Agendas and Attachments for

• Meeting of the Committee on Special Projects (CSP);
• Meeting of the Council of the Probate and Estate Planning Section

Saturday, December 19, 2015
9:00 am
University Club
3435 Forest Road
Lansing, Michigan 48910
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

December 19, 2015
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the University Club, 3435 Forest Road, Lansing, Michigan 48910, on Saturday, December 19, 2015. 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.

Marguerite Munson Lentz, Secretary

Bodman PLC
1901 St. Antoine Street
6th Floor at Ford Field
Detroit, Michigan 48226
Phone: (313) 393-7589
Fax: (313) 393-7579
Email: mlentz@bodmanlaw.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 10:15 a.m., at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

Meeting Schedule for 2015-2016

January 16, 2016
February 13, 2016
March 12, 2016
April 16, 2016
June 4, 2016
September 10, 2016 (Annual Section Meeting)
CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Schedule of 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 David P. Lucas, Chair of CSP (dlucas@vcflaw.com).

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

January 7, 2016
February 4, 2016
March 3, 2016
April 7, 2016
May 26, 2016
September 1, 2016 (Annual Section Meeting)

Schedule of Dates for Materials for Council Meeting

All materials are due on or before 11:00 p.m. of the Friday falling 8 days before the next Council meeting. Council materials are to be sent to Meg Lentz, Secretary (mlentz@bodmanlaw.com).

Schedule of dates for Council materials, by 11:00 p.m.:

January 8, 2016
February 5, 2016
March 4, 2016
April 8, 2016
May 27, 2016
September 2, 2016
## Officers for 2015-2016 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Shaheen I. Imami</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>James B. Steward</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Marlaine C. Teahan</td>
</tr>
<tr>
<td>Secretary</td>
<td>Marguerite Munson Lentz</td>
</tr>
<tr>
<td>Treasurer</td>
<td>Christopher A. Ballard</td>
</tr>
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## Council Members for 2015-2016 Term

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<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>
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<tbody>
<tr>
<td>Allan, Susan M.</td>
<td>2010 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Brigman, Constance L.</td>
<td>2010 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Mills, Richard C.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; partial term)</td>
<td>2016</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Marquardt, Michele C.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>New, Lorraine F.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>Vernon, Geoffrey R.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>Bearup, George F.</td>
<td>2014 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2014 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Kellogg, Mark E.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Malviya, Raj A.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Lichterman, Michael G.</td>
<td>2015 (1&lt;sup&gt;st&lt;/sup&gt; partial term)</td>
<td>2017</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2018</td>
<td>No</td>
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<tr>
<td>Lucas, David P.</td>
<td>2015 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2018</td>
<td>No</td>
</tr>
<tr>
<td>Skidmore, David L.J.M.</td>
<td>2015 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2018</td>
<td>No</td>
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<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
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<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lynwood, Katie</td>
<td>2015 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
Ex Officio Members

John E. Bos
Robert D. Brower, Jr.
Douglas G. Chalgian
George W. Gregory
Henry M. Grix
Mark K. Harder
Hon. Philip E. Harter
Dirk C. Hoffius
Brian V. Howe
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
Thomas F. Sweeney
Fredric A. Sytsma
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman
Everett R. Zack
Michael W. Irish Award

Mission: To honor a practitioner (supported by recommendations from his or her peers) whose contributions to the Probate and Estate Planning Section of the State Bar of Michigan and whose service to his or her community reflect the high standards of professionalism and selflessness exemplified by Michael W. Irish.

Recipients
1995  Joe C. Foster, Jr.
1996  John H. Martin
1997  Harold A. Draper
1998  Douglas J. Rasmussen
1999  James A. Kendall
2000  NO AWARD PRESENTED
2001  John E. Bos
2002  Everett R. Zack
2003  NO AWARD PRESENTED
2004  Brian V. Howe
2005  NO AWARD PRESENTED
2006  Hon. Phillip E. Harter
2007  George Cooney (April 3, 2007)
2008  Susan A. Westerman
2009  Russell M. Paquette (posthumously)
2010  Fredric A. Sytsma
2011  John A. Scott
2012  NO AWARD PRESENTED
2013  Michael J. McClory
2014  Sebastian V. Grassi, Jr.

The Michael W. Irish Award was first presented in 1995 in honor of the late Michael W. Irish. The award reflects the professionalism and community leadership of its namesake.
The George A. Cooney Society

What: This award is presented by the Institute of Continuing Legal Education and the Probate & Estate Planning Section of the State Bar of Michigan to a Michigan estate planning attorney for outstanding contributions to continuing legal education in Michigan.

Who: As of November 2015, there have been five recipients:

- John E. Bos (2007)
- Everett R. Zack (2009)
- John H. Martin (2011)
- John A. Scott (2013)
- Phillip E. Harter (2015)

When: This award is not necessarily given every year. So far we’ve given awards in 2007, 2009, 2011, 2013, and 2015.

Where: The award is presented at the Annual Probate & Estate Planning Institute. ICLE will invite the recipient to attend the Institute, and one of the Section officers will present the individual award at the start of the Institute.

Why: With George Cooney’s passing, the State Bar of Michigan lost one of its premier estate planning and elder law attorneys. The Section and ICLE have chosen to jointly create the George A. Cooney Society to recognize a select group of lawyers who epitomize George's dedication to his fellow attorneys and in recognition of his long-term, significant contributions to continuing legal education in Michigan.

How: ICLE will nominate candidates based upon the specific criteria contained in the Guidelines for Selection and will send a nominating letter to the Section for approval by the Executive Board. The Section’s leadership and at-large members may also recommend candidates to ICLE for consideration.

Guidelines for Selection:

- Significant CLE contributions to probate and estate planning over a substantial period of time.
- Outstanding quality of contributions.
- A wide range of contributions, e.g. multiple contributions for the following: speaker, author, editor, advisory board member, curriculum advisor, creating case study scenarios, preparing Top Tips, How-To Kits or other online resources, etc.
- Generous mentorship and assistance to colleagues with their probate and estate planning career development as well as activities and active involvement with the Probate & Estate Planning Section of the State Bar of Michigan.
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 engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

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

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

Marguerite Munson Lentz, Chair
Marlaine C. Teahan
Christopher A. Ballard

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

Nancy H. Welber, Chair
Christopher A. Ballard
John Roy Castillo
David P. Lucas

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

James B. Steward

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

Christopher J. Caldwell, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Richard C. Mills
Nazneen H. Syed

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

Constance L. Brigman, Chair
Kathleen M. Goetsch (Liaison to Solutions on Self-help Task Force)
Katie Lynwood
Michael J. McClory
Melisa M. W. Mysliwiec
Neal Nusholtz
Jessica M. Schilling
Rebecca A. Schnelz
Nicholas Vontroba
Nancy H. Welber

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

David P. Lucas, 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
Patricia M. Ouellette
Nicholas A. Reister
Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section’s web site, the Section listserv, and the ICLE Online Community site, 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
Nancy L. Little
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

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 relying on non-lawyers

Katie Lynwood, 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 statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

Rhonda M. Clark-Kreuer, Chair
Katie Lynwood, Vice Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Kurt A. Olson
James B. Steward
Paul 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 and to further achievement of the Section’s legislative priorities, as well as to study legislation and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Michele C. Marquardt, Chair
Christopher A. Ballard
Ryan Bourjaily
Georgette E. David
Mark E. Kellogg
Jonathon Nahhat
Harold G. Schuitmaker

Legislation Development & Drafting Committee
Mission: To review, revise, communicate and recommend 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.

Geoffrey R. Vernon, Chair
Susan M. Allan
Howard H. Collens
Georgette David
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Sueann Mitchell
Kurt A. Olson
Nathan Piwowarski
James P. Spica
Robert P. Tiplady, II

Litigation, Proceedings, and Forms 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

David L.J.M. Skidmore, Chair
James F. (“JV”) Anderton
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Shaheen I. Imami
Hon. Michael L. Jaconette
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup and to Guardianship, Conservatorship, and Protective Proceedings Workgroup)

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

Raj A. Malviya, Chair
David Borst
Ryan Bourjaily
Christopher J. Caldwell
Nicholas R. Dekker
Daniel A. Kosmowski
Robert O’Reilly
Nicholas A. Reister
Theresa Rose
Joseph J. Viviano
Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council

Mark K. Harder, Chair
Thomas F. Sweeney
Amy N. Morrissey

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

James B. Steward, Chair

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

Marlaine C. Teahan

Real Estate Committee
Mission: To 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
George F. Bearup
John Roy Castillo
David S. Fry
J. David Kerr
Michael G. Lichterman
David P. Lucas
Melisa M. W. Mysliwiec
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

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

Lorraine F. New, Chair
Robert B. Labe
Marguerite Munson Lentz
Geoffrey R. Vernon
Nancy H. Welber
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

Amy Rombyer Tripp

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

Susan M. Allan

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*

Constance L. Brigman  
(Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Michele C. Marquardt  
(Estates & Trusts Workgroup)
Rebecca A. Schnelz  
(Mental Health/Commitment Workgroup and Guardianship, Conservatorship, and Protective Proceedings 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*

Richard J. Siriani

**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
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<tr>
<th>Action Pending</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>
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<tbody>
<tr>
<td>Fiduciary Access to Digital Assets (HB5366-5370)</td>
<td>Bylaw Update</td>
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<td>PR access to online accts (SB 293)</td>
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<td>Funeral Representative (HB 5162/SB 731)</td>
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| Priority Items                                                                |                                   | -SCAO Meetings*                |                             |                                 |
| Domestic Asset Protection Trusts                                             |                                   |                                |                             |                                 |
| ILIT Trustee Liability Protection                                             |                                   |                                |                             |                                 |
| Artificial Reproductive Technology                                            |                                   |                                |                             |                                 |
| Charitable Trust                                                              |                                   |                                |                             |                                 |
| Probate Appeals                                                               |                                   |                                |                             |                                 |

| Secondary Priority                                                             |                                   |                                | -Inventory Lawyer           | -Opportunities with ICLE      |
| EPIC/MTC Updates                                                              |                                   |                                |                             |                                 |
| Directed Investment Trusts                                                    |                                   |                                |                             |                                 |
| TBE Trusts                                                                    |                                   |                                |                             |                                 |
| ADR Revision                                                                  |                                   |                                |                             |                                 |
| Property tax on trust property                                                |                                   |                                |                             |                                 |
| Uniform Real Property TOD Act                                                 |                                   |                                |                             |                                 |

| Priority To Be Determined                                                     |                                   | -Budget Reporting              | -Probate Court Opinion Bank |                                 |
| Dignified Death (Family Consent) Act                                          |                                   |                                |                             |                                 |
| Pooled income trust exclusion                                                 |                                   |                                |                             |                                 |
| Neglect Legislation                                                           |                                   |                                |                             |                                 |
| Foreign Guardians                                                             |                                   |                                |                             |                                 |
| Inheritance Tax                                                               |                                   |                                |                             |                                 |
| Estate Recovery                                                               |                                   |                                |                             |                                 |
| PRE after death & nursing home                                                |                                   |                                |                             |                                 |

*ongoing
CSP MATERIALS
Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
December 19, 2015
9:00 a.m.

1   Artificial Reproductive Technology Ad Hoc Committee - Nancy Welber

   1.1  Exhibit A - consent form (captioned “Proposed Addition to Michigan Health Code”)

   1.2  Exhibit B - proposed amendments to EPIC (captioned “Proposed Amendments to EPIC, Based on Uniform Probate Code 2008 & Later Revisions

2   Legislation Development & Drafting Committee – Geoffrey R. Vernon

   2.1  Exhibit C - proposed Tenancy By the Entirety Property (trusts) legislation (MCL 700.7512)
Exhibit A

consent form
Proposed Addition to Michigan Health Code

MICHIGAN HEALTH CODE

§ _____ Assisted reproduction; Form required to be provided to individual to establish parental intent for purposes of the Estates and Protected Individuals Code § 700.---; contents of form.

(1) Section 700.--- of the Estates and Protected Individuals Code provides that a birth mother who is not a gestational carrier is automatically the mother of the child. The form required by this section is intended to assist in determining whether, in the case of posthumous conception, any other individual is the other parent of the child. An individual need not be the donor of genetic material to be the other parent of the child.

(2) This section and the form required by this section only apply to cases of assisted reproduction in which the prospective birth mother will not be a gestational carrier as defined in MCL § 700.---.

(3) Any entity that, on or after the effective date of this section, receives human genetic material that may be used for conception must make available a form that can be used by an individual, other than the prospective birth mother, to signify the individual’s consent to assisted reproduction by the prospective birth mother with intent to be treated as the other parent of the child for purposes of Section 700.--- of the Estates and Protected Individuals Code. The execution of the form is not mandatory, and the form is not the exclusive means of expressing an individual’s intent. The entity should retain either the original form or an electronic version of the form and provide a copy of the signed form to the individual and the prospective birth mother. The form shall include advisements in substantially the following form:

You may wish to consult with a lawyer before signing this form. This form is designed only to clarify your intent; signing this form is not mandatory.
IF THE TRANSFER OF EGGS, SPERM, OR EMBRYOS FOR PURPOSES OF ASSISTED REPRODUCTION BY (INSERT NAME OF PROSPECTIVE BIRTH MOTHER) OCCURS AFTER YOUR DEATH, DO YOU INTEND TO BE TREATED AS THE CHILD’S OTHER PARENT?

PLEASE SELECT ONLY ONE, THEN SIGN AND DATE BELOW:

_____ Yes
_____ No

Signed: ____________________ Dated: ____________________

- In case of a multiple birth, your response applies to all children born alive from the transfer that resulted in the birth.

- You can amend or revoke your consent at any time before the transfer of eggs, sperm, or embryos.

- Any future amendment or revocation you wish to make must be in a written document that you sign and date. A designation, amendment, or revocation may not be changed or revoked orally.
Add new subsection to MCL 700.3715.

(gg) In deciding how and when to distribute all or part of a decedent’s estate, the decedent’s personal representative:

(i) may take into account whether:

(a) the personal representative has received notice or has knowledge of an intention to use genetic material to create a child after the decedent’s death; and

(b) the posthumous birth of a child of assisted reproduction may have an effect on the distribution of the decedent’s estate.

(ii) shall incur no liability for making a distribution of all or part of a decedent’s estate if the personal representative made a distribution before receiving notice or acquiring knowledge of an intention to use genetic material to create a child after the decedent’s death.

COMMENT

This section is based on Cal. Prob. Code§ 249.5 and 249.6. In most cases when an intestate decedent is survived by a surviving spouse, the surviving spouse will inherit all or almost all of the decedent’s estate. Consequently, even when there is a posthumous conception by the surviving spouse, the child will not inherit any portion of the decedent’s estate even if the child is treated under 2-120 or 2-121 as the child of the deceased spouse.
Add new subsection to MCL 700.7821.

(4) In deciding how and when to distribute all or part of a trust estate, the trustee:

(a) may take into account whether:

   (i) the trustee has received notice or has knowledge of an intention to use genetic material to create a child after the trust distribution date; and

   (ii) the posthumous birth of a child of assisted reproduction may have an effect on the distribution of the trust estate.

(b) shall incur no liability for making a distribution of all or part of a trust estate if the trustee made a distribution before receiving notice or acquiring knowledge of an intention to use genetic material to create a child after the trust distribution date.

COMMENT

This new subsection is a companion provision to MCL 700.3715(gg).
Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
December 19, 2015
9:00 a.m.

Exhibit B

proposed amendments to EPIC
# Proposed Amendments to EPIC, Based on Uniform Probate Code 2008 & Later Revisions

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**General Provisions, Definitions and Probate Jurisdiction of Court**

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**Intestacy, Wills, and Donative Transfers**

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UNIFORM PROBATE CODE

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

PART 2. DEFINITIONS

AMEND MCL 700.1107 TO READ. SECTION 1-201. GENERAL DEFINITIONS—RECORD THROUGH TRUSTEE. AS USED IN THIS ACT, Subject to additional definitions contained in the subsequent [articles] that are applicable to specific [articles,] [parts,] or sections and unless the context otherwise requires, in this [code],

(a 44) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(f 45) “Sign” means, with present intent to authenticate or adopt a record other than a will:

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

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

UPC PREFATORY NOTE

The Uniform Probate Code was originally promulgated in 1969.

1990 Revisions. In 1990, Article II underwent significant revision. The 1990 revisions were the culmination of a systematic study of the Code conducted by the Joint Editorial Board for the Uniform Probate Code (now named the Joint Editorial Board for Uniform Trust and Estate Acts) and a special Drafting Committee to Revise Article II. The 1990 revisions concentrated on Article II, which is the article that covers the substantive law of intestate succession; spouse’s elective share; omitted spouse and children; probate exemptions and allowances; execution and revocation of wills; will contracts; rules of construction; disclaimers; the effect of homicide and divorce on succession rights; and the rule against perpetuities and honorary trusts.

Themes of the 1990 Revisions. In the twenty or so years between the original promulgation of the Code and 1990, several developments occurred that prompted the systematic round of review. Four themes were sounded: (1) the decline of formalism in favor of intent-serving policies; (2) the recognition that will substitutes and other inter-vivos transfers have so proliferated that they now constitute a major, if not the major, form of wealth transmission; (3) the advent of the multiple-marriage society, resulting in a significant fraction of the population being married more than once and having stepchildren and children by previous marriages and (4) the acceptance of a partnership or marital-sharing theory of marriage.

The 1990 revisions responded to these themes. The multiple-marriage society and the partnership/marital-sharing theory were reflected in the revised elective-share provisions of Part 2. As the General Comment to Part 2 explained, the revised elective share granted the surviving spouse a right of election that implemented the partnership/marital-sharing theory of marriage.

The children-of-previous-marriages and stepchildren phenomena were reflected most prominently in the revised rules on the spouse’s share in intestacy.

The proliferation of will substitutes and other inter-vivos transfers was recognized, mainly, in measures tending to bring the law of probate and nonprobate transfers into greater unison. One aspect of this tendency was reflected in the restructuring of the rules of construction. Rules of construction are rules that supply presumptive meaning to dispositive and similar provisions of governing instruments. See Restatement (Third) of Property: Wills and Other Donative Transfers § 11.3 (2003). Part 6 of the pre-1990 Code contained several rules of construction that applied only to wills. Some of those rules of construction appropriately applied only to wills; provisions relating to lapse, testamentary exercise of a power of appointment, and ademption of a devise by satisfaction exemplify such rules of construction. Other rules of construction, however, properly apply to all governing instruments, not just wills; the provision relating to inclusion of adopted persons in class gift language exemplifies this type of rule of construction. The 1990 revisions divided pre-1990 Part 6 into two parts – Part 6, containing rules of construction for wills only; and Part 7, containing rules of construction for wills and
other governing instruments. A few new rules of construction were also added.

In addition to separating the rules of construction into two parts, and adding new rules of construction, the revocation-upon-divorce provision (Section 2-804) was substantially revised so that divorce not only revokes testamentary devises, but also nonprobate beneficiary designations, in favor of the former spouse. Another feature of the 1990 revisions was a new section (Section 2-503) that brought the execution formalities for wills more into line with those for nonprobate transfers.

2008 Revisions. In 2008, another round of revisions was adopted. The principal features of the 2008 revisions are summarized as follows:

Inflation Adjustments. Between 1990 and 2008, the Consumer Price Index rose by somewhat more than 50 percent. The 2008 revisions raised the dollar amounts by 50 percent in Article II Sections 2-102, 2-102A, 2-201, 2-402, 2-403, and 2-405, and added a new cost of living adjustment section — Section 1-109.

Intestacy. Part 1 on intestacy was divided into two subparts: Subpart 1 on general rules of intestacy and subpart 2 on parent-child relationships. For details, see the General Comment to Part 1.

Execution of Wills. Section 2-502 was amended to allow notarized wills as an alternative to wills that are attested by two witnesses. That amendment necessitated minor revisions to Section 2-504 on self-proved wills and to Section 3-406 on the effect of notarized wills in contested cases.

Class Gifts. Section 2-705 on class gifts was revised in a variety of ways, as explained in the revised Comment to that section.

Reformation and Modification. New Sections 2-805 and 2-806 brought the reformation and modification sections now contained in the Uniform Trust Code into the Uniform Probate Code.

Historical Note. This Prefatory Note was revised in 2008.

UPC Legislative Note: References to spouse or marriage appear throughout Article II. States that recognize civil unions, domestic partnerships, or similar relationships between unmarried individuals should add appropriate language wherever such references or similar references appear.

States that do not recognize such relationships between unmarried individuals, or marriages between same-sex partners, are urged to consider whether to recognize the spousal-type rights that partners acquired under the law of another jurisdiction in which the relationship was formed but who die domiciled in this state. Doing so would not be the equivalent of recognizing such relationships in this state but simply allowing those who move to and die in this state to retain the rights they previously acquired elsewhere. See Christine A. Hammerle, Note,
PART 1. INTESTATE SUCCESSION

UPC GENERAL COMMENT

The pre-1990 Code’s basic pattern of intestate succession, contained in Part 1, was designed to provide suitable rules for the person of modest means who relies on the estate plan provided by law. The 1990 and 2008 revisions were intended to further that purpose, by fine tuning the various sections and bringing them into line with developing public policy and family relationships.

1990 Revisions. The principal features of the 1990 revisions were:

1. So-called negative wills were authorized, under which the decedent who dies intestate, in whole or in part, can by will disinherit a particular heir.

2. A surviving spouse was granted the whole of the intestate estate, if the decedent left no surviving descendants and no parents or if the decedent’s surviving descendants are also descendants of the surviving spouse and the surviving spouse has no descendants who are not descendants of the decedent. The surviving spouse receives the first $200,000 plus three-fourths of the balance if the decedent left no surviving descendants but a surviving parent. The surviving spouse receives the first $150,000 plus one-half of the balance of the intestate estate, if the decedent’s surviving descendants are also descendants of the surviving spouse but the surviving spouse has one or more other descendants. The surviving spouse receives the first $100,000 plus one-half of the balance of the intestate estate, if the decedent has one or more surviving descendants who are not descendants of the surviving spouse. (To adjust for inflation, these dollar figures and other dollar figures in Article II were increased by fifty percent in 2008.)

3. A system of representation called per capita at each generation was adopted as a means of more faithfully carrying out the underlying premise of the pre-1990 UPC system of representation. Under the per-capita-at-each-generation system, all grandchildren (whose parent has predeceased the intestate) receive equal shares.

4. Although only a modest revision of the section dealing with the status of adopted children and children born of unmarried parents was then made, the question was under continuing review and it was anticipated that further revisions would be forthcoming in the future.

5. The section on advancements was revised so that it applies to partially intestate estates as well as to wholly intestate estates.

2008 Revisions. As noted in Item 4 above, it was recognized in 1990 that further revisions on matters of status were needed. The 2008 revisions fulfilled that need. Specifically, the 2008 revisions contained the following principal features:

Part 1 Divided into Two Subparts. Part 1 was divided into two subparts: Subpart 1 on general rules of intestacy and Subpart 2 on parent-child relationships.
Subpart 1: General Rules of Intestacy. Subpart 1 contains Sections 2-101 (unchanged), 2-102 (dollar figures adjusted for inflation), 2-103 (restyled and amended to grant intestacy rights to certain stepchildren as a last resort before the intestate estate escheats to the state), 2-104 (amended to clarify the requirement of survival by 120 hours as it applies to heirs who are born before the intestate’s death and those who are in gestation at the intestate’s death), 2-105 (unchanged), 2-106 (unchanged), 2-107 (unchanged), 2-108 (deleted and matter dealing with heirs in gestation at the intestate’s death relocated to 2-104), 2-109 (unchanged), 2-110 (unchanged), 2-111 (unchanged), 2-112 (unchanged), 2-113 (unchanged), and 2-114 (deleted and replaced with a new section addressing situations in which a parent is barred from inheriting).

Subpart 2: Parent-Child Relationships. New Subpart 2 contains several new or substantially revised sections. New Section 2-115 contains definitions of terms that are used in Subpart 2. New Section 2-116 is an umbrella section declaring that, except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this subpart 2, the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession. Section 2-117 continues the rule that, except as otherwise provided in Sections 2-120 and 2-121, a parent-child relationship exists between a child and the child’s genetic parents, regardless of their marital status. Regarding adopted children, Section 2-118 continues the rule that adoption establishes a parent-child relationship between the adoptive parents and the adoptee for purposes of intestacy. Section 2-119 addresses the extent to which an adoption severs the parent-child relationship with the adoptee’s genetic parents. New Sections 2-120 and 2-121 turn to various parent-child relationships resulting from assisted reproductive technologies in forming families. As one researcher reported: “Roughly 10 to 15 percent of all adults experience some form of infertility.” Debora L. Spar, The Baby Business 31 (2006). Infertility, coupled with the desire of unmarried individuals to have children, have led to increased questions concerning children of assisted reproduction. Sections 2-120 and 2-121 address inheritance rights in cases of children of assisted reproduction, whether the birth mother is the one who parents the child or is a gestational carrier who bears the child for an intended parent or intended parents. As two authors have noted: “Parents, whether they are in a married or unmarried union with another, whether they are a single parent, whether they procreate by sexual intercourse or by assisted reproductive technology, are entitled to the respect the law gives to family choice.” Charles P. Kindregan, Jr. & Maureen McBrien, Assisted Reproductive Technology: A Lawyer’s Guide to Emerging Law and Science 6-7 (2006). The final section, new Section 2-122, provides that nothing contained in Subpart 2 should be construed as affecting application of the judicial doctrine of equitable adoption.

Historical Note. This General Comment was revised in 2008.
Add Subpart 1. General Rules

AMEND MCL 700.2103 TO READ. SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.

(a) Any part of the intestate estate not passing to a decedent’s surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

   (1) to the decedent’s descendants by representation;

   (2) if there is no surviving descendant, to the decedent’s parents equally if both survive, or to the surviving parent if only one survives;

   (3) if there is no surviving descendant or parent, to the descendants of the decedent’s parents or either of them by representation;

   (4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

      (A) half to the decedent’s paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent’s paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

      (B) half to the decedent’s maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the
descendants of the decedent’s maternal grandparents or either of them if both are deceased, the descendants taking by representation;

(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent’s relatives on the side with one or more surviving members in the manner described in paragraph (4).

(b) If there is no taker under subsection (a), but the decedent has:

(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse’s descendants by representation; or

(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.

UPC Comment

This section provides for inheritance by descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents; in line with modern policy, it eliminates more remote relatives tracing through great-grandparents.

1990 Revisions. The 1990 revisions were stylistic and clarifying, not substantive. The pre-1990 version of this section contained the phrase “if they are all of the same degree of kinship to the decedent they take equally (etc.).” That language was removed. It was unnecessary and confusing because the system of representation in Section 2-106 gives equal shares if the decedent’s descendants are all of the same degree of kinship to the decedent.

The word “descendants” replaced the word “issue” in this section and throughout the 1990 revisions of Article II. The term issue is a term of art having a biological connotation.
Now that inheritance rights, in certain cases, are extended to adopted children, the term descendants is a more appropriate term.

**2008 Revisions.** In addition to making a few stylistic changes, which were not intended to change meaning, the 2008 revisions divided this section into two subsections. New subsection (b) grants inheritance rights to descendants of the intestate’s deceased spouse(s) who are not also descendants of the intestate. The term deceased spouse refers to an individual to whom the intestate was married at the individual’s death.

**Historical Note.** This Comment was revised in 2008.
AMEND MCL 700.2104 TO READ AND REPEAL MCL 700.2108.

SECTION 2-104. REQUIREMENT OF SURVIVAL BY 120 HOURS; INDIVIDUAL IN GESTATION.

(a) [Requirement of Survival by 120 Hours; Individual in Gestation.] For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (b), the following rules apply:

(1) An individual born before a decedent’s death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before a decedent’s death survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.

(2) An individual in gestation at a decedent’s death is deemed to be living at the decedent’s death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent’s death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

(b) [Section Inapplicable If Estate Would Pass to State.] This section does not apply if its application would cause the estate to pass to the state under Section 2-105.

UPC Comment
This section avoids multiple administrations and in some instances prevents the property from passing to persons not desired by the decedent. See Halbach & Waggoner, The UPC’s New Survivorship and Antilapse Provisions, 55 Alb. L. Rev. 1091, 1094-1099 (1992). The 120 hour period will not delay the administration of a decedent’s estate because Sections 3-302 and 3-307 prevent informal issuance of letters for a period of five days from death. Subsection (b) prevents the survivorship requirement from defeating inheritance by the last eligible relative of the intestate who survives for any period.

In the case of a surviving spouse who survives the 120-hour period, the 120-hour requirement of survivorship does not disqualify the spouse’s intestate share for the federal estate-tax marital deduction. See Int. Rev. Code § 2056(b)(3).

2008 Revisions. In 2008, this section was reorganized, revised, and combined with former Section 2-108. What was contained in former Section 2-104 now appears as subsections (a)(1) and (b). What was contained in former Section 2-108 now appears as subsection (a)(2). Subsections (a)(1) and (a)(2) now distinguish between an individual who was born before the decedent’s death and an individual who was in gestation at the decedent’s death. With respect to an individual who was born before the decedent’s death, it must be established by clear and convincing evidence that the individual survived the decedent by 120 hours. For a comparable provision applicable to wills and other governing instruments, see Section 2-702. With respect to an individual who was in gestation at the decedent’s death, it must be established by clear and convincing evidence that the individual lived for 120 hours after birth. For a comparable provision applicable to wills and other governing instruments, see Section 2-705(g).

Historical Note. This Comment was revised in 2008.
AMEND MCL 700.2108 TO READ. SECTION 2-108. [RESERVED.]

Legislative Note: Section 2-108 is reserved for possible future use. The 2008 amendments moved the content of this section to Section 2-104(a)(2).

MCL 700.2108 Afterborn heirs.

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.
AMEND MCL 700.2114 TO READ: PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

MOVED FROM MCL 700.2114(4) AND (3)

(1) Inheritance from or through a child by either genetic parent or his or her kindred is precluded unless that genetic parent has openly treated the child as his or hers, and has not refused to support the child.

(2) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

EPIC Committee Comment

The EPIC Committee did not adopt the 2008 UPC section on this topic. The 2008 UPC reads as follows:

UPC 2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent’s parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) the child died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of
nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

2008 Revisions. In 2008, this section replaced former section 2-114(c), which provided: “(c) inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child.”

Subsection (a)(1) recognizes that a parent whose parental rights have been terminated is no longer legally a parent.

Subsection (a)(2) addresses a situation in which a parent’s parental rights were not actually terminated. Nevertheless, a parent can still be barred from inheriting from or through a child if the child died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code], but only if those parental rights could have been terminated on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

ADD SUBPART 2. PARENT-CHILD RELATIONSHIP

ADD AS MCL 700.2115, SECTION 2-115,--DEFINITIONS. In this [subpart];

(1) “Adoptee” means an individual who is adopted.

(2) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse.

(3) “Divorce” includes an annulment, dissolution, and declaration of invalidity of a marriage.

(4) “Functioned as a parent of the child” means behaving toward a child in a manner consistent with being the child’s parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual’s child, materially participating in the child’s upbringing, and residing with the child in the same household as a regular member of that household.

(5) “Genetic father” means the man whose sperm fertilized the egg of a child’s genetic mother. If the father-child relationship is established under the presumption of paternity under MCL 700.2117 [insert applicable state law], the term means only the man for whom that relationship is established.

(6) “Genetic mother” means the woman whose egg was fertilized by the sperm of a child’s genetic father.
(7) “Genetic parent” means a child’s genetic father or genetic mother.

(8) “Incapacity” means the inability of an individual to function as a parent of a child because of the individual’s physical or mental condition.

(9) “Relative” means a grandparent or a descendant of a grandparent.

**UPC Legislative Note:** States that have enacted the Uniform Parentage Act (2000, as amended) should replace “applicable state law” in paragraph (5) with “Section 201(b)(1), (2), or (3) of the Uniform Parentage Act (2000), as amended”. Two of the principal features of Articles 1 through 6 of the Uniform Parentage Act (2000, as amended) are (i) the presumption of paternity and the procedure under which that presumption can be disproved by adjudication and (ii) the acknowledgment of paternity and the procedure under which that acknowledgment can be rescinded or challenged. States that have not enacted similar provisions should consider whether such provisions should be added as part of Section 2-115(5). States that have not enacted the Uniform Parentage Act (2000, as amended) should also make sure that applicable state law authorizes parentage to be established after the death of the alleged parent, as provided in the Uniform Parentage Act § 509 (2000, as amended), which provides: “For good cause shown, the court may order genetic testing of a deceased individual.”

**UPC Comment**

**Scope.** This section sets forth definitions that apply for purposes of the intestacy rules contained in Subpart 2 (Parent-Child Relationship).

**Definition of “Adoptee”.** The term “adoptee” is not limited to an individual who is adopted as a minor but includes an individual who is adopted as an adult.

