PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

Meeting of the Committee on Special Projects (CSP);

Annual Meeting of the Probate and Estate Planning Section;

Meeting of the Council of the Probate and Estate Planning Section

Saturday, September 8, 2018
9:00 am
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 Annual Meeting of the Section will begin at approximately 10:15am. The meeting of the Council of the Probate and Estate Planning Section will begin at approximately 10:45 am. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David P. Lucas, Secretary
Vandervoort, Christ & Fisher, PC
70 Michigan Ave. West, Suite 450
Battle Creek, Michigan 49017
voice: (269) 965-7000
fax: (269) 965-0646
email: dlucas@vcflaw.com
STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL

Council and CSP Meeting Schedule for 2018-2019

Saturday, October 13, 2018, Somerset Inn, Troy, Michigan*
Saturday, November 17, 2018, University Club, Lansing, Michigan**
Saturday, December 15, 2018, University Club, Lansing, Michigan**

Note the remainder of the meetings are on Fridays

Friday, January 25, 2019, University Club, Lansing, Michigan**
Friday, February 15, 2019, University Club, Lansing, Michigan**
Friday, March 8, 2019, University Club, Lansing, Michigan**
Friday, April 12, 2019, University Club, Lansing, Michigan**
Friday, June 14, 2019, University Club, Lansing, Michigan**
Friday, September 20, 2019, University Club, Lansing, Michigan**

*Somerset Inn, 2601 West Big Beaver Road, Troy, Michigan 48084
**University Club, 3435 Forest Road, Lansing, Michigan 48909

Each meeting starts with the Committee on Special Projects at 9:00am, followed by the meeting of the Council of the Probate & Estate Planning Section.

Call for materials

Due dates for Materials for Committee on Special Projects
All materials are due on or before 5:00 p.m. of the date falling 9 days before the next CSP meeting. CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@bilhlaw.com)

Schedule of due dates for CSP materials, by 5:00 p.m.:
Thursday, October 4, 2018 (for Saturday, October 13, 2018 meeting)
Thursday, November 8, 2018 (for Saturday, November 17, 2018 meeting)
Thursday, December 6, 2018 (for Saturday, December 15, 2018 meeting)
Wednesday, January 16, 2019 (for Friday, January 25, 2019 meeting)
Wednesday, February 6, 2019 (for Friday, February 15, 2019 meeting)
Wednesday, February 27, 2019 (for Friday, March 8, 2019 meeting)
Wednesday, April 3, 2019 (for Friday, April 12, 2019 meeting)
Wednesday, June 5, 2019 (for Friday, June 14, 2019 meeting)
Wednesday, September 11, 2019 (for Friday, September 20, 2019 meeting)

Due dates for Materials for Council Meeting
All materials are due on or before 5:00 p.m. of the date falling 8 days before the next Council meeting. Council materials are to be sent to David Skidmore (dskidmore@wnj.com).

Schedule of due dates for Council materials, by 5:00 p.m.:
Friday, October 5, 2018 (for Saturday, October 13, 2018 meeting)
Friday, November 9, 2018 (for Saturday, November 17, 2018 meeting)
Friday, December 7, 2018 (for Saturday, December 15, 2018 meeting)
Thursday, January 17, 2019 (for Friday, January 25, 2019 meeting)
Thursday, February 7, 2019 (for Friday, February 15, 2019 meeting)
Thursday, February 28, 2019 (for Friday, March 8, 2019 meeting)
Thursday, April 4, 2019 (for Friday, April 12, 2019 meeting)
Thursday, June 6, 2019 (for Friday, June 14, 2019 meeting)
Thursday, September 12, 2019 (for Friday, September 20, 2019 meeting)
## 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)</th>
<th>Current Term Expires</th>
<th>Eligible after Current Term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
</tr>
<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mysliwiec, Melisa M.W.</td>
<td>2016 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Hentkowski, Angela M.</td>
<td>2017 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Labe, Robert B.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mills, Richard C.</td>
<td>2016 (1st full term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
</tr>
<tr>
<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Hasan, Nazneen</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Mayoras, Andrew</td>
<td>2018 (1st partial term)</td>
<td>2019</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Kellogg, Mark E.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
</tr>
<tr>
<td>Lichterman, Michael G.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
</tr>
<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
<table>
<thead>
<tr>
<th></th>
<th>Section Initiatives</th>
<th>Respond to Others’ Initiatives</th>
<th>Outreach to Section or Community</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fall 2018 priority</strong></td>
<td>Obtain passage of:&lt;br&gt;• Omnibus EPIC&lt;br&gt;• ART, SB 1056, 1057, 1058&lt;br&gt;• Certificate of Trust, HB 5362, 5398&lt;br&gt;• Modify Voidable Transfers Act to fix glitch&lt;br&gt;• Divided and Directed Trustees act, HB 6129, 6130, 6131&lt;br&gt;• Uncapping bill, SB 540, HB 5546</td>
<td>• Respond if needed to HB 4751, 4969&lt;br&gt;• Respond re HB 4684, 4996 (visitation of isolated adults)</td>
<td>• State Bar Journal theme issue (Nov. 2018)&lt;br&gt;• Consider initiatives for involving younger lawyers, increasing diversity&lt;br&gt;• Promote “Who Should I Trust” in October 2018?&lt;br&gt;• Update information regarding members, committees, etc. on web site</td>
</tr>
<tr>
<td><strong>Spring 2019 priority</strong></td>
<td>Lawyer drafter/beneficiary&lt;br&gt;• TBE Trusts&lt;br&gt;• Community Property Trusts&lt;br&gt;• Premarital property act&lt;br&gt;• Undisclosed trusts</td>
<td></td>
<td>• Annual Probate Institute (May/June 2019)</td>
</tr>
<tr>
<td><strong>Ongoing</strong></td>
<td>SCAO meetings&lt;br&gt;Review of forms and court rules for changes needed by legislative changes</td>
<td>State Bar 21st Century Task Force&lt;br&gt;Modest Means Work Group&lt;br&gt;E-filing in courts</td>
<td>Social events for members&lt;br&gt;Joint event with other bars like the taxation section or business law section?&lt;br&gt;Review brochures on web site. Need to be updated?</td>
</tr>
<tr>
<td><strong>Secondary priority</strong></td>
<td>Review Uniform Fiduciary Income and Principal Act&lt;br&gt;No liability for trustee of ILIT (SB 644 stalled)</td>
<td></td>
<td></td>
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<tr>
<td><strong>Future projects</strong></td>
<td>Legislative fix for who does attorney represent when attorney represents fiduciary&lt;br&gt;Update supervision of charitable trusts act?&lt;br&gt;Revise nonprofit corporation act so charity can clearly act as trustee&lt;br&gt;Statutory authority for private trust companies.</td>
<td>Electronic Wills</td>
<td></td>
</tr>
</tbody>
</table>
MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

AGENDA
September 8, 2018
Lansing, Michigan
9:00 – 10:15 AM

1. Nathan Piwowarski – Omnibus – 10 minutes
   See attached LSB Draft 1.

2. Neal Nusholtz – Community Property Trusts – 20 minutes
   See attached Memorandum.

3. Christine Savage – Premarital and Marital Agreements Act – 30 minutes
   See attached Uniform Premarital and Marital Agreements Act.

   See attached: 1) Memorandum; 2) analysis of other states; and 3) ACTEC email comments.
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1106, 1210, 2519, 2806, 3605, 3916, 3917, 3918, 3959, 3981, 3983, 5102, 5301, 5310, 5313, and 5314 (MCL 700.1106, 700.1210, 700.2519, 700.2806, 700.3605, 700.3916, 700.3917, 700.3918, 700.3959, 700.3981, 700.3983, 700.5102, 700.5301, 700.5310, 700.5313, and 700.5314), sections 1106 and 5314 as amended by 2017 PA 155, section 1210 as amended by 2009 PA 46, section 2519 as amended by 2010 PA 325, section 3917 as amended by 2004 PA 314, section 5301 as amended by 2005 PA 204, section 5310 as amended by 2000 PA 54, and section 5313 as amended by 2012 PA 545, and by adding section 5301c; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:
Sec. 1106. As used in this act:

(a) "Mental health professional" means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A physician's assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vi) A licensed professional counselor licensed under part 181 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

(b) "Michigan prudent investor rule" means the fiduciary investment and management rule prescribed by part 5 of this article.

(c) "Minor" means an individual who is less than 18 years of
(d) "Minor ward" means a minor for whom a guardian is appointed solely because of minority.

(e) "Money" means legal tender or a note, draft, certificate of deposit, stock, bond, check, or credit card.

(f) "Mortgage" means a conveyance, agreement, or arrangement in which property is encumbered or used as security.

(g) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.

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

(i) "Parent" includes, but is not limited to, an individual entitled to take, or who would be entitled to take, as a parent under this act by intestate succession from a child who dies without a will and whose relationship is in question. Parent does not include an individual who is only a stepparent, foster parent, or grandparent.

(j) "Partial guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(k) "Patient advocate" means an individual designated to exercise powers concerning another individual's care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual, or both, as
provided in section 5506.

(l) "Patient advocate designation" means the written document executed and with the effect as described in sections 5506 to 5515.

(m) "Payor" means a trustee, insurer, business entity, employer, government, governmental subdivision or agency, or other person authorized or obligated by law or a governing instrument to make payments.

(n) "Person" means an individual or an organization.

(o) "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII, who performs substantially the same function under the law governing that person's status.

(p) "Petition" means a written request to the court for an order after notice.

(q) "Physician orders for scope of treatment form" means that term as defined in section 5674 of the public health code, 1978 PA 368, MCL 333.5674.

(r) "Plenary guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(S) "POWER OF APPOINTMENT" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE POWERS OF APPOINTMENT ACT OF 1967, 1967 PA 224, MCL 556.112.

(T) (s) "Proceeding" includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may
be denominated a civil action under court rules.

(U) "Professional conservator" means a person that provides conservatorship services for a fee. Professional conservator does not include a person who is an individual who is related to all but 2 of the protected individuals for whom he or she is appointed as conservator.

(V) "Professional guardian" means a person that provides guardianship services for a fee. Professional guardian does not include a person who is an individual who is related to all but 2 of the wards for whom he or she is appointed as guardian.

(W) "Property" means anything that may be the subject of ownership, and includes both real and personal property or an interest in real or personal property.

(X) "Protected individual" means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V.

(Y) "Protective proceeding" means a proceeding under the provisions of part 4 of article V.

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) BEFORE JANUARY 1, 2018, THE SPECIFIC AMOUNTS STATED IN SECTIONS 2519, 3605, 3916, 3917, 3918, 3981, 3982, AND 5102 APPLY
TO THOSE SECTIONS. BEGINNING JANUARY 1, 2018, THOSE SPECIFIC DOLLAR AMOUNTS MUST BE MULTIPLIED BY THE COST-OF-LIVING ADJUSTMENT FACTOR FOR THE CALENDAR YEAR IN WHICH THE DECEDENT DIES.

(3) (2) Before February 1, 2001, and annually after 2001, the department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amounts referred to in subsection (1) for decedents who die during that calendar year and in section 7414 for trusts the value of the property of which is insufficient to justify the cost of administration. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount MUST be rounded to the nearest $1,000.00 amount.

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 MUST 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:

______________________ ______________________

______________________ ______________________

______________________ ______________________

(Insert names or write "none")

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.
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
1. 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)
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
1 distribute partially or totally in kind, may determine the value
2 of distributions in kind without reference to income tax bases,
3 and may make non-pro rata distributions.
4
5 2. The personal representative may distribute estate assets
6 otherwise distributable to a minor beneficiary to the minor's
7 conservator or, in amounts not exceeding $5,000.00—$25,000.00 per
8 year, either to the minor, if married; to a parent or another
9 adult with whom the minor resides and who has the care, custody,
10 or control of the minor; or to the guardian. The personal
11 representative is free of liability and is discharged from
12 further accountability for distributing assets in compliance with
13 the provisions of this paragraph.

14 POWERS OF GUARDIAN AND CONSERVATOR

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

19 (3) THE DOLLAR AMOUNT DESCRIBED IN THIS SECTION MUST BE
20 ADJUSTED AS PROVIDED IN SECTION 1210.

21 Sec. 3605. (1) A person apparently having an interest in the
22 estate worth in excess of $2,500.00—$25,000.00 or a creditor
23 having a claim against the estate in excess of $2,500.00
24 $25,000.00 may make a written demand that a personal
25 representative give bond. The demand must be filed with the
26 register, and if appointment and qualification have occurred, a
copy must be mailed to the personal representative. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3603 or 3604. After receipt of notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the fiduciary office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 28 days after receipt of notice is cause for removal and appointment of a successor personal representative.

(2) THE DOLLAR AMOUNT DESCRIBED IN THIS SECTION MUST BE ADJUSTED AS PROVIDED IN SECTION 1210.

Sec. 2806. As used in this section and sections 2807 to 2809:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

(c) "Divorced individual" includes, but is not limited to, an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument.
executed by a divorced individual before the divorce from, or
annulment of his or her marriage to, his or her former spouse.
(e) "Relative of the divorced individual's former spouse"
means an individual who is related to the divorced individual's
former spouse by blood, adoption, or affinity and who, after the
divorce or annulment, is not related to the divorced individual
by blood, adoption, or affinity.
(f) "Revocable" means, with respect to a disposition,
appointment, provision, or nomination, one under which the
divorced individual, at the time of the divorce or annulment, was
alone empowered, by law or under the governing instrument, to
cancel the designation in favor of his or her former spouse or
former spouse's relative, whether or not the divorced individual
was then empowered to designate himself or herself in place of
his or her former spouse or in place of his or her former
spouse's relative and whether or not the divorced individual then
had the capacity to exercise the power.
Sec. 3916. (1) In exchange for suitable receipts and
following a court order if the administration is supervised, a
fiduciary making final distribution shall deposit with the county
treasurer the money or personal property the fiduciary has that
belongs to any of the following:
(a) An heir, devisee, trust beneficiary, or claimant whose
 whereabouts the fiduciary cannot ascertain after diligent
inquiry.
(b) An heir, devisee, trust beneficiary, or claimant who
delays to accept the money awarded to the person.
(c) A person if the right of the person is the subject of appeal from an order of the court.

(2) As an alternative to deposit with the county treasurer under subsection (1), if the amount involved for a person described under subsection (1)(a) or (b) is $250.00 - $1,000.00 or less, the fiduciary may distribute the amount as part of the residue of the decedent's estate or to those entitled to the trust fund balance. If the fiduciary has property other than money that belongs to a person described in subsection (1)(a) or (b), the fiduciary may sell the property for the purpose of reducing it to money to be deposited with the county treasurer.

(3) The fiduciary shall retain or file the county treasurer's receipt for property deposited under this section in the same fashion as though the fiduciary paid or delivered the money or property to, and received a receipt from, the heir, devisee, trust beneficiary, or claimant.

(4) THE DOLLAR AMOUNT DESCRIBED IN THIS SECTION MUST BE ADJUSTED AS PROVIDED IN SECTION 1210.

Sec. 3917. (1) The county treasurer shall receive and safely keep money deposited under authority of this act in a separate fund and keep a separate account for each distributee or claim. The county treasurer shall deposit the money in a county depository at the current rate of interest, shall pay out from the fund upon the order of the court, and shall turn over any surplus left in the treasurer's hands at the termination of the treasurer's term of office to the treasurer's successor. The county treasurer shall, at the end of each year, render to the
court, and to the county board of commissioners, a true account
of that money.

(2) For the care of the money received under authority of
this act, the county treasurer may take 1% from the different
amounts paid out under court order unless the amount paid out to
a single individual exceeds $1,000.00, $1,500.00, in which case
the county treasurer shall take $10.00 $15.00 plus 1/2 of 1% of
the excess of the amount over $1,000.00 $1,500.00.

(3) A person entitled to the money may petition the court
having jurisdiction for an order directing the county treasurer
to pay over money that is deposited with the county treasurer.
Upon receiving the petition, the court shall make an order as to
notice of the hearing as the court considers proper. Upon
satisfactory proof being made to the court of the claimant's
right to the money, the court shall order the county treasurer to
pay the money and interest earned on the money, less the fee of
the county treasurer, to the claimant.

