PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

FEBRUARY 7, 2020, 9 a.m. MEETING

Meeting of the Committee on Special Projects (CSP)

Meeting of the Council of the Probate and Estate Planning Section

NOTICE FOR REMOTE REGISTERING AND ATTENDANCE:

The registration link for remote attendance for the February Council meeting: https://zoom.us/meeting/register/uZMpceyspwUtg7a0_QtA

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

Friday, February 7, 2020
9 a.m.

University Club of MSU
3435 Forest Road
Lansing, MI 48910

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

Mark E. Kellogg, Secretary
Fraser Trebilcock Davis & Dunlap, P.C.
124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
517-377-0890
Email: mkellogg@fraserlawfirm.com
Each meeting starts with the Committee on Special Projects at 9 a.m., followed by the meeting of the Council of the Probate & Estate Planning Section.

Call for materials

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

Schedule of due dates for CSP materials, by 5:00 p.m.:
Tuesday, March 3, 2020 (for Friday, March 13, 2020 meeting)

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

Schedule of due dates for Council materials, by 5 p.m.:
Thursday, March 5, 2020 (for Friday, March 13, 2020 meeting)
# Officers of the Council for 2019-2020 Term

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<tr>
<td>Chairperson Elect</td>
<td>David P. Lucas</td>
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<tr>
<td>Vice Chairperson</td>
<td>David L.J.M. Skidmore</td>
</tr>
<tr>
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<td>Mark E. Kellogg</td>
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<td>Treasurer</td>
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Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan, Marguerite Munson Lentz
CSP Materials
MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

AGENDA

Friday, February 7, 2020
East Lansing, Michigan
9:00 – 10:15 AM

1. Nathan Piwowarski – Legislative Development and Drafting Committee – 30 minutes
   Re: Corrections to the Omnibus
   See attached memorandum (Exhibit 1)

2. Andy Mayoras – Drafter/beneficiary Ad Hoc Committee – 15 minutes
   See attached draft of proposed statute (Exhibit 2)

3. Christine Savage – Marital and Premarital Agreement Committee – 30 minutes
   See attached:
   • Memorandum from the committee (Exhibit 3)
   • Proposed redline version of the Uniform Premarital and Marital Agreements Act (Exhibit 4)
EXHIBIT 1
To: Committee on Special Projects  
From: Legislative Development and Drafting Committee  
Re: Corrections to 2019 Omnibus  
Date: January 31, 2020

Our committee has completed a painstaking review of the 2019/2020 Omnibus’s second draft. The LSB drafting lawyer helpfully identified a few oversights on our part. While our committee chair was empowered to make nonsubstantive revisions, these changes would open new statutes, and therefore should be voted upon. The three corrections are:

1. Persons who are the subject of guardianship proceedings have the right to themselves petition the court to appoint or remove a guardian. We did not create a correlative right for them to petition for the designation (or change in designation of) a standby guardian. We should have. The necessary improvements to section 5303 are included below.

2. Persons who are the subject of guardianship proceedings have the right to be present at hearings concerning the guardian’s appointment and removal. We did not create a correlative right for proceedings to designate or remove a standby guardian. We should have. The necessary improvements to section 5304 are included below.

3. Persons who are the subject of guardianship proceedings have the right to notice of hearings concerning the guardian’s appointment and removal. We did not create a correlative notice right for standby guardian proceedings. We should have. The necessary improvements to section 5311 are included below.

To allow timely introduction of the Omnibus, we ask for the adoption of the public policy position at this meeting.

700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.

1. An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian or designation of a standby guardian. The petition must contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

2. Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, physician orders for
scope of treatment form, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

(3) Upon the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.

700.5304 Evaluation and report; hearing.

(1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303. A report prepared as provided in this subsection shall not be made a part of the proceeding's public record, but shall be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at his or her own expense or, if indigent, at the expense of the state. Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable.

(3) A report prepared under this section shall contain all of the following:

(a) A detailed description of the individual's physical or psychological infirmities.

(b) An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.

(c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.

(d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.

(e) The signatures of all individuals who performed the evaluations upon which the report is based.

(4) The individual alleged to be incapacitated is entitled to be present at the hearing to appoint a guardian or designate a standby guardian in person, and to see or hear all evidence bearing upon the individual's condition. If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site.
(5) The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury.

(6) The issue of incapacity may be determined at a closed hearing without a jury if requested by the individual alleged to be incapacitated or that individual's legal counsel.

700.5311 Appointment or removal of guardian; notice of hearing.

(1) In a proceeding for the appointment or removal of an incapacitated individual's guardian, other than the appointment of a temporary guardian or temporary suspension of a guardian, or designate a standby guardian or change the designated standby guardian, notice of hearing must be given to each of the following:

(a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.

(b) A person who is serving as the guardian or conservator or who has the individual's care and custody.

(c) If known, a person named as attorney in fact under a durable power of attorney.

(d) The standby guardian or the person nominated to be designated as standby guardian.

(e) If no other person is notified under subdivision (a), (b), or (c), at least 1 of the individual's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated individual. Notice to all other persons must be given as prescribed by court rule. Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor.

(3) In a proceeding for a guardian's appointment or designation of a standby guardian under sections 5303 and 5304, a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

(a) The nature, purpose, and legal effects of the appointment of a guardian or designation of a standby guardian.

