PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

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

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

Saturday, February 17, 2018
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

February 17, 2018 
9:00 a.m. 
University Club 
3435 Forest Road 
Lansing, Michigan 48910 

The meeting of the Section’s Committee on Special Projects (CSP) meeting will begin at 9:00 am and will end at approximately 10:15 am. The meeting of the Council of the Probate and Estate Planning Section will begin at approximately 10:30 am. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David P. Lucas, Secretary 

Vandervoort, Christ & Fisher, PC 
70 Michigan Ave. West, Suite 450 
Battle Creek, Michigan 49017 
voice: (269) 965-7000 
fax: (269) 965-0646 
email: dlucas@vcflaw.com 

Meeting Schedule for 2017-2018 

February 17, 2018 
March 24, 2018 
April 21, 2018 
June 16, 2018 
September 8, 2018 (Annual Section Meeting)
CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Due dates for Materials for Committee on Special Projects

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

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

- March 15, 2018
- April 12, 2018
- June 7, 2018
- August 30, 2018 (for September meeting)

Due dates for Materials for Council Meeting

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

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

- March 16, 2018
- April 13, 2018
- June 8, 2018
- August 31, 2018
### Officers of the Council for 2017-2018 Term

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

### Council Members for 2017-2018 Term

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year Elected to Current Term (partial, first or second full term)</th>
<th>Current Term Expires</th>
<th>Eligible after Current Term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
</tr>
<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mysliwiec, Melisa M.W.</td>
<td>2016 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Hentkowski, Angela M.</td>
<td>2017 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Labe, Robert C.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Mills, Richard C.</td>
<td>2016 (1st full term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
</tr>
<tr>
<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Hasan, Nazneen H.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Vernon, Geoffrey R.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<tr>
<td>Kellogg, Mark E.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<tr>
<td>Lichterman, Michael G.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
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<tr>
<td>Malviya, Raj A.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<tr>
<td>Olson, Kurt A.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
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<tr>
<td>Savage, Christine M.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack
## Probate & Estate Planning Section
### Biennial Plan of Work
10/1/2016 - 9/30/2018

<table>
<thead>
<tr>
<th>Action Pending</th>
<th>Statutory/Legislative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prop tax uncapping exempt.</td>
<td>- Tenants by Entirety Property bill</td>
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<tr>
<td>-- Tenants by Entirety Property bill</td>
<td>- ILIT trustee exoneration bill</td>
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<tr>
<td>- Jajuga legislation override</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority Items</th>
<th>Court Rules, Procedures and Forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted Reproductive Technology</td>
<td>- Probate Appeals Rules</td>
</tr>
<tr>
<td>EPIC/MTC Updates</td>
<td>- SCAO Meetings*</td>
</tr>
<tr>
<td>Guardian/Conservator Jurisdiction</td>
<td>- New forms based on legislation</td>
</tr>
<tr>
<td>Tenants by Entirety Property in Trust bill</td>
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</tbody>
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<thead>
<tr>
<th>Secondary Priority</th>
<th>Council Organization &amp; Internal Procedures</th>
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<tbody>
<tr>
<td>Charitable Trust statute update</td>
<td>- Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)</td>
</tr>
<tr>
<td>Expand Personal Residence Exemption</td>
<td>- Amend bylaws to better coordinate transition of new officers/members</td>
</tr>
<tr>
<td>- attorney for the fiduciary (Perry v Cotton issue)</td>
<td></td>
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<tr>
<td>- Michigan Community Property Trust Act</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>Priority To Be Determined</th>
<th>Professional Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parental rights assignment criminalization</td>
<td>- who does the attorney for the fiduciary represent?</td>
</tr>
<tr>
<td>- EPIC changes to reflect UPC updates</td>
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<tr>
<td>- Dignified Death (Family Consent) Act</td>
<td></td>
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<tr>
<td>- Directed/Separate Trustee Proposals</td>
<td></td>
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<td>- Further brochure updating</td>
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</tbody>
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<tr>
<th>Education &amp; Service to the Public &amp; Members</th>
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<tbody>
<tr>
<td>- Brochures State Bar Publication Agreement</td>
</tr>
<tr>
<td>- Promotion of &quot;Who Should I Trust?&quot; Program* (or similar)</td>
</tr>
<tr>
<td>- 57th Annual P&amp;EP Institute</td>
</tr>
<tr>
<td>- Communications with members*</td>
</tr>
<tr>
<td>- Social events for Section members</td>
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<tr>
<td>- Liaise with local bar associations</td>
</tr>
<tr>
<td>- Social media &amp; website*</td>
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<tr>
<td>- Brochures*</td>
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<tr>
<td>- Annual Institute/ICLE seminars*</td>
</tr>
<tr>
<td>- Section Journal*</td>
</tr>
<tr>
<td>- Opportunities with ICLE Journal Advertising</td>
</tr>
</tbody>
</table>

| - State Bar of Michigan 21st Century Practice Task Force Report |
| - Probate Court Opinion Bank Mentor program |
| - Outreach to COA to stay apprised of pending appeals & need for involvement |
| - Estate Recovery |

*ongoing
CSP Materials
1. Legislation Development & Drafting Committee (9:00 - 9:40 am)
   A. Discussion of HB 5398 and HB 5362 (certificates of trust existence) and comments and suggestions made by representatives of the Michigan Banker’s Association.
   B. Update to omnibus project regarding definition of charitable trusts in MCL 700.7103(c).

2. Visitation of Competent Adults Ad Hoc Committee (9:40 - 10:00 am)

Discussion of issues.
HOUSE BILL No. 5362


A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending section 7913 (MCL 700.7913), as added by 2009 PA 46.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7913. (1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust containing THAT MUST INCLUDE all of the following information:

(a) The name of the trust, and the date of the trust, AND THE DATE OF EACH OPERATIVE TRUST instrument. and any amendments.

(b) The name and address of the currently acting EACH CURRENT trustee.

(c) The powers of the trustee relating to the purposes for which the certificate OF TRUST is being offered.
(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(D) (e) The authority of cotrustees to sign **ON BEHALF OF THE TRUST** or otherwise authenticate **ON BEHALF OF THE TRUST** and whether all or less than all **OF THE COTRUSTEES** are required in order to exercise powers of the trustee.

(2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate **shall MUST** be in the form of an affidavit.

(3) A certificate of trust **shall MUST** state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained **INCLUDED** in the certificate of trust to be incorrect.

(4) A certificate of trust need not contain **INCLUDE** the dispositive terms of the trust **INSTRUMENT**.

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from the original **EACH** trust instrument and later amendments that designate the trustee and confer **ON** the trustee the power to act in the pending transaction.

(6) A person who **THAT** acts in reliance **ON** a certificate of trust without knowledge that the representations contained **INCLUDED** in the certificate **OF TRUST** are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the **TRUST AND OTHER** facts contained **INCLUDED** in the certificate **OF TRUST**.
(7) A person who in good faith enters into a transaction in reliance upon a certificate of trust may enforce the transaction against the trust property as if the representations contained in the certificate were correct.

(8) A person making a demand for the trust instrument in addition to a certificate of trust or excerpts is liable for damages, costs, expenses, and legal fees if the court determines that the person was not acting pursuant to a legal requirement in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
HOUSE BILL No. 5398

January 11, 2018, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1991 PA 133, entitled

"An act to allow the use and recording of certain documents regarding trusts in the case of real property that is conveyed or otherwise affected by a trust; and to prescribe their effect,"

by amending the title and sections 1 and 5 (MCL 565.431 and 565.435); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to allow the use and recording of certain documents regarding trusts in the case of FOR real property that is conveyed or otherwise affected by a trust; and to prescribe their effect.

Sec. 1. An instrument conveying, encumbering, THAT CONVEYS, ENCUMBERS, or otherwise affecting an interest in AFFECTS real property, executed pursuant to an express trust, may be accompanied either by a EITHER OF THE FOLLOWING:
(A) A copy of the EACH OPERATIVE trust agreement or by a
INSTRUMENT. AS USED IN THIS SUBDIVISION, "TRUST INSTRUMENT" MEANS
THAT TERM AS DEFINED IN SECTION 7103 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7103.

(B) A certificate of trust existence and authority, as
described in sections 2 and 3. UNDER SECTION 7913 OF THE ESTATES AND
PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, THAT
INCLUDES THE LEGAL DESCRIPTION OF THE AFFECTED REAL PROPERTY.

Sec. 5. A purchaser or other party relying upon the
INFORMATION contained INCLUDED in a recorded certificate of trust
existence and authority shall be afforded UNDER SECTION 7913 OF THE
ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913,
HAS the same protection as is provided to a subsequent purchaser in
good faith under section 29 of chapter 65 of the Revised Statutes
of 1846 RS 65, being section MCL 565.29. of the Michigan Compiled
Laws, and shall A PURCHASER OR OTHER PARTY DESCRIBED IN THIS
SECTION IS not be required to further examine the trust agreement,
INSTRUMENT, unless an instrument amending or revoking the trust
agreement INSTRUMENT or certificate of trust existence and
authority UNDER SECTION 7913 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, is recorded in the
same office in which the trust agreement INSTRUMENT or certificate
of trust existence and authority UNDER SECTION 7913 OF THE ESTATES
AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, was
recorded. AS USED IN THIS SECTION, "TRUST INSTRUMENT" MEANS THAT
TERM AS DEFINED IN SECTION 7103 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7103.
Thanks again to all of you for participating in today’s conference call. Nathan and Katie please feel free to let us know if you do need any material that we discussed for the Probate Section Meeting where you will take our concerns to the committee for possible changes to the House Bills. We will look forward to hearing back from you in the next couple of weeks and make sure Rep. Lucido doesn’t go forward with having a hearing on these bills until then.

Debbie Mitin
Director of Trust Services | Michigan Bankers Association
507 S. Grand Ave. | Lansing, MI 48933
(Office): 517-485-3600 | (Direct) 517-342-9072
www.mibankers.com

Save the Date: April 18-20, Traverse City, MI

From: Deborah Mitin
Sent: Tuesday, February 06, 2018 9:44 AM
To: ‘Mehregan, Susan’ <susan.mehregan@mbandt.com>; William Franks <Wfranks@Mercbank.com>; ‘William Collins’ <william.collins@chemicalbankmi.com>; ‘Vicki DenBoer’ <vickid@wmcb.com>; ‘Nathan Piwowarski’ <nathan@mwplegal.com>; ‘Klynwood@BLLHlaw.com’ <Klynwood@BLLHlaw.com>
Subject: HB 5398, 5362

Here are the links to the two bills that we will be discussing tomorrow at our 9:00 conference call with members from the MBA General Counsel and Retail Lending Committee and the attorneys from the Probate Section of the State Bar, Nathan and Katie.

Nathan and Katie if you could begin the discussion with history of why the need for the change in COT and why there were two COT sections in the law . I had originally sent you a paragraph briefly explaining the banks’ concerns so you have an idea as to why we are having this conference call as to the issue involved.