(4) If a person whose whereabouts are unknown or who
declined to accept the money does not make a claim to money
deposited by a fiduciary before the expiration of 3 years after
the deposit date, the money and interest earned on the money that
would be distributed under this section to the person, if alive,
less expenses, shall MUST be distributed by court order to each
person who would be entitled to the money if the person had died
before the date that he or she became entitled to the money, and
the person is forever barred from all claim or right to the
money.
(5) THE DOLLAR AMOUNTS DESCRIBED IN THIS SECTION MUST BE 
ADJUSTED AS PROVIDED IN SECTION 1210.

Sec. 3918. (1) A personal representative may discharge the 
personal representative's obligation to distribute to an 
individual under legal disability by distributing in a manner 
expressly provided in the will.

(2) Unless contrary to an express provision in the will, the 
personal representative may discharge the personal 
representative's obligation to distribute to an individual under 
legal disability as authorized by section 5102 or another 
statute. If the personal representative knows that a conservator 
has been appointed for an individual or that a proceeding for 
appointment of a conservator for the individual is pending, the 
personal representative is authorized to distribute only to the 
conservator. If the personal representative knows that a guardian 
of the estate of an individual with a developmental disability 
has been appointed under the mental health code, 1974 PA 258, MCL 
330.1001 to 330.2106, or that a proceeding for appointment of a 
guardian of the estate for the individual with the developmental 
disability is pending, the personal representative is authorized 
to distribute only to the guardian of the estate.

(3) If the heir or devisee is under legal disability other 
than minority, the personal representative is authorized to 
distribute to any of the following:

(a) A trustee appointed by the court under section 3915(4).

(b) An attorney in fact who has authority under a power of 
attorney to receive property for that person.
(c) The spouse, parent, or other close relative with whom the individual under legal disability resides if both of the following are true:

(i) A conservator has not been appointed for the individual.

(ii) The distribution is in amounts not exceeding $5,000.00 in a year or property not exceeding $5,000.00 in value, unless the court authorizes a higher amount or value.

(4) A person receiving money or property for an individual under legal disability shall use the money or property only for that individual's support and for reimbursement of out-of-pocket expenses for goods and services necessary for that individual's support. Excess money and property shall be preserved for the individual's future support. The personal representative is not responsible for the proper use of money or property by the recipient if distribution is made under the authority of this section.

(5) THE DOLLAR AMOUNTS DESCRIBED IN THIS SECTION MUST BE ADJUSTED AS PROVIDED IN SECTION 1210.

Sec. 3959. (1) If estate property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed, or if there

(A) ESTATE property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed, or if there

(B) THERE is other good cause to reopen a previously administered estate, including an estate administratively closed, upon petition of an interested person and notice as the court directs.
(2) THE court may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this act apply as appropriate. A claim previously barred shall MUST not be asserted in the subsequent administration.

Sec. 3981. (1) A hospital, convalescent or nursing home, morgue, or law enforcement agency holding $500.00–$1,000.00 or less and wearing apparel of a decedent may deliver the money and wearing apparel to an individual furnishing identification and a sworn statement that the individual is the decedent's spouse, child, or parent and that there is no application or petition pending for administration of the decedent's estate. The hospital, home, morgue, or law enforcement agency making the delivery is released to the same extent as if delivery were made to a legally qualified personal representative of the decedent's estate and is not required to see to the property's disposition. The individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

(2) THE DOLLAR AMOUNT DESCRIBED IN THIS SECTION MUST BE ADJUSTED AS PROVIDED IN SECTION 1210.

Sec. 3983. (1) After 28 days after a decedent's death, a person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the
indebtedness or deliver the tangible personal property or the instrument to a person claiming to be the decedent's successor upon being presented with the decedent's death certificate and a sworn statement made by or on behalf of the successor stating all of the following:

(a) The estate does not include real property and the value of the entire estate, wherever located, net of liens and encumbrances, does not exceed $15,000.00, $25,000.00, adjusted as provided in section 1210.

(b) Twenty-eight days have elapsed since the decedent's death.

(c) An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.

(d) The claiming successor is entitled to payment or delivery of the property.

(e) The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

(2) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of a sworn statement as provided in subsection (1).

(3) The state court administrative office shall develop and make available a standardized form for use as a sworn statement that can be used for the procedure authorized under subsection (1). The form shall include a notice that a false statement...
may subject the person swearing to the statement to prosecution for perjury.

Sec. 5102. (1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed $5,000.00–$25,000.00 each year, to any of the following:

(a) The minor if he or she is married.
(b) An individual having the care and custody of the minor with whom the minor resides.
(c) A guardian of the minor.
(d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor's estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor's support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. An excess amount shall be preserved for the minor's future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is attained. A person who

This is as we requested. But it does prompt the question: since we didn't otherwise reform the petition-and-order-of-assignment procedure in section 3982, should we also request a change to that threshold?
pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

(4) THE DOLLAR AMOUNT DESCRIBED IN THIS SECTION MUST BE ADJUSTED AS PROVIDED IN SECTION 1210.

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, AND NO STANDBY GUARDIAN HAS BEEN APPOINTED UNDER SECTION 5301C, 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 IF NO
STANDBY GUARDIAN HAS BEEN APPOINTED UNDER SECTION 5301C, 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.

SEC. 5301C. (1) AT A HEARING CONVENED UNDER THIS PART, THE COURT MAY DESIGNATE 1 OR MORE STANDBY GUARDIANS. THE COURT MAY DESIGNATE AS STANDBY GUARDIAN A COMPETENT PERSON THAT IS SUITABLE AND WILLING TO SERVE.

(2) THE STANDBY GUARDIAN MUST RECEIVE A COPY OF THE PETITION NOMINATING HIM OR HER TO SERVE, THE COURT ORDER ESTABLISHING OR MODIFYING GUARDIANSHIP, AND THE ORDER DESIGNATING THE STANDBY GUARDIAN. [CAN A STANDBY GUARDIAN BE AN ENTITY? IF YES, WE NEED TO CHANGE THE REFERENCE TO "HIM OR HER" IN THIS SUBSECTION.]

(3) A STANDBY GUARDIAN SHALL FILE AN ACCEPTANCE OF HIS OR HER DESIGNATION UNDER SUBSECTION (2) WITHIN 28 DAYS AFTER RECEIVING NOTICE OF THE ORDER DESIGNATING THE STANDBY GUARDIAN. [SAME COMMENT AS IN SUBSECTION (2).]

(4) IF THE STANDBY GUARDIAN IS UNABLE OR UNWILLING TO SERVE, THE STANDBY GUARDIAN SHALL PROMPTLY NOTIFY THE COURT AND INTERESTED PERSONS.

(5) A STANDBY GUARDIAN DOES NOT HAVE AUTHORITY TO ACT UNLESS THE GUARDIAN IS UNAVAILABLE FOR ANY REASON, INCLUDING ANY OF THE FOLLOWING:

(A) THE GUARDIAN DIES.

(B) THE GUARDIAN IS PERMANENTLY OR TEMPORARILY UNAVAILABLE.

(C) THE COURT REMOVES OR SUSPENDS THE GUARDIAN.

(6) DURING AN EMERGENCY AFFECTING THE PROTECTED PERSON'S
WELFARE WHEN THE GUARDIAN IS UNAVAILABLE, THE STANDBY GUARDIAN MAY TEMPORARILY ASSUME THE POWERS AND DUTIES OF THE GUARDIAN. A PERSON MAY RELY ON THE STANDBY GUARDIAN’S REPRESENTATION THAT HE OR SHE HAS THE AUTHORITY TO ACT IF THE PERSON IS GIVEN THE ORDER ISSUED UNDER SUBSECTION (2) AND ACCEPTANCE FILED UNDER SUBSECTION (3). A PERSON THAT ACTS IN RELIANCE ON THE REPRESENTATIONS AND DOCUMENTATION DESCRIBED IN THIS SUBSECTION WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT FURTHER INQUIRY THE EXISTENCE OF THE STANDBY GUARDIAN’S AUTHORITY. [SAME COMMENT AS IN SUBSECTION (2). ALSO, SHOULD WE USE "LEGALLY INCAPACITATED INDIVIDUAL" INSTEAD OF "PROTECTED PERSON"?]

(7) A STANDBY GUARDIAN’S APPOINTMENT AS GUARDIAN IS EFFECTIVE, WITHOUT FURTHER PROCEEDINGS OR REITERATION OF ACCEPTANCE, IMMEDIATELY ON THE GUARDIAN’S UNAVAILABILITY AS DESCRIBED IN SUBSECTION (5). THE STANDBY GUARDIAN HAS THE SAME POWERS AND DUTIES AS THE PRIOR GUARDIAN.

(8) ON ASSUMING OFFICE, THE STANDBY GUARDIAN SHALL PROMPTLY NOTIFY THE COURT, ANY KNOWN AGENT APPOINTED UNDER A POWER OF ATTORNEY EXECUTED UNDER SECTION 5103, AND INTERESTED PERSONS. ON RECEIVING NOTICE UNDER THIS SUBSECTION, THE COURT MAY ENTER AN ORDER APPOINTING A STANDBY GUARDIAN AS GUARDIAN WITHOUT THE NEED FOR ADDITIONAL PROCEEDINGS. THE GUARDIAN APPOINTED UNDER THIS SUBSECTION SHALL SERVE THE COURT'S ORDER ON THE INTERESTED PERSONS.

Sec. 5310. (1) On petition of the guardian and subject to the filing and approval of a report prepared as required by
section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

(2) The ward, a person appointed guardian in a will or other writing by a parent or spouse under section 5301, or any other person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. IF A REQUEST UNDER THIS SUBSECTION IS MADE BY THE PERSON APPOINTED BY WILL OR OTHER WRITING UNDER SECTION 5301, THE PERSON SHALL ALSO PRESENT PROOF OF THEIR APPOINTMENT BY WILL OR OTHER WRITING. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

(3) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, shall not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the
ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in THIS STATE OR another state.
(b) A person the individual subject to the petition chooses to serve as guardian.
(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.
(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.
(E) A PERSON APPOINTED BY A PARENT OR SPOUSE OF A LEGALLY INCAPACITATED INDIVIDUAL BY WILL OR OTHER WRITING UNDER SECTION 5301.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

Sec. 5314. If meaningful communication is possible, a
legally incapacitated individual's guardian shall consult with
the legally incapacitated individual before making a major
decision affecting the legally incapacitated individual. To the
extent a guardian of a legally incapacitated individual is
granted powers by the court under section 5306, the guardian is
responsible for the ward's care, custody, and control, but is not
liable to third persons because of that responsibility for the
ward's acts. In particular and without qualifying the previous
sentences, a guardian has all of the following powers and duties,
to the extent granted by court order:

(a) The custody of the person of the ward and the power to
establish the ward's place of residence in or outside this state.
The guardian shall visit the ward within 3 months after the
guardian's appointment and not less than once within 3 months
after each previous visit. The guardian shall notify the court
within 14 days of a change in the ward's place of residence or a
change in the guardian's place of residence.

(b) If entitled to custody of the ward, the duty to make
provision for the ward's care, comfort, and maintenance and, when
appropriate, arrange for the ward's training and education. The
guardian shall secure services to restore the ward to the best
possible state of mental and physical well-being so that the ward
can return to self-management at the earliest possible time.
Without regard to custodial rights of the ward's person, the
guardian shall take reasonable care of the ward's clothing,
furniture, vehicles, and other personal effects and commence a
protective proceeding if the ward's other property needs
protection. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(c) The power to give the consent or approval that is necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. The power of a guardian to execute a do-not-resuscitate order under subdivision (d) or execute a physician orders for scope of treatment form under subdivision (f) does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.

(d) The power to execute, reaffirm, and revoke a do-not-resuscitate order on behalf of a ward. However, a guardian shall not execute a do-not-resuscitate order unless the guardian does all of the following:

(i) Not more than 14 days before executing the do-not-resuscitate order, visits the ward and, if meaningful communication is possible, consults with the ward about executing the do-not-resuscitate order.

(ii) Consults directly with the ward's attending physician as to the specific medical indications that warrant the do-not-resuscitate order.

(e) If a guardian executes a do-not-resuscitate order under
subdivision (d), not less than annually after the do-not-resuscitate order is first executed, the duty to do all of the following:

(i) Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the do-not-resuscitate order.

(ii) Consult directly with the ward's attending physician as to specific medical indications that may warrant reaffirming the do-not-resuscitate order.

(f) The power to execute, reaffirm, and revoke a physician orders for scope of treatment form on behalf of a ward. However, a guardian shall not execute a physician orders for scope of treatment form unless the guardian does all of the following:

(i) Not more than 14 days before executing the physician orders for scope of treatment form, visits the ward and, if meaningful communication is possible, consults with the ward about executing the physician orders for scope of treatment form.

(ii) Consults directly with the ward's attending physician as to the specific medical indications that warrant the physician orders for scope of treatment form.

(g) If a guardian executes a physician orders for scope of treatment form under subdivision (f), not less than annually after the physician orders for scope of treatment is first executed, the duty to do all of the following:

(i) Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the physician orders for scope of treatment form.
(ii) Consult directly with the ward's attending physician as to specific medical indications that may warrant reaffirming the physician orders for scope of treatment form.

(h) If a conservator for the ward's estate is not appointed, the power to do any of the following:

(i) Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform that duty.

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for the ward's support, care, and education. The guardian shall not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by court order made on notice to at least 1 of the ward's next of kin, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

(i) The duty to report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, but not less often than annually. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision must contain all of the following:

(i) The ward's current mental, physical, and social condition.

(ii) Improvement or deterioration in the ward's mental,
physical, and social condition that occurred during the past year.

(iii) The ward's present living arrangement and changes in his or her living arrangement that occurred during the past year.

(iv) Whether the guardian recommends a more suitable living arrangement for the ward.

(v) Medical treatment received by the ward.

(vi) Whether the guardian has executed, reaffirmed, or revoked a do-not-resuscitate order on behalf of the ward during the past year.

(vii) Whether the guardian has executed, reaffirmed, or revoked a physician orders for scope of treatment form on behalf of the ward during the past year.

(viii) Services received by the ward.

(ix) A list of the guardian's visits with, and activities on behalf of, the ward.

(x) A recommendation as to the need for continued guardianship.

(xi) A STATEMENT SIGNED BY THE STANDBY GUARDIAN, IF ANY HAVE BEEN APPOINTED, THAT THE STANDBY GUARDIAN CONTINUES TO BE WILLING TO SERVE IN THE EVENT OF THE UNAVAILABILITY, DEATH, INCAPACITY, OR RESIGNATION OF THE GUARDIAN.

(j) If a conservator is appointed, the duty to pay to the conservator, for management as provided in this act, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current support, care, and education. The guardian shall account to the conservator for
the amount expended.

Enacting section 1. Section 2722 of the estates and protected individuals code, 1998 PA 386, MCL 700.2722, is repealed.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No.____ or House Bill No.____ (request no. 06614'18) of the 99th Legislature is enacted into law.
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending sections 7103, 7105, 7110, 7302, and 7402 (MCL 700.7103, 700.7105, 700.7110, 700.7302, and 700.7402), section 7103 as amended by 2012 PA 483, section 7105 as amended by 2010 PA 325, and section 7110 as added and sections 7302 and 7402 as amended by 2009 PA 46, and by adding sections 7409 and 7409a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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) "Ascertainable 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:

Per later Council vote, we will ask LSB to add "if that charitable purpose is a material purpose of the trust."
(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) "Qualified trust beneficiary" means EITHER OF THE FOLLOWING:

(i) A trust beneficiary to whom A SETTLOR'S INTENT TO BENEFIT IS A MATERIAL PURPOSE OF THE TRUST AND TO WHOM 1 or more of the following apply on the date the trust beneficiary's qualification is determined:

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

(B) (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) SUB-SUBPARAGRAPH (A) terminated on that date without causing the trust to terminate.

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

(ii) IF ON THE DATE A TRUST BENEFICIARY'S QUALIFICATION IS DETERMINED THERE IS NO TRUST BENEFICIARY DESCRIBED IN SUBPARAGRAPH (i), A TRUST BENEFICIARY TO WHOM 1 OR MORE OF THE FOLLOWING APPLY ON THE DATE THE TRUST BENEFICIARY'S QUALIFICATION IS DETERMINED:

(A) THE TRUST BENEFICIARY IS A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF TRUST INCOME OR PRINCIPAL.