(b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel.
EXHIBIT 2
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," (MCL 700.1101 to 700.8206) by adding section 1215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1215. (1) Any part of a governing instrument that
directly or indirectly makes a substantial gift to an attorney who
drafted the governing instrument, or a person related to the
attorney who drafted the governing instrument, is void, unless the
attorney who drafted the governing instrument or other recipient of
the substantial gift is related to the individual making the
(2) This section does not apply to a provision in a governing instrument appointing an attorney, or a person related to the attorney, as a fiduciary. [Should this subsection refer to an "attorney who drafted the governing instrument"?]

(3) A provision in a governing instrument purporting to waive or otherwise avoid the application of this section is unenforceable.

(4) If a purchaser or lender for value acquires property distributed in kind or a security interest in property from a person who has received a substantial gift pursuant to a part of a governing instrument that is void under subsection (1), the purchaser or lender takes title free of any claims arising under, and incurs no personal liability by reason of this section. This section does not directly or indirectly impose liability on a person who honors or relies on a part of a governing instrument that is void under subsection (1) and that contains or effectuates a substantial gift, unless the person has knowledge that the part of the governing instrument is void. For purposes of this subsection, a person has knowledge of a fact if 1 or more of the following apply:

(a) The person has actual knowledge of it.
(b) The person has received a notice or notification of it.
(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(5) If a part of a governing instrument is void under subsection (1), the part that is void is severable and does not affect any other part of the governing instrument that can be given effect, including a term that makes an alternate or substitute
gift. If the part of the governing instrument that is void under subsection (1) cannot be severed, the entire governing instrument has no effect. For a power of appointment, this section does not affect the power to appoint in favor of persons other than the attorney or a person related to the attorney. [Should this subsection refer to an "attorney who drafted the governing instrument"?]

(6) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law. A part of a governing instrument that is not void under subsection (1) may be challenged under other legal grounds.

(7) This section applies only to a governing instrument executed after December 31, 2019.

(8) For purposes of this section, a person is related to an individual if, at the time the attorney prepared or supervised the preparation or execution of the governing instrument, the person is any of the following:
   (a) A spouse of the individual.
   (b) A lineal ascendant or descendant of the individual or the individual's spouse. [Note: the term "ascendant" is not used in any of the Michigan Compiled Laws. You should consider defining that term.]
   (c) A sibling of the individual.
   (d) A spouse of the individual described in subdivision (b) or (c).

(9) For purposes of this section, an entity is related to an attorney if the attorney owns a 50% or greater interest in the entity or otherwise controls the entity.

(10) For purposes of this section, a gift is considered
substantial if the value of the gift exceeds $5,000.00 as a result of a single governing instrument or 2 or more related governing instruments.

(11) As used in this section:

(a) "Attorney who drafted the governing instrument" means an individual to whom both of the following apply:

(i) The individual is or was licensed to practice law in this state or any other state, before or at the time the governing instrument was prepared or executed, or both.

(ii) The individual directly or indirectly prepared or supervised the preparation, execution, or both of the governing instrument. For purposes of this subparagraph, among other ways, the individual is considered to have prepared, or supervised the execution of, the governing instrument if the preparation, or supervision of the execution, of the governing instrument was performed by an employee, subordinate, partner, co-owner, or another person or lawyer employed by the same firm or company as the individual as of the time of preparation or execution, or both.

(b) "Gift" includes both of the following:

(i) An inter vivos gift, a testamentary transfer of real property or personal property or any interest in real property or personal property, and the power to make the testamentary transfer regardless of any of the following:

(A) Whether the gift or testamentary transfer is outright or in trust.

(B) When the gift or testamentary transfer is to take effect.

(C) Whether the power is held in a fiduciary or nonfiduciary capacity.

(ii) A transaction that conveys property for substantially less...
than fair market value. [Does "substantially less" mean less than $5,000.00?]
The Premarital and Marital Agreement Committee ("Committee") has focused our efforts on a review of the Uniform Premarital and Marital Agreements Act ("Act"). This review has included an examination of the current law in Michigan relating to premarital and marital agreements, along with the review of the provisions of the Act during the CSP meetings. Attached is a copy of the Act marked with the revisions from the most recent CSP meeting.

At this point the Committee is requesting input from CSP on its interest in having the Committee pursue the advancement of the Act to the Michigan legislature.

Following is a brief summary of the Act:

Section 1: Title

"Uniform Premarital and Marital Agreements Act"

Section 2: Definitions

Section 2 of the Act is defined terms. To stay consistent with the uniformity of the Act, only minor revisions were made which are marked for terms that are also defined under EPIC. No substantive revisions were made to the defined terms.

Section 3: Scope

Section 3 outlines the scope of the Act. The Act applies to agreements signed after the effective date. It does not apply to agreements which require court approval to become effective or agreements between spouses who intend to obtain a marital dissolution or court-decreed separation.

Section 4: Governing Law
Section 4 describes the validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement and how it is determined by the law of jurisdiction designated in the agreement, given that it is not contrary to public policy or Michigan Law.

Section 5: Principles of Law and Equity

Section 5 makes clear that common law contract doctrines and principles of equity are continually applied where this act does not displace them.

Section 6: Formation Requirements

Section 6 states that the agreement must be in a record, typically written record, and signed by both parties. This Section also affirmatively provides that a premarital or marital agreement is enforceable without consideration.

Section 7: When Agreement Effective

Section 7 sets forth the effective date of the premarital and marital agreements. A premarital agreement is effective on marriage. A premarital agreement is effective on the signing of the agreement by both parties. The effective date does not deprive parties from agreeing that certain provisions within an agreement will not go into or out of effect until a later time.