**Definition of “Assisted Reproduction”.** The definition of “assisted reproduction” is copied from the Uniform Parentage Act § 102. Current methods of assisted reproduction include intrauterine insemination (previously and sometimes currently called artificial insemination), donation of eggs, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection.

**Definition of “Functioned as a Parent of the Child”.** The term “functioned as a parent of the child” is derived from the Restatement (Third) of Property: Wills and Other Donative Transfers. The Reporter’s Note No. 4 to § 14.5 of the Restatement lists the following parental functions:

- **Custodial responsibility** refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, residential or overnight responsibility.

- **Decisionmaking responsibility** refers to authority for making significant life decisions on behalf of the child, including decisions about the child’s education, spiritual guidance, and health.
Caretaking functions are tasks that involve interaction with the child or that direct, arrange, and supervise the interaction and care provided by others. Caretaking functions include but are not limited to all of the following:

(a) satisfying the nutritional needs of the child, managing the child’s bedtime and wake-up routines, caring for the child when sick or injured, being attentive to the child’s personal hygiene needs including washing, grooming, and dressing, playing with the child and arranging for recreation, protecting the child’s physical safety, and providing transportation;

(b) directing the child’s various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence, and maturation;

(c) providing discipline, giving instruction in manners, assigning and supervising chores, and performing other tasks that attend to the child’s needs for behavioral control and self-restraint;

(d) arranging for the child’s education, including remedial or special services appropriate to the child’s needs and interests, communicating with teachers and counselors, and supervising homework;

(e) helping the child to develop and maintain appropriate interpersonal relationships with peers, siblings, and other family members;

(f) arranging for health-care providers, medical follow-up, and home health care;

(g) providing moral and ethical guidance;

(h) arranging alternative care by a family member, babysitter, or other child-care provider or facility, including investigation of alternatives, communication with providers, and supervision of care.

Parenting functions are tasks that serve the needs of the child or the child’s residential family. Parenting functions include caretaking functions, as defined [above], and all of the following additional functions:

(a) providing economic support;

(b) participating in decision making regarding the child’s welfare;

(c) maintaining or improving the family residence, including yard work, and house cleaning;

(d) doing and arranging for financial planning and organization, car repair and maintenance, food and clothing purchases, laundry and dry cleaning, and other tasks supporting
the consumption and savings needs of the household;

(e) performing any other functions that are customarily performed by a parent or guardian and that are important to a child’s welfare and development.

Ideally, a parent would perform all of the above functions throughout the child’s minority. In cases falling short of the ideal, the trier of fact must balance both time and conduct. The question is, did the individual perform sufficient parenting functions over a sufficient period of time to justify concluding that the individual functioned as a parent of the child. Clearly, insubstantial conduct, such as an occasional gift or social contact, would be insufficient. Moreover, merely obeying a child support order would not, by itself, satisfy the requirement. Involuntarily providing support is inconsistent with functioning as a parent of the child.

The context in which the question arises is also relevant. If the question is whether the individual claiming to have functioned as a parent of the child inherits from the child, the court might require more substantial conduct over a more substantial period of time than if the question is whether a child inherits from an individual whom the child claims functioned as his or her parent.

**Definition of “Genetic Father”**. The term “genetic father” means the man whose sperm fertilized the egg of a child’s genetic mother. If the father-child relationship is established under the presumption of paternity recognized by the law of this state, the term means only the man for whom that relationship is established. As stated in the Legislative Note, a state that has enacted the Uniform Parentage Act (2000/2002) should insert a reference to Section 201(b)(1), (2), or (3) of that Act.

**Definition of “Relative”**. The term “relative” does not include any relative no matter how remote but is limited to a grandparent or a descendant of a grandparent, as determined under this Subpart 2.
ADD AS MCL 700.2116. SECTION 2-116. EFFECT OF PARENT-CHILD RELATIONSHIP. Except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this [subpart], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

UPC Comment

Scope. This section provides that if a parent-child relationship exists or is established under any section in Subpart 2, the consequence is that the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession by, from, or through the parent and the child. The exceptions in Section 2-119(b) through (e) refer to cases in which a parent-child relationship exists but only for the purpose of the right of an adoptee or a descendant of an adoptee to inherit from or through one or both genetic parents.
AMEND MCL 700.2114 TO READ AS FOLLOWS AND RENUMBER IT AS MCL 700.2117. SECTION 2-117. NO DISTINCTION BASED ON MARITAL STATUS; CHILD BORN OR CONCEIVED DURING MARRIAGE.

Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child’s genetic parents, regardless of the parents’ marital status.

Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121:

(1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her genetic parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

   (a) If a child is born or conceived during a marriage, both spouses are presumed to be the genetic parents of the child for purposes of intestate succession. The presumption is rebuttable only by clear and convincing evidence. If two individuals participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their genetic child for purposes of intestate succession.

   (b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's genetic father for purposes of intestate succession if any of the following occur:

      (i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.
(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) The man is determined to be the father in an action under the revocation of paternity act.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's parents marry after the conception or birth of the child.

(§ 2) Only the individual presumed to be the genetic parent of a child under subsection (I)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

**UPC Comment**

**Scope.** This section, adopted in 2008, provides the general rule that a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status. Exceptions to this general rule are contained in Sections 2-114 (Parent Barred from Inheriting in Certain Circumstances), 2-119 (Adoptee and Adoptee's Genetic Parents), 2-120 (Child Conceived by Assisted Reproduction Other than Child Born to Gestational Carrier), and 2-121 (Child Born to Gestational Carrier).

This section replaces former Section 2-114(a), which provided: “(a) Except as provided
in subsections (b) and (c), for purposes of intestate succession by, through, or from a person, an individual is the child of his [or her] natural parents, regardless of their marital status. The parent and child relationship may be established under [the Uniform Parentage Act] [applicable state law] [insert appropriate statutory reference]."

**Defined Terms.** Genetic parent is defined in Section 2-115 as the child’s genetic father or genetic mother. Genetic mother is defined as the woman whose egg was fertilized by the sperm of a child’s genetic father. Genetic father is defined as the man whose sperm fertilized the egg of a child’s genetic mother.
ADD AS MCL 700.2118, SECTION 2-118. ADOPTEE AND ADOPTEE’S ADOPTIVE PARENT OR PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents.] A parent-child relationship exists between an adoptee and the adoptee’s adoptive parent or parents.

(b) [Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent.] For purposes of subsection (a):

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent’s surviving spouse; and

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent’s spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.

(c) [Child of Assisted Reproduction or Gestational Child in Process of Being Adopted.] If, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent’s spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2).
**UPC Comment**

**2008 Revisions.** In 2008, this section and Section 2-119 replaced former Section 2-114(b), which provided: “(b) An adopted individual is the child of his [or her] adopting parent or parents and not of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent”. The 2008 revisions divided the coverage of former Section 2-114(b) into two sections. Subsection (a) of this section covered that part of former Section 2-114(b) that provided that an adopted individual is the child of his or her adopting parent or parents. Section 2-119(a) and (b)(1) covered that part of former Section 2-114(b) that provided that an adopted individual is not the child of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent.

The 2008 revisions also added subsections (b)(2) and (c), which are explained below.

**Data on Adoptions.** Official data on adoptions are not regularly collected. Partial data are sometimes available from the Children’s Bureau of the U.S. Department of Health and Human Services, the U.S. Census Bureau, and the Evan B. Donaldson Adoption Institute.

For an historical treatment of adoption, from ancient Greece, through the Middle Ages, 19th- and 20th-century America, to open adoption and international adoption, see Debora L. Spar, The Baby Business ch. 6 (2006) and sources cited therein.

**Defined Term.** *Adoptee* is defined in Section 2-115 as an individual who is adopted. The term is not limited to an individual who is adopted as a minor but includes an individual who is adopted as an adult.

**Subsection (a): Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents.** Subsection (a) states the general rule that adoption creates a parent-child relationship between the adoptee and the adoptee’s adoptive parent or parents.

**Subsection (b)(1): Individual in Process of Being Adopted by Married Couple.** If the spouse who subsequently died had filed a legal proceeding to adopt the individual before the spouse died, the individual is “in the process of being adopted” by the deceased spouse when the spouse died. However, the phrase “in the process of being adopted” is not intended to be limited to that situation, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.

**Subsection (b)(2): Stepchild in Process of Being Adopted by Stepparent.** If the stepparent who subsequently died had filed a legal proceeding to adopt the stepchild before the stepparent died, the stepchild is “in the process of being adopted” by the deceased stepparent when the stepparent died. However, the phrase “in the process of being adopted” is not intended to be limited to that situation, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.
Subsection (c): Child of Assisted Reproduction or Gestational Child in Process of Being Adopted. Subsection (c) provides that if, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent’s spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2). An example would be a situation in which an unmarried mother or father is the parent of a child of assisted reproduction or a gestational child, and subsequently marries an individual who then begins the process of adopting the child but who dies before the adoption becomes final. In such a case, subsection (c) provides that the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2). The phrase “in the process of being adopted” carries the same meaning under subsection (c) as it does under subsection (b)(2).
ADD AS MCL 700.2119, SECTION 2-119. ADOPTEE AND ADOPTEE’S GENETIC PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Genetic Parents.] Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee’s genetic parents.

(b) [Stepchild Adopted by Stepparent.] A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:
   
   (1) the genetic parent whose spouse adopted the individual; and
   
   (2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(c) [Individual Adopted by Relative of Genetic Parent.] A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(d) [Individual Adopted after Death of Both Genetic Parents.] A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.
(e) [Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted.] If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child’s parent or parents under Section 2-120 or 2-121 are treated as the child’s genetic parent or parents for the purpose of this section.

**UPC Comment**

**2008 Revisions.** In 2008, this section and Section 2-118 replaced former Section 2-114(b), which provided: “(b) An adopted individual is the child of his [or her] adopting parent or parents and not of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent”. The 2008 revisions divided the coverage of former Section 2-114(b) into two sections. Section 2-118(a) covered that part of former Section 2-114(b) that provided that an adopted individual is the child of his or her adopting parent or parents. Subsections (a) and (b) of this section covered that part of former Section 2-114(b) that provided that an adopted individual is not the child of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent.

The 2008 revisions also added subsections (c), (d), and (e), which are explained below.

**Defined Terms.** Section 2-119 uses terms that are defined in Section 2-115.

*Adoptee* is defined in Section 2-115 as an individual who is adopted. The term is not limited to an individual who is adopted as a minor, but includes an individual who is adopted as an adult.

*Genetic parent* is defined in Section 2-115 as the child’s genetic father or genetic mother. *Genetic mother* is defined as the woman whose egg was fertilized by the sperm of a child’s genetic father. *Genetic father* is defined as the man whose sperm fertilized the egg of a child’s genetic mother.

*Relative* is defined in Section 2-115 as a grandparent or a descendant of a grandparent.
Subsection (a): Parent-Child Relationship Between Adoptee and Adoptee’s Genetic Parents. Subsection (a) states the general rule that a parent-child relationship does not exist between an adopted child and the child’s genetic parents. This rule recognizes that an adoption severs the parent-child relationship between the adopted child and the child’s genetic parents. The adoption gives the adopted child a replacement family, sometimes referred to in the case law as “a fresh start”. For further elaboration of this theory, see Restatement (Third) of Property: Wills and Other Donative Transfers § 2.5(2)(A) & cmts. d & e (1999). Subsection (a) also states, however, that there are exceptions to this general rule in subsections (b) through (d).

Subsection (b): Stepchild Adopted by Stepparent. Subsection (b) continues the so-called “stepparent exception” contained in the Code since its original promulgation in 1969. When a stepparent adopts his or her stepchild, Section 2-118 provides that the adoption creates a parent-child relationship between the child and his or her adoptive stepparent. Section 2-119(b)(1) provides that a parent-child relationship continues to exist between the child and the child’s genetic parent whose spouse adopted the child. Section 2-119(b)(2) provides that a parent-child relationship also continues to exist between an adopted stepchild and his or her other genetic parent (the noncustodial genetic parent) for purposes of inheritance from and through that genetic parent, but not for purposes of inheritance by the other genetic parent and his or her relatives from or through the adopted stepchild.

Example 1 — Post-Widowhood Remarriage. A and B were married and had two children, X and Y. A died, and B married C. C adopted X and Y. Under subsection (b)(1), X and Y are treated as B’s children and under Section 2-118(a) as C’s children for all purposes of inheritance. Under subsection (b)(2), X and Y are treated as A’s children for purposes of inheritance from and through A but not for purposes of inheritance from or through X or Y. Thus, if A’s father, G, died intestate, survived by X and Y and by G’s daughter (A’s sister), S, G’s heirs would be S, X, and Y. S would take half and X and Y would take one-fourth each.

Example 2 — Post-Divorce Remarriage. A and B were married and had two children, X and Y. A and B got divorced, and B married C. C adopted X and Y. Under subsection (b)(1), X and Y are treated as B’s children and under Section 2-118(a) as C’s children for all purposes of inheritance. Under subsection (b)(2), X and Y are treated as A’s children for purposes of inheritance from and through A. On the other hand, neither A nor any of A’s relatives can inherit from or through X or Y.

Subsection (c): Individual Adopted by Relative of a Genetic Parent. Under subsection (c), a child who is adopted by a maternal or a paternal relative of either genetic parent, or by the spouse or surviving spouse of such a relative, remains a child of both genetic parents.

Example 3. F and M, a married couple with a four-year old child, X, were badly injured in an automobile accident. F subsequently died. M, who was in a vegetative state and on life support, was unable to care for X. Thereafter, M’s sister, A, and A’s husband, B, adopted X. F’s father, PGF, a widower, then died intestate. Under subsection (c), X is treated as PGF’s grandchild (F’s child).

Subsection (d): Individual Adopted After Death of Both Genetic Parents. Usually, a
post-death adoption does not remove a child from contact with the genetic families. When someone with ties to the genetic family or families adopts a child after the deaths of the child’s genetic parents, even if the adoptive parent is not a relative of either genetic parent or a spouse or surviving spouse of such a relative, the child continues to be in a parent-child relationship with both genetic parents. Once a child has taken root in a family, an adoption after the death of both genetic parents is likely to be by someone chosen or approved of by the genetic family, such as a person named as guardian of the child in a deceased parent’s will. In such a case, the child does not become estranged from the genetic family. Such an adoption does not “remove” the child from the families of both genetic parents. Such a child continues to be a child of both genetic parents, as well as a child of the adoptive parents.

Example 4. F and M, a married couple with a four-year-old child, X, were involved in an automobile accident that killed F and M. Neither M’s parents nor F’s father (F’s mother had died before the accident) nor any other relative was in a position to take custody of X. X was adopted by F and M’s close friends, A and B, a married couple approximately of the same ages as F and M. F’s father, PGF, a widower, then died intestate. Under subsection (d), X is treated as PGF’s grandchild (F’s child). The result would be the same if F’s or M’s will appointed A and B as the guardians of the person of X, and A and B subsequently successfully petitioned to adopt X.

Subsection (e): Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adjusted. Subsection (e) puts a child of assisted reproduction and a gestational child on the same footing as a genetic child for purposes of this section. The results in Examples 1 through 4 would have been the same had the child in question been a child of assisted reproduction or a gestational child.
ADD AS MCL 700.2120 SECTION 2-120. CHILD CONCEIVED BY
ASSISTED REPRODUCTION OTHER THAN CHILD BORN TO
GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) “Birth mother” means a woman, other than a gestational carrier under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child’s genetic mother.

(2) “Child of assisted reproduction” means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.

(3) “Third-party donor” means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(B) the birth mother of a child of assisted reproduction; or

(C) an individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.

(b) [Third-Party Donor.] A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.
(c) [Parent-Child Relationship with Birth Mother.] A parent-child relationship exists between a child of assisted reproduction and the child’s birth mother.

(d) [Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime by His Wife for Assisted Reproduction.] Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child’s birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

(e) [Birth Certificate: Presumptive Effect.] A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

(f) [Parent-Child Relationship with Another.] Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:
(1) before or after the child’s birth, signed a record that, considering all the facts and circumstances, evidences the individual’s consent; or

(2) in the absence of a signed record under paragraph (1):

(A) functioned as a parent of the child no later than two years after the child’s birth;

(B) intended to function as a parent of the child no later than two years after the child’s birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(C) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

(g) [Record Signed More than Two Years after the Birth of the Child: Effect.] For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached [18] years of age.

(h) [Presumption: Birth Mother Is Married or Surviving Spouse.] For the purpose of subsection (f)(2), the following rules apply:

(1) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her
If the birth mother is a surviving spouse and at her deceased spouse’s death no divorce proceeding was pending, and if before death or incapacity, the deceased spouse deposited the sperm or eggs that were used to conceive the child, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).

(i) [Divorce Before Placement of Eggs, Sperm, or Embryos.] If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother’s former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse’s child.

(j) [Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.] If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (f).

(k) [When Posthumously Conceived Child Treated as in Gestation.] If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual’s death, the child is treated as in gestation at the individual’s death for purposes of Section 2-104(a)(2) if the child is:
(1) in utero not later than 36 months after the individual’s death; or

(2) born not later than 45 months after the individual’s death.

**UPC Legislative Note:** States are encouraged to enact a provision requiring genetic depositories to provide a consent form that would satisfy subsection (f)(1). See Cal. Health & Safety Code § 1644.7 and .8 for a possible model for such a consent form.

**UPC Comment**

**Data on Children of Assisted Reproduction.** The Center for Disease Control (CDC) of the U.S. Department of Health and Human Services collects data on children of assisted reproduction (ART). See Center for Disease Control, 2004 Assisted Reproductive Technology Success Rates (Dec. 2006) (2004 CDC Report), available at http://www.cdc.gov/ART/ART2004. The data, however, is of limited use because the definition of ART used in the CDC Report excludes intrauterine (artificial) insemination (2004 CDC Report at 3), which is probably the most common form of assisted reproductive procedures. The CDC estimates that in 2004 ART procedures (excluding intrauterine insemination) accounted for slightly more than one percent of total U.S. births. 2004 CDC Report at 13. According to the Report: “The number of infants born who were conceived using ART increased steadily between 1996 and 2004. In 2004, 49,458 infants were born, which was more than double the 20,840 born in 1996.” 2004 CDC Report at 57. “The average age of women using ART services in 2004 was 36. The largest group of women using ART services were women younger than 35, representing 41% of all ART cycles carried out in 2004. Twenty-one percent of ART cycles were carried out among women aged 35-37, 19% among women aged 38-40, 9% among women aged 41-42, and 9% among women older than 42.” 2004 CDC Report at 15. Updates of the 2004 CDC Report are to be posted at http://www.cdc.gov/ART/ART2004.

**AMA Ethics Policy on Posthumous Conception.** The ethics policies of the American Medical Association concerning artificial insemination by a known donor state that “[i]f semen is frozen and the donor dies before it is used, the frozen semen should not be used or donated for purposes other than those originally intended by the donor. If the donor left no instructions, it is reasonable to allow the remaining partner to use the semen for intrauterine insemination but not to donate it to someone else. However, the donor should be advised of such a policy at the time of donation and be given an opportunity to override it.” Am. Med. Assn. Council on Ethical & Judicial Affairs, Code of Medical Ethics: Current Opinions E-2.04 (Issued June 1993; updated December 2004).

**Subsection (a): Definitions.** Subsection (a) defines the following terms:

*Birth mother* is defined as the woman (other than a gestational carrier under Section 2-121) who gave birth to a child of assisted reproduction.

*Child of assisted reproduction* is defined as a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.
Third-party donor. The definition of third-party donor is based on the definition of “donor” in the Uniform Parentage Act § 102.

Other Defined Terms. In addition to the terms defined in subsection (a), this section uses terms that are defined in Section 2-115.

Assisted reproduction is defined in Section 2-115 as a method of causing pregnancy other than sexual intercourse.

Divorce is defined in Section 2-115 as including an annulment, dissolution, and declaration of invalidity of a marriage.

Functioned as a parent of the child is defined in Section 2-115 as behaving toward a child in a manner consistent with being the child’s parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual’s child, materially participating in the child’s upbringing, and residing with the child in the same household as a regular member of that household. See also the Comment to Section 2-115 for additional explanation of the term.

Genetic father is defined in Section 2-115 as the man whose sperm fertilized the egg of a child’s genetic mother.

Genetic mother is defined as the woman whose egg was fertilized by the sperm of the child’s genetic father.

Incapacity is defined in Section 2-115 as the inability of an individual to function as a parent of a child because of the individual’s physical or mental condition.

Subsection (b): Third-Party Donor. Subsection (b) is consistent with the Uniform Parentage Act § 702. Under subsection (b), a third-party donor does not have a parent-child relationship with a child of assisted reproduction, despite the donor’s genetic relationship with the child.

Subsection (c): Parent-Child Relationship With Birth Mother. Subsection (c) is in accord with Uniform Parentage Act Section 201 in providing that a parent-child relationship exists between a child of assisted reproduction and the child’s birth mother. The child’s birth mother, defined in subsection (a) as the woman (other than a gestational carrier) who gave birth to the child, made the decision to undergo the procedure with intent to become pregnant and give birth to the child. Therefore, in order for a parent-child relationship to exist between her and the child, no proof that she consented to the procedure with intent to be treated as the parent of the child is necessary.

Subsection (d): Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime By His Wife for Assisted Reproduction. The principal application of subsection (d) is in the case of the assisted reproduction procedure known as intrauterine insemination husband (IIH), or, in older terminology, artificial insemination husband (AIH).
Subsection (d) provides that, except as otherwise provided in subsection (i), a parent-child relationship exists between a child of assisted reproduction and the husband of the child’s birth mother if the husband provided the sperm that were used during his lifetime by her for assisted reproduction and the husband is the genetic father of the child. The exception contained in subsection (i) relates to the withdrawal of consent in a record before the placement of eggs, sperm, or embryos. Note that subsection (d) only applies if the husband’s sperm were used during his lifetime by his wife to cause a pregnancy by assisted reproduction. Subsection (d) does not apply to posthumous conception.

Subsection (e): Birth Certificate: Presumptive Effect. A birth certificate will name the child’s birth mother as mother of the child. Under subsection (c), a parent-child relationship exists between a child of assisted reproduction and the child’s birth mother. Note that the term “birth mother” is a defined term in subsection (a) as not including a gestational carrier as defined in Section 2-121.

Subsection (e) applies to the individual, if any, who is identified on the birth certificate as the child’s other parent. Subsection (e) grants presumptive effect to a birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction. In the case of unmarried parents, federal law requires that states enact procedures under which “the name of the father shall be included on the record of birth,” but only if the father and mother have signed a voluntary acknowledgment of paternity or a court of an administrative agency of competent jurisdiction has issued an adjudication of paternity. See 42 U.S.C. § 666(a)(3)(D). This federal statute is included as an appendix to the Uniform Parentage Act.

The federal statute applies only to unmarried opposite-sex parents. Section 2-120(e)’s presumption, however, could apply to a same-sex couple if state law permits a woman who is not the birth mother to be listed on the child’s birth certificate as the child’s other parent. Even if state law does not permit that listing, the woman who is not the birth mother could be the child’s parent by adoption of the child (see Section 2-118) or under subsection (f) as a result of her consent to assisted reproduction by the birth mother “with intent to be treated as the other parent of the child,” or by satisfying the “function as a parent” test in subsection (f)(2).

Section 2-120 does not apply to same-sex couples that use a gestational carrier. For same-sex couples using a gestational carrier, the parent-child relationship can be established by adoption (see Section 2-118 and Section 2-121(b)), or it can be established under Section 2-121(d) if the couple enters into a gestational agreement with the gestational carrier under which the couple agrees to be the parents of the child born to the gestational carrier. It is irrelevant whether either intended parent is a genetic parent of the child. See Section 2-121(a)(4).

Subsection (f): Parent-Child Relationship with Another. In order for someone other than the birth mother to have a parent-child relationship with the child, there needs to be proof that the individual consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. The other individual’s genetic material might or might not have been used to create the pregnancy. Except as otherwise provided in this section, merely depositing genetic material is not, by itself, sufficient to establish a parent-child relationship with the child.
Subsection (f)(1): Signed Record Evidencing Consent, Considering All the Facts and Circumstances, to Assisted Reproduction with Intent to Be Treated as the Other Parent of the Child. Subsection (f)(1) provides that a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction with intent to be treated as the other parent of the child is established if the individual signed a record, before or after the child’s birth, that considering all the facts and circumstances evidences the individual’s consent. Recognizing consent in a record not only signed before the child’s birth but also at any time after the child’s birth is consistent with the Uniform Parentage Act §§ 703 and 704.

As noted, the signed record need not explicitly express consent to the procedure with intent to be treated as the other parent of child, but only needs to evidence such consent considering all the facts and circumstances. An example of a signed record that would satisfy this requirement comes from In re Martin B., 841 N.Y.S.2d 207 (Sur. Ct. 2007). In that case, the New York Surrogate’s Court held that a child of posthumous conception was included in a class gift in a case in which the deceased father had signed a form that stated: “In the event of my death I agree that my spouse shall have the sole right to make decisions regarding the disposition of my semen samples. I authorize repro lab to release my specimens to my legal spouse [naming her].” Another form he signed stated: “I, [naming him], hereby certify that I am married or intimately involved with [naming her] and the cryopreserved specimens stored at repro lab will be used for future inseminations of my wife/intimate partner.” Although these forms do not explicitly say that the decedent consented to the procedure with intent to be treated as the other parent of the child, they do evidence such consent in light of all of the facts and circumstances and would therefore satisfy subsection (f)(1).

Subsection (f)(2): Absence of Signed Record Evidencing Consent. Ideally an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child will have signed a record that satisfies subsection (f)(1). If not, subsection (f)(2) recognizes that actions speak as loud as words. Under subsection (f)(2), consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual functioned as a parent of the child no later than two years after the child’s birth. Under subsection (f)(2)(B), the same result applies if the evidence establishes that the individual had that intent but death, incapacity, or other circumstances prevented the individual from carrying out that intent. Finally, under subsection (f)(2)(C), the same result applies if it can be established by clear and convincing evidence that the individual intended to be treated as a parent of a posthumously conceived child.

Subsection (g): Record Signed More than Two Years after the Birth of the Child: Effect. Subsection (g) is designed to prevent an individual who has never functioned as a parent of the child from signing a record in order to inherit from or through the child or in order to make it possible for a relative of the individual to inherit from or through the child. Thus, subsection (g) provides that, for purposes of subsection (f)(1), an individual who signed a record more than two years after the birth of the child, or a relative of that individual, does not inherit from or through the child unless the individual functioned as a parent of the child before the child reached the age of 18.
**Subsection (h): Presumption: Birth Mother is Married or Surviving Spouse.** Under subsection (h), if the birth mother is married and no divorce proceeding is pending, then in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B) or if the birth mother is a surviving spouse and at her deceased spouse’s death no divorce proceeding was pending, then in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).

**Subsection (i): Divorce Before Placement of Eggs, Sperm, or Embryos.** Subsection (i) is derived from the Uniform Parentage Act § 706(b).

**Subsection (j): Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.** Subsection (j) is derived from Uniform Parentage Act Section 706(a). Subsection (j) provides that if, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies the requirements of subsection (f).

**Subsection (k): When Posthumously Conceived Gestational Child Treated as in Gestation.** Subsection (k) provides that if, under this section, an individual is a parent of a gestational child who is conceived after the individual’s death, the child is treated as in gestation at the individual’s death for purposes of Section 2-104(a)(2) if the child is either (1) in utero no later than 36 months after the individual’s death or (2) born no later than 45 months after the individual’s death. Note also that Section 3-703 gives the decedent’s personal representative authority to take account of the possibility of posthumous conception in the timing of all or part of the distribution of the estate.

The 36-month period in subsection (k) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The 36-month period also coincides with Section 3-1006, under which an heir is allowed to recover property improperly distributed or its value from any distributee during the later of three years after the decedent’s death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a typical period of pregnancy.
ADD AS MCL 700.2121. SECTION 2-121. CHILD BORN TO
GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) “Gestational agreement” means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).

(2) “Gestational carrier” means a woman who is not an intended parent who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child’s genetic mother.

(3) “Gestational child” means a child born to a gestational carrier under a gestational agreement.

(4) “Intended parent” means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

(b) [Court Order Adjudicating Parentage: Effect.] A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.

(c) [Gestational Carrier.] A parent-child relationship between a gestational
child and the child’s gestational carrier does not exist unless the gestational carrier is:

(1) designated as a parent of the child in a court order described in subsection (b); or

(2) the child’s genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

(d) [Parent-Child Relationship with Intended Parent or Parents.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:

(1) functioned as a parent of the child no later than two years after the child’s birth; or

(2) died while the gestational carrier was pregnant if:

(A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child’s birth;

(B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child’s birth; or
(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child’s birth.

(c) [Gestational Agreement after Death or Incapacity.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual’s death or incapacity to conceive a child under a gestational agreement entered into after the individual’s death or incapacity if the individual intended to be treated as the parent of the child. The individual’s intent may be shown by:

(1) a record signed by the individual which considering all the facts and circumstances evidences the individual’s intent; or

(2) other facts and circumstances establishing the individual’s intent by clear and convincing evidence.

(f) [Presumption: Gestational Agreement after Spouse’s Death or Incapacity.] Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:

(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;
(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and

(3) the individual’s spouse or surviving spouse functioned as a parent of the child no later than two years after the child’s birth.

(g) [Subsection (f) Presumption Inapplicable.] The presumption under subsection (f) does not apply if there is:

(1) a court order under subsection (b); or

(2) a signed record that satisfies subsection (e)(1).

(h) [When Posthumously Conceived Gestational Child Treated as in Gestation.] If, under this section, an individual is a parent of a gestational child who is conceived after the individual’s death, the child is treated as in gestation at the individual’s death for purposes of Section 2-104(a)(2) if the child is:

(1) in utero not later than 36 months after the individual’s death; or

(2) born not later than 45 months after the individual’s death.

(i) [No Effect on Other Law.] This section does not affect law of this state other than this [code] regarding the enforceability or validity of a gestational agreement.

**UPC Comment**

**Subsection (a): Definitions.** Subsection (a) defines the following terms:

*Gestational agreement.* The definition of gestational agreement is based on the Comment to Article 8 of the Uniform Parentage Act, which states that the term “gestational carrier” “applies to both a woman who, through assisted reproduction, performs the gestational
function without being genetically related to a child, and a woman who is both the gestational and genetic mother. The key is that an agreement has been made that the child is to be raised by the intended parents.” The Comment also points out that “The [practice in which the woman is both the gestational and genetic mother] has elicited disfavor in the ART community, which has concluded that the gestational carrier’s genetic link to the child too often creates additional emotional and psychological problems in enforcing a gestational agreement.”

**Gestational carrier** is defined as a woman who is not an intended parent and who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child’s genetic mother.

**Gestational child** is defined as a child born to a gestational carrier under a gestational agreement.

**Intended parent** is defined as an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

**Other Defined Terms.** In addition to the terms defined in subsection (a), this section uses terms that are defined in Section 2-115.

**Child of assisted reproduction** is defined in Section 2-115 as a method of causing pregnancy other than sexual intercourse.

**Divorce** is defined in Section 2-115 as including an annulment, dissolution, and declaration of invalidity of a marriage.

**Functioned as a parent of the child** is defined in Section 2-115 as behaving toward a child in a manner consistent with being the child’s parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual’s child, materially participating in the child’s upbringing, and residing with the child in the same household as a regular member of that household. See also the Comment to Section 2-115 for additional explanation of the term.

**Genetic mother** is defined as the woman whose egg was fertilized by the sperm of the child’s genetic father.

**Incapacity** is defined in Section 2-115 as the inability of an individual to function as a parent of a child because of the individual’s physical or mental condition.

**Relative** is defined in Section 2-115 as a grandparent or a descendant of a grandparent.

**Subsection (b): Court Order Adjudicating Parentage: Effect.** A court order issued under Section 807 of the Uniform Parentage Act (UPA) would qualify as a court order adjudicating parentage for purposes of subsection (b). UPA Section 807 provides:
UPA Section 807. Parentage under Validated Gestational Agreement.

(a) Upon birth of a child to a gestational carrier, the intended parents shall file notice with the court that a child has been born to the gestational carrier within 300 days after assisted reproduction. Thereupon, the court shall issue an order:

(1) confirming that the intended parents are the parents of the child;
(2) if necessary, ordering that the child be surrendered to the intended parents; and
(3) directing the [agency maintaining birth records] to issue a birth certificate naming the intended parents as parents of the child.

(b) If the parentage of a child born to a gestational carrier is alleged not to be the result of assisted reproduction, the court shall order genetic testing to determine the parentage of the child.

(c) If the intended parents fail to file notice required under subsection (a), the gestational carrier or the appropriate state agency may file notice with the court that a child has been born to the gestational carrier within 300 days after assisted reproduction. Upon proof of a court order issued pursuant to Section 803 validating the gestational agreement, the court shall order the intended parents are the parents of the child and are financially responsible for the child.