Thanks to all of you for taking time out of your busy schedule and to Susan who is on vacation and will try to join us for this important topic.
Debbie Mitin
Director of Trust Services | Michigan Bankers Association
507 S. Grand Ave. | Lansing, MI 48933
(Office): 517-485-3600 | (Direct) 517-342-9072
www.mibankers.com

Save the Date: April 18-20, Traverse City, MI
From: Katie Lynwood <Klynwood@BLLHlaw.com>
Sent: Wednesday, February 7, 2018 9:49 AM
To: Katie Lynwood; Nathan Piwowarski
Subject: phone conference with Bankers Association - Cert of Trust

2/7/2018

Nathan/Katie conference call with the MI Banker’s Association (MBA)

Attendees
Vicki DebBoer – from the West Mission Community Bank, in lender compliance and mortgages, member of MBA lending committee, lots of experience
Bill Franks – assistant council for Mercantile Bank joined 2 years ago, was in private practice for 13 years
Bill Collins - Chemical Bank general counsel for 7 years, before that was in private practice, current chair of general counsel committee of MBA
Patricia Hernon – senior vp of advocacy area for the MBA
Debbie Minton – the liaison for general counsel and MBA

Vicki understands consolidating into one statute and likes the idea. Previously Frannie and Freddie would normally not accept property in a trust, so would require an “in and out” transaction to complete a mortgage. Fannie and Freddie changed this requirement, but only if the trust is revocable. Concern for Vicki is that her bank wouldn’t be able to sell on a secondary market to Frannie and Freddie if the “revocable/irrevocable” is taken out of the statute. The selling guide for Frannie requires that the trust is revocable.

At the federal level, they are seeing more discussion about Frannie and Freddie to get them reformed and out of US Treasury. Intent is to remove them so that they are free standing. With the reform, they want to make sure there will be changes and the bankers don’t see them deviating from this revocable/irrevocable requirement. Frannie and Freddie drive this issue but US Bank has the same requirement. Even though not all lender require it, by keeping the revocability/irrevocability in the statute, it will help the bankers from a customer services standpoint because if the statute requires it, they likely the information will be provided in the Cert of Trust document. So then they don’t have to go back and request that the provisions be added to the Cert of Trust, or that the client provide more documentation of revocability/irrevocability.

Section 4 (recordability) and 6 (indexing) - Some title companies live and die on the recordability – even though its not what the statute says. They tie it with land title standards.

MI Land Title Association – they asked whether we have had a conversation with them. Maybe we should? (See land title standard 8.1, 8.3)

Takeaways from phone call
1. They like this statute, makes things easier
2. Revocability is an issue. Needs to be in there for the secondary markets – Frannie and Freddie
3. Recordability issue
STANDARD 8.3

DEED BY TRUSTEE UNDER EXPRESS TRUST

STANDARD: A DEED BY A TRUSTEE UNDER A TRUST WHOSE NECESSARY TERMS ARE EXPRESSED IN THE INSTRUMENT CREATING THE TRUSTEE’S ESTATE DOES NOT VEST MARKETABLE TITLE OF RECORD IN THE GRANTEE UNLESS THE INSTRUMENT CONTAINING THE TRUST TERMS OR A CERTIFICATE OF TRUST EXISTENCE AND AUTHORITY COMPLYING WITH THE REQUIREMENTS OF ACT 133 OF THE MICHIGAN PUBLIC ACTS OF 1991 (A) IS OF PUBLIC RECORD, (B) ESTABLISHES A VALID TRUST AND (C) CONTAINS A VALID AUTHORITY FOR THE CONVEYANCE.

Problem A: Blackacre was deeded to “Richard Roe as Trustee to collect rents and pay to James Smith for his life.” No such trust instrument or certificate appears of public record. Roe, as trustee, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No.

Problem B: John Doe, a widower and owner of Blackacre, died testate. Doe’s will, which was admitted to probate, created a valid trust for the benefit of Doe’s children and appointed Richard Roe, Trustee, with power of sale. Doe’s estate was probated, debts, taxes and expenses paid, and an order entered distributing Blackacre to the trustee. Roe, as testamentary trustee, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem C: Blackacre was owned by Richard Roe as trustee under a trust agreement conferring upon the trustee the express power to sell and convey any real property constituting part of the trust corpus. A certificate of trust existence and authority as to the trust, complying with the requirements of Act 133 of the Michigan Public Acts of 1991, was duly recorded. Roe, as trustee, deeded Blackacre to Simon Grant. Did Grant obtain
marketable title to Blackacre?

Answer: Yes.

Problem D: Blackacre was deeded to Richard Roe as trustee under a valid recorded trust. The trust agreement conferred power of sale only with the consent of the majority of the beneficiaries. Roe, as trustee, deeded Blackacre to Simon Grant, but a majority of the beneficiaries did not join therein or otherwise evidence their consent of record. Did Grant acquire marketable title of record to Blackacre?

Answer: No.

Problem E: John Doe, a widower, the owner of Blackacre, deeded it on December 1, 1988, to Richard Roe as trustee under a recorded declaration of trust containing a power of sale. The trust provided that the corpus was to be retained for 50 years and then distributed to Doe’s then-living lineal descendents, the income to be distributed annually to Doe’s children and grandchildren. Roe, as such trustee, thereafter deeded Blackacre to Simon Grant. Did Grant acquire marketable title of record to Blackacre?

Answer: No. The trust was void ab initio as violating either the statute prohibiting suspension of the power of alienation (see Standard 9.6) or the common law rule against perpetuities (see Standard 9.4), whichever is applicable. Since the trust was void at its creation, the power of sale therein contained failed. In the absence of a valid trust and power, title acquired through the trustee was not marketable.

Comment: If the trustee’s deed had been executed and recorded after December 27, 1988, the effective date of the Uniform Statutory Rule Against Perpetuities, being Act 418 of the Michigan Public Acts of 1988 (MCL 554.71 et seq.), it may be valid under the alternative 90-year rule provided by the Act.

Authorities: Generally: MCL 555.11 to 555.23 incl; MCL 565.431 to 555.436 incl.

Problem D: Palmer v Williams, 24 Mich 328 (1872).
Problem E: MCL 554.14 to 554.20 incl. (repealed and superseded by 1949 PA 38, MCL 554.51 to 554.53 incl.). Gardner v City National Bank and Trust Co, 267 Mich 270, 255 NW 587 (1934); LaMere v Jackson, 288 Mich 99, 284 NW 659 (1939); Grand Rapids Trust Co v Herbst, 200 Mich 321, 190 NW 250 (1922); Petit v Flint & Pere Marquette R Co, 114 Mich 362, 72 NW 238 (1897).

Comment: This Standard does not consider the requirements of MCL 700.162 (now repealed) (pertaining to the recording of wills), nor does it attempt to deal with recording problems such as those arising where the declaring or creating instrument appears of public record only in a county or counties other than that in which the land conveyed is located.

Caveat 1: This Standard deals with the requirements for establishing a marketable title of record in connection with deeds by trustees where the trust terms and existence are sufficiently expressed to constitute notice of the existence of the trust. It does not apply to deeds from so-called naked trustees or other grantors where the trust is not fully expressed. See Standard 8.2.

Caveat 2: Revised Probate Code Section 833 (MCL 700.833, repealed and superseded by MCL 700.7404) seems to protect a third party in dealing with a trustee, allowing the third party to assume the existence and proper exercise of trust powers, even if the trust is fully expressed on the record as long as the third party does not have actual notice that the trustee is exceeding his or her powers or is improperly exercising them. This puts RPC Section 833 (MCL 700.833) and MCL 700.7404 into an apparent conflict with MCL 555.21 and MCL 565.435.

Note: The Michigan Trust Code (MCL 700.7101, et seq.) became effective on April 1, 2010. Section 7913 (MCL 700.7913) prescribes the contents and execution of a certificate of trust. The provisions of MCL 700.7913 and MCL 565.432-.433 are similar but not exactly the same. Both statutes provide protection to parties that rely in good faith on the provisions contained in a trust certificate.

A significant difference between the two statutes relates to the execution of a trust certificate. MCL 700.7913 provides that a “certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee.”
MCL 565.433 provides that a “certificate of trust existence and authority shall be executed by the settlor or grantor; an attorney for the settlor, grantor, or trustee; or an officer of a banking institution or an attorney if then acting as a trustee.” Under MCL 565.433 a trustee would not be a proper person to sign a certificate of trust unless the trustee is one of the persons identified therein.

Section 7913 of the Trust Code is not intended to replace the provisions of MCL 565.432-433, which are intended to apply to real property transactions.
STANDARD 8.4

DEED BY LESS THAN ALL TRUSTEES UNDER EXPRESS TRUST

STANDARD: ALL SURVIVING TRUSTEES MUST EXECUTE A DEED PURSUANT TO A POWER OF SALE CONTAINED IN AN EXPRESS TRUST UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE.

Problem A: John Doe, the owner of Blackacre, died testate. Doe’s will devised Blackacre to Edgar Poe and Richard Roe as trustees under an express trust containing a power of sale. The order assigning residue entered in Doe’s estate assigned Blackacre to Poe and Roe as trustees. Roe, as trustee, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No.

Problem B: Same facts as in Problem A, except that Poe died before the execution of the deed and no successor co-trustee was appointed. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

STANDARD 8.5

DEED BY SUCCESSOR TRUSTEE
UNDER EXPRESS TRUST

STANDARD: IF AN EXPRESS TRUST CONTAINS A POWER OF SALE WHICH IS NOT LIMITED TO THE NAMED TRUSTEE, A SUCCESSOR TRUSTEE MAY CONVEY REAL PROPERTY PURSUANT TO THE TRUST TERMS. IF A TRUST DOES NOT CONTAIN A POWER OF SALE OR CONTAINS A POWER OF SALE LIMITED TO THE NAMED TRUSTEE, THE PROBATE COURT MAY ENTER AN ORDER REMOVING ANY TRUST PROVISION LIMITING THE SUCCESSOR TRUSTEE'S POWER OF SALE, THEREBY PERMITTING THE SUCCESSOR TRUSTEE TO CONVEY REAL PROPERTY PURSUANT TO THE COURT'S ORDER.

Problem A: Richard Roe, the sole (or surviving) trustee under an express, recorded declaration of trust containing a power of sale, died. The trust instrument did not provide for a successor trustee. Blackacre was part of the corpus of the trust. Later, Alice Roe, widow and sole heir at law of Richard Roe, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Real property held in trust does not descend to the heirs at law of a deceased trustee.

Problem B: Same facts as in Problem A, except that after Roe’s death the probate court appointed Edgar Poe as successor trustee. Poe, as trustee, conveyed Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem C: Same facts as in Problem A, except that Richard Roe resigned as trustee and the probate court appointed Edgar Poe as successor trustee. Did Grant acquire marketable title to Blackacre?

Answer: Yes.
Problem D: John Doe executed a declaration of trust under which Richard Roe and Edgar Poe were appointed trustees. The trust instrument contained a power of sale which was limited as follows: “Having confidence in the trustees herein named, I declare that the powers granted shall be personal to them and shall not vest in their successors.” The trust instrument was recorded, and Doe deeded Blackacre to the named trustees. Roe and Poe died; the probate court appointed John Jones and Samuel Smith as successor trustees. Jones and Smith, as successor trustees, executed a deed describing Blackacre to Simon Grant pursuant to the power of sale. Did Grant acquire marketable title to Blackacre.

Answer: No. Although the probate court appointed successor trustees, the court’s order did not remove the trust provision limiting the power of sale to the named trustees.

