PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

• Meeting of the Committee on Special Projects (CSP);

• Meeting of the Council of the Probate and Estate Planning Section

Saturday, October 14, 2017
9:00 am
Crowne Plaza Lansing West, Ballroom A
925 S. Creyts Road
Lansing, Michigan 48917
Probate and Estate Planning Section of the

State Bar of Michigan

Notice of Meetings

Meeting of the Section’s Committee on Special Projects (CSP) And Meeting of the Council of the Probate and Estate Planning Section

October 14, 2017
9:00 a.m. Crowne Plaza Lansing West
Ballroom A
925 S. Creyts Rd.
Lansing, Michigan 48917

The above stated meetings of the Section will be held at the Crowne Plaza Lansing West, Ballroom A, 925 S. Creyts Road, Lansing, Michigan 48917, on Saturday, October 14, 2017. The Section’s Committee on Special Projects (CSP) meeting will begin at 9:00 am, followed immediately by the meeting of the Council of the Section. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David P. Lucas, Secretary
Vandervoort, Christ & Fisher, PC
70 Michigan Ave. West, Suite 450
Battle Creek, Michigan 49017
voice: (269) 965-7000
fax: (269) 965-0646
email: dlucas@vcflaw.com
Schedule and Location of Future Meetings

Probate and Estate Planning Section

Of the

State Bar of Michigan

Unless otherwise noted, CSP meetings are held at 9:00 a.m., immediately followed by the Council meeting for the Section at approximately 10:20 a.m., at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

Meeting Schedule for 2017-2018

November 11, 2017
December 16, 2017
January 20, 2018
February 17, 2018
March 24, 2018
April 21, 2018
June 16, 2018

September 8, 2018 (Annual Section Meeting)
CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Due dates for Materials for Committee on Special Projects

All materials are due on or before 5:00 p.m. of the Thursday falling 9 days before the next CSP meeting. CSP materials are to be sent to Geoffrey Vernon, Chair of CSP (gvernon@joslynvernon.com).

Schedule of due dates for CSP materials, by 5:00 p.m.:

November 2, 2017
December 7, 2017
January 11, 2018
February 8, 2018
March 15, 2018
April 12, 2018
June 7, 2018
August 30, 2018 (for September meeting)

Due dates for Materials for Council Meeting

All materials are due on or before 5:00 p.m. of the Friday falling 8 days before the next Council meeting. Council materials are to be sent to David Lucas, Secretary (dlucas@vcflaw.com).

Schedule of due dates for Council materials, by 5:00 p.m.:

November 3, 2017
December 8, 2017
January 12, 2018
February 9, 2018
March 16, 2018
April 13, 2018
June 8, 2018
August 31, 2018
## Officers of the Council for 2017-2018 Term

<table>
<thead>
<tr>
<th>Office</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Marlaine C. Teahan</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Marguerite Munson Lentz</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Christopher A. Ballard</td>
</tr>
<tr>
<td>Secretary</td>
<td>David P. Lucas</td>
</tr>
<tr>
<td>Treasurer</td>
<td>David L.J.M. Skidmore</td>
</tr>
</tbody>
</table>

## Council Members for 2017-2018 Term

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year Elected to Current Term (partial, first or second full term)</th>
<th>Current Term Expires</th>
<th>Eligible after Current Term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
</tr>
<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mysliwiec, Melisa M.W.</td>
<td>2016 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Skidmore, David L.J.M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
</tr>
<tr>
<td>Labe, Robert C.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mills, Richard C.</td>
<td>2016 (1st full term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
</tr>
<tr>
<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Syed, Nazneen H.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Vernon, Geoffrey R.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
</tr>
<tr>
<td>Hentkowski, Angela M.</td>
<td>2017 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Kellogg, Mark E.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Lichterman, Michael G.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Malviya, Raj A.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Olson, Kurt A.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Savage, Christine M.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
CSP Materials
1. Divided and Directed Trusteeships ad Hoc Committee (9:00 - 10:00 am)

Further discussion of divided and directed trusteeships legislative proposal. The following are included in the meeting materials:

- Legislative Proposal.
- Venn Diagram (revised) re MTC “Trust Protectors” and UDTA “Trust Directors.”

2. Legislation Development and Drafting Committee (10:00 - 10:20 am)

Further discussion and update of the standby guardian proposal. A memo from Nathan Piwowarski to the CSP and the proposed legislation are included in the meeting materials.
A bill to amend 1998 PA 386, entitled “estates and protected individuals code,” by amending sections 7103, 7105, 7108, 7411, 7703, and 7704 as amended by 2009 PA 46, 2010 PA 325, and 2012 PA 483; by deleting (and reserving the numerical designation of) section 7809; and by adding sections 7703a and 7703b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

700.7103 Definitions

Sec. 7103. As used in this article:
(a) "Action", with respect to a trustee or a trust protector, includes an act or a failure to act.
(b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.
(c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).
(d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:
   (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.
   (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.
   (iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.
   (iv) Whether the distribution of trust property is from income or principal or both of the trust.
   (v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.
(e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.
(f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:
   (i) Exercisable by a trustee and limited by an ascertainable standard.
   (ii) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
(g) "Qualified trust beneficiary" means a trust beneficiary to whom 1 or more of the following apply:
   (i) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
   (ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.
   (iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
(h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

   (i) "Settlor" means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of appointment to be treated as a settlor of the trust.

   (j) "Spendthrift provision" means a term of a trust that restrain either the voluntary or involuntary transfer of a trust beneficiary's interest.

   (k) "Support provision" means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a support provision, but rather is a discretionary trust provision.

   (l) "Trust beneficiary" means a person to whom 1 or both of the following apply:

      (i) The person has a present or future beneficial interest in a trust, vested or contingent.

      (ii) The person holds a power of appointment over trust property in a capacity other than that of trustee or trust director.

   (m) "Trust instrument" means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

   (n) "Trust protector/director" means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

      (i) The settlor of a trust.

      (ii) The holder of a power of appointment that term as defined in section 7703a(1)(e).

700.7105  Duties and powers of trustee; provisions of law prevailing over terms of trust

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

   (a) The requirements under sections 7401 and 7402(1)(e) for creating a trust.

   (b) The duty of a trustee to administer a trust in accordance with section 7801.

   (c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

   (d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

   (e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

   (f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

   (g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

   (h) Except as permitted under section 7809(2). The obligations imposed on a trust protector/director in section 7703a(5) and (6) 7809(4).
(i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.

(j) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

(k) The effect of an exculpatory term under section 7809(8)(7703a(6)(b) or 7908.

(l) The effect of a release of a trustee or trust director from liability for breach of trust under section 7703a(9).

(m) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(77) Except as permitted by section 7703a(9), Periods of limitation under this article for commencing a judicial proceeding.

(n) The power of the court to take action and exercise jurisdiction.

(o) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(p) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

(r) The requirement under section 7703b(3)(d) regarding the eligibility of a trust’s sole beneficiary to be a “separate trustee” within the meaning of section 7703b.

700.7108 Principal place of administration

Sec. 7108. (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either of the following applies:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

(b) A trust director's principal place of business is located in, or a trust director is a resident of, the designated jurisdiction.

(c) All or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.
(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 7704.

(7) The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration.

700.7411 Modification or termination of noncharitable trust; consent; "settlor's representative" defined

Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court upon the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) Upon the consent of the qualified trust beneficiaries and a trust protector person or committee who is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or trust protector other person or committee given to whom a power by the terms of the trust to direct the termination or modification of the trust has been given by the terms of a trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010.

(3) Notice of any proceeding to terminate or modify a trust shall be given to the settlor, the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust protector director, if any, a powerholder described in paragraph (b) or (c) of subsection (1), if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) Upon termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the agent is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian.

700.7703 Cotrustees; powers and duties

Sec. 7703. (1) Except as otherwise provided in this section, Cotrustees cotrustees shall act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.
A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated pursuant to section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

Unless a delegation under subsection (5) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection shall be in writing and shall be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation shall be given to the qualified trust beneficiaries within 28 days after the revocation.

If 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

(a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.

(b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.

(c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each faction is entitled to vote the securities proportionately.

A trustee is not liable for the action or omission of a cotrustee if all of the following apply:

(a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.

(b) The trustee is aware of but does not join in the action or omission of the cotrustee.

(c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.

A trustee who is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.

A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.

The other subsections of this section notwithstanding, the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee’s exercise or nonexercise of a power of the other cotrustee to the same extent that a directed trustee described in section 7703a may be relieved from duty and liability with respect to a trust director’s power of direction under that section.

700.7703a  Directed Trusteeship; construction of certain powers

7703a.  (1) In this section:
(a) “Breach of trust” includes a violation by a trust director or trustee of a duty imposed on that
director or trustee by the terms of the trust or by this article.
(b) “Directed trustee” means a trustee that is subject to a power of direction.
(c) “Power of appointment” means that term as defined in section 2(c) of the powers of
appointment act of 1967.
(d) “Power of direction” means a power over a trust granted by the terms of the trust to the extent
the power is exercisable while the person to whom it is granted is not serving as a trustee. The term
includes a power over the investment, management, or distribution of trust property or other matters
of trust administration. The term excludes the powers described in subsection (2).
(e) “Trust director” means a person that is granted a power of direction. The person is a trust
director whether or not the terms of the trust refer to the person as a trust director and whether or not
the person is a beneficiary or settlor of the trust.

(2) Excepting the rules of construction in subsection (3), this section does not apply to:
   (a) A power of appointment that is intended to be held by the donee in a nonfiduciary capacity.
   (b) A power that is intended to be held in a nonfiduciary capacity that enables the holder to create
   a power of appointment, regardless of whether the created power is intended to be held by the donee
   of the created power in a fiduciary or a nonfiduciary capacity.
   (c) A power to appoint or remove a trustee or trust director.
   (d) A power of a settlor over a trust to the extent the settlor has a power to revoke the trust.
   (e) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power
   affects either of the following:
      (i) The beneficial interest of the beneficiary.
      (ii) The beneficial interest of another beneficiary represented by the beneficiary under part 3
      of this article with respect to the exercise or nonexercise of the power.
   (f) A power over a trust if both of the following apply:
      (i) The terms of the trust provide that the power is held in a nonfiduciary capacity.
      (ii) The power must be held in a nonfiduciary capacity to achieve the settlor’s tax objectives
      under the internal revenue code.
(3) The following apply as rules of construction:
   (a) Any power that is excluded from the general application of this section by subsection (2) and
   that is intended to be held in a nonfiduciary capacity shall not be subject to fiduciary constraint and
   may be exercised by the holder in any manner consistent with the scope of the power and any express
   requirements or limitations imposed by the terms of the trust. A trustee shall take action to comply
   with the exercise or nonexercise of such a power and is not liable for so acting provided, however,
   that a trustee must not comply with the exercise or nonexercise of any such power if the exercise or
   nonexercise was obtained with the trustee’s collusion or by the trustee’s fraud and compliance would
   be in pursuance of that collusion or fraud.
   (b) Except as provided in paragraph (c) of this subsection, the following powers are intended to
   be held in a nonfiduciary capacity if granted to a person other than a trustee of the trust:
      (i) A power of appointment, including one in the form of a power to adjust between principal
      and income or convert to a unitrust or to modify, reform, terminate, or decant the trust.
      (ii) A power that enables the holder to create a power of appointment.
   (c) The following powers are intended to be held in a fiduciary capacity even though the holder is
   not a trustee of the trust if the holder otherwise has no beneficial interest in the trust:
      (i) A power to adjust between principal and income or convert to a unitrust.
      (ii) A power to modify, reform, terminate, or decant the trust.
(4) Subject to subsection (5), the terms of a trust may grant a power of direction to a trust director.
   (a) A power of direction includes only those powers granted by the terms of the trust.
   (b) Both of the following apply as rules of construction:
(i) A trust director may exercise any further power appropriate to the exercise or nonexercise of the director’s power of direction.

(ii) Trust directors with joint powers must act by majority decision.

(5) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or a further power under subsection (4)(b)(i) regarding both of the following:

(a) A payback provision in the terms of the trust necessary for compliance with the reimbursement requirements of medicaid law in section 1917 of the social security act, 42 U.S.C. 1396p(d)(4)(A).

(b) A charitable interest in the trust, including required notices regarding the interest to the Attorney General.

(6) Subject to subsection (7), both of the following apply with respect to a power of direction or a further power under subsection (4)(b)(i):

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power as a sole trustee in a like position and under similar circumstances if the power is held individually or, if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

(b) A term of a trust that relieves a trust director from liability for breach of fiduciary duty is unenforceable to the extent that either of the following applies:

(i) The term relieves the trust director of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(ii) The term was inserted as the result of an abuse by the trust director of a fiduciary or confidential relationship to the settlor.

(7) If a trust director is licensed, certified, or otherwise authorized or permitted by law other than this section to provide health care in the ordinary course of the director’s business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this section.

(8) A directed trustee shall take action to comply with the exercise or nonexercise of a power of direction or further power of a trust director under subsection (4)(b)(i) and is not liable for so acting provided, however, that a directed trustee must not comply with the exercise or nonexercise of any such power if the exercise or nonexercise was obtained with the directed trustee’s collusion or by the directed trustee’s fraud and compliance would be in pursuance of that collusion or fraud.

(9) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if any of the following applies:

(a) The breach involved the trustee’s or other director’s bad faith or reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The release was induced by improper conduct of the trustee or other director in procuring the release.

(c) at the time of the release, the director did not know the material facts relating to the breach.

(10) Subject to subsection (11):

(a) A trustee shall provide information to a trust director to the extent the information is reasonably related both to the powers or duties of the trustee and the powers or duties of the director.

(b) A trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to the powers or duties of the director and the powers or duties of the trustee or other director.

(11) Subsection (10) notwithstanding:

(a) A trustee does not have a duty to monitor a trust director; or inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director.
(b) By taking an action described in paragraph (a) of this subsection, a trustee does not assume the duty excluded by paragraph (a).

(c) A trust director does not have a duty to monitor a trustee or another trust director or inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director.

(d) By taking an action described in paragraph (c) of this subsection, a trust director does not assume the duty excluded by paragraph (c).

(12) Provided its reliance is not in bad faith:

(a) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance.

(b) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance.

(13) An action against a trust director for breach of trust must be commenced within the same limitation period as an action for breach of trust against a trustee in a like position and under similar circumstances as under section 7905.

(14) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have in an action for breach of trust against a trustee in a like position and under similar circumstances under section 7905.

(15) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

(16) By accepting appointment as a trust director, the director submits personally to jurisdiction in this state regarding any matter related to a power or duty of the director. This section does not preclude use of another method to obtain jurisdiction over a trust director.

(17) The rules applicable to a trusteeship apply to a trust directorship regarding all of the following matters:

(a) Acceptance under section 7701(1).

(b) Giving of bond to secure performance under section 7702.

(c) Reasonable compensation under section 7708.

(d) Resignation under section 7705.

(e) Removal under section 7706.

(f) Vacancy and appointment of successors under section 7704, treating any instance in which two or more trust directors have the same power of direction as analogous to a cotrusteeship for purposes of section 7704(2).

(18) The application of this section with respect to a given trust is subject to both of the following:

(a) If the trust was created before the effective date of the amendatory act that added this section, the section applies only to decisions or actions taken on or after that date.

(b) If the trust’s principal place of administration is changed to this state on or after the effective date of the amendatory act that added this section, this section applies only to decisions or actions taken on or after the date of the change.

(19) In applying and construing the provisions of this section that are based on the Uniform Directed Trust Act, some weight should be given to the goal of promoting uniformity in the law on directed trusteeships among the states that have enacted the uniform act.

700.7703b Divided Trusteeship

7703b. (1) In this section:
(a) “Affirmative action,” or action taken “affirmatively,” by a separate trustee does not include a failure to act.

(b) A “separate distributions trustee” means a person, or a cotrusteeship described in section 7703, that is designated by a separate trustees provision to exercise discretion under a discretionary trust provision.

(c) A “separate investment trustee” means a person, or a cotrusteeship described in section 7703, that is designated by a separate trustees provision to perform the trustee investment function.

(d) A “separate resultant trustee” means a person, or a cotrusteeship described in section 7703, that is designated to perform all trustee functions not allocated by the separate trustees provision to a separate investment trustee or to any separate distributions trustee.

(e) A “separate trustee” means any separate resultant trustee, separate investment trustee, or separate distributions trustee.

(f) A “separate trustees provision” means a trust provision that designates, or provides a method of designating both of the following:

(i) A separate resultant trustee.

(ii) A separate investment trustee or 1 or more separate distributions trustees.

(g) A “separate trusteeship” means the office of any separate trustee;

(h) “The trust” means the inclusive set of separate relations of trust to be separately accepted by the separate trustees under a given separate trustees provision.

(i) The “trustee investment function” means the trustee function(s) expressly allocated by the separate trustees provision to a separate investment trustee. The trustee investment function may be broadly or narrowly defined by the separate trustees provision and may include determining for trust investment purposes the retention, purchase, sale, assignment, exchange, tender, or encumbrance of trust property and the investment and reinvestment of undistributed income and principal of the trust; management, control, and exercise of voting powers related directly or indirectly to any trust asset; and for nonpublicly traded investments or property for which there is no readily available market value, determining the methodology for valuing such property and the frequency of valuations.

(2) A trust instrument may include a separate trustees provisions.

(3) While a separate trustees provision applies, the whole trusteeship of the trust is divided, along the lines created by the designation of separate trustees, into discrete sets of separately accepted fiduciary responsibilities, each set separately allocated to 1 or another of the trust’s separate trustees.

(a) Except as provided in paragraph (c) of this subsection, the trust’s separate trustees shall not be treated as cotrustees in their relations to 1 another. Thus:

(i) A separate investment trustee accepts the common title to the trust property described in paragraph (c)(i) only for purposes of performing the trustee investment function described by the governing separate trustees provision for the benefit of the beneficiaries of the trust.

(ii) A separate distributions trustee accepts the common title to the trust property described in paragraph (c)(i) only for purposes of administering the discretionary trust provision(s) indicated in the governing separate trustees provision for the benefit of those beneficiaries affected by the indicated discretionary trust provision(s).

(iii) A separate resultant trustee accepts the common title to the trust property described in paragraph (c)(i) only for purposes of performing all trustee functions not allocated by the governing separate trustees provision either to the separate investment trustee (if any) or to any separate distributions trustee.

(b) Each separate trustee shall act as to its separate trustee function(s) upon its own authority without need of approval from any other separate trustee of the trust. The trust’s separate trustees are not cotrustees for purposes of joinder of necessary parties in a proceeding for breach of trust, or for any other purpose not specifically described in paragraph (c) of this subsection.
(c) The trust’s separate trustees are treated as cotrustees in their relations to 1 another only for purposes of the following:
   (i) Taking, holding, transferring, and defending title to trust property.
   (ii) Determining venue and interested persons in proceedings concerning the trust.
   (iii) Liability (if any) for income, property, or other taxes attributable to trust property.
   (iv) The privileges and immunities of cotrustees to comment, to the trust’s beneficiaries or settlor(s) or others, on 1 another’s performance of fiduciary duties, which privileges and immunities separate trustees shall enjoy notwithstanding that each separate trustee is expressly relieved, by subsection (9) of this section, of any duty whatsoever to make any such comment to the settlor(s) or any beneficiary of the trust.

(d) The trust’s separate trustees are not cotrustees for purposes of the requirement in section 7402 that the same person is not the sole trustee and sole beneficiary of a trust: if a trust has only 1 beneficiary, that beneficiary may not be a separate trustee of the trust unless the separate trustee in question comprises a cotrusteeship of which the beneficiary is a cotrustee and the trust instrument prohibits the beneficiary from serving alone.

(e) A separate trustee shall not accept the trust associated with, nor, except as provided elsewhere in this subsection, participate in or provide advice regarding the performance of, the separate trustee function(s) of any other separate trustee of the trust. Ministerial acts performed by 1 separate trustee in connection with the separate trustee function(s) of another separate trustee of the trust (such as confirming that an investment or distribution directive of another separate trustee has been carried out, recording and reporting the actions of another separate trustee or conferring with another separate trustee for purposes of administrative coordination or efficiency) shall not be deemed to constitute an acceptance of the trust associated with the separate trustee function(s) of the other separate trustee. While a separate trustees provision applies, the prohibition of this subsection against the acceptance by 1 of the trust’s separate trustees of the trust associated with the separate trustee function(s) of any other of the trust’s separate trustees shall constitute a legal disability.

(f) A separate trustee has no duty to petition the court or to take other affirmative action to ensure that any vacancy in any separate trusteeship is filled. A separate trustee who elects, in spite of having no duty to do so, to petition the court or to take other affirmative action to ensure that a vacancy in a separate trusteeship is filled shall not be deemed to have accepted the trust associated with the vacant separate trusteeship, and a separate trustee who elects thus to petition the court or to take other affirmative action on a given occasion shall not thereby be obligated to do so on any other occasion.