Subsection (c): Gestational Carrier. Under subsection (c), the only way that a parent-child relationship exists between a gestational child and the child’s gestational carrier is if she is (1) designated as a parent of the child in a court order described in subsection (b) or (2) the child’s genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

Subsection (d): Parent-Child Relationship With Intended Parent or Parents. Subsection (d) only applies in the absence of a court order under subsection (b). If there is no such court order, subsection (b) provides that a parent-child relationship exists between a gestational child and an intended parent who functioned as a parent of the child no later than two years after the child’s birth. A parent-child also exists between a gestational child and an intended parent if the intended parent died while the gestational carrier was pregnant, but only if (A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child’s birth; (B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child’s birth; or (C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child’s birth.

Subsection (e): Gestational Agreement After Death or Incapacity. Subsection (e) only applies in the absence of a court order under subsection (b). If there is no such court order, a parent-child relationship exists between a gestational child and an individual whose sperm or
Eggs were used after the individual’s death or incapacity to conceive a child under a gestational agreement entered into after the individual’s death or incapacity if the individual intended to be treated as the parent of the child. The individual’s intent may be shown by a record signed by the individual which considering all the facts and circumstances evidences the individual’s intent or by other facts and circumstances establishing the individual’s intent by clear and convincing evidence.

Subsections (f) and (g): Presumption: Gestational Agreement After Spouse’s Death or Incapacity. Subsection (f) and (g) are connected. Subsection (f) provides that unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if (1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child, (2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and (3) the individual’s spouse or surviving spouse functioned as a parent of the child no later than two years after the child’s birth.

Subsection (g) provides, however, that the presumption under subsection (f) does not apply if there is a court order under subsection (b) or a signed record that satisfies subsection (e)(1).

Subsection (h): When Posthumously Conceived Gestational Child is Treated as in Gestation. Subsection (h) provides that if, under this section, an individual is a parent of a gestational child who is conceived after the individual’s death, the child is treated as in gestation at the individual’s death for purposes of Section 2-104(a)(2) if the child is either (1) in utero not later than 36 months after the individual’s death or (2) born not later than 45 months after the individual’s death. Note also that Section 3-703 gives the decedent’s personal representative authority to take account of the possibility of posthumous conception in the timing of the distribution of part or all of the estate.

The 36-month period in subsection (g) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The three-year period also coincides with Section 3-1006, under which an heir is allowed to recover property improperly distributed or its value from any distributee during the later of three years after the decedent’s death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a typical period of pregnancy.
ADD AS MCL 700.2122. SECTION 2-122. EQUITABLE ADOPTION.

This [subpart] does not affect the doctrine of equitable adoption.

UPC Comment

On the doctrine of equitable adoption, see Restatement (Third) of Property: Wills and Other Donative Transfers § 2.5, cmt. k & Reporter’s Note No. 7 (1999).
PART 5. WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

UPC GENERAL COMMENT

Part 5 of Article II was retitled in 1990 to reflect the fact that it now includes the provisions on will contracts (pre-1990 Section 2-701) and on custody and deposit of wills (pre-1990 Sections 2-901 and 2-902).

Part 5 deals with capacity and formalities for execution and revocation of wills. The basic intent of the pre-1990 sections was to validate wills whenever possible. To that end, the minimum age for making wills was lowered to eighteen, formalities for a written and attested will were reduced, holographic wills written and signed by the testator were authorized, choice of law as to validity of execution was broadened, and revocation by operation of law was limited to divorce or annulment. In addition, the statute also provided for an optional method of execution with acknowledgment before a public officer (the self-proved will).

These measures have been retained, and the purpose of validating wills whenever possible has been strengthened by the addition of a new section, Section 2-503, which allows a will to be upheld despite a harmless error in its execution.
AMEND MCL 700.2502 TO READ: SECTION 2-502. EXECUTION; WITNESSED OR NOTARIZED WILLS; HOLOGRAPHIC WILLS.

(a) [Witnessed or Notarized Wills.] Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:

(1) in writing;
(2) signed by the testator or in the testator’s name by some other individual in the testator’s conscious presence and by the testator’s direction; and
(3) either:
   (A) signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator’s acknowledgment of that signature or acknowledgement of the will; or
   (B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements.

(b) [Holographic Wills.] A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator’s signature and the document’s material portions are in the testator’s handwriting.

(c) [Extrinsic Evidence.] Intent that a document constitute the testator’s will can be established by extrinsic evidence, including, for holographic wills, portions
of the document that are not in the testator’s handwriting.

**UPC Comment**

**Subsection (a): Witnessed or Notarized Wills.** Three formalities for execution of a witnessed or notarized will are imposed. Subsection (a)(1) requires the will to be in writing. Any reasonably permanent record is sufficient. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. i (1999).

Under subsection (a)(2), the testator must sign the will or some other individual must sign the testator’s name in the testator’s presence and by the testator’s direction. If the latter procedure is followed, and someone else signs the testator’s name, the so-called “conscious presence” test is codified, under which a signing is sufficient if it was done in the testator’s conscious presence, i.e., within the range of the testator’s senses such as hearing; the signing need not have occurred within the testator’s line of sight. For application of the “conscious-presence” test, see Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. n (1999); Cunningham v. Cunningham, 80 Minn. 180, 83 N.W. 58 (1900) (conscious-presence requirement held satisfied where “the signing was within the sound of the testator’s voice; he knew what was being done....”); Healy v. Bartless, 73 N.H. 110, 59 A. 617 (1904) (individuals are in the decedent’s conscious presence “whenever they are so near at hand that he is conscious of where they are and of what they are doing, through any of his senses, and where he can readily see them if he is so disposed.”); Demaris’ Estate, 166 Or. 36, 110 P.2d 571 (1941) (“[W]e do not believe that sight is the only test of presence. We are convinced that any of the senses that a testator possesses, which enable him to know whether another is near at hand and what he is doing, may be employed by him in determining whether [an individual is] in his [conscious] presence....”).

Signing may be by mark, nickname, or initials, subject to the general rules relating to that which constitutes a “signature”. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. j (1999). There is no requirement that the testator “publish” the document as his or her will, or that he or she request the witnesses to sign, or that the witnesses sign in the presence of the testator or of each other. The testator may sign the will outside the presence of the witnesses, if he or she later acknowledges to the witnesses that the signature is his or hers (or that his or her name was signed by another) or that the document is his or her will. An acknowledgment need not be expressly stated, but can be inferred from the testator’s conduct. Norton v. Georgia Railroad Bank & Tr. Co., 248 Ga. 847, 285 S.E.2d 910 (1982).

There is no requirement that the testator’s signature be at the end of the will; thus, if the testator writes his or her name in the body of the will and intends it to be his or her signature, the statute is satisfied. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmts. j & k (1999).

Subsection (a)(3) requires that the will either be (A) signed by at least two individuals, each of whom witnessed at least one of the following: (i) the signing of the will; (ii) the testator’s acknowledgment of the signature; or (iii) the testator’s acknowledgment of the will; or (B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. Subparagraph (B) was added in 2008 in order to recognize the validity
of notarized wills.

Under subsection (a)(3)(A), the witnesses must sign as witnesses (see, e.g., Mossler v. Johnson, 565 S.W.2d 952 (Tex. Civ. App. 1978)), and must sign within a reasonable time after having witnessed the testator’s act of signing or acknowledgment. There is, however, no requirement that the witnesses sign before the testator’s death. In a particular case, the reasonable-time requirement could be satisfied even if the witnesses sign after the testator’s death.

Under subsection (a)(3)(B), a will, whether or not it is properly witnessed under subsection (a)(3)(A), can be acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. Note that a signature guarantee is not an acknowledgment before a notary public or other person authorized by law to take acknowledgments. The signature guarantee program, which is regulated by federal law, is designed to facilitate transactions relating to securities. See 17 C.F.R. § 240.17Ad-15.

Allowing notarized wills as an optional method of execution addresses cases that have begun to emerge in which the supervising attorney, with the client and all witnesses present, circulates one or more estate-planning documents for signature, and fails to notice that the client or one of the witnesses has unintentionally neglected to sign one of the documents. See, e.g., Dalk v. Allen, 774 So.2d 787 (Fla. Dist. Ct. App. 2000); Sisson v. Park Street Baptist Church, 24 E.T.R.2d 18 (Ont. Gen. Div. 1998). This often, but not always, arises when the attorney prepares multiple estate-planning documents – a will, a durable power of attorney, a health-care power of attorney, and perhaps a revocable trust. It is common practice, and sometimes required by state law, that the documents other than the will be notarized. It would reduce confusion and chance for error if all of these documents could be executed with the same formality.

In addition, lay people (and, sad to say, some lawyers) think that a will is valid if notarized, which is not true under non-UPC law. See, e.g., Estate of Saueressig, 136 P.3d 201 (Cal. 2006). In re Estate of Hall, 51 P.3d 1134 (Mont. 2002), a notarized but otherwise unwitnessed will was upheld, but not under the pre-2008 version of Section 2-502, which did not authorize notarized wills. The will was upheld under the harmless-error rule of Section 2-503. There are also cases in which a testator went to his or her bank to get the will executed, and the bank’s notary notarized the document, mistakenly thinking that notarization made the will valid. Cf., e.g., Orrell v. Cochran, 695 S.W.2d 552 (Tex. 1985). Under non-UPC law, the will is usually held invalid in such cases, despite the lack of evidence raising any doubt that the will truly represented the decedent’s wishes.

Other uniform acts affecting property or person do not require either attesting witnesses or notarization. See, e.g., Uniform Trust Code Section 402(a)(2); Uniform Power of Attorney Act Section 105; Uniform Health-Care Decisions Act Section 2(f).

A will that does not meet the requirements of subsection (a) may be valid under subsection (b) as a holograph or under the harmless error rule of Section 2-503.

Subsection (b): Holographic Wills. This subsection authorizes holographic wills. On holographic wills, see Restatement (Third) of Property: Wills and Other Donative Transfers §
3.2 (1999). Subsection (b) enables a testator to write his or her own will in handwriting. There need be no witnesses. The only requirement is that the signature and the material portions of the document be in the testator’s handwriting.

By requiring only the “material portions of the document” to be in the testator’s handwriting (rather than requiring, as some existing statutes do, that the will be “entirely” in the decedent’s handwriting), a holograph may be valid even though immaterial parts such as date or introductory wording are printed, typed, or stamped.

A valid holograph can also be executed on a printed will form if the material portions of the document are handwritten. The fact, for example, that the will form contains printed language such as “I give, devise, and bequeath to ____” does not disqualify the document as a holographic will, as long as the testator fills out the remaining portion of the dispositive provision in his or her own hand.

Subsection (c): Extrinsic Evidence. Under subsection (c), testamentary intent can be shown by extrinsic evidence, including for holographic wills the printed, typed, or stamped portions of the form or document. Handwritten alterations, if signed, of a validly executed nonhandwritten will can operate as a holographic codicil to the will. If necessary, the handwritten codicil can derive meaning, and hence validity as a holographic codicil, from nonhandwritten portions of the document. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.2 cmt. g (1999). This position intentionally contradicts Estate of Foxley, 575 N.W.2d 150 (Neb. 1998), a decision condemned in Reporter’s Note No. 4 to the Restatement as a decision that “reached a manifestly unjust result”.


Historical Note. This Comment was revised in 2008.

The Michigan Notary Public Act (MCL 55.285) provides in relevant part:

MCL 55.285 Performance of notarial acts; scope; verification.
   (1) A notary public may perform notarial acts that include, but are not limited to, the following:
      (a) Taking acknowledgments.
      (b) Administering oaths and affirmations.
      (c) Witnessing or attesting to a signature.
   (2) In taking an acknowledgment, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the person in the presence of the notary public and making the acknowledgment is the person whose signature is on the record.
   (3) In taking a verification upon oath or affirmation, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the person in the presence of the notary public and making the verification is the person whose signature is on the record being verified.
(4) In witnessing or attesting to a signature, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person in the presence of the notary public and is the person named in the record.

(5) In all matters where the notary public takes a verification upon oath or affirmation, or witnesses or attests to a signature, the notary public shall require that the person sign the record being verified, witnessed, or attested in the presence of the notary public.

(6) A notary public has satisfactory evidence that a person is the person whose signature is on a record if that person is any of the following:
   (a) Personally known to the notary public;
   (b) Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the person;
   (c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the person's photograph and signature.

AMEND MCL 700.2504 TO READ, SECTION 2-504, SELF-PROVED

WILL.

700.2504 Self-proved will.

(1) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ________________________, the testator, sign my name to this document on __________, ______. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; that I am 18 years of age or older and under no constraint or undue influence; and that I have sufficient mental capacity to make this will.

_________________________________
(Signature) Testator

We, ________________________ and ________________________,
the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this will; each of us, in the testator's presence, signs this will as witness to the testator's signing; and, to
the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this will.

_________________________________
(Signature) Witness
_________________________________
(Signature) Witness

The State of ________________________________
County of ___________________________________

Sworn to and signed in my presence by ____________, the

testator, and sworn to and signed in my presence by
__________ and ____________, witnesses, on
__________________, __________.

month/day year

____________________________________
(SEAL) Signed

____________________________________
(official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of ________________________________
County of ___________________________________

We, ________________, ________________, and
______________, the testator and the witnesses,
respectively, whose names are signed to the attached will,

sign this document and have taken an oath, administered by the
officer whose signature and seal appear on this document, to

swear that all of the following statements are true: the

individual signing this document as the will's testator
executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

_________________________________
(Signature) Testator
_________________________________
(Signature) Witness
_________________________________
(Signature) Witness
Sworn to and signed in my presence by ___________, the testator, and sworn to and signed in my presence by ___________ and ___________, witnesses, on __________, __________.

____________________________________
(SEAL) Signed
____________________________________
(official capacity of officer)

(3) A codicil to a will that is executed with attesting witnesses may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ___________, the testator, sign my name to this document on __________, __________. I have taken an oath, administered by the officer whose signature and seal appear on
this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

_________________________________
(Signature) Testator

We, ___________ and ___________, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

_________________________________
(Signature) Witness

_________________________________
(Signature) Witness

The State of ________________________________
County of ___________________________________

Sworn to and signed in my presence by ____________, the testator, and sworn to and signed in my presence by ___________ and _____________, witnesses, on
month/day year

(SEAL) Signed

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that...".

**UPC Comment**

A self-proved will may be admitted to probate as provided in Sections 3-303, 3-405, and 3-406 without the testimony of any attesting witness, but otherwise it is treated no differently from a will not self-proved. Thus, a self-proved will may be contested (except in regard to questions of proper execution), revoked, or amended by a codicil in exactly the same fashion as a will not self-proved. The procedural advantage of a self-proved will is limited to formal testamentary proceedings because Section 3-303, which deals with informal probate, dispenses with the necessity of testimony of witnesses even though the instrument is not self-proved under this section.

Subsection (c) was added in 1990 to counteract an unfortunate judicial interpretation of similar self-proving will provisions in a few states, under which a signature on the self-proving affidavit was held not to constitute a signature on the will, resulting in invalidity of the will in cases in which the testator or witnesses got confused and only signed on the self-proving affidavit. See Mann, Self-proving Affidavits and Formalism in Wills Adjudication, 63 Wash. U. L.Q. 39 (1985); Estate of Ricketts, 773 P.2d 93 (Wash. Ct. App. 1989).

**2008 Revision.** Section 2-502(a) was amended in 2008 to add an optional method of execution by having a will notarized rather than witnessed by two attesting witnesses. The amendment to Section 2-502 necessitated amending this section so that it only applies to a will
that is executed with attesting witnesses.

**Historical Note.** This Comment was revised in 2008.
PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

UPC GENERAL COMMENT

Part 7 contains rules of construction applicable to wills and other governing instruments, such as deeds, trusts, appointments, beneficiary designations, and so on. Like the rules of construction in Part 6 (which apply only to wills), the rules of construction in this part yield to a finding of a contrary intention.

Some of the sections in Part 7 are revisions of sections contained in Part 6 of the pre-1990 Code. Although these sections originally applied only to wills, their restricted scope was inappropriate.

Some of the sections in Part 7 are new, having been added to the Code as desirable means of carrying out common intention.

Application to Pre-Existing Governing Instruments. Under Section 8-101(b), for decedents dying after the effective date of enactment, the provisions of this Code apply to governing instruments executed prior to as well as on or after the effective date of enactment. The Joint Editorial Board for the Uniform Probate Code has issued a statement concerning the constitutionality under the Contracts Clause of this feature of the Code. The statement, titled “Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules as Applied to Pre-Existing Documents,” can be found at 17 Am. C. Tr. & Est. Couns. Notes 184 (1991) or can be obtained from the Uniform Law Commission, www.uniformlaws.org.

Historical Note. This General Comment was revised in 1993. For the prior version, see 8 U.L.A. 137 (Supp. 1992).
AMEND MCL 700.2707 TO READ. SECTION 2-705. CLASS GIFTS

CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION;

EXCEPTIONS.

(a) [Definitions.] In this section:

(1) “Adoptee” has the meaning set forth in Section 2-115.

(2) “Child of assisted reproduction” has the meaning set forth in Section 2-120.

(3) “Distribution date” means the date when an immediate or postponed class gift takes effect in possession or enjoyment.

(4) “Functioned as a parent of the adoptee” has the meaning set forth in Section 2-115, substituting “adoptee” for “child” in that definition.

(5) “Functioned as a parent of the child” has the meaning set forth in Section 2-115.

(6) “Genetic parent” has the meaning set forth in Section 2-115.

(7) “Gestational child” has the meaning set forth in Section 2-121.

(8) “Relative” has the meaning set forth in Section 2-115.

(b) [Terms of Relationship.] A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective
descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under Section 2-701, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.

(c) [Relatives by Marriage.] Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage, unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that relatives by marriage were intended to be included.

(d) [Half-Blood Relatives.] Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.

(e) [Transferor Not Genetic Parent.] In construing a dispositive provision of
a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of that genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached [18] years of age.

(f) [Transferor Not Adoptive Parent.] In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(1) the adoption took place before the adoptee reached [18] years of age;

(2) the adoptive parent was the adoptee’s stepparent or foster parent; or

(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age.

(g) [Class-Closing Rules.] The following rules apply for purposes of the class-closing rules:

(1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

(2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent’s death,
the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent’s death or born not later than 45 months after the deceased parent’s death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

**UPC Comment**

This section facilitates a modern construction of gifts that identify the recipient by reference to a relationship to someone; usually these gifts will be class gifts. The rules of construction contained in this section are substantially consistent with the rules of construction contained in the Restatement (Third) of Property: Wills and Other Donative Transfers §§ 14.5 through 14.9. These sections of the Restatement apply to the treatment for class-gift purposes of an adoptee, a nonmarital child, a child of assisted reproduction, a gestational child, and a relative by marriage.

The rules set forth in this section are rules of construction, which under Section 2-701 are controlling in the absence of a finding of a contrary intention. With two exceptions, Section 2-705 invokes the rules pertaining to intestate succession as rules of construction for interpreting terms of relationship in private instruments.

**Subsection (a): Definitions.** With one exception, the definitions in subsection (a) rely on definitions contained in intestacy sections. The one exception is the definition of “distribution date,” which is relevant to the class-closing rules contained in subsection (g). Distribution date is defined as the date when an immediate or postponed class gift takes effect in possession or enjoyment.

**Subsection (b): Terms of Relationship.** Subsection (b) provides that a class gift that uses a term of relationship to identify the takers includes a child of assisted reproduction and a gestational child, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. As provided in subsection (g), inclusion of a child of assisted reproduction or a gestational child in a class is subject to the class-closing rules. See Examples 11 through 15.

The last sentence of subsection (b) was added by technical amendment in 2010. That sentence is necessary to prevent a provision in a governing instrument that relates to the inclusion or exclusion of a child born to parents who are not married to each other from applying to a child of assisted reproduction or a gestational child, unless the provision specifically refers
to such a child. Technically, for example, a posthumously conceived child born to a decedent’s surviving widow could be considered a nonmarital child. See, e.g., Woodward v. Commissioner of Social Security, 760 N.E.2d 257, 266-67 (Mass. 2002) (“Because death ends a marriage,... posthumously conceived children are always nonmarital children.”). A provision in a will, trust, or other governing instrument that relates to the inclusion or exclusion of a nonmarital child, or to the inclusion or exclusion of a nonmarital child under specified circumstances, was not likely inserted with a child of assisted reproduction or a gestational child in mind. The last sentence of subsection (b) provides that, unless that type of provision specifically refers to a child of assisted reproduction or a gestational child, such a provision does not state a contrary intention under Section 2-701 to the rule of construction contained in subsection (b).

Subsection (b) also provides that, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession regarding parent-child relationships. The subsection (e) exception relates to situations in which the transferor is not the genetic parent of the child. The subsection (f) exception relates to situations in which the transferor is not the adoptive parent of the adoptee. Consequently, if the transferor is the genetic or adoptive parent of the child, neither exception applies, and the class gift or other term of relationship is construed in accordance with the rules for intestate succession regarding parent-child relationships. As provided in subsection (g), inclusion of an adoptee or a child born to parents who are not married to each other in a class is subject to the class-closing rules. See Examples 9 and 10.

Subsection (c): Relatives by Marriage. Subsection (c) provides that terms of relationship that do not differentiate relationships by blood from those by marriage, such as “uncles”, “aunts”, “nieces”, or “nephews”, are construed to exclude relatives by marriage, unless (1) when the governing instrument was executed, the class was then and foreseeably would be empty or (2) the language or circumstances otherwise establish that relatives by marriage were intended to be included. The Restatement (Third) of Property: Wills and Other Donative Transfers § 14.9 adopts a similar rule of construction. As recognized in both subsection (c) and the Restatement, there are situations in which the circumstances would tend to include a relative by marriage. As provided in subsection (g), inclusion of a relative by marriage in a class is subject to the class-closing rules.

One situation in which the circumstances would tend to establish an intent to include a relative by marriage is the situation in which, looking at the facts existing when the governing instrument was executed, the class was then and foreseeably would be empty unless the transferor intended to include relatives by marriage.

Example 1. G’s will devised property in trust, directing the trustee to pay the income in equal shares “to G’s children who are living on each income payment date and on the death of G’s last surviving child, to distribute the trust property to G’s issue then living, such issue to take per stirpes, and if no issue of G is then living, to distribute the trust property to the X Charity.” When G executed her will, she was past the usual childbearing age, had no children of her own, and was married to a man who had four children by a previous marriage. These children had lived with G and her husband for many years, but G had never adopted them. Under these
circumstances, it is reasonable to conclude that when G referred to her “children” in her will she was referring to her stepchildren. Thus her stepchildren should be included in the presumptive meaning of the gift “to G’s children” and the issue of her stepchildren should be included in the presumptive meaning of the gift “to G’s issue.” If G, at the time she executed her will, had children of her own, in the absence of additional facts, G’s stepchildren should not be included in the presumptive meaning of the gift to “G’s children” or in the gift to “G’s issue.”

Example 2. G’s will devised property in trust, directing the trustee to pay the income to G’s wife W for life, and on her death, to distribute the trust property to “my grandchildren.” W had children by a prior marriage who were G’s stepchildren. G never had any children of his own and he never adopted his stepchildren. It is reasonable to conclude that under these circumstances G meant the children of his stepchildren when his will gave the future interest under the trust to G’s “grandchildren.”

Example 3. G’s will devised property in trust, directing the trustee to pay the income “to my daughter for life and on her death, to distribute the trust property to her children.” When G executed his will, his son had died, leaving surviving the son’s wife, G’s daughter-in-law, and two children. G had no daughter of his own. Under these circumstances, the conclusion is justified that G’s daughter-in-law is the “daughter” referred to in G’s will.

Another situation in which the circumstances would tend to establish an intent to include a relative by marriage is the case of reciprocal wills, as illustrated in Example 4, which is based on Martin v. Palmer, 1 S.W.3d 875 (Tex. Ct. App. 1999).

Example 4. G’s will devised her entire estate “to my husband if he survives me, but if not, to my nieces and nephews.” G’s husband H predeceased her. H’s will devised his entire estate “to my wife if she survives me, but if not, to my nieces and nephews.” Both G and H had nieces and nephews. In these circumstances, “my nieces and nephews” is construed to include G’s nieces and nephews by marriage. Were it otherwise, the combined estates of G and H would pass only to the nieces and nephews of the spouse who happened to survive.

Still another situation in which the circumstances would tend to establish an intent to include a relative by marriage is a case in which an ancestor participated in raising a relative by marriage other than a stepchild.

Example 5. G’s will devised property in trust, directing the trustee to pay the income in equal shares “to my nieces and nephews living on each income payment date until the death of the last survivor of my nieces and nephews, at which time the trust shall terminate and the trust property shall be distributed to the X Charity.” G’s wife W was deceased when G executed his will. W had one brother who predeceased her. G and W took the brother’s children, the wife’s nieces and nephews, into their home and raised them. G had one sister who predeceased him, and G and W were close to her children, G’s nieces and nephews. Under these circumstances, the conclusion is justified that the disposition “to my nieces and nephews” includes the children of W’s brother as well as the children of G’s sister.

The language of the disposition may also establish an intent to include relatives by marriage, as illustrated in Examples 6, 7, and 8.
Example 6. G’s will devised half of his estate to his wife W and half to “my children.” G had one child by a prior marriage, and W had two children by a prior marriage. G did not adopt his stepchildren. G’s relationship with his stepchildren was close, and he participated in raising them. The use of the plural “children” is a factor indicating that G intended to include his stepchildren in the class gift to his children.

Example 7. G’s will devised the residue of his estate to “my nieces and nephews named herein before.” G’s niece by marriage was referred to in two earlier provisions as “my niece.” The previous reference to her as “my niece” indicates that G intended to include her in the residuary devise.

Example 8. G’s will devised the residue of her estate “in twenty-five (25) separate equal shares, so that there shall be one (1) such share for each of my nieces and nephews who shall survive me, and one (1) such share for each of my nieces and nephews who shall not survive me but who shall have left a child or children surviving me.” G had 22 nieces and nephews by blood or adoption and three nieces and nephews by marriage. The reference to twenty-five nieces and nephews indicates that G intended to include her three nieces and nephews by marriage in the residuary devise.

Subsection (d): Half Blood Relatives. In providing that terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as “brothers”, “sisters”, “nieces”, or “nephews”, are construed to include both types of relationships, subsection (d) is consistent with the rules for intestate succession regarding parent-child relationships. See Section 2-107 and the phrase “or either of them” in Section 2-103(a)(3) and (4). As provided in subsection (g), inclusion of a half blood relative in a class is subject to the class-closing rules.

Subsection (e): Transferor Not Genetic Parent. The general theory of subsection (e) is that a transferor who is not the genetic parent of a child would want the child to be included in a class gift as a child of the genetic parent only if the genetic parent (or one or more of the specified relatives of the child’s genetic parent functioned as a parent of the child before the child reached the age of 18). As provided in subsection (g), inclusion of a genetic child in a class is subject to the class-closing rules.

Example 9. G’s will created a trust, income to G’s son, A, for life, remainder in corpus to A’s descendants who survive A, by representation. A fathered a child, X; A and X’s mother, D, never married each other, and A never functioned as a parent of the child, nor did any of A’s relatives or spouses or surviving spouses of any of A’s relatives. D later married E; D and E raised X as a member of their household. Because neither A nor any of A’s specified relatives ever functioned as a parent of X, X would not be included as a member of the class of A’s descendants who take the corpus of G’s trust on A’s death.

If, however, A executed a will containing a devise to his children or designated his children as beneficiary of his life insurance policy, X would be included in the class. Under Section 2-117, X would be A’s child for purposes of intestate succession. Subsection (c) is
Inapplicable because the transferor, A, is the genetic parent.

Subsection (f): Transferor Not Adoptive Parent. The general theory of subsection (f) is that a transferor who is not the adoptive parent of an adoptee would want the child to be included in a class gift as a child of the adoptive parent only if (1) the adoption took place before the adoptee reached the age of [18]; (2) the adoptive parent was the adoptee's stepparent or foster parent; or (3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached the age of [18]. As provided in subsection (g), inclusion of an adoptee in a class is subject to the class-closing rules.

Example 10. G’s will created a trust, income to G’s daughter, A, for life, remainder in corpus to A’s descendants who survive A, by representation. A and A’s husband adopted a 47-year-old man, X. Because the adoption did not take place before X reached the age of [18], A was not X’s stepparent or foster parent, and A did not function as a parent of X before X reached the age of [18]. X would not be included as a member of the class of A’s descendants who take the corpus of G’s trust on A’s death.

If, however, A executed a will containing a devise to her children or designated her children as beneficiary of her life insurance policy, X would be included in the class. Under Section 2-118, X would be A’s child for purposes of intestate succession. Subsection (d) is inapplicable because the transferor, A, is an adoptive parent.

Subsection (g): Class-Closing Rules. In order for an individual to be a taker under a class gift that uses a term of relationship to identify the class members, the individual must (1) qualify as a class member under subsection (b), (c), (d), (e), or (f) and (2) not be excluded by the class-closing rules. For an exposition of the class-closing rules, see Restatement (Third) of Property: Wills and Other Donative Transfers § 15.1. Section 15.1 provides that, “unless the language or circumstances establish that the transferor had a different intention, a class gift that has not yet closed physiologically closes to future entrants on the distribution date if a beneficiary of the class gift is then entitled to distribution.”

Subsection (g)(1): Child in Utero. Subsection (g)(1) codifies the well-accepted rule that a child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

Subsection (g)(2): Children of Assisted Reproduction and Gestational Children; Class Gift in Which Distribution Date Arises At Deceased Parent’s Death. Subsection (g)(2) changes the class-closing rules in one respect. If a child of assisted reproduction (as defined in Section 2-120) or a gestational child (as defined in Section 2-121) is conceived posthumously, and if the distribution date arises at the deceased parent’s death, then the child is treated as living on the distribution date if the child lives 120 hours after birth and was either (1) in utero no later than 36 months after the deceased parent’s death or (2) born no later than 45 months after the deceased parent’s death.

The 36-month period in subsection (g)(2) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with
assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The 36-month period also coincides with Section 3-1006, under which an heir is allowed to recover property improperly distributed or its value from any distributee during the later of three years after the decedent’s death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a normal period of pregnancy.

Example 11. G, a member of the armed forces, executed a military will under 10 U.S.C. § 1044d shortly before being deployed to a war zone. G’s will devised “90 percent of my estate to my wife W and 10 percent of my estate to my children.” G also left frozen sperm at a sperm bank in case he should be killed in action. G consented to be treated as the parent of the child within the meaning of Section 2-120(f). G was killed in action. After G’s death, W decided to become inseminated with his frozen sperm so she could have his child. If the child so produced was either (1) in utero within 36 months after G’s death or (2) born within 45 months after G’s death, and if the child lived 120 hours after birth, the child is treated as living at G’s death and is included in the class.

Example 12. G, a member of the armed forces, executed a military will under 10 U.S.C. § 1044d shortly before being deployed to a war zone. G’s will devised “90 percent of my estate to my husband H and 10 percent of my estate to my issue by representation.” G also left frozen embryos in case she should be killed in action. G consented to be the parent of the child within the meaning of Section 2-120(f). G was killed in action. After G’s death, H arranged for the embryos to be implanted in the uterus of a gestational carrier. If the child so produced was either (1) in utero within 36 months after G’s death or (2) born within 45 months after G’s death, and if the child lived 120 hours after birth, the child is treated as living at G’s death and is included in the class.

Example 13. The will of G’s mother created a testamentary trust, directing the trustee to pay the income to G for life, then to distribute the trust principal to G’s children. When G’s mother died, G was married but had no children. Shortly after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G’s death, G’s widow decided to become inseminated with his frozen sperm so she could have his child. If the child so produced was either (1) in utero within 36 months after G’s death or (2) born within 45 months after the G’s death, and if the child lived 120 hours after birth, the child is treated as living at G’s death and is included in the class under the rule of convenience.

Subsection (g)(2) Inapplicable Unless Child of Assisted Reproduction or Gestational Child is Conceived Posthumously and Distribution Date Arises At Deceased Parent’s Death. Subsection (g)(2) only applies if a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date arises at the deceased parent’s death.
Subsection (g)(2) does not apply if a child of assisted reproduction or a gestational child is not conceived posthumously. It also does not apply if the distribution date arises before or after the deceased parent’s death. In cases to which subsection (g)(2) does not apply, the ordinary class-closing rules apply. For purposes of the ordinary class-closing rules, subsection (g)(1) provides that a child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

This means, for example, that, with respect to a child of assisted reproduction or a gestational child, a class gift in which the distribution date arises after the deceased parent’s death is not limited to a child who is born before or in utero at the deceased parent’s death or, in the case of posthumous conception, either (1) in utero within 36 months after the deceased parent’s death or (2) born within 45 months after the deceased parent’s death. The ordinary class-closing rules would only exclude a child of assisted reproduction or a gestational child if the child was not yet born or in utero on the distribution date (or who was then in utero but who failed to live 120 hours after birth).