Section 8: Void Marriage

Section 8 provides that if a marriage is void, the agreement is enforceable to the extent necessary to avoid inequitable result. This section is intended to apply primarily to cases where a marriage is void due to the pre-existing marriage of one of the partners. Situations where one partner seeking a civil annulment relating to some claims of misrepresentation or mutual mistake would usually be better left to the main enforcement provisions of Sections 9 and 10.

Section 9: Enforcement

Pursuant to Section 9 a premarital or marital agreement would be unenforceable if a party against whom enforcement is sought proves any of the following:

1. The party's consent to the agreement was involuntary or the result of duress;

   Note in the marked version, fraud and mistake were inserted consistent with Michigan case law.

2. The party did not have access to independent legal representation;
3. Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights, or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or

4. Before signing the agreement, the party did not receive adequate financial disclosure.

Section 9 also details the requirements to meet the standards for enforceability:

1. **Independent Legal Representation.** A party has access to independent legal representation if (a) before signing a premarital or marital agreement, the party has a reasonable time to (i) decide whether to retain a lawyer to provide independent legal representation, and (ii) locate a lawyer to provide independent legal representation, obtain a lawyer's advice, and consider the advice provided; and (b) the other party is represented by a lawyer and the party has the financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.

2. **Waiver.** A notice of waiver of rights under Section 9 requires language, conspicuously displayed, substantially similar to examples in the Act, as applicable to the premarital agreement or marital agreement.

3. **Adequate Financial Disclosure.** A party has adequate financial disclosure if the party: (a) receives a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the party, (b) expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided, or (c) has adequate knowledge or reasonable basis for having adequate knowledge of the description an estimate of the property, liabilities and income.

Note Section 9 also provides the following:

1. **Public Assistance.** If the premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the are their party to provide support to the extent necessary to avoid that eligibility.

2. **Unconscionability or Hardship.** A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole (a) the term is unconscionable at the time of signing, or (b) enforcement of the term results in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.

Note that the marked changes modified to state that the material change was reasonably foreseeable at the time the agreement was signed. This modification was made to be consistent with Michigan case law.
**Section 10: Unenforceable Terms**

Section 10 discusses specific incidents in which a premarital or marital agreement is not enforceable. A term in a premarital agreement or marital agreement is not enforceable to the extent that it:

1. Adversely affects a child's right to support;
2. Limits or restricts a remedy available to a victim of domestic violence;
3. Purports to modify the grounds for a court-decreed separation or marital dissolution; or
4. Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

**Section 11: Limitation of Action**

Section 11 provides that a claim for relief under a premarital agreement or marital agreement is tolled during the marriage, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**Section 12: Uniformity of Applications and Construction**

Section 12 provides that consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Section 13: Relation to Electronic Signatures in Global and National Commerce Act**

Section 13 modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101 (C) of that act, or authorize electronic delivery of any of the notices described under that act.

**Section 14: Repeals; Conforming Amendments**

As Michigan did not adopt the prior uniform act, the Uniform Premarital Agreement Act, there will be no act to repeal.

**Section 15: Effective Date**

The effective date will be stated in the Act.
UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
NASHVILLE, TENNESSEE
JULY 13 - JULY 19, 2012

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2, 2013
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UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

SECTION 1. SHORT TITLE. This act may be known and cited as the "Uniform Premarital and Marital Agreements Act."

SECTION 2. DEFINITIONS. In this act:

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

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

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

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

   (A) spousal support;

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

   (C) responsibility for a liability;

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

   (E) award and allocation of attorney's fees and costs.
"Premarital agreement" means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.

"Property" means anything that may be the subject of ownership and includes both whether-real and personal property, tangible or intangible, legal or equitable, or any interest therein.

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

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

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

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

"State" means a state of the United States, the District of Columbia, the Common Wealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. SCOPE.

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

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

(c) This act does not apply to:
(1) an agreement between spouses which affirms, modifies, or waives a
marital right or obligation and requires court approval to become effective; or
(2) an agreement between spouses who intend to obtain a marital
dissolution or court-decreed separation which resolves their marital rights or
obligations and is signed when a proceeding for marital dissolution or court-decreed
separation is anticipated or pending.

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

SECTION 4. GOVERNING LAW. The validity, enforceability, interpretation,
and construction of a premarital agreement or marital agreement are determined:
(1) by the law of the jurisdiction designated in the agreement if the jurisdiction
has a significant relationship to the agreement or either party and the designated law is
not contrary to a fundamental public policy of this state; or
(2) absent an effective designation described in paragraph (1), by the law of
this state, including the choice-of-law rules of this state.

SECTION 5. PRINCIPLES OF LAW AND EQUITY. Unless
displaced by a provision of this Act, principles of law and equity supplement
this Act.

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

SECTION 7. WHEN AGREEMENT EFFECTIVE. A premarital agreement
is effective on marriage. A marital agreement is effective on signing by both parties.
SECTION 8. VOID MARRIAGE. If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

SECTION 9. ENFORCEMENT.

(a) A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves any of the following:

1. The party's consent to the agreement was involuntary or the result of fraud, duress, or mistake;
2. The party did not have access to independent legal representation under subsection (b);
3. Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights under subsection (c) or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or
4. Before signing the agreement, the party did not receive adequate financial disclosure under subsection (d).