(4) The separate trustees provision shall determine all of the following:
   (a) That the trustee investment function shall be performed by the separate investment trustee (if there is one) or that 1 or more separate distributions trustees (if any) shall exercise discretion under 1 or more specified discretionary trust provisions.
   (b) Which of the trust’s separate trustees shall perform, during any period in which the trust is not a unitrust, the function of allocating between principal and income, for fiduciary accounting purposes, receipts and disbursements or distributions affected by the separate trustees’ separate trustee functions.
   (c) Which of the trust’s separate trustees shall be responsible for preparation and filing of tax and information returns for the trust and for responding on behalf of the trust to inquiries from governmental agencies.
   (d) Which of the trust’s separate trustees shall be responsible for responding to attacks upon the trust’s validity or purpose(s).
   (e) Which of the trust’s separate trustees shall be responsible for determining whether at any time cash or other property will be loaned by the trust to 1 or more beneficiaries of the trust, which shall be responsible for determining whether at any time cash or other property will be loaned by the trust to 1 or more business enterprises in which any beneficiary of the trust has an ownership interest, and
which shall be responsible for determining whether at any time cash or other trust property will be
loaned by the trust to 1 or more business enterprises in which the trust itself has an ownership interest.
(f) In the case of a separate investment trustee, whether the separate investment trustee or the
separate resultant trustee shall determine the trust’s asset allocation for investment purposes.
(5) The separate resultant trustee shall be responsible for possession, custody, or control of the trust
property within the meaning of section 7810.
(6) Within its separate trustee function(s), a separate trustee:
(a) Has all of the rights, privileges, powers, immunities, and duties of a trustee described in this
part 7 and in part 8 of this code.
(b) Is subject to control by the settlor(s) of a revocable trust or by a holder of a power to direct a
trustee (if any) in the same circumstances an ordinary trustee or cotrusteeship would be.
(c) Is bound to seek or consider the advice of a designated trust advisor (if any) in the same
circumstances an ordinary trustee or cotrusteeship would be.
(7) If a separate trustee comprises a cotrusteeship, then within that separate trustee’s separate trustee
function(s), those cotrustees have all of the rights, privileges, powers, immunities, and duties of cotrustees
described in this part 7.
(8) Each separate trustee has the duty to inform and report on its separate trustee function(s) to:
(a) Beneficiaries of the trust as described in section 7813, provided, however, that no separate
trustee is required to provide any beneficiary any report that it knows will be duplicative of a report
provided that beneficiary by another separate trustee of the trust.
(b) Each other separate trustee of the trust as is reasonably necessary for the other separate trustee
to perform its separate trustee function(s).
(9) A separate trustee has no duty whatsoever either to monitor or review the actions of any other
separate trustee of the trust or to notify or warn any settlor or beneficiary of the trust of any breach or
possible breach of trust on the part of any other separate trustee of the trust. A separate trustee who elects,
in spite of having no duty to do so, to notify or warn a settlor or beneficiary of the trust of a possible
breach of trust on the part of another separate trustee shall not be deemed to have accepted the trust
associated with the separate trustee function(s) of that other separate trustee, and a separate trustee who
elects thus to notify or warn a settlor or beneficiary on a given occasion shall not thereby be obligated to
do so on any other occasion.
(10) Absent clear and convincing evidence of collusion in a breach of trust, all of the following apply:
(a) A separate trustee is not liable for the act or omission of any other separate trustee of the trust.
(b) A separate trustee in breach of a trustee duty of its separate trustee function(s) shall be the
only separate trustee of the trust obligated to defend any action brought by a beneficiary of the trust
regarding that breach.
(c) Except as provided in paragraph (d) of this subsection, a separate trustee shall be liable to trust
beneficiaries for breach of a trustee duty of its separate trustee function(s) as if the other separate
trustee(s) of the trust were not in office and it were the sole trustee of the trust.
(d) A separate trustee may be liable concerning a trustee function of another separate trustee of
the trust only for its own actions in the performance of ministerial offices pursuant to that other
separate trustee’s instruction(s) and then only to the extent it acts in bad faith.

700.7704 Vacancy in trusteeship; manner of filling; priority; appointment by court of
additional trustee or fiduciary

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:
(a) A person designated as trustee rejects the trusteeship.
(b) A person designated as trustee cannot be identified or does not exist.
(c) A trustee resigns.
(d) A trustee is disqualified or removed.
(e) A trustee dies.
(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. Though any separate trustee described in section 7703b may comprise a cotrusteeship, the relation between respective separate trustees serving under a given separate trustees provision described in section 7703b is not itself a cotrusteeship. Thus, a vacancy in a trusteeship shall be filled if the:
   (a) it leaves a trust that is not subject to a separate trustees provision as of the time of the vacancy without any has no remaining trustee; or
   (b) it leaves any of the several separate trusteeships governed by an operative separate trustees provision without any remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy shall be filled in the following order of priority:
   (a) In the manner designated by the terms of the trust.
   (b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy shall be filled in the following order of priority:
   (a) In the manner designated by the terms of the trust.
   (b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection.
   (c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

700.7809  [Reserved] Trust protector; exercise of powers

Sec. 7809. [Reserved] (1) A trust protector, other than a trust protector who is a beneficiary of the trust, is subject to all of the following:
   (a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.
   (b) In exercising or refraining from exercising any power, duty, or discretion, the trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
   (c) The trust protector is liable for any loss that results from the breach of his or her fiduciary duties.

(2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(3) Except as otherwise provided in subsection (4), the trustee shall act in accordance with a trust protector's exercise of the trust protector's specified powers and is not liable for so acting.

(4) If either of the following applies to a trust protector's attempted exercise of a specified power, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives prior direction from the court:
   (a) The exercise is contrary to the terms of the trust.
(b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.

(5) A trustee is not liable for any loss that results from any of the following:

(a) The trustee's compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (4);

(b) The trustee's failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization;

(c) Seeking a determination from the court regarding the trust protector's actions or directions;

(d) The trustee's refraining from action pursuant to subsection (4).

(6) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(7) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.

(8) A term of a trust that relieves a trust protector from liability for breach of his or her fiduciary duties is unenforceable to the extent that either of the following applies:

(a) The term relieves the trust protector of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries;

(b) The term was inserted as the result of an abuse by the trust protector of a fiduciary or confidential relationship to the settlor.
INTRODUCTION AND DIAGRAM

Section 7703a of the Divided and Directed Trusteeships *ad hoc* Committee’s legislative proposal (CP) imports the Uniform Directed Trust Act (UDTA) into the Michigan trust code (MTC). The UDTA displaces subsections (b) through (d) of section 808 of the Uniform Trust Code (UTC), which have their local installation in MTC section 7809. So, under the CP, the new section 7703a displaces MTC section 7809. The result is (among other things) a change in the scope of the statutory imposition of fiduciary constraint on persons having powers to direct the actions of trustees. That change can be described schematically as follows:

All points in the interior of the rectangle enclosing this set diagram represent powers affecting possible trust relations. (The powers represented are fiduciary and nonfiduciary powers; some of them are held by trustees, some by beneficiaries, some by settlors, some by persons who fall into more than one of these functional categories, and some by persons who fall into none of them.) The region of the circle marked ‘TP,’ for “trust protector,” (comprising subregions (a) and (b)) represents the proper subset of discrete powers possession of which (in some circumstances at least) will bring the power holder under fiduciary obligations imposed by MTC section 7809.

---

1 The Appendix hereto contains parallel tables mapping the UDTA onto CP section 7703a and vice versa. The Uniform Law Commission promulgated the UDTA as a separate, stand-alone statute. See *Unif. Directed Trust Act* § 1 (Unif. Law Comm’n 2017) (short title). Because the CP ensconces the UDTA within the MTC, it locates some of the UDTA’s structural provisions outside of section 7703a. Thus, for example, the UDTA provision extending the Act’s application to the relations of cotrustees *inter se* is located, under the CP, in the MTC provision on cotrusteeships. See CP § 7703(10) (Unif. Directed Trust Act § 12).

2 See *Unif. Directed Trust Act* § 9 legislative note.


4 See CP § 7809 (deleted, numerical designation reserved).

5 As we shall see, the position of a given point in the set diagram depends, not only on the nature of the power the point represents, but also on the identity of the power holder. See infra note 9.
The region of the circle tagged ‘TD,’ for “trust director,” (comprising subregions (b) and (c)) represents the proper subset of discrete powers’ possession of which (in some circumstances at least) will bring the power holder under fiduciary obligations imposed by CP section 7703a.8

Thus, subregions (a) and (c) map the changes recommended by the CP for the statutory imposition of fiduciary constraint on persons having powers to direct: subregion (a) represents powers currently triggering fiduciary obligations (in some circumstances) under MTC section 7809 that will not trigger such obligations (in those circumstances) under CP section 7703a; subregion (c) represents powers that will trigger fiduciary obligations (in some circumstances) under CP section 7703a that do not trigger such obligations (in those circumstances) under MTC section 7809.

**INTERPRETATION**

Subregion (a) includes a power in a nonsettlor (of the trust in question):9

1. To remove a trustee if exercise of the removal power will create either no vacancy or a vacancy that will have to be filled by the prospective action of someone other than the power holder.10

---

6 MTC section 7809 describes the duties and liabilities of what the MTC calls “trust protectors.” See MICH. COMP. LAWS §§ 700.7103(n), 700.7809. See also id. § 700.7105(2)(h) (minimum obligations imposed on trust protectors by section 7809 not liable to be subverted by terms of the trust).

7 The set diagram is not scaled—it does not represent the relative extent of the regions indicated.

8 CP section 7703a describes the duties and liabilities of what the CP (following the UDTA) calls “trust directors.” See CP §§ 7703a(1)(e) (UNIF. DIRECTED TRUST ACT § 2(9)), 7703a(6) (UNIF. DIRECTED TRUST ACT § 8(a)).

9 Subregions (a) and (b) do not include any power held by a settlor of the trust in question because for purposes of MTC section 7809, the term ‘trust protector’ excludes “[t]he settlor of a trust” (meaning, presumably, the settlor of the trust in question). MICH. COMP. LAWS § 700.7103(n)(i).

10 Subregions (a) and (b) do not include any power that constitutes a power of appointment because for purposes of MTC section 7809, the term ‘trust protector’ excludes “[t]he holder of a power of appointment.” Id. § 700.7103(n)(ii). If someone wielding a power to remove a trustee can also replace a trustee whom she has removed, then the confluence of the removal and replacement powers constitutes a power of appointment—because it enables the power holder to transfer legal ownership of the res (from one trustee to another). See id. § 556.112(c) (“‘power of appointment’ means a power . . . to designate . . . the transferees of property”). See also id. § 556.115a(6) (power to transfer trust property from one trustee to another is a power of appointment). (The MTC does not define the term ‘power of appointment,’ but the provisions of the Michigan Powers of Appointment Act of 1967 (MPAA) just cited (viz., id. §§ 556.112(c), 556.115a(6)) are no doubt in pari materia for purposes of interpreting the MTC. See, e.g., RUPERT CROSS, STATUTORY INTERPRETATION 150-51 (John Bell & George Engle eds., 3rd ed. 2005). See also Robert S. Summers, Statutory Interpretation in the United States, in INTERPRETING STATUTES: A COMPARATIVE STUDY 407, 423 (D. Neil MacCormick & Robert S. Summers eds., 1991) (courts obliged to consider texts of closely related statutes).) Hence subregion (a) item 1 contemplates a power to remove a trustee without a concomitant power to fill any resulting vacancy (or, indeed, to trigger the appointment of a known, predetermined successor). Otherwise, the MTC’s exclusion of holders of powers of appointment from the extension of ‘trust protector’ would take the case out of subregions (a) and (b) altogether.
2. To remove a nontrustee who has a power to direct the trustee in the exercise of one or more of the trustee’s powers \textit{qua} trustee (a character it will be convenient for us to refer to as a “nontrustee trust actor”)\textsuperscript{11} if either (a) the nontrustee trust actor’s power is nondispositive (because the trustee function subject to the power is nondispositive)\textsuperscript{12} or (b) exercise of the removal power will create either no vacancy or a vacancy that will have to be filled by the prospective action of someone other than the power holder.\textsuperscript{13}

\textsuperscript{11} A “nontrustee trust actor” may or may not be either a “trust protector” within the meaning of the current MTC or a “trust director” within the meaning of the CP (and the UDTA).

\textsuperscript{12} A power to direct the exercise of a power of appointment is a power of appointment. See, e.g., MICH. COMP. LAWS § 556.112(c) (MPAA definition of ‘power of appointment’). And a power to create a power of appointment may also be a power of appointment. See, e.g., RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 19.14 (2011) (unless instrument creating power manifests contrary intent, special power of appointment may be exercised to create powers of appointment in permissible appointees). See also UNIF. POWERS OF APPOINTMENT ACT § 102(13) (UNIF. LAW COMM’N 2013) (“power of appointment” circularly defined to include power to create “another power of appointment”). Thus, a power to remove and replace a nontrustee trust actor who can direct the trustee in the exercise of a fiduciary power of appointment is a power to create a power of appointment (in the removed nontrustee trust actor’s successor), which is itself a power of appointment; and that entails that the holder of the removal-and-replacement power is not a “trust protector” within the meaning of MTC section 7809. See supra note 10.

Hence—in order to prevent the MTC’s exclusion of holders of powers of appointment from the extension of ‘trust protector’ from taking the case out of subregions (a) and (b) altogether—subregion (a) item 2(a) contemplates a power to remove and replace a nontrustee trust actor whose power (to direct the trustee) is a nondispositive power, i.e., a power that does not amount to a power to create a power of appointment because the trustee function that the nontrustee trust actor is empowered to direct is a nondispositive function. (“Dispositive powers are powers which authorize [a] person to create or dispose of beneficial interests or proprietary rights in property. . . . Powers of appointment are the most important and most common dispositive powers.” GERAINT THOMAS, THOMAS ON POWERS 7 (2d ed. 2012).)

In that case (viz., subregion (a) item 2(a)), the power to remove and replace the nontrustee trust actor will not constitute a power of appointment within the meaning of the MTC because (1) by hypothesis, the power is not a power to create a power of appointment, (2) a power of appointment is otherwise defined as a power “to designate the transferees of property” (MICH. COMP. LAWS § 556.112(c); see supra note 10) and (3) the nontrustee trust actor, as such, will not hold legal or equitable title to the res—legal ownership thereof is in the trustee(s), equitable ownership in the beneficiaries. See, e.g., id. § 700.2901(2)(j) (defining ‘trust’ in terms of the relation between legal and equitable owners of trust property). Thus, if a given nontrustee trust actor’s power is a power to direct the trustee in the exercise of a nondispositive trustee function, the confluence of the powers to remove that nontrustee trust actor and replace her will not constitute a power of appointment, and the holder of the removal-and-replacement power (given that she is not a settlor of the trust in question (see supra note 9)) will be a “trust protector” within the meaning of MTC section 7809. See id. § 700.7103(n).

\textsuperscript{13} Subregion (a) item 2(b) contemplates a power to remove a nontrustee trust actor whose power is a power to direct the trustee in the exercise of a dispositive trustee function, i.e., the nontrustee trust actor’s power is a power that \textit{does} amount to a power of appointment for the reason explained supra note 12. In that case, for the reason explained supra note 10, the contemplated power’s inclusion in subregion (a) or (b) depends on the power holder’s \textit{not} being able to replace a nontrustee trust actor whom she has removed.
3. To ascertain the happening of an event that affects the administration of the trust if the power does not constitute a power of appointment and the power holder is a health professional who acts in that capacity in ascertaining the happening of the event in question.

4. To determine the capacity of a trustee, settlor, nontrustee trust actor, or beneficiary of the trust if the power does not constitute a power of appointment and the power holder is a health professional who acts in that capacity in making the determination.

5. That is described in Internal Revenue Code (IRC) section 675(4), regardless of what the trust instrument says about the power’s being exercisable in a nonfiduciary capacity, if the power does not constitute a power of appointment.

Subregion (b) includes a power in a nonsettlor (of the trust in question):

1. To acquire, dispose of, exchange, or retain any trust investment if the power does not constitute a power of appointment.

2. To vote proxies for securities held in trust.

---

14 See supra note 10.
15 Cf. CP § 7703a(7) (UNIF. DIRECTED TRUST ACT § 8(b)).
16 Subregion (a) item 4 is just a special case of subregion (a) item 3.
17 See supra note 15.
18 This power is included in subregion (a) because under the current MTC, it must be exercised, regardless of what the trust instrument says, “in accordance with . . . the interests of the trust beneficiaries.” See MIC. COMP. LAWS §§ 700.7809(1)(b) (trust protector must act “in accordance with . . . the interests of the trust beneficiaries”), 700.7809(2) (same even in exercise of IRC section 675(4) administrative power). See also id. § 700.7105(2)(b) (terms of MTC prevail over terms of the trust on this point). The Internal Revenue Service is unlikely to accept that such a power is “exercisable in a nonfiduciary capacity” within the meaning of IRC section 675(4), given that (1) the relevant inquiry for federal tax purposes is whether the power is in fact “exercisable primarily in the interests of the beneficiaries” (Treas. Reg. § 1.675-1(b)(4)(iii)) and (2) that the minimum standard of care thus applicable under the MTC to trust protectors is the same minimum standard applicable to trustees. See MIC. COMP. LAWS §§ 700.7105(2)(b), (k); 700.7801; 700.7908.

A trust protector’s inability under the MTC, to exercise an IRC section 675(4) administrative power in a nonfiduciary capacity is without practical effect to the extent a power to substitute assets (by far the most prevalent of the powers described in section 675(4)) is given to or reserved by a settlor (of the trust in question) or constitutes a power of appointment. See supra notes 9-10. But anyone who doubts either that a power to substitute assets is a power of appointment within the meaning of the MTC or that a power to substitute assets is the only IRC section 675(4) power worth giving a nonsettlor, nontrustee trust actor for tax-engineering purposes will be glad of a proposal that excludes IRC section 675(4) powers from the scope of a nontrustee trust actor’s fiduciary obligations. The CP (following the UDTA) does that. See CP §§ 7703a(2)(f) (UNIF. DIRECTED TRUST ACT § 5(b)(5)), 7703a(3)(a) (no UDTA counterpart).

19 See supra note 9.
3. To make or take loans if the power does not constitute a power of appointment.

4. To adopt a particular valuation of trust property or determine the frequency or methodology of valuations.

5. To manage, or select managers for, a trust-owned business.

6. To select a custodian for trust assets.

7. To direct the delegation of a trustee’s or a nontrustee trust actor’s powers to the extent the powers to be delegated are nondispositive.20

8. To change the trust’s principal place of administration or tax situs or the law governing the meaning and effect of the trust’s terms.

9. To ascertain the happening of an event that affects the administration of the trust if the power holder is not a health professional who acts in that capacity in ascertaining the happening of the event in question.21

10. To determine the capacity of a trustee, settlor, nontrustee trust actor, or beneficiary of the trust22 if the power holder is not a health professional who acts in that capacity in making the determination.

11. To determine the compensation to be paid to a trustee or a nontrustee trust actor if the power to do so does not constitute a power of appointment.

12. To prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust.

13. To veto a trustee’s or a nontrustee trust actor’s exercise of another power if the other power is nondispositive.23

14. To release a trustee or nontrustee trust actor from liability for an action proposed or previously taken by the trustee or nontrustee trust actor if the power of release does not constitute a power of appointment.

Subregion (c) includes:

1. Each of the fourteen powers described above as lying in subregion (b) if the holder is a settlor (of the trust in question) and the settlor does not have the power to revoke the trust.24

20 As to the transitivity of the dispositive character of powers of appointment, see supra note 12.
21 See CP § 7703a(7) (UNIF. DIRECTED TRUST ACT § 8(b)).
22 Subregion (b) item 10 is just a special case of subregion (b) item 9.
23 As to the transitivity of the dispositive character of powers of appointment, see supra note 12.
2. Any power of appointment if the power is expressly a fiduciary power.\textsuperscript{25}

3. A power to adjust between principal and income or convert to a unitrust if the trust has disparate income and remainder beneficiaries\textsuperscript{26} and either (a) the donee of the power is not a beneficiary (of the trust in question) and the power is not expressly a nonfiduciary power\textsuperscript{27} or (b) the donee is a beneficiary and the power is expressly a fiduciary power.\textsuperscript{28}

4. A power to modify, reform, terminate, or decant a trust if either (a) the power holder is not a beneficiary (of the trust in question) and the power is not expressly a nonfiduciary power\textsuperscript{29} or (b) the power holder is a beneficiary and the power is expressly a fiduciary power.\textsuperscript{30}

5. A power to veto a trustee’s or a nontrustee trust actor’s exercise of another power if the other power is dispositive and the veto power is expressly fiduciary.

6. A power to release a trustee or nontrustee trust actor from liability for an action proposed or previously taken by the trustee or nontrustee trust actor if the power constitutes a power of appointment and is expressly fiduciary.

\textsuperscript{24} Unlike the MTC’s ‘trust protector’ (see supra note 9), the CP’s (and UDTA’s) ‘trust director’ may include a settlor of the trust in question. See CP § 7703a(1)(e) (UNIF. DIRECTED TRUST ACT § 2(9)). But to be a “trust director” within the meaning of the CP (and UDTA), a person has to have a “power of direction,” which is defined to exclude any power of a settlor over a trust to the extent the settlor can revoke that trust. See id. §§ 7703a(1)(d) (UNIF. DIRECTED TRUST ACT § 2(5)), 7703a(2)(d) (UNIF. DIRECTED TRUST ACT § 5(b)(3)). So, in order for a settlor of a given trust to be a “trust director” with respect to that trust, she must not have a power of revocation.

\textsuperscript{25} See id. §§ 7703a(1)(d) (UNIF. DIRECTED TRUST ACT § 2(5)) (‘power of direction’ defined), 7703a(2)(a) (UNIF. DIRECTED TRUST ACT § 5(b)(1)) (exclusion from extension of ‘power of direction’ for powers of appointment intended to be held by donee in nonfiduciary capacity), 7703a(3)(b) (UNIF. DIRECTED TRUST ACT § 5(c)) (certain powers of appointment granted to a donee other than a trustee constructively presumed to be nonfiduciary powers).

\textsuperscript{26} If a trust has disparate income and remainder beneficiaries, a power over the trust to adjust between principal and income or convert to a unitrust is a power of appointment. See, e.g., MICH. COMP. LAWS § 556.112(c) (MPAA definition of ‘power of appointment’).

\textsuperscript{27} See CP § 7703a(3)(c)(i) (no UDTA counterpart) (power to adjust between principal and income or convert to unitrust granted to someone who otherwise has no beneficial interest in the trust constructively presumed to be a fiduciary power).

\textsuperscript{28} See supra note 25.

\textsuperscript{29} See CP § 7703a(3)(c)(ii) (no UDTA counterpart) (power to modify, reform, terminate, or decant a trust granted to someone who otherwise has no beneficial interest in the trust constructively presumed to be a fiduciary power).

