Appeals disregarded Wife's argument of abuse as a change in circumstances as the parties agreed in the premarital agreement that fault would not be a factor in these determinations. Therefore, to invalidate the agreement on the basis of one party's fault would contravene the clear and unambiguous language of the premarital agreement. The Court of Appeals determined that even if the abuse was unforeseeable, it

did not void the agreement on the basis of change of circumstance because change of circumstances must relate to the issues addressed in the agreement. The types of change of circumstance would have to relate to the issues addressed in the agreement, which were spousal support and division of assets.

c. The Court of Appeals held that under the plain and unambiguous language of the premarital agreement, the LLCs created by plaintiff during the course of the marriage were not acquired in Husband's individual capacity or name; that under the plain and unambiguous language of the premarital agreement, the income of the parties is to be treated as marital income and not property.. The Court of Appeals remanded for determination regarding the extent to which income earned by Husband and derived from the LLCs should be treated as marital income, and whether that marital income was used to purchase assets titled in the LLCs.

d. The Court of Appeals held that the invasion statutes do not permit a party to invade the separate property of the other party, contrary to the terms of a premarital agreement.

3. Allard v Allard, 499 Mich 932 (2016) (Allard II)

a. The Supreme Court reasoned that the parties premarital agreement rendered much of the property at issue part of the Husband's separate estate. If the premarital agreement did nothing more than divide the property between the marital state and the parties separate estates, the trial court could exercise its discretion to invade the Husband's separate estate. However, the property settlement in the premarital agreement was to be "in full satisfaction, settlement, and discharged of any and all rights or claims of alimony, support, property division, or other rights or claims of any kind, nature, or description incident to marriage and divorce, Under the present or future statutes and laws of common law of the State of Michigan or any other jurisdiction "all of which are hereby waived and released)". The Supreme Court held that the Court of Appeals did not address whether the statement waived the defendant's ability to seek invasion of the Husband's separate estate.

b. The Supreme Court vacated the Court of Appeals decision relating to the invasion of separate property. It remanded back to the Court of Appeals to consider whether the party may waive the Trial Court's statutory discretion to invade separate property.

4. Allard v Allard, January 31, 2017 (Allard III)

a. On remand the Court of Appeals found that the invasion of separate property is allowed despite a premarital agreement which states that a party is not permitted to invade separate property. The Court held that a husband and wife could not, by their prenuptial agreement, deprive the trial court of its equitable discretion to award the wife spousal support or to effectuate an equitable property settlement by "invading" the husband's separate assets.

b. The Court reasoned that the trial court must have "equitable discretion" to invade separate assets of a party even though a premarital agreement may state otherwise. The Court of Appeals held that any agreement which prohibits the invasion of separate property is "void as against both statute and the public policy codified by the Legislature". The Court held that the parties to a divorce cannot, through a premarital agreement, compel a court of equity to order a property settlement that is inequitable. Although parties have a fundamental right to contract as they see fit, they have no right to do so in direct contravention of this state's law and public policy.

Council Materials

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

Friday, April 14, 2023

Agenda

- I. Call to Order and Welcome (Mark Kellogg)
- II. Zoom Roll Call Confirmation of Attendees (Mark Kellogg)
- III. Excused Absences (Mark Kellogg)
- IV. Lobbyist's Report (Public Affairs Associates)
- V. Monthly Reports:
 - A. Minutes of Prior Council Meeting – March (Nathan Piwowarski) –
Attachment 1
 - B. Chair's Report (Mark Kellogg)
 - C. Treasurer's Report (Rick Mills) – Budget approval – **Attachment 2**
 - D. Committee on Special Projects (Melisa Mysliwec)
 - E. Tax Committee Tax Nugget (JV Anderton)
 - F. Membership Committee (Angela Hentkowski)
- VI. Oral Reports
- VII. Written Reports
- VIII. Other Business
- IX. Adjournment

Reminder: The Council does not meet in May. The next Probate & Estate Planning Council meeting will be **Friday, June 9, 2023**. The Council meeting will begin (almost) immediately after the Committee on Special Projects meeting, which begins at 9:00 AM. To register for participation via Zoom, visit https://us02web.zoom.us/meeting/register/tZErcCoqz0iGNNpnZuXDb_TMGZql01fN14a.