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

1. Before signing a premarital or marital agreement, the party has a reasonable time to:
   (A) Decide whether to retain a lawyer to provide independent legal representation; and
   (B) Locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and
2. The other party is represented by a lawyer and the party has the
financial ability to retain a lawyer or the other party agrees to pay the reasonable fees
and expenses of independent legal representation.

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

(1) "If you sign this agreement, you may be:
(A) Giving up your right to be supported by the person you
are marrying or to whom you are married.
(B) Giving up your right to ownership or control of money and
property.
(C) Agreeing to pay bills and debts of the person you are
marrying or to whom you are married.
(D) Giving up your right to money and property if your
marriage ends or the person to whom you are married dies.
(E) Giving up your right to have your legal fees paid."

(d) A party has adequate financial disclosure under this section if the
party one of the following applies:

(1) receives The party receives a reasonably accurate description and
good-faith estimate of value of the property, liabilities, and income of the other
party;
(2) expressly The party expressly waives, in a separate signed record,
the right to financial disclosure beyond the disclosure provided; or
(3) The party has adequate knowledge or a reasonable basis for having
adequate knowledge of the information described in paragraph (1).
(e) If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.

(f) A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole, either of the following apply:

1. The term was unconscionable at the time the agreement was signed; or
2. Enforcement of the term may be unconscionable for a party at the time of enforcement because of a material change in circumstances arising after the agreement was signed that was not reasonably foreseeable at the time the agreement was signed.

(g) The court shall decide a question of unconscionability under subsection (f) as a matter of law.

SECTION 10. UNENFORCEABLE TERMS.

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

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

1. Adversely affects a child's right to support;
2. Limits or restricts a remedy available to a victim of domestic violence.
under law of this state other than this Act; 

(3) Purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this Act; or 

(4) Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution. 

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

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

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

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

[SECTION 14. REPEALS; CONFORMING AMENDMENTS. 

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

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

] 7
SECTION 15. EFFECTIVE DATE. This act takes effect ...
Council Materials
MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN
February 7, 2020
Agenda

I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates

V. Monthly Reports:
   A. Minutes of Prior Council Meeting (Mark Kellogg)—ATTACHMENT 1
   B. Treasurer’s Report (James Spica)—ATTACHMENT 2
      1. Financial Update
      2. Proposed Budget
   C. Chair’s Report
   D. Committee on Special Projects (Katie Lynwood)
   E. Legislative Analysis & Monitoring Committee (Dan Hilker)
   F. Legislative Development and Drafting Committee (Nathan Piwowarski)

VI. Other Committees Presenting Oral Reports
   A. Amicus Committee (Andy Mayoras)
   B. Tax Nugget, February 2020 (J.V. Anderton)—ATTACHMENT 3
   C. Petition to Compel JP Morgan Chase Bank to Complain with MCL 700.7914 (COT) and Order (Patricia Ouellette)—ATTACHMENT 4

VII. Other Committees Presenting Written Reports Only
   A. Vehicle TOD Proposal (Georgette David and Katie Lynwood)—ATTACHMENT 5

VIII. Other Business

IX. Adjournment

Next Probate Council Meeting: Friday, March 13, 2020, at 9 a.m.
Meeting of the Council of the
Probate and Estate Planning Section of
the State Bar of Michigan

Friday, January 10, 2020 @ 9:00 a.m.
University Club of MSU

Minutes

I. Call to Order

The Chair of the Council, Christopher A. Ballard, called the meeting to order at 9:45 a.m.

II. Introduction of Guests

A. Meeting attendees introduced themselves.

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

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

C. The following officers and members of Council were present and attended via remote access: Nathan R. Piwowarski and Ken Silver

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

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

E. Others present:

Douglas G. Chalgian
Jeanne Murphy
Ryan Bourjaily
Rebecca K. Wrock
Kevin Cummings
Georgette David
Michael D. Shelton
Theresa Rich
VIA REMOTE ACCESS:
Charlotte Shoup
Christina Jeter (3L Law Student)
Daniel Hilker
Lisa Anderson
Sam Nuxoll
Michael Green
Pete Hairston
Carolyn Noble (Wayne State Law School)

III. Excused Absences

The following officers and members of the Council were absent with excuse: Hon. Michael Jaconette, Andy Mayoras and Nazneen H. Syed.

IV. Lobbyist Report—Public Affairs Associates

No one was present on behalf of Public Policy Associates.

V. Monthly Reports:

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

Minutes of Prior Council Meeting (submitted by Mark E. Kellogg): it was moved and seconded to approve the Minutes of the December 14, 2019, meeting of the
Council, as included in the meeting agenda materials and presented at the meeting.

The minutes were approved by a vote of the Council.

B. Chair’s Report

1. Stay diligent on proposed legislation coming from the Section as this is an election year. Any legislation not finished by December 31, 2020 will have to be reintroduced.

2. Everyone will now be permitted to bring telephones in court rooms.


C. Committee on Special Projects (Katie Lynwood)

During CSP meeting discussed upcoming topics during the current fiscal year.

The anticipated topics include:

- Pre-martial Agreements (Christine Savage) – will be ready to present in February; seeking a final review and vote from Council

- Community Property legislation (Neal Nusholtz) – waiting to hear from banking group as to any objections; meeting the week of January 20th with legislative representatives and Becky Bechler; proposed legislation was already approved by Council but there have been some changes since approval.