\textsuperscript{30} See supra note 25.
### APPENDIX

#### UDTA / CP MTC 7703a Parallel Tables

<table>
<thead>
<tr>
<th>UDTA §</th>
<th>CP MTC § 7703a [or other]</th>
<th>CP MTC § 7703a</th>
<th>UDTA §</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>omitted č³¹</td>
<td>7703a(1)(a)</td>
<td>2(1)</td>
</tr>
<tr>
<td>2(1)</td>
<td>7703a(1)(a)</td>
<td>7703a(1)(b)</td>
<td>2(3)</td>
</tr>
<tr>
<td>2(2)</td>
<td>omitted</td>
<td>7703a(1)(c)</td>
<td>5(a)</td>
</tr>
<tr>
<td>2(3)</td>
<td>7703a(1)(b)</td>
<td>7703a(1)(d)</td>
<td>2(5)</td>
</tr>
<tr>
<td>2(4)</td>
<td>omitted č³²</td>
<td>7703a(1)(e)</td>
<td>2(9)</td>
</tr>
<tr>
<td>2(5)</td>
<td>7703a(1)(d)</td>
<td>7703a(2)(a)-(b)</td>
<td>5(b)(1)</td>
</tr>
<tr>
<td>2(6)</td>
<td>omitted č³³</td>
<td>7703a(2)(c)</td>
<td>5(b)(2)</td>
</tr>
<tr>
<td>2(7)</td>
<td>omitted č³⁴</td>
<td>7703a(2)(d)</td>
<td>5(b)(3)</td>
</tr>
<tr>
<td>2(8)</td>
<td>omitted č³⁵</td>
<td>7703a(2)(e)</td>
<td>5(b)(4)</td>
</tr>
<tr>
<td>2(9)</td>
<td>7703a(1)(e)</td>
<td>7703a(2)(f)</td>
<td>5(b)(5)</td>
</tr>
<tr>
<td>2(10)</td>
<td>omitted č³⁶</td>
<td>7703a(3)(b)⁷</td>
<td>5(c)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7703a(4)</td>
<td>6(a)</td>
</tr>
<tr>
<td>3(a)</td>
<td>7703a(18)</td>
<td>7703a(4)(a)</td>
<td>6(b)</td>
</tr>
<tr>
<td>3(b)</td>
<td>[7108(1)(b)]</td>
<td>7703a(4)(b)</td>
<td>6(c)</td>
</tr>
<tr>
<td>4</td>
<td>omitted č³⁸</td>
<td>7703a(5)</td>
<td>7</td>
</tr>
<tr>
<td>5(a)</td>
<td>7703a(1)(c)</td>
<td>7703a(6)</td>
<td>8(a)</td>
</tr>
<tr>
<td>5(b)(1)</td>
<td>7703a(2)(a)-(b)</td>
<td>7703a(7)</td>
<td>8(b)</td>
</tr>
<tr>
<td>5(b)(2)</td>
<td>7703a(2)(c)</td>
<td>7703a(8)</td>
<td>9(a)-(b)</td>
</tr>
<tr>
<td>5(b)(3)</td>
<td>7703a(2)(d)</td>
<td>7703a(9)</td>
<td>9(c)</td>
</tr>
<tr>
<td>5(b)(4)</td>
<td>7703a(2)(e)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(b)(5)</td>
<td>7703a(2)(f)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(c)</td>
<td>7703a(3)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

³¹ Counterpart at MICH. COMP. LAWS § 700.7101.
³² Counterpart at id. § 700.1106(n).
³³ Counterpart at id. § 700.7103(i).
³⁴ Counterpart at id. § 700.1107(f).
³⁵ Counterpart at id. § 700.1107(k).
³⁶ Counterpart at id. § 700.1107(o).
³⁷ CP sections 7703a(3)(a) and 7703a(3)(c) do not have counterparts in the UDTA.
³⁸ Counterpart at MICH. COMP. LAWS § 700.1203(1).
## Venn Diagram re MTC “Trust Protectors” and UDTA “Trust Directors”

<table>
<thead>
<tr>
<th>UDTA §</th>
<th>CP MTC § 7703a [or other]</th>
<th>CP MTC § 7703a to UDTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>6(b)</td>
<td>7703a(4)(a)</td>
<td></td>
</tr>
<tr>
<td>6(c)</td>
<td>7703a(4)(b)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>7703a(5)</td>
<td>7703a(11)</td>
</tr>
<tr>
<td>8(a)</td>
<td>7703a(6)</td>
<td>7703a(12)</td>
</tr>
<tr>
<td>8(b)</td>
<td>7703a(7)</td>
<td>7703a(13)</td>
</tr>
<tr>
<td>8(c)</td>
<td>omitted(^{39})</td>
<td>7703a(13)</td>
</tr>
<tr>
<td>9(a)-(b)</td>
<td>7703a(8)</td>
<td>7703a(14)</td>
</tr>
<tr>
<td>9(c)</td>
<td>7703a(9)</td>
<td>7703a(15)</td>
</tr>
<tr>
<td>9(d)</td>
<td>omitted</td>
<td></td>
</tr>
<tr>
<td>9(e)</td>
<td>omitted(^{40})</td>
<td></td>
</tr>
<tr>
<td>10(a)-(b)</td>
<td>7703a(10)</td>
<td></td>
</tr>
<tr>
<td>10(c)-(d)</td>
<td>7703a(12)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>7703a(11)</td>
<td>7703a(18)</td>
</tr>
<tr>
<td>12</td>
<td>[7703(10)]</td>
<td>7703a(19)</td>
</tr>
<tr>
<td>13(a)</td>
<td>7703a(13)</td>
<td></td>
</tr>
<tr>
<td>13(b)</td>
<td>7703a(14)</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>7703a(15)</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>7703a(16)</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>7703a(17)</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>7703a(19)</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>omitted</td>
<td></td>
</tr>
</tbody>
</table>

\(^{39}\) Counterpart at *id.* § 700.7105(1).  
\(^{40}\) Counterpart at *id.*
TO: Committee on Special Projects (Probate and Estate Planning Section)
FROM: Nathan Piwowarski, (Legislative Development and Drafting Committee)
RE: Standby Guardians – an introduction
DATED: September 1, 2017

On many occasions, it would be helpful to have a backup to a guardian appointed under EPIC. If authorized, standby guardians could prevent gaps in authority if the guardian falls ill, is absent, or dies. In our current environment, courts will sometimes appoint co-guardians to attempt to solve these problems. Having multiple current fiduciaries invites its own troubles. The Mental Health Code offers a longstanding, straightforward model for the designation of standby guardians:

(1) At a hearing convened pursuant to this chapter the court may designate 1 or more standby guardians whose appointment shall become effective without further proceedings immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian.

(2) The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall notify the court.

(3) In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian.


This provision’s history makes clear that it has been in effect for a long time, and not recently tinkered with. Given the established nature of this statutory tool, the Legislative Development and Drafting Committee used it as a leaping-off point. A few important distinctions matter, however.

The MHC imposes a less structured order of priority for guardians. This prompted the Committee to ask: is it appropriate to use the MHC’s looser approach for priority for appointment of a guardian under EPIC Article V? The current draft of our proposal adopts a more flexible approach, allowing the court to designate “any competent person who is suitable and willing to serve.”
MHC guardians are appointed for adult persons with developmental disabilities. This prompts the question: should we make standby guardians available for only ‘legally-incapacitated adults under EPIC Article V, Part 3, or should we also do so for minors under Article V, Part 2? The committee is inclined to do so for both. The current draft, however, only addresses standby guardians for legally-incapacitated adults.

**The MHC does not lay out notice-related requirements.** We suggest doing so:

- After the appointment, the standby will receive a copy of the order designating them as the standby.
- The standby must file an acceptance within 28 days of this notice.
- The guardian’s annual report would require the standby to sign off, and indicate her continued willingness to act.

**The MHC does not address many of the mechanics of standby guardian action, and accession into the role of guardian.** We suggest spelling it out:

- The standby may act in during an emergency when the guardian is unavailable. The current version does not define “emergency” or “unavailable,” relying on courts’ common sense.
- The standby’s duties do not arise unless she acts.
- There is a third-party reliance provision for when the standby does act. The protection accrues only after the third party has received a copy of the order designating the standby guardian, the standby’s acceptance, and the standby’s representation that she needs to act.
- The standby becomes the guardian without further proceedings upon the current guardian’s death, incapacity, or resignation. To obtain full letters, the standby need only notify the court, which can issue the letters without additional proceedings. The new guardian must then serve the order on the interested persons. None of the foregoing, however, would prohibit a court from requiring a hearing with good cause.

**The MHC does not speak to how standby guardianship interacts with the nomination of guardians by parents and spouses in wills and nontestamentary instruments.** Further, because they do not exist under the MHC, there is no provision for how delegations of authority by guardians by power of attorney would interact with standby guardians. Kathy Goetsch has kindly taken on the work of putting these companion proposals together. There are many moving pieces. We expect to introduce the companion proposals at our next CSP meeting.

Thank you for your consideration.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

October 14, 2017
Lansing, Michigan

Agenda
10:45-12:00

I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of September 9, 2017 Meeting of the Council

V. Chairperson's Report – Marlaine C. Teahan

VI. Report of the Committee on Special Projects – Geoffrey R. Vernon

VII. Old Business -- Standing and Ad Hoc Committee Reports
   A. Court Rules, Forms and Procedures – Melisa M.W. Mysliwiec
      Attachment 3, report on HB 4821 and 4822, need vote of Council, Public Policy Position
   B. Citizens Outreach – Kathleen M. Goetsch
      Attachment 4, need vote of Council

VIII. New Business -- Standing and Ad Hoc Committee Reports
   A. Amicus Curiae – David L.J.M. Skidmore
      Attachment 5, Application regarding the Brody Trust, need vote of Council, Public Policy Position
B. Legislative Analysis and Monitoring Committee – Ryan P. Bourjaily/Daniel S. Hilker
   
   Attachment 6, latest spreadsheet of Bills being tracked
   Attachment 7, list of bills currently being tracked by Public Affairs Associates

C. Legislation Development & Drafting Committee – Nathan Piwowarski/Katie Lynwood
   
   Attachment 8, report of Committee

D. Real Estate Committee – Mark E. Kellogg
   
   Attachment 9, SB 540, seeking vote of Council in support; Public Policy Position

E. Tax Committee – Christine M. Savage
   
   Attachment 10, Tax Nugget

IX. Liaison Reports

A. State Bar Commissioner Liaison – Joseph Patrick McGill
   
   Welcome and Oral Report

B. Uniform Law Commission Liaison – James P. Spica
   
   Attachment 11, report by Liaison

C. Taxation Section Liaison – George Gregory
   
   Attachment 12, report by Liaison

X. Hot Topics

XI. Other Business

XII. Adjournment
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

September 9, 2017
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Marlaine Teahan, called the meeting to order at 10:05 am and thanked James B. Steward for all his work as Chair, indicating he has made his work look easy, when in reality so much time is spent on Council matters.

II. Attendance

A. The following officers and members of Council were in attendance:

- Marlaine C. Teahan
- Marguerite Munson Lentz
- Christopher A. Ballard
- David P. Lucas
- Rhonda M. Clark-Kreuer
- Kathleen M. Goetsch
- Mark E. Kellogg
- Robert B. Labe
- Michael G. Lichterman
- Katie Lynwood
- Raj A. Malviya
- Richard C. Mills
- Melisa M.W. Mysliwiec
- Lorraine F. New
- David L.J.M. Skidmore
- Geoffrey R. Vernon

A total of 16 council members and officers were present, representing a quorum.

B. The following officers and members of Council were absent with excuse

- George F. Bearup
- Christopher J. Caldwell
- Hon. Michael L. Jaconette
- Nathan R. Piwowarski
- Nazneen H. Syed
Nancy H. Welber

C. The following officers and members of Council were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

George W. Gregory
Nancy L. Little
Douglas A. Mielock
James B. Steward

E. The following Liaisons to the Council were in attendance:

Hon. David M. Murkowski
Jeanne Murphy
Patricia Ouellette
James P. Spica

F. Others in attendance:

Aaron Bartell
Kimberly Browning
Susan Chalgian
Mark DeLuca
Daniel S. Hilker
Andrew Mayoras
Gabrielle McKee
Ryan Mills
Sueann T. Mitchell
Neal Nusholtz
Kurt Olson
Scott Robbins
Christine Savage
Joan Skrzyniarz
Paul Vaidya

I. Minutes of the June 24, 2017, Meeting of the Council

The minutes of the June 24, 2017, Meeting of the Council were attached to the combined Agenda for this meeting, posted on the Section’s web page prior to the meeting. Ms. Lentz moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

II. Treasurer’s Report – David P. Lucas

Mr. Lucas’s Treasurer’s Report was provided as a supplement to the combined Agenda.
Mr. Lucas thanks the Council members for their contributions to the Hearts and Flowers Fund. Mr. Lucas encouraged the timely submission of requests for reimbursement.

III. Chairperson’s Report – Marlaine Teahan

Ms. Teahan delivered the report of the chair. She thanked the incoming Council members for agreeing to serve on the Council. The following items were noted:

- The October meeting will be at the Crowne Plaza in Lansing.
- A new committee list is being put together and will be published at the next meeting.
- The biennial plan is being reworked and will be sent out in October.
- The agenda will be changed starting October to streamline the flow of the meeting and to insure adequate time is given to items carrying over from prior meetings.
- The meeting structure may be changed starting in November, permitting more time for CSP, and eliminating the lunch after the meeting. There will be more time for mingling and more food during the break in the middle of the meeting.

I. Report of the Committee on Special Projects – Geoffrey R. Vernon

Mr. Vernon presented a summary of the committee report. The Committee held an introductory discussion regarding a new proposal to create a Michigan Uniform Directed Trust Act. This proposal would entail changes to the Michigan Trust Code provisions that relate to trust protectors, in addition to the adoption of new provisions that relate to trust directors. The proposal would also permit the division of trustee duties within a trust instrument. The discussion will continue at future Council meetings.

II. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard – the committee has worked out a preliminary budget that will be presented at the October meeting.
3. Awards – Amy N. Morrissey—no report.
B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Ryan P. Bourjaily

Mr. Hilker presented the report of the committee.

The bill that would have permitted graduates of non-accredited law schools becoming members of the bar is basically dead.

HB 4589 and SB 346 have been proposed by the Attorney General. They deal with financial exploitation and financially endangered adults. The bills permit brokers to have discussions with law enforcement and with other family members about suspicions regarding possible financial exploitation. The definition of “endangered adult” is much too broad (e.g., including all adults over age 65). The committee was instructed to contact the Section’s lobbyist and to come back to Council with a possible recommendation in October if it looks like the legislation might have traction. The section will also work through its liaison with the Elder Law section and Michigan Bankers Association.

2. Legislation Development & Drafting Committee – Nathan R. Piwowarski

Ms. Lynwood led a discussion regarding possible Jajuga legislation. Rep Lucido has proposed a new bill (HB 4410). The committee has some concern with the language in the new bill. The committee has not finalized its preparation of a Jajuga fix (Ms. Lynwood circulated a 6th draft of the legislation). Judge Murkowski reported that the Probate Judges Association hasn’t really seen a need for a fix and might have issues with any fix that is too broad. Mr. Vernon and Ms. Lynwood will meet with Rep. Lucido to discuss.

Ms. New moved that the Council’s public policy regarding the HB 5638 (from the 2015-2016 legislative session) permitting a testator to disinherit children should continue to be the public policy of the Council and further adopting a public policy position opposing HB 4410 in its current form. The motion was seconded. The motion passed on a vote of 16 in favor, 0 opposed, 0 abstentions.

The Council approved Mr. Vernon and Ms. Lynwood meeting with Rep. Lucido to see whether he would adopt the Council’s previous draft of the bill as a substitute.

3. Ad Hoc Committee on Legislative Drafting and Legal Ethics – Sueann T. Mitchell – discussion was postponed until the end of the meeting.


4. 5. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber – no report.

6. Community Property – Neal Nuscholtz
Mr. Nuscholtz led a discussion of the reasons that community property might be helpful from a tax perspective. The committee is looking at legislation that would permit electing community property status for some property. The Legislative Services Bureau is almost finished with processing the committee’s draft and Mr. Nuscholtz will provide it to Council when completed.


George Bearup prepared a report for his committee, but the committee has not finished working on the issue, so the report has not been presented to Council. There will be a House committee hearing on proposed legislation (HB 4751) on Sept 12. The committee’s sense is that they don’t have any objections to the bill, but that it doesn’t really address the Allard issue. There is a separate proposed bill that does address the Allard case, but the bill has not been introduced yet. The sense of the Council is that we should focus our energies on the Uniform Premarital and Marital Agreements Act. Because of the short deadline before the committee hearing, the Council feels that Ms. Teahan should contact our lobbyist to contact Rep. Kesto’s office and ask for him to hold off on considering the legislation until Council can formulate something more thorough.


C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore –

2. Dan Hilker and Susan Chalgian left the room because of a conflict in interest. Mr. Skidmore reported on a request in the Breakey case, which governs whether the personal residence exemption can be claimed on property where a surviving spouse inherits a life estate in real estate held in the other spouse’s trust. Treasury has changed a previously established position, stating that the exemption should not apply. The Tax Tribunal has upheld Treasury’s position. The case is being appealed to the Michigan Court of Appeals.

The committee recommends filing an amicus brief in this case. It is recommended that Foster Swift be retained to draft the brief and authorize up to $15,000. The motion was adopted with 16 in favor, 0 opposed, and 0 abstentions. Brief is in favor of the appellants’ position.

The real estate section will look at drafting legislation that would clarify the language of the statute.

Regarding funding allocated to amicus briefs. Ms. Little made a motion that Council allocate $15,000 for the drafting of all future briefs. The motion was seconded. The motion
passed on a unanimous vote.

3. Probate Institute – Mr. Ballard reported that the Probate Institute will be held in Acme this year Thursday to Saturday, May 17-19, 2018; and will be held at the Inn at St Johns, Plymouth, Thursday and Friday, June 14-15, 2018.

4. State Bar and Section Journals – Richard C. Mills –.Michigan Bar Journal theme issue will be coming up in November 2018. A conference call between the committee and Ms. Teahan will take place before the next Council meeting. There will be further discussion at a future Council meeting.

5. Citizens Outreach – Melisa M.W. Mysliwiec –

6. Discussion of the committee’s report is deferred to October.


D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law– Katie Lynwood –

2. Ms Lynwood reported on the Who Should You Trust seminar, which will be held October 11.

E. Administration of Justice


Ms. Teahan reported that she has been in contact with SCAO regarding probate court appeals changes; SCAO Form MC 55 will be amended. There are two new liaisons to SCAO, Ms. Mysliwiec and Ms. Chalgian. They will be preparing a report on possible changes for the October meeting.

F. Areas of Practice

1. Real Estate – Mark E. Kellogg –

2. Mr. Kellog reported that SB 540 has been introduced. It deals with uncapping issues on real estate transfers.

3. Tax Committee – Lorraine F. New -- Ms. New’s Tax Nugget was attached to the meeting materials.


I. Other Reports

A. Liaisons

3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp—no report.
4. Family Law Section Liaison – Patricia M. Ouellette—no report.
5. ICLE Liaison – Jeanne Murphy—no report.
10. SCAO Liaisons – Melisa M.W. Mysliwiec and Susan Chalgian — no report.
14. ULC Liaison – James P. Spica – a report was included in the agenda materials.

I. Other Business –

Several Council members and guests who are connected to the Mardigian case excused themselves.

The Council took up consideration of whether to submit an amicus brief in the Mardigian case.

The Supreme Court has asked for the Section’s input on three questions:

1. Whether the rebuttable presumption of undue influence set forth in In re Powers...
Estate, 375 Mich 150 (1965), when used as a means to determine the testator’s intent, is a workable rule that sufficiently protects the testator when the testator’s lawyer violates MRPC 1.8(c);

2. Whether the Court’s adoption of MRPC 1.8(c) warrants overruling In re Powers Estate; and

3. If In re Powers Estate is overruled, whether a violation of MRPC 1.8(c) should bear on the validity of the gift provided to the testator’s lawyer under the testamentary instrument; and if so, how?

Following a spirited discussion, the general consensus of the Council is that the rules of professional conduct should not create a cause of action, as is stated in the preamble to the Rules.

Mr. Mills moved that the Probate Section prepare an amicus brief, to be drafted by Mr. Olson and Mr. Mayoras, and in accord with the discussion and motion that up to $15,000 be allocated to the preparation of the brief, to be allocated between the firms as they determine.

The motion was seconded. The motion passed, with 11 in favor, 0 opposed, 0 abstentions.

II. Hot Topics

III. None.

IV. Adjournment

The meeting was adjourned by Chair Marlaine Teahan at 1:07 pm.
October 14, 2017
Chair's Report – Marlaine C. Teahan

1. The annual Chair’s dinner was held last night. Recognition was given to long-time Council members, George Bearup and Nancy Welber, long-time ELDRS Liaison, Amy Tripp, outgoing MBA Liaison Nazneen Syed, and special thanks and recognition was given to our out-going Chair, James B. Steward.

2. **New Council members.** Welcome to Angela Hentkowski, Kurt A. Olson, and Christine M. Savage. Our new Council members have hit the ground running. Angela has agreed to serve as our new ELDRS Liaison, Kurt is chairing our Ethics & Unauthorized Practice of Law Committee, and Chris is chairing our Premarital Agreements Legislation Ad Hoc Committee.

3. **Liaisons.** The new list of Liaisons is attached. We look forward to input and collaboration from our new liaisons:
   - Angela Hentkowski, ELDRS
   - Joseph Patrick McGill, State Bar Commissioner

Please note we have a vacancy in Michigan Bankers Association. Please contact me with suggestions for a new liaison from MBA.

4. **New Committee Members.** New listing attached. Please send me comments, corrections, and changes.

Several Section members have joined a committee for the first time. Please welcome Celeste E. Arduino, Heidi Aull, Aaron A. Bartell, Angela Hentkowski, Jeffrey Robbins, and Tim White.

Many other Section and Council members have joined new committees, changed committees, or reduced the number of committee positions in order to provide increased focus to one substantive area. If you would like to make a change in your committee membership, please let me know and adjustments will be made.

5. **Section's Plan of Work.** Draft attached. Please send me additions/deletions, comments, corrections, and suggested changes to the listed priorities. The Section’s Plan of Work is an important document that directs how our time at the Committee on Special Projects and Council meetings is allocated. Priority for time spent at meetings is given to pending and first priority items.

6. **Public Policy Positions Taken Last Month**
   
   HB 4410:
   
7. **Memorial tribute.** Former Council member, mentor, and dear friend Sebastian Grassi passed away on September 10, 2017. Sebastian was an amazing contributor to Council and frequent speaker for ICLE who dubbed him "the hardest working man in CLE". Sebastian was a prolific writer and contributor to the knowledge and understanding of many areas of law, including tax, estate planning, and the administration of trusts and estates. To honor Sebastian, flowers were sent by our Hearts & Flowers Fund to his visitation and funeral from the Probate and Estate Planning Council.

8. **SBM Section Chair and Chair Elect Officers Training** – October 4, 2017. Meg Lentz and I attended the day-long training for Section officers at the State Bar of Michigan in Lansing. We met the new State Bar President, Donald G. Rockwell, and the new chair of the Representative Assembly, Joseph Patrick McGill. We met the SBM Staff and learned about what the SBM does for Sections. We also learned about the effective use of SBM resources and opportunities to use the advanced technology options with SBM Connect.

