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, April 21, 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 Meeting
Meeting of the Section’s Committee on Special Projects (CSP) and
Meeting of the Council of the Probate and Estate Planning Section
April 21, 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: d lucas@vcflaw.com

Meeting Schedule for 2017-2018:
April 21, 2018
June 16, 2018
September 8, 2018 (Annual Section Meeting)

Call for Materials:
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 Marlaine Teahan (mteahan@fraserlawfirm.com) or David Lucas (dlucas@vcflaw.com).

Schedule of due dates for CSP materials, by 5:00 p.m.:
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.:
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>
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<tr>
<td>Labe, Robert B.</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>
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<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
</tr>
<tr>
<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Hasan, Nazneen H.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Vernon, Geoffrey R.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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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>
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<tr>
<td>Name</td>
<td>Term</td>
<td>Year</td>
<td>End Date</td>
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<tr>
<td>Malviya, Raj A.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Olson, Kurt A.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Savage, Christine M.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>

**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>
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<tbody>
<tr>
<td>- Prop tax uncapping exempt.</td>
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<tr>
<td>- Tenants by Entirety Property bill</td>
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<td>- ILIT trustee exoneration bill</td>
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<td>- Jajuga legislation override</td>
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<tr>
<th>Priority Items</th>
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<tbody>
<tr>
<td>- Assisted Reproductive Technology</td>
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<tr>
<td>- EPIC/MTC Updates</td>
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<tr>
<td>- Guardian/Conservator Jurisdiction</td>
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<tr>
<td>- Tenants by Entirety Property in Trust bill</td>
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<tr>
<td>- Probate Appeals Rules</td>
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<tr>
<td>- SCAO Meetings*</td>
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<tr>
<td>- New forms based on legislation</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Secondary Priority</th>
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</thead>
<tbody>
<tr>
<td>- Charitable Trust statute update</td>
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<tr>
<td>- Expand Personal Residence Exemption</td>
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<tr>
<td>- Attorney for the Fiduciary (Perry v. Cotton issue)</td>
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<tr>
<td>- Michigan Community Property Trust Act</td>
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<tr>
<td>- Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)</td>
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<tr>
<td>- Amend bylaws to better coordinate transition of new officers/members</td>
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<tr>
<th>Priority To Be Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Parental rights assignment criminalization</td>
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<tr>
<td>- EPIC changes to reflect UPC updates</td>
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<tr>
<td>- Dignified Death (Family Consent) Act</td>
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<tr>
<td>- Directed/Separate Trustee Proposals</td>
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<tr>
<td>- Further brochure updating</td>
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<tr>
<td>- Estate Recovery</td>
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<tr>
<td>- Budget Reporting</td>
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<tr>
<td>- State Bar of Michigan 21st Century Practice Task Force Report</td>
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<tr>
<td>- Probate Court Opinion Bank</td>
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<td>- Mentor program</td>
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<tr>
<td>- Outreach to COA to stay apprised of pending appeals &amp; need for involvement</td>
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<tr>
<td>- Estate Recovery</td>
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</tbody>
</table>

*ongoing
CSP meeting materials
MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

April 21, 2018
Lansing, Michigan

Agenda

9:00 - 10:00 AM

1. MTC notice fix – Nathan Piwowarski/Jim Spica

See attached memorandum (by way of background) and the revision below to Section 7103(c), which will be reviewed and voted on at CSP.

“Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) if that charitable purpose is a material purpose of the trust.

2. Definitions of “sign” and “record” – Katie Lynwood

See attached Memorandum on Adding the definitions of “sign” and “record” to EPIC. Additional materials provided on EPIC and related ART materials.

3. Undisclosed trusts proposal – Jim Spica

See attached Memorandum.
MEMORANDUM

To: Geoffrey R. Vernon

From: James P. Spica

Re: MTC Notice Fix for Council Legislation Development & Drafting Committee

Date: November 6, 2017

Here’s another shot at the “fix” designed (according to your suggestion) to allow us to leave the term ‘qualified trust beneficiary/ies’ in place throughout the MTC.

700.7103 Definitions.

Sec. 7103. As used in this article:
   (a) "Action", with respect to a trustee or a trust protector, includes an act or a failure to act.
   (b) "Ascertaintable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.
   (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).
   (d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:
      (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.
      (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.
      (iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.
      (iv) Whether the distribution of trust property is from income or principal or both of the trust.
      (v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.
   (e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.
   (f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:
      (i) Exercisable by a trustee and limited by an ascertainable standard.
(ii) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(g) Except as provided in subparagraph (iv) of this paragraph, "Qualified-qualified trust beneficiary" means a trust beneficiary the settlor’s (or settlors’) intent to benefit whom is a material purpose of the trust and to whom at least 1 or more of the following apply: subparagaphs (i) through (iii) apply on the date the trust beneficiary's qualification is determined:

(i) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.

(iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(iv) If on the date the trust beneficiary's qualification is determined, there is no beneficiary of the trust described in subparagraph (i), (ii), or (iii) the settlor’s (or settlors’) intent to benefit whom is a material purpose of the trust, then the term qualified trust beneficiary means merely a trust beneficiary to whom 1 of subparagraphs (i) through (iii) applies on that date.

(h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

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

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

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

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

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

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

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

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1 The intuitive idea here is just that if the settlor authorizes a distribution to a beneficiary B merely to avoid a resulting trust, the benefit to B is incidental to the trust’s purposes.
(n) "Trust protector" means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

(i) The settlor of a trust.
(ii) The holder of a power of appointment.
Memorandum

To: Probate and Estate Planning Council
From: Katie Lynwood and Josh Ard
Date: April 9, 2018
Re: Adding the definitions of “sign” and “record” to EPIC

Question Presented to Our Committee:
The Assisted Reproductive Technology (ART) Committee proposed legislation which included the option of using the Uniform Probate Code’s (UPC’s) definition of “record” and “sign”. The questions are:

1. Should Council add the definitions of “record” and “sign” to the definition section of the Estates and Protected Individuals Code (EPIC)?
2. If yes, should Council use the definitions in the UPC, or some other definition?
3. How would these definitions impact the rest of the provisions currently contained in EPIC?