A case that reached the same result that would be reached under this section is In re Martin B., 841 N.Y.S.2d 207 (Sur. Ct. 2007). In that case, two children (who were conceived posthumously and were born to a deceased father’s widow around three and five years after his death) were included in class gifts to the deceased father’s “issue” or “descendants”. The children would be included under this section because (1) the deceased father signed a record that would satisfy Section 2-120(f)(1), (2) the distribution dates arose after the deceased father’s death, and (3) the children were living on the distribution dates, thus satisfying subsection (g)(1).

Example 14. G created a revocable inter vivos trust shortly before his death. The trustee was directed to pay the income to G for life, then “to pay the income to my wife, W, for life, then to distribute the trust principal by representation to my descendants who survive W.” When G died, G and W had no children. Shortly before G’s death and after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G’s death, W decided to become inseminated with G’s frozen sperm so that she could have his child. The child, X, was born five years after G’s death. W raised X. Upon W’s death many years later, X was a grown adult. X is entitled to receive the trust principal, because a parent-child relationship between G and X existed under Section 2-120(f) and X was living on the distribution date.

Example 15. The will of G’s mother created a testamentary trust, directing the trustee to pay the income to G for life, then “to pay the income by representation to G’s issue from time to time living, and at the death of G’s last surviving child, to distribute the trust principal by representation to G’s descendants who survive G’s last surviving child.” When G’s mother died, G was married but had no children. Shortly after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G’s death, G’s widow decided to become inseminated with his frozen sperm so she could have his child. If the child was produced was either (1) in utero within 36 months after G’s death or (2) born within 45 months after the G’s death, and if the child lived 120 hours after birth, the child is treated as living at G’s death and is included in the class-gift of income under the rule of convenience. If G’s widow later decides to use his frozen sperm to have another child
or children, those children would be included in the class-gift of income (assuming they live 120 hours after birth) even if they were not in utero within 36 months after G’s death or born within 45 months after the G’s death. The reason is that an income interest in class-gift form is treated as creating separate class gifts in which the distribution date is the time of payment of each subsequent income payment. See Restatement (Third) of Property: Wills and Other Donative Transfers § 15.1 cmt. p. Regarding the remainder interest in principal that takes effect in possession on the death of G’s last living child, the issue of the posthumously conceived children who are then living would take the trust principal.

**Subsection (g)(3).** For purposes of the class-closing rules, an individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted. An individual is “in the process of being adopted” if a legal proceeding to adopt the individual had been filed before the class closed. However, the phrase “in the process of being adopted” is not intended to be limited to the filing of a legal proceeding, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.


**Historical Note.** This Comment was revised in 1993, 2008, and 2010.
PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

UPC GENERAL COMMENT

Part 8 contains five general provisions that cut across probate and nonprobate transfers. Part 8 previously contained a sixth provision, Section 2-801, which dealt with disclaimers. Section 2-801 was replaced in 2002 by the Uniform Disclaimer of Property Interests Act, which is incorporated into the Code as Part 11 of Article 2 (Sections 2-1101 to 2-1117). To avoid renumbering the other sections in this part, Section 2-801 is reserved for possible future use.

Section 2-802 deals with the effect of divorce and separation on the right to elect against a will, exempt property and allowances, and an intestate share.

Section 2-803 spells out the legal consequence of intentional and felonious killing on the right of the killer to take as heir under wills and revocable inter-vivos transfers, such as revocable trusts and life-insurance beneficiary designations.

Section 2-804 deals with the consequences of a divorce on the right of the former spouse (and relatives of the former spouse) to take under wills and revocable inter-vivos transfers, such as revocable trusts and life-insurance beneficiary designations.

Sections 2-805 and 2-806, added in 2008, bring the reformation provisions in the Uniform Trust Code into the UPC.

Application to Pre-Existing Governing Instruments. Under Section 8-101(b), for decedents dying after the effective date of enactment, the provisions of this Code apply to governing instruments executed prior to as well as on or after the effective date of enactment. The Joint Editorial Board for the Uniform Probate Code has issued a statement concerning the constitutionality under the Contracts Clause of this feature of the Code. The statement, titled “Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules as Applied to Pre-Existing Documents”, can be found at 17 ACTEC Notes 184 (1991) or can be obtained from the Uniform Law Commission, www.uniformlaws.org.

Historical Note. This General Comment was revised in 1993, 2002, and 2008.

2002 Amendment Relating to Disclaimers. In 2002, the Code’s former disclaimer provision (Section 2-801) was replaced by the Uniform Disclaimer of Property Interests Act, which is incorporated into the Code as Part 11 of Article 2 (Sections 2-1101 to 2-1117). The statutory references in this Comment to former Section 2-801 have been replaced by appropriate references to Part 11. Updating these statutory references has not changed the substance of this Comment.
**ADD AS MCL 700.2810 SECTION 2-805. REFORMATION TO CORRECT MISTAKES.** The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor’s intention if it is proved by clear and convincing evidence what the transferor’s intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

**UPC Comment**

Added in 2008, Section 2-805 is based on Section 415 of the Uniform Trust Code, which in turn was based on Section 12.1 of the Restatement (Third) of Property: Wills and Other Donative Transfers (2003).

Section 2-805 is broader in scope than Section 415 of the Uniform Trust Code because Section 2-805 applies but is not limited to trusts.

Section 12.1, and hence Section 2-805, is explained and illustrated in the Comments to Section 12.1 of the Restatement and also, in the case of a trust, in the Comment to Section 415 of the Uniform Trust Code.

**2010 Amendment.** This section was revised by technical amendment in 2010. The amendment better conforms the language of the section to the language of the Restatement (Third) of Property provision on which the section is based.
**ADD AS MCL 700.2811. SECTION 2-806. MODIFICATION TO ACHIEVE TRANSFEROR’S TAX OBJECTIVES.** To achieve the transferor’s tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor’s probable intention. The court may provide that the modification has retroactive effect.

**UPC Comment**

Added in 2008, Section 2-806 is based on Section 416 of the Uniform Trust Code, which in turn was based on Section 12.2 of the Restatement (Third) of Property: Wills and Other Donative Transfers (2003). Section 2-806 is broader in scope than Section 416 of the Uniform Trust Code because Section 2-806 applies but is not limited to trusts.

Section 12.2, and hence Section 2-806, is explained and illustrated in the Comments to Section 12.2 of the Restatement and also, in the case of a trust, in the Comment to Section 416 of the Uniform Trust Code.
ARTICLE III
PROBATE OF WILLS AND ADMINISTRATION
PART 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

AMEND MCL 700.3406 TO READ
SECTION 3-406. FORMAL
TESTACY PROCEEDINGS; CONTESTED CASES. In a contested case in
which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to Section 2-504, the will satisfies the
requirements for execution without the testimony of any attesting witness, upon
filing the will and the acknowledgment and affidavits annexed or attached to it,
unless there is evidence of fraud or forgery affecting the acknowledgment or
affidavit.

(2) If the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-
proved, there is a rebuttable presumption that the will satisfies the requirements for
execution upon filing the will.

(3) If the will is witnessed pursuant to Section 2-502(a)(3)(A), but not
notarized or self-proved, the testimony of at least one of the attesting witnesses is
required to establish proper execution if the witness is within this state, competent,
and able to testify. Proper execution may be established by other evidence,
including an affidavit of an attesting witness. An attestation clause that is signed
by the attesting witnesses raises a rebuttable presumption that the events recited in
the clause occurred.

**UPC Comment**

**2008 Revisions.** This section, which applies in a contested case in which the proper execution of a will is at issue, was substantially revised and clarified in 2008.

**Self-Proved Wills:** Paragraph (1) provides that a will that is self-proved pursuant to Section 2-504 satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit. Paragraph (1) does not preclude evidence of undue influence, lack of testamentary capacity, revocation or any relevant evidence that the testator was unaware of the contents of the document.

**Notarized Wills:** Paragraph (2) provides that if the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.

**Witnessed Wills:** Paragraph (3) provides that if the will is witnessed pursuant to Section 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred. For further explanation of the effect of an attestation clause, see Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. q (1999).

**Historical Note.** This Comment was revised in 2008.
Add new subsection to MCL 700.3715.

(gg) In distributing all or part of a decedent’s estate, the decedent’s personal representative may take into account whether:

(i) the personal representative has received notice or has knowledge of an intention to use genetic material to create a child after the decedent’s death; and

(ii) the posthumous birth of a child of assisted reproduction may have an effect on the distribution of the decedent’s estate.

COMMENT

This section is based on Cal. Prob. Code§ 249.5 and 249.6. In most cases when an intestate decedent is survived by a surviving spouse, the surviving spouse will inherit all or almost all of the decedent’s estate. Consequently, even when there is a posthumous conception by the surviving spouse, the child will not inherit any portion of the decedent’s estate even if the child is treated under 2-120 or 2-121 as the child of the deceased spouse.
Add new subsection to MCL 700.7821.

(4) In distributing all or part of a trust estate, the trustee may take into account whether:

(a) the trustee has received notice or has knowledge of an intention to use genetic material to create a child after the trust distribution date; and

(b) the posthumous birth of a child of assisted reproduction may have an effect on the distribution of the trust estate.

COMMENT

This new subsection is a companion provision to MCL 700.3715(gg).
**UPC Legislative Note:** States that have previously enacted the Uniform Probate Code and are enacting an amendment or amendments to the Code are encouraged to include the following effective date provision in their enacting legislation. The purpose of this effective date provision, which is patterned after Section 8-101 of the original UPC, is to assure that the amendment or amendments will apply to instruments executed prior to the effective date, to court proceedings pending on the effective date, and to acts occurring prior to the effective date, to the same limited extent and in the same situations as the effective date provision of the original UPC.

Include the following in the Act adopting the above EPIC amendments:

**TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION.**

(a) This [act] takes effect on January 1, 20__.

(b) On the effective date of this [act]:

(1) the [act] applies to governing instruments executed by decedents dying thereafter;

(2) the [act] applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(3) an act done before the effective date of this [act] in any proceeding and any accrued right is not impaired by this [act]. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date of this [act], the provisions shall remain in force with respect to that right; and

(4) any rule of construction or presumption provided in this [act] applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent.
§ ____._____ Assisted reproduction; Form required to be provided to individual to establish parental intent for purposes of the Estates and Protected Individuals Code § 700.---; contents of form.

(1) Section 700.--- of the Estates and Protected Individuals Code provides that a birth mother who is not a gestational carrier is automatically the mother of the child. The form required by this section is intended to assist in determining whether any other individual is the other parent of the child. An individual need not be the donor of genetic material to be the other parent of the child.

(a) This section and the form required by this section only apply to cases of assisted reproduction in which the birth mother or prospective birth mother is not a gestational carrier or prospective gestational carrier as defined in MCL § 700.___.

(b) Any entity that receives or possesses human genetic material that may be used for conception must make available a form that can be used by an individual, other than the birth mother or prospective birth mother, to signify the individual’s consent to assisted reproduction by the birth mother or prospective birth mother with intent to be treated as the other parent of the child for purposes of Section 700.--- of the
Estates and Protected Individuals Code. The execution of the form is not mandatory.

The entity should retain either the original form or an electronic version of the form and provide a copy of the signed form to the individual and the birth mother or prospective birth mother. The form shall include advisements in substantially the following form:

You may wish to consult with a lawyer before signing this form. This form is designed only to clarify your intent; signing this form is not mandatory.

IF THE TRANSFER OF EGGS, SPERM, OR EMBRYOS FOR PURPOSES OF ASSISTED REPRODUCTION BY (INSERT NAME OF BIRTH MOTHER OR PROSPECTIVE BIRTH MOTHER) OCCURS AFTER YOUR DEATH, DO YOU INTEND TO BE TREATED AS THE CHILD’S OTHER PARENT?

PLEASE SELECT ONLY ONE, THEN SIGN AND DATE BELOW:

_____ Yes
_____ No

Signed: ___________________ Dated: ___________________

• In case of a multiple birth, your response applies to all children born alive from the transfer that resulted in the birth.

• You can amend or revoke your consent at any time before the transfer of eggs, sperm, or embryos.

• Any future amendment or revocation you wish to make must be in a written document that you sign and date. A designation, amendment, or revocation may not be changed or revoked orally.
APPENDIX

The Committee recommends repeal of the Michigan Surrogate Parenting Act.

MICHIGAN SURROGATE PARENTING ACT

Act 199 of 1988

MCL 722.851 Short title.
This act shall be known and may be cited as the “surrogate parenting act”.

MCL 722.853 Definitions.
As used in this act:

(a) “Compensation” means a payment of money, objects, services, or anything else having monetary value except payment of expenses incurred as a result of the pregnancy and the actual medical expenses of a surrogate mother or surrogate carrier.

(b) “Developmental disability” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.

(c) “Mental illness” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(d) “Mentally retarded” means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(e) “Participating party” means a biological mother, biological father, surrogate carrier, or the spouse of a biological mother, biological father, or surrogate carrier, if any.

(f) “Surrogate carrier” means the female in whom an embryo is implanted in a surrogate gestation procedure.

(g) “Surrogate gestation” means the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female.

(h) “Surrogate mother” means a female who is naturally or artificially inseminated and who subsequently gestates a child conceived through the insemination pursuant to a surrogate parentage contract.

(i) “Surrogate parentage contract” means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

MCL 722.855 Surrogate parentage contract as void and unenforceable.
A surrogate parentage contract is void and unenforceable as contrary to public policy.
MCL 722.857 Surrogate parentage contract prohibited; surrogate parentage contract as felony; penalty.
(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability is the surrogate mother or surrogate carrier.
(2) A person other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who enters into, induces, arranges, procures, or otherwise assists in the formation of a contract described in subsection (1) is guilty of a felony punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

MCL 722.859 Surrogate parentage contract for compensation prohibited; surrogate parentage contract for compensation as misdemeanor or felony; penalty.
(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract for compensation.
(2) A participating party other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who knowingly enters into a surrogate parentage contract for compensation is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 or imprisonment for not more than 1 year, or both.
(3) A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation is guilty of a felony punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

MCL 722.861 Custody of child.
If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, “best interests of the child” means that term as defined in section 3 of the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being section 722.23 of the Michigan Compiled Laws.
Exhibit C

proposed Tenancy By the Entirety Property (trusts) legislation
(1) As used in this section:

(a) "Property" means real or personal property and any interest in real or personal property.

(b) "Proceeds" means:

(i) Property acquired by a trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by spouses as tenants by the entirety to a trustee.

(ii) Interest, dividends, rents, and other property collected by a trustee on, or distributed on account of, property originally conveyed by spouses as tenants by the entirety to a trustee.

(iii) Rights arising out of property originally conveyed by spouses as tenants by the entirety to a trustee.

(iv) Claims and resulting damage awards and settlement proceeds arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.

(v) Insurance proceeds or benefits payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.

(vi) Property held by a trustee that is otherwise traceable to property originally conveyed by spouses as tenants by the entirety to a trustee or the property proceeds described in subsections (i) to (v).

(2) While both spouses are still living, any property once held by the spouses as tenants by the entirety and subsequently conveyed as tenants by the entirety to a trustee of one or more trusts, and the proceeds of that property, shall have the same immunity from the claims of each spouse’s separate creditors as would exist if the spouses retained the property or its proceeds as tenants by the entirety, so long as all of the following apply:

(a) The spouses remain married.

(b) The property or its proceeds continue to be held in trust by a trustee.
(c) The trust or trusts are revocable by either spouse or both spouses, acting together.

(d) Each spouse is a distributee or permissible distributee of the trust or trusts.

(e) The trust instrument, deed, or other instrument of conveyance provides that this section shall apply to the property or its proceeds.

(3) Upon the death of the first spouse:

(a) All property held in trust that, under subsection (2), was immune from the claims of the deceased spouse’s creditors immediately prior to his or her death shall continue to have immunity from the claims of the decedent’s separate creditors as if both spouses were still alive.

(b) To the extent that the surviving spouse remains a distributee or permissible distributee of the trust or trusts and has the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from the claims of the separate creditors of the decedent, the property shall be subject to the claims of the separate creditors of the surviving spouse.

(c) If the surviving spouse remains a distributee or permissible distributee of the trust or trusts, but does not have the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from claims of the spouses’ separate creditors, that property shall continue to have immunity from the claims of the separate creditors of the surviving spouse.

(4) The immunity from the claims of separate creditors under subsections (2) and (3) may be waived by the express provisions of a trust instrument, deed, or other instrument of conveyance, or by the written consent of both spouses, as to any specific creditor or any specifically described trust property, including all separate creditors of a spouse or all former tenancy by the entirety property conveyed to a trustee.

(5) Except as provided in subsection (6), immunity from the claims of separate creditors under subsections (2) and (3) shall be waived if both of the following are true:

(a) A trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.
(b) The separate creditors claiming that the immunity provided by this section was waived by the spouses detrimentally relied upon the failure of the trustee to disclose (as provided in subsection (5)(a) above) in extending credit to the spouse.
Immunity is not waived under subsection (5) if the identity of the property that is immune from the claims of separate creditors and evidence of such immunity is otherwise reasonably disclosed by any of the following:

(a) A publicly recorded deed or other instrument of conveyance by the spouses to the trustee.

(b) A written memorandum by the spouses, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained.

(c) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(d) A certificate of trust existence and authority under MCL 565.431 et. seq. or a certificate of trust under MCL 700.7913.

A waiver under subsection (5) shall be effective only as to:

(a) The person to whom the financial statement is delivered by a trustee.

(b) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement.

(c) The transaction for which the disclosure was sought.

In any dispute relating to the immunity of trust property from the claims of either spouse's separate creditor, the creditor has the burden of proving, by clear and convincing evidence, that the trust property is not immune from the creditor's claims.

In the event that any transfer of property held in tenancy by the entirety to a trustee of a trust as provided under subsection (2) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses are living, then immediately upon the occurrence of either event, absent a contrary provision in a court decree, all property held in the trust shall be deemed for all purposes to be held by both spouses as tenants by the entirety.

No transfer by spouses described in subsection (2) shall affect or change either spouse's marital property rights to the transferred property or interest therein immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless both spouses expressly agree otherwise in writing. Upon entry of a judgment of divorce or annulment between the spouses, the immunity from the claims of separate creditors under subsection (2) shall terminate.
If property is transferred to a trustee of a trust as provided under subsection (2), the trustee may transfer such trust property to the spouses as tenants by the entirety. This section may not be construed to affect existing state law with respect to tenancies by the entirety. This section applies only to tenancy by the entirety property conveyed to a trustee on or after ____________, 2016.
END OF
CSP MATERIALS
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

December 19, 2015
Lansing, Michigan

Agenda

I. Call to Order
II. Excused Absences
III. Introduction of Guests
IV. Minutes of November 7, 2015, Meeting of the Council
   See Attachment 1
V. Treasurer's Report – Christopher Ballard
   See Attachment 2
VI. Chairperson's Report – Shaheen I. Imami
   See Attachment 3 –
   • Proposed amendments to MCR 2.403 (comments due by February 8, 2016)
   • Proposed amendments to Administrative Order No. 2013-12 (comments due by February 8, 2016)
   • Public Policy positions filed on votes taken last month
   • Copy of Perry v Cotton amicus brief filed
VII. Report of the Committee on Special Projects – David P. Lucas
VIII. Report of Standing Committees
   A. Internal Governance
      1. Budget – Marguerite Munson Lentz
      See Attachment 4 –
      2. Bylaws – Nancy H. Welber
      3. Awards – Amy N. Morrissey
      4. Planning – James B. Steward
5. Nominating – Mark K. Harder
6. Annual Meeting – James B. Steward

B. Legislation and Lobbying
   1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt
   2. Legislation Development & Drafting Committee – Geoffrey R. Vernon
      2.A. Report from Marlaine Teahan on probate appeals project.
      See Attachment 5
   3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon
   4. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber

C. Education and Advocacy Services for Section Members
   1. Amicus Curiae – David L. Skidmore
   2. Probate Institute – Marlaine C. Teahan
   3. State Bar and Section Journals – Richard C. Mills
   4. Citizens Outreach – Constance L. Brigman
      See Attachment 6
   5. Electronic Communications – Michael G. Lichterman
   6. Membership – Raj A. Malviya

D. Ethics and Professional Standards
   1. Ethics & Unauthorized Practice of Law – Katie Lynwood

E. Administration of Justice

F. Areas of Practice
   1. Real Estate – Mark E. Kellogg
      See Attachment 7
   2. Transfer Tax Committee – Lorraine F. New
   3. Charitable and Exempt Organization – Christopher J. Caldwell
4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

IX. Other Reports

A. Liaisons

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr.
2. Business Law Section Liaison – John R. Dresser
3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp
4. Family Law Section Liaison – Patricia M. Ouellette
5. ICLE Liaison – Jeanne Murphy
6. Law Schools Liaison – William J. Ard
7. Michigan Bankers Association Liaison – Susan M. Allan
9. Probate Registers Liaison – Rebecca A. Schnelz
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz
11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch
12. State Bar Liaison – Richard J. Siriani
13. Taxation Section Liaison – George W. Gregory

X. Other Business

XI. Hot Topics

XII. Adjournment
ATTACHMENT 1
I. Call to Order

The Chair of the Section, Shaheen I. Imami, called the meeting to order at 10:15 a.m.

II. Attendance

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

Shaheen I. Imami
James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
Christopher A. Ballard
Constance L. Brigman
Rhonda M. Clark-Kreuer
Kathleen M. Goetsch
Michael G. Lichterman
David P. Lucas
Michaele Marquadt
Lorraine F. New
David L.J.M. Skidmore
Geoffrey R. Vernon

A total of 14 council members and officers were present, representing a quorum.

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

Susan M. Allan
George F. Bearup
Christopher J. Caldwell
Hon. Michael L. Jaconette
Mark E. Kellogg
Katie Lynwood
Raj A. Malviya
Richard C. Mills
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
Phillip E. Harter
Kenneth E. Konop
Michael McClory
Douglas A. Mielock

E. Others in attendance:

W. Josh Ard
Jeanne Murphy
Becky Bechler
Ryan Bourjaily
Robert Taylor
Neal Nusholtz
Robert O’Reilly
Susan Chalgian
Daniel Hilker
Jonathan Nahhat
John Giarmarco
Michael D. Shelton
Nazneen Syed
Kurt A. Olson
Carol A. Sewell
Nick Reister
Rob Labe
Andrew Mayoras
Jessica Schilling
Sueann Mitchell
James Spica
John Roy Castillo

III. Minutes of the October 10, 2015 Meeting of the Council

The minutes of the October 10, 2015 Meeting of the Council were included with the Agenda for the November meeting, which were posted on the Section’s web page prior to the meeting. Ms. Lentz moved that the minutes be approved. The motion was seconded. One change was noted. The motion to approve the minutes, as corrected, was approved on a voice-vote with no nays and no abstentions. The corrected minutes were subsequently posted to the Section’s web page.
IV. Treasurer’s Report – Christopher Ballard

Mr. Ballard presented the income/expense report through the end of the fiscal year, September 30, 2015. The Section ended the year with a surplus of approximately $6500. The income/expense report for October is not yet available.

V. Chairperson’s Report – Shaheen I. Imami

- Mr. Imami reported on a request to slow our pace of legislative initiatives. Ms. Becky Bechler thanked the Section members who have been so responsive in dealing with issues arising with various bills. She reported that our Section has five pending requests (in addition to our section’s responses to bills which were not initiated by our Section), and the legislators that we have asked to sponsor legislation have asked us to slow down the pace. In addition, Mr. Imami would like to keep the workloads manageable for Section members who are reviewing bills and proposing substitute language or are drafting proposed legislation.
- Ms. Bechler had referred a question to Mr. Imami concerning the elimination of dower bill, SB 560. Senator Robertson had received an inquiry from a Cooley law professor asking if MCL 700.2202(7)(a) could be eliminated. (The email exchange was attached to the November meeting agenda.) Mr. Konop remembers that when EPIC was being considered, the Family Law Section objected to the elimination of 2202(7)(a). Ms. Bechler was requested to ask the Senators how important this issue was before Council voted on it.
- Mr. Imami reported that Mr. Ard was given permission to use the Patient’s Guide to Health Care Decision-Making. A copy of the Guide and the copyright registration were attached to the November agenda.
- Three court of appeals decisions, In re Brown Estate, In re Duke Estate, In re Jajuga Estate, were attached to the November agenda, for information.
- The public policy positions regarding votes taken at the October meeting (community property trust, filing an amicus brief in Perry v Cotton, supporting the dower repeal bills, and supporting the funeral representative bill in concept) were attached to the November agenda. Ms. Bechler report that she is exploring a possible sponsor for the community property trust.

VI. Report of the Committee on Special Projects – David P. Lucas

Mr. Lucas reported that CSP discussed the proposed tenancy by entireties trust and the Legislative Development and Drafting Committee will be reviewing the language in light of the comments raised. Included as Attachment 1 of the supplemental materials posted on the Section’s webpage for the November meeting was the Draft 1 substitute for the funeral representative bill. Mr. Lucas requested comments concerning the language of the funeral representative bill.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Marguerite Munson Lentz
Ms. Lentz presented the proposed budget, which Ms. Marquardt seconded. A question was raised whether to increase the budget for amicus briefs, and whether that should be treated as an increase from the current budget or a reallocation from the General Fund balance as of the beginning of the year to the Amicus Fund. Mr. Gregory moved to reallocate $40,000 from the Section’s General Fund balance to the Amicus Fund. Ms. Brigman seconded the motion. The motion passed. A motion to approve the budget, as amended to show the reallocation between the funds, was passed.


3. Awards – Amy N. Morrissey -- No report.


5. Nominating – Mark K. Harder -- No report.

6. Annual Meeting – James B. Steward

The meeting has been scheduled. No further report.

B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt

Ms. Marquardt reported that SB 225 and 226 were introduced to provide that the transfer of ownership of pistols to heirs/devisees would be permissible whether or not the pistol was registered. The heir or devisee would have to register the pistol within 30 days. No action was requested of Council. According to Ms. Bechler, these bills have been passed and are awaiting the governor’s signature.

Ms. Teahan reported that additional changes were made to the draft bill concerning probate appeals. They are hoping this bill will be introduced in the Senate soon.

2. Legislation Development & Drafting Committee – Geoffrey R. Vernon

Mr. Vernon reported that the qualified dispositions in trust act was introduced as SB 597 and 598. Senator Schuitmaker sponsored the legislation. The proposed legislation for revising the definition of tenancy by the entireties property, as passed by the Council, has been given to the Legislative Service Bureau.

Ms. Lentz moved for the Council to support the Draft 1 substitute for HB 5034 (digital assets for fiduciaries). Mr. Steward supported the motion. The motion passed, 14 in favor, 0 opposed, 0 abstained.

Mr. Vernon requested any suggested changes to EPIC or MTC be sent to him.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported that the ILIT trustee exoneration proposal is still with the Legislative Service Bureau.
4. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber -- No report.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

Mr. Skidmore reported on a request for an amicus brief to be filed in *In re Jacob*. This is an appeal from a probate court decision. (A copy of the amicus request was attached to the November agenda.) Mr. Skidmore recommended that no brief be filed at this point, and to reconsider when the court of appeals issues its opinion.

The next issue concerned whether to file an amicus brief in *In re Mardigian*. Ms. Lentz read a list of the law firms representing parties and named expert witnesses. All persons who are affiliated with any of the law firms or with one of the named expert witnesses (including Mr. Skidmore, Ms. Lentz, and others) left the room. Ms. Teahan took the minutes of this portion of the meeting.

As reported by Ms. Teahan:

After a spirited discussion, a motion was made by Mr. Gregory and seconded by Ms. Clark-Heuer to table a decision on whether or not council should direct the amicus committee to file an amicus in the *Mardigian* case.

2. Probate Institute – Marlaine C. Teahan

Ms. Teahan reported that she is working with ICLE about the program and expects to have the program done within a month. There will be three out-of-state speakers. There was a discussion about the pros and cons of having out-of-state speakers.


4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the committee is working with Clark Hill concerning issues with the publication of the brochures, such as how, and when, to give permission to use the brochures. Her written report is attached as Attachment A.


D. Ethics and Professional Standards


E. Administration of Justice

F. Areas of Practice

1. Real Estate – Mark E. Kellogg

Mr. Steward gave the report for the committee. (A written report was attached to the November agenda.) The report concerned HB 4645 and HB 4930, which proposed changes to the legislation involving uncapping. HB 4645 involves LLCs and HB 4930 involves life estates. The Treasury Department proposed changes to HB 4645, which were introduced as a substitute bill for HB 4645. Mr. Steward moved that the Council oppose the substitute bill for HB 4645. Ms. Lentz seconded. After discussion, the Council voted: 13 approved the motion to oppose the substitute for HB 4645, 0 opposed the motion, and 1 abstained.

Mr. Steward reported that the committee approved HB 4930 in concept, but was still working on more comprehensive language. He moved that the Council approve HB 4930 in concept. Ms. Lentz supported. The motion passed, 14 in favor, 0 opposed, 0 abstained.

2. Transfer Tax Committee – Lorraine F. New

Mr. Labe gave the report. The Tax Nugget was included with the November agenda. The Tax Nugget included information about Rev Proc 2015-53 (inflation adjustments) and Prop. Reg. 301.7701-18 (interpreting terms like “husband” and “wife” in gender neutral manner).

3. Charitable and Exempt Organization – Christopher J. Caldwell -- No report.


VIII. Other Reports

A. Liaisons

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr. -- No report.


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.


9. Probate Registers Liaison – Rebecca A. Schnelz

Mr. McClory reported that Laurence Paolucci will replace Judge Mack on Wayne County Probate Court.

10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz -- No report.

11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch

Ms. Goetsch reported that forms for a small estate are now on the Solutions for Self-Help web site.


13. Taxation Section Liaison – George W. Gregory

Mr. Gregory provided a written report on the activities of the Taxation Section, which is attached as Attachment B.

IX. Other Business

Ms. Lentz reported that the Council received a nice thank you note from Ms. Brigman regarding the flowers sent to her from Hearts and Flowers Fund.

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chairperson Shaheen I. Imami at 12:12 pm.
ATTACHMENT A
I. **Healthcare Decision-making guide published June 1, 2014.**
   a. Author: Connie.
   b. Copyright Claimant: Connie.
   c. Rights and Permissions: SBM Probate and Estate Planning Section. Section has an exclusive license to use the brochure. This exclusive license is not transferable.

II. **Explanation of terms**
   a. **Copyright License.** If you grant someone a copyright license, you retain ownership of your copyright and you give the other party permission to use some or all of your copyright rights.
   b. **Exclusive license.** Nonexclusive license to use the work means that the author and anyone else the author grants permission can also use the work. Exclusive license to publish the work means that the author and copyright owner may still use the work but she may not give permission to anyone else to use the work. Only the exclusive license holder may do that.

III. **Fair use doctrine issue has been raised. Josh Ard requested to use the healthcare decision-making guide for a seminar that he is giving.**
   a. Josh Ard’s seminar: The Mental Health & Aging Project will present GERO 169 Special Topics in Gerontology: Legal Rights of Older Adults, taught by Josh Ard, JD, from 8:00 AM - 5:00 PM at Lansing Community College. The registration fee is $100. This course focuses on issues such as guardianship, conservatorship, power of attorney, the living will, joint tenancy, nursing home residency, and civil commitment, including actual and perceived choices a person has as aging and illness occur. *Legal Rights of Older Adults* is approved for:
      1. Social Work hours: 8.0
      2. Nursing contact hours: 7.75
      3. Nursing Home Administrator hours: 8.0
   b. **Permission to use material granted?**
   c. When is permission required? Copyright permission is the process of getting consent to use copyrighted materials. Unless the material is in the “public domain” or your use is
considered a “fair use,” you must seek permission to use it. If you do not seek permission, you may be infringing and may be subject to legal action.

i. What is in public domain? The following works are in the public domain (i) material published prior to 1923; (ii) material published between 1923 through 1963 without a copyright renewal; (iii) material published between 1923 through 1977 without a copyright notice; and (iv) material published from 1978 through March 1, 1989 without a copyright notice and without subsequent registration within 5 years. If the material is in the public domain permission is not required.

ii. What is fair use? Fair use allows an educator to legally bypass copyrights in narrow circumstances. See https://www.law.cornell.edu/uscode/text/17/107. At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The full text of the agreement is as follows:

**Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with respect to books and periodicals**

**Guidelines**

. . .

II.

Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,

B. Meets the cumulative effect test as defined below; and

C. Each copy includes a notice of copyright.

**Definitions**

Brevity
(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III.

Prohibitions as to I and II Above

...
(C) Copying shall not:
(a) substitute for the purchase of books, publishers’ reprints or periodicals;
(b) be directed by higher authority;
(c) be repeated with respect to the same item by the same teacher from term to term.
(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976.