(B) 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 SUB-
SUBPARAGRAPH (A) TERMINATED ON THAT DATE WITHOUT CAUSING THE TRUST
to terminate.

(C) THE TRUST BENEFICIARY WOULD BE A DISTRIBUTEE OR
PERMISSIBLE DISTRIBUTEE OF TRUST INCOME OR PRINCIPAL IF THE TRUST
TERMINATED 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 (or settlors') intent to benefit whom is a material
purpose. 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. If the trust and at least one of at least one of subparagraphs (i) through (iii)
applies to whom 1 or more of the following 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 at least one of
subparagraphs (i) through (iii) applies on that date.
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.

(i) "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.

(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.

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:
(a) The requirements under section 7401 for creating a trust.
(b) The duty of a trustee to administer a trust in accordance with section 7801.
(c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(D) THE DURATIONAL LIMITS SPECIFIED IN SECTION 7409 FOR THE CARE OF ANIMALS AND IN SECTION 7409A FOR OTHER NONCHARITABLE PURPOSE TRUSTS.

(E) (d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.
(F) (e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.
(G) (f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.
(H) (g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
(I) (h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).
(J) (i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.
(K) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

(I) The effect of an exculpatory term under section 7809(8) or 7908.

(M) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(N) Periods of limitation under this article for commencing a judicial proceeding.

(O) The power of the court to take action and exercise jurisdiction.

(P) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(Q) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

Sec. 7110. (1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.
(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

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

(2) A person appointed to enforce a trust created for the care of an animal UNDER SECTION 7409 or another noncharitable purpose as provided in section 2722 TRUST UNDER SECTION 7409A has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.
For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

(2) FOR PURPOSES OF SUBSECTION (1), BOTH OF THE FOLLOWING APPLY:

(A) THERE IS NO CONFLICT OF INTEREST BETWEEN THE HOLDER OF A NONFIDUCIARY POWER OF APPOINTMENT AND A PERSON WHOSE INTEREST IS SUBJECT TO THE POWER TO THE EXTENT THE SUBJECT INTEREST IS LIABLE TO BE EXTINGUISHED BY AN EXERCISE OF THE POWER.

(B) IF A POWER OF APPOINTMENT IS SUBJECT TO A CONDITION PRECEDENT OTHER THAN THE DEATH OF THE HOLDER OF A TESTAMENTARY POWER, NO INTEREST IS SUBJECT TO THE POWER UNTIL THE CONDITION PRECEDENT IS SATISFIED.

(3) AS USED IN THIS SECTION, "NONFIDUCIARY" MEANS, WITH RESPECT TO A POWER OF APPOINTMENT, THAT THE POWER IS NOT HELD IN A FIDUCIARY CAPACITY.

Sec. 7402. (1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

(i) A charitable trust.

(ii) A trust for a noncharitable purpose UNDER SECTION 7409A
or **A TRUST** for the care of an animal, as provided in section 2722, **UNDER SECTION 7409.**

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A trust beneficiary is definite if the trust beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a trust beneficiary from an indefinite class is valid only in a charitable trust.

SEC. 7409. (1) **A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF A DESIGNATED DOMESTIC PET OR ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME.** A TRUST CREATED UNDER THIS SUBSECTION TERMINATES ON THE DEATH OF THE ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE CARE OF MORE THAN 1 DOMESTIC OR PET ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME, ON THE DEATH OF THE LAST SURVIVING ANIMAL.

(2) **A TRUST AUTHORIZED UNDER THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF THERE IS NOT A PERSON APPOINTED IN THE TERMS OF THE TRUST, BY A PERSON APPOINTED BY THE COURT.** A PERSON THAT HAS AN INTEREST IN THE WELFARE OF AN ANIMAL FOR WHICH THE TRUST IS CREATED MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON APPOINTED IN THE TERMS OF THE TRUST.

(3) **PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE.** EXCEPT AS OTHERWISE PROVIDED IN THE
TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST
BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE
SETTLOR'S SUCCESSORS IN INTEREST.

SEC. 7409A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7409 OR
ANY OTHER LAW, THE FOLLOWING RULES APPLY:

(A) A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT
A DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A
NONCHARITABLE BUT OTHERWISE VALID PURPOSE TO BE SELECTED BY THE
TRUSTEE. A TRUST CREATED UNDER THIS SECTION MAY BE PERFORMED BY THE
TRUSTEE ACCORDING TO THE TERMS OF THE TRUST FOR NOT MORE THAN 25
YEARS WHETHER OR NOT THE TERMS OF THE TRUST CONTEMPLATE A LONGER
DURATION.

(B) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A
PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF THERE IS NOT A
PERSON APPOINTED IN THE TERMS OF THE TRUST, BY A PERSON APPOINTED
BY THE COURT.

(C) PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE
APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT
DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT
REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE
TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST
BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE
SETTLOR'S SUCCESSORS IN INTEREST.

Enacting section 1. This amendatory act does not take effect
unless Senate Bill No.____ or House Bill No.____ (request no.
06613'18) of the 99th Legislature is enacted into law.
A bill to amend 1949 PA 300, entitled "Michigan vehicle code,"
by amending section 236 (MCL 257.236), as amended by 2000 PA 64.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 236. (1) If ownership of a vehicle passes by operation of
law, upon furnishing satisfactory proof of that ownership to the
secretary of state, the person acquiring the vehicle may procure a
title to the vehicle regardless of whether a certificate of title
has ever been issued. Upon death of an owner of a registered
vehicle, the license plate assigned to the vehicle, unless the
vehicle is destroyed, is a valid registration until the end of the
registration year or until the personal representative of the
owner's estate transfers ownership of the vehicle.

(2) If an owner of 1 or more vehicles, which vehicles do not
have a total value of more than $60,000.00, $100,000.00, dies and
the owner does not leave other property that requires issuance of letters as provided in section 3103 of the estates and protected individuals code, 1998 PA 386, MCL 700.3103, the owner's surviving spouse, or an heir of the owner in the order specified in section 2103 of the estates and protected individuals code, 1998 PA 386, MCL 700.2103, may apply for a title, after furnishing the secretary of state with proper proof of the death of the registered owner, attaching to the proof a certification setting forth the fact that the applicant is the surviving spouse or an heir. Upon proper petition, the secretary of state shall furnish the applicant with a certificate of title.

(3) THE DEPARTMENT OF TREASURY SHALL PUBLISH THE COST-OF-LIVING ADJUSTMENT FACTOR FOR THE SPECIFIC DOLLAR AMOUNT DESCRIBED IN SUBSECTION (2) FOR EACH CALENDAR YEAR. THE SECRETARY OF STATE SHALL MULTIPLY THE SPECIFIC DOLLAR AMOUNT DESCRIBED IN SUBSECTION (2) BY THE COST-OF-LIVING ADJUSTMENT FACTOR EACH CALENDAR YEAR.

(4) AS USED IN THIS SECTION, "COST-OF-LIVING ADJUSTMENT FACTOR" MEANS A FRACTION, THE NUMERATOR OF WHICH IS THE UNITED STATES CONSUMER PRICE INDEX FOR THE PRIOR CALENDAR YEAR AND THE DENOMINATOR OF WHICH IS THE UNITED STATES CONSUMER PRICE INDEX FOR CALENDAR YEAR 2017. AS USED IN THIS SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS THE ANNUAL AVERAGE OF THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, OR A SUCCESSOR AGENCY, AND AS CERTIFIED BY THE STATE TREASURER.

Enacting section 1. This amendatory act takes effect 90 days after September 2, 2018.
after the date it is enacted into law.
A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 80312 (MCL 324.80312), as amended by 2000 PA 65.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 80312. (1) The secretary of state may issue a certificate of title for a watercraft to a person who complies with subsection (2) or (3) if the transfer of ownership of that watercraft is any of the following:

(a) By operation of law including, but not limited to, inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale.

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

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

(d) As provided in subsection (3).

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

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

   (b) Pay the fee prescribed in section 80311.

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

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

   (a) The record owner of the registered watercraft dies without leaving other property that requires the procurement of letters under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

   (b) The total value of the deceased owner's interest in all watercraft subject to the petition for a certificate or certificates of title under this section is $100,000.00 or less, $300,000.00 or less, as adjusted for the calendar year of the deceased owner's death. The adjustment shall be made each year, beginning January 1, 2017, by multiplying $300,000.00 by the cost-
OF-LIVING ADJUSTMENT FACTOR FOR THAT YEAR AND ROUNding TO THE
NEAREST $1,000.00. THE DEPARTMENT OF TREASURY SHALL CERTIFY AND
PUBLISH THE ADJUSTED DOLLAR AMOUNT FOR EACH CALENDAR YEAR. AS USED
IN THIS SUBDIVISION:

(i) "COST-OF-LIVING ADJUSTMENT FACTOR" MEANS A FRACTION, THE
NUMERATOR OF WHICH IS THE UNITED STATES CONSUMER PRICE INDEX FOR
THE PRIOR CALENDAR YEAR AND THE DENOMINATOR OF WHICH IS THE UNITED
STATES CONSUMER PRICE INDEX FOR 2017.

(ii) "UNITED STATES CONSUMER PRICE INDEX" MEANS THE ANNUAL
AVERAGE OF THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN
CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT
OF LABOR, BUREAU OF LABOR STATISTICS, OR ITS SUCCESSOR AGENCY.

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

(i) The surviving spouse of the watercraft owner.

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

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

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

(ii) The petitioner's priority to receive the decedent's
interest in each watercraft for which a certificate of title is
sought.
(4) A certification by the person, or agent of the person, to whom possession of the watercraft passed, that sets forth the facts entitling that person to possession and ownership of the watercraft, together with a copy of the journal entry, court order, instrument, or other document upon which the claim of possession and ownership is founded, are satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership, the applicant may apply to the secretary of state for a certificate of title and submit evidence that establishes that person's ownership interest in the watercraft. If the secretary of state finds the evidence sufficient, the secretary of state may issue to that person a certificate of title for that watercraft.

The office of secretary of state shall examine the records in its possession and, if it determines from that examination that a lien is on the watercraft, and if the applicant fails to provide satisfactory evidence of extinction of the lien, the secretary of state shall furnish a certificate of title that contains a statement of the lien.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
A bill to amend 1998 PA 433, entitled "Michigan uniform transfers to minors act," by amending section 10 (MCL 554.530).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 10. (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 13 in the absence of a will or under a will or trust that does not contain an authorization to make the irrevocable transfer.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 13.

(3) A transfer under subsection (1) or (2) may be made only if
ALL OF THE FOLLOWING APPLY:

(A) THE personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor. 

(B) THE transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument. 

(C) IF the transfer exceeds $10,000.00--$50,000.00 in value, the transfer is authorized by the court.
Please see my (I hope not too tardy) responses (in red) below, Nathan.

Jim

From: Nathan Piwowarski <nathan@mwplegal.com>
Sent: Thursday, August 23, 2018 2:16 PM
To: James P. Spica <JSpica@dickinson-wright.com>
Cc: 'Katie Lynwood’ <Klynwood@BLLHlaw.com>
Subject: EPIC Omnibus: powers of appointment and directed trusteeship add-ons

Jim,

With the omnibus bluebacks in hand, we will need to ensure that we have not caused any coordination problems with your other committees’ work. We also need to incorporate a few stray changes that the Council adopted after it adopted the main omnibus proposal.

My records are spotty. I ran back through our Council materials running back to November of 2017. Based on that review, I believe these are the issues we need to check:

- 7103(a), definition of “action.” This is being handled by the Divided and Directed Trusteeships Committee’s (DDTC’s) proposal, in the portion currently embodied in 2018 House Bill 6131.
- 7103(c). The MTC notice fix. (“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”). Exactly correct—this was approved by Council.
- 7103(n). Based on my notes, we wouldn’t want to change the definition of trust protector to trust director unless we adopt the entire directed trusteeship proposal, so I believe that we are just keeping an eye on this, in case the proposals move in tandem. This is being handled by the DDTC’s proposal, in the portion currently embodied in 2018 House Bill 6131.
- Virtual representation. If memory serves, we also voted to amend 7302 and 1106, and add it to the omnibus. Exactly correct—this was approved by Council.
- I am unsure of whether we were supposed to lump in the non-ART UPC changes into the omnibus. This includes things like “knowledge of a fact” and some non-ART changes to section 3406 regarding contested formal
No, those changes are being handled by the ART Committee’s proposal, in the portion currently embodied in 2018 Senate Bills 1056-57.

I should’ve kept better notes about these, and am open to corrections. If you have Word versions of the changes we are supposed to incorporate, I would appreciate it if you could send them.

Thanks,

Nathan Piwowarski
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MEMORANDUM

August 31, 2018

From: The Ad Hoc Community Property Trust Committee

Regarding: Whether to add a DAPT provision in MCL §700.1045 (11-12)
To the Optional Community Property Statute as requested by the Michigan Bankers Association.

Explanation:

In a conference call with the Michigan Bankers Association on Tuesday the 28th instant, a concern by the bankers was expressed that someone could make a loan and then subsequently transfer their assets away into a Community Property Trust. The transferor would then only have a one-half interest in the property available to the lender. A suggestion was made to include a provision like the provision that is included in the Domestic Asset Protection Trust (“DAPT”) Statute, at MCL §700.1045 (11-12). In that provision, a bank in its loan documents, can require a borrower to notify the bank if it makes transfers to a DAPT -- a failure to make such notification to the bank removes asset protection for assets transferred without prior notice. The particular sections 11-12 provide:

(11) A written agreement between a transferor and a creditor may provide for any of the following:
(a) The transferor will have a continuing or periodic obligation to disclose any qualified dispositions to the creditor.
(b) A qualified disposition will require the prior written approval of the creditor.
(c) That the transferor is under those other obligations as the creditor may require with respect to qualified dispositions.
(12) If a transfer that would otherwise be a qualified disposition violates an agreement with a creditor described in subsection (11), with respect to the creditor only, the transfer is not a qualified disposition and this act does not affect the rights of the creditor.
On the committee, of the three committee members who have addressed the issue, two are against it and one would like to accommodate the banking Committee if possible.

The reasons against the inclusion of the identified provision are as follows.

1. **Banks Already Have Remedies for voidable transfers and do not need a Failure to Notify Remedy.** To the extent a community property trust prevents creditors from reaching assets, it would be considered a self settled spendthrift trust that is reachable under MCL §700.7506 (c)(i). To the extent transfers to a community property trust are transfers to avoid creditors, the transfer is voidable under MCL §566.35. Transfers between spouses do not get special treatment. In *Dunn Minnesota*, 323 Mich 687 (1949) a husband paid $9,600 against the mortgage on his entireties property while owing a debt. The court held that the creditor could reach the entireties property. In a New York Case decided simultaneously under both New York and Florida law (that have fraudulent transfer rules similar to Michigan) a husband transferred assets to a partnership owned by himself and his wife, but distributions were controlled by his wife. The court held that the assets transferred were reachable. *Interpool Ltd. v. Patterson*, 890 F. Supp. 259 (S.D.N.Y. 1995). Without a proposed notification provision, loan and credit card applications reference community property trusts in common law states (Michigan, Ohio, Illinois, Kentucky, South Carolina, Maryland, Arkansas, Maine, New York) and community property states (California and Texas) and in loans from the USDA and Freddie Mac.

2. **An extraneous statutory remedy could backfire by implicitly creating new debtor rights.** If the statute contains a notify provision for post loan transfers, a debtor will have a new argument in response to an attack that the transfer has either been made to a self settled spendthrift trust or that it is a voidable transfer. That argument would be that the intended statutory remedy for fraudulent transfers to community property trusts was for the bank to require notification of loan transfers in its loan documents. In addition, there will likely be a claim by a debtor that notice had been reasonably given which would give the transferor protection that it would not have otherwise had for a spendthrift trust or a voidable transfer, or at least a negotiating position. A notify provision in the statute could end up
making it harder for banks to collect, particularly if its presence in the statute is unnecessary.

