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

NOTICE FOR REMOTE REGISTERING AND ATTENDANCE:

For those who are unable to attend in person, you may attend remotely by registering here: https://zoom.us/meeting/register/bb684641b51e8a8fcde7dc3c8da9331e

If you have any difficulty registering for remote attendance, please contact Mike Lichterman at mike@baarlegal.com. Remote attendees are required to register ahead of time. It is a new registration link each month and I will make sure to email it to you before you send out the Section-wide invitation to the meeting.
Probate and Estate Planning Section of the
State Bar of Michigan

Meeting of the Section’s Committee on Special Projects and
Meeting of the Council of the Probate and Estate Planning Section

Saturday, December 14, 2019
9 a.m.

University Club of MSU
3435 Forest Road
Lansing, MI 48910

The meeting of the Section’s Committee on Special Projects (CSP) meeting will begin at 9 a.m. and will end at approximately 10:15 a.m. The meeting of the Council of the Probate and Estate Planning Section will begin at approximately 10:30 a.m. 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.

Mark E. Kellogg, Secretary
Fraser Trebilcock Davis & Dunlap, P.C.
124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
517-377-0890
Email: mkellogg@fraserlawfirm.com
STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL
Council and CSP Meeting Schedule for 2019-2020

Saturday, December 14, 2019
9 a.m.

University Club of MSU
3435 Forest Road
Lansing, MI 48910

Each meeting starts with the Committee on Special Projects at 9 a.m., followed by the meeting of the Council of the Probate & Estate Planning Section.

Call for materials

Due dates for Materials for Committee on Special Projects
All materials are due on or before 5 p.m. of the date falling 9 days before the next CSP meeting. CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@blhlaw.com)

Schedule of due dates for CSP materials, by 5:00 p.m.:
Tuesday, December 31, 2019 (for Friday, January 10, 2020 meeting)

Due dates for Materials for Council Meeting
All materials are due on or before 5 p.m. of the date falling 8 days before the next Council meeting. Council materials are to be sent to Mark Kellogg (mkellogg@fraserlawfirm.com).

Schedule of due dates for Council materials, by 5 p.m.:
Thursday, January 2, 2020 (for Friday, January 10, 2020 meeting)
### Officers of the Council for 2019-2020 Term

<table>
<thead>
<tr>
<th>Office</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Christopher A. Ballard</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>David P. Lucas</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>David L.J.M. Skidmore</td>
</tr>
<tr>
<td>Secretary</td>
<td>Mark E. Kellogg</td>
</tr>
<tr>
<td>Treasurer</td>
<td>James P. Spica</td>
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### Council Members for 2019-2020 Term

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year Elected to Current Term (partial, first or second full term)</th>
<th>Current Expires</th>
<th>Eligible after Current Term?</th>
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<tr>
<td>Anderton, James F.</td>
<td>2018 (1st term)</td>
<td>2020</td>
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<td>Jaconette, Hon. Michael L.</td>
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<td>2020</td>
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<td>Malviya, Raj A.</td>
<td>2017 (2nd term)</td>
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<td>Olson, Kurt A.</td>
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<td>Labe, Robert C.</td>
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<td>No</td>
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<td>Mayoras, Andrew W.</td>
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<td>2022</td>
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<td>Piwowarski, Nathan R.</td>
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<td>2022</td>
<td>No</td>
</tr>
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<td>Syed, Nazneen Hasan</td>
<td>2019 (2nd term)</td>
<td>2022</td>
<td>No</td>
</tr>
<tr>
<td>Silver, Kenneth</td>
<td>2019 (1st term)</td>
<td>2022</td>
<td>Yes</td>
</tr>
</tbody>
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Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan, Marguerite Munson Lentz
CSP Materials
Georgette David and Katie Lynwood – Legislative Development and Drafting Committee – 60 minutes

Re: Vehicle Transfer on Death

See attached:

- Memo from Georgette David and Katie Lynwood (Exhibit 1)
- Draft of proposed TOD statute (Exhibit 2)
- Draft of proposed/revised statutes for the Vehicle Code and Natural Resources and Environmental Protection Act (Exhibit 3)
MEMORANDUM

To: Legislative Development and Drafting Committee

From: Katie L. and Georgette D.