Discussion:
Attached as Exhibit 1 is the ART proposal. The terms “sign” and “record” are highlighted in yellow.

Attached as Exhibit 2 are the statutes in EPIC in which the terms “sign” and “record” appear – the terms are highlighted in yellow.

We are satisfied with using the UPC definition of “record” and have spent most of our time and analysis on the term “sign”.

The definitions found in the UPC are as follows:
(41) “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.
(45) “Sign” means, with present intent to authenticate or adopt a record other than a will: (A) to execute or adopt a tangible symbol; or (B) to attach to or logically associate with the record an electronic symbol, sound, or process. [all in Section 1-201]
The definitions in the Uniform Electronic Transactions Act (UEFA) are as follows:

(e) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(m) “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.

[all from MCL 450.832]

Our considerations:

- we don’t want to use a definition that creates problems,
- we don’t want “sign” to have a different meaning in Michigan than it does in other states, especially if there is a concern whether the instrument is to be governed by Michigan law or by the law of some foreign jurisdiction,
- if we don’t use the UPC definition, will practitioners make incorrect assumptions about the UPC definition and the fact that we did not use the UPC definition?
- if we do not add these definitions, anything other than wills, codicils, and trusts created by a will, are governed by the UETA.

Our concerns with the UPC version:

- could create mischief because it could be seen as too broad, but we believe it’s helpful that the definition specifically excludes the signing of a will.
- using the verb “means” in the definition indicates that it is exclusive. Instead we could use the verb “includes” which would resolve the issue.
- an example of a potential problem is the situation in which a person sends an email with an attachment and uses a signature line at the end of the email. This could be viewed as “signing” the attachment. However, we feel that the proposed definition of “sign” would only govern EPIC so, therefore, would not affect the commercial code or UETA.

The UETA definitions are clearer than the UPC definitions but that might be more a matter of esthetics. The UETA already applies to trusts, powers of attorney, patient advocate designations, and every instrument covered by EPIC other than wills, codicils, and trusts created by a will.

MCL 450.833 Applicability of act to electronic records and signatures.

(1) Except as otherwise provided in subsection (2) and section 4, this act applies to electronic records and electronic signatures relating to a transaction.
(2) This act does not apply to a transaction to the extent it is governed by either of the following:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(b) Except as otherwise provided in subsection (3), the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(3) This act does apply to a transaction to the extent it is governed by section 1107 or 1206 or article 2 or 2A of the uniform commercial code, 1962 PA 174, MCL 440.1107, 440.1206, and 440.2101 to 440.2982.

(4) A transaction subject to this act is also subject to other applicable substantive law.

Even if we like the UETA definition better, using this definition leads to strategic concerns:
- The applicability of the UETA may be true by law but many lawyers don’t know it.
- Lawyers tend to look to EPIC alone for definitions, so we should not refer the reader to look to a different code section for the definition of “sign” and “record”.
- We don’t want to diverge from the UPC on these matters, but the UETA has a better definition and applies automatically to everything other than wills, codicils and trusts created by a will.

Possible solutions:
- Use the UPC definitions verbatim.
- Use the UPC definitions with revisions.
- Use the UETA definitions verbatim.
- Say nothing and assume people would know to look to the UETA.
- Do a type of cross-reference and say something like “The terms record and sign are defined in the Uniform Electronic Transactions Act for instruments other than wills, codicils, and trusts created by a will.”

**Recommendation:**
We have a recommendation, although do not feel strongly about it, because there are not significant differences between the definitions.

The definitions of “sign” and “record” should be added to EPIC. We should use the UPC definition of “sign” with a minor to tweak to remove “means” and replace it with “includes”.

Therefore, the definition should be: “Sign” includes, with present intent to authenticate or adopt a record other than a will: (A) to execute or adopt a tangible symbol; or (B) to attach to or logically associate with the record an electronic symbol, sound, or process.
Exhibit 2

Sections in which "record" and "records" appear in EPIC
700.1207
700.1305
700.1307
700.1403
700.2803
700.2807
700.3607
700.3719
700.3801
700.5101
700.5104
700.5106
700.5214
700.5304
700.5305
700.5306
700.5307
700.5410
700.5417
700.5420
700.5422
700.5501
700.5505
700.5506
700.5508
700.5510
700.5512
700.7209
700.7811
700.8202
Sections in which “sign”, “signing” and “signature” appear in EPIC
700.1402
700.2205
700.2501
700.2502
700.2504
700.2505
700.2513
700.2514
700.2519
700.2903
700.2953
700.2954
700.2955
700.3206
700.3206a
700.3206b
700.3303
700.3405
700.3406
700.3914
700.3921
700.4303
700.5202
700.5301
700.5304
700.5313
700.5501
700.5506
700.5507
700.5510
700.5512
700.7401
700.7913
700.8202
700.1207 Evidence of death or status.

Sec. 1207.

In addition to the rules of evidence in courts of general jurisdiction, the court shall determine death or status in accordance with the following:

(a) Death occurs when an individual is determined to be dead under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034.

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the decedent's identity and of the fact, place, date, and time of the decedent's death.

(c) A certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the individual's status and of the dates, circumstances, and places disclosed by the record or report.

(d) In the absence of prima facie evidence of death under subdivision (b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(e) The fact of death may be established under the procedure prescribed in section 1208 to establish the death of an individual described in that section.

(f) At the hearing upon the petition, the court upon its own motion may, or upon motion of an interested person shall, impanel a jury as provided by law. If it is established by a preponderance of the evidence presented at the hearing that an accident or disaster occurred in which the individual named in the petition was killed or may be presumed to have died, the court shall enter an order that establishes the location of the accident or disaster, the date of death, and, if possible, the time of death and that states that the individual is dead.