9. **New technology opportunities.** As a result of input from the SBM at the Bar Leadership Forum (June) and in-person meetings with State Bar staff (June and July), the Officers voted at their July planning meeting to implement the following uses of SBM resources and technology:
   - **Use the SBM Connect discussion board forum for all of our Committees.** These are now established and allow for discussion among committee members on committee work. One of the best features is access to SBM server space for committee document libraries for relevant committee documents. Gone are the days when a committee member can’t find something and needs the Chair to resend a document. New committee members can get up to speed quickly on important documents, past conversations and current projects.
   - **Use the SBM Connect platform for our entire Section for announcements and for our Section’s Forum (the “listserv”).** This is also already established and can be used now. There are many new bells & whistles; an upgrade to our current format. SBM Connect can be solely utilized via email or by logging in to michbar.org. Real time communication or daily digests can be selected. This is a free Forum for all Section members. Our old “listserv” will be provided exclusively via our new Section Forum as of January 1, 2018.
   - **SBM presentation at Council meeting in November** to give an overview of the new technology, including our Committee pages and our Section Forum. The presentations at the SBM’s Section Chair training in October reinforced the wisdom and utility of these decisions.

10. **Economic Practice of Law Survey for 2017** is now open for participation. Please go to [www.michbar.org/News/NewsDetail/nid/5487](http://www.michbar.org/News/NewsDetail/nid/5487) for more information. Private practitioners take the survey at [www.surveymonkey.com/r/17private](http://www.surveymonkey.com/r/17private) and non-private practitioners take the survey at [www.surveymonkey.com/r/17nonprivate](http://www.surveymonkey.com/r/17nonprivate)
Please make time to take this Survey; it is an important tool, used across the State by Judges, law firms, and lawyers in all occupational areas. The Survey is only done every 3 years and takes about 5 minutes to complete.

11. **State Bar Journal, Monthly Section Briefs**
   a. Every Section can post 75 words each month in the State Bar Journal Section Briefs column. Entries are due on the 5th of the month. I plan on using this opportunity to communicate with the State Bar as a whole and with our Section Members. Please send me suggested topics.
   
   b. The following Brief will appear in the November Journal:
   “Many thanks for the dedication and hard work of James B. Steward, out-going Chair, and out-going Council members, George Bearup and Nancy Welber. Congratulations to in-coming Chair, Marlaine C. Teahan, and new Council members Angela Hentkowski, Kurt A. Olson, and Christine M. Savage. Please join us for our monthly Council meetings (http://connect.michbar.org/probate/events/schedule). We are a welcoming group, striving to do great things for Michigan's Trusts and Estates law.”

12. I had a very productive **meeting with Becky Bechler of Public Affairs Associates** (PAA) early in October. We agreed upon the following items:
   - Our contract is over 13 years old and will be updated;
   - We will receive weekly updates of all Bills we are currently tracking;
   - We will provide PAA a list of keywords from our Legislation Analysis & Monitoring Committee and, using Bill Hound, will send the Committee new Bills as they are introduced. This effective tool is expected to reduce the Committee’s time to find bills, enabling them to spend more time analyzing bills.
   - Becky will meet with the Chairs of the House and Senate Judiciary Committees to determine their legislative agenda for the next few months; this will enable us to focus our time on the Bills moving fast and allow us to be more nimble in response to a very fast-moving Legislature.
   - PAA has included Jim Ryan to work with Becky on our issues.
   - Regular conference calls with Committee Chairs will continue, regarding legislative priorities and specific bills.
   - Meetings will be set with legislators to discuss our concerns on various bills.
   - Ongoing communication with lobbyists for the ELDRS, MPJA and Funeral Directors Association will facilitate cooperation among us as stakeholders.

13. **Proposed 2704 Regs** – in another response to Executive Order 13789, Treasury and the IRS have announced that they will withdraw Proposed 2704 Regs.

14. **E-filing is coming to a Court near you.** ADM File No. 2002-37 will be reported on next month by the Court Rules, Forms, and Procedures Committee. The SBM has requested our input.
For a sneak peek:

15. **October Issues to Note:**
   - The need for more Amicus briefs continue
   - Guardianship/Conservatorship issues came to the surface in a couple counties
   - Public Administrator issues continue
   - Lawsuit filed in the Eastern District of Michigan, United States v. State of Michigan
Alternative Dispute Resolution Section Liaison

Milton L. Mack, Jr.

Business Law Section Liaison  
**Mission:** The liaison to the Business Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Business Law Section on matters of mutual interest and concern

John R. Dresser

Elder Law and Disability Rights Section Liaison  
**Mission:** The liaison to the Elder Law and Disability Rights Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Elder Law Section on matters of mutual interest and concern

Angela Hentkowski

Family Law Section Liaison  
**Mission:** The liaison to the Family Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Family Law Section on matters of mutual interest and concern

Patricia M. Ouellette

ICLE Liaison  
**Mission:** The liaison to ICLE is responsible for developing and maintaining bilateral communication between the Section and the Institute for Continuing Legal Education

Jeanne Murphy

Law Schools Liaison  
**Mission:** The Law Schools Liaison is responsible for developing and maintaining bilateral communication between the Section and the law schools located in the State of Michigan in matters of mutual interest and concern

William J. Ard

Michigan Bankers Association Liaison  
**Mission:** The liaison to the Michigan Bankers Association is responsible for developing and maintaining bilateral communication between the Section and the Michigan Bankers Association in matters of mutual interest and concern

Vacant

Probate Judges Association Liaisons  
**Mission:** The liaisons to the MPJA are responsible for developing and maintaining bilateral communication between the Section and the MPJA on matters of mutual interest and concern

Hon. David M. Murkowski  
Hon. Michael L. Jaconette
Probate Registers Liaison
Mission: The liaison to the Michigan Probate and Juvenile Registers Association is responsible for developing and maintaining bilateral communication between the Section and the Probate and Juvenile Registers Association on matters of mutual interest and concern

Rebecca A. Schnelz

SCAO Liaisons
Mission: The liaisons to SCAO are responsible for developing and maintaining communications between the Section and SCAO on matters of mutual interest and concern

Melisa M.W. Mysliwiec
(Probate Workgroup)
Susan Chalgian
(Probate Workgroup)
Rebecca A. Schnelz
(Mental Health/Commitment Workgroup and Probate Workgroup)

Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task force is responsible for maintaining bilateral communications between the Section and the Task Force

Kathleen M. Goetsch

State Bar Commissioner Liaison
Mission: The liaison to the State Bar is responsible for maintaining bilateral communication between the Section and the larger State Bar of Michigan, including the Board of Commissioners and staff of the State Bar

Joseph Patrick McGill

Taxation Section Liaison
Mission: The liaison to the Taxation Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Taxation Section on matters of mutual interest and concern

George W. Gregory
Amicus Curiae Committee  
**Mission:** To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

David L.J.M. Skidmore, Chair  
Andrew W. Mayoras  
Kurt A. Olson  
Patricia M. Ouellette  
Nazneen H. Syed

Annual Meeting  
**Mission:** To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section

Marguerite Munson Lentz

Assisted Reproductive Technology Ad Hoc Committee  
**Mission:** To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction

Nancy H. Welber, Chair  
Christopher A. Ballard  
Edward Goldman  
Robert M. O’Reilly  
James P. Spica  
Lawrence W. Waggoner

Awards Committee  
**Mission:** To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society

Amy N. Morrissey, Chair  
Robert D. Brower, Jr.  
George W. Gregory  
Phillip E. Harter  
Nancy L. Little

Budget Committee  
**Mission:** To develop the annual budget and to alert the Council to revenue and spending trends

David P. Lucas, Chair  
Christopher A. Ballard  
David L.J.M. Skidmore

Bylaws Committee  
**Mission:** To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council

Nazneen Syed, Chair  
Christopher A. Ballard  
John Roy Castillo  
David P. Lucas
Charitable and Exempt Organization Committee

Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Council concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Christopher J. Caldwell, Chair
Celeste E. Arduino
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Mark E. Kellogg
Richard C. Mills

Citizens Outreach Committee

Mission: To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section’s efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan

Kathleen M. Goetsch, Chair
Michael J. McClory
Neal Nusholtz
Jessica M. Schilling
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
Nicholas J. Vontroba

Committee on Special Projects

Mission: The Committee on Special Projects is a working committee of the whole of the Section that considers and studies in depth a limited number of topics and makes recommendations to the Council of the Section with respect to those matters considered by the Committee. The duties of the Chair include setting the agenda for each Committee Meeting, and in conjunction with the Chair of the Section, to coordinate with substantive Committee chairs the efficient use of time by the Committee, consistent with the biennial plan of work

Geoffrey R. Vernon, Chair

Community Property Trusts Ad Hoc Committee

Mission: To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Nicholas A. Reister
Rebecca K. Wrock
Court Rules, Forms and Procedures Committee
Mission: To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including the interpretation, use, and amendment of them

Melisa M.W. Mysliwiec, Chair and SCAO Liaison
James F. ("JV") Anderton
Susan Chalgian, SCAO Liaison
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Hon. Michael L. Jaconette
Michael McClory
Andrew W. Mayoras
Hon. David M. Murkowski
Kurt A. Olson
Rebecca A. Schnelz, SCAO Liaison

Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section's website and Connect Community, the ICLE Online Community, and the listserv, to identify emerging technological trends of importance to the Section and its members, and to recommend to the council best practices to take advantage of technology in carrying out the Section's and Council’s mission and work

Michael G. Lichterman, Chair
William J. Ard
Amy N. Morrissey
Jeannie Murphy, Liaison to ICLE
Neal Nusholtz
Michael L. Rutkowski

Divided and Directed Trusteeships ad Hoc Committee
Mission: To review the Uniform Directed Trust Act and other legislative proposals concerning the division of fiduciary labor and responsibility among non-trustee directors, co-trustees, and divided trusteeships and, if advisable, to recommend changes to Michigan law in this area

James P. Spica, Chair
Judith M. Grace
Marguerite Munson Lentz
Gabrielle M. McKee
Raj A. Malviya
Richard C. Mills
Jeffrey Robbins
Robert P. Tiplady
Geoffrey R. Vernon

Ethics & Unauthorized Practice of Law Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems of relying on non-lawyers

Kurt A. Olson, Chair
William J. Ard
Raymond A. Harris
J. David Kerr
Robert M. Taylor
Amy Rombyer Tripp
Guardianship, Conservatorship, and End of Life Committee
Mission: To monitor the need for and make recommendations with respect to pending legislation and needed statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

Rhonda M. Clark-Kreuer, Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Kurt A. Olson
Christine M. Savage
James B. Steward
Paul S. Vaidya

Insurance Legislation Ad Hoc Committee
Mission: To recommend new legislation related to insurability and the administration of irrevocable life insurance trusts

Geoffrey R. Vernon, Chair
Stephen L. Elkins
James P. Spica
Joseph D. Weiler, Jr.

Legislation Analysis & Monitoring Committee
Mission: In cooperation with the Section’s lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature, including newly introduced legislation, to study legislation, and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Ryan P. Bourjaily, Chair
Daniel S. Hilker, Vice-Chair and Liaison to Legislative Development & Drafting Committee
Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Jonathon R. Nahhat
Timothy White

Legislation Development & Drafting Committee
Mission: To review, revise, communicate and recommend changes to Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times. May work alone or in conjunction with other substantive standing or ad hoc committees, and may identify projects best suited for other substantive standing or ad hoc committees

Nathan Piwowarski, Chair
Katie Lynwood, Vice Chair
Heidi Aull
Aaron A. Bartell
Howard H. Collens
Georgette E. David
Kathleen M. Goetsch
Daniel S. Hilker
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
David P. Lucas
Richard Mills
Sueann T. Mitchell
Kurt A. Olson
Christine M. Savage
James P. Spica
Robert P. Tiplady, II
Geoffrey R. Vernon
Mardigian Case Review and Drafting Ad Hoc Committee
Mission: To follow the progress and outcome of the Mardigian case, and make recommendations for possible statutory changes to better deal with the situation where a lawyer prepares an instrument for a non-relative which includes a gift for that lawyer.

Sueann T. Mitchell, Chair
George W. Gregory
David P. Lucas
Andrew W. Mayoras
Kurt A. Olson

Membership Committee
Mission: To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities

Nicholas A. Reister, Chair
Daniel S. Hilker, Vice Chair
David Borst
Ryan P. Bourjaily
Nicholas R. Dekker
Angela Hentkowski
Daniel A. Kosmowski
Raj A. Malviya
Ryan S. Mills
Robert O’Reilly
Theresa A. Rose

Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council

Amy N. Morrissey, Chair
Shaheen I. Imami
James B. Steward

Planning Committee
Mission: To periodically review and update the Section’s Strategic Plan and to annually prepare and update the Council’s Biennial Plan of Work in conjunction with the other officers of the Council

Marguerite Munson Lentz, Chair

Premarital Agreements Legislation Ad Hoc Committee
Mission: To review and compare Michigan’s statutes & case law (particularly the Allard decision) regarding enforcement and potential effects on estate planning and estate administration with the Uniform Premarital and Marital Agreements Act and similar acts from other states, and recommend changes to our laws as needed.

Christine M. Savage, Chair
Kathleen M. Goetsch
Daniel S. Hilker
Patricia M. Ouellette, Family Law Liaison

Probate Institute
Mission: To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute

Christopher A. Ballard
Real Estate Committee
Mission: To review pending legislation and recommend new legislation related to real estate matters of interest and concern to the Section and its members

Mark E. Kellogg, Chair
Jeffrey S. Ammon
William J. Ard
David S. Fry
J. David Kerr
Michael G. Lichterman
James T. Ramer
James B. Steward

State Bar and Section Journals Committee
Mission: To oversee the publication of the Section’s Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trust administration

Richard C. Mills, Chair
Nancy L. Little, Managing Editor
Melisa M. W. Mysliwiec, Assoc. Editor
Sueann T. Mitchell
Rebecca A. Schnelz, Liaison with State Bar Journal Committee

Tax Committee
Mission: To monitor developments concerning Federal and State income and transfer taxes and to recommend appropriate actions by the Section in response to developments or needs

Lorraine F. New, Chair
Christopher J. Caldwell
Mark DeLuca
Angela Hentkowski
Robert B. Labe
Raj A. Malviya
Christine M. Savage
Timothy White
<table>
<thead>
<tr>
<th>Action Pending</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Jajuga fix; HB 4410</td>
<td>-HB 4821 and HB 4822 (public administrators)</td>
<td>-Streamline agenda of Council meeting</td>
<td>- who does the attorney for the fiduciary represent?</td>
<td>-SB Journal Probate &amp; Estate Planning Section focused edition (Nov. 18)</td>
</tr>
<tr>
<td></td>
<td>- Assisted Reproductive Technology</td>
<td></td>
<td></td>
<td>-Mardigan legislative fix</td>
<td>-Amicus briefs in Brody, Mardigian,</td>
</tr>
<tr>
<td></td>
<td>- Property Tax Uncapping Exemptions SB 540</td>
<td></td>
<td></td>
<td></td>
<td>- Promotion of &quot;Who Should I Trust?&quot; Program* (Oct /17)</td>
</tr>
<tr>
<td></td>
<td>- Tenants by Entirety Property in Trust bill</td>
<td></td>
<td></td>
<td></td>
<td>-Committee use of SBM Connect</td>
</tr>
<tr>
<td></td>
<td>- Certificates of Trust legislation</td>
<td></td>
<td></td>
<td></td>
<td>-Listserv upgrade to SBM Connect</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority Items</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Directed and Divided Trusts</td>
<td>- e-filing in courts</td>
<td>- e-filing in courts</td>
<td></td>
<td>- Communications with members*</td>
</tr>
<tr>
<td></td>
<td>- EPIC/MTC Updates (with COLA)</td>
<td>- SCAO Meetings*</td>
<td>- New forms based on EPIC/MTC updates legislation</td>
<td></td>
<td>- Social events for Section members</td>
</tr>
<tr>
<td></td>
<td>- MTC Notice Fix</td>
<td>- New forms based on EPIC/MTC updates legislation</td>
<td></td>
<td></td>
<td>- Liaise with local bar associations</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Secondary Priority</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Standby Guardians for minors and LIs</td>
<td>- Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)</td>
<td></td>
<td></td>
<td>- Opportunities with ICLE</td>
</tr>
<tr>
<td></td>
<td>- Premarital and Marital Agreements Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Guardianship, Conservatorship, and Other protective Arrangements Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Expand Personal Residence Exemption</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- attorney for the fiduciary (Perry v Cotton issue)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Agents to settle trusts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Breakey fix – PRE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority To Be Determined</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Allard fixes, HB 4751, HB 4959</td>
<td></td>
<td></td>
<td></td>
<td>-Mentor program</td>
</tr>
<tr>
<td></td>
<td>- Charitable Trust statute update</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Undisclosed Trusts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
</table>
- HB 4589 / SB 345? – financial exploitation; 65 y.o. vulnerable adults in financial transactions
- HB 5037 implanting tracking device in wards
- SB 49 compensation for professional guardian
- ??Dignified Death (Family Consent) Act
- HB 4905PRE after death & nursing home
- Passed in the 2015-16 Legislative Session but we want to review/suggest changes:
  - Probate court jurisdiction over G/C proceedings (SB 270 (PA 498 of 2016) which added Sections 5301b & 5402a to EPIC.
  - ??Update to uniform voidable transactions act (SB 982 (PA 552 of 2016) which amended secs. 1-3 of MCL 566.31 and adds secs. 14-15.
- Did not pass in the 2015-16 Session and will need to be reintroduced:
  - ILIT trustee exoneration bill (SB 1010)
- Pending/working with Bankers:
  - Tenants by Entirety Property bill

*ongoing
To: Probate and Estate Planning Council Members
From: Melisa M. W. Mysliwiec
RE: Substitute House Bills 4821 and 4822
Date: October 6, 2017

Below are summaries of Substitute House Bills 4821 and 4822, both of which passed the House of Representatives on October 5, 2017. According to our lobbyist, Becky Bechler, these bills are anticipated to move just as quickly through the Senate. The Substitute House Bills, as passed, are attached.

At this time, we request that the Council adopt a public policy position on Substitute House Bills 4821 and 4822, and we suggest that the public policy position be as follows:

SB HB 4821 (H-1):
We oppose all suggested amendments to MCL 700.3203 as well as the addition of subsection (6) to MCL 700.3414 pertaining to criminal penalties for a public administrator who knowingly fails to provide certain notices.

SB HB 4822 (H-1):
We oppose all suggested amendments to MCL 700.3721 as well as the portion of MCL 700.3715(2)(A) requiring written approval of the state court administrator before a probate court may approve a sale of decedent's real property.

Summary of SB HB 4821:

Substitute HB 4821 amends MCL 700.3203, 700.3204, and 700.3414.

It amends MCL 700.3203 to extend the timeframe before a public administrator can step in and administer an estate from 42 days to 91 days, except where exigent circumstances exist a court may appoint a public administrator after 42 days but before 91 days. The committee opposes all suggested amendments to MCL 700.3203.

Substitute HB 4821 amends MCL 700.3204 to require a public administrator be appointed only in a formal proceeding. The committee is agreeable to the amendments to MCL 700.3204.

Substitute HB 4821 amends MCL 700.3414 to create specific notice requirements where a public administrator is seeking appointment as personal representative and has knowledge that the decedent's real property is subject to a mortgage foreclosure or has delinquent property taxes. It also amends MCL 700.3414 to create criminal penalties for a public administrator who knowingly fails to provide the notices required. The committee is agreeable to the amendments to MCL 700.3414 added as a new subsection (5), but the committee opposes the addition of subsection (6) pertaining to criminal penalties.
Summary of SB HB 4822:

Substitute HB 4822 amends MCL 700.3705, 700.3715, and 700.3721.

It amends MCL 700.3705 to require notice of appointment be given to the county treasurer when the public administrator is the personal representative and the decedent's real property is subject to a tax foreclosure. The committee is indifferent to this.

Substitute HB 4822 amends MCL 700.3715 to require public administrators to obtain court approval before sale of a decedent's real property. It also goes on to prohibit a court from approving such a sale when the real property is occupied by an heir of the decedent unless the state public administrator provides written approval. The committee is agreeable to requiring court approval to sell real property, but opposes the remainder of subsection (2)(A) requiring written approval of the state court administrator before a court may approve a sale. It also amends MCL 700.3715 to provide that all court filing fees associated with administration of the estate be advanced by the personal representative unless waived by the court. The committee doesn't believe this provision adds anything new as this is likely the standard practice currently; therefore, we are indifferent.

Finally, Substitute HB 4822 amends MCL 700.3721 to require court review of the propriety of employment of any person hired by the personal representative when the personal representative is the public administrator. It also provides that real estate fees or fees related to identifying real property subject to foreclosure that are in excess of 10% of the net proceeds payable to the estate are considered excessive where decedent's real property is subject to tax or mortgage foreclosure. The committee doesn't believe these amendments are necessary; and, therefore, opposes the amendments to MCL 700.3721. Heirs are already protected in that they can object to fees under other provisions of EPIC already if they believe they are excessive. Where there are no known heirs and the AG has been served with notice of hearing on the petition for probate, the AG must be served with notice pertaining to sale of the real estate as well. It would be up to the AG to object to fees. To require the probate court to evaluate fees in each and every case, especially where there are no objections being raised, puts too much on the courts. It adds an extra layer to the process with no benefit to the public.

Respectfully submitted,

Melisa M. W. Mysliwiec
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3203, 3204, and 3414 (MCL 700.3203, 700.3204, and 700.3414), sections 3204 and 3414 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3203. (1) For either formal or informal proceedings, subject to subsection (2), persons who are not disqualified have priority for appointment as personal representative in the following order:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.
(d) The decedent's surviving spouse.
(e) Other heirs of the decedent.
(f) After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.

(g) After 91 days after the decedent's death, or after 42 days but before 91 days after the decedent's death if the court determines exigent circumstances exist, the state or county public administrator if any of the following apply:

(i) No interested person applied or petitioned for appointment of a personal representative within 42–91 days or the number of days determined by the court under this subdivision after the decedent's death.

(ii) The decedent died apparently leaving no known heirs.

(iii) There is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate.

(2) An objection to the appointment of a personal representative may be made only in a formal proceeding. If an objection is made, the priorities prescribed by subsection (1) apply except in either of the following circumstances:

(a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, on petition of creditors, the court may appoint any qualified person.