- House Bill 4260 Elder Abuse package (Mike Shelton) – the Elder Law Section is suggesting some revisions and will be responding with comments about the age included in the proposed legislation.
• Legislative Development and Drafting Committee (Nathan Piwowarski) –
the following proposals will be ready for CSP over the course of the fiscal
year:
  o Entireties Trust Proposal
  o Motor Vehicle TOD (Georgette David and Katie Lynwood)
  o Omnibus – if we get a request for changes (Nathan Piwowarski)
  o Delaware Tax Trap legislation (Jim Spica)
  o Qualified Dispositions in Trust Act and voidable transfers (Rob
    Tiplady)
  o Elder Abuse Task Force
  o ART (HB 5321)

• Elder Abuse Task Force (Dan Hilker)

• Electronic Wills (Kurt Olson)

• Fiduciary exception (Warren Krueger)

D. Legislative Analysis & Monitoring Committee (Dan Hilker)

Dan discussed SB 0110 was signed by Governor Whitmer regarding amendment to
EPIC to allow a court-appointed limited guardian to supervise visits with an
incapacitated individual if certain conditions are met.

HB 5103 regarding priority of appointments and special personal representatives.
Draws distinction between general personal representative and special personal
representative.

E. Legislative Development and Drafting Committee (Nathan Piwowarski)

1. The proposal on entireties trust is in a delay mode.
2. The Council is waiting for a proposal from the Michigan Bankers Association (MBA). They have requested that we delay pending the input of the MBA. Nathan has requested input from Council regarding the next steps. Based upon discussion of Council, Nathan will proceed with introducing legislation regarding the entireties trusts.

3. Have received a full draft of the Omnibus Blueback. Currently being reviewed to ensure that it accurately reflects proposal adopted by Council.

4. Work on motor vehicle TODs also continues. Lobbyist has assisted in reaching out to Secretary of State to solicit its input and feedback.

VI. Other Committees Presenting Oral Reports

A. Tax Committee (Chris Caldwell)


VII. Other Committees Presenting Written Reports Only

A. Tax Section Liaison (Neal Nusholtz)—PROVIDED HANDOUT; SEE ATTACHED.

VIII. Other Business

Jim Spica presented a Treasurer's Report. The IRS reduced the mileage rate to 57.5 cents per mile.

Jim also proposed a line item for a clerical assistant to the elected Secretary. There was the suggestion that this person assist the Chair of CSP as well. We will vote on this at the February meeting.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting of the Council, the Chair declared the meeting adjourned at 11:20 a.m.

Respectfully submitted,
Mark E. Kellogg, Secretary

Next Probate Council Meeting: Friday, February 7, 2020, at 9 a.m.
"How SECURE are your clients following enactment of the SECURE Act?"

As we have all heard over the past two weeks, on December 20, 2019, the SECURE ("Setting Every Community Up for Retirement Enhancement") Act (the "Act") was enacted into law. The Act includes minor changes to the law in several areas, apparently intended to provide additional options for individuals saving for retirement, along with some significant changes regarding the distribution of certain retirement plans following the death of the owner necessary to pay for the changes and generate additional revenue. This tax nugget highlights many of the minor changes (although it is not exhaustive), then focuses primarily on the more significant changes to post-death distributions.

1. Effective Date. Generally speaking, the Act applies to plans of participants who died after December 31, 2019.¹

2. Miscellaneous Provisions:
   - RBD Age: Increased from 70 1/2 to age 72.
   - Individuals can contribute to IRAs beyond the RBD if the plan owner is working.
   - Employers will be permitted to allow (and in some cases required to provide information about) converting existing plans into lifetime annuity streams.
   - Plan owners may withdraw $5,000 within one year of the birth or adoption of a child without any penalty.
   - 529 Plans may be used for certain registered apprenticeship programs and to pay up to a maximum of $10,000 toward student loans.

3. RMD Rules:
   - The Act does not change the definition of a DB. Rather it creates new rules for required distributions and creates different categories of DBs such that the following results are possible:

¹ However, there is some question about whether the new 10-year payout rule described below applies to a plan owned by a participant who died before 2020, but whose designated beneficiary ("DB") subsequently died before his or her life expectancy passed. Under previous law, the DB of the initial DB, now deceased, would be entitled to a payout based on the now deceased DB's life expectancy. The Act, however, appears to limit the successor DB to a 10-year payout (described in more detail below), although the language in this regard is unclear as to which DB is being referred to at certain points.
- **No Designated Beneficiary** (e.g., estate, charity, or non see-through trust as beneficiary). In this case, there is no change from prior law. The beneficiary will have a 5-year payout (12/31 of the year including the fifth anniversary of the participant's death) if the owner died before RBD, or the owner's remaining life expectancy if the owner died after RBD.

- **Designated Beneficiary.** If there is a DB, but that DB does not qualify as an "Eligible Designed Beneficiary" (see below), there is a new 10-year rule for distributions. Although the statute doesn't specifically address it, because the 10-year payout is based on the existing 5-year payout structure for plans with no DB, those existing rules and regulations can help us apply how the 10-year rule should work in certain respects. First, the deadline for the payout will be December 31 of the year which includes the 10th anniversary of the plan owner's death. Second, there is no requirement for annual distributions as long as all plan benefits are distributed by the "10 year" deadline.

- **Eligible Designated Beneficiary.** There are several exceptions to the 10-year payout rule:
  
  - A surviving spouse may use a life expectancy payout (e.g., in the case of a conduit trust for a surviving spouse) or roll over the benefits to his or her own plan if the spouse is named as the beneficiary. The 10-year payout then applies after the spouse's death.
  