(g) A certified copy of an order issued under this section is sufficient when presented to the medical examiner for the preparation of a certificate of death. The medical examiner shall forward the completed certificate of death to the state registrar. The state registrar shall register the death as provided in section 2845 of the public health code, 1978 PA 368, MCL 333.2845. The state registrar shall forward a copy of the registered death record to the local registrar of the place where the death occurred as established under this section.


Popular Name: EPIC
700.1305 Appeals.

Sec. 1305.

Appellate review, including the right to appellate review or interlocutory appeal and provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and the power of the appellate court, is governed by the revised judicature act of 1961 and by supreme court rule.

Popular Name: EPIC

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700.1307 Records and certified copies.

Sec. 1307.

(1) Court records shall be maintained in accordance with section 832 of the revised judicature act of 1961, being section 600.832 of the Michigan Compiled Laws. Upon payment of the fee required by law, the probate register shall issue a certified copy of a probated will, letters issued to a personal representative, or any other record or paper filed or recorded. A certificate that relates to a probated will shall indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. A certificate that relates to letters shall show the date of appointment and the date to which the letters continued in force.

(2) A certified copy of letters of authority may be recorded in the office of the register of deeds for the county in which a written instrument that is executed by a person under authority of the letters is recorded.

Popular Name: EPIC

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700.1402 Notice; waiver; order.

Sec. 1402.

(1) Except as provided in subsection (2), a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice and consent to the granting of a petition by a writing signed by the person or the person's attorney and filed in the proceeding. If every person affected by the proceeding waives notice and consents in writing to the granting of a petition, the court may enter an appropriate order on the petition without a hearing.

(2) A person for whom a guardianship or other protective order is sought, a ward, or a protected person cannot waive notice. A fiduciary shall not waive or consent on a petition, account, or report made as the fiduciary or in a different fiduciary capacity.

Popular Name: EPIC

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700.1403 Formal proceeding; pleadings; parties bound by others; notice.

Sec. 1403.

In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

(a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument that creates the interests, or in another appropriate manner.

(b) A person is bound by an order binding others in each of the following cases:

(i) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(ii) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(iii) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

(i) Notice as prescribed by section 1401 shall be given to every interested person or to one who can bind an interested person as described in subdivision (b)(i) or (ii). Notice may be given both to a person and to another who may bind the person.

(ii) Notice is given to an unborn or unascertain person, who is not represented under subdivision (b)(i) or (ii), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertain person.

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertain person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit...
accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.


**Popular Name:** EPIC

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700.2205 Waiver of rights by surviving spouse.

Sec. 2205.

The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, exempt property, or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.


Popular Name: EPIC

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700.2501 Will; maker; sufficient mental capacity.

Sec. 2501.

(1) An individual 18 years of age or older who has sufficient mental capacity may make a will.

(2) An individual has sufficient mental capacity to make a will if all of the following requirements are met:

(a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.

(b) The individual has the ability to know the nature and extent of his or her property.

(c) The individual knows the natural objects of his or her bounty.

(d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will.

Popular Name: EPIC

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700.2502 Execution; witnessed wills; holographic wills.

Sec. 2502.

(1) Except as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(a) In writing.

(b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

(c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting.

(3) Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

**History:** 1998, Act 386, Eff. Apr. 1, 2000

**Popular Name:** EPIC

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700.2504 Self-proved will.

Sec. 2504.

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

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

________________________
(Signature) Testator

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

________________________
(Signature) Witness

________________________
(Signature) Witness

The State of __________________________
County of ____________________________

Sworn to and signed in my presence by ________________, the testator, and sworn to and signed in my presence by ________________ and ________________, witnesses, on ____________, ____________.

month/day/year

________________________
(SEAL) Signed

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

The State of ________________________________
County of ________________________________
We, ____________________________, ____________________________, and ____________________________, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

(Signature) Testator

(Signature) Witness

(Signature) Witness
Sworn to and signed in my presence by ______________, the testator, and sworn to and signed in my presence by ______________ and ______________, witnesses, on ______________, ______________.

month/day year

(SEAL) Signed

(official capacity of officer)

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

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

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

____________________________________
(Signature) Witness

____________________________________
(Signature) Witness
The State of ___________________________
County of ____________________________
Sworn to and signed in my presence by ____________, the
testator, and sworn to and signed in my presence by
________________ and ________________, witnesses, on
________________, _____________.
month/year

____________________________________
(SEAL) Signed

____________________________________
(official capacity of officer)

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

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

700.2505 Witnesses.

Sec. 2505.

(1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.


Popular Name: EPIC

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700.2513 Separate writing identifying devise of certain types of tangible personal property.

Sec. 2513.

Whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be either in the testator’s handwriting or signed by the testator at the end, and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator’s death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.


Popular Name: EPIC

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700.2514 Contracts concerning succession.

Sec. 2514.

(1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:

(a) Provisions of a will stating material provisions of the contract.

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Popular Name: EPIC

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700.2519 Statutory will.

Sec. 2519.

(1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older who has sufficient mental capacity may make a will.

2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF ________________________________
(Print or type your full name)

ARTICLE 1. DECLARATIONS
This is my will and I revoke any prior wills and codicils.
I live in __________________________ County, Michigan.
My spouse is ________________________________.
(Insert spouse's name or write "none")
My children now living are:
__________________________________________
__________________________________________

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ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): $ ____________________________

AMOUNT OF GIFT (In words): ____________________________ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift

(Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): $ ____________________________

AMOUNT OF GIFT (In words): ____________________________ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.
(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.
(Name at least 1)

I nominate ________________________________
(Insert name of person or eligible financial institution)
of ________________________________ to serve as personal representative.
(Insert address)
If my first choice does not serve, I nominate ________________________________
(Insert name of person or eligible financial institution)
of ________________________________ to serve as personal representative.
(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine, I nominate ________________________________
(Insert name of individual)
of ________________________________ as guardian and
(Insert address)

_______________________________
(Insert name of individual or eligible financial institution)
of ________________________________ to serve as conservator.
(Insert address)
If my first choice cannot serve, I nominate ________________________________
(Insert name of individual)
of ________________________________ as guardian and
(Insert address)

_______________________________
(Insert name of individual or eligible financial institution)
of ________________________________ to serve as conservator.
(Insert address)

3.3 BOND.
A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on ______________, 20___.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

__________________________
(Print Name)

__________________________
(Signature of witness)

__________________________
(Address)

__________________________
(City) (State) (Zip)

__________________________
(Print name)

__________________________
(Signature of witness)

__________________________
(Address)

__________________________
(City) (State) (Zip)

__________________________
(Print name)

__________________________
(Signature of witness)
DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) "Descendants" means your children, grandchildren, and their descendants.