ATTACHMENT 1

**MEETING OF THE COUNCIL OF THE
OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**
Friday, March 10, 2023 @ 9:00 AM

University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910
and
Remote

Minutes

- I. **Call to Order and Welcome** (Mark Kellogg)
 - a. Chairperson Mark E. Kellogg called the meeting to order at 9:00 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.
- II. **Zoom Roll Call Confirmation of Attendees** (Mark Kellogg)
 - a. In Person: Mark E. Kellogg, Richard Mills, Susan Chalgian, Daniel Hilker, and Elizabeth Siefker.
 - b. Remote: James P. Spica, Daniel Borst, Melisa Mysliwiec, Kenneth Silver, Christine Savage, Michael Lichterman, Michael D. Shelton, Neal Nusholtz, Robert Tiplady, Sandra Glazier, Nathan Piwowski, James F. Anderton, Katie Lynwood, Marguerite Lentz, David Lentz, Kurt Olson, Jonathan Beer, David Sprague, Christine Caswell, Charlotte Shoup, John McFarland, Rebecca Gorbett, Robert Tiplady, Kathleen Goetsch, Andrew Mayoras, Hon. Shauna Dunning, Robert Labe, Angela Hentkowski, Stephen J. Dunn, Kathleen A. Cieslik, Rebecca Wrock, Warren Krueger, Sean Blume, Lindsey DiCesare (ICLE), Rebecca Bechler (Public Affairs Associates), and Andrea Neighbors (Administrative Assistant)
- III. **Excused Absences** (Mark Kellogg)
 - a. Georgette E. David
- IV. **Lobbyist's Report** (Public Affairs Associates)
 - a. According to Rep. Graham Filer, there is one bill of the EPIC Omnibus bills that the legislative service bureau has not prepared correctly, and he is hopeful that he will get it back next week. We are just waiting for that bill and then hopefully will move forward. Rep. Graham Filler and Rep. Kelly Breen will co-sponsor it.
 - b. Rep. Kara Hope, who chairs the criminal justice committee has agreed and has put in requests for the section's unitrust- and power of attorney-related legislation. She does not have either blueback back yet. Becky believes that there is a competing bill.
 - c. A meeting has been requested with Sen. Stephanie Chang, who chairs the Senate judiciary committee, regarding powers of appointment and rules against perpetuity to see if she could put those bills in on the Senate side. Both the house and senate are actively engaged in Section's issues.
 - d. There will be a meeting with the attorney general's office on March 15 to speak with Judge Carl Marlinga who is the chair of the Elder Law Task Force in the Attorney General's office regarding the Uniform Power of Attorney Act.

VI. **Monthly Reports**

- a. **Minutes of Prior Council Meeting** – January (Nathan Piwowski) –Attachment 1
 - i. Motion by David Sprague, second Hon. Shauna Dunning to accept as presented. Approved.
- b. **Chair's Report** (Mark Kellogg)
 - i. Mark is hopeful that some of the bills that have been stalled will go through. He is confident that we can make some progress this year. Mark appreciates all the time an effort put forth to get things through.
- c. **Treasurer's Report** (Rick Mills)
 - i. Suggested council member donation to Hearts & Flowers is \$35.
- d. **Committee on Special Projects** (Melisa Mysliwiec)
 - i. CSP did not meet.
- e. **Tax Committee Tax Nugget** (Rob Tiplady) – Attachment 2. Rob Tiplady reviewed the information included in Attachment 2.
- f. **Membership Committee** (Angela Hentkowski)
 - i. The Section receives three complementary registrations. Previously, the council would give one away. Scholarship for the other two?
 - ii. May 18th reception. ICLE is letting the council use a hospitality suite free of charge for the reception. Angela moved for \$2,000 to be used for the May 18 reception at the institute, seconded by David Sprague. Approved.
 - iii. The Council has a vendor table at the Institute. If anyone is interested in manning the table, please contact Angela. Otherwise, there will be some journals on the table.

VII. **Oral Reports**

- a. Guardianship, Conservatorship and End of Life Committee (Sandy Glazier) – Attachment 3. The Council reviewed the information included in Attachment 3. Nathan Piwowski moved and seconded by Sandy Glazier to oppose HB 4171 and HB 4172 with the explanation: The Section supports the goal of protecting vulnerable adults' rights but has concerns regarding likely unintended effects of these bills on vulnerable adults, including a reduction of statutorily qualified persons available to serve as fiduciaries. The Secretary recorded a vote of 22 in favor, 0 opposed, 1 not voting, and 0 abstaining, and the Chair declared the motion carried.