3. **A Notice Requirement makes Sense in the DAP context but not in the Community Property Trust context where the provision may require addressing the wide ranging implications of an implied lien.** Under the DAPT provision, property transferred to a DAPT without prior notice, would not get creditor protection if notice is required by the loan documents. Third parties are unaffected by that. With a CPT, a creditor would already have access to the half interest of the transferring spouse in a community property trust situation. The proposed provision will have to include something like an implied lien on property transferred after a loan without notice and that lien will be superior to the interests of both spouses. That lien would have to be the case for all transfers to a CPT without notice after a loan even if the bank does not pursue the debtor in the event of a default. What happens if there is a sale or encumbrance to a third party and what provisions will be needed in the statute to protect those third parties? Does the bank need to record a blanket lien on a trust that did not exist on the date of the loan and it may never know about? The CPT notify provision will be far more complicated than the DAP notify provision in addressing the implications of an implied lien and the provision could create a whole new area of debtor creditor law.

4. **Every item in the statute which is not typical of traditional community property law is ammunition for the IRS to argue that the Michigan optional community property statute does not qualify as community property.** Optional community statutes have been around for a while in Alaska, Tennessee and South Dakota, but the government has not officially blessed them by saying that optional community property statutes will work. The IRS has said it will not issue a private letter ruling. We have obtained anecdotal evidence from other states that IRS tax audits of tax returns which have claimed a basis step up from a CPT have resulted in favorable treatment, although it is suspected that the examining agents either did not understand the issue have not been told it should be challenged. One day, the IRS might examine state CPT laws, and, if so, it would not be
unexpected for the IRS to decide that those state laws which contain too many features that deviate from traditional community property will not qualify for favorable tax treatment. For instance, Alaska, Tennessee and South Dakota, allow non-residents to set up community property trusts. The Michigan proposed statute does not, because residency is a traditional attribute of community property. Requiring residency is a strategic federal tax advantage for the Michigan statute when Michigan residents are selecting a Michigan community property trust over the statutes of other states. Additionally, by having the notice requirement in the Michigan statute and not in the statutes of Alaska, Tennessee and South Dakota, those other state statutes would have an advantage over the Michigan statute.

Two other changes were requested by the bankers that are minor and do not pose a problem: (1) revising one of two consecutive paragraphs so that both refer to the community property trust, instead of one referring to the trust and one referring to the trustee; and (2) making it clear that references to the community trust owning a business, means the trust owning the business assets directly instead of owning 100% of the stock or a 100% member interest in a business.
UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2, 2013
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UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

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

SECTION 2. DEFINITIONS. In this Act:

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

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

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

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

(A) spousal support;

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

(C) responsibility for a liability;

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

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

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

(7) "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.

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

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

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

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

SECTION 3. SCOPE.

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

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

(c) This act does not apply to:
(1) an agreement between spouses which affirms, modifies, or waives a marital right or obligation and requires court approval to become effective; or

(2) an agreement between spouses who intend to obtain a marital dissolution or court-decreed separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed separation is anticipated or pending.

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

SECTION 4. GOVERNING LAW. The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

(1) by the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party and the designated law is not contrary to a fundamental public policy of this state; or

(2) absent an effective designation described in paragraph (1), by the law of this state, including the choice-of-law rules of this state.

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

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

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

SECTION 9. ENFORCEMENT.

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

(1) the party's consent to the agreement was involuntary or the
result of fraud, duress, or mistake;

(2) the party did not have access to independent legal representation
under subsection (b);

(3) unless the party had independent legal representation at the time the
agreement was signed, the agreement did not include a notice of waiver of rights under
subsection (c) or an explanation in plain language of the marital rights or obligations
being modified or waived by the agreement; or

(4) before signing the agreement, the party did not receive adequate
financial disclosure under subsection (d).

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

(1) before signing a premarital or marital agreement, the party has a
reasonable time to:

(A) decide whether to retain a lawyer to provide independent legal
representation; and

(B) locate a lawyer to provide independent legal
representation, obtain the lawyer's advice, and consider the advice provided; and

(2) the other party is represented by a lawyer and the party has the
financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.

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

(1) "If you sign this agreement, you may be:

(A) Giving up your right to be supported by the person you are marrying or to whom you are married.

(B) Giving up your right to ownership or control of money and property.

(C) Agreeing to pay bills and debts of the person you are marrying or to whom you are married.

(D) Giving up your right to money and property if your marriage ends or the person to whom you are married dies.

(E) Giving up your right to have your legal fees paid."

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

(1) The party receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party;

(2) The party expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) The party has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in paragraph (1).
(e) If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.

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

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

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

SECTION 10. UNENFORCEABLE TERMS.

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

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

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

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

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

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

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

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

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

[SECTION 14. REPEALS; CONFORMING AMENDMENTS.

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

(b) [Uniform Probate Code Section 2-213 (Waiver of Right to Elect and of Other Rights)] is repealed.
SECTION 15. EFFECTIVE DATE. This act takes effect ...
MEMORANDUM

TO: Probate and Estate Planning Council
FROM: Legislative Drafting Committee
RE: Ante-Mortem Statute
DATE: September 8, 2018

I. ISSUE

Many individuals make substantial efforts and incur significant costs to ensure their assets are disposed of in the manner they deem appropriate. Most states contemplate only post-mortem probate, which can at times result in costly and time-consuming probate disputes that could be avoided prior to that individual’s death. The question is whether it is feasible and practicable to have an ante-mortem statute allowing for a mechanism to settle the testator’s testamentary capacity and freedom from undue influence when their estate planning document was executed; therefore, avoiding potential costly fights in court. There are at least eight (8) states that have some form of an ante-mortem statute for wills and/or trusts.

II. CONTENT OF ANTE-MORTEM STATUTE

- A petition to probate court and notice being given to heirs and interested persons prior to the testator’s death to make a determination that the testator’s will, and any documents that are incorporated into it by reference, is valid (subject to revocation or modification).

- Section 3510 (A) – (E) of the previous proposed bill with amendments (2015) contains the relevant information that must be put in the petition to the court.

- Notice would be sent to heirs and other interested persons along with the copy of the will. At the hearing, the testator would have to submit proofs of no undue influence, lack mental capacity, fraud, mistake, or duress, in relation to the execution of the will. If no one objects, then the will would be affirmed by the Court as valid.

- Interested persons would be the testator, testator’s presumptive heirs, the devisees and personal representatives named in the will, and in the interest of justice, the court may require additional persons be served.
• Venue for a petition to determine validity of the will is either (a) the county where the testator is domiciled or (b) if the testator is not domiciled in this state, any county in this state where the testator owns an interest in real property.

• This process is available to a testator who wants his/her heirs and other interested parties to raise any issues with the will before the testator passes. If someone raises mental capacity, undue influence, fraud, mistake, or duress, then the testator (presumably the best evidence) is available to testify and explain its reasoning and process.

• If the will is deemed valid, then claims against such will would be barred (absent modification, revocation, or proper party not noticed of proceedings), including those properly bound under the representation rules in Section 1403(b).

• Modifications or revocations could affect bar of claims. A modification and revocation would need the same procedure as initially used to ensure the testator’s capacity, et cetera.

• Person that should have been given notice of the hearing, but was not, can still fight the validity of the will at a later date since they did not have the opportunity to contest the validity of the document.

• A party’s decision not to submit a will under this statute shall not create an adverse inference or evidence regarding a will’s validity.

II. ADVANTAGE AND DISADVANTAGES OF ANTE-MORTEM PROCESS

A. Advantages

1. Typical issues in a postmortem will context involve mental capacity, undue influence, and fraud. The trier of fact must determine the condition of the testator’s mind and the validity of the will by making inferences from evidence of past conduct and circumstances surrounding the testator. The evidentiary problems are both complex and numerous because the testator is deceased and cannot testify as to the testator’s true intent. It prevents the “worst evidence rule,” a term coined by Yale Law professor John H. Langbein. In ante-mortem probate the testator would participate in the will validation proceeding and would attest to mental capacity, intent, free will, or could even be medically evaluated. The evidentiary problems without the best evidence encourage and provide an advantage to the bad actors in will contests. This statute ultimately prevents a bad actor from hiding in the weeds and waiting for the best evidence to die before they take advantage of the lost evidence for evil purposes. It prevents a desperate heir from deciding whether the truth should be buried.

2. Ante-mortem validation would help ensure that the testator’s wishes are followed after death, which is the ultimate question and gives the testator an added peace of mind. In
post-mortem will contests, often times either the threat of a will contest or an actual will contest sets up potential settlements. The atypical distribution of an estate can usually be suggestive of some abnormality in the testator or the testator’s family relationships. There is no doubt that occasionally a settlement may affect a more equitable distribution from an estate than would the testator’s wishes. However, this potential forced settlement and the will contest itself post mortem combine to justify the ante-mortem statute, which allows the testator to achieve his/her ultimate goals.

3. Ante-mortem probate would decrease the number of post-mortem will contests by declaring the testator’s will valid before his/her death and thereby preempting frivolous litigation. This statute is only an option to a testator; therefore, they do not have to spend the funds if they choose not to utilize the tool. Further, even though the belief is most people’s preference is to keep their will private, the availability of the procedure should not depend on the majority’s sentiments.

4. If the instrument is deemed invalid in an ante-mortem proceeding, the testator can cure the source of the invalidity or take alternative testamentary measures to ensure that their wishes are followed.

5. The result of the process would help prevent lost wills since it would be on file at the courthouse once it is certified. In turn, it limits the cases of an heir claiming the testator modified or revoked his/her will.

B. Disadvantages

1. A potential heir can initiate conservatorship and guardianship proceedings in response to the ante-mortem planning. This tactic could put to halt the ante-mortem planning since courts a lot of times are very liberal in finding a person incapacitated to preserve the assets. Courts feel like they can assure the estate will not be squandered by finding incapacitation and putting in place a conservator and guardian.

2. This process puts the testator through a very unfortunate spectacle wherein the testator is compelled to enter upon a contest with the expectants of the testator’s own estate and litigate while living with those who have no current legal claims to the property, but who may subject the testator to ruinous costs and delays in facing such hearings and testimony.

3. The heirs are put in a no-win situation if they genuinely believe the will is not valid. It invites will contests under conditions as to insure disruption potentially beyond repair of the participating family if the action becomes contested. On the other hand, the power to revoke or amend by the testator discourages aggrieved parties from contesting the validity
of the documents even if there may be legitimate concerns regarding the testator being influenced or not competent.

4. It is not always good to nail things down right away. The truth could develop later, such as motive or impediments, which could cast doubts on the validity of the will. Therefore, the process is risking virtue and justice for the sake of finality before the testator is deceased.

5. Confidentiality is lost once the proceedings begin since the will is filed with the probate court and the proceedings are open to the public. For some people with significant assets or are of prominent status in a community, this could be detrimental to them and/or their family. Further, disclosing the contents could provide potential heirs with valuable information to compile claims against the will.

6. Assuming the court validates the will, the chance still exists for all of that effort to be undone by designation on accounts, creation of joint bank accounts, deed transfers, or the making of gifts mortis causa. Some of these transfers still are open to litigation raising the very issues which the proposed statute was to ameliorate.

7. Ante-mortem process is an unnecessary expense that may end in fruitless litigation. The proceeding may be required more than once in a testator’s lifetime because the testator retains the right to modify or supersede the will. Further, since the testator’s size of the estate can change, a testator might end up leaving no property or insufficient property to justify the proceeding. Finally, since the judgment only binds parties that were given proper notice, a defective notice permits postmortem contest with additional cost.

8. Two statutes, MCL 700.5408 and MCL 700.7604, arguably accomplish the same intent as the ante-mortem statute. MCL 700.5408 addresses conservator appointment or another protective order. If an individual recognizes age related decline to the point of disability, becoming vulnerable, or there are questions regarding their ability to conduct their financial affairs and are concerned their children are going to fight over the estate, then the settlor can petition to the Court for a protective order to confirm the validity of the trust. The companion statute deals with the statute of repose, MCL 700.7604(1)(b). This statute, along with the reading of In re Brody Trust, 321 Mich App 304 (2017), if the trustee puts the heirs on notice with a copy of the trust instrument along with all requirements held in MCL 700.7604(1)(b)(i)-(vii), and if the heirs do not bring an action within six (6) months, the heirs would be barred from bringing an action. Since these two devices are available, then there is no need for the ante-mortem statute.

However, there are counter-arguments that MCL 700.5408 and MCL 700.7604 cannot accomplish the intent of the proposed ante-mortem statute. For a court to have jurisdiction under MCL 700.5408, the individual must fall within one of the categories delineated in MCL 700.5401 (the individual is unable to manage property and business affairs...
effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance). This delineated group is only a select group of individuals and is not available to everyone. Further, under MCL 700.7604, the argument is the statute of repose does not work until the settlor is deceased.

9. Not all states allow ante-mortem probate, therefore, there is a possibility of a will that is determined valid in this state that would have no legal effect if the testator subsequently moves to a state that does not recognize the right.

10. Attorneys are going to have to be extra careful when handling a client that understands the ante-mortem process is available but does not wish to utilize this tool for malpractice reasons. Proper documentation regarding the client’s knowledge of the process and waiver of using such process is imperative.

III. WHAT HAVE OTHER STATES DONE

Attached is a chart with different states that have enacted ante-mortem statutes for wills and/or trusts. So far, it appears eight different states have enacted such statutes. For further reference, attached is a sample of e-mails from attorneys that practice in some of the states with ante-mortem statutes with their opinions as to any problems or ease they have had with a similar statute. Also, attached is the previous proposed ante-mortem legislation that was discussed in 2015 by the probate section.
To: Legislation Development and Drafting Committee  
From: Nathan Piwowarski  
Re: Prebate – Other States  
Date: July 13, 2018

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<td>Proceeding</td>
<td>Formalities, capacity, lack of undue influence</td>
<td>Devisors; present intestate successor</td>
<td>Will put on file with court with order; will be binding in ND unless plaintiff-testator executes new will and institutes new proceeding</td>
<td>Findings and evidence cannot be used in other proceeding</td>
<td>None</td>
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<td>Challenging party (as to proceeding); trustee (as to statute of repose)</td>
<td>Proceeding</td>
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<td>Settlor; beneficiary; settlor’s present intestate successor</td>
<td>Claim bar</td>
<td>Can have collateral effects on prior distributions</td>
<td>None</td>
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¹ § 30.1-08.1-01, West's North Dakota Century Code Annotated  
² § 59-10.1-01, West's North Dakota Century Code Annotated
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<td>Those served</td>
<td>Claim bar</td>
<td>Can have collateral effects on prior distributions</td>
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<td>Delaware⁴</td>
<td>Wills</td>
<td>Testator</td>
<td>120-day statute of repose upon notice</td>
<td>Those served</td>
<td>Claim bar</td>
<td>Includes provision for powers of appointment issues, too; law states no adverse inference for not using procedure</td>
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<tr>
<td>Alaska⁵</td>
<td>Wills</td>
<td>Testator, nominated PR, or nominee of testator</td>
<td>Proceeding</td>
<td>Those served</td>
<td>Claim bar</td>
<td>Determination does not force any party to return to court to revoke or amend instrument</td>
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<tr>
<td>Alaska⁶</td>
<td>Trusts</td>
<td>Settlor or trustee</td>
<td>Proceeding</td>
<td>Those served</td>
<td>Claim bar</td>
<td>Determination does not force any party to return to court to revoke or amend instrument</td>
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</table>

³ § 3546, West's Delaware Code Annotated
⁴ § 1311, West's Delaware Code Annotated
⁵ T. 13, Ch. 12, Art. 6, West's Alaska Statutes Annotated
⁶ Matter of Estate of Baker, 386 P3d 1228 (Alas, 2016). Law does not require a testator to petition a court to validate her will; it merely provides that an interested party may petition the court to determine before the testator's death that the will is a valid will.
Alaska’s statute is the most sophisticated, procedurally speaking. It addresses the petitions’ contents comprehensively, addresses venue, subsequent amendments, confidentiality of records in the proceedings, etc. At a minimum, it offers a comprehensive issue checklist for crafting a proceeding-driven statute.
We have used the Delaware statute many times and in every case have had a favorable outcome. We only had one matter where the heir actually filed a claim contesting the validity of the trust. In that case the Delaware Supreme Court held the heir’s claim was time barred because it was brought after the 120 period.