  - A minor child is not subject to the 10-year payout rule initially, but the rule applies after the child attains the age of majority.
  
  - Disabled (under §72(m)(7)) and chronically ill (under §7702B(c)(2)) beneficiaries are entitled to the life expectancy payout; the 10-year payout applies after death of the disabled or chronically ill beneficiary. An additional change specific only to accumulation trusts for these eligible DBs is that if the trust has multiple DBs, at least one of whom is disabled or chronically ill, then the life expectancy rules can apply to a trust for the benefit of the disabled or chronically ill DB.
  
  - A beneficiary who does not qualify as an eligible designated beneficiary under the prior bullet points but who is less than 10 years younger than the plan owner may also use a life expectancy payout, which then converts to a 10-year payout after the beneficiary's death.
4. Planning Considerations and General Take-Aways:

- **Use of Conduit and Accumulation Trusts:** The drafting techniques here have not changed, but the use of them may as a result of the Act. For example:
  - The use of a conduit trust may have been particularly important with regard to planning for a child who for one reason or another should not receive large amounts of money at any given time. The result of the Act is that a conduit trust for a non-Eligible Designated Beneficiary will force the complete distribution of the plan benefits received by the trust no later than December 31 of the year of the 10th anniversary of the plan owner's death. If the conduit trust beneficiary does qualify for one of the exceptions above, then the modified use of the life expectancy payout is still available.
  - Accumulation trusts, on the other hand, only allow for the modified life expectancy payout if the designated beneficiary is disabled or chronically ill. An accumulation trust for a spouse or minor will be subject to new 10-year payout.

- **Roth IRA conversions:** For certain clients, converting to a Roth may result in significant tax savings over time, particularly if the owner is in a lower income tax bracket than the expected beneficiary.

- **Review Beneficiary Designations:** Does a client name a trust as the beneficiary, and if so, what is the planning purpose behind doing so. In some cases, continuing with the existing plan will make sense (e.g., an accumulation trust for a spendthrift beneficiary) despite increased taxes resulting from a shorter payout period. In some cases, a conduit trust might need to be changed to an accumulation trust to avoid the distribution of the funds from the trust to the beneficiary in 10 years.

- **Charities as Beneficiaries:** Clients who have philanthropic intent should consider (even more so than before) naming charitable beneficiaries. These could specific charities, or could name CRTs that would receive the entire distribution from the plan over the 10-year period, but would make distributions to the beneficiary for his or her lifetime. Because the payment is to the CRT, no income tax is assessed at that time, so the shortened payout period does not result in an acceleration of income taxes owed.

- **"Tea Pot Trusts":** Proposed in a recent "Leimberg Information Services" post by Alan Gassman, *et al.*, a "Tea Pot Trust" is one in which two separate trusts would be created: one to receive the retirement benefits subject to a 10-year payout, and another trust (with the same beneficiaries) to hold other assets. In each trust, the trustee would have significant discretion to distribute assets among the various beneficiaries to minimize potential income tax effects.
State Bar of Michigan
Taxation Section

Editor/Author: Sean H. Cook (Partner at Warner, Norcross + Judd, LLP)
Author: Nina Lucido (Associate at Warner, Norcross + Judd, LLP)
Author: Sarah Harper (Associate at Warner, Norcross + Judd, LLP)

Tax Highlights

[Updates will be posted at connect.michbar.org/tax/pubpolicy/highlights]

Mission: Tax Highlights is a summary of selected income, estate and gift legislative and regulatory tax developments of general interest. This is not a comprehensive reporter of all tax developments. YOUR input is welcome. You can submit proposals for topics to include by sending a message to Sean H. Cook at scook@wnj.com. New materials from the last edition are in red. Materials related to the TCJA are in green.

Current Hot Issues

- Rev. Rul. 2019-11: Tax benefit rule explained for state income tax refunds received in a subsequent tax period
- 199A Guidance: Proposed Rulemaking becomes FINAL (see below)
- Meals and Entertainment Guidance: Notice (see below)
- Opportunity Zone Guidance: Rev. Rul. 2018-19; First set of Proposed Regulations issued on 10/29/18; Second set of Proposed Regulations issued on 4/17/19; Third set expected in January 2020. In a FAQ on July 1, 2019, the IRS provided relief for investors who invested in 2018 in QOFs prior to the publication of QOF netting rules that require an investor to net his capital gains against capital losses at the end of the tax year before he can invest in a QOF.
- Wayfair Decision Guidance: R.A.B. 2018-16
- Michigan: Illegal Activities: Notice dated September 12, 2018
- Michigan Department of Treasury has issued a release that summarized the Michigan income tax treatment of retirement and pension benefits effective for tax year 2018. February 4, 2019.
- Michigan Department of Treasury has updated its guidance on the sales and use tax bad debt deduction, for periods after September 30, 2019. This revised guidance incorporates a recent Michigan Supreme Court decision. Michigan Revenue Administrative Bulletin No. 2019-3, 02/15/2019.
### Carry-Over Fund Balance from 2018-2019

| 1-5-00-775-0001 Fund Bal-Probate/Estate Plan |

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<th>Proposed Budget (2019-2020)</th>
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**Net Income**

$$(6,803.17)$$ $71,945.98 $$(15,650.00)$$

**General Fund plus Net Income (Running Total)**

$$(256,816.29)$$ $$(169,220.31)$$

**Notes:**

*Per Becky Weaver $3,000 incorrectly allocated to the Probate Section in October, corrected in December.*