(b) If a devisee or heir who appears to have a substantial interest in the estate objects to the appointment of a person whose priority is not determined by will, the court may appoint a person
who is acceptable to the devisees and heirs whose interests in the
estate appear to be worth in total more than 1/2 of the probable
distributable value or, if no person is acceptable to these
devicees and heirs, any suitable person.

(3) A person entitled to letters under subsection (1)(b) to
(e) may nominate a qualified person to act as personal
representative. A person may renounce his or her right to nominate
or to an appointment by filing an appropriate writing with the
court. If 2 or more persons share a priority, those of them who do
not renounce shall concur in nominating another to act for them or
in applying for appointment.

Sec. 3204. (1) A conservator of a protected individual's
estate or, if there is no conservator, a guardian of a minor or
legally incapacitated individual may exercise the same right to
nominate, to object to another's appointment, or to participate in
determining the preference of a majority in interest of the
devicees and heirs that the protected individual or ward would have
if qualified for appointment.

(2) Except as provided in sections 3308(1)(f) and 3310, a
person who does not have priority PRESCRIBED IN SECTION 3203(1)(A)
to (F), including priority resulting from renunciation or
nomination determined under this section or section 3203, shall be
appointed only in a formal proceeding. THE STATE OR COUNTY PUBLIC
ADMINISTRATOR MUST BE APPOINTED ONLY IN A FORMAL PROCEEDING. Before
appointing a--THE STATE OR COUNTY PUBLIC ADMINISTRATOR OR ANY OTHER
person without priority, the court shall determine that persons
having priority have been notified of the proceedings and have
failed to request appointment or to nominate another person for appointment, and that administration is necessary.

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

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

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

Sec. 3414. (1) An interested person or a person that has a right or cause of action that cannot be enforced without appointment may file a petition for a formal proceeding regarding the priority or qualification of a prospective or appointed personal representative.

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

(3) If a formal proceeding precedes the appointment of a personal representative, the formal proceeding stays an informal appointment proceeding that is pending or that is commenced after the formal proceeding's commencement. If the formal proceeding is commenced after the appointment of a personal representative and after the personal representative receives notice of the commencement, the personal representative shall not exercise a power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(4) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, a previously appointed personal representative, a person having or claiming priority for appointment as personal representative, and any other person described in section 3403(1) or (2), the court shall determine who is entitled to appointment under section 3203, make a proper appointment, and, if appropriate, terminate a prior appointment found to be improper as provided in cases of removal under section 3611.

(5) If the state or county public administrator is seeking appointment as personal representative and the state or county public administrator has knowledge that the decedent's real property has delinquent property taxes on it or is subject to a mortgage foreclosure, all of the following apply:
(A) IN ADDITION TO ANY OTHER NOTICE REQUIRED UNDER THIS ACT, THE PETITIONER SHALL GIVE NOTICE OF HEARING TO THE DECEDENT'S HEIRS IN THE MANNER PRESCRIBED BY SECTION 1401. THE PETITIONER SHALL ALSO POST THE NOTICE OF HEARING ON THE DECEDENT'S REAL PROPERTY. A NOTICE REQUIRED UNDER THIS SUBDIVISION MUST BE IN A FORM APPROVED BY THE SUPREME COURT AND MUST INCLUDE ALL OF THE FOLLOWING INFORMATION:

(i) A STATEMENT DESCRIBING WHY THE HEIR IS RECEIVING THE NOTICE.

(ii) THAT THE HEIR MAY PETITION THE COURT TO OBJECT TO THE PETITIONER'S APPOINTMENT.

(iii) THAT THE HEIR MAY PETITION THE COURT FOR A COURT HEARING ON ANY MATTER, INCLUDING, BUT NOT LIMITED TO, A PETITION FOR REMOVAL OF A PERSONAL REPRESENTATIVE FOR CAUSE UNDER SECTION 3611, AT ANY TIME DURING THE ESTATE'S ADMINISTRATION.

(B) THE PETITION MUST INCLUDE A STATEMENT THAT DETAILS THE PETITIONER'S REASONABLE SEARCH FOR THE DECEDENT'S HEIRS. A SEARCH REQUIRED UNDER THIS SUBDIVISION MUST INCLUDE THE USE OF AN ELECTRONIC SEARCHING SERVICE.

(6) A STATE OR COUNTY PUBLIC ADMINISTRATOR WHO KNOWINGLY FAILS TO PROVIDE THE NOTICES REQUIRED UNDER SUBSECTION (5) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN $1,000.00, OR BOTH.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4822 of the 99th Legislature is enacted into
law.
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3705, 3715, and 3721 (MCL 700.3705, 700.3715, and 700.3721), sections 3705 and 3715 as amended by 2009 PA 46.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3705. (1) Not later than 28 days after a personal representative's appointment or other time specified by court rule, the personal representative, except a special personal representative, shall give notice of the appointment to the decedent's heirs and devisees, except those who have executed a written waiver of notice, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal
representative and to the trustee of a trust described in section 17605(1) as to which the decedent was settlor. The personal representative shall give the notice by personal service or by ordinary first-class mail to each person required to receive notice under this subsection whose address is reasonably available to the personal representative. However, the personal representative is not required to notify a person who was adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice required under this subsection must be in a form approved by the supreme court and must include all of the following information:

(a) That the court will not supervise the personal representative. This statement shall MUST not be included if the appointment is made in a supervised proceeding under part 5 of this article.

(b) That, unless a person files a written objection to the appointment of the person named as personal representative in the notice or files a demand that bond or higher bond be posted, the person named in the notice is the personal representative without bond or with bond in the amount shown in the notice. This statement shall MUST not be included if the personal representative is appointed in a formal appointment proceeding.

(c) The name and address of the person appointed as the estate's personal representative.

(d) That, during the course of administering the estate, the personal representative must provide all interested persons with all of the following:
(i) A copy of the petition for the personal representative's appointment and a copy of the will, if any, with the notice.

(ii) A copy of the inventory.

(iii) A copy of the settlement petition or of the closing statement.

(iv) Unless waived, a copy of the account, including, but not limited to, fiduciary fees and attorney fees charged to the estate.

(e) That an interested person may petition the court for a court hearing on any matter at any time during the estate's administration, including, but not limited to, distribution of assets and expenses of administration.

(f) That federal and Michigan estate taxes, if any, must be paid within 9 months after the date of the decedent's death or another time period specified by law, to avoid penalties.

(g) That, if the estate is not settled within 1 year after the personal representative's appointment, within 28 days after the anniversary of the appointment, the personal representative must file with the court and send to each interested person a notice that the estate remains under administration and must specify the reason for the continuation of settlement proceedings. If such a notice is not received, an interested person may petition the court for a hearing on the necessity for continued administration or for closure of the estate.

(h) The identity and location of the court where papers relating to the estate are on file.

(2) The personal representative's failure to give the information required by subsection (1) is a breach of the personal
representative's duty to the persons concerned, but does not affect
the validity of the personal representative's appointment, powers,
or other duties. A personal representative may inform other persons
of the appointment by delivery or ordinary first-class mail.

(3) A personal representative shall also give notice that
includes the information described in subsection (1) to the
attorney general, public administration division, under any of the
following circumstances:

(a) It appears from the petition that the decedent died
intestate without leaving a known heir.

(b) In the administration of an intestate estate, it appears
that the decedent did not leave a known heir.

(c) In the administration of a testate estate, it appears that
devisees of the purported will would not be entitled to share in
the estate but for the terms of the will and that the decedent died
without leaving a known heir.

(4) If notice is required to be given to the attorney general
under subsection (3), the attorney general, representing this
state, has all the rights of an heir to be heard and to contest the
validity of a claim, the appointment of a personal representative,
an action of the personal representative, an order, an appointment,
or an instrument purporting to be a decedent's contract or will,
and has all the rights granted or accruing to an heir,
representative, or creditor by a law relating to the settlement of
a testate or intestate estate in court, or by way of rehearing or
appeal.

(5) Within 28 days after the personal representative's
appointment or another time specified by court rule, the personal
representative, except a special personal representative, shall
notify the decedent's surviving spouse, if any, of the spouse's
right to election under part 2 of article II and of the time within
which the election must be exercised.

(6) Except as otherwise provided in this subsection, at the
same time the notice required by subsection (1) is given, the
personal representative shall give notice to the friend of the
court for the county in which the estate is being administered,
which notice identifies the decedent's surviving spouse and the
individuals who are, for a testate estate, the devisees or, for an
intestate estate, the heirs. The personal representative is not
required to notify the friend of the court of a devise to a trustee
of an existing trust or to a trustee under the will. A personal
representative incurs no obligation or liability to the friend of
the court or to another person for an error or omission made in
good faith compliance with this subsection.

(7) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
PUBLIC ADMINISTRATOR, AND IF THE DECEDENT'S REAL PROPERTY IS
SUBJECT TO A TAX FORECLOSURE, THE PERSONAL REPRESENTATIVE SHALL
ALSO GIVE WRITTEN NOTICE THAT INCLUDES THE INFORMATION DESCRIBED IN
SUBSECTION (1) TO THE TREASURER OF THE COUNTY IN WHICH THE REAL
PROPERTY SUBJECT TO THE TAX FORECLOSURE IS LOCATED.

Sec. 3715. (1) Except as restricted or otherwise provided by
the will or by an order in a formal proceeding, and subject to
SUBSECTION (2) AND TO the priorities stated in section 3902, a
personal representative, acting reasonably for the benefit of
interested persons, may properly do any of the following:

(a) Retain property owned by the decedent pending distribution or liquidation, including property in which the personal representative is personally interested or that is otherwise improper for trust investment.

(b) Receive property from a fiduciary or another source.

(c) Perform, compromise, or refuse performance of a contract of the decedent that continues as an estate obligation, as the personal representative determines under the circumstances. If the contract is for a conveyance of land and requires the giving of warranties, the personal representative shall include in the deed or other instrument of conveyance the required warranties. The warranties are binding on the estate as though the decedent made them but do not bind the personal representative except in a fiduciary capacity. In performing an enforceable contract by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do any of the following:

(i) Execute and deliver a deed of conveyance for cash payment of the amount remaining due or for the purchaser's note for the amount remaining due secured by a mortgage on the land.

(ii) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the decedent's successors, as designated in the escrow agreement.

(d) If, in the judgment of the personal representative, the decedent would have wanted the pledge satisfied under the
circumstances, satisfy a written charitable pledge of the decedent
irrespective of whether the pledge constitutes a binding obligation
of the decedent or is properly presented as a claim.

(e) If funds are not needed to meet a debt or expenses
currently payable and are not immediately distributable, deposit or
invest liquid assets of the estate, including funds received from
the sale of other property, in accordance with the Michigan prudent
investor rule.

(f) Acquire or dispose of property, including land in this or
another state, for cash or on credit, at public or private sale;
and manage, develop, improve, exchange, partition, change the
character of, or abandon estate property.

(g) Make an ordinary or extraordinary repair or alteration in
a building or other structure, demolish an improvement, or raze an
existing or erect a new party wall or building.

(h) Subdivide, develop, or dedicate land to public use, make
or obtain the vacation of a plat or adjust a boundary, adjust a
difference in valuation on exchange or partition by giving or
receiving consideration, or dedicate an easement to public use
without consideration.

(i) Enter into a lease as lessor or lessee for any purpose,
with or without an option to purchase or renew, for a term within
or extending beyond the period of administration.

(j) Enter into a lease or arrangement for exploration and
removal of minerals or another natural resource, or enter into a
pooling or unitization agreement.

(k) Abandon property when, in the opinion of the personal
representative, it is valueless, or is so encumbered or in such a
c condition as to be of no benefit to the estate.
(l) Vote stocks or another security in person or by general or
limited proxy.
(m) Pay a call, assessment, or other amount chargeable or
accruing against or on account of a security, unless barred by a
provision relating to claims.
(n) Hold a security in the name of a nominee or in other form
without disclosure of the estate's interest. However, the personal
representative is liable for an act of the nominee in connection
with the security so held.
(o) Insure the estate property against damage, loss, and
liability and insure the personal representative against liability
as to third persons.
(p) Borrow property with or without security to be repaid from
the estate property or otherwise, and advance money for the
estate's protection.
(q) Effect a fair and reasonable compromise with a debtor or
obligor, or extend, renew, or in any manner modify the terms of an
obligation owing to the estate. If the personal representative
holds a mortgage, pledge, or other lien upon another person's
property, the personal representative may, in lieu of foreclosure,
accept a conveyance or transfer of encumbered property from the
property's owner in satisfaction of the indebtedness secured by
lien.
(r) Pay a tax, an assessment, the personal representative's
compensation, or another expense incident to the estate's
administration.

(s) Sell or exercise a stock subscription or conversion right.

(t) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(u) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(v) Employ, and pay reasonable compensation for reasonably necessary services performed by, a person, including, but not limited to, an auditor, investment advisor, or agent, even if the person is associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act on such a person's recommendations without independent investigation; and, instead of acting personally, employ 1 or more agents to perform an act of administration, whether or not discretionary.

(w) Employ an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative's administrative duties, even if the attorney is associated with the personal representative, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

(x) Prosecute or defend a claim or proceeding in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties.
(y) Sell, mortgage, or lease estate property or an interest in estate property for cash, credit, or part cash and part credit, and with or without security for unpaid balances.

(z) Continue a business or venture in which the decedent was engaged at the time of death as a sole proprietor or a general partner, including continuation as a general partner by a personal representative that is a corporation, in any of the following manners:

(i) In the same business form for a period of not more than 4 months after the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including goodwill.

(ii) In the same business form for an additional period of time if approved by court order in a formal proceeding to which the persons interested in the estate are parties.

(iii) Throughout the period of administration if the personal representative incorporates the business or converts the business to a limited liability company and if none of the probable distributees of the business who are competent adults object to its incorporation or conversion and its retention in the estate.

(aa) Change the form of a business or venture in which the decedent was engaged at the time of death through incorporation or formation as a limited liability company or other entity offering protection against or limiting exposure to liabilities.

(bb) Provide for the personal representative's exoneration from personal liability in a contract entered into on the estate's behalf.
(cc) Respond to an environmental concern or hazard affecting estate property as provided in section 3722.

(dd) Satisfy and settle claims and distribute the estate as provided in this act.

(ee) Make, revise, or revoke an available allocation, consent, or election in connection with a tax matter as appropriate in order to carry out the decedent's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:

(i) Electing to take expenses as estate tax or income tax deductions.

(ii) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.

(iii) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.

(iv) Electing the date of death or an alternate valuation date for federal estate tax purposes.

(v) Excluding or including property from the gross estate for federal estate tax purposes.

(vi) Valuing property for federal estate tax purposes.

(vii) Joining with the surviving spouse or the surviving spouse's personal representative in the execution and filing of a joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.
(ff) Divide portions of the estate, including portions to be allocated into trust, into 2 or more separate portions or trusts with substantially identical terms and conditions, and allocate property between them, in order to simplify administration for generation skipping transfer tax purposes, to segregate property for management purposes, or to meet another estate or trust objective.

(2) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY PUBLIC ADMINISTRATOR, ALL OF THE FOLLOWING APPLY:

(A) THE PERSONAL REPRESENTATIVE SHALL NOT SELL THE DECEDENT'S REAL PROPERTY WITHOUT APPROVAL OF THE COURT. IF THE PERSONAL REPRESENTATIVE IS THE COUNTY PUBLIC ADMINISTRATOR, AND IF THE DECEDENT'S REAL PROPERTY IS OCCUPIED BY AN HEIR OF THE DECEDENT, THE COURT SHALL NOT APPROVE A SALE UNDER THIS SUBDIVISION UNLESS THE COURT RECEIVES WRITTEN NOTICE FROM THE STATE PUBLIC ADMINISTRATOR THAT PROVIDES THAT THE STATE PUBLIC ADMINISTRATOR DOES NOT OBJECT TO THE SALE.

(B) UNLESS WAIVED BY THE COURT, THE PERSONAL REPRESENTATIVE SHALL ADVANCE ANY OF THE PERSONAL REPRESENTATIVE'S COURT FILING FEES ASSOCIATED WITH THE ADMINISTRATION OF THE ESTATE.

Sec. 3721. (1) After notice to all interested persons, on petition of an interested person, on appropriate motion if administration is supervised, or on the court's own motion, the court may review the propriety of employment of a person by a personal representative, including, but not limited to, an attorney, accountant, investment advisor, or other specialized agent or assistant, the reasonableness of such a person's
compensation, or the reasonableness of the compensation determined
by the personal representative for the personal representative's
own services. **IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
PUBLIC ADMINISTRATOR, AND IF THE DECEDENT'S ESTATE INCLUDES REAL
PROPERTY, ALL OF THE FOLLOWING APPLY:**

(A) THE COURT SHALL REVIEW THE PROPRIETY OF THE EMPLOYMENT AS
DESCRIBED IN THIS SECTION.

(B) EXCEPT AS OTHERWISE PROVIDED BY THE COURT, IF THE
DECEDENT'S ESTATE INCLUDES REAL PROPERTY SUBJECT TO TAX OR MORTGAGE
FORECLOSURE, REAL ESTATE FEES OR FEES RELATED TO IDENTIFYING REAL
PROPERTY SUBJECT TO FORECLOSURE, OR BOTH, IN EXCESS OF 10% OF THE
NET PROCEEDS PAYABLE TO THE ESTATE ARE CONSIDERED EXCESSIVE
COMPENSATION UNDER THIS SECTION.

(2) If the court determines **UNDER SUBSECTION (1)** that a person
received excessive compensation from an estate for services
rendered, the court shall order the person to pay an appropriate
refund and may include in the refund amount interest and penalties
as the court considers just.

Enacting section 1. This amendatory act takes effect 90 days
after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect
unless House Bill No. 4821 of the 99th Legislature is enacted into
law.
To: Probate and Estate Planning Council Members
From: Melisa M. W. Mysliwiec, Citizens Outreach Committee
RE: Recommendation with respect to third party publications and materials
Date: August 2, 2017

The committee was asked to consider whether the Section should allow third party publications to be posted on our Section's page within the SBM website, and if so, to create a policy as to what steps must be taken to determine whether something is posted or not. The committee advises against allowing third party "content driven" publications and materials or links to such information to be posted on our Section's page. The committee's primary concern was that the Council would not have control over the content. Currently, our brochures are drafted by the committee, given a seal of approval by the Council, and will constantly be updated as needed so that the information being provided to the public is accurate and up to date. We could not say the same for other third party's publications or educational materials. Additionally, if we allow links to third party information, we have no control at all over content of those third party sites, comments that may be made or posted to that site, etc. We believe that to allow these items on our page within the SBM website would be to take a step backward from what the committee has accomplished and also risks providing the public with incorrect or out of date information, which would violate our mission.

The committee recommends that the Council prohibit posting of third party publications, educational materials, and links to similar information on the Section's page within the SBM website.

Respectfully submitted,

[Signature]

Melisa M. W. Mysliwiec
Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan (“Section”), based upon the Section’s Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date: October 5, 2017

Name: William H. Horton P Number_31567_____

Firm Name__Giarmarco, Mullins & Horton, P.C.________________________

Address___101 W. Big Beaver Rd, 10th Floor________________________

City_____Troy________________________ State_MI___ Zip Code_48084________

Phone Number_248-457-7060________ Fax Number (248) 404-6360________

E-mail address__bhorton@gmhlaw.com______________________________

Name of Case: In re Rhea Brody Trust, Oakland County Probate Court Case No. 15-361,379-TV. Court of Appeals Case No. 330871.

Parties Involved: Robert Brody (husband), Rhea Brody (wife), Jay Brody (son), Cathy Deutchman (daughter). Cathy was the Petitioner.

Current Status: Decision by Court of Appeals September 12, 2017. Robert and Jay intend to file an Application for Leave to Appeal to the Supreme Court.

Deadlines: Application for Leave to Appeal to be filed on or before October 24, 2017. By analogy to MCR 7.312(H)(3), a motion to file an amicus brief should be filed by the Section after the Application is filed.

Issue(s) Presented: Whether a contingent beneficiary has standing to challenge the administration of a revocable trust. The Court of Appeals held the beneficiary has standing even though the trust is revocable.

Michigan Statute(s) or Court Rule(s) at Issue: MCR 2.201(B) (real party in interest); MCL 700.7103(h) (definition of “revocable”); MCL 700.7603(1) (duty owed only to settlor); MCL 700.7201(1) (jurisdiction invoked by interested person).
**Common Law Issues/Cases at Issue:** Whether a person without a vested interest in a trust is a real party in interest or has standing. *E.g.*, *In re Pagonas*, Court of Appeals Case No. 290864 (July 27, 2010) (unpublished) (no standing if no interest in trust); numerous published opinions in other Uniform Trust Code states holding no standing until the trust becomes irrevocable.

**Why do you believe that this case requires the involvement of the Section?** The Section is the voice of Michigan’s established probate and estate planning attorneys and its opinion is given great weight by the Court. This decision upends the advice almost certainly provided by the Section’s attorneys for years that the settlor of a revocable trust unilaterally controls his or her assets until death. In addition to undermining the utility of a revocable trust in the future, the decision also provides a basis for challenging the use of assets in the many revocable grantor trusts that are currently in existence. Moreover, Michigan’s Trust Code is the adoption of the Uniform Trust Code. This decision is contrary to the decisions of 14 other states, most of which, like Michigan, are Uniform Trust Code states. We are aware of no decisions to the contrary anywhere. One of the primary purposes of the Uniform Trust Code is to provide certainty among the states. Since many Michigan clients have assets in other states or citizens of other states have assets in Michigan, this decision is likely to cause unwarranted complexity in estate planning – essentially the creation of a Michigan-specific strategy – in order to avoid the effect of this decision if the client desires to retain control over their assets until death.