Authorities: MCL 700.1302, 700.7201 and 700.7402.

Comment A: This Standard and the Problems are limited to non-testamentary trusts. The probate court has jurisdiction to appoint a successor trustee under a testamentary trust upon the death, resignation or removal of a sole or surviving trustee. MCL 700.7201 and 700.1302.

Comment B: The Estates and Protected Individuals Code (EPIC) gives the probate court certain powers in the administration of trusts, both testamentary and non-testamentary. Not all trusts, however, meet the definition of a trust for purposes of EPIC. The following trusts are not “trusts” within the meaning of EPIC and therefore the probate court has no jurisdiction over them: resulting trusts; business trusts providing for certificates to be issued to beneficiaries; investment trusts; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts created for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is a nominee or escrow agent for another. See, MCL 700.1107. The jurisdiction to appoint a successor trustee for the above-named types of trusts is vested in the circuit court. MCL 555.24 and 555.27.
STANDARD 8.6

DEED EXECUTED BY TRUSTEE WITHOUT EXPRESS
OR IMPLIED POWER OF SALE UNDER
EXPRESS TRUST BEFORE APRIL 1, 2000

STANDARD: BEFORE APRIL 1, 2000 A TRUSTEE UNDER AN EXPRESS
TRUST WHICH NEITHER CONTAINS NOR IMPLIES A POW-
ER OF SALE BUT DOES NOT RESTRICT SALE, HAD POW-
ER TO CONVEY REAL PROPERTY IF:

(A) ALL PERSONS HAVING A BENEFICIAL INTEREST
JOINED WITH THE TRUSTEE IN THE CONVEYANCE
OR CONVEYED BY SEPARATE INSTRUMENT; OR

(B) THE SALE WAS CONFIRMED BY AN ORDER OF THE
PROBATE COURT.

Problem A: John Doe died testate on December 1, 1999. His will devised Blackacre and other real property to Richard Roe as trustee under an express trust. The will did not contain or imply a power of sale, but it did not require that Blackacre be retained in the trust or otherwise restrict the sale of Blackacre. On January 31, 2000 Roe, as trustee, and to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Roe, as trustee, reported the facts of the sale to the probate court and requested confirmation of the sale. Notice of hearing was given to all parties in interest. An order confirming the sale was entered, pursuant to which Roe deeded Blackacre to Grant. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem C: Same facts as in Problem A, except that Roe, as trustee, petitioned the probate court for construction of the will and for authority to con-
vey Blackacre. All interested parties were joined in the proceeding. The court entered an order authorizing the sale in order to preserve the assets of the estate, after determining that there was no express power of sale under the will. Roe, as trustee, filed a report of the sale to Grant, and the probate court entered an order confirming the sale. Roe, as trustee, deeded Blackacre to Grant pursuant to the order. Did Grant acquire marketable title to Blackacre?

**Answer:** Yes.

**Authorities:** Problems A through C: MCL 700.634 (repealed effective April 1, 2000); and 700.643 through 700.647 (repealed effective April 1, 2000). *Jones v Harsha*, 225 Mich 416, 196 NW 624 (1923); *MacKenzie v Union Guardian Trust Co*, 262 Mich 563, 247 NW2d 914 (1933).

**Comment:** Beginning April 1, 2000, the effective date of the Estates and Protected Individuals Code, the provisions governing the authority of trustees are set forth in MCL 700.7401 through 700.7410. Under 700.7401, a trustee has the power to sell real property unless the trustee’s power of sale is restricted by the trust instrument.

**Note:** See Standard 8.5 regarding conveyances by a successor trustee under an express trust containing a power of sale and, as to trusts on or after April 1, 2000, the authority of the probate court to remove trust provisions limiting the power of sale of a successor trustee.
STANDARD 8.7

ACQUISITION OF TRUST REAL PROPERTY
BY NON-TESTAMENTARY
TRUSTEE UNDER EXPRESS TRUST

STANDARD: IF THE TRUSTEE OF AN EXPRESS NON-TESTAMENTARY
TRUST DIRECTLY OR INDIRECTLY CONVEYS TRUST REAL
PROPERTY TO HIMSELF OR HERSELF IN AN INDIVIDUAL
CAPACITY, THE TITLE ACQUIRED IS NOT MARKETABLE
UNLESS THE TRUST INSTRUMENT AUTHORIZES THE
CONVEYANCE.

Problem A: Title to Blackacre was vested in Richard Roe as trustee under an ex-
press trust which contained a power of sale but no provision authoriz-
ing Roe to acquire an interest in Blackacre. Roe, as trustee, deeded
Blackacre to Susan Grant. Later, Grant deeded Blackacre to Richard
Roe and Alice Roe, husband and wife. Did the Roes acquire market-
able title to Blackacre?

Answer: No.

Problem B: Title to Blackacre was vested in Richard Roe as trustee under an ex-
press trust for the benefit of Lucy Doe. Upon the death of Doe, the
trust was to terminate and the corpus vest in Roe and Marjorie Poe.
After Doe’s death, Roe, as trustee, deeded Blackacre to himself and
Poe. Did Roe and Poe acquire marketable title to Blackacre?

Answer: Yes.

Authorities: Campau v Van Dyke, 15 Mich 371 (1867); Sheldon v Estate of Rice,
30 Mich 296 (1874); In re Culhane’s Estate, 269 Mich 68, 256 NW
807 (1934); Sprenger v Sprenger, 298 Mich 551, 299 NW 711 (1941);
Newton v Old Merchants National Bank & Trust Co, 299 Mich 499,
300 NW 859 (1941).

Comment: The Committee recognizes that laches or estoppel may bar claims of
trust beneficiaries challenging the validity of conveyances such as are
described in Problem A.

Note: See Standards 7.10 and 7.11 regarding self-dealing transactions by
testamentary trustees.
CHAPTER IX
FUTURE INTERESTS

STANDARD 9.1

ATTEMPTED RESTRAINT ON ALIENATION OF FEE SIMPLE ESTATE

STANDARD: A PROVISION IN A WILL OR DEED WHICH ATTEMPTS TO RESTRAIN ALIENATION OF A FEE SIMPLE ESTATE IS VOID.

Problem A: Blackacre was devised in fee simple to Ada Brown subject to a provision that “Ada Brown shall not alienate or mortgage Blackacre until five years after my death.” Before the expiration of the five-year period, Ada Brown deeded Blackacre to Theodore Worth. Did Worth acquire marketable title?

Answer: Yes.

Problem B: Blackacre was devised in fee simple to Ada Bedford and Clare Brown, the only children of the testator, with a provision that “it shall not be competent for any devisee to alienate, mortgage, barter or transfer any portion of the real property until my youngest child reaches the age of 25 years.” Before the youngest child reached the age of 25, Ada Brown, who was of full age, deeded her undivided one-third interest in Blackacre to Theodore Worth. Did Worth acquire marketable title to an undivided one-third interest in Blackacre?

Answer: Yes.

Problem C: Blackacre was conveyed to John Barry by a deed which provided that the grantee was not to alienate Blackacre during the lifetime of the grantor. Before the death of the grantor, Barry, a single man, deeded Blackacre to Theodore Worth. Did Worth acquire marketable title?
Problem D: Blackacre was conveyed to John Barry and David Barry, “as joint tenants and not as tenants in common.” The deed provided that “it is part of the consideration of this deed that neither grantee shall or can sell, deed, mortgage or in any way dispose of his interest without the consent of the other grantee.” John Barry, a single man, deeded his interest to Theodore Worth without the consent of David Barry. Did Worth acquire marketable title to the interest conveyed to him by John Barry?

Answer: Yes.


Problem D: Smith v Smith, 290 Mich 143, 28 NW 411 (1939).

Note: See Standard 6.3 as to severance of a joint tenancy.

Caveat: MCL 554.381, which became effective on August 27, 1925, provides that “No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes.”
AN ACT to allow the use and recording of certain documents regarding trusts in the case of real property
that is conveyed or otherwise affected by a trust; and to prescribe their effect.


The People of the State of Michigan enact:

565.431 Instrument affecting interest in real property executed pursuant to express trust;
copy of trust agreement or certificate of trust existence and authority.
Sec. 1. An instrument conveying, encumbering, or otherwise affecting an interest in real property, executed
pursuant to an express trust, may be accompanied either by a copy of the trust agreement or by a certificate of
trust existence and authority, as described in sections 2 and 3.


565.432 Certificate of trust existence and authority; contents.
Sec. 2. A certificate of trust existence and authority shall contain all of the following information:
(a) The title of the trust.
(b) The date of the trust agreement and any amendments to the trust agreement.
(c) The name of the settlor or grantor and the settlor’s or grantor’s address.
(d) The names and addresses of all of the trustees and successor trustees.
(e) The legal description of the affected real property.
(f) Verbatim reproductions of provisions of the trust agreement, and any amendments to the trust
agreement, regarding all of the following:
   (i) The powers of the trustee or trustees relating to real property or any interest in real property and
   restrictions on the powers of the trustee or trustees relating to real property or any interest in real property.
   (ii) The governing law.
   (iii) Amendment of the trust relating to the trust provisions described in subdivision (a) to (f)(ii).
(g) Certification that the trust agreement remains in full force and effect.
(h) A list of names and addresses of all persons who, at the time the certificate of trust is executed, are
trustees of the trust.


565.433 Certificate of trust existence and authority; execution; form.
Sec. 3. A certificate of trust existence and authority shall be executed by the settlor or grantor; an attorney
for the settlor, grantor, or trustee; or an officer of a banking institution or an attorney if then acting as a
trustee. The certificate shall be in the form of an affidavit.


565.434 Trust agreement or certificate of trust existence and authority; recording.
Sec. 4. The trust agreement or certificate of trust existence and authority, and any amendments to or
revocations of the trust agreement or the certificate of trust existence and authority, may be recorded in the
office of the register of deeds of each county where the lands that are the subject of or affected by the trust
agreement are located.


565.435 Protection afforded party relying on information in recorded certificate of trust
existence and authority; further examination of trust agreement.
Sec. 5. A purchaser or other party relying upon the information contained in a recorded certificate of trust
existence and authority shall be afforded the same protection as is provided to a subsequent purchaser in good
faith under section 29 of chapter 65 of the Revised Statutes of 1846, being section 565.29 of the Michigan
Compiled Laws, and shall not be required to further examine the trust agreement, unless an instrument
amending or revoking the trust agreement or certificate of trust existence and authority is recorded in the same
office in which the trust agreement or certificate of trust existence and authority was recorded.


565.436 Indexing of certificate of trust existence and authority.
Sec. 6. The certificate of trust existence and authority, in addition to being indexed in any other manner required by law, shall be indexed in the records of the office of the register of deeds under the title of the trust.