(c) "Descendants" or "children" includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.

(d) "Jointly held assets" means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(e) "Spouse" means your husband or wife at the time you sign this will.

(f) Whenever a distribution under a Michigan statutory will is to be made to an individual's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g) "Heirs" means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.

(h) "Person" includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in good faith exercise of the person's powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor's conservator, or, in amounts not exceeding $5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

Compiler's Notes: As to actions taken with respect to a clerical error detected in Enrolled Senate Bill No. 1045 with the Secretary of State on March 30, 2000, see the following correspondence: "September 14, 2000"Secretary of State Candice Miller"Department of State"Treasury Building"430 W. Allegan"Lansing, MI 48918-9900"Dear Secretary Miller:""The purpose of this letter is to document the action I am taking in order to correct a clerical error recently detected in Enrolled Senate Bill 1045. I signed this bill on March 29, 2000. It was filed with the Secretary of State on March 30, 2000, and assigned Public Act Number 54 of 2000. This legislation made various, largely technical amendments to the Estates and Protected Individuals Code that, having been given immediate effect, took effect on April 1, 2000."The Secretary of the Senate and the Clerk of the House re-presented a corrected version of Enrolled Senate Bill 1045 to me on September 11, 2000, along with the accompanying letter. Apparently, a clerical error was made during the enrollment process. Specifically, Section 2519, which updated the year '19 ___' to '20___' on the Michigan statutory will form was inadvertently omitted from the bill. During the 6 months this error remained undetected, an unknown and unknowable number of persons may have relied on its provisions, all but one of which are unaffected by this correction which, in effect, makes a century date change."The Secretary of the Senate and the Clerk of the House have recommended that I now re-sign a corrected version to be assigned the same date and public act number of the originally signed bill. Michigan case law supports this recommended procedure due to the fact that the omission was a 'clerical mistake' that dealt with a non-substantive provision of the bill. "As the court held in Board of Control v Auditor General, 149 Mich 386, 388 (1907), '(an) omission in the enrolled bill of words not essential to its substance or effect will not render the act invalid.' Similar decisions can be found in more recent court opinions. Beacon Club v Kalamazoo Sheriff, 332 Mich 412 (1952)."Therefore, I have affixed the revised enrolled bill with the same date as the date of my original signature. In addition, it is my expectation that the corrected enrolled bill will receive Public Act Number 54 of 2000."Sincerely,"John Engler"Governor"cc: Michigan State Senate"Michigan House of Representatives""September 10, 2000"The Honorable John Engler"Capitol Building"Lansing, Michigan 48913"Subject: PA 54 of 2000"Dear Governor Engler:"A clerical error has been detected in Enrolled Senate Bill 1045, which was filed with the Secretary of State on March 30, 2000, and assigned Public Act No. 54 of 2000. The bill presented to you on March 29, 2000, did not accurately reflect what was agreed to by both houses of the Legislature. Specifically, Section 2519, which updated the year from '19 ___' to '20___' on the Michigan statutory will form was inadvertently omitted from the bill."Therefore, we are presenting a correct Enrolled Senate Bill for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 1045 will be replaced with the correct Enrolled Senate Bill 1045 and assigned the same public act number. The inaccurate enrolled bill was signed by you on March 29, 2000, and filed with the Secretary of State on March 30, 2000. The effective date of Public Act No. 54 of 2000 will remain April 1, 2000."This procedure ensures that the bill as passed by both houses of the Legislature is accurately filed and effective, while this document will provide notification to the public. We apologize for any inconvenience this may have caused you and the citizens of the state of Michigan. If you have any questions, please feel free to contact us."Sincerely,"Carol Morey Viventi"Secretary of the Senate"Gary L. Randall"Clerk of the House of Representatives"cc: Candice S. Miller, Secretary of State"Enacting section 1 of Act 325 of 2010 provides:"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010."(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: Statutory Will

Popular Name: EPIC

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700.2803 Forfeiture, revocation, or severance.

Sec. 2803.

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

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

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

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

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

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

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

(c) Bars the killer or felon from exercising a power under section 3206(1).

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

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

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

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

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

Popular Name: EPIC

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700.2807 Revocation upon divorce; revocation by other changes of circumstances.

Sec. 2807.

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

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

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

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

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

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

(c) Bars the former spouse from exercising a power under section 3206(1).

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

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

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

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


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700.2903 Contents; signature.

Sec. 2903.

(1) A disclaimer is not valid unless it complies with all of the following:

(a) Is in writing.

(b) Declares the disclaimer.

(c) Describes the disclaimed interest.

(d) Is signed by the disclaimant.

(e) Is delivered as provided in sections 2904, 2905, and 2906.

(2) If a disclaimable interest is disclaimed by a fiduciary on behalf of the person to whom the disclaimable interest devolves, the disclaimer must be signed by all incumbent fiduciaries. Unless the governing instrument requires otherwise, a disclaimer of a disclaimable interest by a trustee may be signed by less than all incumbent trustees. A disclaimer of a fiduciary power by a fiduciary may be signed by less than all incumbent fiduciaries.


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700.2953 Form and procedure; requirements.

Sec. 2953.