**Do you believe that a decision in this case will substantially impact this Section’s attorneys and their clients? If so, how?** Yes. The decision of the Court of Appeals is *stare decisis* unless overruled or vacated. MCR 7.215(C)(2). According to the Court of Appeals decision, any "interested person" can challenge a trustee’s decisions while the trust is revocable – even though such "interested persons" can be removed as a beneficiary until the trust becomes irrevocable. The effect of this opinion is that the settlor no longer has complete control over his or her property until death.
<table>
<thead>
<tr>
<th>Type</th>
<th>Bill #</th>
<th>Subject</th>
<th>Amends</th>
<th>Primary Sponsor</th>
<th>What it does</th>
<th>Where it is in the Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate Bill</td>
<td>0049</td>
<td>Probate; guardians and conservators; provision related to compensation for professional guardian or professional conservator; modify.</td>
<td>Amends sec. 5106 of 1998 PA 386 (MCL 700.5106).</td>
<td>Darwin Booher</td>
<td>Allows for compensation for Guardian from other sources</td>
<td>Passed House; Passed Senate WITH S1; Passed House WITH H-1; Returned to Senate</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0071</td>
<td>Vehicles; registration; vehicle registration fees; exempt senior citizens from increases.</td>
<td>Amends sec. 801 of 1949 PA 300 (MCL 257.801).</td>
<td>Jim Ananich</td>
<td>Exempt vehicle registration fees senior citizens from increases.</td>
<td>referred to Committee on transportation, No meeting scheduled</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0284</td>
<td>Property; recording; statement of marital status in instruments conveying or mortgaging real estate; remove requirement.</td>
<td>Amends sec. 1 of 1915 PA 79 (MCL 565.221).</td>
<td>Rick Jones</td>
<td>Remove requirement statement of marital status in instruments conveying or mortgaging real estate.</td>
<td>referred to Committee on Financial Services, No meeting scheduled</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0345</td>
<td>Occupations; securities; financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults; require certain record keeping and posting of information.</td>
<td>Amends 2008 PA 551 (MCL 451.2101 - 451.2703) by adding art. 5A. TIE BAR WITH: SB 0346'17</td>
<td>Rick Jones</td>
<td>Require certain record keeping and posting of information for financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults</td>
<td>REFERRED TO COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS, No meeting scheduled</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0346</td>
<td>Occupations; securities; financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults; require.</td>
<td>Amends title of 2008 PA 551 (MCL 451.2101 - 451.2703) &amp; adds art. 5A. TIE BAR WITH: SB 0345'17</td>
<td>Jim Ananich</td>
<td>Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults</td>
<td>REFERRED TO COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS, No meeting scheduled</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0378</td>
<td>Senior citizens; housing; home for the aged; amend definition and create an exemption from licensing.</td>
<td>Amends secs. 20106, 20156, 20173a &amp; 21311 of 1978 PA 368 (MCL 333.20106 et seq.) &amp; adds secs. 21302 &amp; 21312 of 1978 PA 368</td>
<td>Marty Knollenberg</td>
<td>Amend home for the aged definition and create an exemption from licensing.</td>
<td>House Committee Hearing: 10/11/2017 Regulatory Reform (SB 0378 on Agenda)</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0525</td>
<td>Courts; reorganization; reorganization of courts and number of judgeships; modify.</td>
<td>Amends secs. 511, 530, 545, 821, 8121, 8121a, 8122, 8123, 8124 &amp; 8162 of 1961 PA 236</td>
<td>Rick Jones</td>
<td>Eliminate language prohibiting certain probate judges from engaging in the practice of law, and, instead, allow only a probate judge who is not a judge of the First probate Court District to practice law. and Require the question of creating the First probate Court District to be submitted to the electors of the affected counties (Houghton and Keweenaw) and, if the voters did not approve the probate District, authorize the probate judges in those counties and Baraga County to act as District judges upon the elimination of a District judgeship.</td>
<td>Reported favorably from committee without amendment. Referred to the Committee of the whole.</td>
</tr>
<tr>
<td>Senate Bill</td>
<td>0597</td>
<td>Health; other; procedure to withhold or withdraw a life-sustaining treatment; establish to require physician and hospital to obtain the consent of certain persons.</td>
<td>Amends 1978 PA 368 (MCL 333.1101 - 333.25211) by adding secs. 17019, 17519 &amp; 20407.</td>
<td>John Proos</td>
<td>Establish procedure to withhold or withdraw a life-sustaining treatment to require physician and hospital to obtain the consent of certain persons.</td>
<td>REFERRED TO COMMITTEE ON OVERSIGHT, No meeting scheduled</td>
</tr>
<tr>
<td>Bill Number</td>
<td>Description</td>
<td>Text</td>
<td>Committee</td>
<td>Meetings Scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------</td>
<td>-------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senate Bill 0598</td>
<td>Probate; patient advocates; court determination of whether a patient advocate is acting within his or her authority or in a patient's best interest; provide for.</td>
<td>Amends secs. 5306, 5311 &amp; 5508 of 1998 PA 386 (MCL 700.5306 et seq.). 1. Raises the burden of proof (to clear and convincing) to declare a patient advocate designation void or that the patient advocate is not acting in the principal's best interest. 2. Establishes hearing procedures for removal of a patient advocate. 3. THE COURT SHALL NOT APPOINT A TEMPORARY GUARDIAN UNDER SECTION 5312 WHILE CONSIDERING A PETITION UNDER THIS SUBSECTION.</td>
<td>John Proos</td>
<td>REFERRED TO COMMITTEE ON OVERSIGHT, No meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4021</td>
<td>Probate; guardians and conservators; guardianship petitions; allow probate judges to schedule certain hearings before minor turns 18 years of age.</td>
<td>Amends secs. 5303 &amp; 5306 of 1998 PA 386 (MCL 700.5303 &amp; 700.5306). Allow guardianship petitions probate judges to schedule certain hearings before minor turns 18 years of age.</td>
<td>Robert Kosowski</td>
<td>referred to Committee on Judiciary, No meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4040</td>
<td>Vehicles; registration; vehicle registration fees; exempt senior citizens from increases.</td>
<td>Amends sec. 801 of 1949 PA 300 (MCL 257.801). Exempt senior citizens from vehicle registration fees increases.</td>
<td>Darrin Camilleri</td>
<td>referred to Committee on Government Operations, No meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4043</td>
<td>Law enforcement; communications; missing senior and vulnerable adult plan; establish.</td>
<td>Amends title of 2012 PA 176 (MCL 28.711 - 28.718) &amp; adds sec. 2a. Establish missing senior and vulnerable adult plan.</td>
<td>Robert Kosowski</td>
<td>referred to Committee on Law and Justice, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4171</td>
<td>Probate; guardians and conservators; physician orders for scope of treatment form; authorize a guardian to sign.</td>
<td>Amends secs. 1106, 5303, 5305 &amp; 5314 of 1998 PA 386 (MCL 700.1106 et seq.). TIE BAR WITH: HB 4170 '17 Authorize a guardian to sign physician orders for scope of treatment form.</td>
<td>Laura Cox</td>
<td>Passed House; REFERRED TO SENATE COMMITTEE ON HEALTH POLICY, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill</td>
<td>Title</td>
<td>Description</td>
<td>Sponsor</td>
<td>Status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4205</td>
<td>Administrative procedure: rules; State agencies (existing): generally; Legislation: other;</td>
<td>Amends secs. 32 &amp; 45 of 1969 PA 306 (MCL 24.232 &amp; 24.245).</td>
<td>Triston Cole</td>
<td>Prohibit adoption of rules by state agencies from being more stringent than federal regulations.</td>
<td>Passed House; Passed Senate WITH S-1; Returning to House;</td>
<td></td>
</tr>
<tr>
<td>4312</td>
<td>Occupations; attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify.</td>
<td>Amends secs. 937, 940 &amp; 946 of 1961 PA 236 (MCL 600.937 et seq.) &amp; adds sec. 945.</td>
<td>Beau LaFave</td>
<td>Modify eligibility requirements for attorney licensed in another state to practice law in Michigan.</td>
<td>(Placed on Third reading, but not likely to be put to a vote)</td>
<td></td>
</tr>
<tr>
<td>4410</td>
<td>Probate; wills and estates; exempt property; allow decedent to exclude adult child by written instrument.</td>
<td>Amends sec. 2404 of 1998 PA 386 (MCL 700.2404).</td>
<td>Peter Lucido</td>
<td>Allow exempt property decedent to exclude adult child by written instrument.</td>
<td>reported from committee with substitute H-1; referred to second reading (Support of H-1 was adopted as a policy position by Probate Council)</td>
<td></td>
</tr>
<tr>
<td>4469</td>
<td>Senior citizens; other; eligibility for participation in senior farmers' market nutrition program (SFMNP); provide for, and create a rotating distribution process.</td>
<td>Amends 1939 PA 280 (MCL 400.1 - 400.119b) by adding sec. 14m.</td>
<td>Vanessa Guerra</td>
<td>Provide for eligibility for participation in senior farmers' market nutrition program</td>
<td>referred to Committee on Families, Children, and Seniors, no meeting scheduled</td>
<td></td>
</tr>
<tr>
<td>4588</td>
<td>Occupations; securities; Occupations; securities; financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults; require certain record keeping and posting of information.</td>
<td>Amends 2008 PA 551 (MCL 451.2101 - 451.2703) by adding art. 5A. TIE BAR WITH: HB 4589’17</td>
<td>Winnie Brinks</td>
<td>Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults and posting of information.</td>
<td>referred to Committee on Financial Services, No meeting scheduled</td>
<td></td>
</tr>
<tr>
<td>Bill Number</td>
<td>Description</td>
<td>Sponsor</td>
<td>Textual Content</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
<td>---------</td>
<td>----------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4589</td>
<td>Occupations; securities; financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults; require.</td>
<td>Joseph Graves</td>
<td>Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults. referred to Committee on Financial Services, No meeting scheduled</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4684</td>
<td>Probate; guardians and conservators; limited guardianship to supervise access to incapacitated individual's relative; allow.</td>
<td>Peter Lucido</td>
<td>Allow limited guardianship to supervise access to incapacitated individuals relative. referred to Committee on Judiciary, No meeting scheduled</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4686</td>
<td>Housing; affordable; rent limitation for senior citizens and individuals with disabilities; authorize local units to impose, and provide for tax exemptions and specific tax. Creates new act.</td>
<td>Stephanie Chang</td>
<td>A bill to authorize local units of government to limit rent for disabled individuals and individuals over a certain age, to exempt property from ad valorem property taxes, and to impose a specific tax; and to provide for the powers and duties of certain local governments officers and entities. referred to Committee on Local Government, no meeting scheduled</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill 4751</td>
<td>Family law; marriage and divorce; enforceability of prenuptial agreements; clarify.</td>
<td>Klint Kesto</td>
<td>Codifies common law regarding the enforceability of prenuptial agreements. 10/4/17 Hearing Minutes - Rob Labe Testified in favor; Family Law Section submitted a card not in favor - 10/10/2017 Law and Justice (HB 4751 on Agenda) TUESDAY, OCTOBER 10, 2017 09:00 AM 327 HOB</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House Bill</td>
<td>4752</td>
<td>Probate; wills and estates; fee ratio and reporting requirement; revise, and remove sunset.</td>
<td>Amends secs. 871 &amp; 877 of 1961 PA 236 (MCL 600.871 &amp; 600.877).</td>
<td>Klint Kesto</td>
<td>1. Certain calculations related to fees no longer need to be made by the Court for reporting to the State Treasurer 2. Removes sunset provisions on fee-sharing between county treasurer and state treasurer.</td>
<td>referred to Committee on Law and Justice, no meeting scheduled</td>
</tr>
<tr>
<td>-----------</td>
<td>------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>------------</td>
<td>-----------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>House Bill</td>
<td>4754</td>
<td>Courts; jurisdiction; inter-circuit concurrent jurisdiction plan; authorize.</td>
<td>Amends secs. 401, 405, 841 &amp; 8304 of 1961 PA 236 (MCL 600.401 et seq.) &amp; adds</td>
<td>Tom Barrett</td>
<td>Authorize inter-circuit concurrent jurisdiction plan. Allows counties to develop concurrent jurisdiction plans with neighboring counties</td>
<td>referred to Committee on Judiciary, No meeting scheduled</td>
</tr>
<tr>
<td>House Bill</td>
<td>4821</td>
<td>Probate; wills and estates; appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding; require, and modify powers and duties of public administrators acting as personal representatives.</td>
<td>Amends secs. 3203, 3204 &amp; 3414 of 1998 PA 386 (MCL 700.3203 et seq.). TIE BAR WITH: HB 482217</td>
<td>Jim Runestad</td>
<td>Require appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives.</td>
<td>Passed the House WITH H-2; Proceeding to senate</td>
</tr>
<tr>
<td>House Bill</td>
<td>4822</td>
<td>Probate; wills and estates; appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding; require, and modify powers and duties of public administrators acting as personal representatives.</td>
<td>Amends secs. 3705, 3715 &amp; 3721 of 1998 PA 386 (MCL 700.3705 et seq.). TIE BAR WITH: HB 482117</td>
<td>Jim Ellison</td>
<td>Require appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives.</td>
<td>Passed the House WITH H-1; Proceeding to senate</td>
</tr>
<tr>
<td>House Bill</td>
<td>4885</td>
<td>Crimes; embezzlement; penalties for stealing, embezzling, or converting personal or real property from a vulnerable adult; increase.</td>
<td>Amends sec. 174a of 1931 PA 328 (MCL 750.174a).</td>
<td>Peter Lucido</td>
<td>Increase penalties for stealing, embezzling, or converting personal or real property from a vulnerable adult.</td>
<td>referred to Committee on Families, Children, and Seniors, no meeting scheduled</td>
</tr>
<tr>
<td>House Bill</td>
<td>Number</td>
<td>Description</td>
<td>Actions</td>
<td>Referred To</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>-------------</td>
<td>---------</td>
<td>-------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4886</strong></td>
<td></td>
<td>Criminal procedure; sentencing guidelines; penalties for embezzlement from vulnerable adult; increase.</td>
<td>Amends sec. 16i, ch. XVII of 1927 PA 175 (MCL 777.16i). TIE BAR WITH: HB 4885'17</td>
<td>Increase penalties for stealing, embezzling, or converting personal or real property from a vulnerable adult. referred to Committee on Families, Children, and Seniors, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4905</strong></td>
<td></td>
<td>Property tax; principal residence exemption; principal residence exemption for individual residing in nursing home or assisted living facility; modify.</td>
<td>Amends sec. 7cc of 1893 PA 206 (MCL 211.7cc).</td>
<td>Broaden the Principal Residence Exception, granting the PRE to persons living assisted living facilities who allow family members or others, to live in their homes. referred to Committee on Tax Policy, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4931</strong></td>
<td></td>
<td>Civil procedure; civil actions; financial exploitation liability act; create. Creates new act.</td>
<td>&quot;financial exploitation liability act&quot;</td>
<td>This new act seems to be an attempt to codify the common law regarding undue influence. It also provides treble damages when such acts occur. referred to Committee on Law and Justice, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4959</strong></td>
<td></td>
<td>Family law; marriage and divorce; prenuptial and postnuptial agreements; require to be enforceable.</td>
<td>Amends sec. 23 of 1846 RS 84 (MCL 552.23).</td>
<td>Eliminates Court's ability to Order spousal support when a valid prenuptial agreement prohibits. NOTE: Does not address 552.401 referred to Committee on Law and Justice, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4994</strong></td>
<td></td>
<td>Senior citizens; crimes; public relations campaign to prevent elder abuse; provide for.</td>
<td>Amends secs. 2 &amp; 6 of 1981 PA 180 (MCL 400.582 &amp; 400.586).</td>
<td>Re-names the &quot;office of services to the aging&quot; to AGING and ADULT SERVICES AGENCY. Authorizes the agency to CONDUCT A PUBLIC EDUCATION CAMPAIGN THAT EMPHASIZES ZERO TOLERANCE FOR ELDER ABUSE. referred to Committee on Law and Justice, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4995</strong></td>
<td></td>
<td>Senior citizens; crimes; neglect and mistreatment of senior citizens; require the department of health and human services to collect and analyze data.</td>
<td>Amends 1981 PA 180 (MCL 400.581 - 400.594) by adding sec. 6l.</td>
<td>THE AGING AND ADULT SERVICES AGENCY SHALL COLLECT DATA ON ELDER ABUSE POSSESSED BY STATE AND LOCAL AGENCIES IDENTIFYING THE INCIDENCE OF ELDER ABUSE AMONG OLDER PERSONS referred to Committee on Law and Justice, no meeting scheduled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill Number</td>
<td>Title</td>
<td>Amending Statutes</td>
<td>Sponsor</td>
<td>Summary</td>
<td>Committee</td>
<td>Status</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>---------------------------------------</td>
</tr>
<tr>
<td>House Bill</td>
<td>4996 Probate; guardians and conservators; notification requirements of guardians; expand.</td>
<td>Amends secs. 5308, 5310 &amp; 5314 of 1998 PA 386 (MCL 700.5308 et seq.).</td>
<td>Robert Kosowski</td>
<td>1. Guardian must notify family of hospitalization, death, and funeral arrangements. 2. Family may Petition for access to Ward.</td>
<td>referred to Committee on Judiciary, no meeting scheduled</td>
<td></td>
</tr>
</tbody>
</table>
HB 4021 - PROBATE, Guardians and Conservators, Allow guardianship petitions probate judges to schedule certain hearings before minor turns 18 years of age. (Kosowski, Robert (D), 01/12/17)
(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)

HB 4040 - VEHICLES, Registration, Exempt senior citizens from vehicle registration fees increases. (Camilleri, Darrin (D), 01/12/17)
(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)

HB 4043 - LAW ENFORCEMENT, Communications, Establish missing senior and vulnerable adult plan. (Farrington, Diana (R), 01/18/17)
(Status: 01/24/2017 - bill electronically reproduced 01/18/2017)

HB 4171 - PROBATE, Guardians and Conservators, Authorize a guardian to sign physician orders for scope of treatment form. (Cox, Laura (R), 02/07/17)
(Status: 06/21/2017 - REFERRED TO COMMITTEE ON HEALTH POLICY)

 Senate Committee Hearing: 10/03/2017 Health Policy (HB 4171 on Agenda) - (Click for More Info)

HB 4297 - CRIMINAL PROCEDURE, Evidence, Create presumption that certain documents affecting real property are forged or counterfeit. (Love, Leslie (D), 03/02/17)
(Status: 03/07/2017 - bill electronically reproduced 03/02/2017)

HB 4312 - OCCUPATIONS, Attorneys, Modify eligibility requirements for attorney licensed in another state to practice law in Michigan. (LaFave, Beau (R), 03/07/17)
(Status: 06/15/2017 - substitute H-1 adopted and amended)

HB 4410 - PROBATE, Wills and Estates, Allow exempt property decedent to exclude adult child by written instrument. (Lucido, Peter J. (R), 03/23/17)
(Status: 03/28/2017 - bill electronically reproduced 03/23/2017)

 House Committee Hearing: 10/03/2017 Judiciary (HB 4410 on Agenda) - (Click for More Info)

HB 4469 - SENIOR CITIZENS, Other, Provide for eligibility for participation in senior farmers' market nutrition program (SFMNP) and create a rotating distribution process (Guerra, Vanessa (D), 03/30/17)
(Status: 04/19/2017 - bill electronically reproduced 03/30/2017)

HB 4532 - PROPERTY, Recording, Modify marital status in instruments conveying or mortgaging real estate. (Whiteford, Mary (R), 04/26/17)
(Status: 06/20/2017 - assigned PA 54'2017 with immediate effect)

HB 4588 - OCCUPATIONS, Securities, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults and posting of information. (Brinks, Winnie (D), 05/04/17)
(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)

HB 4589 - OCCUPATIONS, Securities, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults. (Graves, Joseph (R), 05/04/17)
(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)

HB 4684 - PROBATE, Guardians and Conservators, Allow limited guardianship to supervise access to incapacitated individuals relative. (Lucido, Peter J. (R), 05/31/17)
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)
HB 4686  -  HOUSING, Affordable, Revise code of criminal procedure to revise age limit procedure for sentencing juveniles prosecuted for personal protection order violation. (Chang, Stephanie (D), 05/31/17)
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)

HB 4751  -  FAMILY LAW, Marriage and Divorce, Clarify enforceability of prenuptial agreements. (Kesto, Klint (R), 06/13/17)
(Status: 06/14/2017 - referred to Committee on Law and Justice)

HB 4752  -  PROBATE, Wills and Estates, Revise fee ratio and reporting requirement and remove sunset (Kesto, Klint (R), 06/08/17)
(Status: 06/14/2017 - referred to Committee on Law and Justice)

HB 4754  -  COURTS, Jurisdiction, Authorize inter-circuit concurrent jurisdiction plan. (Barrett, Tom (R), 06/13/17)
(Status: 06/14/2017 - referred to Committee on Judiciary)

HB 4821  -  PROBATE, Wills and Estates, Require appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Runestad, Jim (R), 07/12/17)
(Status: 09/26/2017 - reported with recommendation with substitute H-2)

HB 4822  -  PROBATE, Wills and Estates, Require appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Ellison, Jim (D), 07/12/17)
(Status: 09/26/2017 - reported with recommendation with substitute H-1)

HB 4885  -  CRIMES, Embezzlement, Increase penalties for stealing, embezzling, or converting personal or real property from a vulnerable adult. (Lucido, Peter J. (R), 08/16/17)
(Status: 09/06/2017 - bill electronically reproduced 08/16/2017)

HB 4886  -  CRIMINAL PROCEDURE, Sentencing Guidelines, Increase penalties for embezzlement from vulnerable adult. (Lucido, Peter J. (R), 08/16/17)
(Status: 09/06/2017 - bill electronically reproduced 08/16/2017)

HB 4887  -  OCCUPATIONS, Pawnbrokers, Establish hold process for pawned goods. (Lucido, Peter J. (R), 08/16/17)
(Status: 09/06/2017 - bill electronically reproduced 08/16/2017)

HB 4905  -  PROPERTY TAX, Principal Residence Exemption, Modify principal residence exemption for individual residing in nursing home or assisted living facility (Lucido, Peter J. (R), 09/07/17)
(Status: 09/13/2017 - bill electronically reproduced 09/12/2017)

HB 4931  -  CIVIL PROCEDURE, Civil Actions, Create financial exploitation liability act (Kosowski, Robert L. (D), 09/13/17)
(Status: 09/14/2017 - bill electronically reproduced 09/13/2017)

HB 4959  -  FAMILY LAW, Marriage and Divorce, Require prenuptial and postnuptial agreements to be enforceable. (Hoitenga, Michele (R), 09/14/17)
(Status: 09/19/2017 - bill electronically reproduced 09/14/2017)

HB 4994  -  SENIOR CITIZENS, Crimes, Provide for public relations campaign to prevent elder abuse. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/26/2017 - bill electronically reproduced 09/20/2017)