MCL 700.7103(c)

"Charitable trust' means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1), which purpose is a material purpose of the trust."
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

February 17, 2018
Lansing, Michigan

Agenda

10:15-12:00

1. Call to Order
2. Introduction of Guests
3. Excused Absences
4. Minutes of January 20, 2018 Meeting of the Council
   Attachment 1
5. Chairperson’s Report – Marlaine C. Teahan
   Attachment 2
6. Committee Reports
   A. Committee on Special Projects – Geoff Vernon
      Council vote requested to take a Public Policy Position to approve the charitable trust language and add it to the EPIC Omnibus Bill approved by Council at the January 20, 2018 meeting. See CSP materials for specific proposed language.
   B. Court Rules, Forms, & Proceedings Committee – Melisa Mysliwiec
      Written report. Attachment 3
      Council vote requested on:
      - Suggested changes to HB 5073 and work with ADR Taskforce on automatic mediation legislation or court rules. Note that we will not be taking a public policy position on HB 5073; however, we may take a position on the substance of the bill and potential court rules (Public Policy Position); and
      - Contacting SCAO regarding deduction of liens for small estates.
   C. Real Estate Committee – Mark Kellogg
      Written materials including Bill Analysis of HB 4905 by Senate Fiscal Agency and relevant portions of HB 4905 (pages 1, 9, 10, 22, and 23). Attachment 4. Council vote requested to take a Public Policy Position to
support HB 4905 with suggested amendments relative to the lease provisions contained in MCL 211.7cc(5)(d) (see page 10 of H-2 of HB 4905).

D. **Electronic Communications Committee – Mike Lichterman**

Written report of Committee regarding SBM Connect. [Attachment 5]

E. **Tax Committee – Lorraine New**

Tax Nugget: changes in the New Tax Bill by Angela Hentkowski. [Attachment 6]
Suggested alerts regarding tax reform by Raj Malviya. [Attachment 7]

F. **Guardianship, Conservatorship, and End of Life Committee – Rhonda Clark**

Update on various legislative issues.

G. **Membership Committee – Nick Reister**

Update on committee initiatives.

7. **Written Reports Without Oral Presentation**

- Divided and Directed Trusteeship Committee [Attachment 8]
- Uniform Law Commission Liaison Report [Attachment 9]
- Public Affairs Legislative Update – Report of Bills being watched [Attachment 10]

8. **Other Business**

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

January 20, 2018
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 9:19 am.

2. Introduction of Guests and attendance.
   a. Meeting attendees introduced themselves
   b. The following officers and members of the Council were present:

   Marlaine C. Teahan, Chair
   Marguerite Munson Lentz, Chair Elect
   Christopher A. Ballard, Vice Chair
   David P. Lucas, Secretary
   David L.J.M. Skidmore, Treasurer
   Christopher J. Caldwell
   Rhonda M. Clark-Kreuer
   Angela M. Hentkowski
   Mark E. Kellogg
   Robert B. Labe
   Michael G. Lichterman
   Katie Lynwood
   Raj A. Malviya
   Richard C. Mills
   Melisa M.W. Mysliwiec
   Lorraine F. New
   Kurt A. Olson
   Nathan R. Piwowarski
   Christine M. Savage
   Geoffrey R. Vernon

   A total of 20 Council officers and members were present, constituting a quorum

3. Absences
   a. The following members of the Council were absent with excuse:

(2018 - 02 - a) (January 20, 2018)
b. The following officers and members of the Council were absent without excuse: none

c. The following ex-officio members of the Council were present:
   George W. Gregory
   Amy N. Morrissey

d. The following liaisons to the Council were present:
   Susan Chalgian
   Jeanne Murphy
   James P. Spica

e. Others present:
   Aaron Bartell
   Rebecca Bechler
   Georgette David
   Dan Hilker
   Sueann Mitchell
   Neal Nusholtz
   Jim Ryan
   Ken Silver

4. Minutes of December 16, 2017 Meeting of the Council: it was moved and seconded to approve
   the Minutes of the December 16, 2017 meeting of the Council, as included in the meeting
   agenda materials and presented to the meeting. On voice vote, the Chair declared the motion
   approved.

5. Treasurer’s Report - David Skidmore: Mr. Skidmore reviewed his Report, which was included as
   a supplement to the agenda materials. Mr. Skidmore noted the 2018 mileage reimbursement
   rate of $0.545, stated that he had received contributions to the Council’s Hearts and Flowers
   Fund, and encouraged Council members and Officers to consider an annual contribution.

6. Chair’s Report – Marlaine C. Teahan: The Chair reviewed the Chair’s Report which was included
   with the meeting agenda materials, including (i) that the Hon. Milton Mack, Jr. had notified the
   Chair that he is not able to continue as the Council’s liaison to the Alternative Dispute Resolution

(2018 - 02 - a) (January 20, 2018)
Section, but would like to continue to be involved in Section matters—the Chair thanked Judge Mack for his service and asked for volunteers and recommendations to act as the Council’s Liaison to the Alternative Dispute Resolution Section; (ii) that Rep. Lucido would like the Council to take up the development of legislation regarding visitation of adults who are not the subject of a guardianship order, so that incapacity does not have to be alleged in order to provide for family visitation and access.

it was moved and seconded that an ad hoc committee would be appointed by the Chair to consider whether such legislation is possible and, if so, to develop draft legislation that will allow a Court to order visitation of a shut-in adult (with capacity) by petitioners who would like to visit with the adult and by those of the adult’s choosing, and to consider the implications of SB 713.

The Council discussed the motion; George Gregory suggested that such a committee seek input from the Elder Law Section (Liaison Angela Hentkowski) and Family Law Section (Pat Ouellette). Following discussion, on voice vote, the Chair declared the motion approved. The Chair appointed Geoff Vernon as the Chair of the Ad Hoc Committee on Visitation of Shut-In Adults, and the Chair will designate the number and members of such Committee at a later date.

The Chair continued the review of the Chair’s report, including (i) that she had received correspondence from the Michigan Women’s Lawyers Association requesting a sponsorship of their 100th anniversary at an event on April 27, 2018, she encouraged Council officers and members and Section members to attend and support such event, but indicated that after consultation with the Officers, our Section will not support the event due to the Section’s policy of not financially sponsoring affinity bar association events; and (ii) a request from the Membership Committee for more members to assist with planning.

During the Chair’s Report, Mr. Spica told the Council that he had talked to Representative Lucido about legislation regarding certificates of trust existence and addressing In re Jajuga. Mr. Spica also told the Council that he had met with Representative Kesto about the Divided and Directed Trusteeship legislation, and was told that the legislation would likely take the form of three bills.

7. Committee Reports

a. Committee on Special Projects - Geoff Vernon: Mr. Vernon reported that the Committee on Special Projects discussed the Legislation and Development Committee’s proposed EPIC Omnibus Legislation, included in the Council agenda meeting materials, after a unanimous vote at the Committee on Special Projects, the Committee recommends to Council to approve the following motion:

(2018 - 02 - a) (January 20, 2018)
The Probate and Estate Planning Section supports the Legislation and Development Committee's EPIC Omnibus Legislation, in the form presented to the Council.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 19 in favor of the motion, 0 opposed to the motion, 0 abstain, and 4 not voting. The Chair declared the motion approved.

b. Electronic Communications Committee - Mike Lichterman: Mr. Lichterman reported that the Committee thinks that it is in the best interest of the Section to move from the Section’s Listserv to SBM Connect as the means of communicating on issues and questions by members of the Section. Mr. Lichterman reported the many reasons for such move, including (i) that the technology on which the Listserv is based is older technology that works now, but will probably not be available over the long term, so it is prudent to move before the technology to support the Listserv no longer exists; (ii) the number of vendors to provide service for such technology is likely to be substantially reduced; (iii) the membership in SBM Connect is updated immediately, by the State Bar, so the amount of time engaged in this activity by Council members and officers will be substantially reduced, and the accuracy of such membership is likely to be increased; (iv) “communities” have been established for special purpose communications, such as committees of the Section; (v) “libraries” have been established for sharing documents; (vi) policing the communications by the Section will be substantially reduced since only Section members may use SBM Connect; and (vii) our Section's online policies which were developed and approved last year can still be used. The Committee’s motion is:

The Probate and Estate Planning Section endorses and adopts the communications between Members of the Section based on the SBM Connect system, as described in the Electronic Communications Committee’s report, in the form presented to the Council, and directing the Committee to implement such system change, commencing June 1, 2018, and granting the Committee the authority to implement the change, develop and change materials explaining the move to SBM Connect, as they see fit, and work with the SBM to assist those with questions on connecting to the new technology.

The Council discussed the motion; suggestions were made to the Committee's developed list of frequently asked questions, including that the Q&A provides easy directions on how to access the State Bar information about SBM Connect and tutorials for use of SBM Connect, provides a sufficient term of transition from the Listserv to SBM

(2018-02-a) (January 20, 2018)
Connect, and that the Committee consider the possibility of preserving the Listserv archives. Following further discussion, on voice vote, the Chair declared the motion approved and noted that the motion was unanimously approved by the Council. The Chair asked Mr. Lichterman and the Electronic Communications Committee to proceed with the implementation of the Committee’s report and the Section’s resolution.

c. Tax Committee – Lorraine New: Ms. New noted the Tax Nugget included with the agenda materials, and reported on the federal government closure, changes to the CPI definition, reviewing estate planning documents with clients. Lorraine New reported on the federal gift tax, and Mr. Malviya reported on possible clawback due to future reductions in exemption amounts.

d. Court Rules, Forms, & Proceedings Committee - Melisa Mysliwiec: Ms. Mysliwiec gave updates on HB 5073, HB 4752, HB 4821, HB 4822, and e-filing implementation delay. The Chair noted that a workgroup on e-filing had been established and that the Chair has requested that Ms. Mysliwiec, or someone from the Committee, be included in the workgroup. Rebecca Bechler, the Section’s lobbyist, reported that there were no other legislation issues that needed to be discussed at this time.

e. State Bar & Section Journals Committee - Rick Mills: Mr. Mills gave a report on the upcoming probate-themed November State Bar Journal. Articles may include divided and directed trusteeships, domestic asset protection trusts, Jajuga, and Mardigian. Mr. Mills stated that the positive things that the Section does for Section members (such as master lawyers for new practitioners and amicus filings) will be highlighted. The Chair asked that Mr. Mills update the Council with deadlines for submission of articles.

8. Written Reports Without Oral Presentation - The Chair noted the several reports that were included with the agenda materials.

9. Other Business

a. George Gregory, as Liaison of the Tax Section, presented a written report which is attached to these Minutes.

b. The Chair reported on HB 5415 and requested that the Real Estate Committee review this legislation.

c. Mark Kellogg reported on HB 4905 regarding change in principal residence if an owner is in a nursing home. The Council discussed the report, including that the lease of a residence while the owner is in a nursing home is a common practice to maintain the

(2018 - 02 - a) (January 20, 2018)
home. The Chair asked that the Committee address the issue of lease of a principal residence in this instance.

d. Amy Morrissey reported that, on behalf of the Nominating Committee, she was requesting suggestions for individuals to be nominated for election to the Council, and encouraged submission of names to the Committee. The Chair asked that the Committee make its request for suggestions on SBM Connect and the Listserv.

e. The Chair highlighted the MIRS Bill Hound Report that was included with the agenda materials. The Chair noted that the Bill Hound subscription gives the Council and Committees the ability to follow legislation which affects the Section.

f. Christine Savage reported that she anticipated that there would be a report on HB 4959 at the February Council meeting.

g. The Chair reminded Council members, when publicly discussing legislative positions, that they are clear as to whether they are discussing their own personal views or if they are representing a position taken by Council. When representing the Section, this can only be done if Council has adopted a public policy position that has been reported to the State Bar of Michigan.

h. Ms. Bechler reported that Representative Bieda is working on the community property trust act.

i. Meg Lentz reported that the tenancy by the entitites trust legislation seems to be stalled.