To comply with this part as a valid international will, a will shall meet all of the following requirements regarding form and procedure:

(a) The will shall be made in writing, but does not need to be written by the testator personally. The will may be written in any language and may be written by hand or by any other means.

(b) The testator shall declare in the presence of 2 witnesses and an authorized individual that the document is the testator's will and that he or she knows its contents. The testator need not inform the witnesses or the authorized person of the will's contents.

(c) In the witnesses' and the authorized individual's presence, the testator shall sign the will or, if the testator has previously signed the will, shall acknowledge his or her signature.

(d) If the testator is unable to sign the international will, the absence of the testator's signature does not affect the will's validity if the testator indicates the reason for the inability and the authorized individual makes note of the reason on the will. In such a case, it is permissible, but not required, for another individual present, including a witness or the authorized individual, to sign the testator's name at the testator's direction, which act the authorized individual shall also note on the will.

(e) The witnesses and the authorized individual shall there and then attest the will by signing in the presence of the testator.

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700.2954 Form and procedure; additional recommendations.

Sec. 2954.

(1) To further assure an international will's acceptance, in addition to the section 2953 requirements, all of the following are recommended regarding form and procedure:

(a) The testator's, witnesses', and authorized individual's signatures should be placed at the end of the will. If the will consists of several sheets, the testator should sign each sheet. If the testator is unable to sign, the individual signing on the testator's behalf should sign each sheet or, if there is no such individual, the authorized individual should sign each sheet. In addition, each sheet should be consecutively numbered.

(b) The will's date is the date of its signature by the authorized individual. The authorized individual should note that date at the end of the will.

(c) The authorized individual should ask the testator whether he or she wishes to make a declaration concerning the will's safekeeping. If so and at the testator's express request, the place where the testator intends to have the will kept should be mentioned in the certificate provided for in section 2955.

(2) A will executed in compliance with section 2953 is not invalid merely because it does not comply with this section.

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700.2955 Certificate.

Sec. 2955.

The authorized individual shall attach to the will a certificate signed by the authorized individual establishing that the will complies with the requirements of this part for valid execution of an international will. The authorized individual shall keep a copy of the certificate and deliver another to the testator. The certificate must be in substantially the following form, except the provisions of the form that are optional provisions need only be included if the circumstances of the will render them applicable:

CERTIFICATE
(Convention of October 26, 1973)

1. I, ___________________________________________,
(Name, address and capacity)
a person authorized to act in connection with international wills
2. Certify that on ______ at ______________________
(Date) (Place)
3. (Testator) _________________________________
(Name, address, date and place of birth)
in my presence and that of the witnesses
4. (a) __________________________________________
(Name, address, date and place of birth)
(b) __________________________________________
(Name, address, date and place of birth)
has declared that the attached document is his (or her) will and
that he (or she) knows the contents thereof.
5. I furthermore certify that:
6. (a) In my presence and in that of the witnesses (1) the
testator has signed the will or has acknowledged his (or her)
signature previously affixed. * following a declaration
of the testator stating that he (or she) (2) was unable to sign
his (or her) will for the following reason _______________________
I have mentioned this declaration on the will * and the signature
has been affixed by

_________________________________________
(Name and address)
7. (b) The witnesses and I have signed the will;
8. *(c) Each page of the will has been signed by
_____________________________ and numbered;
9. (d) I have satisfied myself as to the identity of the
testator and of the witnesses as designated above;
10. (e) The witnesses have met the conditions requisite to
act as such according to the law under which I am acting;
11. *(f) The testator has requested me to include the
following statement concerning the safekeeping of his (or her)
will:
12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE and, if necessary, SEAL
* to be completed if appropriate.

**History:** 1998, Act 386, Eff. Apr. 1, 2000
**Popular Name:** EPIC

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ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.3206 Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent's body; presumption; funeral representative designation; priority; "exercise their rights or powers under subsection (1)" defined; shared rights and powers; personal representative or nominated personal representative; guardian; special fiduciary or special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; person criminally charged with intentionally killing decedent; payment for costs; definitions.

Sec. 3206.

(1) Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (12), a funeral representative designated under subsection (2), a person with priority under subsections (3) to (5) or a person acting under subsection (6), (7), (8), or (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to retrieve from the funeral establishment and possess cremated remains of the decedent immediately after cremation. The handling, disposition, or disinterment of a body must be under the supervision of a person licensed to practice mortuary science in this state.

(2) Except as otherwise provided in this subsection and subject to the priority in subsection (3), an individual 18 years of age or older who is of sound mind at the time a funeral representative designation is made may designate in writing another individual who is 18 years of age or older and who is of sound mind to have the rights and powers under subsection (1). All of the following apply to a funeral representative designation under this subsection:

(a) For purposes of this section and sections 3206a and 3206b, an individual who is named in a funeral representative designation to have the rights and powers described in subsection (1) is known as a funeral representative and an individual who makes a funeral representative designation is known as a declarant.

(b) A funeral representative designation under this subsection must be in writing, dated, and signed voluntarily by the declarant or signed by a notary public on the declarant's behalf under section 33 of the Michigan notary public act, 2003 PA 238, MCL 55.293. A funeral representative designation may be included in the declarant's will, patient advocate designation, or other writing. If a funeral representative designation is contained in an individual's will, the will is not required to be admitted to probate for the funeral representative designation to be valid. A funeral representative designation must be 1 or both of the following:

(i) Signed in the presence of and signed by 2 witnesses. A witness under this section may not be the funeral representative or an individual described in subdivision (c)(ii) to (iv). A witness shall not sign the funeral representative designation unless the declarant appears to be of sound mind and under no duress, fraud, or undue influence.

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

(c) The following individuals may not act as a funeral representative for the declarant unless the individual is the surviving spouse or is a relative of the declarant:

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

(ii) A health professional, or an employee of or volunteer at a health facility or veterans facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the declarant's death, or a partner, member, shareholder, owner, or representative of the health facility where medical treatment or nursing care was provided.