Michael

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302-652-1142 (telefax)

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From: ACTEC Practice List <actec-prac@ACTEC.ORG> On Behalf Of Jane Ditelberg
Sent: Wednesday, July 18, 2018 2:12 PM
To: actec-prac@ACTEC.ORG
Subject: Re: [actec-prac] “Pre-bate” or proceedings to establish capacity before the testator/settlor dies

My own experience, which is admittedly very limited and may vary from those of other Fellows, is that the people who want to do this are aware that their heirs/legates are litigious and want to flush out the litigation during the grantor’s lifetime. As a result virtually all of the ones that I have worked on resulted in full fledged litigation with the “troublesome” heir. I am not sure in all of the situations I worked on that the parent was prepared for that fight and how divisive that would be to the family. In two cases, the parent died before the trial so that the parent’s testimony was not available to rely on in defending the Will in any case. It seems like it might be kinder if you know that no matter what there is going to be a battle between the heirs to save it until after the parent is gone to spare the heartache. This is just the flip side to the peace of mind you get if the notice works to dissuade the troublesome heir from contestesting.
I believe you have raised the relevant issues. My experience in Alaska is that the statute improves the law by giving clients a proactive alternative. We have not had any bad experiences with this law to date.

-Steve

Steven T. O'Hara
Attorney At Law
601 West Fifth Avenue, Suite 900, Anchorage, AK 99501
T 907.276.1711 F 907.279.5358
sohara@bgolaw.pro www.bgolaw.pro
www.60yearsofboxing.org
Sent from my iPhone

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sohara@bgolaw.pro www.bgolaw.pro

www.60yearsofboxing.org
On Mon, Jul 16, 2018 at 5:02 PM, Lentz, Marguerite  <MLentz@bodmanlaw.com> wrote:
Hello all:
This question is for Fellows in Delaware, Alaska, Alabama, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, or any other state that has some kind of procedure like a court hearing (or statute of repose after notice) to establish the testator’s or settlor’s capacity to make a will or trust before a testator or settlor dies. Trying to decide if we should explore this for our state.
What has your practical experience been? Do you use the procedure often? Did it help to avoid a will or trust contest after the testator or settlor died?
Have there been any unintended consequences after using the procedure (good or bad)? It might be useful to try the incapacity issue while the testator or settlor is alive, but starting the procedure might make family relations worse.
Is there any concern that if an attorney does not take advantage of the procedure that a beneficiary may later sue the attorney, saying we would have avoided this will contest had you only used this procedure?

Thank you for your help,

Marguerite (Meg) Munson Lentz

Sent from my iPhone

This message was secured by ZixCorp(R).
Lentz, Marguerite

From: ACTEC Practice List <actec-prac@ACTEC.ORG> on behalf of Redd, Charles A.  
<charles.redd@STINSON.COM>
Sent: Wednesday, July 18, 2018 1:16 PM
To: actec-prac@ACTEC.ORG
Subject: Re: [actec-prac] “Pre-bate” or proceedings to establish capacity before the testator/settlor dies

Seems like a great idea to me. It’s optional, so, if the testator/settlor doesn’t want to stir up family trouble, s/he doesn’t have to.

--Clary

From: ACTEC Practice List [mailto:actec-prac@ACTEC.ORG] On Behalf Of Steve O’Hara
Sent: Wednesday, July 18, 2018 11:33 AM
To: actec-prac@ACTEC.ORG
Subject: Re: [actec-prac] “Pre-bate” or proceedings to establish capacity before the testator/settlor dies

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************************************************************************************************************************

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Thank you for your help,

Marguerite (Meg) Munson Lentz

Sent from my iPhone

-----------------------------------------------------------------------------------------------------------------------------
This message was secured by ZixCorp(R).

Charles A. Redd | Partner | Stinson Leonard Street LLP
7700 Forsyth Blvd., Suite 1100 | St. Louis, MO 63105-1821
charles.redd@stinson.com | www.stinson.com

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has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose
the contents to others.
Nevada has a statutory declaratory relief provision to allow a pre death determination of validity of the estate plan. The courts were initially opposed as there was concern it would trigger a huge increase in filings. But that has not proven to be the case. In my own practice, although mentioned often, clients rarely want to take this route for several reasons. But in all cases where they have, its been successful in eliminating post death litigation... at least so far. Its nice to have the grantor present to testify and confirm intent opposed to post death litigation so long as Grantor is competent, prepared, and able to deal with potential battle.

However, I believe clients who do take this step need to be fully informed of what can happen.

1. Notice has to be given to the beneficiaries. That generally stops the discussion. Clients often do not wish to spend their golden years in court fighting or confronting a problem beneficiary or disinherited heir. Cases where this process is considered are generally ones where litigation is contemplated. It can be a horrible situation for the grantor to face the ugly family dynamics head on. Last one I was involved in was where atty filed for the relief under to approve 98 yr olds plan. His appearance was so poor it resulted in actually causing court to question capacity, and was followed by a vicious battle between his children. He cried in court every day. It was horrible to see and not a way to spend his final days. The atty had thought it was a rubber stamp procedure and grossly under estimated what would happen. It did result in a pre death settlement and no litigation post death. Just a horrible way for that grantor to spend his last days. So be prepared if you take this route.

2. Its public and although sealing options may be available, its not guaranteed. Very wealthy or well known clients don't like idea of public airing of dirty laundry even if it will save post death litigation.

3. If grantor later changes plan again, the action has to be reinitiated again for revised plan so clients often want to wait until they are sure its the final plan. Of course, that day only comes on death and by then its too late or clients condition may not be conducive to court.

4. Expensive. And client has to pay the cost to defend his plan. Many say "let them duke it out on their dimes when I am dead". While cost may ultimately be born by same trust, client wont see it post death which seems to be psychologically easier to digest.

5. Still some uncertainty over whether it will really work. If its a rev trust, does Dec Judgment bind a beneficiary who does not appear to object whose interest is not yet vested? There have been some practitioners who worry about this and have not had this taken up by higher courts. I suppose this is similar to issue of whether a pre-death waiver of right to contest post death is enforceable.

Overall, I like having the tool as an option. It has worked and can be helpful if used in right situation with a prepared client.

Michaelle
On Jul 18, 2018, at 6:03 PM, Jerry Chariton <jbc@CSMLAWOFFICES.COM> wrote:

In Estate of Mampe, 932 A.2d 954, 2007 PA Super 269, two of testator's daughters filed a declaratory judgment action seeking to have testator's will and revocable trust declared invalid in Chester County. The mother died, and the case was allowed to continue, rather than declared moot. Therefore, by implication, I intuited that a party could bring a Declaratory Judgment Action to determine the validity of a trust agreement and Will. On that basis, I brought a declaratory judgment action to validate the estate planning of a client which changed what she said a niece had done without her knowledge and permission.

The Orphans' Court judge ruled in favor of the validity of the Trust Agreement and powers of attorney, but declined to declare that the Will was valid on the ground that the other documents were operational while the Will had no effect until death. But, since he validated the other documents executed at the same time, I was confident that the niece would not bring an action to claim that the Will was procured by undue influence or that the testatrix lacked capacity since the judge had already determined she had capacity for the other documents. There was not Will contest after death.

On 7/18/2018 2:59 PM, Don Kozusko wrote:

I have considered these procedures and declined to use them because of the public nature of the proceeding on the record. However they inspired me to initiate a process in one case recently to informally involve the relevant parties (advised by their separate counsel) with a goal of getting consents and releases. Seems to work so far, although its handicapped by the fact that deadlines are soft.

Don Kozusko

Please excuse brevity and typos
Kozusko Harris Duncan
A national private client law firm
www.kozlaw.com<http://www.kozlaw.com>
On Jul 18, 2018, at 12:55 PM, Steve O'Hara
<sohara@bgolaw.pro<mailto:sohara@bgolaw.pro>> wrote:

I believe you have raised the relevant issues. My experience in
Alaska is that the statute improves the law by giving clients a
proactive alternative. We have not had any bad experiences with
this law to date.

-Steve

Steven T. O'Hara
Attorney At Law

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*******************************************************************************
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Thank you for your help,

Marguerite (Meg) Munson Lentz

Sent from my iPhone

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--

Jerry B. Chariton, Esquire
Chariton, Schwager & Malak
Attorneys At Law
138 South Main Street, P.O. Box 910
Wilkes-Barre, PA 18703-0910
Telephone: 570-824-3511
Facsimile: 570-824-3580
E-mail: jbc@csmlawoffices.com
Internet: www.csmlawoffices.com

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Annual Section Meeting Materials
ANNUAL MEETING OF THE MEMBERS OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

September 8, 2018

NOTICE OF ANNUAL MEETING OF THE MEMBERS

The Annual Meeting of the Members of the Probate and Estate Planning Section will be held on Saturday, September 8, 2018, immediately following the conclusion of the Committee for Special Projects of the Probate Council. It is anticipated that the Meeting of the Members will start at approximately 10:00 am. The meeting will be held at the University Club of Michigan State University, located at 3435 Forest Road, Lansing, Michigan 48909.

AGENDA

I. Call to Order

II. Minutes of September 9, 2017, Annual Meeting of the Section--Attachment 1

III. Chairperson's Report (Marlaine C. Teahan)--Attachment 2

IV. Treasurer's Report (David L.J.M. Skidmore)—Attachment 3

V. Election of Council Officers and Members--Attachment 4 (Nominating Committee Report). Note that nominations were closed at the June 16, 2018 Meeting.

VI. Other Business

VII. Adjournment of Annual Meeting of Section Membership
ATTACHMENT 1
ANNUAL MEETING OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

September 9, 2017
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the Annual Meeting of the Probate and Estate Planning Section to order at 9:34 a.m. All in attendance were asked to sign an attendance sheet. The following Section members were in attendance:

James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
Christopher A. Ballard
David P. Lucas
Aaron Bartell
Kimberly Browning
Susan Chalgian
Rhonda M. Clark-Kreuer
Mark DeLuca
Kathleen M. Goetsch
George W. Gregory
Daniel S. Hilker
Mark E. Kellogg
Robert B. Labe
Michael G. Lichterman
Nancy L. Little
Katie Lynwood
Raj A. Malviya
Andrew Mayoras
Gabrielle McKee
Douglas A. Mielock
Richard C. Mills
Ryan Mills
Sueann T. Mitchell
Hon. David M. Murkowski
Jeanne Murphy
Melisa M.W. Mysliwiec
Lorraine F. New
Neal Nusholtz
Kurt Olson  
Patricia Ouellette  
Scott Robbins  
Christine Savage  
David L.J.M. Skidmore  
Joan Skrzyniarz  
James P. Spica  
Paul Vaidya  
Geoffrey R. Vernon

II. Minutes of the June 24, 2017 Special Meeting of the Section

The minutes of the June 24, 2017, Special Meeting of the Section were attached to the combined Agenda for the Annual Meeting and the September Council Meeting, which Agenda posted on the Section’s web page prior to the meeting. Ms. Lentz moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

III. Minutes of the September 10, 2016 Annual Meeting of the Section

The minutes of the September 10, 2016, Annual Meeting of the Section were attached to the combined Agenda for the Annual Meeting and the September Council Meeting, which Agenda posted on the Section’s web page prior to the meeting. Mr. Spica moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. Chairperson’s Report – James Steward

Mr. Steward gave the Chair’s report.

Mr. Steward submitted his annual report was submitted to the State Bar. His report was attached to the agenda for the meeting.

V. Treasurer’s Report – David Lucas

Mr. Lucas reported that projections indicate that the section will most likely run a deficit of approximately $2,000 for the year ending September 30. Membership in the section is down approximately 110 members compared to the prior fiscal year.

VI. Elections of Council Officers and Members

The report of the Nominating Committee was attached to the combined Agenda.

At the close of the Annual Meeting, the Chairperson-Elect, Ms. Teahan, will become the Chair without a further vote.
The following were nominated as officers of the Council for 2017-2018:
   Chairperson Elect:    Marguerite Munson Lentz
   Vice Chairperson:     Christopher A. Ballard
   Secretary:            David P. Lucas
   Treasurer:            David L.J.M. Skidmore

The following were nominated for the Council for a second three-year term expiring at the Annual Meeting in 2020:
   Hon. Michael L. Jaconette
   Mark E. Kellogg
   Raj A. Malviya

The following were nominated for the Council for an initial three-year term expiring at the Annual Meeting in 2020:
   Michael G. Lichterman
   Kurt A. Olson
   Christine M. Savage

Because of the nomination of David L.J.M. Skidmore to the office of Treasurer, Angela M. Hentkowski was nominated to serve the balance of Mr. Skidmore’s term as a member of the Council, which ends with the annual meeting in 2018. Ms. Hentkowski will thereafter be eligible for election to two additional three-year terms as a member of the Council.

Mr. Gregory moved for the adoption of the slate of candidates and the election of all sections officers and council members. The candidates were all approved unanimously, with no nays and no abstentions.

VII. Other Business

George Bearup and Nancy Welber are both leaving the council after 6 years of service. Mr. Steward expressed a heartfelt thanks to them for their service to the section.

Mr. Steward thanked Ms. Teahan for the work she has done for the section and wished her well during the term that she will be serving as chair.

Mr. Steward also thanked his wife, Betty, for all the assistance she has provided to him during his years on the Council. She has put in a tremendous amount of work.

Mr. Steward presented a gavel to the incoming Chair, Marlaine Teahan.

VIII. Adjournment

The meeting was adjourned by Chairperson James Steward at 9:50 am.
1. **Annual Report of Chair of the Section.** Each year the Chair of each Section must provide a summary of the year's work to the State Bar of Michigan. My report was due May 31, 2018 and is attached in the materials. The report includes our Section's work since last June 1, 2017; thus, our recent activities are not included.

2. **SCAO Probate Forms Committee Liaison.** Due to a resignation from a member of the SCAO Probate Forms Committee, our Section was asked to provide a nomination for a new member. After discussion with our chair of the Court Rules, Forms, & Proceedings Committee and the incoming Chair, Nathan Piwowarski's name was submitted as our nominee. Nathan has already received the appointment letter from Milton Mack and will begin his term in 2019. This appointment will provide SCAO with a great resource in Nathan since he will be able to provide historical context to the many changes needed to probate court forms after the passage of the EPIC Omnibus legislation.

3. **We took a Public Policy Position in June on the following:** The Section took a formal public policy position supporting proposed legislation that would allow undisclosed trusts in Michigan. This bill, if passed, would add a new section MCL 700.7409a. More details are found in the June 16, 2018 minutes. All public policy positions of our Section can be found online at the SBM Probate and Estate Planning Section Public Policy Position page: [https://www.michbar.org/sections/probatepp](https://www.michbar.org/sections/probatepp)

4. **Welcome to our new Chair!** Hearty congratulations to our new Chair, Meg Lentz. Meg has a deep understanding of our issues and is capable of being both theoretical and practical. Meg is a great listener and forms strategic alliances among stakeholders, insuring excellent outcomes. She is a positive person who brings out the best in others. She will be an excellent Chair and I look forward to her year of leadership.

5. **With appreciation.** I have thoroughly enjoyed my year as Chair of the Section. Many thanks to each of you for your support during this past year. Your tireless work has protected and enhanced the laws of the State of Michigan. Our legislative initiatives have modernized our probate and trust code, our legislative monitoring has improved the bills others have introduced, our amicus work has protected our case law, and our membership services have increased our connections both electronically and personally. Your collegiality is outstanding and exemplary. It's been an honor and privilege to work alongside you.
Probate and Estate Planning Section

Chair
P56603 Marlaine C. Teshan
Fraser Trebilcock Davis & Dunlap PC
124 W Allegan St Ste 1000
Lansing MI 48933-1736
Phone: (517) 377-0869
Fax: (517) 482-0887
e-mail: mteahan@fraserlawfirm.com

Chair-Elect
P30583 Marguerite Munson Lentz, Detroit

Vice Chair
P47015 Christopher A. Ballard, Ann Arbor

Secretary
P34466 David P. Lucas, Battle Creek

Treasurer
P58794 David L.J.M. Skidmore, Grand Rapids

Council Member
Term Ending: 2018
P64928 Christopher J. Caldwell, Grand Rapids
P49818 Rhonda M. Clark-Kreuer, Saint Louis
P30574 Kathleen M. Goetsch, Howell
P71609 Angela M. Hentkowski, Ishpeming
P72027 Katie Lynwood, East Lansing
P69445 Melisa Marie-Werkema Mysliwiec, Grand Rapids

Term Ending: 2019
P72821 Nazneen S. Hasan, Bloomfield Hills
P37092 Robert B. Labe, Birmingham
P54896 Andrew W. Mayoras, Troy
P68618 Richard Charles Mills, Jackson
P32058 Lorraine F. New, Troy
P70974 Nathan R. Piwowarski, Cadillac

Term Ending: 2020
P47209 Hon. Michael L. Jaconette, Battle Creek
P38306 Mark E. Kellogg, Lansing
P71256 Michael G. Lichterman, Grandville
P68762 Raj Anand Malviya, Grand Rapids
P38321 Kurt A. Olson, Plymouth
P60174 Christine M. Savage, Okemos

Commissioner Liaison
P43770 Joseph Patrick McGill, Livonia
### Council Meeting Schedule:
Please attach any additional information needed regarding Council meetings as an addendum.