There was no other business offered or requested.

10. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:26 am.

Respectfully submitted,
David P. Lucas, Secretary
February 17, 2018
Chair's Report – Marlaine C. Teahan
mteahan@fraserlawfirm.com
517-377-0869

1. **Correspondence.** On January 26, 2018, I received an email from Candace Crowley, SBM Assistant Executive Director and Director of External Development, seeking a Section member to join the SBM's Modest Means Workgroup. Information was posted to our Connect Discussions page with no responses to date. More information is attached to my report. If you are interested in joining this Workgroup, or attending a one-day Modest Means Summit, please contact Candace Crowley at ccrowley@michbar.org or Marlaine Teahan at mteahan@fraserlawfirm.com.

2. **Hospital Lobbyist Meeting.** On January 30, 2018, I met with four lobbyists from 3 different hospital associations. This meeting was requested by the lobbyists, was facilitated by Becky Bechler and several members of her staff, and held in anticipation of a Workgroup meeting on February 28, 2018 on HB 5075 and HB 5076. Discussions centered around guardianships, patient advocate designations, DNRs. Our Section will participate in this Workgroup. I will attend the meetings of this Workgroup along with Raymond Harris, a member of our Section's Guardianship, Conservatorship, and End of Life Committee and a Council member of the Elder Law and Disability Rights Section of the SBM.

3. **Ad Hoc Committees.** In January, Geoff Vernon was named Chair of the Visitation of Competent Adults Ad Hoc Committee. Susan Chalgian is a member of this Committee and others may be added; anyone with interest serving on this ad hoc committee should contact Geoff Vernon at gvernon@joslynvernon.com. The mission of this ad hoc committee is to determine if it is possible and advisable to draft and support legislation relative to the visitation of competent adults by individuals the adult wishes to visit and others wishing to visit the adult. In February, Jim Spica was named Chair of the Uniform Fiduciary Income and Principal Act (UFIPA) Ad Hoc Committee. The mission of this ad hoc committee is to review the Uniform Law Commission's UFIPA draft and final version, scheduled to be voted upon at the Commission's Annual Meeting in July, 2018. Beginning work on UFIPA this year will position Council well in analyzing and responding to the uniform law in a timely fashion. Anyone interested in serving on the UFIPA Ad Hoc Committee should contact Jim Spica at jspica@dickinson-wright.com.

4. **We took a Public Policy Position in January on the following:**
The Section supports Omnibus Legislation to amend many sections of EPIC. The position and all amendments can be found online at the SBM Probate and Estate Planning Section Public Policy Position page:
https://www.michbar.org/sections/probatepp

5. **Bill Hound Reports.** For an interactive summary of the bills being watched by our Legislative Monitoring Committee, look in our Section's Connect Library.
6. **New Ideas, Comments, Questions.** Please email or call me at mteahan@fraserlawfirm.com with your thoughts and ideas for the following:
   - projects our Section should tackle – legislative or otherwise;
   - new ways to benefit our Section Members;
   - new social events for our Section Members, guests, and those interested in joining our Section;
   - anything you would like to discuss; and
   - your questions -- If I can't answer your question, I will find someone who can.

7. **Agenda.** To get on an upcoming Agenda, please contact me directly. Let me know what you want to do (report on your committee's work, have general discussion to help guide your committee, get a vote to report a public policy position). Tell me how much time you need and who will be presenting for your committee. Most important, if your matter must be heard in a certain month, let me know so that you are near the top of the agenda, ensuring adequate time for discussion. If you do not let me know you need time on the agenda, there is a possibility you will not be able to present for your committee. If there a late-breaking development and you need time on the agenda but the latest news on the issue happened after the deadline for the agenda, please call me to see what we can do to address the issue. If you want a public policy position taken on a pending bill, please be sure to include the bill in your report.

   - Experts in Estate Planning: Estate and Distribution Planning for Retirement Benefits, Plymouth - This was an excellent seminar. If you missed it, you may wish to catch the webcast.
   - Jan. 18 - Drafting Estate Planning Documents, 27th Annual, Grand Rapids (Live)
   - Feb. 15 - Drafting Estate Planning Documents, 27th Annual, Plymouth (Live)
   - March 15 – Drafting an Estate Plan for an Estate Under $5 Million
   - Apr. 10 - Medicaid and Health Care Planning Update 2018, Plymouth (Live)
   - May 16 - Income Tax Planning for Family LPs, LLCs, and Disregarded Entities (Probate Institute add-on seminar), Acme (Live)
   - May 17-19 - Probate & Estate Planning Institute, 58th Annual, Acme (Live) – registration is open!
   - June 14-15 - Probate & Estate Planning Institute, 58th Annual, Plymouth (Live) -- registration is open and note that the Plymouth location of the Institute will be held on Thursday and Friday this year – due to popular demand.
Creation of New Committees or Work Groups:

November 20, 2017
Steering Committee the Committee/Work Group reports to:

*Implementation Innovation - Delivery*

Name:

Modest Means Implementation

Type of Committee (circle one)

*Work Group*

Jurisdiction:

Develop the Modest Means module of the online marketplace/lawyer referral service especially by identifying new practice areas and flat rate services, and identifying methods of recruiting lawyers as panel members.

Notes:

Length of volunteer term? *Assess at end of bar year*

Include non-member volunteers? *Yes*

Number of volunteers needed? Fluid

List any stakeholders who should serve on the committee:

Solo & Small Firm Section
Family Law Section
Consumer Law Section
Probate Law
Real Property Law

Connect with national initiative with Patrick Rose and Peter Edelman

**SBM Staff:**

List SBM Staff to be assigned as State Bar Liaisons, and any assistants:

Candace Crowley
Others TBD
Budget:
Up to $1,000 to include phone meetings, possible focus group work

Public Policy:
None

Membership:
Elizabeth Kitchen Troop P67570 CHAIR (Pending)

Nicole Evans  E. Lansing P74826
Lisa Timmons Detroit P77752
Jennifer Lamp
Kathryn Larlee
Todd Morgan Adrian P74142
Laura Mancini Pontiac
DeYana Joi Simmons-Howard
To: Probate and Estate Planning Council Members  
From: Melisa M. W. Mysliwiec  
RE: Updates  
Date: February 9, 2018

1. Recent release of updates to SCAO-Approved Court Forms:

Use the following links to see a full list of the court form changes and to view the forms with the changes highlighted:

http://courts.mi.gov/Administration/SCAO/Forms/Documents/RecentRevisions/2017DecemberExplanationofChanges.pdf

http://courts.mi.gov/Administration/SCAO/Forms/Documents/RecentRevisions/feb1pcrevisions.pdf

Please see attached report for more information.


A great deal transpired with respect to HB 4821 and 4822 over the past month. Both have been approved with minor amendments and given immediate effect. As of the date of this memo, the Public Acts have not been posted to the legislature's website, so I am not able to attach them. However, here are links to the Bills, because the Public Acts will be posted soon.

HB 4821 S-2 with House Amendment was approved and assigned PA 13 '18 with immediate effect.

HB 4822 S-3 was approved and assigned PA 14 '18 with immediate effect.

3. HB 5073: Automatic Mediation Legislation:

The Committee requests Council approval to work directly with the ADR Taskforce with respect to our suggested changes, which are outlined in the attached memorandum, so that regardless of which way the ADR Section continues to advocate for this change in the law, our Section's comments and suggestions might be relied upon and worked into the suggested language being proposed from the beginning.
4. HB 4752 (re: Deducting Liens from Value of Real Estate on Inventory)

The sunset on deducting liens from the value of real estate when calculating an estate's inventory fee has been removed. HB 4752 S-1 was approved and presented to the Governor today, February 9.

Related to this, it has come to our attention that SCAO has determined that liens are not deducted from the value of real estate when determining whether an estate qualifies as a small estate, but only in calculating the inventory fee. However, SCAO must only be referencing Court Orders Distributing Small Estates under MCL 700.3982 because Small Estate Summary Proceedings, under MCL 700.3987, specifically states that liens and encumbrances are taken into account in determining whether summary proceedings are available.

The Committee requests Council approval to reach out to SCAO about reanalyzing this. Our goal is to allow liens and encumbrances on real property to be deducted from the property's fair market value in determining whether an estate qualifies as a small estate.

5. ADM 2016-19/2016-28

2016-19/2016-28: Proposed Amendment of MCR 5.125 and 5.409

The State Bar's Board of Commissioners identified this court rule amendment as being of interest to our Section. If we have comments, we are to submit them by February 22. At this time, our Committee has no objection to these court rule amendments and suggests that no comments be submitted by Council.

The proposed amendment of MCR 5.125(C)(22) is intended to ensure that minor children of an alleged legally incapacitated person receive notice of a petition as presumptive heirs where there is no spouse, adult child, or parent living.

The proposed amendments of MCR 5.125(C)(23) were submitted by the Representative Assembly of the State Bar of Michigan, and are intended to clarify the definition of persons interested in receiving a copy of a guardianship report for a minor, as referenced by MCL 700.5215.

The proposed amendment of MCR 5.409, Report of Guardian, Inventories and Accounts of Conservators, is intended to ensure that the financial institution statements and verification of funds reflect assets on hand as of the last day of the accounting period, not some time beyond that date.

Respectfully submitted,

Melisa M. W. Mysliwiec
Effective September 27, 2017:

- **MC 55, Claim of Appeal** – preexisting forms cannot be used, revised to comply with the 2017 amendments to MCR 7.204(D)

- **PCA 305-I Release of Indian Child by Parent** - preexisting forms cannot be used, modified to comply with 25 USC 1913(a) which states that voluntary consent to foster care placement or termination of parental rights of an Indian child is not valid unless recorded before a judge of a court of competent jurisdiction, references to “referee” were removed as well as the special acknowledgment section

- **PCA 308-I Consent by Parent to Adoption of Indian Child** - preexisting forms cannot be used, modified to comply with 25 USC 1913(a) same as above

December 2017 Distribution:

- **PC 562 Notice of Hearing** – preexisting forms cannot be used after 6/30/2018, citation MCR 3.002(5) was updated to MCR 3.002(12)

- **PC 579 Statement and Proof of Claim** - preexisting forms cannot be used after 6/30/2018, added “upon petition and notice to interested persons” before “a hearing will be held to determine whether to allow the claim, added MCR 5.208(E) and MCR 5.307(D) citations to footer

- **PC 593 Petition for Complete Estate Settlement, Testacy Previously Adjudicated & PC 594 Petition for Adjudication of Testacy and Complete Estate Settlement** – combined into PC 593, PC 594 can be used until depleted but preexisting PC 593 forms cannot be used after 6/30/2018

- **PC 621 Receipt of Property from Conservator** - preexisting forms cannot be used after 6/30/2018, updated to require indication of authority to receive property

- **PC 631 Order Regarding Appointment of Guardian of Incapacitated Individual** – preexisting forms can be used until depleted, updated to allow discharge of an attorney or guardian ad litem

- **PC 634 Annual Report of Guardian on Condition of Legally Incapacitated Individual** - preexisting forms can be used until depleted, added signature block for co-guardian situations and decreased writing space to fit