### Hearts and Flowers Fund

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| Total Fund | $772.81 |

### Amicus Reserve

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| Ending Fund Balance | $19,167.25 |

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1 of 1
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| Net Income | $71,945.98 | $(43,375.00) | $11,942.99 | $(15,650.00) |

| General Fund plus Net Income (Running Total) | $256,816.29 | - | - | $169,220.31 |

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<th>Carry-Over Fund Balance from 2018-2019</th>
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<td>Beginning Deposit Fund Balance</td>
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<tr>
<td>Revenue</td>
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<tr>
<td>Withdrawals</td>
<td>-</td>
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<tr>
<td><strong>Total Fund</strong></td>
<td><strong>$772.81</strong></td>
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<tr>
<th>Amicus Reserve</th>
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<td>Beginning Fund Balance</td>
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<tr>
<td>Revenue</td>
<td>-</td>
</tr>
<tr>
<td>Withdrawals</td>
<td>-</td>
</tr>
<tr>
<td><strong>Ending Fund Balance</strong></td>
<td><strong>$19,167.25</strong></td>
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February 2020 Tax Nugget
By: J.V. Anderton

After last month’s excellent review of the SECURE Act, and with no major breaking news in the estate and gift tax area, this month’s nugget is a quick reminder of the different rules applicable to appraisers and appraisals under estate tax valuation rules (applicable for completing a Form 706), and those rules relating to a “qualified appraiser” as required for income tax charitable donations under Section 170 of the Code.

For appraisers valuing an estate’s assets, the instructions for Form 706 state, “If the decedent owned at the date of death works of art or items with collectable value (for example, jewelry, furs, silverware, books, statuary, vases, oriental rugs, coin or stamp collections) check the “Yes” box on line 1 and provide full details. If any item or collection of similar items is valued at more than $3,000, attach an appraisal by an expert under oath and the required statement regarding the appraiser’s qualifications (see Regulations Section 20.2031-6(b)).”

Regulation Section 20.2031-6(b) then additionally requires that, “The appraisal shall be accompanied by a written statement of the executor containing a declaration that it is made under the penalties of perjury as to the completeness of the itemized list of such property and as to the disinterested character and the qualifications of the appraiser or appraisers.” Thus, the executor and the appraiser must work together to supply the necessary statements to accompany the Form 706 when submitted. The appraisal will put a value on the assets as of the date of death, or the alternate valuation date.

This is contrasted with the requirements for an appraisal for income tax purposes under Section 170 of the Code, which must be performed by a “qualified appraiser.” Such an appraisal is required for any non-cash donation where the claimed value is over $5,000. Here, the appraisal must not be completed more than 60 days before the date the property is contributed to a charity. A Form 8283 must be filed for each donee that receives non-cash assets of the same class, even if the individual donee does not receive assets of more than $5,000 in value. For example: if Charity 1 gets books worth $3,000, and Charity 2 gets books worth $2,500, two Forms 8283 must be filed.

The “qualified appraiser” that identifies the value of such non-cash donations must have the following qualifications: 1) She either: a) has a recognized appraiser designation from a generally recognized professional appraiser organization, or b) has met certain minimum education requirements and has two or more years of experience in valuing the type of property being appraised; 2) the appraiser regularly prepares appraisals for which she is paid; and 3) the appraiser makes a declaration in the appraisal that, because of her experience and education, she is qualified to make an appraisal of the type of property being appraised.

Thus, it appears that the appraisal standards for estate valuation purposes are less-stringent than the standards for a “qualified appraiser” for income tax purposes under Section 170 of the Code. Practitioners should keep this distinction in mind to ensure they follow the applicable requirements and avoid unnecessary client expense.
STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF INGHAM

In the Matter of the Trust
Agreement Dated February 16, 1995
File No. 19-7260 - TV
Honorables

Attorneys For Petitioner:
Lowe Law Firm, P. C.
Patricia M. Ouellette (P53725)
2375 Woodlake Drive, Suite 380
Okemos, Michigan 48864
Telephone: 517.908.0900

PETITION TO COMPEL JP MORGAN CHASE BANK, NA
TO COMPLY WITH MCL 700.7913

NOW COMES Petitioner, [redacted] Trustee of the Trust u/a/d February 16, 1995, restated September 25, 2001, amended October 24, 2011 by and through her attorneys, the Lowe Law Firm, P.C. and state in support of her Petition as follows:

Jurisdiction and Venue

1. This court has subject matter jurisdiction pursuant to MCL 700.1302 and 700.1303.

2. Venue is in Ingham County, the residence of the Trustee. The Trust is not registered.

3. The interested persons in this matter are:
   a. [redacted] Trustee/Beneficiary
   b. [redacted]
   c. Travis Wright, Manager
      JP Morgan Chase Bank, NA
      1749 W. Grand River Ave.
      Okemos, MI 48864
Factual Background

4. On September 6, 2019 the Settlor of the [redacted] Trust ("Trust") and original Trustee, [redacted] died.

5. The successor Trustee named in the October 24, 2011 amendment was Settlor's daughter, [redacted]

6. On Friday, September 27, 2019, Successor Trustee, [redacted] ("Trustee") went to JPMorgan Chase Bank, NA ("Chase"), 1749 W. Grand River Ave, Okemos, MI 48864 in order to access the accounts held by the Trust at Chase.