Dated: 4/25/2019

We were asked to review legislation from other states and decide if it seemed worthwhile to investigate whether the committee should consider presenting the issue of drafting vehicle transfer on death legislation to the council. We decided that this type of legislations is worthwhile and it seemed appropriate to begin an investigation and discussion.

1. Advantages and Disadvantages.

Some advantages.

A. Probate avoidance. The transfer on death designation lets beneficiaries receive assets at the time of the owner's death without going through probate. Transferring vehicles in Michigan under $60,000 do not require letters of authority and the probate factor is less applicable (although still a probate asset if a probate case is opened).

B. Ease of asset distribution. The designation also lets the owner of the asset specify the designated beneficiary, which helps the personal representative distribute the decedent's assets after death.

C. Retains owner control over asset. With TOD designation, the named beneficiary has no access to or control over the owner's asset as long as the person is alive.

D. Modifiable and revocable. TOD is not permanent and can either be revoked or modified.

E. Creditor Avoidance. TOD registration may allow for creditor avoidance, which can be an advantage in some instances, especially for lower socio-economic individuals who rely on a safe vehicle for access to employment.

F. Widely accepted and familiar transfer tool. Many people are familiar with transfer on death registrations and beneficiary designations for other common assets. Many other typically more valuable assets have TOD registration available including:

i. Individual Retirement accounts are TOD

ii. Life Insurance is TOD

iii. Brokerage and Bank Accounts can be TOD

iv. Real Property in some states can be TOD
2. **Some disadvantages and complications.**

   A. **Creditor Avoidance.**
   B. **Fraud tool.** Another opportunity for fraud upon the elderly, incapacitated and unsophisticated owner, since this type of legislation may allow for titles with TOD to be recorded without the knowledge, intent or consent of the owner/transferor.
   C. **Insurance complications.** Would the deceased owner’s insurance coverage remain in effect after death, even if the beneficiary has not re-titled the vehicle? What is the impact if the TOD beneficiary is not insurable and title cannot be transferred?

3. **Some Legislation Issues and Decisions.**

   We reviewed the legislation for 17 states and created a spreadsheet of relevant areas covered by the various statutes. A spreadsheet of the areas that need to be discussed and decisions that need to be made about this type of legislation is attached. Here is a list of some decisions that need to be made along with how Ohio and Indiana handle the issue in their statute, along with Georgette’s and Katie’s opinions.

   Ohio statute – Note that upon the death of a vehicle owner, the title may be transferred to a surviving spouse – does not include all heirs like Michigan. The value of the vehicle must be $65,000 or less.

   A. Where should this legislation be located? Under EPIC or Michigan’s Motor Vehicle Statute? Someplace else?
      a. **Ohio:** Located in their probate code; Title 21 of their code.
      c. **G & K:** Michigan does not have a General Transfer on Death Act, similar to Indiana’s. Most states include this under their motor vehicle code. We feel more comfortable drafting under EPIC and believe this type of legislation belongs under non-probate transfers, Article 6, Part II. We would reference this EPIC section in Michigan’s Motor Vehicle Code similar to how the updated Certificate of Trust legislation was placed in the Trust Code (MCL 700.7913), and the new COT statute is referenced in the Conveyances of Real Property code (MCL 565.431, MCL 565.434 and MCL 565.435).

   B. Should the legislation cover all motor vehicles as defined under the Motor Vehicle Code, **257.216 Vehicles subject to registration and certificate of title provisions; exceptions.** This statute is attached. Should it cover farm equipment; motor homes; recreational vehicles; boats and motorcycles?
a. **Ohio**: the statute applies to:

i. "motor vehicle" includes manufactured homes, mobile homes, recreational vehicles, and trailers and semitrailers whose weight exceeds four thousand pounds (ORC 4505.01)

ii. "watercraft" includes: vessel operated by machinery either permanently or temporarily affixed; sailboat other than a sailboard; inflatable, manually propelled vessel that is required by federal law to have a hull identification number meeting the requirements of the United States coast guard; canoe, kayak, pedalboat, or rowboat; any of the following multimodal craft being operated on waters in this state: (1) amphibious vehicle, (2) submersible, and (3) airboat or hovercraft; vessel that has been issued a certificate of documentation with a recreational endorsement under 46 C.F.R. 67. (ORC 1546.01)

iii. "Outboard motor"

b. **Indiana**: The applicability section, IC 32-17-14-2 states:

(e) Subject to IC 9-17-3-9(g), this chapter applies to a beneficiary designation for the transfer on death of a motor vehicle or a watercraft.