- **PC 638a Order Regarding Termination/Modification of Guardian for Minor or LII/Conservator** - preexisting forms can be used until depleted, updated so court discharge attorney or guardian ad litem, added space for attorney information

- **PC 638b Order Regarding Termination/Modification of Guardian for Individual with Developmental Disability** - preexisting forms can be used until depleted, added space for attorney information

- **PC 640 Order Regarding Appointment of Conservator** - preexisting forms can be used until depleted, updated so court discharge attorney or guardian ad litem
- **PC 662 Letters of Guardianship of Individual with Developmental Disability** - preexisting forms can be used until depleted, added writing space for guardian’s phone number

- **PC 663 Report of Guardian on Condition of Individual with Developmental Disability** - preexisting forms can be used until depleted, added signature block for co-guardian situations and decreased writing space to fit

- **PC 688 Order of Investigation and Notice of Hearing on Guardianship of Indian Child** – NEW FORM, mandated by MCR 5.402(E)(5) to be used when a court discovers that a child may be an Indian child after a guardianship has been ordered

- Accommodated same-sex marriages (preexisting forms can be used until depleted):
  - PC 100 Petition for Emancipation, Affidavit, and Waiver of Notice
  - PC 102 Petition to rescind Order of Emancipation
  - PC 556 Petition and Order for Assignment
    - Also added item to allow denial or dismissal/withdrawal of petition
  - PC 565 Testimony to Identify Heirs
    - Also added MCL 700.2103 citation to footer
  - PC 650 Petition for Appointment of Limited Guardian of Minor
  - PC 650-I Petition for Appointment of Limited Guardian of Indian Child (Voluntary Guardianship)
  - PC 651 Petition for Appointment of Guardian of Minor
  - PC 651-Ia Petition for Appointment of Guardian of Minor Indian Child (Voluntary Guardianship)
  - PC 651-Ib Petition for Appointment of Guardian of Minor Indian Child (Involuntary Guardianship)
  - PC 653 Order Regarding Appointment of Guardian/limited Guardian of a Minor
  - PC 653-I Order Regarding Appointment of Guardian/limited Guardian of a Minor Indian Child
  - PC 654 Annual Report of Guardian on Condition of Minor
    - Also added signature block for co-guardian situations and decreased writing space to fit
  - PC 670 Minor Guardianship Social History
  - PC 675 Petition to Terminate/Modify Guardianship
  - PC 678 Notice of Guardianship proceedings Concerning An Indian Child
  - PC 684 Application and Order for Appointment of Out of State Guardian of a Minor
  - PC 686 Consent by Parent/Indian Custodian to Guardianship of Indian Child
    - Also modified to comply with 25 USC 1913(a) which states that voluntary consent to foster care placement or termination of parental rights of an Indian child is not valid unless recorded before a judge of a court of competent jurisdiction, references to “referee” were removed
February 2018 Distribution:

- The following documents were revised to comply with 2017 PA 155 (POST):
  o PC 626 Notice of Rights to Alleged Incapacitated Individual
  o PC 627 Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual
  o PC 634 Annual Report of Guardian on Condition of Legally Incapacitated Individual
  o PC 666 Options You Should Know Before Filing a Petition for a Full Adult GA
MEDIATION LEGISLATION

HB 5073 ANALYSIS

HB 5072 was introduced on 10/17/17 and has been referred to the Committee on Law and Justice.

It creates a new Chapter 49 of the Revised Judicature Act (RJA) – Mediation and Case Evaluation. Chapter 49A of the RJA would be repealed.

Absent an objection, all civil nondomestic relations actions claiming damages over $25,000 and contested probate proceedings must be referred to mediation. Sec. 4902(1).

Observation: Huge problem for probate courts due to the unique character of probate litigation. Unlike civil cases, with defined adverse parties, probate proceedings involve giving notice to a group of interested persons who have the right to appear and provide input and objections (verbal or written) at the hearing. Many cases involve objections to only a part of the proceeding – i.e., who should serve as guardian, access to ward, authority to be given to guardian, etc. Requiring mandatory mediation will increase costs and slow down the adjudication of probate cases without appreciable benefits.

The following actions would not be referred to mediation:

- A party to the action is subject to a protection order protecting another party to the action.
- A party to the action seeking protection order against another party.
- A party to the action involved in abuse/neglect proceeding.
- Allegation that party to action abused another party.
- DHHS investigation request of party to action.

Sec. 4902(2).

Observation/Suggestion: The following provision could be added to this section: “For contested probate proceedings, upon a finding of good cause that mediation would not be appropriate.” This would maintain status quo, allowing a case to be referred to mediation where a judge believes it to be beneficial.

The above restrictions on referring a matter to mediation are inapplicable if the court determines mediation appropriate or mediation requested by protected party, party seeking protection, or party who is alleged victim of abuse. Sec. 4902(3).

Unless objection timely filed, judge must refer action to mediation within 30 days after response to complaint filed. Sec. 4902(4).

Observation: What is a response to a complaint in probate court? Complaint is not defined in bill. Per MCR 5.101, all probate actions are proceedings except for the extremely small number
of civil actions. An argument could be made that this legislation is only applicable to civil actions, but insertion of “safety valve” language in bill most prudent approach. Responses are not filed in the vast majority of probate cases – an interested person may simply appear and verbally object to an aspect of the proceeding at the hearing.

If a party objects to mediation, they must either notify the court that it is not appropriate per MCL 600.1035 (domestic relations action) or file a written objection containing facts to establish good cause. Good cause includes, but not limited to, the following:

- Child abuse\neglect.
- Domestic abuse.
- Inability of one\both parties to negotiate for themselves.
- Reason to believe health\safety of parties would be endangered by mediation participation.
- Inability to afford mediation fees\costs.
- Stipulation of all mediation parties.
- Unnecessary re: matter resolved.
- Matter assigned to another alternative dispute resolution process.

Objection must be filed and served on all attorneys\in pro per parties within 14 days of order for mediation. Hearing on removal motion must be held within 14 days of filing, unless adjourned via agreement or court orders otherwise. Removal motion must be heard before action mediated.

Sec. 4902(7).

The proposed legislation has additional provisions relating to private nature of proceedings, and guidelines for disclosure of mediation communications. Secs. 4902(8)-(12).

Language in medical malpractice sections changed from mediation to case evaluation. Secs. 4903-4923.
The bill would amend the General Property Tax Act to do the following:

-- Allow a property owner who previously occupied the property as his or her principal residence but now resided in any other location for the purposes of convalescence to retain a principal residence exemption (PRE) if the owner manifested an intent to return.

-- Delete the requirement that property be unoccupied if the owner is to continue receiving the PRE while he or she resides in a nursing home or assisted living facility.

The Act exempts an individual's principal residence from the tax levied by a school district for school operating purposes (typically 18 mills), to the extent provided in the Revised School Code. To claim the PRE, the homeowner must file an affidavit with the local tax collecting unit.

Not more than 90 days after the exempted property is no longer used as a principal residence, the owner must rescind the claim of exemption by filing a form with the local tax collecting unit. However, an owner may retain the exemption under certain circumstances.

An owner of property who previously occupied that property as his or her principal residence but now resides in a nursing home or assisted living facility may retain an exemption on that property if the owner manifests an intent to return to that property by satisfying all of the following conditions:

-- The owner continues to own the property while residing in the nursing home or assisted living facility.
-- The owner has not established a new principal residence.
-- The owner maintains or provides for the maintenance of the property while residing in the nursing home or assisted living facility.
-- The property is not occupied, is not leased, and is not used for any business or commercial purpose.

The bill would extend these provisions to a property owner who presently resided in any other location, if residing there solely for the purposes of convalescence.
A property owner residing in a nursing home, assisted living facility, or other location would have to meet all of the current conditions for retaining the PRE, except the bill would delete the requirement that the property be unoccupied.

Under the Act, an owner who owned and occupied a principal residence on June 1 or November 1 for which the exemption was not on the tax roll, or an owner of property who previously occupied that property as his or her principal residence but did not occupy that property on June 1 or November 1 while residing in a nursing home or assisted living facility under the circumstances described above for which the exemption was not on the tax roll, may file an appeal with the July or December board of review in the year for which the exemption was claimed or the immediately succeeding three years.

The bill would include in this provision an owner of property who previously occupied the property as his or her principal residence but did not occupy it on June 1 or November 1 while residing in another location for the purpose of convalescence.

MCL 211.7cc Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would increase School Aid Fund expenditures by an unknown and likely minimal amount. By reducing the requirements for homeowners to retain an exemption from the 18-mill school operating levy, the bill would likely increase the number of the exempt properties (or decrease the number that otherwise would become ineligible for the exemption). Since the exemption would reduce local school operating revenue, expenditures from the School Aid Fund would need to be increased in order to maintain per-pupil funding guarantees. The magnitude of any changes would depend on the specific characteristics of any affected property.

Fiscal Analyst: Ryan Bergan
A bill to amend 1893 PA 206, entitled "The general property tax act,"
by amending section 7cc (MCL 211.7cc), as amended by 2017 PA 121.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7cc. (1) A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section. Notwithstanding the tax day provided in section 2, the status of property as a principal residence shall be determined on the date an affidavit claiming an exemption is filed under subsection (2).

(2) Except as otherwise provided in subsection (5), an owner
school aid fund established in section 11 of article IX of the state constitution of 1963. If a land contract vendor, bank, credit union, or other lending institution transfers ownership of property for which an exemption is retained under this subsection, that land contract vendor, bank, credit union, or other lending institution shall rescind the exemption as provided in this section and shall notify the treasurer of the local tax collecting unit of that transfer of ownership. If a land contract vendor, bank, credit union, or other lending institution fails to make the payment required under this subsection for any property within the period for which property taxes are due and payable without penalty, the local tax collecting unit shall deny that conditional rescission and that denial is retroactive and is effective on December 31 of the immediately preceding year. If the local tax collecting unit denies a conditional rescission, the local tax collecting unit shall remove the exemption of the property and the amount due from the land contract vendor, bank, credit union, or other lending institution shall be a tax so that the additional taxes, penalties, and interest shall be collected as provided for in this section. If payment of the tax under this subsection is not made by the March 1 following the levy of the tax, the tax shall be turned over to the county treasurer and collected in the same manner as delinquent taxes under this act. An owner of property who previously occupied that property as his or her principal residence but now resides in a nursing home, or assisted living facility, or, if residing there solely for purposes of convalescence, any other location may retain an exemption on that property if the owner manifests an intent to
return to that property by satisfying all of the following
conditions:

(a) The owner continues to own that property while residing in
the nursing home, or assisted living facility, OR OTHER LOCATION.

(b) The owner has not established a new principal residence.

(c) The owner maintains or provides for the maintenance of
that property while residing in the nursing home, or assisted
living facility, OR OTHER LOCATION.

(d) That property is not occupied, is not leased, and is not
used for any business or commercial purpose.