7. Trustee met with the Bank Manager, Travis Wright ("Manager") and provided him with a Certificate of Trust Existence and Authority (See Exhibit A) which contained the following:

   a. Name of the trust and the date of the trust instrument and any amendments, MCL 700.7913 (1)(a);

   b. The name and address of the currently acting trustee and the date the original trustee died, MCL 700.7913 (1)(b);

   c. The Certificate contained the verbatim reproductions of the powers of the trustee as well as the statutory powers provided under the Estates and Protected Individuals Code, MCL 700.7913 (1)(c);

   d. The Certificate stated that the Trust was irrevocable, MCL 700.7913 (1)(d);

   e. The Certificate was signed by the attorney for the Trustee, MCL 700.7913 (2);

   f. The Certificate stated that the Trust was in full force and effect and had not been revoked, modified or amended in any manner that would cause the representations contained in the Certificate to be incorrect. MCL 700.7913 (3);

   g. The Certificate did not contain the dispositive provisions of the Trust, MCL 700.7913 (4).

8. The Trustee also provided the Manager a copy of the October 24, 2011 amendment which provided that [redacted] was the successor Trustee, (See Exhibit B). MCL 700.7913 (5) provides "A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts [emphasis}
added] from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction."

9. The Manager informed the Trustee that she would not be able to access her father's accounts until she provided the full trust agreement and all amendments.

10. The Manager would not provide the legal reason for requiring the full trust document and amendments.

11. When the Trustee asked if she could speak with the legal department the answer was no.

12. When asked what additional information was needed the Manager said that the legal department would make that determination but the full Trust document and all amendments would be required.

13. When asked if the attorney for the Trust could speak with the legal department the answer was no.

14. When the Manager was told that MCL 700.7913 (8) provided that 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, he replied that Chase's policy was to require the entire trust and he had been doing that for a long time.

15. Because Chase has denied Trustee access to these accounts Trustee has been unable to pay certain Trust expenses and has incurred additional legal fees and costs.

WHEREFORE Petitioner requests this Honorable Court to:

A. Require Chase to allow the Trustee to access the Trust accounts pursuant to MCL 700.7913 and/or provide to this Court the legal requirements in demanding the Trust instrument.

B. Require Chase to pay the legal costs necessary to file this Petition and to reimburse the Trustee for her time and expenses incurred by her inability to access the Chase accounts.

C. Grant any other such relief that this Court deem appropriate given the circumstances of the case.
STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF INGHAM

In the Matter of the Trust Agreement Dated February 16, 1995

File No. 19-1266-TV
Honorable Richard J. Garcia

Attorneys For Petitioner:
Lowe Law Firm, P. C.
Patricia M. Ouellette (P53725)
2375 Woodlake Drive, Suite 380
Okemos, Michigan 48864
Telephone: 517.908.0900

JP Morgan Chase & Company
40600 Ann Arbor Road, E, Suite 201
Plymouth, MI 48170

Order

At a session of said Court held in the County Courthouse, City of Lansing, Ingham County, Michigan, this ___ day of December, 2019.

PRESENT: Honorable Richard J. Garcia, Probate Judge

On the Hearing held on December 11, 2019 for the Petition to Compel JP Morgan Chase Bank, NA to comply with MCL 700.7913, the Court finds that:

1. The Certificate of Trust Existence and Authority ("Certificate") provided to JP Morgan Chase Bank, NA ("Chase Bank") complied with MCL 700.7913.

2. JP Morgan Chase Bank, NA did not provide any legal requirement for demanding the Trust instrument in addition to the Certificate of Trust Existence and Authority.

3. JP Morgan Chase Bank, NA did not provide any reason for its failure to recognize the valid Certificate of Trust Existence and Authority other than it was their policy to require a copy of the Trust.

IT IS ORDERED:

A. The policy of JP Morgan Chase Bank, NA shall not override MCL 700.7913;

B. JP Morgan Chase Bank, NA and its Representative, Travis Wright ("Manager") shall recognize the Certificate of Trust Existence and Authority and permit
Trustee, access to the all of the accounts held by JP Morgan Chase Bank, NA in the name of the Trust u/a/d February 19, 1995;

C. JP Morgan Chase Bank, NA shall immediately pay the attorney fees and costs associated with this matter in the amount of $4,838.84.

D. That Respondent pay the Trustee fees for her time and expenses incurred in the amount of $201.00.

Richard J. Garcia  
JUDGE OF PROBATE

Honorable Richard J. Garcia

Counter signed:  
ELISSA COOK

Deputy Clerk  PROBATE REGISTER
Memorandum

To: Probate Council
From: Legislative Development and Drafting Committee
Date: February 3, 2020
Re: Vehicle TOD proposal

On January 23, 2020, Georgette David and Katie Lynwood met with Adam Reames, the Legislative Policy Director of the Secretary of State (SOS) along with our lobbyist, Jeff Brownlee of Public Affairs Associates at PAA’s office. Mr. Reames is new to his position at the SOS.

We presented to Mr. Reames our proposed legislation along with a memorandum with a list of our questions regarding the SOS’s policies and procedures. Mr. Reames will send our memorandum to the SOS Operations department to obtain answers to our posed questions.

We expect to hear back from Mr. Reames within the next few weeks. Mr. Brownlee is following up with him.

Mr. Reames expressed appreciation for involving the SOS in advance of the proposal, and is receptive to the proposed legislation.