VIII. **Written Report Only**

IX. **Other Business.**

- a. Katie Lynwood reminded the section of the ICLE institute in Traverse City on May 18th and in Plymouth in June. There is also an add-on session in Traverse City on May 17th with Chris Hoyt talking about in-depth retirement asset planning.
- b. Dan Hilker moved to provide discretion to the Membership Committee chair specifically for use of section funds up to \$250 per night for subsidy for a hotel for scholarship recipients for the ACME and/or Plymouth section events, seconded by David Sprague. Approved.

X. **Adjournment**

- a. There being no other business before the Council, the Chairperson declared the meeting adjourned at 10:04 AM.

Respectfully Submitted,

Nathan Piwowarski, Secretary

The next Council meeting will be held on Friday, April 14, 2023.

ATTACHMENT 2

Probate and Estate Planning Section 2021-2022
Proposed Budget

Carry-Over Fund Balance from 2020-2021	
1-5-00-775-0001 Fund Bal-Probate/Estate Plan	\$ 232,021.60

Revenue	YTD Revenue (2022-2023)	Prior Budget (2021-2022)	Actual (2021-2022)	Proposed Budget (2022-2023)
1-7-99-775-1050 Probate/Estate Planning Dues	\$ -	\$ 110,000.00	\$ 116,795.00	\$ 110,000.00
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	\$ -	\$ 800.00	\$ 595.00	\$ 800.00
1-7-99-775-1330 Subscription to Newsletter	\$ -	\$ -		\$ -
1-7-99-775-1470 Publishing Agreement Account	\$ -	\$ 200.00	\$ 749.98	\$ 500.00
1-7-99-775-1755 Pamphlet Sales Revenue	\$ -	\$ -	\$ -	\$ -
1-7-99-775-1935 Miscellaneous Revenue	\$ -	\$ 650.00	\$ 975.00	\$ 650.00
Total Revenue	\$ -	\$ 111,650.00	\$ 119,114.98	\$ 111,950.00

Expenses	Cumulative Expenses	Prior Budget (2020-2021)	Actual (2020-2021)	Proposed Budget (2022-2023)
1-9-99-775-1111 Administrative Expenses	\$ -	\$ 10,000.00	\$ 5,017.56	\$ 10,000.00
1-9-99-775-1127 Multi-Section Lobbying Group	\$ -	\$ 36,000.00	\$ 36,000.00	\$ 36,000.00
1-9-99-775-1276 Meetings	\$ -	\$ 45,000.00	\$ 41,767.77	\$ 45,000.00
1-9-99-775-1283 Seminars	\$ -	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ 1,000.00	\$ 250.43	\$ 1,000.00
1-9-99-775-1493 Travel	\$ -	\$ 12,000.00	\$ 9,058.69	\$ 12,000.00
1-9-99-775-1528 Telephone	\$ -	\$ -	\$ -	\$ -
1-9-99-775-1549 Books & Subscriptions	\$ -	\$ -	\$ -	\$ -
1-9-99-775-1822 Litigation-Amicus Curiae Brief	\$ -	\$ 25,000.00	\$ -	\$ 25,000.00
1-9-99-775-1833 Newsletter	\$ -	\$ 13,200.00	\$ 13,300.00	\$ 13,500.00
1-9-99-775-1868 Postage	\$ -	\$ 150.00	\$ -	\$ 500.00
1-9-99-775-1987 Miscellaneous	\$ -	\$ 2,500.00	\$ 1,826.30	\$ 2,500.00
Total Expenses	\$ -	\$ 159,850.00	\$ 122,220.75	\$ 160,500.00

Net Income	\$ -	\$ (48,200.00)	\$ (3,105.77)	\$ (48,550.00)
General Fund plus Net Income (Running Total)	\$ 232,021.60			\$ 183,471.60

Probate and Estate Planning Section: 2022-2023
Treasurer's Monthly Activity Report

Carry-Over Fund Balance from 2019-2020	Carry Over Balance
1-5-00-775-0001 Fund Bal-Probate/Estate Plan	\$ 232,021.60