(6) Except as otherwise provided in subsections (5) and (32),
if the assessor of the local tax collecting unit believes that the
property for which an exemption is claimed is not the principal
residence of the owner claiming the exemption, the assessor may
deny a new or existing claim by notifying the owner and the
department of treasury in writing of the reason for the denial and
advising the owner that the denial may be appealed to the
residential and small claims division of the Michigan tax tribunal
within 35 days after the date of the notice. The assessor may deny
a claim for exemption for the current year and for the 3
immediately preceding calendar years. If the assessor denies an
existing claim for exemption, the assessor shall remove the
exemption of the property and, if the tax roll is in the local tax
collecting unit's possession, amend the tax roll to reflect the
denial and the local treasurer shall within 30 days of the date of
the denial issue a corrected tax bill for any additional taxes with
interest at the rate of 1.25% per month or fraction of a month and
and rescission forms to the buyer and seller, or fails to file the affidavit and rescission forms with the local tax collecting unit if requested by the buyer or seller, the buyer may appeal to the department of treasury within 30 days of notice to the buyer that an exemption was not recorded. If the department of treasury determines that the buyer qualifies for the exemption, the department of treasury shall notify the assessor of the local tax collecting unit that the exemption is granted and the assessor of the local tax collecting unit or, if the tax roll is in the possession of the county treasurer, the county treasurer shall correct the tax roll to reflect the exemption. This subsection does not create a cause of action at law or in equity against a closing statement preparer who fails to provide exemption affidavit and rescission forms to a buyer and seller or who fails to file the affidavit and rescission forms with the local tax collecting unit when requested to do so by the buyer or seller.

(19) An owner who owned and occupied a principal residence on May 1 for taxes levied before January 1, 2012 for which the exemption was not on the tax roll may file an appeal with the July board of review or December board of review in the year for which the exemption was claimed or the immediately succeeding 3 years. For taxes levied after December 31, 2011, an owner who owned and occupied a principal residence on June 1 or November 1 for which the exemption was not on the tax roll, or an owner of property who previously occupied that property as his or her principal residence but did not occupy that property on June 1 or November 1 while residing in a nursing home, assisted living facility, OR OTHER
LOCATION under the circumstances described in subsection (5)(a) to (d) or while absent on active duty as a member of any branch of the Armed Forces of the United States, including the Coast Guard, a reserve component of any branch of the Armed Forces of the United States, or the National Guard, under the circumstances described in subsection (32)(a) to (d), for which the exemption was not on the tax roll, may file an appeal with the July board of review or the December board of review in the year for which the exemption was claimed or the immediately succeeding 3 years. If an appeal of a claim for exemption that was not on the tax roll is received not later than 5 days before the date of the December board of review, the local tax collecting unit shall convene a December board of review and consider the appeal pursuant to this section and section 53b.

(20) An owner who owned and occupied a principal residence within the time period prescribed in subsection (2) in any year before the 3 immediately preceding tax years for which the exemption was not on the tax roll as a result of a qualified error on the part of the local tax collecting unit may file a request for the exemption for those tax years with the department of treasury. The request for the exemption shall be in a form prescribed by the department of treasury and shall include all documentation the department of treasury considers necessary to consider the request and to correct any affected official records if a qualified error on the part of the local tax collecting unit is recognized and an exemption is granted. If the department of treasury denies a request for the exemption under this subsection, the owner is
MEMORANDUM

TO: PROBATE AND ESTATE PLANNING COUNCIL
FROM: MICHAEL LICHTERMAN – CHAIR, ELECTRONIC COMMUNICATIONS COMMITTEE
SUBJECT: MIGRATING TO SBM CONNECT DISCUSSION BOARD AND RETIRING SECTION EMAIL LISTSERV
DATE: FEBRUARY 17, 2018

This report is a follow-up to our Committee’s report at the January 20, 2018 Council meeting regarding the transition away from the Section mailing list (“Listserv”) to the Section’s SBM Connect site (“Connect”).

As set forth in the procedure proposed in the January Report, I, as Chair of our Committee, sent out the announcement email to the Listerv on February 1, 2018, and cross-posted it to Connect. There was very little response. The only issue brought to our attention is a Section member who does not want to have her email public. As noted in the January Report, the email address on file with the State Bar must be public or Connect will not work. Sandra Barger from the State Bar is in conversation with the Connect software vendor for a fix or a work around (if a permanent fix is not available).

I will continue to send the announcement email to the Listserv monthly (around the 1st of each month) until June 1, 2018 and will cross-post each announcement email to Connect.

I have received some answers to the good questions asked at the January meeting. The questions and answers follow.

**Question: How often are the Listserv archives accessed?** The Modern Firm hosts the Listserv and is most familiar with the Listserv software. Brendan Chard from the Modern Firm stated that the server does not have analytics software on it, so he is not able to give us a reliable number.

**Question: Can an auto-forward be set up to automatically forward Listserv emails to Connect after June 1, 2018?** Brendan Chard said that it could, however he does not recommend it due to past issues he has seen with similar approaches. Instead, he recommends setting it up so that anyone using the Listserv email address receives an automatic response letting them know what the new address is and instructions on accessing Connect.

**Question: Do attachments to an email show up in the Section Discussion Library automatically?** Andrew Marks at the State Bar confirmed that attachments to Connect emails are added to the Section Discussion Library.

There are all the questions I noted at the January Council meeting. If any Council members have additional questions, please email or call me with them.

Respectfully,

Michael Lichterman
Electronic Communications Committee Chair
Changes in the New Tax Bill

1. **ALIMONY DEDUCTION ELIMINATED IN 2019**

Under the current IRS tax code, alimony (a.k.a. spousal support or spousal maintenance) is tax deductible by the payor and taxable to the payee. This means that the person paying spousal support is paying pretax dollars, which they can then deduct on their annual return. Under the Tax Cuts and Jobs Act of 2017 (TCJA), for divorce judgments or separation agreements executed after December 31, 2018, or executed before that date but modified after it (if the modification expressly provides that the new amendments apply), alimony will no longer be deductible for the payer, and taxes don't need to be paid on it by the recipient.

When it comes to alimony, the paying spouse is generally the higher earner and therefore taxed at a higher rate. Similarly, the receiving spouse is typically the lower earner and taxed at a lower tax rate. Thus when it comes to the alimony dollars, under the old rule there are less taxes to pay resulting in more dollars available. Under the new rule, where there are more taxes to pay, the result is less money to get the case settled.

Offering tax relief to alimony payers often helps to move the negotiations along and avoid trial. Keep in mind that the window is still open, and if the divorce is filed and finalized before January 1, 2019, the old “taxable/deductible” rule will still apply.

Since this provision sunsets as of the end of 2025, it is unclear what will happen after that point to all of the property settlement agreements that are executed while the alimony deduction was eliminated. Thus, every divorce agreement, prenuptial agreement and post-nuptial agreement ideally should address the consequences of the new law, and contemplate the possible change or sunset of the provision.

Keep in mind, prenuptial agreements already entered into are not grandfathered and need to be revisited in light of the new tax law if there are references to taxable/deductible alimony.

(Former Code Secs. 215, 61(a)(8), and 71, as stricken by Act Sec. 11051)

2. **ROTH RECHARACTERIZATION NO LONGER ALLOWED**

Prior to TCJA, an individual could recharacterize and reverse a Roth IRA conversion from a traditional IRA for any given tax year if it is done by October 15th of the next year. People typically recharacterized, or reversed their conversion, if the stock market dipped after the conversion or could no longer pay the tax on the conversion. Under TCJA, a Roth IRA conversion made on or after January 1, 2018, cannot be recharacterized.

(Code Sec. 408A(d), as amended by Act Sec. 13611)
3. **529 FOR ALL EDUCATION COSTS**

Section 529 plans have typically only been available for college education expenses, with Coverdell Education Savings accounts being used for pre-college education. A revision in the law means that 529 accounts could be used for any education expense, from elementary to college, and even home school expenses. Pre-college expenses are limited to $10,000 per year.

For families who have been paying for pre-college education out-of-pocket, they could now reroute those expenses, up to $10,000 per year, through their state’s 529 plan. If available, they could take a state income tax deduction for the 529 contribution. Contributions are deductible for Michigan income tax purposes up to $5,000 per year for a single income tax return filer and $10,000 per year for joint filers.

(Code Sec. 529(c)(7), as added by Act Sec. 11032(a))

4. **KIDDIE TAX MODIFIED**

For tax years beginning after December 31, 2017, the taxable income of a child attributable to earned income is taxed under the rates for single individuals, and taxable income of a child attributable to net unearned income is taxed according to the brackets applicable to trusts and estates.

(Code Sec. 1(j)(4), as amended by Act Sec. 11001(a))

5. **STUDENT LOAN DISCHARGED ON DEATH OR DISABILITY**

For discharges of indebtedness after December 31, 2017 and before January 1, 2026, certain student loans that are discharged on account of death or total and permanent disability of the student are also excluded from gross income.

(Code Sec. 108(f), as amended by Act Sec. 11031)

Angela Hentkowski
Steward & Sheridan PLC
On December 22, 2017, the revenue act known as the Tax Cuts and Jobs Act (the “TCJA”) was signed into law, accomplishing the most far-reaching tax reform in decades. The TCJA impacts much more than income taxes. The changes it makes to the transfer tax system (estate, gift and gst tax) are many, complex and are not permanent. Many of the new rules under the TCJA expire (sunset) after 2025.

Given the TCJA’s significant increase in transfer tax exemption allowed for individuals, there may be certain historic estate planning opportunities available to you, for a limited period of time, to engage in certain lifetime transfers to minimize and potentially eliminate estate tax exposure in the future. Given that the TCJA is so new, there is anticipated guidance from Treasury that is expected to reinforce the ability to use increased exemptions to absorb transfers now, without risk that such transfers will be later subject to estate tax when the increased exemptions sunset under the TCJA. This likely allows for “grandfathered” estate planning opportunities. In some circumstances, there is significant risk in your estate plan by doing nothing.

Each individual’s plan is different and should take into account both tax and non-tax objectives. Even if you currently do not have estate tax exposure nor anticipate being taxable in the future, your foundational estate plan documents should be coordinated with the new rules under the TCJA so they perform as intended. There is no single approach that is best for everyone.

We recommend you schedule a confidential consultation with your [law firm name] estate planning attorney to discuss how the TCJA affects you and your family and whether your existing estate plan should be revised. For easy reference, below is link to each member of [law firm name] estate planning group.

[link to each member of [law firm name] estate planning group]

This alert is provided for informational purposes only and does not establish an attorney-client relationship nor does it constitute legal or tax advice.
The recently enacted Tax Cuts and Jobs Act (TCJA) is the most sweeping tax legislation in decades. It impacts much more than income taxes. The changes it makes to estate, gift, and generation skipping transfer taxes are many, complex, and temporary. For a limited period of time, there are tremendous opportunities available for taxpayers in planning their estates to minimize taxes. And in some circumstances, there is risk in doing nothing. Many of the provisions under the new law are set to expire after 2025.

Each individual’s plan is unique and should take into account both tax and non-tax objectives. There is no single approach that is best for everyone.

We recommend you contact your [list law firm name attorney] to discuss how the TCJA may affect you and what options are available to you. For easy reference, below is link to each member of [law firm name] estate planning group.