Ad Hoc Committee on Copyright Law Revision:
By Sheldon Elliott Steinbach.

Author-Publisher Group:

Authors League of America:
By Irwin Karp,
Counsel.

Association of American Publishers, Inc.:
By Alexander C. Hoffman.
Chairman, Copyright Committee.

c. **How to get permission to use copyrighted work.**
   i. Contact the party in the copyright notice.
   ii. Ask for permission and provide information:
      1. One time use or ongoing use?
      2. Describe format of how you will use it (print or online article?)
      3. Expiration date of permission.

IV. **Copyright notice recommended for the healthcare decision-making guide:**

   PUBLICATION NOTICE

   Copyright 2014. Constance L. Brigman. Requests and permissions shall be exclusively directed to the State Bar of Michigan Probate and Estate Planning Section.
V. Hiring of Clark Hill PLLC to represent the section regarding publication of brochures both in print and online. Preparing a scope of representation.

Scope of Representation

1. The State Bar of Michigan Probate and Estate Planning Council (hereinafter PEPC) seeks:
   a. Preparation of two publication agreements (print publishing agreement and online publishing agreement)
   b. Negotiation with the SBM General Counsel regarding the terms of the publication agreements
   c. Assistance with review and approval of the finalized publication agreement and supervision of the execution of the same.

2. The subcommittee chairperson, Constance L. Brigman, will be the point person for discussion of the terms of the publication agreements; however, PEPC must approve and authorize the publication agreements in their final form.

3. This is anticipated to be a one-time representation; however, from time to time the PEPC may ask for assistance with amendments to the terms of the agreements. At such time, the parties must prepare and sign a new representation agreement.

4. Legal research may be required in the course of this representation. The cost of the legal research will be billed separately from the legal representation fee.
5. Legal representation begins with the signing of this Scope of Representation and it ends when the publication agreements have been approved and executed by the SBM and the PEPC chairperson.

6. Matters and issues to be negotiated in the publication agreements:
   a. Publication notice to be displayed on first page of print and first screen of digital copies of the materials given to the SBM for publication.
   b. License to publish granted to SBM and shall include Copyright [year] held by State Bar of Michigan Probate and Estate Planning Section. Publication Rights licensed to State Bar of Michigan.
   c. In exchange for allowing SBM to collect fees for the brochures and profit from the web traffic generated by the brochures, SBM agrees to act as a single source for republication requests and for delivery of the material to the requesting party; to protect brochures from plagiarism and any other unauthorized uses; and, to sustain and develop publication of the brochures.
   d. Final approval rights with the PEPC for material prior to publication.
   e. Publication schedule for print and online brochures.
   f. If finalized materials are submitted for publication but they are not in fact published by the SBM, then the copyright license expires within a term of days (90 days?) and all rights in the material revert back to the PEPC.
   g. Informational reports to the PEPC each month detailing the web traffic and print orders for the brochures that the SBM publishes.
   h. Expiration date of the licenses granted to SBM.
   i. Approval and consultation with PEPC on title, cover, layout, artwork, including the placement of the Publication Notice.
   j. If the SBM requests revisions, then PEPC has the exclusive right to provide a revision. Publication Notice shall add this statement: “This is a [current year] minor revision of the work published [original publication date].
   k. Any revision that contains 25% or more new material shall require a new license and Publication Agreement. It is no longer a minor revision of a previous work.
   l. Once a work is published, it shall be fixed and not altered except to revise or make corrections by mutual agreement of the PEPC and the SBM.
V. **Logging permissions.** The brochures committee is in full agreement that it is important to log permissions granted to lawyers and non-lawyers alike who use the brochures. It gives us important feedback about how the brochures are used and also a log of persons to whom corrections or revisions ought to go.

VI. **SBM as a publisher with a license to publish our materials versus SBM as a printing service.** The brochures committee discussed the attractiveness of the section publishing print brochures using the SBM print services (which by the way any member can use). It would give us a great deal of control, but it would be an administrative burden. Ultimately, we did not foresee it being a workable solution.
ATTACHMENT B
REPORT TO THE PROBATE SECTION OF THE STATE BAR OF MICHIGAN

FROM: George W. Gregory, Liaison from the Taxation Section

Date: November 7, 2015

The Taxation Section website lists a variety of things including upcoming events

The Annual Conference will be held on May 19, 2015 in Plymouth.

At the October 22, 2015 Council Meeting

Reports included information about road funding issues, both Michigan and Federal; concerns on getting younger lawyers involved; BEPS (an international report on Base Erosion and Profit Shifting on multinationals moving net income to lower tax jurisdictions); the Detroit Regional Chamber of Commerce made a presentation on what it sees as Tax Tribunal Reform that might be achievable (addresses quality of members, efficiency, ease of access, deadlines, fees, structure of hearings and fees).

The section has a Facebook page.

The Tax Law Series cosponsored by ICLE will consist of on demand webcasts

11/17/2015 State Tax Controversies in Michigan
12/15/15 Tax Aspects of Divorce
2/16/16 An Inside Look into the IRS Appeals Process
3/15/16 Estate Planning Tax Considerations for 2016
ATTACHMENT 2
PROBATE AND ESTATE PLANNING COUNCIL
Treasurer’s Report
December 19, 2015

Income/Expense Reports

Attached are the income/expense reports for the period October 1, 2015 to November 30, 2015. We currently have $217,381.39 in our general reserves, $75,248.50 in our amicus fund, for a total fund balance of $292,629.89 as of November 30, 2015.

Mileage Reimbursement Rate Effective 1/1/2015

The IRS business mileage reimbursement rate for 2015 is $0.575 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms and instructions are attached. Please note that the forms were revised to reflect the new mileage rate.

Expense Reimbursement Requests

- For instructions or forms, use www.michbar.org/sections/home and scroll down to Section Leadership, and then Section Treasurer Information and click on Expense Reimbursement Form | Instructions or use the attached.
- Email forms to cballard@honigman.com or provide paper copies in person or by mail.

Chris Ballard, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:

Christopher A. Ballard
Honigman Miller Schwartz & Cohn LLP
315 E. Eisenhower Pkwy Ste 100
Ann Arbor, Michigan 48108
office: 734-418-4248
fax: 734-418-4249
email: cballard@honigman.com
### Beginning Fiscal Year 2015-2016

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<th>Beginning of Year</th>
<th>FY to Date</th>
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<th>Nov-15</th>
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<th>Budget 2015-2016</th>
<th>Variance</th>
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### Disbursements

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<td>$7,500.00</td>
<td>$30,000.00</td>
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<td>Meetings (3)</td>
<td>1-9-99-775-1276</td>
<td></td>
<td>$12,000.00</td>
<td></td>
<td>(8,423.41)</td>
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<td>Mtg with Chair's Dinner</td>
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<td></td>
<td>$1,672.79</td>
<td>$1,672.79</td>
<td>$1,672.79</td>
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<tr>
<td>Monthly</td>
<td></td>
<td>University Club of MSU</td>
<td>$975.00</td>
<td>$928.80</td>
<td>$1,903.80</td>
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### Long-range Planning

#### Support for Annual Institute

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<th>Percentage</th>
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<tbody>
<tr>
<td>Contribution to institute</td>
<td>$14,000</td>
<td>ICLE</td>
<td>0.00%</td>
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<tr>
<td>Speaker’s Dinner</td>
<td>$</td>
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<td>0.00%</td>
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<tr>
<td>Amicus Briefs</td>
<td>$10,000</td>
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#### ICLE (Experts in Estate Planning)

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<th>Source</th>
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<tr>
<td>ICLE (Small Firm and Solo Institute) -- scholarships (7)</td>
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<td>ICLE (Small Firm and Solo Institute) -- general support (7)</td>
<td>$1,500</td>
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<td>100.00%</td>
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#### Electronics communications (4)

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<th>Item</th>
<th>Amount</th>
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<td>List serve</td>
<td>$75.00</td>
<td>Chase Manhattan Bank</td>
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<td>E-blast</td>
<td>$</td>
<td></td>
<td>0.00%</td>
</tr>
<tr>
<td>Telephone</td>
<td>$</td>
<td></td>
<td>0.00%</td>
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#### Membership Activities (6)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Source</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Membership Activities (6)</td>
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#### Publishing and Copyright (8)

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<td>1-9-99-775-1868</td>
<td>1-9-99-775-1987</td>
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<tr>
<td>------------------------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Copyright</td>
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<td>Other(5)</td>
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<td>Copying</td>
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<td>Young Lawyer's Conference</td>
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<td>Total Disbursements</td>
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<tr>
<td>Net Increase (Decrease)</td>
<td>$63,927.12</td>
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</tr>
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</table>
Specific Policies

1. The Board of Commissioners may make their expenses approved by the Compensation of Expresses, or Compensation of seven (7) members of the Board of Commissioners if any express must be removed from the express line. An express that continues beyond the limits of the territory, the express may be removed at the option of the Board of Commissioners. If an express is removed, the express shall be returned to the company of origin at the express expense, and the express shall be returned to the company of origin at the express expense.

2. Any express expenses incurred in excess of the approved expenses shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

3. All express expenses shall be recorded in the express book. The express book shall be kept open for inspection by the public. Expresses that exceed the approved expenses shall be recorded in the express book. The express book shall be kept open for inspection by the public.

4. All express expenses shall be approved by the Board of Commissioners. The express book shall be kept open for inspection by the public. Expresses that exceed the approved expenses shall be recorded in the express book. The express book shall be kept open for inspection by the public.

5. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

6. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

7. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

8. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

9. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

10. Any express expenses that are recorded in the express book shall be considered a violation of the express policy. The express company shall be responsible for all expenses incurred in excess of the approved expenses.

Section 14: Expense Reimbursement Policies and Procedures

STATE BAR OF MICHIGAN
ATTACHMENT 3
Order

November 25, 2015

ADM File No. 2014-13

Proposed Amendment of
Rule 2.403 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.403 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 2.403 Case Evaluation

(A)-(K)[Unchanged.]

(L) Acceptance or Rejection of Evaluation.

(1) Each party shall file a written acceptance or rejection of the panel's evaluation with the ADR clerk within 2814 days after service of the panel's evaluation. Even if there are separate awards on multiple claims, the party must either accept or reject the evaluation in its entirety as to a particular opposing party. The failure to file a written acceptance or rejection within 2814 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 2814-day period, at which time
the ADR clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) [Unchanged.]

(M)-(O)[Unchanged.]

Staff Comment: This proposed amendment, submitted by the Michigan Judges Association, would reduce the time period from 28 days to 14 days in which a party would be required to accept or reject a case evaluation award.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by March 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-13. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.
MCR 2.403  
Case Evaluation

STATE BAR OF MICHIGAN POSITION  
By vote of the Representative Assembly on April 16, 2005

MCR 2.403 (M)(3) should be amended as proposed by the Civil Procedure and Courts Committee.

(a) yes
(b) no

Synopsis

The Civil Procedure and Courts Committee recommends that the current case evaluation court rule be amended to limit its scope regarding automobile no fault benefit cases, to limit its scope to only expenses actually incurred and disputed before the case evaluation hearing due to the ongoing nature of these types of claims. The current rule provides that acceptance of a case evaluation award is deemed to dispose of all claims in an action.

Proposed MCR Amendment

MCR 2.403 (Case Evaluation)

(A)-(L) [Unchanged]

(M)(1)-(2) [Unchanged]

(3) In a case alleging a claim for personal protection insurance benefits under MCL 500.3101, et seq, the award is limited to expenses claimed in the action that were incurred and disputed prior to the case evaluation hearing. The trial court may enter an order further limiting the scope of case evaluation. A judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.

(N)-(O) [Unchanged]
Additional Commentary

MCR 2.403(M)(1) provides in pertinent part that a judgment or dismissal entered upon mutual acceptance of a case evaluation award shall be deemed to dispose of all claims in the action.” This rule has been strictly enforced. See, e.g., Marshall v Franklin Life Ins Co, 2001 WL 733529 (February 20, 2001).

The Civil Procedure and Courts Committee notes that as a result, the current case evaluation rule raises problems in actions for personal protection benefits (commonly known as auto no-fault benefits) under MCL 500.310, et seq. Such cases typically involve claims for a combination of no-fault expenses, some incurred pre-suit, with other expenses incurred throughout the pendency of the lawsuit, as well as claims for declaratory relief for future benefits.

The ongoing nature of these claims and the claims for declaratory relief present specific problems in view of the current rule that requires that all claims within a cause of action be disposed of by the process.

The Committee opines that the most troublesome aspect of the current rule arises in claims for declaratory relief for future benefits because it is unwise for a plaintiff to accept case evaluation when declaratory relief sought, thereby risking the dismissal of the plaintiff’s entire claim and a loss of future benefits.

The Committee states that problems also arise in cases involving ongoing disputes where medical expenses are being incurred at or shortly after the time of the case evaluation hearing. The Committee notes that the time lag between the date of case evaluation hearing and entry of judgment is minimally 29 days and in actual practice much longer, often several months. Expenses incurred during this time cannot be determined in advance, yet would be covered by a judgment on mutual acceptance of an award.

The Committee believes that the proposed new MCR 2.403(M)(3) solves these problems by limiting case evaluation awards in PIP actions to expenses incurred and disputed before the case evaluation hearing, and providing that “[a] judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.” The Committee believes that the new rule also provides the trial court with the ability to further limit the scope of case evaluation where needed.

The Civil Procedure and Courts Committee urges the Representative Assembly to approve the amendment to MCR 2.403(M)(3) and transmit it to the Michigan Supreme Court with a recommendation that the Court adopt the amendment.
Proposed Amendment to MCR 2.403 (Case Evaluation)

I. Recommendation to the Representative Assembly

The Civil Procedure and Courts Committee urges the Representative Assembly to approve the following amendment to the MCR 2.403 and transmit it to the Michigan Supreme Court with a recommendation that the Court adopt the amendment.

MCR 2.403 (Case Evaluation)

(A)-(L) [Unchanged]

(M)(1)-(2) [Unchanged]

(3) In a case alleging a claim for personal protection insurance benefits under MCL 500.3101, et seq., the award is limited to expenses claimed in the action that were incurred and disputed prior to the case evaluation hearing. The trial court may enter an order further limiting the scope of case evaluation. A judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.

(N)-(O) [Unchanged]

II. Reasons Supporting the Proposal

MCR 2.403(M)(1) provides in relevant part that a judgment or dismissal entered upon mutual acceptance of a case evaluation award “shall be deemed to dispose of all claims in the action.” This rule has been strictly enforced. See, e.g., Marshall v. Franklin Life Ins. Co., 2001 WL 733529 (February 20, 2001).

As a result, the current case evaluation rule raises problems in actions for Personal Protection Benefits (commonly known as auto No-Fault Benefits) under MCL 500.3101, et.seq. Such cases typically involve claims for a combination of No-Fault expenses, some incurred pre-
suit, other expenses incurred throughout the pendency of the suit, as well as claims for declaratory relief for future benefits. The ongoing nature of these claims and the claims for declaratory relief give rise to specific problems in light of the current rule which requires that all claims within a cause of action be disposed of by the process.

The most troublesome problem arises in cases where claims for declaratory relief for future benefits are involved. In CAM Construction v Lake Edgewood Condominium Assn, 465 Mich 549 (2002), the court held that all claims in an action are disposed of by mutual acceptance of a case evaluation award. The court stated:

“The language of MCR 2.403(M)(1) could not be more clear that accepting a case evaluation means that all claims in the action, even those summarily dismissed. Thus, allowing bifurcation of the claims within such actions, as plaintiff suggests, would be directly contrary to the language of the rule.” Emphasis in the original.

As a result of the above language, it is unwise, if not impossible for a plaintiff to accept case evaluation when declaratory relief is sought. To do otherwise could result in dismissal of plaintiffs’ entire claim and a loss of future benefits. Alternatively, Plaintiffs are requesting (and case evaluators are cooperating in issuing) non-unanimous awards. Both of these practices defeat the purpose of case evaluation and render the process meaningless, as the desired purpose of case evaluation is to resolve matters.

Problems also occur in cases involving ongoing disputes where medical expenses are being incurred at or shortly after the time of the case evaluation hearing. The time lag between the date of case evaluation hearing and entry of judgment is minimally 29 days and in actual practice much longer, often several months. Expenses incurred during this time cannot be determined in advance, yet would be covered by a judgment on mutual acceptance of an award. Once again, Plaintiffs are forced to reject case evaluation as a matter of routine, which
unnecessarily subjects their clients to sanctions and further defeats the purpose of case evaluation.

Proposed new MCR 2.403(M)(3) solves these problems by limiting case evaluation awards in PIP actions to expenses incurred and disputed prior to the case evaluation hearing, and providing that “[a] judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.” It also provides the trial court with the ability to further limit the scope of case evaluation where needed.

III. Fiscal Impact

No fiscal impact is anticipated.

IV. Staffing Impact

No staffing impact is anticipated.

V. Prior Assembly Action

The Assembly has not taken any prior action on this subject.
Respectfully submitted by:

Ronald S. Longhofer

Chair, Civil Procedure and Courts Committee

November 12, 2004
November 25, 2015

ADM File No. 2015-17

Proposed Amendments of Administrative Order No. 2013-12

On order of the Court, this is to advise that the Court is considering amendments of Administrative Order No. 2013-12. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Administrative Order No. 2013-12

(A)(1)-(3) [Unchanged.]

(B)(1)-(3) [Unchanged.]

Probate Court Guidelines.

[The following proposed probate court guidelines numbered 1.-4. would replace the former probate guidelines numbered 1.-3.:]

1. Estate Proceedings. 75% of all cases should be adjudicated within 35 days from the date of the initial filing, 90% within 182 days, and 98% within 364 days.

2. Guardianship, Conservatorship, and Protective Order Proceedings. 75% of all matters should be adjudicated within 90 days from the date of the initial filing and 95% within 364 days.
2.3. Mental Illness Proceedings; Judicial Admission Proceedings. 90% of all petitions should be adjudicated within 14 days from the date of filing and 98% within 28 days.

4. Civil Proceedings and Trust Proceedings. 70% of all cases should be adjudicated within 364 days from the date of case filing and 95% within 728 days.

District Court Guidelines.

(1)-(3) [Unchanged.]

Circuit Court Guidelines.

(1)-(11) [Unchanged.]

Staff Comment: These proposed revisions of Administrative Order No. 2013-12 would adjust the time guidelines in probate courts by applying disposition rates to all cases filed instead of applying rates to “contested matters;” also the proposed revisions would separate from estates, the guidelines for guardianship and conservatorship proceedings and group them with protective order proceedings, and would group trust proceedings with civil proceedings instead of the former grouping of trusts with proceedings for estates.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by March 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-17. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* SB 0551 *

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.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,592.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 22. 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:
SB 0551 (Schuitmaker) Probate; wills and estates; designation of a funeral representative to make disposition arrangements for decedent; provide for. Amends secs. 1104, 2801, 2803, 2807, 3206, 3207, 3209, 3614 & 3701 of 1998 PA 386 (MCL 700.1104 et seq.), adds secs. 3206a & 3206b & repeal sec. 3208 of 1998 PA 386 (MCL 700.3208).

Date position was adopted:
November 17, 2015

Process used to take the ideological position:
Position adopted after an electronic discussion and vote

Number of members in the decision-making body:
23

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

Position:
Support with Recommended Amendments

Explanation of the position, including any recommended amendments.
The Section supports SB 551, but recommends amendments to the bill as provided in the Section's comments.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
COMMENTS OF PROBATE COUNCIL TO
DRAFT 2 OF SUBSTITUTE SENATE BILL 551

Probate Council to the State Bar of Michigan has reviewed the second draft of substitute Senate Bill 551 (the “Bill”), as well as the comments of the Michigan Cemetery Association (“MCA”) dated November 2, 2015.

We recognize the special concerns that these issues pose to the funeral directors in the State of Michigan and all members of the MCA. We are in agreement with the concept of a funeral representative designation and with most of the suggestions in the November 2nd comments of the MCA. However, we have the following recommendations to revise the Bill and the comments of the MCA:

1. In the comments of the MCA and in its proposed addition of section 3210 of the Bill, the MCA suggests that one of the goals of the Bill should be to “Create an unequivocal ability to determine the disposition of one’s own body”. We believe that this goal, however noble, exceeds the parameters of this Bill. This Bill is intended to create a way for an individual to designate a representative. It is an agency Bill, and in order to make its intent clear and singular, the rights and writings of the individual to determine his or her own body’s disposition do not belong in this Bill.

2. We believe that a funeral representative is a fiduciary and the term should remain under Section 1104(e). Like a personal representative, the funeral representative has a duty to fulfill after the death of the declarant.

3. We believe that the prohibition for certain spouses under Section 2801(3) should remain. The behaviors and/or proceedings contemplated by the Section indicate a significant change in the marital relationship and merit a firm and final elimination of that person as a decision maker.

4. Under Section 3206(2), we recommend the insertion of the phrase “of sound mind” in line 12 on page 10, after the phrase “18 years of age or older”. We believe that it is important that the funeral representative be competent to carry out the duties which he or she is asked to perform.

5. Under Section 3206 (2) (B-D), we recommend the following language:
(B) A funeral representative designation under this subsection must be in writing, dated, and signed voluntarily by the Declarant or signed by a notary public on the Declarant’s behalf pursuant to section 33 of the Michigan notary public act, 2003 PA 238, MCL 55.293. A funeral representative designation may be included in the Declarant’s Will, patient advocate designation, or other writing. If a funeral representative designation is contained in an individual’s Will, the Will is not required to be admitted to probate for the funeral representative designation to be valid. The funeral representative designation shall be 1 or both of the following:

(1) Signed in the presence of and signed by two witnesses as provided in Subsection (C), neither of whom is the funeral representative.

(2) Acknowledged by the principal before a notary public, who endorses on the funeral representative designation a certificate of that acknowledgment and the true date of taking the acknowledgment.

(C) When a funeral representative designation under this subsection is executed in the presence of and signed by 2 witnesses, neither witness under this section shall be the patient’s spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, or any of the persons specified in paragraph (D) of this subsection.

(D) The following individuals may not act as a funeral representative for the Declarant unless the individual is described under Subsection (3)(C) or is a relative of the Declarant:

(1) A health professional, partner, member, shareholder, owner, representative, or an employee of or volunteer at a health facility or Veterans’ association, who provided medical treatment or nursing care to the Declarant.

(2) An officer, partner, member, shareholder, owner, representative or employee of a funeral establishment that will provide services to the Declarant.

(3) An officer, partner, member, shareholder, owner, representative or employee of a cemetery at which the Declarant’s body will be interred, entombed or inurned.
(4) An officer, partner, member, shareholder, owner, representative or employee of a crematory that will provide the Declarant’s cremation services.

(5) A member of municipal board, commission, council, committee or other body charged with the oversight or operation of a cemetery or crematory.

You will note that we recommend the deletion of the old Section 3206(C), as it is redundant with the new subsection (B).

6. We recommend a change in the list of family members with priority if there is no designated funeral representative under subsection 3206(3)((D)) as follows:

   (D) The individual or individuals 18 years of age or older, in the following order of priority:
   (i) The decedent’s children;
   (ii) The decedent’s parents;
   (iii) The decedent’s grandparents;
   (iv) The decedent’s siblings;
   (v) The decedent’s nieces and nephews.

7. We recommend the deletion of Subsection 3206(3)(E). We cannot endorse the first come, first honored nature of the subsection. The priority of individuals should be paramount.

8. In Subsection 3206(4), we acknowledge the short period which 48 hours provides. We recommend a 96 hour limit instead. Additionally, we recommend the change to the last sentence of that subsection, lines 12 and 13 on draft page 13, to read as follows:

   “For purposes of this subsection only, ‘exercise their rights or powers under subsection (1)’ means notifying the funeral establishment in possession of the decedent’s body of an individual’s decision to act as the funeral representative.”

9. We recommend the following changes to Section 3206A on page 17 of the Bill: First, Subsection (2) be re-written in total to read, “A person designated as a funeral representative accepts the designation as funeral
representative by signing an acceptance of the funeral representative designation, or by acting as the funeral representative.” Second, we believe that Subsection (3) should remain in its current form, and this authority be exercisable only after the Declarant’s death.

10. In Section 3206B, subsections (A) and (B) on page 18 of the Bill, we recommend the change to 96 hours in line 5 (to be consistent through-out), and we recommend Subsection (B) be re-written as follows:

" (B) The Declarant’s revocation of the funeral representative designation shall be in writing and signed in the manner specified under Section 3206(2). "

11. Under Section 3207(5)(D), line 19, please change the word “under” to “pursuant to”.

12. As mentioned earlier, our only other issue is that we object to the inclusion of Section 3210 submitted by the MCA.

Thank you for the opportunity to submit these comment, which have been duly approved by a majority vote of the members of the Probate Council.
SENATE BILL No. 551

October 7, 2015, Introduced by Senators SCHUITMAKER, BRANDENBURG, JONES, HILDENBRAND and BIEDA and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending sections 1104, 2801, 2803, 2807, 3206, 3207, 3209, 3614, and 3701 (MCL 700.1104, 700.2801, 700.2803, 700.2807, 700.3206, 700.3207, 700.3209, 700.3614, and 700.3701), section 1104 as amended by 2009 PA 46, section 2803 as amended by 2012 PA 173, section 2807 as amended by 2000 PA 54, sections 3206 and 3209 as amended by 2012 PA 63, section 3207 as amended by 2010 PA 325, and sections 3614 and 3701 as amended by 2006 PA 299, and by adding sections 3206a and 3206b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1104. As used in this act:
2 (a) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.
(b) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

(c) "Exempt property" means property of a decedent's estate that is described in section 2404.

(d) "Family allowance" means the allowance prescribed in section 2403.

(e) "Fiduciary" includes, but is not limited to, a personal representative, guardian, conservator, trustee, plenary guardian, partial guardian, and successor fiduciary.

(f) "Financial institution" means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, credit union, insurance company, and entity that offers mutual fund, securities brokerage, money market, or retail investment accounts.

(g) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(h) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(i) "Funeral establishment" means that term as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, and the owners, employees, and agents of the funeral establishment.
(J) "FUNERAL REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED TO
HAVE THE RIGHT AND POWER TO MAKE DECISIONS ABOUT FUNERAL
ARRANGEMENTS AND THE HANDLING, DISPOSITION, OR DISINTERMENT OF A
DECEDENT'S BODY, INCLUDING, BUT NOT LIMITED TO, DECISIONS ABOUT
CREMATION, AND THE RIGHT TO POSSESS CREMATED REMAINS OF THE
DECEDENT AS PROVIDED IN SECTION 3206.

(K) "FUNERAL REPRESENTATIVE DESIGNATION" MEANS A WRITTEN
DOCUMENT EXECUTED AND WITH THE EFFECT AS DESCRIBED IN SECTIONS 3206
TO 3206B.

(I) "General personal representative" means a personal
representative other than a special personal representative.

(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); 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.

(N) "Guardian" means a person who has qualified as a
guardian of a minor or a legally incapacitated individual under a
parental or spousal nomination or a court appointment and includes
a limited guardian as described in sections 5205, 5206, and 5306.
Guardian does not include a guardian ad litem.

(O) "Hazardous substance" means a substance defined as
hazardous or toxic or otherwise regulated by an environmental law.

(P) "Heir" means, except as controlled by section 2720, a
person, including the surviving spouse or the state, that is
entitled under the statutes of intestate succession to a decedent's property.

(Q) "Homestead allowance" means the allowance prescribed in section 2402.

Sec. 2801. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of parts 1 to 4 of this article and of section 3203, a surviving spouse does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.

(c) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(d) An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.
(e) An individual who did any of the following for 1 year or more before the death of the deceased person:

(i) Was willfully absent from the decedent spouse.

(ii) Deserted the decedent spouse.

(iii) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

(3) FOR PURPOSES OF SECTION 3206, A SURVIVING SPOUSE DOES NOT INCLUDE EITHER OF THE FOLLOWING:

(A) AN INDIVIDUAL DESCRIBED IN SUBSECTION (2).

(B) AN INDIVIDUAL WHO IS A PARTY TO A DIVORCE OR ANNULMENT PROCEEDING WITH THE DECEDENT AT THE TIME OF THE DECEDENT'S DEATH.

Sec. 2803. (1) An individual who feloniously and intentionally kills or who is convicted of committing abuse, neglect, or exploitation with respect to the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, a family allowance, and exempt property. If the decedent died intestate, the decedent's intestate estate passes as if the killer or felon disclaimed his or her intestate share.

(2) The felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent does all of the following:

(a) Revokes all of the following that are revocable:

(i) Disposition or appointment of property made by the decedent to the killer or felon in a governing instrument.

(ii) Provision in a governing instrument conferring a general
or nongeneral power of appointment on the killer or felon.

(iii) Nomination of the killer or felon in a governing instrument, nominating or appointing the killer or felon to serve in a fiduciary or representative capacity, including a personal representative, executor, **FUNERAL REPRESENTATIVE**, trustee, or agent.

(b) Severs the interests of the decedent and killer or felon in property held by them at the time of the killing, abuse, neglect, or exploitation as joint tenants with the right of survivorship, transforming the interests of the decedent and killer or felon into tenancies in common.

(C) **BARS THE KILLER OR FELON FROM EXERCISING A POWER UNDER SECTION 3206(1).**

(3) A severance under subsection (2)(b) does not affect a third party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer or felon unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(4) A provision of a governing instrument is given effect as if the killer or felon disclaimed all provisions revoked by this section or, in the case of FOR a revoked nomination in a fiduciary or representative capacity, as if the killer or felon predeceased the decedent.

(5) A killer's or felon's wrongful acquisition of property or
interest not covered by this section shall be treated in accordance with the principle that a killer or felon cannot profit from his or her wrong.

(6) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing or the abuse, neglect, or exploitation of the decedent conclusively establishes the convicted individual as the decedent's killer or as a felon, as applicable, for purposes of this section. With respect to a claim of felonious and intentional killing, in the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that THE individual as the decedent's killer for purposes of this section.

(7) This section does not apply if the forfeiture, revocation, or severance would occur because of abuse, neglect, or exploitation and the decedent executed a governing instrument after the date of the conviction expressing a specific intent to allow the felon to inherit or otherwise receive the estate or property of the decedent.

Sec. 2807. (1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced...
individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

(ii) A provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse.

(iii) A nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, FUNERAL REPRESENTATIVE, trustee, conservator, agent, or guardian.

(b) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(C) BARS THE FORMER SPOUSE FROM EXERCISING A POWER UNDER SECTION 3206(1).

(2) A severance under subsection (1)(b) does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor
of the former spouses unless a writing declaring the severance has
been noted, registered, filed, or recorded in records appropriate
to the kind and location of the property that are relied upon, in the ordinary course of transactions involving that type of
property, as evidence of ownership.

(3) Each provision of a governing instrument is given effect as if the former spouse and relatives of the former spouse
disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative
capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(4) Each provision revoked solely by this section is revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(5) No change of circumstances other than as described in this section and in sections 2803 to 2805, 2808, and 2809 causes a revocation.

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (11), (12), A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION (2), a person with priority under subsections (2) to (4) TO (5) or A PERSON acting under subsection (5) TO (6), (7), or (8), OR (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to RETRIEVE FROM THE FUNERAL
ESTABLISHMENT AND possess cremated remains of the decedent IMMEDIATELY AFTER CREMATION. The handling, disposition, or disinterment of a body shall MUST be under the supervision of a person licensed to practice mortuary science in this state.

(2) SUBJECT TO THIS SUBSECTION AND THE PRIORITY IN SUBSECTION (3), AN INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO IS OF SOUND MIND AT THE TIME A FUNERAL REPRESENTATIVE DESIGNATION IS MADE MAY DESIGNATE IN WRITING ANOTHER INDIVIDUAL WHO IS 18 YEARS OF AGE OR OLDER TO HAVE THE RIGHTS AND POWERS UNDER SUBSECTION (1). ALL OF THE FOLLOWING APPLY TO A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS SUBSECTION:

(A) FOR PURPOSES OF THIS SECTION AND SECTIONS 3206A AND 3206B, AN INDIVIDUAL WHO IS NAMED IN A FUNERAL REPRESENTATIVE DESIGNATION TO HAVE THE RIGHTS AND POWERS DESCRIBED IN SUBSECTION (1) IS KNOWN AS A FUNERAL REPRESENTATIVE AND AN INDIVIDUAL WHO MAKES A FUNERAL REPRESENTATIVE DESIGNATION IS KNOWN AS A DECLARANT.

(B) THE FOLLOWING INDIVIDUALS MAY NOT ACT AS A FUNERAL REPRESENTATIVE FOR THE DECLARANT UNLESS THE INDIVIDUAL IS DESCRIBED UNDER SUBSECTION (3)(C) OR IS A RELATIVE OF THE DECLARANT:

(i) A HEALTH PROFESSIONAL, OR AN EMPLOYEE OF OR VOLUNTEER AT A HEALTH FACILITY OR VETERANS FACILITY, WHO PROVIDED MEDICAL TREATMENT OR NURSING CARE TO THE DECLARANT DURING THE FINAL ILLNESS OR IMMEDIATELY BEFORE THE DECLARANT'S DEATH.