HB 4995  -  SENIOR CITIZENS, Crimes, Require neglect and mistreatment of senior citizens the department of health and human services to collect and analyze data. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/20/2017 - introduced by Representative Robert Kosowski)

HB 4996  -  PROBATE, Guardians and Conservators, Expand notification requirement of guardians. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/26/2017 - bill electronically reproduced 09/20/2017)

HB 5037  -  PROBATE, Guardians and Conservators, Provide for power of guardian to implant a tracking device with a ward. (Lucido, Peter J. (R), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)
**SB 0039**  - PROBATE, Other, Revise exceptions to definition of surviving spouse in relation to a funeral representative. (Jones, Rick (R), 01/18/17)
(Status: 04/18/2017 - ASSIGNED PA 0020'17 WITH IMMEDIATE EFFECT)

**SB 0049**  - PROBATE, Guardians and Conservators, Modify provision related to compensation for professional guardian or professional conservator. (Booher, Darwin (R), 01/18/17)
(Status: 09/06/2017 - substitute H-1 adopted)

**SB 0071**  - VEHICLES, Registration, Exempt vehicle registration fees senior citizens from increases. (Ananich, Jim (D), 01/31/17)
(Status: 01/31/2017 - INTRODUCED BY SENATOR JIM ANANICH)

**SB 0284**  - PROPERTY, Recording, Remove requirement statement of marital status in instruments conveying or mortgaging real estate. (Jones, Rick (R), 03/29/17)
(Status: 04/26/2017 - referred to Committee on Financial Services)

**SB 0345**  - OCCUPATIONS, Securities, Require certain record keeping and posting of information for financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults (Jones, Rick (R), 05/02/17)
(Status: 05/02/2017 - INTRODUCED BY SENATOR STEVEN BIEDA)

**SB 0346**  - OCCUPATIONS, Securities, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults (Ananich, Jim (D), 05/02/17)
(Status: 05/02/2017 - INTRODUCED BY SENATOR JIM ANANICH)

**SB 0378**  - SENIOR CITIZENS, Housing, Amend home for the aged definition and create an exemption from licensing. (Knollenberg, Marty (R), 05/16/17)
(Status: 07/12/2017 - received on 06/22/2017)

---

**House Committee Hearing:** 10/04/2017 Regulatory Reform (SB 0378 on Agenda) - [Click for More Info]

---

**SB 0525**  - COURTS, Reorganization, Modify reorganization of courts and number of judgeships (Jones, Rick (R), 09/06/17)
(Status: 09/28/2017 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0597**  - HEALTH, Other, Establish procedure to withhold or withdraw a life-sustaining treatment to require physician and hospital to obtain the consent of certain persons. (Proos, John (R), 09/28/17)
(Status: 09/28/2017 - INTRODUCED BY SENATOR JOHN PROOS)

**SB 0598**  - PROBATE, Patient Advocates, Provide for court determination of whether a patient advocate is acting within his or her authority or in a patient's best interest (Proos, John (R), 09/28/17)
(Status: 09/28/2017 - INTRODUCED BY SENATOR JOHN PROOS)

---

**MIRS: Michigan's oldest and most comprehensive newsletter covering the activities of Michigan state government**

From the legislature to the governor, from the state bureaucracy to Michigan's courts, MIRS provides our subscribers with more news and insight than any other source.
To: Probate and Estate Planning Council

From: Legislative Development and Drafting Committee

Re: October 2017 Committee Report

Since our last Council meeting, our Committee has been active in the following areas:

- We worked with our lobbyist to advocated for the adoption of our preferred version of the exempt property allowance/\textit{Jajuga} fix. Katie Lynwood testified on our behalf before the House Judiciary Committee. A copy of Katie’s written testimony and the committee’s substitute are attached to this report. We are in communication with the Michigan Probate Judges Association regarding concerns that the bill will allow for the undesirable exclusion of minor and dependent adult children.

- We have firmed up the numbers for the proposed EPIC “numbers” changes. This will be part of the EPIC omnibus update submitted to CSP in November.

- Drafted a proposal that will clarify/confirm that an attorney-in-fact (if the power’s conferred by the durable power of attorney) may create a trust on an incapacitated principal’s behalf. This will be part of the EPIC omnibus update submitted to CSP in November.

- We continued refining the "jumbo small estates" proposal. This may also be part of the EPIC omnibus. Draft 4 is attached. Georgette will share a draft 6 at our next meeting.

In the coming month, we will compile most of our EPIC-related proposals into one bill, with the goal of using the November CSP to introduce the omnibus.
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

Position Statement Regarding HB 4410

Testimony provided by: Katie Lynwood, Vice-Chair, Legislative Development and Drafting Committee of the Probate and Estate Planning Section of the State Bar of Michigan

Buhl, Little, Lynwood & Harris, PLC, 271 Woodland Pass, Ste 115, East Lansing, MI 48823-2060, Phone: (517) 853-6900, e-mail: klynwood@bllhlaw.com

1. Introduction

Good afternoon. My name is Katie Lynwood. I am a member of the council of the Probate and Estate Planning Section of the State Bar of Michigan, and the vice-chair of the Section’s Legislative Development and Drafting Committee. I am here today to share my Section of the State Bar’s position on HB 4410.

The Probate and Estate Planning Section is not the State Bar of Michigan itself, but rather a Section whose members choose voluntarily to join, based on common professional interest. The Section’s formal position statement accompanies the written testimony that I have filed with your committee.

2. Public Policy Position

Our Section and Committee have closely studied the Court of Appeals’ 2015 decision in In re Estate of Shelby Jean Jajuga. In that case, the Court of Appeals applied the “exempt property allowance” provision.

Michigan’s Estate and Protected Individuals Code—often called “EPIC”—governs wills and estates. In most ways, EPIC respects individuals’ freedom to pass their property according to their last will. In some limited cases, however, EPIC overrides the freedom to will one’s property.

The Jajuga case involved one of these types of overrides—the exempt property allowance, which is created by MCL 700.2404. There are two public policies behind the exempt property allowance.

- The first policy is that, even if an estate is insolvent, the deceased person’s spouse or children should not lose the modest property in their home to the deceased person’s creditors. To further this policy, MCL 700.2404 sets aside up to $15,000 (in today’s inflation-adjusted numbers) in property for the surviving spouse or children. This allowance is paid even if the estate has significant unsecured debts.

- The second policy is that, even if the deceased person disinherits their spouse or children,
they would at least receive some modest property to support them. To further this second policy, the $15,000 is payable to the surviving spouse, even if she or he is disinherited. If there is no surviving spouse, this allowance is payable to the surviving children.

It is this second policy that can cause mischief. Sometimes there are good reasons to completely disinherit a person:

- The person may have severe creditor problems, meaning that any gift will be immediately lost to creditors.

- The person may have a serious substance abuse problem. In this situation, the payment of a $15,000 exempt property allowance would feed a deadly habit.

- Sometimes, the deceased person has provided for the person outside of their probate estate. This could be through beneficiary designations, trusts, or lifetime gifts. In this situation, the extra exempt property allowance gives them an unfair windfall and unexpectedly reduces gifts to others.

- Some beneficiaries have special needs or severe disabilities. If they receive this allowance, it might eliminate their access to vitally-important Supplemental Security Income, Medicaid, and mental health services.

For these reasons, my Section of the State Bar supports changing MCL 700.2404 to enable one’s ability to reduce or eliminate a family member’s entitlement to the exempt property allowance.

Over the last two years, my committee has prepared multiple drafts of legislation to improve MCL 700.2404. The drafts have attempted to honor a person’s intent for their estate while keeping the spirit of the public policy for the allowance. There is little controversy concerning the exclusion of one’s adult children from receiving this allowance.

Some may feel differently about the exclusion of one’s minor children from the allowance. After two years of close consideration of the issue, however, we have concluded that more good than harm will be accomplished by allowing the exclusion of minor children. As part of our own deliberations, we did consider adding “safe harbor” provisions that would allow a person to exclude a minor child in only certain narrow circumstances, such as where the child needs to qualify for means-tested public benefits. But ultimately, we have reached the conclusion that there is no workable way to create such a “safe harbor.”

Therefore, on behalf of the Probate and Estate Planning Council of the State Bar of Michigan, we support the redlined version of House Bill 5638, which is attached to the written testimony that I have filed with the Committee.

Thank you for your consideration.
The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,336 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 22 members. On September 9, 2017, the Section adopted its position after discussion and vote at a scheduled meeting. 16 members voted in favor of the Section’s position on HB 4410, 0 members voted against this position, 0 members abstained, 6 members did not vote.

The Probate & Estate Planning Section Supports the Public Policy Position Adopted by the Council on September 10, 2016 related to HB 5638

The Probate & Estate Planning Section support the public policy position adopted by the Council on September 10, 2016 related to HB 5638.

Explanation:
This legislation clarifies the language of MCL 700.2404 following the ruling of the Michigan Court of Appeals in the 2015 case In re Estate of Jajuga. The Court effectively ruled that parents cannot disinherit their children by will. The Council previously supported proposed substitute H-3, adopted by the House Judiciary Committee, to 2016 HB 5638. The Council recommends returning to this previous version of the legislation.

Contact Person: Christopher Ballard
Phone: 734-372-2912

Position Adopted September 9, 2017
The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

The State Bar does not have a position in this matter.

The total membership of the Probate & Estate Planning Section is 3,769.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 22. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.
Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Marguerite Munson Lentz

E-Mail:
mlentz@bodmanlaw.com

Bill Number:
HB 5638 (Lucido) Probate; wills and estates; exempt property; allow decedent to exclude adult child by written instrument. Amends sec. 2404 of 1998 PA 386 (MCL 700.2404).

Date position was adopted:
September 10, 2016

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
22

Number who voted in favor and opposed to the position:
15 Voted for position
0 Voted against position
0 Abstained from vote
7 Did not vote (absent)

Position:
Support with Recommended Amendments

Explanation of the position, including any recommended amendments:
The Section supports HB 5638 with the proposed changes in the attachment.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
[Recommended changes to HB 5638; Draft 2.]

A bill to amend 1998 PA 386, entitled "Estate and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's 1 surviving spouse is also
2 entitled to household furniture, automobiles, furnishings,
3 appliances, and personal effects from the estate up to a value not
4 to exceed $10,000.00 more than the amount of any security interests
5 to which the property is subject. If EXCEPT AS OTHERWISE PROVIDED
6 IN SUBSECTION (4), IF there is no surviving spouse, the decedent's
7 children WHO ARE NOT EXCLUDED UNDER SUBSECTION 4 are entitled jointly to the same
8 value.

2 (2) IF EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF
encumbered assets are selected and the value in excess of security interests, plus that of 1 other exempt
property, is less than
$10,000.00, or if there is not $10,000.00 worth of exempt property
in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are
entitled to other assets
of the estate, if any, to the extent necessary to make up the
$10,000.00 value. Rights to exempt property and assets needed to
make up a deficiency of exempt property have priority over all
claims against the estate, except that the right to assets to make
up a deficiency of exempt property abates as necessary to permit
payment of all of the following in the following order:
(a) Administration costs and expenses.
(b) Reasonable funeral and burial expenses.
(c) Homestead allowance.
(d) Family allowance.
(3) The rights under this section are in addition to a benefit
or share passing to the surviving spouse or children by the
decedent's will, unless otherwise provided, by intestate
succession, or by elective share. The $10,000.00 amount expressed
DESCRIBED in this section **MUST** be adjusted as provided in
section 1210.

---

(4) A DECEDEENT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY
EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR
DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE
ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION
DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE
DECEDEENT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED
IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDEENT'S
INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDEENT BY WILL UNDER SECTION
1201, WITHOUT ADDITIONAL LANGUAGE SPECIFICALLY

2 STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS
3 SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT
4 A RIGHT PROVIDED IN THIS SECTION.

22 (4) THE DECEDEANT MAY EXCLUDE 1 OR MORE CHILDREN FROM
23 RECEIVING THIS ALLOWANCE BY EITHER OF THE FOLLOWING MEANS:
26 (a) DECEDEANT BY WILL EXPRESSLY STATES THAT THE CHILD TAKES NOTHING OR AN
27 AMOUNT OF $10.00 OR LESS FROM THE ESTATE.
28 (b) DECEDEANT BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE AN
29 ALLOWANCE UNDER THIS SECTION.

30 Enacting section 1. This amendatory act takes effect 90 days
31 after the date it is enacted into law.
Legislative Analysis

EXEMPT PROPERTY:
ALLOW TO EXCLUDE ADULT CHILD IN WILL

House Bill 4410 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 9-25-17

SUMMARY:

The bill would allow a person to exclude, in a will or written instrument, an adult child who is not a dependent from making a claim to receive property from the person's estate after death under the "exempt allowance" provision.

House Bill 4410 would amend Section 2404 of the Estates and Protected Individuals Code. Currently, a surviving spouse, or if no surviving spouse, the decedent's children, have a statutory right to exempt property. This is in addition to any property bequeathed in a will or that the heirs are entitled to under the state's intestate laws if the person did not leave a will. (Exempt property refers to property such as jewelry, cars, or cash that is protected from creditors; the amount that may be protected is established in statute and currently is about $15,000.)

The bill would amend Section 2404 to allow a decedent (either in a will or by other signed writing) to expressly exclude or limit the right of a child who is not a minor or the decedent's dependent from making a claim to any of the exempted property for which the child would have a right under Section 2404.

The exclusion or limitation described above would have to be expressly stated by the decedent, and would have to specifically refer to the allowance described in Section 2404 in a manner sufficient to express the decedent's intent. An exclusion or limitation stated by a decedent by will under Section 2101 of the code, without additional language specifically stating an intent to exclude or limit a right to make a claim against excluded property, would not be considered sufficient language to exclude or limit a right under Section 2404. (Section 2101 allows a decedent to expressly exclude in a will an individual from receiving any part of the decedent's estate that was not disposed of in the will and so would pass by intestate succession to the decedent's heirs as prescribed in the act.)

The bill would take effect 90 days after enactment.

MCL 700.2404
BACKGROUND INFORMATION:

Currently, a person may expressly disinherit a child (other than a minor child or child who is a dependent) in a will. Recently, however, a Michigan Court of Appeals case ruled that disinheritance of a child in a will does not limit that child’s right to make a claim to exempt property under MCL 700.2404. Thus, a disinherited child may make a claim against certain personal property up to the amount protected in statute from creditors. In re Estate of Shelby Jean Jajuga, Chelenyak v. Veith, No. 322522 (October 20, 2015)

House Bill 4410 is identical to House Bill 5638 of the 2015-2016 Legislative Session. The bill was reported as an H-3 substitute but failed to see floor action.

FISCAL IMPACT:

The bill will have no fiscal impact on state or local units of government.
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children WHO ARE NOT EXCLUDED UNDER SUBSECTION (4) are entitled jointly to the same value.

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt
property in the estate, the spouse or children \textit{WHO ARE NOT EXCLUDED UNDER SUBSECTION (4)} are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.
(b) Reasonable funeral and burial expenses.
(c) Homestead allowance.
(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed \textit{DESCRIBED in this section} shall \textit{MUST be adjusted as provided in section 1210.}

(4) \textit{THE DECEDENT MAY EXCLUDE 1 OR MORE OF THE DECEDENT'S CHILDREN FROM RECEIVING EXEMPT PROPERTY OR ASSETS TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY UNDER SUBSECTION (1) BY EITHER OF THE FOLLOWING MEANS:}

(A) \textit{THE DECEDENT BY WILL EXPRESSLY STATES EITHER OF THE FOLLOWING:}

(i) \textit{THE CHILD TAKES NOTHING.}

(ii) \textit{THE CHILD TAKES AN AMOUNT OF $10.00 OR LESS FROM THE ESTATE.}
(B) THE DECEdent BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE EXEMPT PROPERTY UNDER THIS SECTION.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
House Bill 4410 (2017)  


Sponsor
Peter Lucido
(click name to see bills sponsored by that person)

Categories
Probate: wills and estates;

Probate; wills and estates; exempt property; allow decedent to exclude adult child by written instrument. Amends sec. 2404 of 1998 PA 386 (MCL 700.2404).

Bill Documents
Bill Document Formatting Information
[x]
The following bill formatting applies to the 2017-2018 session:
- New language in an amendatory bill will be shown in BOLD AND UPPERCASE.
- Language to be removed will be stricken.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

(orange icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis
House Fiscal Agency Analysis
Summary As Introduced (9/25/2017)
This document analyzes: HB4410

History
(House actions in lowercase, Senate actions in UPPERCASE)

<table>
<thead>
<tr>
<th>Date</th>
<th>Journal</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/23/2017</td>
<td>HJ 31 Pg. 355</td>
<td>introduced by Representative Peter Lucido</td>
</tr>
<tr>
<td>3/23/2017</td>
<td>HJ 31 Pg. 355</td>
<td>read a first time</td>
</tr>
<tr>
<td>3/23/2017</td>
<td>HJ 31 Pg. 355</td>
<td>referred to Committee on Judiciary</td>
</tr>
<tr>
<td>3/28/2017</td>
<td>HJ 32 Pg. 364</td>
<td>bill electronically reproduced 03/23/2017</td>
</tr>
<tr>
<td>10/3/2017</td>
<td>HJ 72 Pg. 1673</td>
<td>reported with recommendation with substitute H-1</td>
</tr>
<tr>
<td>10/3/2017</td>
<td>HJ 72 Pg. 1673</td>
<td>referred to second reading</td>
</tr>
</tbody>
</table>
SENATE BILL No. 540

September 7, 2017, Introduced by Senator SCHUITMAKER and referred to the Committee on Local Government.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

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

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

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

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

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

(a) A conveyance by deed.

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

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

(i) If the settler-TRANSFEROR or the settler's-TRANSFEROR'S
spouse, or both, conveys the property to the trust and the sole
present beneficiary or beneficiaries are the settler-TRANSFEROR or
the settler's TRANSFEROR's spouse, or both.

(ii) Beginning December 31, 2014, for residential real
property, if the settler TRANSFEROR or the settler's TRANSFEROR's
spouse, or both, conveys the residential real property to the trust
and the sole present beneficiary or beneficiaries are the settler's
TRANSFEROR's or the settler's TRANSFEROR's spouse's mother, father,
brother, sister, son, daughter, adopted son, adopted daughter,
grandson, or granddaughter, and OR ARE 1 OR MORE OF THESE
INDIVIDUALS, FOR SO LONG AS the residential real property is not
used for any commercial purpose CLASSIFICATION UNDER SECTION 34C
DOES NOT CHANGE following the conveyance. Upon request by the
department of treasury or the assessor, the sole present
beneficiary or beneficiaries A TRANSFEREE shall furnish proof
within 30 days that the sole present beneficiary or beneficiaries
meet TRANSFEREE MEETS the requirements of this subparagraph. If a
present beneficiary TRANSFEREE fails to comply with a request by
the department of treasury or assessor under this subparagraph,
that present beneficiary TRANSFEREE is subject to a fine of
$200.00.

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

(i) If the distributee is the sole present beneficiary or the
spouse of the sole present beneficiary, or both, OR IS A TRUST AND
THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE EITHER OR BOTH OF
THES INDIVIDUALS.

(ii) Beginning December 31, 2014, a distribution of
residential real property if the distributee is the settler's or
the settlor's spouse's mother, father, brother, sister, son,
daughter, adopted son, adopted daughter, grandson, or granddaughter
and—OF A SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR OF THE
SPouse OF A SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR IS 1 OR
MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT
BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS,
FOR SO LONG AS the residential real property is not used for any
commercial purpose—CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE
following the conveyance. Upon request by the department of
treasury or the assessor, the sole present beneficiary or
beneficiaries—a distributee shall furnish proof within 30 days that
the sole present beneficiary or beneficiaries meet—DISTRIBUTEE
MEETS the requirements of this subparagraph. If a present
beneficiary—DISTRIBUTEE fails to comply with a request by the
department of treasury or assessor under this subparagraph, that
present beneficiary—DISTRIBUTEE is subject to a fine of $200.00.
(e) A change in the sole present beneficiary or beneficiaries
of a trust, except under any of the following conditions:

(i) A change that adds or substitutes the spouse of the sole
present beneficiary, OR A TRUST AND THE SOLE PRESENT BENEFICIARY IS
THE SPOUSE OF THE SOLE PRESENT BENEFICIARY.

(ii) Beginning December 31, 2014, for residential real
property, a change that adds or substitutes the settlor's or the
settlor's spouse's mother, father, brother, sister, son, daughter,
adopted son, adopted daughter, grandson, or granddaughter and—OF A
SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR OF THE SPOUSE OF A
SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR ADDS OR SUBSTITUTES 1
1 or more of these individuals, or is a trust and the sole present
2 beneficiary or beneficiaries are 1 or more of these individuals,
3 for so long as the residential real property is not used for any
4 commercial purpose. classification under section 34c does not change
5 following the conveyance. upon request by the department of
6 treasury or the assessor, the sole present beneficiary or
7 beneficiaries—a transferee shall furnish proof within 30 days that
8 the sole present beneficiary or beneficiaries meet—transferee meets
9 the requirements of this subparagraph. If a present beneficiary
10 transferee fails to comply with a request by the department of
11 treasury or assessor under this subparagraph, that present
12 beneficiary—transferee is subject to a fine of $200.00.
13
14 (f) a conveyance by distribution under a will or by intestate
15 succession—to a transferee as the result of the death of a
16 property owner because the transferee was a distributee under a
17 will or intestate succession, grantee of a deed, trust beneficiary,
18 beneficiary of a beneficiary designation, appointee, or taker in
19 default of a power of appointment, except under any of the
20 following conditions:
21
22 (i) If the distributee—transferee is the decedent's spouse, or
23 is a trust and the sole present beneficiary is the decedent's
24 spouse.
25
26 (ii) Beginning December 31, 2014, for residential real
27 property, if the distributee—transferee is the decedent's or the
28 decedent's spouse's mother, father, brother, sister, son, daughter,
29 adopted son, adopted daughter, grandson, or granddaughter, and—or
30 is 1 or more of these individuals, or is a trust and the sole

02936'17
PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE
INDIVIDUALS, FOR SO LONG AS the residential real property is not
used for any commercial purpose—CLASSIFICATION UNDER SECTION 34C
DOES NOT CHANGE following the conveyance. Upon request by the
department of treasury or the assessor, the sole present
beneficiary or beneficiaries—a TRANSFEREE shall furnish proof
within 30 days that the sole present beneficiary or beneficiaries
meet—TRANSFEREE MEETS the requirements of this subparagraph. If a
present beneficiary TRANSFEREE fails to comply with a request by
the department of treasury or assessor under this subparagraph,
that present beneficiary TRANSFEREE is subject to a fine of
$200.00.