[list attorney names in group]

This alert is provided for informational purposes only and does not establish an attorney-client relationship nor does it constitute legal or tax advice.
MEMORANDUM

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

From: James P. Spica

Re: Divided and Directed Trusteeships ad Hoc Committee Chair’s Report

Date: February 9, 2018

It depresses me to report that as of this date, we are still waiting for a “blueback” of the DDTC legislative proposal—which the Council approved on November 11, 2017 and which State Representative Klint Kesto agreed to sponsor on December 13, 2017—to be returned by the Legislative Service Bureau.
MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
From: James P. Spica
Re: Uniform Law Commission Liaison Report
Date: February 9, 2018

UFIPA

On the date of this month’s Council meeting (February 17, 2018), I shall be in Philadelphia attending (what is scheduled to be) the penultimate face-to-face session of the ULC’s current Uniform Fiduciary Income and Principal Drafting Committee. The draft of the uniform act we shall be discussing then is posted at:


Electronic Wills

As of the date of this report, the ULC’s Electronic Wills Drafting Committee has still not posted a discussion draft. That Committee’s next face-to-face meeting is on March 2 and 3. So, presumably, something will be posted soon. So far, the Committee has only posed an “Issues memo” and research information, which can be viewed at:


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PROBATE

**HB 4021** - PROBATE, Guardians and Conservators. Allow guardianship petitions probate judges to schedule certain hearings before minor turns 18 years of age. (Kosowski, Robert (D), 01/12/17)  
(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)

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

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

**HB 4171** - PROBATE, Guardians and Conservators. Authorize a guardian to sign physician orders for scope of treatment form. (Cox, Laura (R), 02/07/17)  
(Status: 11/09/2017 - assigned PA 155/17 with immediate effect)

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

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

**HB 4410** - PROBATE, Wills and Estates. Allow exempt property decedent to exclude adult child by written instrument. (Lucido, Peter J. (R), 03/23/17)  
(Status: 10/03/2017 - reported with recommendation with substitute H-1)

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

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

**HB 4588** - OCCUPATIONS, Securities. Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults and posting of information. (Brinks, Winnie (D), 05/04/17)  
(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)
HB 4589 - OCCUPATIONS, Securities. Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults. (Graves, Joseph (R), 05/04/17)  
(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)

HB 4684 - PROBATE, Guardians and Conservators. Allow limited guardianship to supervise access to incapacitated individuals relative. (Lucido, Peter J. (R), 05/31/17)  
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)

HB 4686 - HOUSING, Affordable. Authorize local units to impose rent limitation for senior citizens and individuals with disabilities and provide for tax exemptions and specific tax. (Chang, Stephanie (D), 05/31/17)  
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)

HB 4751 - FAMILY LAW, Marriage and Divorce. Clarify enforceability of prenuptial agreements. (Kesto, Klint (R), 06/13/17)  
(Status: 01/30/2018 - PLACED ON ORDER OF THIRD READING WITH SUBSTITUTE S-1)

HB 4752 - PROBATE, Wills and Estates. Revise fee ratio and reporting requirement and remove sunset (Kesto, Klint (R), 06/08/17)  
(Status: 02/06/2018 - bill ordered enrolled)

HB 4754 - COURTS, Jurisdiction. Authorize inter-circuit concurrent jurisdiction plan. (Barrett, Tom (R), 06/13/17)  
(Status: 05/14/2017 - referred to Committee on Judiciary)

HB 4821 - PA 13 - PROBATE, Wills and Estates. Require appointment of the state or county public administrator as personal representative of a decedents estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Runestad, Jim (R), 07/12/17)  
(Status: 02/06/2018 - assigned PA 13 '18 with immediate effect)

HB 4822 - PA 14 - PROBATE, Wills and Estates. Require appointment of the state or county public administrator as personal representative of a decedents estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Ellison, Jim (D), 07/12/17)  
(Status: 02/06/2018 - assigned PA 14 '18 with immediate effect)

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

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

HB 4887 - OCCUPATIONS, Pawnbrokers. Establish hold process for pawned goods. (Lucido, Peter J. (R), 08/16/17)  
(Status: 11/28/2017 - reported with recommendation without amendment)

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

Senate Committee Hearing: 02/13/2018 Finance (HB 4905 on Agenda) - (Click for More Info)

HB 4931 - CIVIL PROCEDURE, Civil Actions. Create financial exploitation liability act (Kosowski, Robert L. (D), 09/13/17)  
(Status: 09/14/2017 - bill electronically reproduced 09/13/2017)
HB 4959 - FAMILY LAW, Marriage and Divorce. Require prenuptial and postnuptial agreements to be enforceable. (Hoitenga, Michele (R), 09/14/17)
(Status: 09/19/2017 - bill electronically reproduced 09/14/2017)

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

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

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

HB 5037 - PROBATE, Guardians and Conservators. Provide for power of guardian to implant a tracking device with a ward. (Lucido, Peter J. (R), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5073 - CIVIL PROCEDURE, Alternate Dispute resolution. Revise procedures for mediation and case evaluation of civil actions. (Kesto, Klint (R), 10/10/17)
(Status: 10/17/2017 - reported with recommendation for referral to Committee on Law and Justice)

HB 5075 - PROBATE, Patient Advocates. Provide for court determination of whether a patient advocate is acting within his or her authority or in a patients best interest. (Cole, Triston (R), 10/10/17)
(Status: 10/11/2017 - bill electronically reproduced 10/10/2017)

HB 5076 - HEALTH, Other. Establish procedure to require physician and hospital to obtain the consent of certain persons to withhold or withdraw a life-sustaining treatment. (Noble, Jeff (R), 10/10/17)
(Status: 10/11/2017 - bill electronically reproduced 10/10/2017)

HB 5152 - HEALTH, Patient Directives. Create non-opioid directive form. (Singh, Sam (D), 10/19/17)
(Status: 10/24/2017 - bill electronically reproduced 10/19/2017)

HB 5153 - PROBATE, Guardians and Conservators. Allow a guardian to execute a non-opioid directive form. (Canfield, Edward (R), 10/19/17)
(Status: 10/24/2017 - bill electronically reproduced 10/19/2017)

HB 5323 - CRIMINAL PROCEDURE, Pretrial Procedure. Modify process for expunction and destruction of DNA samples and identification profiles. (Lucido, Peter J. (R), 12/06/17)
(Status: 12/12/2017 - bill electronically reproduced 12/06/2017)

HB 5362 - PROBATE, Trusts. Modify information required in a certificate of trust. (Lucido, Peter J. (R), 12/13/17)
(Status: 12/28/2017 - bill electronically reproduced 12/13/2017)

HB 5398 - PROBATE, Trusts. Allow use of a certificate of trust under the estates and protected individuals code for a trust that affects real property. (Lucido, Peter J. (R), 01/11/18)
(Status: 01/16/2018 - bill electronically reproduced 01/11/2018)

HB 5443 - TAXATION, Estates. Repeal Michigan estate tax act. (Johnson, Steven (R), 01/24/18)
(Status: 01/25/2018 - bill electronically reproduced 01/24/2018)
HB 5456 - CIVIL PROCEDURE, Civil Actions. Enact asbestos bankruptcy trust claims transparency act. (Wentworth, Jason (R), 01/30/18)
(Status: 02/08/2018 - transmitted)

SB 0039 - PROBATE, Other. Revise exceptions to definition of surviving spouse in relation to a funeral representative. (Jones, Rick (R), 01/18/17)
(Status: 04/16/2017 - ASSIGNED PA 002017 WITH IMMEDIATE EFFECT)

SB 0049 - PROBATE, Guardians and Conservators. Modify provision related to compensation for professional guardian or professional conservator. (Booher, Darwin (R), 01/18/17)
(Status: 10/31/2017 - ASSIGNED PA 013617 WITH IMMEDIATE EFFECT)

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

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

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

SB 0346 - OCCUPATIONS, Securities. Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults (Ananich, Jim (D), 05/02/17)
(Status: 02/01/2018 - HOUSE SUBSTITUTE H-2 CONCURRED IN)

SB 0378 - SENIOR CITIZENS, Housing. Amend home for the aged definition and create an exemption from licensing. (Knollenberg, Marty (R), 05/16/17)
(Status: 11/28/2017 - ASSIGNED PA 16717 WITH IMMEDIATE EFFECT)

SB 0525 - COURTS, Reorganization. Modify reorganization of courts and number of judgeships (Jones, Rick (R), 09/06/17)
(Status: 01/30/2018 - ASSIGNED PA 0618 WITH IMMEDIATE EFFECT)

SB 0540 - PROPERTY TAX, Assessments. Modify definition of transfer of ownership and certain excluded transfers. (Schuitmaker, Tonya (R), 09/07/17)
(Status: 09/07/2017 - INTRODUCED BY SENATOR TONYA SCHUITMAKER)

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

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

SB 0644 - TORTS, Liability. Enact insurance agents liability act. (Jones, Rick (R), 11/01/17)
(Status: 11/01/2017 - INTRODUCED BY SENATOR RICK JONES)

SB 0713 - PROBATE, Guardians and Conservators. Provide for visitation procedures for isolated adults. (Marleau, Jim (R), 12/06/17)
(Status: 12/06/2017 - INTRODUCED BY SENATOR JAMES MARLEAU)
Senate Committee Hearing: 02/13/2018 Judiciary (SB 0713 on Agenda) - (Click for More Info)

**SB 0731 - PROPERTY, Recording.** Change requirement that an instrument be filed to recorded. (Zorn, Dale (R), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0732 - PROPERTY, Recording.** Modify recording waiver of mortgage priority. (Zorn, Dale (R), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0733 - LAND USE, Other.** Modify certified survey map requirements. (Zorn, Dale (R), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITH SUBSTITUTE S-1)

**SB 0734 - PROPERTY, Recording.** Require trust to be recorded separately under conveyance of a trust. (Conyers, Ian (D), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0735 - PROPERTY, Recording.** Require death certificate for joint tenant to be recorded separately from deed. (Knezek, David (D), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0736 - PROPERTY, Recording.** Remove recording requirements from exception for wills. (Hertel Jr., Curtis (D), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITH SUBSTITUTE S-1)

**SB 0737 - PROPERTY, Recording.** Require recording with register of deeds an English translation document to be included. (Hertel Jr., Curtis (D), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0738 - PROPERTY, Recording.** Provide certificates of correction for recording fee. (Proos, John (R), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0739 - PROPERTY, Condemnation.** Repeal prima facie evidence of ownership in fourth class cities. (Proos, John (R), 12/13/17)
(Status: 01/31/2018 - REPORTED FAVORABLY WITHOUT AMENDMENT)

**SB 0784 - HEALTH, Emergency Response.** Allow a parent or guardian to execute do-not-resuscitate order on behalf of a minor child. (Warren, Rebekah (D), 01/25/18)
(Status: 01/25/2018 - INTRODUCED BY SENATOR REBEKAH WARREN)

**SB 0785 - EDUCATION, School Districts.** Establish filing, storage, and notice rules regarding do-not-resuscitate orders and revocations of do-not-resuscitate orders. (Jones, Rick (R), 01/25/18)
(Status: 01/25/2018 - INTRODUCED BY SENATOR RICK JONES)

**SB 0786 - PROBATE, Guardians and Conservators.** Authorize a guardian of a minor to execute a do-not-resuscitate order. (Warren, Rebekah (D), 01/25/18)
(Status: 01/25/2018 - INTRODUCED BY SENATOR REBEKAH WARREN)