(ii) AN OFFICER OR EMPLOYEE OF A FUNERAL ESTABLISHMENT THAT WILL PROVIDE SERVICES.

(iii) AN OFFICER OR EMPLOYEE OF A CEMETERY AT WHICH THE DECLARANT'S BODY WILL BE INTERRED, ENTOMBED, OR INURNED.
(iv) An officer or employee of a crematory that will provide cremation services.

(C) A funeral representative designation under this subsection must be executed in the presence of and signed by 2 witnesses. If a funeral representative designation is contained in an individual's will, the will is not required to be admitted to probate for the funeral representative designation to be valid.

(3) (2) The following have the rights and powers under subsection (1) in the following order of priority:

(A) If the decedent was a service member, a person designated to direct the disposition of the service member's remains according to a statute of the United States or regulation, policy, directive, or instruction of the Department of Defense.

(B) A funeral representative designated under subsection (2).

(C) The surviving spouse. or, if there is no surviving spouse, the

(D) Subject to subdivision (E), the individual or individuals 18 years of age or older, in the highest order of priority under section 2103, and related to the decedent in the closest degree of consanguinity, have the rights and powers under subsection (1). In the following order of priority:

(i) The decedent's children.

(ii) The decedent's grandchildren.

(iii) The decedent's parents.

(iv) The decedent's siblings.

(E) If an individual described in subdivision (D) has exercised the right to dispose of the decedent's body under
SUBSECTION (1), ANOTHER INDIVIDUAL DESCRIBED IN SUBDIVISION (D) WITH A HIGHER PRIORITY THAN THE INDIVIDUAL WHO EXERCISED THAT RIGHT DOES NOT HAVE THE RIGHT TO MAKE A DECISION ABOUT THE DISINTERMENT OF THE DECEDENT'S BODY OR POSSESSION OF THE DECEDENT'S CREMATED REMAINS.

(4) (3) If the surviving spouse or IF the individual or individuals with the highest priority as determined under subsection (2) do not exercise their rights or powers under subsection (1) or (3) cannot be located after a good-faith effort to contact AND INFORM them OF THE DECEDENT'S DEATH, AFFIRMATIVELY DECLINE TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1), OR FAIL TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) WITHIN 48 HOURS AFTER RECEIVING NOTIFICATION OF THE DECEDENT'S DEATH, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority. FOR PURPOSES OF THIS SUBSECTION ONLY, "EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1)" MEANS NOTIFYING THE FUNERAL
ESTABLISHMENT IN POSSESSION OF THE DECEDENT'S BODY OF AN
INDIVIDUAL'S DECISION OR INSTRUCTIONS AS TO THE FINAL DISPOSITION
OF THE DECEDENT'S BODY.

(5) If 2 or more individuals share the rights and powers
described in subsection (1) as determined under subsection (2) or
(3) OR (4), the rights and powers shall be exercised as decided by
a majority of the individuals WHO CAN BE LOCATED AFTER REASONABLE
EFFORTS. If a majority cannot agree, any of the individuals may
file a petition under section 3207.

(6) If no individual described in subsections (2) and (3)
AND (4) exists, exercises the rights or powers under subsection
(1), or can be located after a sufficient attempt as described in
subsection (9), (10), and if subsection (6) (7) does not apply,
then the personal representative or nominated personal
representative may exercise the rights and powers under subsection
(1), either before or after his or her appointment.

(7) If no individual described in subsections (2) and (3)
AND (4) exists, exercises the rights or powers under subsection
(1), or can be located after a sufficient attempt as described in
subsection (9), (10), and if the decedent was under a guardianship
at the time of death, the guardian may exercise the rights and
powers under subsection (1) and may make a claim for the
reimbursement of burial expenses as provided in section 5216 or
5315, as applicable.

(8) If no individual described in subsections (2) and (3)
AND (4) exists, exercises the rights or powers under subsection
(1), or can be located after a sufficient attempt as described in
subsection (9), if the decedent died intestate, and if subsection (6)--(7) does not apply, **a special fiduciary appointed under section 1309 or a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).**

(9) If there is no person under subsections (2) to (7) to exercise the rights and powers under subsection (1), 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death. **IF THE COUNTY PUBLIC ADMINISTRATOR DECLINES OR FAILS TO ACT, THE MEDICAL EXAMINER SHALL EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1).**

(b) If the decedent was incarcerated in a state correctional facility at the time of his or her death, the director of the department of corrections or the designee of the director.

(10) An attempt to locate a person described in subsection (2) or (3) OR (4) is sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the person at his or her last known address, telephone number, or electronic mail address.

(11) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.
If all of the following apply, subsections (2) to (8) do not apply and the designated person has the rights and the powers under subsection (1):

(a) The decedent was a service member who designated a person to direct disposition of the service member's remains according to a statute of the United States or a regulation, policy, directive, or instruction of the department of defense.

(b) The designated person is the surviving spouse, an adult blood relative, or an adoptive relative of the decedent or, if the surviving spouse, an adult blood relative, or an adoptive relative of the decedent cannot be found, a person standing in loco parentis.

(c) The designated person is able and willing to exercise the rights and powers enumerated in subsection (1).

AN INDIVIDUAL WHO HAS BEEN CRIMINALLY CHARGED WITH THE INTENTIONAL KILLING OF THE DECEDENT SHALL NOT EXERCISE A RIGHT UNDER SUBSECTION (1) WHILE THE CHARGES ARE PENDING.


TO THE EXTENT PAYMENT IS NOT ENSURED UNDER THIS SUBSECTION, THE PERSON DESCRIBED IN THIS SUBSECTION IS LIABLE FOR THE COSTS OF THE DISPOSITION. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO
EXERCISES THE RIGHTS AND POWERS UNDER SUBSECTION (1) AS PROVIDED IN
SUBSECTION (8) OR (9).

(14) (12)—As used in this section:

(a) "Armed forces" means that term as defined in section 2 of
the veteran right to employment services act, 1994 PA 39, MCL
35.1092.

(B) "HEALTH FACILITY" MEANS THAT TERM AS DEFINED IN SECTION

(C) "HEALTH PROFESSIONAL" MEANS THAT TERM AS DEFINED IN

(D) "MEDICAL TREATMENT" MEANS THAT TERM AS DEFINED IN SECTION

(E) (b) "Michigan national guard"—NATIONAL GUARD" means that
term as defined in section 105 of the Michigan military act, 1967
PA 150, MCL 32.505.

(F) (e)—"Nominated personal representative" means a person
nominated to act as personal representative in a will that the
nominated person reasonably believes to be the valid will of the
decedent.

(G) (d) "Service member" means a member of the armed forces, a
reserve branch of the armed forces, or the Michigan national
Guard—NATIONAL GUARD.

SEC. 3206A. (1) A DECLARANT MAY DESIGNATE IN THE FUNERAL
REPRESENTATIVE DESIGNATION A SUCCESSOR INDIVIDUAL AS A FUNERAL
REPRESENTATIVE WHO MAY EXERCISE THE RIGHTS AND POWERS DESCRIBED IN
SECTION 3206(1) IF THE FIRST INDIVIDUAL NAMED AS FUNERAL
REPRESENTATIVE DOES NOT ACCEPT, IS INCAPACITATED, RESIGNS, OR IS
(2) BEFORE ACTING AS A FUNERAL REPRESENTATIVE, THE PROPOSED FUNERAL REPRESENTATIVE MUST SIGN AN ACCEPTANCE OF THE FUNERAL REPRESENTATIVE DESIGNATION.

(3) THE AUTHORITY UNDER A FUNERAL REPRESENTATIVE DESIGNATION IS EXERCISABLE BY A FUNERAL REPRESENTATIVE ONLY AFTER THE DEATH OF THE DECLARANT.

(4) EXCEPT AS PROVIDED IN THE FUNERAL REPRESENTATIVE DESIGNATION, A FUNERAL REPRESENTATIVE SHALL NOT DELEGATE HIS OR HER POWERS TO ANOTHER INDIVIDUAL.

(5) ON REQUEST OF THE FUNERAL ESTABLISHMENT, THE FUNERAL REPRESENTATIVE SHALL PROVIDE A COPY OF THE FUNERAL REPRESENTATIVE DESIGNATION TO THE FUNERAL ESTABLISHMENT.

SEC. 3206B. A FUNERAL REPRESENTATIVE DESIGNATION IS REVOKED BY 1 OR MORE OF THE FOLLOWING:

(A) UNLESS A SUCCESSOR FUNERAL REPRESENTATIVE HAS BEEN DESIGNATED, ANY OF THE FOLLOWING:

(i) THE FUNERAL REPRESENTATIVE'S RESIGNATION.

(ii) THE FUNERAL REPRESENTATIVE CANNOT BE LOCATED AFTER REASONABLE EFFORTS BY THE DECEDEENT'S FAMILY OR FUNERAL ESTABLISHMENT.

(iii) THE FUNERAL REPRESENTATIVE REFUSES TO ACT WITHIN 48 HOURS AFTER RECEIVING NOTICE OF THE DECEDEENT'S DEATH.

(B) THE DECLARANT'S REVOCATION OF THE FUNERAL REPRESENTATIVE DESIGNATION. A DECLARANT MAY REVOKE A FUNERAL REPRESENTATIVE DESIGNATION AT ANY TIME AND IN ANY MANNER BY WHICH HE OR SHE IS ABLE TO COMMUNICATE AN INTENT TO REVOKE THE FUNERAL REPRESENTATIVE
DESIGNATION.

(C) A SUBSEQUENT FUNERAL REPRESENTATIVE DESIGNATION THAT REVOKES THE PRIOR FUNERAL REPRESENTATIVE DESIGNATION EITHER EXPRESSLY OR BY INCONSISTENCY.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4) or if 1 or more of the individuals described in section 3206(2) or (3) cannot be located, 1 ONE or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1): RESOLVE A DISAGREEMENT DESCRIBED IN SECTION 3206(5) OR REBUT THE PRESUMPTION UNDER SECTION 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(C) AN INDIVIDUAL OTHER THAN A PERSON WITH PRIORITY UNDER SECTION 3206(3) TO (5) OR ACTING UNDER SECTION 3206(6), (7), (8), OR (9).

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date shall MUST be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall MUST be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(2) and (3).
(4), unless the court orders that service on every such individual is not required. Unless an individual cannot be located after a reasonable good-faith effort has been made to contact the individual, service must be made on the individual personally or in a manner reasonably designed to give the individual notice. Notice of the hearing must include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing may waive his or her rights. If written waivers from all persons entitled to notice are filed, the court may immediately hear the petition. The court may waive or modify the notice and hearing requirements of this subsection if the decedent's body must be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and reasonable attorney fees in bringing the proceeding must be included in the reasonable funeral and burial expenses under section 3805(1)(b) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section
(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

(D) WHETHER THE DECEDENT EXECUTED A FUNERAL REPRESENTATIVE DESIGNATION UNDER SECTION 3206(2) OR A DESIGNATION DESCRIBED IN SECTION 3206(3)(A).

(E) IF THE DECEDENT WAS MARRIED AT THE TIME OF HIS OR HER DEATH, WHETHER THE DECEDENT'S SPOUSE WAS PHYSICALLY AND EMOTIONALLY SEPARATED FROM THE DECEDENT AT THE TIME OF HIS OR HER DEATH AND HAD BEEN SEPARATED FOR A PERIOD OF TIME THAT CLEARLY DEMONSTRATES AN ABSENCE OF DUE AFFECTION, TRUST, AND REGARD BETWEEN THE SPOUSE AND THE DECEDENT.

(6) BEFORE THE COURT MAKES A DECISION UNDER SUBSECTION (5), AND IF REFRIGERATION IS NOT REASONABLY AVAILABLE, THE FUNERAL ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S BODY MAY EMBALM THE DECEDENT'S BODY.

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) A FUNERAL ESTABLISHMENT MAY RELY ON THE designation of a FUNERAL REPRESENTATIVE UNDER SECTION 3206(2), THE DESIGNATION OF A person as described in section 3206(1) or 3206(3)(A), the order of priority determined under section 3206(2) and (3) may be relied
upon by a funeral establishment. 3206(3) AND (4), OR A COURT ORDER UNDER SECTION 3207 THAT DETERMINES WHO MAY EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1). A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. EXERCISE THOSE RIGHTS AND POWERS. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased OR BY A PERSON OTHER THAN A FAMILY MEMBER THAT THE FUNERAL ESTABLISHMENT REASONABLY BELIEVES KNOWS THE EXISTENCE OR LOCATION OF THE RELATIVES OF THE DECEASED OR THE FUNERAL REPRESENTATIVE. AS USED IN THIS SUBSECTION, "INFORMATION" INCLUDES, BUT IS NOT LIMITED TO, AN AFFIRMATION THAT REASONABLE EFFORTS TO CONTACT THE INDIVIDUAL OR INDIVIDUALS WITH THE RIGHTS AND POWERS UNDER SECTION 3601(1) AND TO INFORM THE INDIVIDUAL OR INDIVIDUALS OF THE DEATH HAVE BEEN MADE WITHOUT SUCCESS.

(3) A funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, OR crematory, or an officer or employee of a funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, or crematory may rely on the terms of sections 3206 and 3207 and this section and the instructions of a person described in section 3206(2) to (8) OR (11), OR OF AN INDIVIDUAL DETERMINED IN AN ACTION UNDER SECTION 3208 TO BE THE PARTY TO EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1), (9) OR A PERSON THAT THE COURT DETERMINES UNDER SECTION 3207 HAS RIGHTS AND POWERS UNDER SECTION
Sec. 3614. A special personal representative may be appointed in any of the following circumstances:

(a) Informally by the register on the application of an interested person if necessary to protect the estate of a decedent before the appointment of a general personal representative or if a prior appointment is terminated as provided in section 3609.

(b) By the court on its own motion or in a formal proceeding by court order on the petition of an interested person if in either case, after notice and hearing, the court finds that the appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, the court may order the appointment without notice.

(c) By the court on its own motion or on petition by an interested person to supervise the disposition of the body of a decedent if section 3206(7)—3206(8) applies. The duties of a special personal representative appointed under this subdivision shall MUST be specified in the order of appointment and may include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding where IF appropriate, and determining the disposition of the body by burial or cremation. The court may waive the bond requirement under section 3603(1)(a). The court may appoint the county public
administrator if the county public administrator is willing to
serve. If the court determines that it will not be necessary to
open an estate, the court may appoint a special fiduciary under
section 1309 instead of a special personal representative to
perform duties under this section.

Sec. 3701. A personal representative's duties and powers
commence upon appointment. A personal representative's powers
relate back in time to give acts by the person appointed that are
beneficial to the estate occurring before appointment the same
effect as those occurring after appointment. Subject to sections
3206 to 3208, before or after appointment, a person named as
personal representative in a will may carry out the decedent's
written instructions relating to the decedent's body, funeral, and
burial arrangements. A personal representative may ratify and
accept an act on behalf of the estate done by another if the act
would have been proper for a personal representative.

Enacting section 1. Section 3208 of the estates and protected
individuals code, 1998 PA 386, MCL 700.3208, is repealed.
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* Draft 1 Substitute for House Bill No. 5034 *

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.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,592.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 14. 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: 
Draft 1 Substitute for House Bill No. 5034 (Forlini) Probate; wills and estates; uniform fiduciary access to digitals assets act; enact. Creates new act.

Date position was adopted: 
November 7, 2015

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: 
23

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

Position: 
Support

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. 
DRAFT 1

SUBSTITUTE FOR

HOUSE BILL NO. 5034

A bill to provide for fiduciary access to digital assets; and to provide for the powers and procedures of the court that has jurisdiction over these matters.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "fiduciary access to digital assets act".
3 Sec. 2. As used in this act:
4 (a) "Account" means an arrangement under a terms-of-service
5 agreement in which the digital custodian carries, maintains,
6 processes, receives, or stores a digital asset of the user or
7 provides goods or services to the user.
8 (b) "Agent" means an attorney-in-fact granted authority under
9 a durable or nondurable power of attorney.
(c) "Carries" means engaging in the transmission of an electronic communication.

(d) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(e) "Conservator" means a person that is appointed by a court to manage all or part of the estate of a protected person. Conservator includes, but is not limited to, any of the following:

(i) A conservator as that term is defined in section 1103 of the estates and protected individuals code, 1998 PA 386, MCL 700.1103.

(ii) A plenary guardian as that term is defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(iii) A partial guardian as that term is defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(iv) A special fiduciary appointed to take possession of and administer a protected person's property.

(v) A special conservator appointed under section 5408 of the estates and protected individuals code, 1998 PA 386, MCL 700.5408.

(vi) A guardian if no conservator has been appointed.

(f) "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication to which all of the following apply:

(i) The information has been sent or received by a user.

(ii) The information is in electronic storage by a digital custodian providing an electronic communication service to the
public or is carried or maintained by a digital custodian providing a remote-computing service to the public.

(iii) The information is not readily accessible to the public.

(g) "Court" means the probate court or, when applicable, the circuit court.

(h) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(i) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

(j) "Digital asset" means an electronic record in which a user has a right or interest. Digital asset does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(k) "Digital custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(l) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(m) "Electronic communication" means that term as defined in 18 USC 2510.

(n) "Electronic communication service" means a digital custodian that provides to a user the ability to send or receive an electronic communication.

(o) "Electronic communication system" means that term as defined in 18 USC 2510.

(p) "Fiduciary" means a person who is an original, additional,
or successor personal representative, conservator, agent, or
trustee.

(q) "Guardian" means that term as defined in section 1104 of
the estates and protected individuals code, 1998 PA 386, MCL
700.1104.

(r) "Governing instrument" means a will, a trust, an
instrument creating a power of attorney, or other dispositive or
nominate instrument.

(s) "Information" means data, text, images, videos, sounds,
codes, computer programs, software, databases, or the like.

(t) "Interested person" or "person interested in an estate"
means those terms as defined in section 1105 of the estates and
protected individuals code, 1998 PA 386, MCL 700.1105.

(u) "Legally incapacitated individual" means that term as
defined in section 1105 of the estates and protected individuals
code, 1998 PA 386, MCL 700.1105.

(v) "Letters" means that term as described in section 1105 of
the estates and protected individuals code, 1998 PA 386, MCL
700.1105.

(w) "Minor" means that term as defined in section 1106 of the
estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(x) "Online tool" means an electronic service provided by a
digital custodian that allows the user, in an agreement distinct
from the terms-of-service agreement between the digital custodian
and user, to provide directions for disclosure or nondisclosure of
digital assets to a third person.

(y) "Person" means that term as defined in section 1106 of the
estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(z) "Personal representative" means that term as defined in
section 1106 of the estates and protected individuals code, 1998 PA
386, MCL 700.1106. Personal representative also includes a special
fiduciary appointed to take possession of and administer the
property of a decedent's estate.

(aa) "Power of attorney" means a record that grants an agent
authority to act in the place of a principal.

(bb) "Principal" means a person that grants authority to an
agent in a power of attorney.

(cc) "Proceeding" means that term as defined in section 1106
of the estates and protected individuals code, 1998 PA 386, MCL
700.1106.

(dd) "Protected individual" means that term as defined in
section 1106 of the estates and protected individuals code, 1998 PA
386, MCL 700.1106.

(ee) "Protected person" includes any of the following:

(i) A protected individual.

(ii) A legally incapacitated individual.

(iii) A minor for whom a guardian has been appointed but no
conservator has been appointed.

(iv) An individual who has a developmental disability.

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

(gg) "Remote-computing service" means a digital custodian that
provides to a user computer processing services or the storage of
digital assets by means of an electronic communications system.

(hh) "Settlor" means that term as defined in section 7103 of
the estates and protected individuals code, 1998 PA 386, MCL
700.7103.

(ii) "Special fiduciary" means a special fiduciary appointed
by the court under sections 1308, 1309, 7704, 7815, and 7901 of the
estates and protected individuals code, 1998 PA 386, MCL 700.1308,
700.1309, 700.7704, 700.7815, and 700.7901.

(jj) "Terms-of-service agreement" means an agreement that
controls the relationship between a user and a digital custodian.

(kk) "Trust" means that term as defined in section 1107 of the
estates and protected individuals code, 1998 PA 386, MCL 700.1107.

(ll) "Trustee" means that term as defined in section 1107 of
the estates and protected individuals code, 1998 PA 386, MCL
700.1107. Trustee also includes a special fiduciary that controls
all or part of a trust.

(mm) "User" means a person that has an account with a digital
custodian.

(nn) "Will" means that term as defined in section 1108 of the
estates and protected individuals code, 1998 PA 386, MCL 700.1108.

Sec. 3. (1) Subject to subsections (2), (3), and (4), this act
applies to all of the following:

(a) A fiduciary acting under a will or power of attorney
executed before, on, or after the effective date of this act.

(b) A personal representative acting for a decedent who died
before, on, or after the effective date of this act.

(c) A proceeding involving a conservator commenced before, on,
or after the effective date of this act.

(d) A trustee acting under a trust created before, on, or after the effective date of this act.

(2) This act applies to a digital custodian if the user resides in this state or resided in this state at the time of the user's death.

(3) This act does not impair an accrued right or an action taken in a proceeding before the effective date of this act.

(4) This act does not apply to a digital asset of an employer used by an employee in the ordinary course of business.

Sec. 4. (1) A user may use an online tool to direct the digital custodian to disclose or not to disclose some or all of the user's digital assets, including the contents of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under subsection (1) or if the digital custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record disclosure of some or all of the user's digital assets, including the contents of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctively from the user's assent to the terms-of-service agreement.
Sec. 5. (1) This act does not change or impair a right of a
digital custodian or a user under a terms-of-service agreement to
access and use digital assets of the user.

(2) This act does not give a fiduciary any new or expanded
rights other than those held by the user for whom, or for whose
estate, the fiduciary acts or who the fiduciary represents.

(3) A fiduciary's access to digital assets may be modified or
eliminated by a user, by federal law, or by a terms-of-service
agreement if the user has not provided direction under section 4.

Sec. 6. (1) When disclosing the digital assets of a user under
this act, the digital custodian may at its sole discretion do any
of the following:

(a) Grant a fiduciary or designated recipient full access to
the user's account.

(b) Grant a fiduciary or designated recipient partial access
to the user's account sufficient to perform the tasks with which
the fiduciary or designated recipient is charged.

(c) Provide a fiduciary or designated recipient a copy in a
record of any digital asset that, on the date the digital custodian
received the request for disclosure, the user could have accessed
if the user were alive and had full capacity and access to the
account.

(2) A digital custodian may assess a reasonable administrative
charge for the cost of disclosing digital assets under this act.

(3) A digital custodian is not required to disclose under this
act a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a digital
custodian to disclose under this act some, but not all, of the user's digital assets, the digital custodian is not required to disclose the requested digital assets if segregation of the requested digital assets would impose an undue burden on the digital custodian. If the digital custodian believes the direction or request imposes an undue burden, the digital custodian or fiduciary may seek an order from the court to disclose any of the following:

(a) A subset limited by date of the user's digital assets.
(b) All of the user's digital assets to the fiduciary or designated recipient.
(c) None of the user's digital assets.
(d) All of the user's digital assets to the court for review in camera.

Sec. 7. If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, a digital custodian shall disclose to the personal representative of the user the content of an electronic communication sent or received by the user if the personal representative gives the digital custodian all of the following:

(a) A written request for disclosure in physical or electronic form.
(b) A copy of the death certificate of the user.
(c) A certified copy of the letters of authority of the personal representative, a small-estate affidavit, or other court order.
(d) Unless the user provided direction using an online tool, a
copy of the user's will, trust, power of attorney, or other record
evidencing the user's consent to disclosure of the contents of
electronic communications.

(e) If requested by the digital custodian, any of the
following:

(i) A number, username, address, or other unique subscriber or
account identifier assigned by the digital custodian to identify
the user's account.

(ii) Evidence linking the account to the user.

(iii) A finding by the court that:

(A) The user had a specific account with the digital
custodian, identifiable by the information specified in
subparagraph (i).

(B) Disclosure of the content of electronic communications of
the user would not violate 18 USC 2701 to 2707, 47 USC 222, or
other applicable law.

(C) Unless the user provided direction using an online tool,
the user consented to disclosure of the contents of electronic
communications.

(D) Disclosure of the contents of electronic communications of
the user is reasonably necessary for administration of the estate.

Sec. 8. Unless the user prohibited disclosure of digital
assets or the court directs otherwise, a digital custodian shall
disclose to the personal representative of the estate of a deceased
user a catalogue of electronic communications sent or received by
the user and digital assets, other than the content of electronic
communications, of the user if the personal representative gives
the digital custodian all of the following:

(a) A written request for disclosure in physical or electronic form.

(b) A copy of the death certificate of the user.

(c) A certified copy of the letters of authority of the personal representative, a small-estate affidavit, or a court order.

(d) If requested by the digital custodian, any of the following:

(i) A number, username, address, or other unique subscriber or account identifier assigned by the digital custodian to identify the user's account.

(ii) Evidence linking the account to the user.

(iii) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate.

(iv) A finding of the court that:

(A) The user had a specific account with the digital custodian, identifiable by the information specified in subparagraph (i).

(B) Disclosure of the contents of electronic communications of a user is reasonably necessary for administration of the estate.

Sec. 9. To the extent a power of attorney grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a digital custodian shall disclose to the agent the content of electronic communication if the agent gives
the digital custodian all of the following:

(a) A written request for disclosure in physical or electronic form.

(b) An original or copy of the power of attorney granting the agent the authority over the(309,174),(813,190)(305,233),(803,250)(313,313),(793,331)(308,374),(800,393)(307,437),(800,455)(310,519),(800,538)(308,591),(800,611)(307,664),(800,686)(309,743),(801,764)form.

(c) An affidavit from the agent under section 5505 of the estates and protected individuals code, 1998 PA 386, MCL 700.5505.

(d) If requested by the digital custodian, any of the following:

(i) A number, username, address, or other unique subscriber or account identifier assigned by the digital custodian to identify the principal's account.

(ii) Evidence linking the account to the principal.

Sec. 10. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a digital custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and any digital assets, other than the content of electronic communications, of the principal if the agent gives to the digital custodian all of the following:

(a) A written request for disclosure in physical or electronic form.

(b) An original or a copy of the power of attorney that gives the agent authority over digital assets or general authority to act on behalf of the principal.
(c) An affidavit from the agent under section 5505 of the 
estates and protected individuals code, 1998 PA 386, MCL 700.5505. 
(d) If requested by the digital custodian, any of the 
following:
(i) A number, username, address, or other unique subscriber or 
account identifier assigned by the digital custodian to identify 
the principal's account.
(ii) Evidence linking the account to the principal.
Sec. 11. Unless otherwise ordered by the court or provided in 
a trust, a digital custodian shall disclose to the trustee that is 
an original user of an account any digital assets of the account 
held in trust, including a catalogue of electronic communications 
of the trustee and the content of electronic communications.
Sec. 12. Unless otherwise ordered by the court, directed by 
the user, or provided in a trust, a digital custodian shall 
disclose to a trustee that is not an original user of an account 
the content of an electronic communication sent or received by an 
original or successor user and carried, maintained, processed, 
received, or stored by the digital custodian in the account of the 
trust if the trustee gives to the digital custodian all of the 
following:
(a) A written request for disclosure in physical or electronic 
form.
(b) A certificate of the trust under section 7913 of the 
estates and protected individuals code, 1998 PA 386, MCL 700.7913, 
that includes consent to disclosure of the contents of electronic 
communications to the trustee.
(c) A certification of the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust.

(d) If requested by the digital custodian, any of the following:

   (i) A number, username, address, or other unique subscriber or account identifier assigned by the digital custodian to identify the trust's account.

   (ii) Evidence linking the account to the trust.

Sec. 13. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a digital custodian shall disclose to a trustee that is not an original user of an account a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the digital custodian in the account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the digital custodian all of the following:

   (a) A written request for disclosure in physical or electronic form.

   (b) A certificate of the trust under section 7913 of the estates and protected individuals code, 1998 PA 386, MCL 700.7913.

   (c) A certification of the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust.

   (d) If requested by the digital custodian, any of the following:
(i) A number, username, address, or other unique subscriber or
account identifier assigned by the digital custodian to identify
the trust's account.

(ii) Evidence linking the account to the trust.

Sec. 14. (1) After an opportunity for a hearing, the court may
grant a conservator access to the digital assets of a protected
person.

(2) Unless otherwise ordered by the court or directed by the
user, a digital custodian shall disclose to a conservator the
catalogue of electronic communications sent or received by the
protected person and any digital asset, other than the content of
electronic communications, in which the protected person has a
right or interest if the conservator gives the digital custodian
all of the following:

(a) A written request for disclosure in physical or electronic
form.

(b) A certified copy of the court order that gives the
conservator authority over the digital assets of the protected
person.

(c) If requested by the digital custodian, any of the
following:

(i) A number, username, address, or other unique subscriber or
account identifier assigned by the digital custodian to identify
the account of the protected person.

(ii) Evidence linking the account to the protected person.

(3) A conservator may request a digital custodian of digital
assets of a protected person to suspend or terminate an account of
the protected person for good cause. A request made under this subsection must be accompanied by a certified copy of the conservator's letters of authority or other order appointing the conservator.

Sec. 15. (1) The legal duties imposed on a fiduciary charged with managing tangible personal property apply to the management of digital assets, including all of the following:

(a) The duty of care.
(b) The duty of loyalty.
(c) The duty of confidentiality.

(2) All of the following apply to a fiduciary's authority with respect to a digital asset of a user:

(a) Except as otherwise provided in section 4, it is subject to the applicable terms-of-service agreement.
(b) It is subject to other applicable laws, including copyright law.
(c) It is limited to the scope of the fiduciary's duties.
(d) It may not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a digital custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws,
including, but not limited to, all of the following:

(a) Section 5 of 1979 PA 53, MCL 752.795.
(b) Section 540 of the Michigan penal code, 1931 PA 328, MCL 750.540.
(c) Section 157n of the Michigan penal code, 1931 PA 328, MCL 750.157n, to the extent that the property is a financial transaction device as that term is defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(5) All of the following apply to a fiduciary with authority over tangible personal property of a decedent, protected person, principal, or settlor:

(a) The fiduciary has the right to access the property and any digital asset stored in it.
(b) The fiduciary is an authorized user for the purposes of computer fraud and unauthorized computer access laws, including, but not limited to, all of the following:
(i) Section 5 of 1979 PA 53, MCL 752.795.
(ii) Section 540 of the Michigan penal code, 1931 PA 328, MCL 750.540.
(iii) Section 157n of the Michigan penal code, 1931 PA 328, MCL 750.157n, to the extent that the tangible personal property is a financial transaction device as that term is defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(6) A digital custodian may disclose information in an account to a fiduciary of the user if the information is required to terminate an account used to access digital assets licensed to the user.
(7) A fiduciary of a user may request a digital custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by all of the following:

(a) If the user is deceased, a copy of the death certificate of the user.

(b) A certified copy of the letters of authority of the personal representative, small-estate affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the account.

(c) If requested by the digital custodian, any of the following:

(i) A number, username, address, or other unique subscriber or account identifier assigned by the digital custodian to identify the user's account.

(ii) Evidence linking the account to the user.

(iii) A finding of the court that the user had a specific account with the digital custodian, identifiable by the information specified in subparagraph (i).

(8) A fiduciary is immune from liability for an action done in good faith in compliance with this act.

Sec. 16. (1) Not later than 56 days after receipt of the information required under sections 7 to 14, a digital custodian shall comply with a request under this act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the digital custodian fails to comply, the fiduciary or designated recipient may petition or otherwise apply to the court...
for an order directing compliance.

(2) An order under subsection (1) directing compliance must contain a finding that compliance is not in violation of 18 USC 2702.

(3) A digital custodian that receives a certificate of trust under section 12 or 13 may require the trustee to provide copies of excerpts from the original trust instrument and later amendments that designate the trustee and, if the trustee is requesting content of electronic communications, that includes consent to disclosure of the contents of electronic communications to the trustee.

(4) A digital custodian or other person that demands the trust instrument in addition to a certificate of trust under section 12 or 13 or demands excerpts under subsection (3) is liable for damages to the same extent the digital custodian or other person would be liable under section 7913 of the estates and protected individuals code, 1998 PA 386, MCL 700.7913.

(5) This act does not limit the right of a person to obtain a copy of a trust instrument in a judicial proceeding concerning the trust.

(6) A digital custodian may notify the user that a request for disclosure or to terminate an account was made under this act.

(7) A digital custodian may deny a request under this act from a fiduciary or designated recipient for disclosure or to terminate an account if the digital custodian is aware of any lawful access to the account following the receipt of the request.