<table>
<thead>
<tr>
<th>Meeting Type</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee on Special Projects, followed by a Council Meeting</td>
<td>06/24/17</td>
<td>Lansing, MI</td>
</tr>
<tr>
<td>Annual Meeting, followed by a Council Meeting</td>
<td>09/09/17</td>
<td>Lansing, MI</td>
</tr>
<tr>
<td>Committee on Special Projects, followed by a Council Meeting</td>
<td>10/14/17</td>
<td>Lansing, MI</td>
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<tr>
<td>Committee on Special Projects, followed by a Council Meeting</td>
<td>11/11/17</td>
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<td>Committee on Special Projects, followed by a Council Meeting</td>
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</tr>
</tbody>
</table>

### Addendum Information: Please list any addendums attached.

**Attachments 1-4:** Public Policy Positions; Bill Hound Report on Legislative Issues developed by Council; Lobbyist's tracking report; and Recommendations for the next Council.

### Events and/or Seminars:
Please attach any additional information needed regarding events and/or seminars as an addendum.

<table>
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<tr>
<th>Event or Seminar Title</th>
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<tr>
<td>57th Annual Probate &amp; Estate Planning Institute</td>
<td>June 16-17, 2017</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Drafting an Estate Plan for an Estate Under $5 Million – limited enrollment</td>
<td>June 22, 2017</td>
<td>Plymouth, MI</td>
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<tr>
<td>Drafting an Estate Plan for an Estate Under $5 Million – limited enrollment</td>
<td>September 26, 2017</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Postdeath Tax Planning and Preparing Fiduciary, Estate, and Gift Tax Returns</td>
<td>October 26, 2017</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Handling Contested Probate Proceedings</td>
<td>October 26, 2017</td>
<td>Plymouth, MI</td>
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<tr>
<td>Experts in Estate Planning: Estate and Distribution Planning for Retirement Benefits</td>
<td>December 7, 2017</td>
<td>Plymouth, MI</td>
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<tr>
<td>27th Annual Drafting Estate Planning Documents</td>
<td>January 18, 2018</td>
<td>Grand Rapids, MI</td>
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<td>27th Annual Drafting Estate Planning Documents</td>
<td>February 15, 2018</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Drafting an Estate Plan for an Estate Under $5 Million – limited enrollment</td>
<td>March 15, 2018</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Medicaid &amp; Health Care Planning Update</td>
<td>April 10, 2018</td>
<td>Plymouth, MI</td>
</tr>
<tr>
<td>Income Tax Planning for Family LPs, LLCs, and Disregarded Entities</td>
<td>May 16, 2018</td>
<td>Acme, MI</td>
</tr>
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<td>58th Annual Probate &amp; Estate Planning Institute</td>
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STATE BAR OF MICHIGAN
SECTION ANNUAL REPORT

Legislative issues:
Our Public Policy Positions are detailed on Attachment 1; Our Bill Hound Report (generated by one of our committees) is Attachment 2; Public Affairs Associates, our Section lobbyist, tracks our Legislative Issues; see Attachment 3.

Recommendations for next Council:
See Attachment 4

Other Information:

Reports must be submitted before May 31, 2018 to:

Jennifer Williams
Administrative Assistant
306 Townsend Street, Lansing MI 48933
Email: jwilliams@mail.michbar.org
Phone 517-367-6421 Fax: 517-482-6248
Attachment 1
Probate & Estate Planning Section positions

Legislative Positions
All reports are in PDF format.

2017-2018 Legislative Session

HB4410  Supported this Bill modifying EPIC, MCL 700.2404, to allow a person to
disinherit a child from receiving the exempt property allowance in a probate
estate. Council was significantly involved in the drafting of this legislation.
This bill resolved the issues presented by In re Jajuga.
This bill is 143 PA '18, effective August 8, 2018.

HB4821  Opposed with suggested adopted modifications; these Bills dealt with
modification to EPIC, Appointment of the State or County Public Administrator
as Personal Representative of a Decedent's Estate in a Formal Proceeding.
These bills are now 13 PA '18 and 14 PA '18, effective May 7, 2018.

HB4905  Supported with suggested modifications; this bill modified the General
Property Tax Act, Principal Residence Exemption to allow retention of a
principal residence exemption under certain circumstances for nursing home
residents.
This bill is now 133 of '18, effective May 3, 2018.

HB5075  Opposed these bills which would modify EPIC relative to patient advocates
and end of life treatment; Council members also participated in a workgroup
regarding this legislation and provided input to the sponsors on our
objections.
Still pending.

HB5076  Supported this bill and was significantly involved in this bill's drafting which
would modify the General Property Tax Act, Definition of Transfer of
Ownership, MCL 211.27a, addressing many uncapping issues common in
estate and business planning and estate and trust administration. Testimony
by Council members to the Committee on Local Government.
Still pending.

SB0540  Opposed this bill which amends EPIC to add new provisions for Visitation
Procedures for Isolated Adults; Council provided alternate language to the
sponsor of the bill.
Still pending

Other

| A Draft of Bill to Amend 1991 PA 133 & 1998 PA 386 | The Probate and Estate Planning Section supports Draft 8 of a bill to amend 1991 PA 133, entitled "Recording Trust Agreement or Certificate of Trust Existence and Authority" and a bill to amend 1998 PA 386, entitled "Estates and protected individuals code" (with certain typographical changes); and empowers the Chair of the Section's Legislative Development & Drafting Committee to consent to non-substantive modifications to the Draft. (3/24/18) |

Probate and Estate Planning Section
September 8, 2018 (2018 - 09 - b)
| **Estate of James Irwin** | The Probate and Estate Planning Section authorizes (i) the filing with the Michigan Supreme Court of a motion requesting permission to file an amicus curiae brief and an amicus curiae brief in the Estate of James Erwin, taking the position that (a) the "absent" portion of the "willfully absent" provision in MCL 700.2801(2)(e)(i) is defined exclusively by physical absence; (b) the "willfully" portion of the "willfully absent" provision in MCL 700.2801(2)(e)(i) permits consideration of mental and emotional bonds and connections; and (c) MCL 700.2801(2)(e)(i) does not require proof that a spouse intends to abandon his or her marital rights; and (ii) the payment of up to $15,000.00 in legal fees and costs for the preparation and submission of such brief on behalf of the Section; and (iii) the engagement of a lawyer to be determined by the Council to prepare and submit such brief. (12/16/17) |
| **In Re Brody Trust** | The Probate and Estate Planning Section authorizes the filing of an amicus curiae brief supporting the grant of leave to appeal with the position that the remainder beneficiary of a trust might be an interested person in a proceeding regarding such trust if the settlor of such trust is incapacitated or deceased, but such remainder beneficiary is not an interested person in a proceeding regarding such trust if the settlor is alive with legal capacity. (11/11/17) |
| **In Re Brody Conservatorship** | The Probate and Estate Planning Section authorizes the filing of an amicus curiae brief supporting the grant of leave to appeal, with the position that the statutory scheme of priority of appointment is not simply a guideline but is binding on the Court. (11/11/17) |
| **Public Policy Position Legislative Proposal of September 28, 2017** | The Probate and Estate Planning Section supports a bill to amend 1998 PA 386, entitled "Estates and protected individuals code" which will update numerous sections of EPIC, as indicated on the attached document. Click on link to left to review exact changes. (11/11/17, and 9/28/17) |
| **Proposed Bill to Amend the Estates and Protected Individuals Code** | The Probate and Estate Planning Section supports a bill to amend 1998 PA 386, entitled "Estates and protected individuals code" which will add new sections to EPIC called, "Divided and Directed Trusteeships." (11/11/17) |
Attachment 3
Probate and Estate Planning Section
Recommendations for next Council

It is hard to make recommendations to such an amazingly dedicated Council as it is difficult to identify areas to improve. Suggestions for the future include comments on new ideas and others already being worked on:

- Continue to attract new Section members by offering an open, welcoming environment.
- Focus on collaboration, educational resources, friendship, and opportunities to contribute to the development and protection of Michigan law in our practice areas, as set forth in our Mission Statement.
- Consider meeting on Friday instead of Saturday; recognize that work/life balance is important for many but crucial in order for some attorneys to get involved.
- For Council members and officer roles, don't just reward attendance and participation but strengthen the Council and secure the future of our Section and T&E law in Michigan by attracting top talent with a depth of practice in all our areas of expertise.
- Continue to push the envelope for the development of our T&E law. Look for new and innovative approaches to legal problems.
- Work with the legislature and develop good relationships there. Testify to support our initiatives and to provide education when needed.
ATTACHMENT 3
### Section Expense Reimbursement Form

Staple receipts to back of form as required. For electronic transmission, scan and PDF receipts and send with form by e-mail. Policies and procedures on reverse side.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description &amp; Purpose</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals</th>
<th>Miscellaneous</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Note start and end point for mileage)</td>
<td>Rate</td>
<td>Mileage</td>
<td>Reimbursement</td>
<td>(Self + attach list of guests)</td>
<td>(i.e. copying, phone, etc.)</td>
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I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Probate and Estate Planning Section  
September 8, 2018  (2018 - 09 - b)
State Bar of Michigan  
Section Expense Reimbursement Policies and Procedures

General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3rd workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar’s ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: http://michbar.org/programs/forms

2. All out of pocket expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.

3. Reimbursement in all instances is limited to reasonable and necessary expenses.

4. Detailed receipts are recommended for all expenses but required for expenses over $25.

5. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required.

For subsidized sections (Young Lawyers Section, Master Lawyers Section, and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget’s website at http://www.michigan.gov/dtbm/0,5552,7-150-0161_13132----00.html referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

6. Spouse expenses are not reimbursable.

7. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.

8. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.

9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
   A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.
   B. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.
   C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
   D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

10. Reimbursement for car, bus, or train will be limited to the maximum reimbursable air fare if airline service to the location is available.

11. Outside speakers must be advised in advance of the need for receipts and the above requirements.

12. Bills for copying done by a firm should be approved in advance and include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).

13. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not possible, the party called and the purpose of the call should be provided.

14. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.

15. Refunds from professional organizations (Example: ABA/NABE) for registration fees and travel must be made payable to the State Bar of Michigan and sent to the attention of the finance department staff at the time you submit your request for payment.

16. Gift cards (Visa, AMEX) that are reimbursed are taxable for any amount, and tangible gifts (other than recognition items such as plaques, gavels, etc.) and gift certificates (for restaurants, department stores, etc.) purchased and reimbursed are considered taxable if greater than $100.

Specific Policies

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.

2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.

4. Payments to vendors for $5,000 or greater are not reimbursable. Payments to vendors for $5,000 or greater should be paid directly by the State Bar.
Report of the Nominating Committee
To the Probate & Estate Planning Council of the State Bar of Michigan
June 16, 2018

The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Amy N. Morrissey, Shaheen I. Inami and James B. Steward.

The Committee reminds the Council and Section that under the Section’s By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section’s annual meeting. The Committee therefore does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect, Marguerite Munson Lentz, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their name:

Chairperson Elect    Christopher A. Ballard
Vice Chairperson     David P. Lucas
Secretary            David L. J. M. Skidmore
Treasurer            Mark E. Kellogg

For the Council for a second three year term:

Christopher J. Caldwell
Kathleen M. Goetsch
Katie Lynwood

For the Council for an initial three year term:

Angela M. Hentkowski
Melisa M. W. Mysliwiec
Neal Nusholtz

If Mark E. Kellogg is elected as Treasurer, the Committee nominates James ("Jv") F. Anderton, V to serve the balance of Mr. Kellogg's term as a member of the Council, which ends on the last day of the fiscal year of the Section in 2020. Mr. Anderton will thereafter be eligible for election to two three-year terms as a member of the Council.

The Committee nominates Andrew W. Mayoras to serve the balance of Geoffrey R. Vernon’s term as a member of the Council, which ends on the last day of the fiscal year of the Section in 2019. Mr. Mayoras will thereafter be eligible for election to two three-year terms as a member of the Council.

Respectfully submitted on behalf of the Nominating Committee,

Amy N. Morrissey, Chair
Council Materials
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

September 8, 2018

Agenda

I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates

V. Monthly Reports:
   A. Minutes of Prior Council Meeting (David P. Lucas)—Attachment 1
   B. Chair’s Report—Attachment 2
      1. Motions with respect to Committees
      2. Proposed Plan of Work
      3. Revised Plans for Chair’s Dinner and October Council Meeting
   C. Committee on Special Projects
   D. Legislative Analysis & Monitoring Committee (Ryan Bourjaily)
   E. Legislative Development and Drafting Committee (Nathan Piwowarski)—
      Attachment 3

VI. Other Committees Presenting Oral Reports
   A. Tax Committee (Christopher J. Caldwell)—Attachment 4
   B. Membership Committee (Robert B. Labe)
   C. Amicus Curiae Committee (David L.J.M. Skidmore)

VII. Other Committees Presenting Written Reports Only
   A. Court Rules, Forms, and Procedures Committee—Attachment 5
   B. Divided and Directed Trusteeships Ad Hoc Committee—Attachment 6
   C. Uniform Fiduciary Income & Principal Act Ad Hoc Committee—Attachment 7
D. Report from the Liaison to the Uniform Law Commission—Attachment 8

VIII. Other Business

IX. Adjournment

Next Probate Council Meeting: October 13, 2018, Somerset Inn, 2601 West Big Beaver Road, Troy, Michigan @ 9:00 am.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION OF
THE STATE BAR OF MICHIGAN

June 16, 2018
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 10:58 am.

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

   Marlaine C. Teahan, Chair
   Marguerite Munson Lentz, Chair Elect
   David P. Lucas, Secretary
   Kathleen M. Goetsch
   Nazneen Hasan
   Angela M. Hentkowski
   Hon. Michael L. Jaconette
   Mark E. Kellogg
   Robert B. Labe
   Michael G. Lichterman
   Katie Lynwood
   Richard C. Mills
   Melisa M.W. Mysliwiec
   Lorraine F. New
   Kurt A. Olson
   Christine M. Savage

   A total of 16 Council officers and members were present, constituting a quorum

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

   Christopher A. Ballard
   David L.J.M. Skidmore
   Christopher J. Caldwell

(2018 - 09 - a) (June 16, 2018)
Rhonda M. Clark-Kreuer
Raj A. Malviya
Andrew W. Mayoras
Nathan R. Piwowarski

b. The following officers and members of the Council were absent without excuse: none

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

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

e. Others present:
   J.V. Anderton
   Cynthia S. Andrews
   Aaron Bartell
   Georgette David
   Mark DeLuca
   John T. McFarland
   Gabrielle McKee
   Neal Nusholtz
   Paul Vaidya
   Nancy H. Welber

4. Lobbyist Report, Public Affairs Associates: The Council’s lobbyists, Becky Bechler and Jim Ryan reported on the legislative activity that affects the Section, including the bills referred to in the meeting agenda, as well as HB 5546 (real property tax uncapping), a meeting with the banker’s association representatives scheduled for July 2018, and legislation relating to patient advocates.

5. Minutes of April 21, 2018 Meeting of the Council: it was moved and seconded to approve the Minutes of the April 21, 2018 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.

(2018 - 09 - a) (June 16, 2018)
6. Treasurer’s Report: the Chair suspended the Agenda to refer to the Treasurer’s Report included with the Agenda supplemental materials (as posted on the website)

7. Chair’s Report – Marlaine C. Teahan: the Chair gave a report, including matters described in the Chair’s written report, which was included with the meeting materials:
   a. the suggestions from Section members for Council Action received by the Chair at the ICLE Probate and Estate Planning Institute (list included with the meeting materials); the Chair recommended various Council committees to handle the various suggestions
   b. the Section’s annual meeting will be held on September 8, 2018, at the University Club, in Lansing.
   c. the Chair stated that the Council’s ad hoc Committee on Electronic Wills needed more members, and invited contact with Doug Mielock or the Chair by individuals with an interest in so serving.