(g) A conveyance by lease if the total duration of the lease,
including the initial term and all options for renewal, is more
than 35 years or the lease grants the lessee a bargain purchase
option. As used in this subdivision, "bargain purchase option"
means the right to purchase the property at the termination of the
lease for not more than 80% of the property's projected true cash
value at the termination of the lease. After December 31, 1994, the
taxable value of property conveyed by a lease with a total duration
of more than 35 years or with a bargain purchase option shall be
adjusted under subsection (3) for the calendar year following the
year in which the lease is entered into. This subdivision does not
apply to personal property except buildings described in section
14(6) and personal property described in section 8(h), (i), and
(j). This subdivision does not apply to that portion of the
property not subject to the leasehold interest conveyed.
(h) Except as otherwise provided in this subdivision AND
SUBSECTION (7), a conveyance OR SUCCESSIVE CONVEYANCES of an
ownership interest in a corporation, partnership, sole
proprietorship, limited liability company, limited liability
partnership, or other legal entity if the ownership interest
conveyed ON A CUMULATIVE BASIS SINCE THE DATE TAXABLE VALUE WAS
FIRST ESTABLISHED FOR TAXES LEVIED IN 1995 UNDER SUBSECTION (2) OR
THE DATE THAT TAXABLE VALUE WAS LAST ADJUSTED UNDER SUBSECTION (3),
WHICHEVER DATE IS LATER, is more than 50% of the TOTAL OWNERSHIP
INTEREST IN THE corporation, partnership, sole proprietorship,
limited liability company, limited liability partnership, or other
legal entity. Unless notification is provided under subsection
(10), the corporation, partnership, sole proprietorship, limited
liability company, limited liability partnership, or other legal
entity shall notify the assessing officer on a form provided by the
state tax commission not more than 45 days after a conveyance of an
ownership interest that constitutes a transfer of ownership under
this subdivision. Both of the following apply to THIS SUBDIVISION
IS SUBJECT TO ALL OF THE FOLLOWING:

(i) FOR a corporation subject to 1897 PA 230, MCL 455.1 to
455.24, +

———(i)—BOTH OF THE FOLLOWING APPLY:

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

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

(ii) Beginning on December 31, 2016, a conveyance during the transferor's lifetime, or by inheritance, or by distribution from a trust, or otherwise of an ownership interest, of any percentage, in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity is not a transfer of ownership if the transferee is the transferor's spouse or is a trust and the sole present beneficiary or beneficiaries are the transferor, the transferor's spouse, or both.

(iii) Beginning on December 31, 2016, a conveyance during the transferor's lifetime, or by inheritance, or by distribution from a trust, or otherwise of an ownership interest, of any percentage, in a limited liability company is not a transfer of ownership of residential real property owned by the limited liability company if the transferee is the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, granddaughters, aunt, uncle, niece, or nephew, or is a lineal descendant of 1 or more of these individuals. Upon request by the department of treasury or the assessor, the transferee shall furnish proof within 30 days that the transferee meets the requirements of this subparagraph. If a transferee fails to comply with a request by the department of treasury or assessor under this subparagraph, that transferee is subject to a fine of $200.00.

(i) A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.
(j) A conveyance of an ownership interest in a cooperative
housing corporation, except that portion of the property not
subject to the ownership interest conveyed.

(k) Notwithstanding the provisions of section 7ee(5), at the
request of a property owner, an assessor's establishment of a
separate tax parcel for a portion of a parcel that ceases to be
qualified agricultural property but is not subject to a land
division under the land division act, 1967 PA 288, MCL 560.101 to
560.293, or any local ordinance. For purposes of this subdivision,
a transfer of ownership occurs only as to that portion of the
parcel established as a separate tax parcel and only that portion
shall have its taxable value adjusted under subsection (3) and
shall be subject to the recapture tax provided for under the
agricultural property recapture act, 2000 PA 261, MCL 211.1001 to
211.1007. The adjustment under subsection (3) shall be made as of
the December 31 in the year that the portion of the parcel
established as a separate tax parcel ceases to be qualified
agricultural property. A portion of a parcel subject to this
subdivision is considered a separate tax parcel only for those
purposes described in this subdivision.

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

(a) The transfer of property from 1 spouse to the other spouse
or from a decedent to a surviving spouse.

(b) A transfer from a husband, a wife, or a married couple 1
OR BOTH SPOUSES creating or disjoining a tenancy by the entireties
in the grantors or the grantor and his or her spouse.

(c) Subject to subdivision (d), a A transfer of that portion
of property subject to a life estate or life lease retained by the
transferor, until expiration or termination of the life estate or
life lease. That portion of property transferred that is not
subject to a life lease shall be adjusted under subsection (3).

However, beginning December 31, 2016, the expiration or termination
of the life estate or life lease is also not a transfer of
ownership if either of the following is true:

(i) The transferee is the transferor's spouse, or is a trust
and the sole present beneficiary is the transferor's spouse.

(ii) The property is residential real property and the
transferee is the transferor's or transferor's spouse's mother,
father, brother, sister, son, daughter, adopted son, adopted
daughter, grandson, or granddaughters, or is 1 or more of these
individuals, or is a trust and the sole present beneficiary or
beneficiaries are 1 or more of these individuals, for so long as
the residential real property classification under section 34C does
not change following the conveyance. Upon request by the department
of treasury or the assessor, a transferee shall furnish proof
within 30 days that the transferee meets the requirements of this
subparagraph. If a transferee fails to comply with a request by the
department of treasury or assessor under this subparagraph, that
transferee is subject to a fine of $200.00.

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

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

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

(F) (g) A conveyance to a trust if the settler—TRANSFEROR or
the settler's—TRANSFEROR'S spouse, or both, conveys the property to
the trust and any of the following conditions are satisfied:

(i) If the sole present beneficiary of the trust is the
settler—TRANSFEROR or the settler's—TRANSFEROR'S spouse, or both.

(ii) Beginning December 31, 2014, for residential real
property, if the sole present beneficiary of the trust is the
settler's—TRANSFEROR'S or the settler's—TRANSFEROR'S spouse's
mother, father, brother, sister, son, daughter, adopted son,
adopted daughter, grandson, or granddaughter, and OR IS 1 OR MORE
OF THESE INDIVIDUALS, FOR SO LONG AS the residential real property
is not used for any commercial purpose CLASSIFICATION UNDER SECTION
34C DOES NOT CHANGE following the conveyance. Upon request by the
department of treasury or the assessor, the sole present
beneficiary or beneficiaries—A TRANSFEREE shall furnish proof
within 30 days that the sole present beneficiary or beneficiaries
meet TRANSFEREE MEETS the requirements of this subparagraph. If a
present beneficiary TRANSFEREE fails to comply with a request by
the department of treasury or assessor under this subparagraph,
that present beneficiary TRANSFEREE is subject to a fine of
$200.00.

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

(H) (i)—A transfer creating or terminating a joint tenancy
between 2 or more persons if at least 1 of the persons was an
original owner of the property before the joint tenancy was
initially created and, if the property is held as a joint tenancy
at the time of conveyance, at least 1 of the persons was a joint
tenant when the joint tenancy was initially created and that person
has remained a joint tenant since the joint tenancy was initially
created. A joint owner at the time of the last transfer of
ownership of the property is an original owner of the property. For
purposes of this subdivision, a person is an original owner of
property owned by that person's spouse.

(I) (j)—A transfer for security or an assignment or discharge of a security interest.

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

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

(L) (m)—A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other
(M) (q) — A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the internal revenue code, 26 USC 368. Upon request by the state tax commission, a property owner shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A property owner who fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(N) (o) — Except as provided in subsection (6)(k), a transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property will remain qualified agricultural property. The affidavit under this subdivision shall be in a form prescribed by the department of treasury. An owner of qualified agricultural property shall inform a prospective buyer of that qualified agricultural property that the qualified agricultural property is subject to the recapture tax provided in the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007, if the qualified agricultural property is converted by a change in use, as that term is defined in section 2 of the agricultural property recapture act, 2000 PA 261, MCL 211.1002. If property ceases to be qualified agricultural property
at any time after a transfer subject to this subdivision, all of
the following shall occur:

(i) The taxable value of that property, or, if subsection
6 (k) applies, a portion of it established as a separate tax
parcel, shall be adjusted under subsection (3) as of the December
31 in the year that the property, or, if subsection (6) (k) applies,
a portion of it established as a separate tax parcel, ceases to be
qualified agricultural property.

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

(0) (p) A transfer of qualified forest property, if the person
to whom the qualified forest property is transferred files a
qualified forest taxable value affidavit with the assessor of the
local tax collecting unit in which the qualified forest property is
located and with the register of deeds for the county in which the
qualified forest property is located attesting that the qualified
forest property will remain qualified forest property. The
qualified forest taxable value affidavit under this subdivision
shall be in a form prescribed by the department of agriculture and
rural development. The qualified forest taxable value affidavit
shall include a legal description of the qualified forest property,
the name of the new property owner, the year the transfer of the
property occurred, a statement indicating that the property owner
is attesting that the property for which the exemption is claimed
is qualified forest property and will be managed according to the
approved forest management plan, and any other information
pertinent to the parcel and the property owner. The property owner
shall provide a copy of the qualified forest taxable value
affidavit to the department. The department shall provide 1 copy of
the qualified forest taxable value affidavit to the local tax
collecting unit, 1 copy to the conservation district, and 1 copy to
the department of treasury. These copies may be sent
electronically. The exception to the recognition of a transfer of
ownership, as herein stated, extends to the land only of the
qualified forest property. If qualified forest property is improved
by buildings, structures, or land improvements, then those
improvements shall be recognized as a transfer of ownership, in
accordance with the provisions of section 7jj[1]. An owner of
qualified forest property shall inform a prospective buyer of that
qualified forest property that the qualified forest property is
subject to the recapture tax provided in the qualified forest
property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036,
if the qualified forest property is converted by a change in use,
as that term is defined in section 2 of the qualified forest
property recapture tax act, 2006 PA 379, MCL 211.1032. If property
ceases to be qualified forest property at any time after being
transferred, all of the following shall occur:

(i) The taxable value of that property shall be adjusted under
subsection (3) as of the December 31 in the year that the property
ceases to be qualified forest property, except to the extent that
the transfer of the qualified forest property would not have been
considered a transfer of ownership under this subsection.
(ii) Except as otherwise provided in subparagraph (iii), the property is subject to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.

(iii) Beginning June 1, 2013 and ending November 30, 2013, owners of property enrolled as qualified forest property before January 1, 2013 may execute a new qualified forest taxable value affidavit with the department of agriculture and rural development. If a landowner elects to execute a qualified forest taxable value affidavit, that owner is not required to pay the $50.00 fee required under section 7jj[1](2). If a landowner elects not to execute a qualified forest taxable value affidavit, the existing affidavit shall be rescinded, without subjecting the property to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the taxable value of that property shall be adjusted under subsection (3).

(p) (q) Beginning on December 8, 2006, a transfer of land, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

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

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

(Q) (x) A transfer of real property or other ownership
interests resulting from a consolidation or merger of a domestic
nonprofit corporation that is a boy or girl scout or camp fire
girls organization, a 4-H club or foundation, a young men's
Christian association, or a young women's Christian association and
at least 50% of the members of that organization or association are
residents of this state.

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

(S) (z) Beginning December 31, 2013 through December 30, 2014,
a transfer of residential real property if the transferee is
related to the transferor by blood or affinity to the first degree
and the use of—FOR SO LONG AS the residential real property
CLASSIFICATION UNDER SECTION 34C does not change following the
transfer.

(T) (a) Beginning December 31, 2014, a transfer of residential
real property if the transferee is the transferor's or the
transferor's spouse's mother, father, brother, sister, son,
daughter, adopted son, adopted daughter, grandson, or
granddaughter, and—OR IS 1 OR MORE OF THESE INDIVIDUALS, OR IS A
TRUST AND THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR
MORE OF THESE INDIVIDUALS, FOR SO LONG AS the residential real
property is not used for any commercial purpose—CLASSIFICATION
UNDER SECTION 34C DOES NOT CHANGE following the conveyance. Upon
request by the department of treasury or the assessor, the transfer shall furnish proof within 30 days that the transfer meets the requirements of this subdivision. If a transfer fails to comply with a request by the department of treasury or assessor under this subdivision, that transfer is subject to a fine of $200.00.

(U) Beginning December 31, 2014, for residential real property, a conveyance from a trust if the person to whom the residential real property is conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and OF A SOLE PRESENT BENEFICIARY OR OF THE SPOUSE OF A SOLE PRESENT BENEFICIARY, OR IS 1 OR MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS, FOR SO LONG AS the residential real property is not used for any commercial purpose CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries—A TRANSFEREE shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet—TRANSFEREE MEETS the requirements of this subdivision. If a present beneficiary—TRANSFEREE fails to comply with a request by the department of treasury or assessor under this subdivision, that present beneficiary—TRANSFEREE is subject to a fine of $200.00.

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

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

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

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


(8) If all of the following conditions are satisfied, the
local tax collecting unit shall revise the taxable value of
qualified agricultural property taxable on the tax roll in the
possession of that local tax collecting unit to the taxable value
that qualified agricultural property would have had if there had
been no transfer of ownership of that qualified agricultural
property since December 31, 1999 and there had been no adjustment
of that qualified agricultural property's taxable value under
subsection (3) since December 31, 1999:

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

(b) The owner of the qualified agricultural property files an
affidavit with the assessor of the local tax collecting unit under
subsection (7)-(e)-(7) (N).

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

(10) The register of deeds of the county where deeds or other
title documents are recorded shall notify the assessing officer of
the appropriate local taxing unit not less than once each month of
any recorded transaction involving the ownership of property and
shall make any recorded deeds or other title documents available to
that county's tax or equalization department. Unless notification
is provided under subsection (6), the buyer, grantee, or other
transferee of the property shall notify the appropriate assessing
office in the local unit of government in which the property is
located of the transfer of ownership of the property within 45 days
of the transfer of ownership, on a form prescribed by the state tax
commission that states the parties to the transfer, the date of the
transfer, the actual consideration for the transfer, and the
property's parcel identification number or legal description. Forms
filed in the assessing office of a local unit of government under
this subsection shall be made available to the county tax or
equalization department for the county in which that local unit of
government is located. This subsection does not apply to personal
property except buildings described in section 14(6) and personal
property described in section 8(h), (i), and (j).

   (11) As used in this section:
   (a) "Additions" means that term as defined in section 34d.
   (b) "Beneficial use" means the right to possession, use, and
   enjoyment of property, limited only by encumbrances, easements, and
   restrictions of record.
   (c) "Commercial purpose" means used in connection with any
   business or other undertaking intended for profit, but does not
   include the rental of residential real property for a period of
   less than 15 days in a calendar year.
   (C) (d) "Inflation rate" means that term as defined in section
   34d.
   (D) (e) "Losses" means that term as defined in section 34d.
   (E) (f) "Qualified agricultural property" means that term as
   defined in section 7dd.
   (F) (g) "Qualified forest property" means that term as defined
in section 7jj[1].

(G) "Residential real property" means real property classified as residential real property under section 34c.

(H) "TRANSFEROR" MEANS A PERSON THAT MAKES A TRANSFER AND INCLUDES, BUT IS NOT LIMITED TO, THE SETTLOR OF A TRUST, OR AN INDIVIDUAL OR ENTITY FOR WHOM A TRANSFER IS MADE BY A REPRESENTATIVE.

Enacting section 1. Section 27a(6)(h)(ii) and (iii) and (7)(x) of the general property tax act, 1893 PA 206, MCL 211.27a, as added by this amendatory act, is retroactive and is effective for taxes levied after December 31, 2016.

Enacting section 2. Section 27a(7)(c) of the general property tax act, 1893 PA 206, MCL 211.27a, as amended by this amendatory act, is retroactive and is effective for taxes levied after December 31, 2016.
In re: Estate of Frederick Alan Simmons, (DC IN 07/31/2017) 120 AFTR 2d held that an IRS tax lien had priority over reasonable administrative expenses of the estate.

Frederick Alan Simmons died on June 5, 2014. The primary asset of the estate was real property located in Indiana ("Property"). Simmons’ surviving spouse and personal representative ("PR") opened a probate estate. Once the Estate was opened, a number of claims were filed against the Estate, including a $591,406 claim by IRS for unpaid federal income taxes and penalties. The PR filed a petition to close the Estate as insolvent, showing the Estate as having total assets of $266,873 and claims against the Estate of $1,812,622.

The state court issued an order closing the Estate as insolvent and ordered distribution of the proceeds from the sale of the Property. The distribution listed the federal tax lien as seventh in priority among the creditors. The US then removed the state court action to the district court, challenging the disposition of its tax lien, seeking to enforce the federal tax lien and determine the priority of liens against the Estate’s property.

The PR filed a motion to determine claim priorities. The district judge referred the matter to a Magistrate Judge who issued a report and recommendation which found that the government had a priority interest for the proceeds from the sale of the Property. Under IRC Code Section 6323, if IRS files the appropriate notice of the federal tax liens, its lien prevails over all other interests, except for purchasers, holders of security interests, mechanics lienors, and judgment lien creditors whose interests are completed or perfected at the time that the notice of federal tax lien is filed. The Federal Priority Statute (31 USC 3713) directs that the government be paid first when the estate of a deceased debtor has insufficient assets to pay all of its debts.

The PR argued that the Magistrate Judge failed to acknowledge the extensive services that she provided and funds she advanced for maintenance and preservation of the Property. PR also objected to the Magistrate Judge's conclusions because his report and recommendation relied on the Federal Tax Lien Act, rather than the Federal Priority Statute. PR further asserted that as personal representative, she and her counsel were entitled to reasonable compensation for their services under Indiana statute. In response the government noted that PR did not challenge or dispute the Magistrate Judge's findings of fact, but argued only that the Magistrate Judge failed to consider additional facts (i.e. that she provided extensive services and funds for the preservation of the Property). The government contended that the exclusion of the additional facts requested by PR did not amount to error because those facts were irrelevant to the determination of priority. There was no dispute to the fact that the government properly filed notice of its federal tax liens. The government had argued pursuant to IRC Code Section 6323 that its liens prevailed over PR's interest because she was not a purchaser, holder of security interest, mechanics lienor, or judgment lien creditor.

The district court concluded that the Federal Tax Lien Act, rather than the Federal Priority Statute, governed whether IRS's tax liens had preference to the proceeds from the Property. Accordingly, because PR's interest did not fall under any of the exceptions listed in Code Sec. 6323 the government's tax liens had priority.
MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan

From: James P. Spica

Re: Uniform Law Commission Liaison Report

Date: October 4, 2017

Having been approved at the ULC’s Annual Meeting in July and since vetted by the ULC Style Committee, the Uniform Directed Trust Act (UDTA) has become final. It is posted at:

http://www.uniformlaws.org/shared/docs/divided%20trusteeship/UDTA_Final_2017oct2.pdf

(The UDTA is embodied (with some alterations) in section 7703a of the legislative proposal introduced by the Council’s Divided and Directed Trusteeships ad Hoc Committee to the Committee on Special Projects at the September 9, 2017 CSP meeting.)

JPS

DETROIT 40411-1 1416338v3 - 10/4/2017 3:29:33 PM
The last meeting of the Taxation Section Council was October 5, 2017. It was also the date of the Annual Meeting and ex-officio dinner. All were held at the Townsend in Birmingham. The next annual meeting will be on September 13, 2018.

The officers are:

- Carolee Kvoriak Smith  Chair
- Jackie Cook  Vice-Chair
- James Combs  Treasurer
- William Lentine  Secretary

New council members are:

<table>
<thead>
<tr>
<th>Person</th>
<th>Term Ending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ryan Peruski</td>
<td>2018</td>
</tr>
<tr>
<td>Thomas Fabbri</td>
<td>2018</td>
</tr>
<tr>
<td>Mindi Johnson</td>
<td>2020</td>
</tr>
<tr>
<td>Michael Monaghan</td>
<td>2020</td>
</tr>
</tbody>
</table>

There are 51 people registered for the Taxation Section’s Fundamentals of Taxation Seminar.

The 2018 Annual Tax Conference is scheduled for May 24, 2018 at the Inn at St. Johns, Plymouth, MI. Presenters include Aaron Stumpf of Stout who will address Tax Issues in Business Valuation.

The Tax Framework is out. It is light on details. It is nine pages long.

A House Bill would allow settlements at informal conference.

The probate Sections SB540, sponsored by Tanya Schuitmaker, generated some interest. Daniel Stanley, Chair of the State & Local Tax Committee of the Taxation Section will head up an ad hoc committee and probably contact Mark Kellogg.

The Fall issue of the *Michigan Tax Lawyer* will include articles by Sean Cook on the new partnership audit rules, Lorraine New on some IRS procedural changes, Carolee Kvoriak Smith on Michigan Informal Conferences and an article on Entity Selection.

The Winter issue will have articles on Estates & Trusts and Employee Benefits.

Those who post photos on SBM connect are more likely to get a hit and contact from a potential client.
The Taxation Section has landing pages for all of its Committees, including Estate & Trusts, for Section members who sign up for it.

The Michigan Tax Tribunal Reform Bill (HB 4412) has passed the House. It is going to the Senate.

The City Income Tax Act is still in the negotiation stage. It includes delegating certain functions to the State of Michigan. An item of concern to tax practitioners is Reverse Commuter Audits which would authorize the City of Detroit to audit businesses outside of Detroit to see if they are properly withholding income tax on persons who are Detroit Residents.

The Employee Benefits Committee will host an educational presentation by Sherry Brackney from the Department of Labor at the MSU Management Center in Troy, Michigan on November 19, 2017.

The Taxation Section has a social media presence on both Facebook (with pictures) and on LinkedIn. Both can be accessed by searching Taxation Section of the State Bar of Michigan.

The Internal Revenue Service in Detroit will move from 500 Woodward Avenue to 985 Michigan Avenue in 2019.

Committee chairs for the 2017-2018 year are

- Employee Benefits: Frederick “Eric” Gregory
- Estates & Trusts: Nicholas “Nick” Monterosso
- State & Local: Daniel Stanley
- Federal Income Tax: Joe Baloch

George W. Gregory, Liaison