(iii) An officer, partner, member, shareholder, owner, representative, or employee of a cemetery at which the declarant's body will be interred, entombed, or inurned.
(iv) An officer, partner, member, shareholder, owner, representative, or employee of a crematory that will provide the declarant's cremation services.

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

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

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

(c) The surviving spouse.

(d) Subject to subdivision (e), the individual or individuals 18 years of age or older in the following order of priority:

(i) The decedent's children.

(ii) The decedent's grandchildren.

(iii) The decedent's parents.

(iv) The decedent's grandparents.

(v) The decedent's siblings.

(vi) A descendant of the decedent's parents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(vii) A descendant of the decedent's grandparents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(e) If an individual described in subdivision (d) had the right to dispose of the decedent's body under subsection (1), but affirmatively declined to exercise his or her right or failed to exercise his or her right within 48 hours after receiving notification of the decedent's death, the individual does not have the right to make a decision about the disposition of the decedent's body or possession of the decedent's cremated remains.

(4) If the individual or individuals with the highest priority as determined under subsection (3) cannot be located after a good-faith effort to contact and inform them of the decedent's death, affirmatively decline to exercise their rights or powers under subsection (1), or fail to exercise their rights or powers under subsection (1) within 48 hours after receiving notification of the decedent's death, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under subsection (3). If the individual or each of the individuals in an order of priority as determined under this subsection similarly affirmatively declines or fails to exercise his or her rights or powers within 48 hours after receiving notification that he or she may act under this subsection or cannot be located, the rights or powers under subsection (1) pass to the next order of priority under subsection (3). For purposes of this subsection only, "exercise their rights or powers under subsection (1)" means notifying the funeral establishment in possession of the decedent's body of an individual's decision to exercise his or her rights or powers under subsection (1).

(5) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (3) or (4), the rights and powers shall be exercised as decided by a majority of the individuals who can be located after reasonable efforts. If a majority cannot agree, any of the individuals may file a petition under section 3207.

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

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

(8) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), if the decedent died intestate, and if subsection (7) does not apply, a special fiduciary appointed under section 1309 or a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(9) If there is no person under subsections (3) to (8) to exercise the rights and powers under subsection (1), 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

(a) Unless subdivision (b) applies, the medical examiner for the county where the decedent was domiciled at the time of his or her death.

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

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

(11) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(12) An individual who has been criminally charged with the intentional killing of the decedent shall not exercise a right under subsection (1) while the charges are pending.

(13) Except as otherwise provided in this subsection, a person who has the rights and powers under subsection (1) and who exercises the right over the disposition of the decedent's body must ensure payment for the costs of the disposition through a trust, insurance, a commitment by another person, a prepaid contract under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or other effective and binding means. To the extent payment is not ensured under this subsection, the person described in this subsection is liable for the costs of the disposition. This subsection does not apply to a person who exercises the rights and powers under subsection (1) as provided in subsection (8) or (9).

(14) As used in this section:

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

(b) "Health facility" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(c) "Health professional" means that term as defined in section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

(d) "Medical treatment" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(e) "Michigan National Guard" means that term as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

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

(g) "Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan National Guard.


Popular Name: EPIC

https://www.legislature.mi.gov/(S(uxmi03cmwqhtmhft4o3gm))/mileg.aspx?page=getObject&objectName=mcl-700-3206
700.3206a Designation of successor individual as funeral representative.

Sec. 3206a.

(1) A declarant may designate in the funeral representative designation a successor individual as a funeral representative who may exercise the rights and powers described in section 3206(1) if the first individual named as funeral representative does not accept, is incapacitated, resigns, or is removed.

(2) An individual designated a funeral representative accepts the designation as funeral representative by signing an acceptance of funeral representative, or by acting as the funeral representative.

(3) The authority under a funeral representative designation is exercisable by a funeral representative only after the death of the declarant.

(4) Except as provided in the funeral representative designation, a funeral representative shall not delegate his or her powers to another individual.

(5) On request of the funeral establishment, the funeral representative shall provide a copy of the funeral representative designation to the funeral establishment.


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700.3206b Revocation of funeral representative designation.

Sec. 3206b.

A funeral representative designation is revoked by 1 or more of the following:

(a) Unless a successor funeral representative has been designated, any of the following:

(i) The funeral representative's resignation.

(ii) The funeral representative cannot be located after reasonable efforts by the decedent's family or funeral establishment.

(iii) The funeral representative refuses to act within 48 hours after receiving notice of the decedent's death.

(b) The declarant's revocation of the funeral representative designation. The declarant's revocation of the funeral representative designation must be in writing and signed in the manner as provided in section 3206(2).

(c) A subsequent funeral representative designation that revokes the prior funeral representative designation either expressly or by inconsistency.


Popular Name: EPIC

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700.3303 Informal probate; proof and findings required.

Sec. 3303.

(1) In an informal proceeding for original probate of a will, the register shall determine whether all of the following are true:

(a) The application is complete.

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief.

(c) The applicant appears from the application to be an interested person.

(d) On the basis of the statements in the application, venue is proper.

(e) An original, properly executed, and apparently unrevoked will is in the register's possession.

(f) That the application is not within section 3304.

(2) The register shall deny the application if the application indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under section 2502 or 2506 have been met shall be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed, or the register may accept a sworn statement of a person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will that was previously probated elsewhere may be granted at any time upon written application by an interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where the will was first probated.

(5) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under subsection (1) may be probated in this state upon receipt by the register of a properly authenticated copy of the will and a properly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Popular Name: EPIC

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700.3405 Formal testacy proceedings; uncontested cases; hearings and proof.

Sec. 3405.

(1) If a petition in a testacy proceeding is unopposed, the court may either order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought.

(2) If evidence concerning execution of the will is necessary, the sworn statement or testimony of 1 of the attesting witnesses to the instrument is sufficient. If the sworn statement or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or sworn statement. If, after diligent search and effort and after the signature of the testator is identified, it appears that the whereabouts of the witnesses to a will cannot be ascertained and it appears on the face of the will that the requirements in this section for a valid will have been met, a presumption arises that the will was executed in all particulars as required by law.