*Note, Title 9 is Indiana’s Motor Vehicle Code. Below are relevant provisions and a definition of “motor vehicle”.*

i. **IC 9-17-3-9 provides:**

(g) In general, IC 32-17-14 applies to a certificate of title designating a transfer on death beneficiary. However, a particular provision of IC 32-17-14 does not apply if it is inconsistent with the requirements of this section or IC 9-17-2-2(b).

IC 9-17-2-2 Application; contents

Sec. 2. (a) A person applying for a certificate of title for a vehicle must submit an application in the form and manner prescribed by the bureau and provide the following information:

(1) A full description of the vehicle, including the make, model, and year of manufacture of the vehicle.

(2) A statement of any liens, mortgages, or other encumbrances on the vehicle.

(3) The vehicle identification number or special identification number of the vehicle.

(4) The former title number, if applicable.

(5) The purchase or acquisition date.

(6) The name and Social Security number or federal identification number of the person.

(7) Any other information that the bureau requires, including a valid permit to transfer title issued under IC 6-1.1-7-10, if applicable.

(b) This subsection applies only to a person that receives an interest in a vehicle under IC 9-17-3-9. To obtain a certificate of title for the vehicle, the person must do the following:
(1) Surrender the certificate of title designating the person as a transfer on death beneficiary.

(2) Submit proof of the transferor's death.

(3) Submit an application for a certificate of title in the form and manner prescribed by the bureau.


ii. IC 9-13-2-105"Motor vehicle" Sec. 105. (a) "Motor vehicle" means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.

(b) "Motor vehicle", for purposes of IC 9-21, means:

(1) a vehicle that is self-propelled; or

(2) a vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motor vehicle", for purposes of IC 9-32, includes a semitrailer, trailer, or recreational vehicle.


iii. IC 9-13-2-198.5"Watercraft"

Sec. 198.5. "Watercraft" means a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, sailboat, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.


c. G & K: We feel the definition should be as broad. We're not sure at this point if it should apply to farm equipment, tugboats, etc. For legislative drafting purposes, it may need to be broader than we intend.

C. Should the legislation authorize the TOD language on the motor vehicle title? By attachment? On the Registration? Both?

a. Ohio: TOD language will be listed on the certificate of title.

b. Indiana: TOD language on the certificate of title, even at the time of purchase.

c. G & K: We agree the certificate of title is the most obvious place. If allowed at the time of purchase, we anticipate push back from other organizations, such as the automotive industry.

D. Should the legislation allow TOD registration, even if the vehicle is jointly titled?

a. Ohio: No. The vehicle must be solely owned. (ORC 2131.13(B))

b. Indiana: Yes. Multiple owners allowed.
c. **G & K**: Multiple owners should be allowed. Consider including in legislation that surviving joint owner has authority to change TOD beneficiary.

E. **Should the legislation allow the TOD beneficiary to be an LLC, Corporation, etc.**
   a. **Ohio**: Yes. TOD may designate one or more persons as the beneficiary. "Person" means an individual, corporation, organization or other legal entity. (ORC 2131.13(A)(3))
   b. **Indiana**: Yes. **Under IC 32-17-14-3 (2) "Beneficiary" means a person designated or entitled to receive property because of another person's death under a transfer on death transfer.**
   Under IC 32-17-14-3 (2) "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a trustee, a corporation, a limited liability company, or any other business entity.
   c. **G & K**: Yes. Note, we are not addressing whether the owner can be anything else than an individual or individuals because we need a living person to trigger the "transfer on death" event.
   d. **Michigan definitions:**
   "Beneficiary" includes, but is not limited to, the following:
   (i) In relation to a trust, a person that is a trust beneficiary as defined in section 7103.
   (ii) In relation to a charitable trust, a person that is entitled to enforce the trust.
   (iii) In relation to a beneficiary of a beneficiary designation, a person that is a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.
   (iv) In relation to a beneficiary designated in a governing instrument, a person that is a grantee of a deed, devisee, trust beneficiary, beneficiary of a beneficiary designation, donee, appointee, taker in default of a power of appointment, or person in whose favor a power of attorney or power held in an individual, fiduciary, or representative capacity is exercised.
   MCL700.1103(d)