Revenue	January 2023	YTD Revenue (2022-2023)	Budget (2022-2023)
1-7-99-775-1050 Probate/Estate Planning Dues	\$ 3,675.00	\$ 114,380.00	\$ -
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	\$ -	\$ 455.00	\$ -
1-7-99-775-1330 Subscription to Newsletter	\$ -	\$ -	\$ -
1-7-99-775-1470 Publishing Agreement Account	\$ -	\$ -	\$ -
1-7-99-775-1755 Pamphlet Sales Revenue	\$ -	\$ -	\$ -
1-7-99-775-1935 Miscellaneous Revenue	\$ -	\$ 325.00	\$ -
Total Revenue	\$ 3,675.00	\$ 115,160.00	\$ -

Expenses	January 2022	Cumulative Expenses	Budget (2022-2023)
1-9-99-775-1111 Administrative Expenses	\$ -	\$ -	\$ -
1-9-99-775-1127 Multi-Section Lobbying Group	\$ 3,000.00	\$ 12,000.00	\$ -
1-9-99-775-1276 Meetings	\$ 2,091.72	\$ 11,223.28	\$ -
1-9-99-775-1283 Seminars	\$ -	\$ -	\$ -
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ -
1-9-99-775-1493 Travel	\$ 805.78	\$ 2,858.89	\$ -
1-9-99-775-1822 Litigation-Amicus Curiae Brief	\$ -	\$ -	\$ -
1-9-99-775-1833 Newsletter	\$ -	\$ -	\$ -
1-9-99-775-1868 Postage	\$ -	\$ -	\$ -
1-9-99-775-1987 Miscellaneous	\$ -	\$ 2,500.00	\$ -
Total Expenses	\$ 5,897.50	\$ 28,582.17	\$ -

Net Income	\$ (2,222.50)	\$ 86,577.83	\$ -
General Fund plus Net Income (Running Total)	\$ 318,599.43	\$ 318,599.43	\$ -

Hearts and Flowers Fund Carry Over Balance	Carry Over Balance	January 2023		
Beginning Deposit Fund Balance	\$ -	\$ 85.00		
Revenue		\$ 70.00		
Withdrawals		\$ -		
Total Fund		\$ 120.00		

Probate and Estate Planning Section: 2022-2023
Treasurer's Monthly Activity Report

Carry-Over Fund Balance from 2019-2020	Carry Over Balance
1-5-00-775-0001 Fund Bal-Probate/Estate Plan	\$ 232,021.60

Revenue	February 2023	YTD Revenue (2022-2023)	Budget (2022-2023)
1-7-99-775-1050 Probate/Estate Planning Dues	\$ 840.00	\$ 115,220.00	\$ -
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	\$ -	\$ 455.00	\$ -
1-7-99-775-1330 Subscription to Newsletter	\$ -	\$ -	\$ -
1-7-99-775-1470 Publishing Agreement Account	\$ -	\$ -	\$ -
1-7-99-775-1755 Pamphlet Sales Revenue	\$ -	\$ -	\$ -
1-7-99-775-1935 Miscellaneous Revenue	\$ -	\$ 325.00	\$ -
Total Revenue	\$ 840.00	\$ 116,000.00	\$ -

Expenses	February 2022	Cumulative Expenses	Budget (2022-2023)
1-9-99-775-1111 Administrative Expenses	\$ -	\$ -	\$ -
1-9-99-775-1127 Multi-Section Lobbying Group	\$ 3,000.00	\$ 15,000.00	\$ -
1-9-99-775-1276 Meetings	\$ 915.00	\$ 12,138.28	\$ -
1-9-99-775-1283 Seminars	\$ -	\$ -	\$ -
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ -
1-9-99-775-1493 Travel	\$ -	\$ 2,858.89	\$ -
1-9-99-775-1822 Litigation-Amicus Curiae Brief	\$ -	\$ -	\$ -
1-9-99-775-1833 Newsletter	\$ 4,400.00	\$ 4,400.00	\$ -
1-9-99-775-1868 Postage	\$ -	\$ -	\$ -
1-9-99-775-1987 Miscellaneous	\$ -	\$ 2,500.00	\$ -
Total Expenses	\$ 8,315.00	\$ 36,897.17	\$ -

Net Income	\$ (7,475.00)	\$ 79,102.83	\$ -
General Fund plus Net Income (Running Total)	\$ 311,124.43	\$ 311,124.43	\$ -

Hearts and Flowers Fund Carry Over Balance	Carry Over Balance	February 2023		
Beginning Deposit Fund Balance	\$ -	\$ 155.00		
Revenue		\$ 1,795.14		
Withdrawals		\$ 100.00		
Total Fund		\$ 1,850.14		