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700.3406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.

Sec. 3406.

(1) If evidence concerning execution of an attested will that is not self-proved is necessary in a contested case, the testimony of at least 1 of the attesting witnesses, if within the state and if competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If a will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and sworn statements annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or a sworn statement.

(3) If a witness is competent at the time he or she signs the will, the witness's subsequent incompetency from whatever cause does not prevent admission of the will to probate, if it is otherwise satisfactorily proved.

Popular Name: EPIC

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700.3607 Order restraining personal representative.

Sec. 3607.

(1) On petition of a person who appears to be an interested person or acting on the court's own motion, the court, by temporary order, may restrain a personal representative from performing a specified act of administration, disbursement, or distribution, or from exercising a power or discharging a duty of the personal representative's office, or may make another order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner or of some other interested person. A person with whom the personal representative may transact business may be made a party.

(2) The court shall set a hearing date for a matter described in subsection (1), which hearing date shall be not more than 14 days after the date of the issuance of the temporary order, unless the parties agree otherwise. Notice shall be given as the court directs to the personal representative, to the personal representative's attorney of record, if any, and to any parties named defendant in the petition.

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700.3719 Compensation of personal representative.

Sec. 3719.

(1) A personal representative is entitled to reasonable compensation for services performed. A personal representative may pay the personal representative's own compensation periodically as earned without prior court approval.

(2) If an attorney serves as personal representative, the attorney shall maintain time records that state the identity of the person performing personal representative services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services. Upon request of an interested person affected by payment of personal representative fees, the attorney shall send the time records to the interested person.

(3) If a will provides for the personal representative's compensation and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A written contract between the decedent and the personal representative regarding compensation for estate settlement services is binding on the personal representative.

(4) A personal representative also may renounce the right to all or a part of the compensation. A written renunciation of fee may be filed with the court and shall be served on all affected interested persons.


Popular Name: EPIC

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700.3801 Notice of creditors.

Sec. 3801.

(1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to present their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7605(1) as to which the decedent is settlor. For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors.

(b) If the personal representative first knows of an estate creditor less than 28 days before the expiration of the time limit in subdivision (a), within 28 days after the personal representative first knows of the creditor.

(3) If the personal representative or the attorney for the estate in good faith believes that notice to a creditor of the estate is or may be required by this section, and if the personal representative gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for having given notice.

(4) If the personal representative or the attorney for the estate in good faith believes that notice to a person is not required by this section and if the personal representative fails to give notice to that person based on that belief, neither the personal representative nor the attorney is personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

Popular Name: EPIC

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700.3914 Agreements among successors to decedent binding on personal representative.

Sec. 3914.

(1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written agreement executed by all who are affected by its provisions. If there is, or may be, an interested person to the agreement who is a minor or incapacitated individual or if there is an inalienable estate or future contingent interest, after notice to the representative of the individual or interest as provided by supreme court rule, the court having jurisdiction of the matter may, if the agreement is made in good faith and appears just and reasonable for the individual or interest, direct the representative of the individual or interest to sign and enter into the agreement. The personal representative shall abide by the agreement's terms subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the fiduciary office's responsibilities for the benefit of a successor of the decedent who is not a party.

(2) A personal representative of a decedent's estate is not required to see to the performance of a trust if the trustee of the trust is another person who is willing to accept the trust. Accordingly, a trustee of a trust created by will is a successor for the purposes of this section. Nothing in this section relieves a trustee of a duty owed to a trust beneficiary.


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700.3921 Tax on separate interests; governing instrument provisions.

Sec. 3921.

(1) Unless specific directions to that effect are contained in the governing instrument under which the fiduciary is acting, section 3920 shall not be construed to require the personal representative or other concerned fiduciary to pay an estate, inheritance, or other death tax levied or assessed by a foreign country.

(2) The net amount of tax attributable to the interests encompassed by subdivision (a), subdivision (b), or subdivision (c) of section 3920(1) considered separately shall be the part of the net amount of tax as finally determined, with any interest and penalties on that amount, as the value of the interests generating the tax and included in the subdivision bears to the amount of the net estate. However, for an inheritance or similar tax, the tax that is imposed on each beneficiary's interest, as determined under the law of the state, country, or political subdivision then under consideration, shall be considered the tax attributable to the interest. In prorating taxes within each subdivision of section 3920(1) based on the value of those interests generating the tax, each separate tax that an interest may incur shall be prorated in the same manner. In determining the proportion that each interest bears to the total value of all interests generating each tax, only interests generating that particular tax are considered. Property or interests generating a tax do not include property or interests, whether passing under a will, trust, or otherwise, to the extent the property or interest is exempt or is initially deductible from the gross estate, without regard to any subsequent diminution of the deduction by reason of the charge of a part of the tax to the property or interest.

(3) A direction in a governing instrument for tax allocation and payment in a manner different from that provided in sections 3920 to 3923 is effective to allocate and pay tax only from property whose devolution is subject to that instrument's control and with respect to which the tax is being levied. If the governing instrument was signed on or after September 6, 1963 and before April 1, 2000 and directs apportionment of taxes by reference to the uniform estate tax apportionment act, which was former 1963 PA 144, or by reference to another law of this state that was in effect when the instrument was executed, the apportionment rules provided in the referenced law control the apportionment of taxes under that governing instrument.

(4) A direction to allocate and pay tax contained in a will is effective to allocate and pay tax even if the will does not control the devolution of property at death with respect to which the tax is being levied, including a direction in a will to allocate and pay tax from a trust of which the testator was the settlor and that was revocable by the settlor, or would have been revocable if the settlor was not incapacitated, until the settlor's death. If there is a conflict between directions in a will to allocate and pay tax and the terms of another governing instrument, the directions in the will control.

(5) A tax apportionment based on the net estate under sections 3920 to 3923 shall be determined without regard to a diminution in deductions resulting from the charge of a part of the tax to a deductible interest.