"Organization" means a corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; or another legal or commercial entity.
MCL 700.1106(i)

"Person" means an individual or an organization.
MCL700.1106(o)
F. Should the legislation establish a value limit on the vehicle for TOD registration and if so, what is the limit and how is it determined?
   a. Ohio: No value limit for a TOD. Note: There is a $65,000 limit when the title is transferred via survivorship, to a surviving spouse.
   b. Indiana: None.
   c. G & K: No value limit for a TOD.

G. Should the legislation require that a lien be resolved before a TOD is added to a vehicle?
   Michigan law (MCL 257.236) allows an heir to transfer the Decedent’s vehicle using a Death Certificate. The Certification From the Heir to a Vehicle (see attached) requires that a lien is terminated first.
   a. Ohio: No. The statute provides that this Section of OH law does not limit the rights of any creditor of the owner against any TOD beneficiary. Note: the lien does not have to be resolved when the title is transferred to a surviving spouse.
   b. Indiana: No.
   c. G & K: Yes, the lien should be resolved. We compared this process to that of a lady bird deed for real property – the transfer of real property with a lady bird deed does not require that a mortgage be paid off first. One difference though is that the lender maintains their lien on the real property and the ability to foreclose. It would be more difficult for a lien holder of a vehicle to repossess a car because it is mobile. But since two of our chosen states have allowed for TOD with an existing lien, we could be persuaded otherwise.
Part 4 TOD Motor Vehicle or Personal Watercraft

MCL 700.6401 Definitions.

As used in this part:

(a) "Beneficiary or Transfer-on-death beneficiary" means a person or persons specified in a certificate of title of a motor vehicle or personal watercraft who will become the owner or owners of the motor vehicle or personal watercraft upon the death of the present owner of the motor vehicle or personal watercraft.

(b) "Designate or designation in beneficiary form" means to designate, or the designation of, a motor vehicle or personal watercraft in a certificate of title that indicates the individual who holds legal title to the motor vehicle or personal watercraft and the intention of that individual with respect to the transfer of ownership on his or her death by designating one or more persons as the beneficiary or beneficiaries who will become the owner or owners of the motor vehicle or personal watercraft upon the death of the individual who holds legal title.

(c) "Motor Vehicle" means a vehicle that has a certificate of title from the Michigan Secretary of State.

(d) "Personal Watercraft" has the same meaning as in MCL 324.80201(o).

(e) "Owner" means the individual who presently holds legal title to a motor vehicle or personal watercraft.

MCL 700.6402 Certificate of title in beneficiary form; sole or joint tenancy ownership.

(1) Only an individual or individuals whose certificate of title to a motor vehicle or personal watercraft that shows sole ownership by 1 individual or multiple ownership by 2 or more individuals with right of survivorship or as tenants by the entireties, rather than as tenants in common, may designate such title in beneficiary form.

(2) The designation in beneficiary form of a motor vehicle or personal watercraft shall be shown on the certificate of title by the words "transfer-on-death" or the abbreviation "TOD" after the name of the owner or owners of a motor vehicle or personal watercraft and before the name or names of the transfer-on-death beneficiary or beneficiaries.

(3) The designation of a transfer-on-death beneficiary or beneficiaries on a certificate of title has no effect on the ownership of a motor vehicle or personal watercraft until the death of all owners of the motor vehicle or personal watercraft and the acceptance of the transfer-on-death beneficiary or beneficiaries.