(8) This act does not limit the digital custodian's ability to
obtain or to require a fiduciary or designated recipient requesting
disclosure or termination of an account under this act to obtain a
court order that does any of the following:

(a) Specifies that an account belongs to the protected person
or principal.

(b) Specifies that there is sufficient consent from the
protected person or principal to support the requested disclosure.

(c) Contains a finding required by law other than this act.

(9) A digital custodian and its officers, employees, and
agents are immune from liability for an action done in good faith
in compliance with this act.

Sec. 17. Notwithstanding section 7 or 8, an interested person
may file a petition in the court for an order to limit, eliminate,
or modify the personal representative's powers with respect to the
decedent's digital assets. On receipt of a petition under this
section, the court shall set a date for a hearing on the petition.
The hearing date must not be less than 14 days or more than 56 days
after the date the petition is filed, except for good cause.

Sec. 18. This act modifies, limits, or supersedes the
electronic signatures in the global and national commerce act, 15
USC 7001 to 7006, but does not modify, limit, or supersedes 15 USC
7001(c) or authorize electronic delivery of any of the notices
described in 15 USC 7003(b).
PROBATE & ESTATE PLANNING SECTION

Respectfully submits the following position on:

* HB 4930 *

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.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,592.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 14. 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 4930 (Nesbitt) Property tax; assessments; definition of transfer of ownership; exclude certain transfers. Amends sec. 27a of 1893 PA 206 (MCL 211.27a).

**Date position was adopted:**
November 7, 2015

**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:**
23

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

**Position:**
Support in Concept

**Explanation of the position, including any recommended amendments:**
The Section supports the bill in concept. The Section is in the process of drafting suggested changes to the bill.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* HB 4645 *

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.

To date, the State Bar does not have a position on this matter.

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Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Marguerite Munson Lentz

E-Mail:
mlentz@bodmanlaw.com

Bill Number:
Substitute H-1 for HB 4645 (Kelly) Property tax; assessments; definition of transfer of ownership; exclude limited liability companies. Amends sec. 27a of 1893 PA 206 (MCL 211.27a).

Date position was adopted:
November 7, 2015

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:
23

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

Position:
Oppose

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
STATE OF MICHIGAN

IN THE SUPREME COURT

SHAWLENE PERRY, MSC No. 152061
Plaintiff/Appellee, COA No. 322069

vs
Genesee County Circuit Court
GLENN M-D COTTON and, LC No. 13-099724-NM
GLENN M-D COTTON, PLC,
Defendants/Appellants.
Hon. Richard B. Yuille

BRIEF OF AMICUS CURIAE
STATE BAR OF MICHIGAN’S PROBATE AND ESTATE PLANNING SECTION
IN SUPPORT OF APPELLANTS’ APPLICATION FOR LEAVE TO APPEAL

BARRON, ROSENBERG,
MAYORAS & MAYORAS, P.C.
By: Andrew W. Mayoras (P54896)
Attorneys for Amicus Curiae
State Bar of Michigan’s
Probate and Estate Planning Section
1301 W. Long Lake Road, Ste. 340
Troy, MI 48098
(248) 641-7070
(248) 641-7073 Fax
awmayoras@brmmlaw.com
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Argument

An Attorney Retained By A Personal Representative Or Other Fiduciary Only Represents, Owes Duties To, And Can Only be Sued For Malpractice By, The Fiduciary, And Not Other Persons Interested In The Estate................................................................. 3

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PROBATE AND ESTATE PLANNING SECTION’S PUBLIC POLICY POSITION

The full version of Amicus Curiae Probate and Estate Planning Section’s Public Policy Position is set forth in Appendix 1. In summary, its position is as follows:

It is the Council’s position that the Court of Appeals in *Perry v Cotton*, COA #322069, wrongly decided that an attorney who represented the personal representative of an estate also represented the beneficiaries of the estate. It is the Council’s opinion that, based upon MCR 5.117(A), an attorney representing the personal representative of an estate only represents the personal representative and does not represent the estate or the beneficiaries of the estate. The Council supports overruling *Perry v Cotton* on this issue.
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The State Bar of Michigan’s Probate and Estate Planning Section (the “Probate and Estate Planning Section” or the “Section”) supports the Application for Leave to Appeal filed by the Appellants and asks this Honorable Court to grant leave to appeal, and review and reverse the unpublished decision of the Court of Appeals issued on June 16, 2015, in the case of Perry v Cotton, No. 322069. Specifically, the Court of Appeals held that the published decision in Steinway v Bolden, 185 Mich App 234, 460 NW2d 306 (1990), applied. The Court of Appeals followed the central holding of Steinway, which stated that “although the personal representative retains the attorney, the attorney’s client is the estate, rather than the personal representative.” Id at 237-38.

It did so without citing or discussing the Michigan Court Rule that was adopted after Steinway, MCR 5.117(A), which states, “An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.” In doing so, Perry v Cotton affirmed the trial court’s granting of summary disposition in favor of the plaintiff in a legal malpractice claim.

The Appellants filed a timely application for leave to appeal to this Court, on July 28, 2015. The Appellee filed a timely opposition on August 17, 2015. The Appellants then filed a timely reply brief on September 8, 2015.

This Court granted the Probate and Estate Planning Section’s Motion for Leave to File Amicus Curiae Brief by November 10, 2015, through its Order dated October 20, 2015. The Section asks this Court to reverse the Court of Appeals, reject the continued application of Steinway in light of MCR 5.117(A) and other authority, and to determine that an attorney representing a personal representative or other fiduciary only represents (and is only subject to malpractice actions filed by) the fiduciary, instead of heirs, beneficiaries, or other interested persons in an estate.
AMICUS CURIAE’S STATEMENT OF QUESTION PRESENTED

Does an attorney retained by personal representative or other fiduciary: (1) represent, (2) owe duties to, and (3) face potential liability through malpractice claims filed by, all interested persons in an estate, instead of the individual fiduciary alone?

Appellants answer: No

Appellee answers: Yes

The trial court answered: Yes

The Court of Appeals answered: Yes

Amicus Curiae, The Probate and Estate Planning Section, answers: No.
STATEMENT OF FACTS

The basic facts are not in dispute. The Appellants are an attorney and his law firm retained by the personal representative of the estate. See Plaintiff’s Motion for Summary Disposition dated October 11, 2013, at 2 and Exhibit 7 thereto at 1. The Appellant-attorney listed himself as attorney for the estate in probate pleadings. See Exhibits 1 through 4 to Appellee’s Brief in Opposition to Application. The Appellants and their client filed pleadings with the probate court to bring the proceeds from a disputed life insurance policy into the estate, and then successfully convinced the probate court to distribute those proceeds to the personal representative, who was also the decedent’s widow. Id; see also Plaintiff’s Motion for Summary Disposition dated October 11, 2013, at Exhibits 7, 8, 9, 10, and 11.

The Appellee was the decedent’s sister and the named beneficiary of the life insurance policy; she was not an heir or beneficiary of the estate. She claims she was not served with the pleadings that sought to dispose of the life insurance proceeds. She opposed the distribution that had already happened and convinced the probate court to set aside its order disbursing the funds to the widow. Plaintiff’s Motion for Summary Disposition dated October 11, 2013, at Exhibits 12 and 13. After the funds had already been disbursed, the widow filed for Chapter 7 bankruptcy and Appellee was unable to receive back the full insurance proceeds. Id at 6-7 and Exhibit 11. Appellee ultimately brought this malpractice lawsuit against the Appellants and prevailed in the trial court, through a summary disposition motion. See Exhibit B to Appellant’s Application. Appellee also prevailed in the Court of Appeals, which affirmed the trial court. See Exhibit A to Appellant’s Application.

The Probate and Estate Planning Section does not believe there are any additional facts, inaccuracies or deficiencies that are material to the disposition of the Application for Leave to
Appeal as to the facts are set forth in the parties’ various briefs. Rather, the Section’s Position is that this Court should review and reverse the Court of Appeals on the following legal issue: Does an attorney hired by a fiduciary also represent, owe duties to, and face potential malpractice claims by, others interested in the estate, trust, or protective proceeding?

The dispositive legal issue and this appeal can be addressed and decided without resolving the dispute about whether the Appellant-attorney did or did not commit a breach of duty or cause harm to the Appellee. The Section takes no position on those points but is only concerned with proper resolution of the legal issue about whom an attorney retained by a fiduciary represents.
ARGUMENT

AN ATTORNEY RETAINED BY A PERSONAL REPRESENTATIVE OR OTHER FIDUCIARY ONLY REPRESENTS, OWES DUTIES TO, AND CAN ONLY BE SUED FOR MALPRACTICE BY, THE FIDUCIARY, AND NOT OTHER PERSONS INTERESTED IN THE ESTATE.

Introduction

Probate practitioners are in need of guidance about whom an attorney retained by a fiduciary represents, and to whom he or she owes duties as a client. The law has been inconsistent and muddled since 1990, leaving a great deal of confusion. It is not uncommon for attorneys to list themselves as “attorney for the Estate” or “attorney for the Trust” in various probate pleadings and other filings. The appropriateness of this, and the meaning of it, is far from clear under Michigan law, despite the passage of a court rule in 1992 that appeared to resolve the question. See MCR 5.117(A).

There is no dispute that personal representatives and other fiduciaries owe important duties to heirs, devisees, and beneficiaries to an estate, such as the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; adherence to the prudent investor rule (with respect to investments); and confidentiality. See MCL 700.1212. But does an attorney retained by the fiduciary also have those duties to all of the interested persons\(^1\) in an estate or trust, even though nothing in the Estate and Protected Individuals Code (“EPIC”) states that they do? Conversely, does the attorney owe duties only to the individual fiduciary, who in turn is responsible for carrying out the duties owed to others – and who is permitted by EPIC to retain an

\(^1\) “Interested persons” is a defined term that includes heirs, devisees, children, spouses, creditors, beneficiaries, and others with a property right in or claim against a trust estate or the estate of a decedent or protected individual, among others. MCL 700.1105(c)
attorney to help him or her do so\(^2\)?

If the attorney does owe duties to multiple parties, and not just the client who retained him or her, then how does the attorney satisfy competing interests of those parties, particularly in light of MRPC 1.7\(^3\)? If the attorney only owes duties to the fiduciary that retained him or her, are there other sufficient legal protections in place for the other heirs, devisees, beneficiaries, and other interested persons?

The Probate and Estate Planning Section believes it is important for the Supreme Court to resolve the conflict in the law that currently exists, and to provide guidance to not only its members, but to all attorneys in the State of Michigan who may appear on behalf of a client in probate court – including fiduciaries and other interested persons. As such, the Section respectfully joins in the Appellants’ request that leave to appeal be granted.

In doing so, the Section will not advocate that the attorney involved in this case should or should not be found responsible for the alleged actions upon which the legal malpractice claim is based. There are a host of other legal claims and avenues that may apply to afford a remedy against attorneys who improperly assist or advise their clients to breach fiduciary duties\(^4\). If that happened

\(^2\) EPIC permits a personal representative to employ an attorney to “advise or assist the personal representative in the performance of the personal representative’s administrative duties.” MCL 700.3715(w). Similar provisions exist with respect to an attorney employed by a trustee or conservator. MCL 700.7817(w); 700.5423(z).

\(^3\) This rule provides, in part, that a “lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person . . . .” MRPC 1.7(b).

\(^4\) For example, the following remedies are potentially available: attorneys can face disciplinary proceedings for ethics violations; loss of compensation under MCL 700.3721 or 700.7207; sanctions under MCR 2.114 (made applicable to probate proceedings under MCR 5.114); sanctions under the inherent ability of courts to sanction misconduct of attorneys
in this case, the attorney could potentially be held responsible without resorting to the imposition of a fictional attorney-client relationship, where the attorney was not retained by, and never appeared for, the plaintiff who won a malpractice claim against him. Without a review and reversal of this case, the already-existing confusion about whom an attorney retained by a fiduciary represents only grows.

Most law school students learn that “bad facts make bad law.” But they do not have to. The bad facts that are alleged in this case should not be allowed to perpetrate bad law for the rest of the bar.

A. The Case Law About Whether An Attorney Represents Only The Fiduciary, Or Also The Estate Or Others, Is Muddled And In Need Of Resolution By The Supreme Court.

One of the primary staples that an attorney can turn to when in doubt about a procedural question is the Michigan Court Rules Practice series, published by Thomson West. In the most recent hardcover version of volume five, issued in November 2008, the scope of an attorney’s representation of a fiduciary is addressed in the section discussing MCR 5.117(A), which states, “An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.” The third paragraph to the Author’s Commentary on Rule 5.117 reads as follows:

(Persichini v William Beaumont Hosp, 238 Mich App 626, 639-42; 607 NW2d 100 (1999)); and a direct tort claim for aiding and abetting a breach of fiduciary duty. Echelon Homes, LLC v Carter Lumber Co, 261 Mich App 424, 444-46; 683 NW2d 171 (2004); rev’d on other grounds, 472 Mich 192). And, of course, the fiduciary can be liable for breach of fiduciary duty, and then the fiduciary could bring a malpractice claim against the attorney who improperly assisted or advised conduct that constituted a breach of fiduciary duty.

Even though the Court of Appeals decision was unpublished, many probate practitioners rely on unpublished opinions for guidance because, in many instances, published case law is not available.
MCR 5.117(A) clarifies that an attorney filing an appearance on behalf of a fiduciary or trustee represents that person, not the estate. The subrule settles decisions such as Steinway v. Bolden, which might suggest or hold to the contrary.

5 Longhofer, Michigan Court Rules Practice (2008) at 770 (emphasis added); attached as part of Exhibit A.

This seeming resolution to the issue was temporary. More recently, including in 2015, the Pocket Part of the same publication has included the following revision to the point:

Replace the third paragraph with the following:
Under MCR 5.117(A), an attorney filing an appearance on behalf of a fiduciary represents the estate as well as the fiduciary personally.

5 Longhofer, Michigan Court Rules Practice (2015 Pocket Part) at 202, citing In re Graves, unpublished opinion per curiam of the Court of Appeals, originally issued December 3, 2009 (Docket No 286674) (emphasis added); attached as part of Exhibit A.

So which statement correctly reflects the law on this point? The Court of Appeals has issued several contradictory opinions on this point, from Steinway in 1990, until the decision in this case was issued this past summer. It is time for a clear answer to be provided.

The claim in Steinway was brought under MCR 8.122, which is limited to claims brought by clients. Liability was sought against the attorney who represented the personal representative of the estate. The Steinway opinion stated, “although the personal representative retains the attorney, the attorney’s client is the estate, rather than the personal representative . . . .” Steinway v Bolden, 185 Mich App 234, 237-38; 460 NW2d 306 (1990). As such, Steinway stood for the proposition that the attorney could be successfully sued for a claim by someone who was not actually his client in the sense of a normal attorney-client relationship. Instead, the Court considered the estate to be the
In 1992, the Supreme Court adopted MCR 5.117(A). Again, that court rule states, “An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.” Longhofer and others interpreted this rule as being in response to Steinway, and changing the outcome going forward, so that attorneys would no longer be considered to represent the “estate.” See MCR 5.117 (2015), Staff Comment, discussed in Appellants’ Application for Leave to Appeal at 5-6.

Consistent with this interpretation of the court rule, each of the next three Court of Appeals panels who addressed this topic issued an unpublished opinion holding that the attorney retained by a fiduciary owed no duty to the estate or persons interested in this estate, but instead, only to the individual fiduciary.

First, in 1997, the Court of Appeals in Ward v Knudsen, Wasiura & Associates, PC, interpreted 5.117(A) as having changed the law set forth in Steinway:

Under current law, the law firm represents the personal representatives of the decedent’s estate, defendants Ward and Smith, not the estate itself. MCR 5.117(A). Because an attorney-client relationship does not exist between the estate and the law firm, we can find no attorney-client relationship between the law firm and plaintiff on the ground presented.

Ward v Knudsen, Wasiura & Associates, PC, unpublished opinion per curiam of the Court of Appeals dated April 22, 1997 (Docket No 187604); Slip Op at 2; attached hereto as Exhibit B. The Probate and Estate Planning Section believes that Ward properly interpreted the meaning of MCR 5.117(A).

In 2008, the Court of Appeals had a consistent view of the court rule in a conservatorship case. There, the conservator (Stanke) retained an attorney to represent her while she acted on behalf of her minor son, Jacob. Subsequently, a malpractice claim was brought on behalf of Jacob against
the attorney. The Court discussed the issue at length:

Once Stanke was named conservator, defendant acted on her behalf in that role. An attorney appearing in a probate matter on behalf of a fiduciary, including a conservator, represents that fiduciary. MCR 5.117(A); MCL 700.1104(e). Thus, there can be no doubt that defendant represented Stanke at all times in the probate court proceedings.

Defendant was retained by Stanke to represent her in prosecuting and settling tort claims on behalf of Jacob; defendant was not acting as Jacob’s guardian ad litem. To the extent that Stanke’s interests diverged from Jacob’s at any point in the proceedings, it was incumbent upon the court to determine the fairness of the course of action proposed by Stanke, and/or appoint a guardian ad litem to represent Jacob’s interests. MCR 2.420(B); MCR 5.121(A). Defendant’s obligation was to adhere to the direction provided by Stanke, who in turn had a duty to act in good faith on behalf of Jacob.

Plaintiff asserts that a determination that defendant represented Stanke, and not Jacob, leaves Jacob unprotected in the legal proceedings adjudicating his rights. However, plaintiff overlooks the fact that, as Jacob’s next friend, Stanke unequivocally owed Jacob certain duties, including to prosecute the action on his behalf, in good faith. If Jacob believes that Stanke breached those duties, he can take—and indeed, he has taken—legal action against her. Similarly, if defendant’s representation of Stanke was deficient, because defendant acted negligently in pursuing Stanke’s chosen course, then Stanke has a malpractice claim against defendant. However, on the circumstances presented here, we conclude that Jacob, not being defendant’s client, has no cause of action against defendant arising out of defendant’s representation of Stanke in connection with either the circuit court or probate court proceedings to prosecute and settle the underlying tort claims.

Stanke v Stanke, unpublished opinion per curiam of the Court of Appeals dated January 24, 2008 (Docket No 263446) (on remand); Slip Op at 4-5 (emphasis added); attached hereto as Exhibit C.

The Probate and Estate Planning Section agrees with this analysis, for the same reasons outlined by the Stanke Court. An attorney’s duty is to the fiduciary-client who retained him or her. The fiduciary’s duty, in turn, is to the heirs, beneficiaries, devisees, the protected individual in protective proceedings, and to a lesser extent, to other interested persons. Further, for all interested
persons, there are legal protections already in place if there is a risk that the fiduciary may not be properly discharging a duty, including appointment of a guardian ad litem under MCR 5.121(A) or a special fiduciary under MCL 700.1309. As an additional protection, the fiduciary faces liability for breach of fiduciary duty, and in turn, the fiduciary can claim malpractice against the attorney.

Later in 2008, the Court of Appeals reached the same conclusion as in Ward and Stanke in a similar dispute. In Chamness v Deperno, a beneficiary of an estate brought a malpractice lawsuit against the attorney who represented the fiduciary who administered the estate, alleging that he was owed a duty as a third-party beneficiary under the case of Mieras v DeBona, 452 Mich 278, 308; 550 NW2d 202 (1996), and/or under the doctrine of equitable subrogation. The Court found that neither theory applied. It first cited well-accepted legal principles in a legal malpractice claim:

[T]he “traditional legal doctrine that mandates that only a person in the privity of an attorney-client relationship could sue an attorney for malpractice.” Ginther v Zimmerman, 195 Mich App 647, 651; 491 NW2d 282 (1992) (emphasis supplied). “The essential purpose of that rule is to prevent consideration of the interests of those outside the relationship from interfering with the attorney’s duty to loyally represent a client.” Id. In other words, “[t]here has been a reluctance to permit an attorney’s actions affecting a nonclient to be a predicate to liability because of the potential for conflicts of interest that could seriously undermine counsel’s duty of loyalty to the client.” Beaty v Hertzberg & Golden, PC, 456 Mich 247, 254; 571 NW2d 716 (1997).

Chamness, unpublished opinion per curiam of the Court of Appeals dated March 4, 2008 (Docket No 267691); Slip Op at 2 (underline added); attached hereto as Exhibit D. The Court affirmed summary disposition for the defendant-attorney, as well as sanctions against the plaintiff, ruling,

6 A court’s power to appoint a guardian ad litem or a special fiduciary exists for all probate proceedings, not just conservatorships.

7 In doing so, it rejected the same argument for the application of Mieras that the Appellee raised in her Brief in this case.
“Plaintiff cannot maintain his legal malpractice claim, as a matter of law, because an attorney-client relationship did not exist.” *Id* at 4.

Again, the Probate and Estate Planning Section echoes the concerns of conflicts of interest and the potential for undermining the attorney’s duty of loyalty to his or her client, if the Court of Appeals’ application of *Steinway* in this case was correct. Compliance with MRPC 1.7 would make it nearly impossible for attorneys to represent fiduciaries, except in those cases where all interested persons (including heirs, beneficiaries, creditors and others with an interest in or claim to estate property) in the particular estate, trust, or protective proceeding agree on every issue. That, of course, often cannot be known at the commencement of any particular probate proceeding. The potential for conflict places attorneys who seek to represent fiduciaries in grave danger of violating the ethics rules, or having to withdraw at the mere hint of a disagreement or adverse positions between interested persons.

While *Ward, Stanke*, and *Chamness* represent a consistent view of this issue, the Court of Appeals has not consistently followed their approach. In 2009, the case of *Graves v Comerica Bank* relied on *Steinway* and held that the attorney (Ford), “… was Preshus Graves’ attorney, MCR 5.117(A), but because Preshus Graves was a personal representative, Ford’s “client” also effectively includes the estate, not just the fiduciary thereof in her personal capacity.” *Graves*, unpublished opinion per curiam of the Court of Appeals, originally dated December 3, 2009 (Docket No 286674); Slip Op at 5 (emphasis in original); attached hereto as Exhibit E. Interestingly, the Court of Appeals originally issued the opinion “For Publication,” but reversed the decision to publish it on its own motion, through an order issued on February 18, 2010. A copy of this Order is attached as part of Exhibit E.
In the instant case, the Court of Appeals applied *Steinway* in the same manner as *Graves*, but with the additional ground that the Appellant-attorney in this case labeled himself as “the attorney for the estate” in various pleadings and admitted he represented the estate in his answer to the complaint. *Perry*, unpublished opinion per curiam of the Court of Appeals dated June 16, 2015 (Docket No 322069); Slip Op at 1; attached hereto as Exhibit F. The Court of Appeals did so without mentioning or discussing MCR 5.117(A) or its impact on the *Steinway* holding. *Id.*

The result from *Graves* and now *Perry*, if not resolved by this Court, is that probate practitioners (not to mention judges) will have two different sets of cases to chose from in determining to whom attorneys have duties – the fiduciary who retained them, alone, or everyone interested in the estate. And if the determining factor is whether the attorney files an appearance listing himself or herself as attorney for the particular fiduciary, or the “estate”, then the power will be placed into the hands of the attorneys to decide to whom they owe fiduciary duties, and how the interests of the various interested parties should be protected. In addition to the obvious concern of inconsistencies between proceedings, this approach would not avoid the conflict of interests problem. Even attorneys who properly list themselves as representing individual fiduciaries would face potential conflicts, because the attorney’s notation of whom he represented was only part of the reason given for the holding by the Court of Appeals in this case, and it was not a factor at all in *Graves*.

The Probate and Estate Planning Section respectfully asks this Court to resolve this confusion and provide clear direction to its members – and indeed, all attorneys and probate judges in the State of Michigan – so that there is a definitive answer to the question of whether attorneys retained by fiduciaries owe duties to other persons interested in the estate, trust, or protective proceeding,
regardless of whether or not the attorney lists himself or herself on filings as an attorney for the “estate”.

B. The Continued Application Of Steinway As To The Existence Of An Attorney’s Duty To Someone Other Than The Person Who Retained Him Or Her Is Contrary To Supreme Court Precedence In Legal Malpractice Cases.

The landmark Supreme Court decision in Michigan about an attorney’s duty to non-clients is Friedman v Dozorc. After a doctor successfully defended a medical malpractice lawsuit, he brought suit against the attorneys who represented the plaintiff, based on claims of negligence, abuse of process, and malicious prosecution. The Court examined the “public policy considerations respecting the attorney’s role in the adversary system and the importance of preserving free access to the courts.” The Court concluded that the public policy considerations weighed against recognizing a legal duty owed by an attorney to an adverse party:

In short, creation of a duty in favor of an adversary of the attorney’s client would create an unacceptable conflict of interest which would seriously hamper an attorney’s effectiveness as counsel for his client. Not only would the adversary’s interests interfere with the client’s interests, the attorney’s justifiable concern with being sued for negligence would detrimentally interfere with the attorney-client relationship.

* * *

Recognition of an attorney’s duty to an adverse party would, contrary to the assertions of plaintiff and amici, impose additional burdens on the attorney. The conflict of interest which would result cannot be resolved, as plaintiff contends, simply by allowing the attorney to resolve all doubts in favor of the client, for the existence or reasonableness of the doubts might themselves become jury questions which would defy principled resolution.

Friedman, 412 Mich 1, 24-26; 312 NW2d 585 (1981) (emphasis added).

In the instant case, Appellant and Appellee were adverse parties in the probate court proceeding. Appellee was not an heir, beneficiary, or devisee of the estate, but was a party who had
a competing property interest against the estate in life insurance policy proceeds. Yet, under the Court of Appeals decision, the Appellant-attorney had a competing duty to the Appellee, conflicting with the interest of Appellants’ client. The ruling ignored the same conflict of interest concerns that troubled the Friedman court.

Disagreements are common in probate court proceedings. Frequently, different interested persons to an estate or trust have adverse interests to the fiduciary. The classic example is a will or trust contest, where the fiduciary has an obligation to defend against a challenge to the validity of the document. See, for example, In re Gerald Pollack Trust, 309 Mich App 125, 157; 867 NW2d 884, 902-03 (2015). Yet, under the analysis of the Court of Appeals in this case, as well as in Graves, the attorney for the personal representative or trustee also has a duty to the beneficiary bringing the challenge. Id. How can that attorney comply with his duties of loyalty and zealous advocacy to the fiduciary who hired him or her, which means helping the fiduciary defend against the will or trust challenge\(^8\), and yet, also honor a theoretical duty to the beneficiary bringing the challenge? Friedman protects attorneys from this ethical dilemma. The ruling of the Court of Appeals in this case removes that protection and would require all such attorneys to withdraw under MRPC 1.7. But even that would not solve the conflict problem because any new attorney would be placed into the exact same ethical quandary.

Subsequent Supreme Court cases have expanded and clarified the rule of law established in Friedman. “The general rule of law implicated in this case dictates that ‘an attorney will be held liable for . . . negligence only to his client, and cannot, in the absence of special circumstances, be

\(^8\) “A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and these rules.” MRPC 1.2(a).
liable to anyone else.’” *Atlanta International Ins Co v Bell*, 438 Mich 512, 518; 475 NW2d 294 (1991), citing 7 AmJur2d, Attorney at Law, §232, p 274. Further,

Traditional legal doctrine thus mandates that only a person in the special privity of the attorney-client relationship may sue an attorney for malpractice. This rule exists to ensure the inviolability of the attorney’s duty of loyalty to the client. Allowing third-party liability generally would detract from the attorney’s duty to represent the client diligently and without reservation. **The essential purpose of the general rule against malpractice liability from third-parties is thus to prevent conflicts from derailing the attorney’s unswerving duty of loyalty of representation to the client.**

*Id* at 518-19 (emphasis added).

In *Bell*, the Court found that special circumstances existed when an insurer retains defense counsel and is liable on any underlying judgment. *Id* at 519-20. But the Court refused to create a direct attorney-client relationship giving rise to a malpractice claim and instead allowed recovery through the doctrine of equitable subrogation. *Id* at 520-21.

Similarly, in *Mieras v DeBona*, 452 Mich 278, 550 NW2d 202 (1996), which was discussed by both Appellants and Appellee, the Court noted the absence of an attorney-client relationship, in the context between an attorney who drafted a will and the beneficiaries. 452 Mich at 288. The Court allowed for a limited, third-party beneficiary claim, but only in the narrow circumstances where the attorney failed to follow the testator’s instruction as contained in the will itself, and not as established by extrinsic evidence. 452 Mich 289-90, 292-93.

In this case, there is no dispute that the Appellee did not retain the Appellants. Rather, the courts below relied on an expansion of the attorney-client relationship to include the “estate” as a client, along with anyone interested in the estate (even a non-beneficiary such as the Appellee). This legal fiction is not necessary and creates conflicts that the general rule of law, as described in *Bell*,
is designed to avoid. So the instant dispute should boil down to this question: Are there a sufficient set of special circumstances in this case (as in Bell and Mieras) to allow for the recognition of a legal duty and the ability of the third-party to sue for malpractice?

The Supreme Court has already answered that question in a very similar situation, which is factually analogous. In Beaty v Hertzberg & Golden, PC, 456 Mich 247, 571 NW2d 716 (1997), the plaintiff was both a creditor to a bankruptcy estate, and also personal representative of her late husband’s estate, which in turn was the majority shareholder of her late husband’s corporation (the bankrupt entity). Id at 249-250. The widow brought suit for malpractice, breach of fiduciary duty, and related claims against the attorney who represented the bankruptcy trustee. The case was based on the alleged mishandling of a claim by the trustee against a third party to recover insurance policy proceeds for the benefit of the bankruptcy estate. Id at 252. The Court ruled that there were no direct, third-party beneficiary, or equitable subrogation claims available to the plaintiff against the attorney due to the lack of a duty owed by the attorney to the plaintiff, a non-client. Id at 259-61.

The Court applied Friedman to prohibit the imposition of malpractice liability against the attorney by the plaintiff, who was a third-party, based on the “potential for conflicts of interest that could seriously undermine counsel’s duty of loyalty to the client.” Id at 253-54. The Court ruled the equitable subrogation doctrine did not apply, in part because:

[P]laintiff could have petitioned the bankruptcy court to remove Hertzberg [the trustee] and order a successor trustee to investigate the way in which the suit against Loyal American was handled. It is well settled that the bankruptcy court “has an obligation to ensure that professional services provided to an estate adhere to a standard of integrity.”

Id at 256.
As to the breach of fiduciary duty claim, the Court noted that the trustee and the plaintiff were “frequently adverse” to one another, much like the Appellants’ client and the Appellee were in this case. *Id* at 261. As such, it was not reasonable for the plaintiff to repose confidence and trust in the attorney, and without “reasonably reposed faith, confidence, and trust in the attorney’s advice,” there could be no breach of fiduciary duty by the attorney. *Id* at 260. Ultimately, the Court found that, “the lower courts correctly determined that the trustee’s attorneys did not owe plaintiff a fiduciary duty, because that duty would not be limited to a particular issue and could create significant conflicts of interest.” *Id* at 262 (emphasis added).

The *Beaty* case is very similar to this one. The Appellee had the option to ask for the personal representative to be removed, along with other remedies (appointment of a guardian ad litem under MCR 5.121(A) or a special fiduciary under MCL 700.1309, for example). She also could have brought a breach of fiduciary duty claim against the personal representative. She did not need to resort to a direct malpractice suit against the attorney to achieve relief.

Further, the Appellants’ client and the Appellee were adverse to one another; as such, it was not reasonable for the Appellee to repose faith, confidence, and trust in the attorney for an adverse party. Just as in *Beaty*, requiring the attorney to discharge a duty to the Appellee placed the attorney in a conflict of interest situation.

The Probate and Estate Planning Section is not aware of the Supreme Court having been presented with the opportunity to resolve this issue in the context of an attorney representing a

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9 For example, neither party sought leave to appeal to the Supreme Court in *Graves* or *Ward*. In *Chamness*, an application for leave was filed but was dismissed by stipulation. See *Chamness*, unpublished Order of the Supreme Court dated August 14, 2008 (Docket No 136177); part of Exhibit D hereto. The only exception was the *Stanke* case, in which this Court denied the application for leave to appeal. See *Stanke*, unpublished Order of the Supreme Court
fiduciary in probate court rather than bankruptcy court, but the same principles would apply.\textsuperscript{10} Probate courts, just like bankruptcy courts, have the ability to monitor the appropriateness of actions and decisions of fiduciaries and attorneys. In this case, the probate court could have removed the fiduciary or taken other steps to stop the underlying actions, now alleged to be wrongful, if those actions were indeed improper.

Indeed, in bankruptcy court, an attorney arguably has a greater duty to the “estate” than exists in probate court. Bankruptcy court does not have a corollary to MCR 5.117(A). Instead, bankruptcy law imposes a general duty on the trustee’s attorney that is not specific to any creditor:

“It is well to recall that the trustee, and of course the attorneys for the trustee, owe a singular duty to the bankruptcy estate. They may act only for the purpose of directly benefitting the estate in bankruptcy and the creditors in general. They may not represent the interests of the individual creditors or shareholders.”