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700.4303 Service on foreign personal representative.

Sec. 4303.

(1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to the representative's last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the representative's decedent immediately before death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the representative is allowed not less than 28 days within which to appear or respond.

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700.5101 General definitions.

Sec. 5101.

As used in parts 1 to 4 of this article:

(a) “Best interests of the minor” means the sum total of the following factors to be considered, evaluated, and determined by the court:

(i) The love, affection, and other emotional ties existing between the parties involved and the child.

(ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child’s religion or creed, if any.

(iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence, as a family unit, of the existing or proposed custodial home.

(vi) The moral fitness of the parties involved.

(vii) The mental and physical health of the parties involved.

(viii) The child’s home, school, and community record.

(ix) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(x) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(xi) Domestic violence regardless of whether the violence is directed against or witnessed by the child.

(xii) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

(b) “Claim” includes, in respect to a protected individual, a liability of the protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the appointment of a conservator, including expenses of administration.

(c) “Conservator” includes, but is not limited to, a limited conservator described in section 5419(1).

(d) “Visitor” means an individual appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

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700.5104 Request or notice; interested person.

Sec. 5104.

(1) An interested person who desires to be notified before an order is made in a guardianship proceeding, including a proceeding subsequent to the appointment of a guardian under section 5312, or in a protective proceeding under section 5401 must file a request for notice with the register of the court in which the proceeding is pending and with the attorney of record of the guardian or conservator or, if none, with the guardian or conservator, if any. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to a proceeding that occurs after the filing. If a guardianship or protective proceeding is not pending at the time a person files a request for notice as authorized by this subsection, the person shall pay a fee for filing the request, which fee shall be in the same amount as, but is separate from, the fee required to commence such a proceeding.

(2) A governmental agency paying benefits to the individual to be protected or before whom an application for benefits is pending is an interested person in a protective proceeding.


Popular Name: EPIC
ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5106 Appointment or approval of professional guardian or professional conservator as
guardian or conservator; findings; bond; compensation or other benefits; schedule of visitation;
care; appointment of nonbanking corporation to act as fiduciary in state.

Sec. 5106.

(1) Subject to subsections (2) and (3), the court may appoint or approve a professional guardian or
professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary
guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA
258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under
subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's,
developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in
accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under
subsection (1) unless the professional guardian or professional conservator files a bond in an amount and
with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of
the bond are subject to sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a
result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by
this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
prevent a person from providing compensation or other benefits, from a source other than the estate of the
ward, developmentally disabled individual, incapacitated individual, or protected individual, to a professional
guardian or professional conservator appointed or approved under this section. If a professional guardian or
professional conservator appointed or approved under this section receives or is to receive compensation or
other benefits as a result of that appointment from a person other than this state, a political subdivision of
this state, or a trust created under section 5407(2), the professional guardian or professional conservator
shall file with the appointing or approving court a written statement of the compensation or other benefit
received or to be received, including the source of the compensation or other benefit, in a form and in a
manner prescribed by the Michigan court rules. The professional guardian or professional conservator shall
serve a copy of the form described in this subsection to the ward, developmentally disabled individual,
incapacitated individual, or protected individual and to interested persons.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation
so that an individual associated with the professional guardian who is responsible for the ward's care visits
the ward within 3 months after the professional guardian's appointment and not less than once within 3
months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of
employees assigned to the care of wards for the purpose of performing the necessary duties associated with
ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of
1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or
nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that
is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The
authorization under this subsection confers the fiduciary capacity only to the extent necessary in the
particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking
corporation is not authorized to act in any other fiduciary capacity.

https://www.legislature.mi.gov/(S(2vdim4g2m1donuxqscd4hi))/mileg.aspx?page=getObject&objectName=mcl-700-5106
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700.5202 Parental appointment of guardian for minor.

Sec. 5202.

(1) The parent of an unmarried minor may appoint a guardian for the minor by will or by another writing signed by the parent and attested by at least 2 witnesses.

(2) Subject to the right of the minor under section 5203, if both parents are dead or have been adjudged to be legally incapacitated or the surviving parent has no parental rights or has been adjudged to be legally incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(3) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(4) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.


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700.5214 Consent to service by acceptance of appointment; notice.

Sec. 5214.

By accepting a parental or court appointment as guardian, a guardian submits personally to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. The petitioner shall cause notice of a proceeding to be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address listed in the court records and to the address then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by court order or parental nomination.

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700.5301 Appointment of guardian for incapacitated person by will or other writing.

Sec. 5301.

(1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

(4) Upon the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument or a testamentary nominating instrument made by a testator who is not deceased, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317.


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700.5304 Evaluation and report; hearing.

Sec. 5304.

(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 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.


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700.5305 Guardian ad litem; duties; compensation; legal counsel.

Sec. 5305.

(1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

(a) Personally visiting the individual.

(b) Explaining to the individual the nature, purpose, and legal effects of a guardian's appointment.

(c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, all of the following:

(i) The right to contest the petition.

(ii) The right to request limits on the guardian's powers, including a limitation on the guardian's power to execute on behalf of the ward either of the following:

(A) A do-not-resuscitate order.

(B) A physician orders for scope of treatment form.

(iii) The right to object to a particular person being appointed guardian.

(iv) The right to be present at the hearing.

(v) The right to be represented by legal counsel.

(vi) The right to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(e) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a physician orders for scope of treatment form on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a physician orders for scope of treatment form executed on his or her behalf.

(f) Informing the individual of the name of each person known to be seeking appointment as guardian.

(g) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.

(h) Making determinations, and informing the court of those determinations, on all of the following:

(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.
(C) Execution of a 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 duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(iii) Whether the individual wishes to be present at the hearing.

(iv) Whether the individual wishes to contest the petition.

(v) Whether the individual wishes limits placed on the guardian's powers.

(vi) Whether the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(vii) Whether the individual objects to having a physician orders for scope of treatment form executed on his or her behalf.

(viii) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.


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