(4) The owner or owners of a motor vehicle or personal watercraft may unanimously cancel or change the designation of a transfer-on-death beneficiary or beneficiaries on a certificate of title at any time without the consent of the transfer-on-death beneficiary or beneficiaries by making an application for a new certificate of title.

(5) A transfer on death designation is not valid until a certificate of title in beneficiary form has been issued by the Michigan Secretary of State.
(1) The designation in beneficiary form of a motor vehicle or personal watercraft certificate of title is not required to be supported by consideration, and the certificate of title in which the designation is made is not required to be delivered to the transfer-on-death beneficiary or beneficiaries in order for the designation in beneficiary form to be effective.

(2) A certificate of title to a motor vehicle or personal watercraft may be designated in beneficiary form, regardless of the vehicle value.

MCL 700.6404 Ownership on death of owner.

(1) On death of a sole owner or the last to die of all multiple owners, ownership of the motor vehicle or personal watercraft designated in beneficiary form passes to the beneficiary or beneficiaries who survived all owners. On proof of death of all owners, and compliance with any applicable requirements of the Michigan Vehicle Code MCL 257.1 et seq., a certificate of title with a designation in beneficiary form may be retitled in the name of the beneficiary or beneficiaries who survived the death of all owners. Multiple beneficiaries surviving the death of all owners hold their interests with right of survivorship. If no beneficiary survives the death of all owners, the motor vehicle or personal watercraft belongs to the estate of the deceased sole owner subject to MCL 257.236 and use of the Certification from an Heir to a Vehicle form, or the estate of the last to die of all multiple owners.

(2) A transfer on death resulting from a certificate of title in beneficiary form is not a testamentary transfer.

(3) This part does not limit the rights of creditors of owners against beneficiaries under other laws of this state.
EXHIBIT 3
Under the Michigan Vehicle Code

Add the following statute:

MCL 257.236b Transfer-on Death of Motor Vehicle

Only an individual or individuals whose certificate of title to a motor vehicle that shows ownership as defined in MCL 700.6401(e) by 1 individual or multiple ownership by 2 or more individuals with right of survivorship or as tenants by the entireties, rather than as tenants in common, may designate such title in beneficiary form as provided for in MCL ________.

Under the Natural Resources and Environmental Protection Act

Modify the existing statute:

MCL 324.80312 Transfer-on Death of Personal Watercraft

(1) The secretary of state may issue a certificate of title for a watercraft to a person who complies with subsection (2) or (3) if the transfer of ownership of that watercraft is any of the following:

(a) By operation of law including, but not limited to, transfer-on-death as provided for in MCL ________, inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale.

(b) By sale to satisfy a storage or repair charge.

(c) By repossession upon default in performance of the terms of a security agreement.

(d) As provided in subsection (3).

(2) A person applying for a certificate of title under this section shall do all of the following:

(a) Surrender to the secretary of state either a valid certificate of title or the manufacturer's or importer's certificate for the watercraft or, if surrender of a certificate for that watercraft is not possible, present proof satisfactory to the secretary of state of the applicant's ownership of and right of possession to the watercraft.

(b) Pay the fee prescribed in section 80311.

(c) Present to the secretary of state an application for certificate of title.

(3) A person may petition the secretary of state for a certificate or certificates of title for 1 or more registered watercraft that the person does not own, if each of the following circumstances exists:

(a) The record owner of the registered watercraft dies without leaving other property that requires the procurement of letters under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.
(b) The total value of the deceased owner's interest in all watercraft subject to the petition for a certificate or certificates of title under this section is $100,000.00 or less.

(c) The person petitioning for a certificate or certificates of title under this section is 1 of the following, in the following order of priority:

(i) The surviving spouse of the watercraft owner.

(ii) A person entitled to the certificate or certificates of title in the order specified in section 2103 of the estates and protected individuals code, 1998 PA 386, MCL 700.2103.

(d) The person who petitions for a certificate of title under this section furnishes the secretary of state with proof satisfactory to the secretary of state of each of the following:

(i) The death of the owner of each watercraft for which a certificate of title is sought.

(ii) The petitioner's priority to receive the decedent's interest in each watercraft for which a certificate of title is sought.