8. Committee Reports Requiring Votes
   a. Committee on Special Projects (CSP) - Katie Lynwood: Ms. Lynwood reported:
      i. that the CSP discussed a new legislative initiative relating to undisclosed trusts, as described in a Memorandum presented to the CSP, and included with the agenda materials for the CSP meeting. CSP’s motion is:

         The Probate and Estate Planning Section supports (i) a bill to amend 1998 PA 386, entitled “estates and protected individuals code” by adding new section 7409a (MCL 7409a), as presented to the Council by CSP; (ii) with the addition of the phrase “acting in a fiduciary capacity,” to proposed section 7409a(5)(e) immediately after the first use of the term “power holder” in such section; and (iii) with the authority of the CSP Chair to consent to non-substantive changes to such proposal on behalf of the Section

         The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 16 in favor of the motion (including one vote that had been communicated to the Secretary in writing), 1 opposed to the motion, 0 abstain, and 6 not voting. The Chair declared the motion approved.

(2018 - 09 - b) (June 16, 2018)
Hon. Michael L. Jaconette, Council member, stated that he would present the Section’s public policy position to the Michigan Probate Judges Association, for discussion and comments by that Association.

ii. that the CSP discussed a report to CSP by Christine Savage, materials for which are included with the agenda materials for the CSP meeting.

iii. that the CSP discussed changing the CSP’s and the Council’s meeting days to Fridays. CSP recommended to the Council that the CSP and Council meetings remain on Saturday.

The following motion was made by Ms. Mysliwiec from the floor and seconded by Ms. Hentkowsi:

To change the regularly-scheduled meeting days of meetings of the CSP and Council from Saturday to Friday

A requested amendment to the motion was not accepted. Following discussion, the Chair called the question. The Chair stated that this would not be a public policy position of the Section, but the Chair ordered a show of hands vote on the motion. The Secretary recorded the vote of 12 in favor of the motion (including 4 votes that had been communicated to the Secretary in writing), 6 opposed to the motion, 3 abstain, and 2 not voting. The Chair declared the motion approved.

b. Nominating Committee - Amy Morrissey: Ms. Morrissey presented the report of the Nominating Committee, included with the meeting materials. The Chair called for nominations from the floor, and none were offered. The Chair stated that the nominations would be voted upon at the Section’s annual meeting on September 8, 2018 and announced that nominations were closed.

c. Electronic Communications Committee - Mike Lichterman: Mr. Lichterman presented the report of the Electronic Communications Committee, included with the meeting materials. Mr. Lichterman stated that the Section’s budget does not provide for payment to the State Bar for the preservation of the Section’s mailing list archives. The Committee’s motion is:

The Probate and Estate Planning Section’s 2017 - 2018 budget is amended to include and authorize payment of up to $500.00 to the State Bar of Michigan for the importation of the
Section’s mailing list archive into the State Bar of Michigan’s SBM Connect.

Following discussion, on voice vote, the Chair declared the motion approved.

**d. Membership Committee - Rob Labe:** Mr. Labe referred to the Committee’s report, included with the meeting materials.

The following motion was made by Mr. Gregory from the floor and seconded by Ms. Teahan:

The Probate and Estate Planning Section’s 2017 - 2018 budget is amended to include and authorize payment of up to $5,000.00 to ICLE to sponsor a networking lunch at the 2019 Drafting Estate Planning Documents seminar in Plymouth.

Following discussion, on voice vote, the Chair declared the motion approved.

**9. Oral Committee Reports (No Vote Required):** the Chair noted the several reports that were included with the meeting materials.

**a. Real Estate Committee - Mark Kellogg:** Mr. Kellogg referred to the Committee Chair’s Memorandum included with the meeting materials, and made some remarks about the Committee’s activity with respect to the Breakey case and SB 540. Regarding HB 4905, Mr. Kellogg reported that the phrase “is not occupied” was deleted from the bill, but the Council’s recommendation that the phrase “is not leased” was not deleted from the bill; Mr. Kellogg reported that he would contact the Council’s Legislation Development and Drafting Committee, to inquire whether that Committee would propose further action to the Council.

**b. Amicus Committee - Andy Mayoras**

i. The Chair referred to a Memorandum from David L.J.M. Skidmore, on behalf of the Committee, included with the Supplement to the meeting materials.

ii. The Chair referred to an Application for Consideration, presented to the Committee by David L.J.M. Skidmore, in litigation captioned Faupel v. Giffin, which Application is included with the meeting materials. Kurt Olson stated that Mr. Skidmore, a member and Chair of the Committee, recused himself from consideration of the Application, since Mr. Skidmore was the applicant. Mr. Olson stated that the Committee did not feel that the matter was ripe for action.

(2018 - 09 - a) (June 16, 2018)
by the Council, and the Committee recommends that the Council take no action at this time. The Committee’s motion is:

The Probate and Estate Planning Section does not authorize an amicus filing, as of the date of adoption of this resolution, as described in the Application for Consideration dated May 22, 2018, regarding the Faupel matter, in the form presented to the Council.

Following discussion, on voice vote with one abstention, the Chair declared the motion approved and asked Mr. Olson to inform the applicant that his application was denied.

c. Court Rules, Forms & Proceedings Committee ADR Summit - Andy Mayoras: Mr. Mayoras referred to the Committee’s memo and Report included with the meeting materials.

10. Other Business

a. The Chair referred the Council to the “save the date” Memorandum from Meg Lentz (the Chair Elect)

There was no other business offered or requested.

11. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:05 pm.

Respectfully submitted,
David P. Lucas, Secretary
Motions for Vote by Probate Council. The Chair makes the following motions:

A. To authorize the Chairperson and the Chairperson-Elect to appoint chairpersons for each of the Section’s committees from members of the Section and to report such appointments at the next meeting of the Council. Such chairpersons to serve for the October 2018 through September 2019 fiscal year.

B. To approve populating certain committees by certain officers:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Members by Virtue of Being a Present or Past Officer</th>
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</thead>
<tbody>
<tr>
<td>Annual Meeting</td>
<td>Chairperson-Elect.</td>
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<tr>
<td>Awards Committee</td>
<td>Ex-officos who were the Chair during the 4th, 5th, and 6th year prior to the current year. Chair of the Committee will be the ex-officio who was Chair 4 years prior to the current year.</td>
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<tr>
<td>Budget Committee</td>
<td>Current Treasurer and the Treasurer from the immediately prior two years. Chair is the immediate past Treasurer.</td>
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<tr>
<td>Planning Committee</td>
<td>Chairperson-Elect</td>
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<tr>
<td>Probate Institute</td>
<td>Vice-Chairperson</td>
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Note: per Section 4.1.1 of the Bylaws, the Nominating Committee will consist of the three immediately past Chairpersons of the Section, unless the committee is otherwise appointed by the Chairperson and the Chairperson-Elect. This motion is not changing the composition of the Nominating Committee.

C. To authorize each chairperson of a committee of the Section not mentioned in the prior motion to appoint members of such committee from members of the Section, to serve for the October 2018 through September 2019 fiscal year. Each chairperson shall send to the Chairperson, the Chairperson-Elect, and the Secretary a list of the committee members prior to the November meeting of the Council.

D. To change the name of the Mardigian Case Review & Drafting Ad Hoc Committee to the Lawyer Drafter/Beneficiary Ad Hoc Committee.

E. To authorize the Chairperson and the Chairperson-Elect to create or delete Ad Hoc Committees as they determine in their discretion and to modify the mission of any Committee as they determine in their discretion.
## 2018-2019 Plan of Work

<table>
<thead>
<tr>
<th>Section Initiatives</th>
<th>Respond to Others’ Initiatives</th>
<th>Outreach to Section or Community</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fall 2018 priority</strong></td>
<td>Obtain passage of:</td>
<td>• Respond if needed to HB 4751, 4969</td>
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<tr>
<td>Omnibus EPIC</td>
<td>• Respond re HB 4684, 4996 (visitation of isolated adults)</td>
<td>• State Bar Journal theme issue (Nov. 2018)</td>
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<tr>
<td>ART, SB 1056, 1057, 1058</td>
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<td>• Consider initiatives for involving younger lawyers, increasing diversity.</td>
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<td>Certificate of Trust, HB 5362, 5398</td>
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<td>• Promote “Who Should I Trust” in October 2018?</td>
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<td>Modify Voidable Transfers Act to fix glitch</td>
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<td>• Update information regarding members, committees, etc. on website</td>
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<td>Divided and Directed Trustees act, HB 6129, 6130, 6131</td>
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<td>Uncapping bill, SB 540, HB 5546</td>
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<tr>
<td><strong>Spring 2019 priority</strong></td>
<td>• Lawyer drafter/beneficiary</td>
<td>• Annual Probate Institute (May/June 2019)</td>
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<td>• TBE Trusts</td>
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<td>• Community Property Trusts</td>
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<td>• Premarital property act</td>
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<td>• Undisclosed trusts</td>
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<td><strong>Ongoing</strong></td>
<td>• SCAO meetings</td>
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<td>• Review of forms and court rules for changes needed by legislative changes</td>
<td>• Modest Means Work Group</td>
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<td>• E-filing in courts</td>
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<td>• Joint event with other bars like the taxation section or business law section?</td>
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<td>• Review brochures on website. Need to be updated?</td>
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<td><strong>Secondary priority</strong></td>
<td>• Review Uniform Fiduciary Income and Principal Act</td>
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<td>• No liability for trustee of ILIT (SB 644 stalled)</td>
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<td><strong>Future projects</strong></td>
<td>• Legislative fix for who does attorney represent when attorney represents fiduciary</td>
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<td>• Update supervision of charitable trusts act?</td>
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<td>• Revise nonprofit corporation act so charity can clearly act as trustee</td>
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<td>• Statutory authority for private trust companies.</td>
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MEMORANDUM

TO: Council of the Probate and Estate Planning Section of the State Bar of Michigan
FROM: Marguerite Munson Lentz
DATE: August 31, 2019
SUBJECT: Chair’s Dinner and October Meeting

<table>
<thead>
<tr>
<th>Event</th>
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<tbody>
<tr>
<td>Chair’s Dinner (for Council members, ex-officios, liaisons, and spouses)</td>
<td>October 12, 2018</td>
<td>6:00 pm</td>
<td>The Village Club, 190 East Long Lake Road, Bloomfield Hills, MI 48304</td>
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<tr>
<td>October Council Meeting</td>
<td>October 13, 2018</td>
<td>9:00 am</td>
<td>Somerset Inn, 2601 West Big Beaver Road, Troy, MI 48084</td>
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</tbody>
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NOTE NEW LOCATION
Attachment 3
To: Probate and Estate Planning Council

From: Legislative Development and Drafting Committee

Re: September 2018 Committee Report

Since our last Council meeting, our Committee has been active in the following areas:

- **Omnibus.** We have reviewed the LSB bluebacks for the EPIC omnibus. The sponsors aim to introduce the bills in early September.

- **MBA meeting.** Over the last week, we have met twice with representatives of the Michigan Bankers Association’s general counsel committee to discuss entireties trusts and certificates of trust existence.

- **Certificates of trust (HB 5362 and 5398).** The MBA’s remaining reservation regarding the certificate of trust proposal concerns representations concerning the trust’s revocability. The bankers remain concerned that our proposal would damage their ability to sell paper on the secondary market. They have committed to seek feedback from Fannie/Freddie/USBank (secondary market buyers) regarding this concern. There will be a September 25 hearing in the House Judiciary Committee on this proposal and there are very few session days left. To give us some tactical flexibility during lame duck, we will ask the Council to vote to authorize the committee chair to request a substitute to the current cert proposal that would remove our desired changes concerning revocability.

- **Entireties trusts (SB 905).** The MBA has not committed to closing the list of questions and concerns it has regarding the entireties trust proposal. But here is the current list:
  - Spouses’ individual pre-transfer liens. In essence, the MBA wants for us to restate the law regarding this issue, as was done in the domestic asset protection trust law.
  - As with the DAPT proposal, MBA wants statutory language expressly allowing a lender to require that borrower give notice before transferring into a TBE trust.
  - They asked, should a TBE trust have the name have “entireties” in it? They seem convinced that this would be unwieldy for converting existing trusts into TBE trusts. They did ask us to consider making a linked change to CoT statute requiring disclosure in the cert as to whether any assets receive TBE treatment.
They have asked us to consider requiring a specific reference to statute in trust instrument.

They want us to consider how the statute deals with real property in existing trusts that are converting into TBE trusts. For example, should the statute require that the settlors record a deed, recording a cert that gives notice of the TBE treatment, or something similar?

Eligible property. The MBA wants something allowing TBE protection only for assets that could otherwise be held TBE. This is an important objection, and would represent a significant giveaway if we accede to it. Even if we agree to it, there are thorny drafting questions as to how we carve out ineligible property (Specific reference or general statement?).

Burden of proof re protection. They do not like the clear and convincing evidence standard. They likely would be amenable to making the standard parallel with the voidable transfers provision, MCL 566.35(e).

**Attorney-in-Fact’s Authority to Create a Trust.** This has proven to be far more complicated than we originally appreciated. We’ve continued to discuss ways in which we could clarify/confirm that an attorney-in-fact (if the power’s conferred by the durable power of attorney) may create a trust on an incapacitated principal’s behalf. This seems unlikely to be included in the EPIC omnibus at this point. We may have proposed legislation ready for introduction in the next legislative session.

**Prebate.** We’ve begun exploring antemortem validation/statute of repose provisions for both wills and trusts. Materials are included in the CSP report. This is a complex, long-term effort. Aaron Bartell has taken the lead on this project.

**SLATs.** We’ve identified the potential need for a technical fix concerning spousal lifetime access trusts. Rob Tiplady is spearheading this effort. We hope to have proposed legislation ready for introduction in the next legislative session.

**Misc.** We have and will consider a number of other ideas:

- Consider peeling back the “dispensing power” provision, MCL 700.2503, in light of the Altia (“never-signed will”) and Horton (“Evernote will”) opinions. We would want to hear from our amicus committee and Council before diving into this project.

- Consider a post-Erwin fix (willfully absent spouse). We would want to hear from our amicus committee and Council before proceeding.
o Consider amending Section 7105(2) to make application of 7603(2) mandatory. Currently, 7603(2) can be drafted around in a trust so that a trustee need not report to anyone if the trustee reasonably believes that the settlor is an incapacitated individual. Our initial sense was that, if Council took a public policy position in favor of silent trusts last week, do we really want to make it harder for a settlor to disclose the extent of their wealth or the nature of their planning?

o Address fact that Section 7803 has the word “impartiality” in title of Section but does not address this concept in the text of the Section. Add into text or remove from title. [Section 1212 includes a trustee's duty to be impartial.]

o UPC 6-102, Liability of Nonprobate Transferees For Creditor Claims and Statutory Allowances. Initial thoughts from the committee is that this would create an easy opening for enhanced Medicaid estate recovery efforts, so it may be a no-go.

o UPC 6-201 to 6-227, Uniform Multiple-Person Accounts Act (1989/1998), as Part 2 of Article 6 of EPIC.

o 6-401 to 6-417, Uniform Real Property Transfer on Death Act. Josh Ard chair committee on this 6-7 years ago. Katie sat on this committee. Should revisit their work product. As with 6-102, initial thought was that opening this issue open would invite Medicaid estate recovery efforts.

o Technical definitional fix to MCL 700.3206.
Hi Nathan:
I’ve been thinking re the Certificate of Trust.

Here’s my thoughts:

At the Sept 8 CSP/probate council meeting, I think we need to request approval to revise the one sentence about revocability to the way MBA wants it (meaning no change from present law for that section).
   a) My sense is that the Republican controlled legislature is not going to pass anything if the MBA objects. Therefore, we are stuck with the existing law about revocability because that is what MBA wants. The only question is whether we get the other changes we want.
   b) The hearing on 9/25 may be the last or best chance of getting a substitute bill which has the language MBA wants and still get it passed this year, so we need to be prepared to offer it.
   c) I am skeptical that the MBA will receive a positive answer about our proposed language from their contacts at Freddie Mac or Fannie Mae. Big bureaucracy, no benefit to them to change, not important enough to them to spend time dealing with it.