\textit{Beaty}, 456 Mich at 261. Yet, this Court in \textit{Beaty} rejected a direct claim for malpractice or breach of fiduciary duty by a person interested in the bankruptcy estate against the trustee’s attorney. The same rule should apply here.
C. **Important Public Policy And Practical Implications Weigh Against Imposing A Legal Duty On An Attorney For A Fiduciary To Others Interested In An Estate, Trust, Or Protective Proceeding.**

As discussed above, both the Court of Appeals and the Supreme Court have frequently pointed to concerns about conflicts of interest when evaluating whether to impose a duty on an attorney towards someone other than the person who retained him or her. Under the present state of the law, the resulting ethical quandary for attorneys retained by fiduciaries is difficult. If the Court of Appeals’ view of an attorney’s duty as expressed by *Graves* and *Perry* is correct, instead of the *Ward/Stanke/Chamness* view, then the concerns of conflicts are made much worse.

For example, the Appellee attached a copy of the State Bar of Michigan Ethics Opinion RI-350 to her brief. *See* Appellee’s Brief In Opposition at Exhibit 8. In that Opinion, the Committee limited the scope of two prior Ethics Opinions, because this very issue is unresolved as a matter of law:

> The question of “who is the client” when the lawyer is retained by a fiduciary has not been conclusively answered as a matter of law.

State Bar of Michigan Ethics Opinion RI-350 at 1 (emphasis added). The same opinion also noted:

> In an area such as fiduciary representation, where the law is not definitive but the actions of a fiduciary will almost certainly affect others, we recommend having a clear engagement letter defining the client; and that persons who are not clients but who may be affected by the definition be advised of that fact.

*Id* at 2.

This approach presents a helpful suggestion. Attorneys should clearly know who their clients are. If the law is clarified that the attorney’s only client is the fiduciary, then everyone involved in an estate, trust, or protective proceeding can adjust their expectations accordingly. Attorneys can, and should, notify non-client, interested persons of this fact as well as the resulting
lack of duty to interested parties. Then the interested parties can choose to retain their own counsel rather than simply assuming the fiduciary’s counsel represents their interests. Further, probate judges will not place expectations on attorneys for fiduciaries to protect others in an estate, trust, or protective proceedings.

By sanctioning the other approach – the one followed by both lower courts in this case – all attorneys who appear for fiduciaries would be ethically required by MRPC 1.7 to withdraw whenever an heir, beneficiary, devisee, or other interested person may have a conflicting interest. For trusts, this is especially problematic because of the frequency of trust distribution provisions that allow for a current income and discretionary distributions to one beneficiary (often a spouse), and then for the remaining principal to pass on to residual beneficiaries after the primary beneficiary dies (such as, to the children of the trust settlor from a prior marriage). In those common scenarios, every distribution the trustee makes presents a conflict – requiring a balancing between the interests of the present beneficiary (as guided by the language of the trust instrument) and the residual beneficiaries. Trustees make these types of decisions frequently. Often, one beneficiary or another is unhappy with the decisions made, for obvious reasons. When that happens, under the view of an attorney’s duty espoused by the Court of Appeals in this case, attorneys could not longer represent the trustee who has to make these decisions, because the competing interests of the various beneficiaries would create a conflict under MRPC 1.7.

In fact, the particular facts of this case illustrate how far the attorney’s duty can be stretched. The Appellee was not an heir, beneficiary, or devisee to the estate. Her only interest was in an insurance policy, of which she was named as the beneficiary. The Appellants and their client caused the insurance proceeds to be brought into the estate and distributed from there, to the decedent’s
spouse (the Appellants’ client). Once that happened, the Appellee was akin to a creditor of the estate, clearly considered to be an interested person in the estate under MCL 700.1105(c), which defines “interested person” to include “any other person that has a property right or claim against a trust estate or the estate of a decedent, ward, or protected individual”.

According to the lower courts in this case, the Appellants, as the attorney for the personal representative, owed a duty to all such interested persons and became conflicted under MRPC 1.7 when the interested person’s interest became adverse to the personal representative. However, this is always the case for every estate or trust that has an unpaid creditor whom the fiduciary has a reason to not pay. A creditor who makes a claim against an estate automatically has an adverse interest to the personal representative who opposes that claim. Under the view of an attorney’s duty used by the Court of Appeals in this case, an attorney could never represent the personal representative against the creditor’s claim. He or she would always have a duty to the creditor that would require withdrawal due to conflict, under MRPC 1.7. The situation is unworkable.

Other common issues of conflict in estate proceedings that place personal representatives in adverse positions with interested persons include: Whether the will maker had sufficient mental capacity (700.2501); the appropriateness and timeliness of spousal elections (700.2201, et seq.); the determination of family and exempt property allowances (700.2403 and 2404); the validity of writings intended as wills that were not executed in compliance with the requisite formalities (700.2503); whether a will was revoked or not (700.2507); forfeiture of benefits to a killer or felon (700.2803); whether a personal representative should be required to post a bond (700.3605); and whether a personal representative should be restrained or removed (700.3607 and 3611).

Of course, this is only a brief illustration of the number of disputed issues that can arise in
an estate proceeding (not to mention trust, guardianship, and conservatorship proceedings) for which the personal representative would be required to take a position adverse to someone else. In any of those instances, under the lower courts’ rulings, an attorney for the personal representative would be required to withdraw, the personal representative would have to retain a personal attorney, and a separate attorney would have to be retained for the interests of the “estate”. This would greatly increase the legal fees and costs of administration and lead to unnecessary delays while two new attorneys are retained and brought up to speed.

If the Ward/Stanke/Chamness view is instead adopted, then the fiduciary can continue to employ the same attorney to represent him or her. The interested persons already enjoy many protections under EPIC and the Michigan court rules, such as the rights to seek removal of the fiduciary, surcharge, denial of compensation to the attorney, appointment of a special fiduciary, investigation by a guardian ad litem, and many others. Michigan probate judges have broad authority to impose remedies when a fiduciary breaches his or her duty – regardless of whether that breach was caused by an attorney’s negligence or not. See MCL 700.1308 and 700.7901. Consistent with Friedman, Bell, and Beaty, the attorney’s duty should only be to the person who retains him or her. Then the conflict of interest problem is avoided, and clients sue their attorneys for malpractice if their assistance or advice leads to a breach of fiduciary duty.

This result appears to be what was intended by both MCR 5.117(A) (an attorney appearing for a fiduciary represents the fiduciary) and by EPIC. The Estates and Protected Individuals Code permits personal representatives to employ an attorney to “advise or assist the personal representative in the performance of the personal representative’s administrative duties.” MCL 700.3715(w). Similar provisions exist with respect to attorneys employed by trustees and conservators. See MCL
700.7817(w) and 700.5423(z). If the legislature intended attorneys to be required to protect the interests of all interested persons to an estate, trust, or protective proceeding, then surely some provision in EPIC would have stated as such. The Code was passed to “simplify and clarify” probate law, and to promote a “speedy and efficient” probate system. MCL 700.1201(a) and (c). It is difficult to comprehend that this comprehensive code of statutes should be read to include an implied duty of attorneys to interested persons, especially when such a duty would increase delays and costs required by attorneys being replaced due to conflicts.

Indeed, the only workable solution for attorneys – if the Court of Appeals’ application of Steinway was correct – would be to always have two attorneys for every fiduciary in each estate, trust, or protective proceeding when there was any chance of a contested issue arising in the present or future, for any reason. One attorney would have to be retained (and presumably, paid for) by the personal representative personally, and the other would act for the “estate”.

But who would want to serve as a fiduciary under those circumstances, when it might require the fiduciary to pay for separate, personal counsel? Even if payment of the legal fees for the separate counsel was permitted under MCL 700.3720, the fiduciary would still have to prove the fees were both necessary and reasonable, which would be a difficult position to take in light of the fact that an “estate” attorney already is being paid. In other words, this would result in less speed and efficiency, and more litigation – and, of course, more estate assets being spent on legal fees.

In addition to the burden that interested parties to probate proceedings would face, this rule of law would make it much more difficult for probate attorneys to practice law consistent with their ethical obligations. “A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and these rules.” MRPC 1.2(a). How does a lawyer do that when
the client is not a single person, but a collection of heirs, beneficiaries, devisees, creditors, and others with property interests or claims to estate property, many of which have different objectives?

Attorneys already have ethical duties to be fair to opposing parties and counsel, under MRPC 3.4, as well as requirements of candor to the tribunal and refraining from bringing frivolous claims. MRPC 3.1 and 3.3. They further are guided by ethical limitations in their transactions with non-clients, such as truthfulness, refraining from stating or implying impartiality, and respecting the rights of non-clients. MRPC 4.1, 4.3, and 4.4. Ethically, there are enough protections in place to guide attorneys’ actions without expanding their duty to avoid conflicts under 1.7 to all interested persons in an estate, even when those persons have adverse interests.

The Probate and Estate Planning Section asks the Supreme Court to grant leave to appeal and reverse the Court of Appeals on this issue, so that probate practitioners will not be placed in the quandary of complying with competing ethical duties caused by a lack of clarify in the law about who their clients actually are. Attorneys and interested persons in estates, trusts, and protective proceedings will benefit from a definitive decision that limits an attorney’s duty to the fiduciary alone.
RELIEF REQUESTED

The Amicus Curiae, Probate and Estate Planning Section of the State Bar of Michigan, respectfully requests that this Honorable Court grant the Appellants’ Application for Leave to Appeal and reverse the Court of Appeals’ ruling that an attorney representing a personal representative also represents other interested persons in the estate.

Respectfully submitted,

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

/s/ Andrew W. Mayoras
ANDREW W. MAYORAS (P54896)
Attorney for Amicus Curiae State Bar of Michigan’s Probate and Estate Planning Section
1301 W. Long Lake Road, Ste. 340
Troy, MI 48098
(248) 641-7070
(248) 641-7073 Fax

Dated: November 9, 2015  awmayoras@brmmlaw.com
ATTACHMENT 4
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The total funds remaining after all expenses are $0.00.

Reconciliation of $40,000 from General Fund to Amicus Fund as of October 1, 2014 per vote of Probate Council on November 7, 2017 before allocation or expenses from 2015-2016 year.
ATTACHMENT 5
Goal  It has been a long-standing goal of Probate Council to get all probate court appeals to the Court of Appeals. Others supporting this goal include the SBM Appellate Practice Section, the Michigan Probate Judges Association and the Michigan Judges Association.

We tried accomplishing this by court rule changes; however, the Supreme Court recently was unwilling to go that route. The Court supported our goal in theory but suggested that a legislative fix was necessary. See ADM File No. 2013-10.

Legislative Fix  Given that the rules change approach was not successful, a subcommittee of the former Court Rules, Forms and Procedures Committee worked to find a legislative fix. The very diligent and faithful committee is comprised of the Hon. David M. Murkowski (Probate Chief Judge, Kent County), Shaheen I. Imami (The Prince Law Firm), Marlaine C. Teahan (Fraser Trebilcock), Liisa Speaker (Speaker Law Firm, PLLC, Appellate Practice Section) and attorney Gary L. Chambon, Jr. (Michigan Court of Appeals). This is the same Committee that worked on the rules change. We began our review of the rules change in September, 2010.


Court Rules  Once these bills are passed, several court rules will need updating. The Subcommittee prepared the Court Rule changes and will forward them on to the appropriate Council committee to have them submitted to the Supreme Court. Since it has been a couple of years since the rules changes were drafted, the new committee should review them to see if there have been any intervening rule changes that will impact our proposal. In addition, since our proposed rules were based on our proposed legislation, the committee should also review our proposed rules against the final legislation once it is passed.

Council Action  The Subcommittee requests that Council take a public policy position to support the passage of SB 632 and 633.

Thanks  Again, many thanks to the faithful members of the Committee, to Judge Murkowski for the idea, to Becky Bechler for getting us this far, and to Sen. Schuitmaker for sponsoring our bills.

Marlaine C. Teahan, Chair
Subcommittee on Probate Appeals Project
ATTACHMENT 6
The committee has three items to report to Council.

1. Sandi Barger (SBM Webmaster) has a mock up of the brochures’ webpages. She has granted all of our requests regarding its layout. It is attached.
   a. Each page will have a static, navigation sidebar that allows the user to move from one brochure to another by clicking the title of the brochure.
   b. In Jan. 2016, we hope to give Sandi the final brochures.
   c. Once the Council has approved Sandi’s work, we take the online brochures live.

2. Rick Mills is working on copyright issues for the SBM Probate and Estate Planning Journal. As Shaheen requested, Clark Hill will represent Rick and our committee.

3. Clark Hill representation will address for our committee:
   a. Offering both online and print versions of the brochures.
   b. On each brochure: “Does not include subsequent changes in law after ‘month’ ‘year.’”
   c. Have SBM cooperate with us in obtaining copyright registration.
      Registration is prima facie evidence of the authorship of the content. That content be dispositive if the materials are copied and pasted by someone claiming authorship. See 17 USC § 410(c). The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.
   d. Council will have final approval of content and format; the ownership of the published content; and, authorize future revisions.
   e. Unlike publication of finalized journal articles, the brochures have been published, revised, re-published, revised then re-published. The publication agreement has to capture the ongoing management of the content over time.

Respectfully,
Constance L. Brigman, chairperson
Katie Lynwood, Nancy Welber, Mike McClory, Neal Nusholtz, Jessica Schilling, Katherine Goetsch, Melisa Mysliwiec, committee members
Probate Information
Acting for the Disabled Adult—Guardianship


Next >>
ATTACHMENT 7
HOUSE BILL No. 5139

December 9, 2015, Introduced by Rep. Pettalia and referred to the Committee on Tax Policy.

A bill to amend 1846 RS 65, entitled

"Of alienation by deed, and the proof and recording of conveyances, and the canceling of mortgages,"

by amending section 49 (MCL 565.49).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 49. (1) Conveyances—A CONVEYANCE in which the grantor or 1 or more of the grantors are named among the grantees therein shall have—HAS the same force and effect as they—IT would have if the conveyance were made by a grantor or grantors who are not named among the grantees. Conveyances expressing—a CONVEYANCE THAT EXPRESSES an intent to create a joint tenancy or tenancy by the entireties in the grantor or grantors together with the grantee or grantees shall be—IS effective to create the type of ownership indicated by the terms of the conveyance.

(2) A CONVEYANCE TO CREATE A JOINT TENANCY THAT EXPRESSES
UNEQUAL INTERESTS IS EFFECTIVE TO CREATE THE JOINT TENANCY WITH THE
UNEQUAL INTERESTS, AND IS A VALID CONVEYANCE.

Enacting section 1. This amendatory act takes effect 90 days
after the date it is enacted into law.
SENATE BILL No. 649

December 9, 2015, Introduced by Senator CASPERSON and referred to the Committee on Local Government.

A bill to amend 1846 RS 65, entitled

"Of alienation by deed, and the proof and recording of conveyances, and the canceling of mortgages,"

by amending section 49 (MCL 565.49).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 49. (1) Conveyances—A CONVEYANCE in which the grantor or
1 or more of the grantors are named among the grantees therein
shall—HAS the same force and effect as they—IT would have if
the conveyance were made by a grantor or grantors who are not named
among the grantees. Conveyances expressing—A CONVEYANCE THAT
EXPRESSIONS an intent to create a joint tenancy or tenancy by the
entireties in the grantor or grantors together with the grantee or
grantees shall—IS effective to create the type of ownership
indicated by the terms of the conveyance.

(2) A CONVEYANCE TO CREATE A JOINT TENANCY THAT EXPRESSES
UNEQUAL INTERESTS IS EFFECTIVE TO CREATE THE JOINT TENANCY WITH THE UNEQUAL INTERESTS, AND IS A VALID CONVEYANCE.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
HOUSE BILL No. 5141

December 9, 2015, Introduced by Rep. Pettalia and referred to the Committee on Tax Policy.

A bill to amend 1893 PA 206, entitled
"The general property tax act,"

by amending section 27a (MCL 211.27a), as amended by 2015 PA 19.

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 settlor-transferor or the settlor's-transferor's spouse, or both, conveys the property to the trust and the sole
present beneficiary or beneficiaries are the settlor-TRANSFEROR or the settlor's-TRANSFEROR'S spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the settlor-TRANSFEROR or the settlor's-TRANSFEROR'S spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's
TRANSFEROR'S or the settlor'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 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 THESE INDIVIDUALS.

(ii) Beginning December 31, 2014, a distribution of
residential real property if the distributee 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 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 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 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.

(f) A conveyance by distribution under a will or by intestate succession, TO A TRANSFEREE AS THE RESULT OF THE DEATH OF A PROPERTY OWNER BECAUSE THE TRANSFEREE WAS A DISTRIBUTEE UNDER A WILL OR INTESTATE SUCCESSION, GRANTEE OF A DEED, TRUST BENEFICIARY, BENEFICIARY OF A BENEFICIARY DESIGNATION, APPOINTEE, OR TAKER IN DEFAULT OF A POWER OF APPOINTMENT, except under any of the following conditions:

(i) If the distributee TRANSFEREE is the decedent's spouse, OR IS A TRUST AND THE SOLE PRESENT BENEFICIARY IS THE DECEDED'S SPouse.

(ii) Beginning December 31, 2014, for residential real property, if the distributee TRANSFEREE is the decedent's or the decedent'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 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, a conveyance 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 is more than 50% of 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, 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) 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, 2014, a conveyance 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, 2014, FOR RESIDENTIAL REAL
PROPERTY, A CONVEYANCE 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 OR TRANSFEROR'S SPOUSE'S MOTHER, FATHER, BROTHER,
SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED DAUGHTER, GRANDSON, OR
GRANDDAUGHTER, 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.

(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.
(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 husband and wife OR BOTH SPOUSES creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) 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, 2014, 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, grandchild, or grandparent, 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) 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) A transfer by redemption by the person to whom taxes are
assessed of property previously sold for delinquent taxes.

(f) A conveyance to a trust if the settlor's TRANSFEROR or the
settlor'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
settlor's TRANSFEROR or the settlor'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
settlor's TRANSFEROR's or the settlor'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
A TRANSFEREE shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet 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 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) 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) A transfer for security or an assignment or discharge of a security interest.

(j) 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) 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) 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 legal entity that
fails to comply with a request by the state tax commission under
this subdivision is subject to a fine of $200.00.

(m) 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) 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 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 agricultural property.

(ii) The property is subject to the recapture tax provided for 
under the agricultural property recapture act, 2000 PA 261, MCL 
211.1001 to 211.1007.
(o) 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) 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) 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) A change to the assessment roll or tax roll resulting from
the application of section 16a of 1897 PA 230, MCL 455.16a.
(s) 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) 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 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.

(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 ie
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 the effective date of the amendatory act that
added this subdivision, 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) 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)(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) "Inflation rate" means that term as defined in section
34d.

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

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

(f) "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, 2014.

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, 2014.
A bill to amend 1893 PA 206, entitled "The general property tax act,"
by amending section 27a (MCL 211.27a), as amended by 2015 PA 19.

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 settlor-TRANSFEROR or the settlor's-TRANSFEROR'S
spouse, or both, conveys the property to the trust and the sole
present beneficiary or beneficiaries are the settlor—TRANSFEROR or
the settlor's—TRANSFEROR'S spouse, or both.

(ii) Beginning December 31, 2014, for residential real
property, if the settlor—TRANSFEROR or the settlor's—TRANSFEROR'S
spouse, or both, conveys the residential real property to the trust
and the sole present beneficiary or beneficiaries are the settlor's
TRANSFEROR'S or the settlor'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.

(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 EX INDIVIDUALS.

(ii) Beginning December 31, 2014, a distribution of
residential real property if the distributee 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 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 SUBSTITUTE 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 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.

(f) A conveyance by distribution under a will or by intestate
succession, TO A TRANSFEREE AS THE RESULT OF THE DEATH OF A
PROPERTY OWNER BECAUSE THE TRANSFEREE WAS A DISTRIBUTEE UNDER A
WILL OR INTESTATE SUCCESSION, GRANTEE OF A DEED, TRUST BENEFICIARY,
BENEFICIARY OF A BENEFICIARY DESIGNATION, APPOINTEE, OR TAKER IN
DEFAULT OF A POWER OF APPOINTMENT, except under any of the
following conditions:

(i) If the distributee—TRANSFEREE is the decedent's spouse, OR
IS A TRUST AND THE SOLE PRESENT BENEFICIARY IS THE DECEDENT'S
SPOUSE.

(ii) Beginning December 31, 2014, for residential real
property, if the distributee—TRANSFEREE is the decedent's or the
decedent'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 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, a conveyance 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 is more than 50% of 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, 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) 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, 2014, A CONVEYANCE 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, 2014, FOR RESIDENTIAL REAL PROPERTY, A CONVEYANCE 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 OR TRANSFEROR'S SPOUSE'S MOTHER, FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED DAUGHTER, GRANDSON, OR GRANDDAUGHTER, 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.

(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.
(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 husband and wife OR BOTH SPOUSES creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) 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, 2014, 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 GRANDDAUGHTER, 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) 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) A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(f) A conveyance to a trust if the settlor—TRANSFEROR or the settlor'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 settlor—TRANSFEROR or the settlor'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 settlor's—TRANSFEROR'S or the settlor'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 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 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) 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) A transfer for security or an assignment or discharge of a security interest.

(j) 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) 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) 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 legal entity that
fails to comply with a request by the state tax commission under
this subdivision is subject to a fine of $200.00.

(m) 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) 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 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 agricultural property.

(ii) The property is subject to the recapture tax provided for
under the agricultural property recapture act, 2000 PA 261, MCL
211.1001 to 211.1007.
(o) 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
1 affidavit shall be rescinded, without subjecting the property to
2 the recapture tax provided for under the qualified forest property
3 recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the
4 taxable value of that property shall be adjusted under subsection
5 (3).
6 (p) Beginning on December 8, 2006, a transfer of land, but not
7 buildings or structures located on the land, which meets 1 or more
8 of the following requirements:
9 (i) The land is subject to a conservation easement under
10 subpart 11 of part 21 of the natural resources and environmental
11 protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in
12 this subparagraph, "conservation easement" means that term as
13 defined in section 2140 of the natural resources and environmental
14 protection act, 1994 PA 451, MCL 324.2140.
15 (ii) A transfer of ownership of the land or a transfer of an
16 interest in the land is eligible for a deduction as a qualified
17 conservation contribution under section 170(h) of the internal
18 revenue code, 26 USC 170.
19 (q) A transfer of real property or other ownership interests
20 resulting from a consolidation or merger of a domestic nonprofit
21 corporation that is a boy or girl scout or camp fire girls
22 organization, a 4-H club or foundation, a young men's Christian
23 association, or a young women's Christian association and at least
24 50% of the members of that organization or association are
25 residents of this state.
26 (r) A change to the assessment roll or tax roll resulting from
27 the application of section 16a of 1897 PA 230, MCL 455.16a.
(s) 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) 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, 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 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.

(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

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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 the effective date of the amendatory act that
added this subdivision, 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) 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)(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(5) and personal
property described in section 8(h), (i), and (j).
(1) 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) "Inflation rate" means that term as defined in section
   34d.
(d) "Losses" means that term as defined in section 34d.
(e) "Qualified agricultural property" means that term as
   defined in section 7dd.
(f) "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, 2014.

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, 2014.
HOUSE BILL No. 5140

December 9, 2015, Introduced by Rep. Pettalia and referred to the Committee on Tax Policy.

A bill to amend 1893 PA 206, entitled "The general property tax act,"
by amending section 27a (MCL 211.27a), as amended by 2015 PA 19.

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 settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or
beneficiaries are the settlor or the settlor's spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the settlor or the settlor's spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary 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.

(ii) Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or...
beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary 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.

(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 the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

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

(i) If the distributee is the decedent's spouse.

(ii) Beginning December 31, 2014, for residential real
property, if the distributee is the decedent's or the decedent'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 conveyance. Upon request by the department of
treasury or the assessor, the sole present beneficiary or
beneficiaries shall furnish proof within 30 days that the sole
present beneficiary or beneficiaries meet the requirements of this
subparagraph. If a present beneficiary fails to comply with a
request by the department of treasury or assessor under this
subparagraph, that present beneficiary 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, a conveyance 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 is more than 50% of 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 a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

(i) 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.

(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.

(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.
(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 husband and wife 1 OR BOTH SPOUSES creating or disjoining a tenancy by the
entireties in the grantors or the grantor and his or her spouse.

(c) 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).

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

(f) A conveyance to a trust if the settlor or the settlor'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 settlor or the settlor's spouse, or both.
(ii) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) 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) 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
(i) A transfer for security or an assignment or discharge of a security interest.

(j) 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) 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) 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 legal entity that fails to comply with a request by the state tax commission under
this subdivision is subject to a fine of $200.00.

(m) 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) 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 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 agricultural property.

(ii) The property is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

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

(s) 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 the residential real property does not change following the
transfer.

(t) 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 the residential real property is not used for any commercial
purpose following the conveyance. 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.

(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 the
residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subdivision. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subdivision, that present beneficiary is subject to a fine of $200.00.

(v) Beginning on the effective date of the amendatory act that added this subdivision, 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) 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)(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) WHEN DETERMINING WHETHER A CONVEYANCE CONSTITUTES A TRANSFER OF OWNERSHIP OF PROPERTY UNDER THIS SECTION, AN ASSESSOR SHALL DISREGARD ANY GUIDELINE OR OPINION OF THE STATE TAX COMMISSION SUGGESTING THAT, WHEN IN DOUBT, A TRANSACTION SHOULD BE CONSIDERED A TRANSFER OF OWNERSHIP UNDER THIS SECTION.

(12) IN ADDITION TO THE NOTICE REQUIRED UNDER SECTION 24C, IF AN ASSESSOR DETERMINES THAT THERE HAS BEEN A TRANSFER OF OWNERSHIP OF PROPERTY UNDER THIS SECTION THAT CAUSES AN INCREASE IN THE TENTATIVE TAXABLE VALUE OF THAT PROPERTY, THE ASSESSOR SHALL GIVE TO EACH OWNER OR PERSON OR PERSONS LISTED ON THE ASSESSMENT ROLL OF THE PROPERTY A NOTICE BY FIRST-CLASS MAIL OF THE INCREASE IN THE TENTATIVE TAXABLE VALUE. THE NOTICE SHALL BE WRITTEN IN 12-POINT
BOLDFACED TYPE AND MAILED AT LEAST 30 DAYS BEFORE THE FIRST MEETING OF THE MARCH BOARD OF REVIEW. IN ADDITION TO NOTICE OF THE AMOUNT OF THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY, THE NOTICE SHALL CLEARLY COMMUNICATE ALL OF THE FOLLOWING:

(A) THE ASSESSOR'S REASONS FOR THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY WITH ADEQUATE CITATION TO THE LAWS OF THIS STATE. FOR PURPOSES OF THIS SUBDIVISION, THE ASSESSOR SHALL EXPLAIN CLEARLY ALL RELEVANT DETAILS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(i) HOW THE TAXABLE VALUE OF PROPERTY CAN EXPERIENCE AN INCREASE, SOMETIMES REFERRED TO AS A "POP UP" OR "UNCAPPING", UPON A TRANSFER OF OWNERSHIP UNDER SUBSECTION (3).

(ii) WHY THE ASSESSOR BELIEVES THAT THIS INCREASE HAS OCCURRED TO THE TAXABLE VALUE OF THE SPECIFIC PROPERTY UNDER CONSIDERATION IN LIGHT OF THE PROVISIONS OF SUBSECTIONS (6) AND (7).

(B) AN INVITATION TO MEET PERSONALLY WITH THE ASSESSOR FOR A VERBAL EXPLANATION OF THE REASONS FOR THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY.

(C) INFORMATION ABOUT THE TIME AND PLACE OF THE MARCH MEETING OF THE BOARD OF REVIEW AND THE OPPORTUNITY TO CONTEST THE ASSESSMENT AT THAT MEETING.

(13) (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) "Inflation rate" means that term as defined in section
(d) "Losses" means that term as defined in section 34d.
(e) "Qualified agricultural property" means that term as defined in section 7dd.
(f) "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.
SENATE BILL No. 650

December 9, 2015, Introduced by Senator CASPERSON 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 2015 PA 19.

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 settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or
beneficiaries are the settlor or the settlor's spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the settlor or the settlor's spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary 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.

(ii) Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or
beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary 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.
   (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 the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(f) A conveyance by distribution under a will or by intestate succession, except under any of the following conditions:
   (i) If the distributee is the decedent's spouse.
   (ii) Beginning December 31, 2014, for residential real
property, if the distributee is the decedent's or the decedent'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 conveyance. Upon request by the department of
treasury or the assessor, the sole present beneficiary or
beneficiaries shall furnish proof within 30 days that the sole
present beneficiary or beneficiaries meet the requirements of this
subparagraph. If a present beneficiary fails to comply with a
request by the department of treasury or assessor under this
subparagraph, that present beneficiary 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, a conveyance 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 is more than 50% of 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 a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

(i) 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.

(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.

(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.
(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 husband and wife 1 OR BOTH SPOUSES creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) 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).

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

(f) A conveyance to a trust if the settlor or the settlor'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 settlor or the settlor's spouse, or both.
(ii) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) 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) 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) A transfer for security or an assignment or discharge of a security interest.

(j) 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) 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) 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 legal entity that fails to comply with a request by the state tax commission under
this subdivision is subject to a fine of $200.00.

(m) 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) 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 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 agricultural property.

(ii) The property is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

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

(s) 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 the residential real property does not change following the
transfer.

(t) 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 the residential real property is not used for any commercial
purpose following the conveyance. 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.

(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 the
residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subdivision. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subdivision, that present beneficiary is subject to a fine of $200.00.

(v) Beginning on the effective date of the amendatory act that added this subdivision, 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) 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)(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) WHEN DETERMINING WHETHER A CONVEYANCE CONSTITUTES A
TRANSFER OF OWNERSHIP OF PROPERTY UNDER THIS SECTION, AN ASSESSOR
SHALL DISREGARD ANY GUIDELINE OR OPINION OF THE STATE TAX
COMMISSION SUGGESTING THAT, WHEN IN DOUBT, A TRANSACTION SHOULD BE
CONSIDERED A TRANSFER OF OWNERSHIP UNDER THIS SECTION.

(12) IN ADDITION TO THE NOTICE REQUIRED UNDER SECTION 24C, IF
AN ASSESSOR DETERMINES THAT THERE HAS BEEN A TRANSFER OF OWNERSHIP
OF PROPERTY UNDER THIS SECTION THAT CAUSES AN INCREASE IN THE
TENTATIVE TAXABLE VALUE OF THAT PROPERTY, THE ASSESSOR SHALL GIVE
TO EACH OWNER OR PERSON OR PERSONS LISTED ON THE ASSESSMENT ROLL OF
THE PROPERTY A NOTICE BY FIRST-CLASS MAIL OF THE INCREASE IN THE
TENTATIVE TAXABLE VALUE. THE NOTICE SHALL BE WRITTEN IN 12-POINT
BOLDFACED TYPE AND MAILED AT LEAST 30 DAYS BEFORE THE FIRST MEETING OF THE MARCH BOARD OF REVIEW. IN ADDITION TO NOTICE OF THE AMOUNT OF THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY, THE NOTICE SHALL CLEARLY COMMUNICATE ALL OF THE FOLLOWING:

(A) THE ASSESSOR’S REASONS FOR THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY WITH ADEQUATE CITATION TO THE LAWS OF THIS STATE. FOR PURPOSES OF THIS SUBDIVISION, THE ASSESSOR SHALL EXPLAIN CLEARLY ALL RELEVANT DETAILS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(i) HOW THE TAXABLE VALUE OF PROPERTY CAN EXPERIENCE AN INCREASE, SOMETIMES REFERRED TO AS A "POP UP" OR "UNCAPPING", UPON A TRANSFER OF OWNERSHIP UNDER SUBSECTION (3).

(ii) WHY THE ASSESSOR BELIEVES THAT THIS INCREASE HAS OCCURRED TO THE TAXABLE VALUE OF THE SPECIFIC PROPERTY UNDER CONSIDERATION IN LIGHT OF THE PROVISIONS OF SUBSECTIONS (6) AND (7).

(B) AN INVITATION TO MEET PERSONALLY WITH THE ASSESSOR FOR A VERBAL EXPLANATION OF THE REASONS FOR THE PROPOSED INCREASE IN THE TAXABLE VALUE OF THE PROPERTY.

(C) INFORMATION ABOUT THE TIME AND PLACE OF THE MARCH MEETING OF THE BOARD OF REVIEW AND THE OPPORTUNITY TO CONTEST THE ASSESSMENT AT THAT MEETING.

(13) 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) "Inflation rate" means that term as defined in section
(d) "Losses" means that term as defined in section 34d.
(e) "Qualified agricultural property" means that term as defined in section 7dd.
(f) "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.