(e) The person who petitions for a certificate of title under this section is a transfer-on-death beneficiary and furnishes the secretary of state with proof satisfactory to the secretary of state of each of the following:

(i) The death of the owner of each watercraft for which a certificate of title is sought.

(ii) The person is entitled to the certificate or certificates of title pursuant to MCL __________.

(4) A certification by the person, or agent of the person, to whom possession of the watercraft passed, that sets forth the facts entitling that person to possession and ownership of the watercraft, together with a copy of the journal entry, court order, instrument, or other document upon which the claim of possession and ownership is founded, are satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership, the applicant may apply to the secretary of state for a certificate of title and submit evidence that establishes that person's ownership interest in the watercraft. If the secretary of state finds the evidence sufficient, the secretary of state may issue to that person a certificate of title for that watercraft. The office of secretary of state shall examine the records in its possession and, if it determines from that examination that a lien is on the watercraft, and if the applicant fails to provide satisfactory evidence of extinction of the lien, the secretary of state shall furnish a certificate of title that contains a statement of the lien.

**Under EPIC**

**Modify the existing section**

MCL 700.1104 Definitions, environmental law to homestead allowance

(m) "Governing instrument" means a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary
form (TOD); vehicle and personal watercraft title registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.
Council Materials
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN
December 14, 2019

Agenda

I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates

V. Monthly Reports:
   A. Minutes of Prior Council Meeting (Mark Kellogg)—Attachment 1
   B. Chair’s Report
   C. Committee on Special Projects (Katie Lynwood)
   D. Legislative Analysis & Monitoring Committee (Dan Hilker)
   E. Legislative Development and Drafting Committee (Nathan Piwowarski)

VI. Other Committees Presenting Oral Reports
   A. Tax Committee (Rob Labe)

VII. Other Committees Presenting Written Reports Only

VIII. Other Business

IX. Adjournment

Next Probate Council Meeting: Friday, January 10, 2019, at 9:00 am
Meeting of the Council of the
Probate and Estate Planning Section of
the State Bar of Michigan

Friday, November 15, 2019 @ 9 a.m.
University Club of MSU

Minutes

I. Call to Order

The Chair of the Council, Christopher A. Ballard, called the meeting to order at 10:25 a.m.

II. Introduction of Guests

A. Meeting attendees introduced themselves.

B. The following officers and members of the Council were present:

Christopher A. Ballard, Chair
David P. Lucas, Chairperson Elect
David L.J.M. Skidmore, Vice Chairperson
Mark E. Kellogg, Secretary
James P. Spica, Treasurer
James F. Anderton
Michael G. Lichterman
Raj A. Malviya
Kurt A. Olson
Christine M. Savage
Christopher J. Caldwell
Kathleen M. Goetsch
Angela M. Hentkowski
Katie Lynwood
Melisa M.W. Mysliwiec
Neal Nusholtz
Robert C. Labe
Andrew W. Mayoras
Nathan R. Piwowarski

C. The following officers and members of Council were present and attended via remote access:

Hon. Michael Jaconnetter
Nazeen Hasan Syed

The Chair noted that a quorum was present, in person.

C. The following liaisons to the Council were present: Neal Nusholtz (Tax Section).
D. Others present:

Daniel S. Hilker
Warren Krueger
Chiara Matheson
Erin Mendez
Debbie Mitin
Warren Krueger
Michael D. Shelton
Dianne Huff (via remote access)

III. Excused Absences

The following officers and members of the Council were absent with excuse: Ken Silver, Raj A. Malviya and Richard Mills.

IV. Lobbyist Report—Public Affairs Associates

No representative from Public Affairs Associates was present at the meeting.

V. Monthly Reports:

A. Minutes of Prior Council Meeting (Mark Kellogg)—ATTACHMENT 1

Minutes of Prior Council Meeting (submitted by Mark E. Kellogg): it was moved and seconded to approve the Minutes of the October 11, 2019, meeting of the Council, as included in the meeting agenda materials and presented at the meeting.

B. Chair’s Report

1. Probate Section Demographics:

The Chair attended the State Bar Section Chairpersons Meeting. The State Bar handed out data on Section Demographics. As a Section we have the 2nd most members compared to all State Bar Sections. Currently have 3,186 Members, which is down from prior 2 years. The section demographics
reflect heavy membership is heavy with male members and the baby boomer generation. Correspondingly, the Section is not as well represented among woman and the millennial generation. This is not unique to the Probate and Estate Planning Section.

2. Follow up on Meeting Days for 2020-2021: Friday/Saturday

The Chair initiated further discussion regarding meeting dates. It was noted that we are losing participants that are unable to make it on Friday due to job requirements. Further comments were expressed that Friday meetings may be better for the target demographics noted above. The proposal to alternate meeting days was also presented. An additional comment was made regarding location of meetings. Also, noted was which day impacts the quality and institutional knowledge related to participants. A council vote was taken to determine the preference for meeting days. Saturday was eliminated as the least favorable option. The vote for Fridays and alternating Fridays and Saturdays was as follows:

- Fridays – 7
- Alternating Fridays and Saturdays – 13

It was determined that the Council would schedule meetings on alternating months on Fridays and Saturdays beginning the Sections next fiscal year.

C. Committee on Special Projects (Katie Lynwood)

Warren Kruger presented on the fiduciary exception to attorney client privilege.

It was determined that the committee will draft a bright line rule on Fiduciary Exception consistent with current case law to present to Council.

Mike Shelton presented on House Bill 4260 regarding amendments to Section MCL 750.174a of the Michigan Penal Code (related to vulnerable adults).
D. Legislative Analysis & Monitoring Committee (Dan Hilker)—ATTACHMENT 2

Dan presented on HB 4922 regarding the repeal of the Michigan Estate Tax. The Committee recommended that the Council support the following Public Policy Position in support of HB 4922:

The Section supports the repeal of the Michigan Estate Tax Act. The current law has no practical effect. The Michigan Estate Tax Act depends upon the existence of a federal estate tax credit for state estate taxes. The credit was repealed in 2001 and is unlikely to be re-enacted by Congress. Passes with a vote of 15 in favor, 3 opposed.

E. Legislative Development and Drafting Committee (Nathan Piwowarski)

The committee continues to review and work on the following:

- Motor Vehicle Transfer on Death Act
- MCL 700.5426(4)

VI. Other Committees Presenting Oral Reports

A. Amicus Committee (Andy Mayoras)—ATTACHMENT 3

Application for Amicus Brief related to Schaaf v. Forbes. Deals with the issue whether a Trust can hold property as joint tenants with rights of survivorship. The majority opinion reasoned that the common law prohibition on trusts and other entities that do not "die" owning property as a joint tenant with rights of survivorship was supplanted by MCL 554.44 and MCL 554.45. The Committee recommends an amicus brief on the position that a trust cannot hold property as joint tenants with rights of survivorship.

The Committee recommendation was approved by a vote of 18-0.

The committee does not recommend that the amicus brief deal with the issue of jurisdiction of the probate court reflected in the case.
The Committee recommendation was approved by a vote of 18-0.

The Committee recommends that the law firm of Foster Swift (Trevor Weston) prepare the brief on behalf of the Section with a $15,000 budget. The recommendation of the Committee was approved 18-0.

Further the Committee recommends that we co-author the brief with the State Bar of Michigan Real Estate Section. The recommendation to co-author the brief was rejected by a vote of the Council by a vote of 2 affirmative and 16 opposed.

B. Tax Committee (Michael Shelton)—ATTACHMENT 4

Tax Committee recommends that Council support HB 4171 which would amend the Income Tax Act to allow certain widows and widowers to claim certain tax deductions allowed in the act that would have applied to late spouses if they were still alive. The vote of the Council to take a public policy position in support of HB 4171 was approved by a vote of 17-0.

Michael Shelton prepared a Tax Nugget on HB 5443 and HB 4922.

VII. Other Committees Presenting Written Reports Only

A. Tax Section Liaison (Neal Nuscholtz)—ATTACHMENT 5

III. Other Business

No other business came before the Council.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:40 a.m.

Respectfully submitted,

Mark E. Kellogg, Secretary

Next Probate Council Meeting: Saturday, December 14, 2019, at 9 a.m.