Personally, I can live with the original language because I never give a Trust Protector, etc., the power to revoke. Power to amend maybe or power to change trustees, but not revoke. And the language only asks who has the power to revoke.

Your thoughts?

Meg

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email: mlentz@bodmanlaw.com
My biography on bodmanlaw.com
Bodman is a Corp! Magazine "Diversity-Focused Company"

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A bill to amend 1991 PA 133, entitled "Recording Trust Agreement or Certificate of Trust Existence and Authority," by amending section 1, section 2, section 3.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sect. 1. An instrument conveying, encumbering, or otherwise affecting an interest in real property, executed pursuant to an express trust, may be accompanied either by a copy of the trust agreement or by a certificate of trust existence and authority, as described in sections 2 and 3. THE OPERATIVE TRUST INSTRUMENT OR TRUST INSTRUMENTS, OR A CERTIFICATE OF TRUST THAT COMPLIES IN ALL RESPECTS WITH MCL 700.7913 AND CONTAINS THE LEGAL DESCRIPTION OF THE AFFECTED REAL PROPERTY.

Sec. 2. A certificate of trust existence and authority shall contain all of the following information:

(a) The title of the trust.

(b) The date of the trust agreement and any amendments to the trust agreement.

(c) The name of the settlor or grantor and the settlor's or grantor's address.

(d) The names and addresses of all of the trustees and successor trustees.

(e) The legal description of the affected real property.

(f) Verbatim reproductions of provisions of the trust agreement, and any amendments to the trust agreement, regarding all of the following:

(i) The powers of the trustee or trustees relating to real property or any interest in real property and restrictions on the powers of the trustee or trustees relating to real property or any interest in real property.

(ii) The governing law.

(iii) Amendment of the trust relating to the trust provisions described in subdivision (a) to (f)(ii).
(g) Certification that the trust agreement remains in full force and effect.

Sec. 4. [Maintain]

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

Sec. 5. [Maintain]

A purchaser or other party relying upon the information contained in a recorded certificate of trust existence and authority shall be afforded the same protection as is provided to a subsequent purchaser in good faith under section 29 of chapter 65 of the Revised Statutes of 1846, being section 565.29 of the Michigan Compiled Laws, and shall not be required to further examine the trust agreement, unless an instrument amending or revoking the trust agreement or certificate of trust existence and authority is recorded in the same office in which the trust agreement or certificate of trust existence and authority was recorded.
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 7913 (MCL 700.7913), as amended by 2000 PA 177
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

(b) The name and address of the currently acting trustee OR ALL CURRENT TRUSTEES OF THE TRUST.

(c) The powers of the trustee relating to the purposes for which the certificate OF TRUST is being offered.

(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust, THE AUTHORITY OF THE SETTLOR TO REVOKE THE TRUST.

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

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

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

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

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from the TRUST INSTRUMENTS original trust instrument and later amendments TO THE TRUST INSTRUMENT that designate the trustee and confer upon the trustee the power to act in the pending transaction.
(6) A person who acts in reliance upon a certificate of trust without knowledge that representations contained in the certificate are incorrect is not liable to any person for so acting and may assume without inquiry the existence of THE TRUST AND THE OTHER the facts contained in the certificate OF TRUST.

(7) A person who is good faith enters into a transaction in reliance upon a certificate OF TRUST may enforce the transaction against the trust property as if the representations contained in the certificate OF TRUST were correct.

(8) A person WHO MAKES [making] a demand for the trust instrument in addition to a certificate of trust or excerpts OF THE TRUST INSTRUMENT is liable for damages, costs, expenses, and legal fees if the court determines that the person WHO MADE THE DEMAND did was not ACT acting pursuant to a legal requirement TO in demand demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding THAT CONCERNS concerning the trust.
HOUSE BILL No. 5362


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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
A bill to amend 1991 PA 133, entitled
"An act to allow the use and recording of certain documents
regarding trusts in the case of real property that is conveyed or
otherwise affected by a trust; and to prescribe their effect,"
by amending the title and sections 1 and 5 (MCL 565.431 and
565.435); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

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

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

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

Sec. 5. A purchaser or other party relying upon the
information contained in a recorded certificate of trust
existence and authority shall be afforded UNDER SECTION 7913 OF THE
ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913,
HAS the same protection as is provided to a subsequent purchaser in
good faith under section 29 of chapter 65 of the Revised Statutes
of 1846 RS 65, being section MCL 565.29. of the Michigan Compiled
Laws, and shall—A PURCHASER OR OTHER PARTY DESCRIBED IN THIS
SECTION IS not be required to further examine the trust agreement,
INSTRUMENT, unless an instrument amending or revoking the trust
agreement INSTRUMENT or certificate of trust existence and
authority UNDER SECTION 7913 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, is recorded in the
same office in which the trust agreement INSTRUMENT or certificate
of trust existence and authority UNDER SECTION 7913 OF THE ESTATES
AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, was
recorded. AS USED IN THIS SECTION, "TRUST INSTRUMENT" MEANS THAT
TERM AS DEFINED IN SECTION 7103 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7103.
SENATE BILL No. 905

March 15, 2018, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," (MCL 700.1101 to 700.8206) by adding section 7509.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 7509. (1) ANY PROPERTY CONVEYED BY A SETTLOR OR A SETTLOR'S SPOUSE, OR BOTH, TO A TRUSTEE OF 1 OR MORE TRUSTS, AND THE PROCEEDS OF THAT PROPERTY, HAVE THE SAME IMMUNITY FROM THE CLAIMS OF EACH SPOUSE'S SEPARATE CREDITORS IN THE SAME MANNER AS IF THE PROPERTY OR ITS PROCEEDS WERE OWNED BY THE SPOUSES AS TENANTS BY THE ENTIRETY, WHILE ALL OF THE FOLLOWING APPLY:

(A) THE SPOUSES REMAIN MARRIED.

(B) THE PROPERTY OR ITS PROCEEDS CONTINUE TO BE HELD IN TRUST BY A TRUSTEE.
(C) The trust or trusts are revocable by either spouse acting alone or both spouses acting together.

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

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

(2) On the death of the first spouse, all of the following apply:

(A) All property held in trust that, under subsection (1), was immune from the claims of the deceased spouse's separate creditors immediately before his or her death continues to have immunity from the claims of the decedent's separate creditors as if both spouses were still alive.

(B) To the extent that the surviving spouse remains a distributee or permissible distributee of the trust or trusts and has the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (1), was immune from the claims of the deceased spouse's separate creditors, the property is subject to the claims of the separate creditors of the surviving spouse.

(C) If the surviving spouse remains a distributee or permissible distributee of the trust or trusts, but does not have the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (1), was immune from claims of each spouse's separate creditors, the property continues to have immunity from
THE CLAIMS OF THE SEPARATE CREDITORS OF THE SURVIVING SPOUSE.

(3) THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER SUBSECTIONS (1) AND (2) MAY BE WAIVED BY THE EXPRESS PROVISIONS OF A TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF CONVEYANCE, OR BY THE WRITTEN CONSENT OF BOTH SPOUSES, AS TO ANY SPECIFIC CREDITOR OR ANY SPECIFICALLY DESCRIBED TRUST PROPERTY, INCLUDING ALL SEPARATE CREDITORS OF A SPOUSE OR ALL PROPERTY CONVEYED TO A TRUSTEE.

(4) ON THE REVOCATION OF A TRUST DESCRIBED IN SUBSECTION (1), ALL OF THE PROPERTY HELD BY THE TRUSTEE OF THE TRUST AT THE TIME OF THE REVOCATION IS CONSIDERED TO BE HELD BY BOTH SPOUSES AS TENANTS BY THE ENTIRETY.

(5) IN A DISPUTE RELATING TO THE IMMUNITY OF TRUST PROPERTY FROM THE CLAIM OF EITHER SPOUSE'S SEPARATE CREDITOR UNDER THIS SECTION, THE CREDITOR HAS THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE TRUST PROPERTY IS NOT IMMUNE FROM THE CREDITOR'S CLAIMS.

(6) A TRANSFER TO A TRUST DESCRIBED IN SUBSECTION (1) DOES NOT AFFECT OR CHANGE ANY MARITAL PROPERTY RIGHTS OF EITHER SPOUSE TO THE TRANSFERRED PROPERTY OR INTEREST IN THE TRANSFERRED PROPERTY IMMEDIATELY BEFORE THE TRANSFER IN THE EVENT OF DISSOLUTION OF MARRIAGE OF THE SPOUSES, UNLESS BOTH SPOUSES EXPRESSLY AGREE OTHERWISE IN WRITING. ON ENTRY OF A JUDGMENT OF DIVORCE OR ANNULMENT BETWEEN THE SPOUSES, THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER SUBSECTION (1) TERMINATES.

(7) THIS SECTION APPLIES ONLY TO PROPERTY CONVEYED TO A TRUSTEE AFTER DECEMBER 31, 2018, OR HELD BY A TRUSTEE ACTING PURSUANT TO A TRUST INSTRUMENT DATED AFTER DECEMBER 31, 2018.
(8) AS USED IN THIS SECTION, "PROCEEDS" MEANS:

(A) PROPERTY ACQUIRED BY A TRUSTEE ON THE SALE, LEASE,
LICENSE, EXCHANGE, OR OTHER DISPOSITION OF PROPERTY HELD BY A
TRUSTEE.

(B) INTEREST, DIVIDENDS, RENTS, AND OTHER PROPERTY COLLECTED
BY A TRUSTEE ON, OR DISTRIBUTED ON ACCOUNT OF, PROPERTY HELD BY A
TRUSTEE.

(C) RIGHTS ARISING OUT OF PROPERTY HELD BY A TRUSTEE.

(D) CLAIMS AND RESULTING DAMAGE AWARDS AND SETTLEMENT PROCEEDS
ARISING OUT OF THE LOSS, NONCONFORMITY, OR INTERFERENCE WITH THE
USE OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO,
PROPERTY HELD BY A TRUSTEE.

(E) INSURANCE PROCEEDS OR BENEFITS PAYABLE BY REASON OF THE
LOSS OR NONCONFORMITY OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR
DAMAGE TO, PROPERTY HELD BY A TRUSTEE.

(F) PROPERTY HELD BY A TRUSTEE THAT IS OTHERWISE TRACEABLE TO
PROPERTY ORIGINALLY CONVEYED TO A TRUSTEE OR THE PROPERTY PROCEEDS
DESCRIBED IN SUBDIVISIONS (A) TO (E).
On August 8, 2018, the Treasury Department issued proposed regulations under section 199A to provide further detail on the applicability of the 20% deduction on qualified business income ("QBI"), which was enacted under the 2017 Tax Cuts and Jobs Act. The regulations are not yet binding because they are not yet final, but taxpayers are permitted to rely upon them. It is of note that in certain cases, clarifications have been made, and in others, significant questions still exist.

This addresses some of the highlights from the 184 pages of proposed regulations which cover additional items and/or detail not addressed in this tax nugget (e.g. guidance on what constitutes a trade or business, determination of W-2 wages and unadjusted basis, calculation of QBI and REIT dividends). Therefore, while a comprehensive overview of the regulations is beyond the scope of a brief note, the purpose of this summary is to highlight key areas to provide estate planners with some general knowledge for providing guidance to taxpayers with businesses that may qualify for this significant tax savings opportunity.

- The 20% deduction for QBI is available without limitation to pass-through income under $315,000 for taxpayers married filing jointly, and under $157,500 for taxpayers who are single filers.

- For taxpayers who exceed the above thresholds, but have QBI under $415,000 (married filing jointly) or $207,500 (single), the deduction begins to be limited.

- For taxpayers who are involved in a "specialized service trade or business" ("SSTB") and whose income exceeds $415,000 (MFJ) or $207,500 (single), no deduction is permitted.

- For taxpayers who are not involved in such a business, but exceed those same thresholds, the deduction limitation is the greater of: (a) 50% of W-2 wages paid with respect to the QBI; or (b) the sum of 25% of W-2 wages paid with respect to QBI plus 2.5% of the unadjusted basis of qualified property determined immediately after its acquisition.

**Specialized Service Trade or Business.** A significant question after the passage of §199A had to do with what qualifies as a SSTB. The statute and the proposed regulations enumerate several such categories, concluding with a catch-all "where the principal asset of the trade or business is the reputation or skill or one or more owners." The statute provided little guidance here; the proposed regulations expand on this concept. Specifically, this limitation does not apply unless one of the following is true:

- Fees or other compensation are received for endorsement of products or services.
- License fees are received for the use of an individual's image, likeness, name, signature, voice, trademark, or other symbols.
• Compensation (including ownership of an entity in lieu of cash) is received for appearing at media events.

The proposed regulations provide an example of a celebrity chef who owns a restaurant. The income earned from the restaurant operations would qualify for the §199A deduction, but income earned as a license fee for branding the restaurant or to sell cookware would be considered SSTB income. In addition, there is also a de minimis exception if the income from the SSTB is less than 10% of gross receipts if the annual receipts are less than $25,000,000, or 5% of gross receipts if annual receipts are in excess of $25,000,000.

"Crack and Pack” Planning: A proposed planning technique that emerged following the issuance of §199A is the so-called "crack and pack” technique. The concept is that a business that qualified as a SSTB but also included non-SSTB operations could be split into several different entities: the SSTB would stand alone, with the deduction unavailable, but the ancillary business providing other services (such as management or billing) would still be permitted to take the §199A deduction.

Generally, the proposed regulations will prohibit that technique. Entities created to provide products or services to a SSTB will be treated as part of the SSTB (meaning the deduction will not be allowed) if both of the following are true: (a) there is at least 50% common ownership between the entities (considering §267(b) attribution rules); and (b) the entity provides 80% of more of its services to the SSTB. Note that if the ancillary entity provides less than 80% of its products or services to the SSTB, then only that entity's income derived from the SSTB is subject to the rules prohibiting the deduction. Other non-SSTB income could qualify for the deduction.

Aggregation of Trusts: Another planning idea that emerged after the issuance of §199A was to divide business interests with QBI into several (many) separate trusts so that each trust would fall under the phase-out thresholds. With respect to grantor trusts, the grantor will be treated as the taxpayer, so dividing person’s ownership into separate grantor trusts will not permit each trust to be treated as a separate “individual” taxpayer with its own phase-in threshold for purposes of the §199A deduction. See Prop. Reg. 1.199A-1(a)(2). With respect to non-grantor trusts, each individual trust can be structured so that it is treated as a separate taxpayer for purposes of §199A, but if the grantor and beneficiaries are the same, it appears that the regulations may result in aggregation of the trusts for purposes of determining the deduction (i.e., under §643(f)). Therefore, one option may be to use several separate trusts all with different beneficiaries. Yet, it is still unclear whether this will work, as the regulations attempt to disregard any trusts created specifically for receiving the deduction under §199A. Some commentators have suggested that this specific provision exceeds the Treasury Department's scope of authority in issuing regulations.

Conclusion: Although the proposed regulations do provide clarity in some areas (e.g., certain SSTB rules), there are other areas where there is still significant uncertainty. The consensus among commentators appears to be that significant tax planning related to §199A will be difficult to accomplish until final regulations are issued, which is anticipated to be sometime in 2019.
Attachment 5
04919’17 * Draft 1
(Draft HB to amend MCL 720.220)

As you may recall from our June Report, Representative Runestad requested Council's feedback on 04919’17 Draft 1 before being introduced, and we provided the requested feedback.

Since then, a lot has transpired on the draft bill, and below is an update.

Rep. Runestad's office took our comments to heart and deleted a large portion of (1) of the statute. In July, Rep. Runestad's office contacted Council again for additional feedback on 04919’17 * Draft 1 (a copy of which is attached). Our suggested changes to 04919’17 * Draft 1 follow:

1) Suggested language for (1) of MCL 720.220:

If the state public administrator or a county public administrator is appointed personal representative of a decedent’s estate under this act, and a person with higher priority for appointment as personal representative under Section 3203 of the Estates and Protected Individuals Code, 1998 PA 386, MCL 700.3203, files a petition for appointment as successor personal representative, the state public administrator or the county public administrator shall file a resignation as personal representative under Section 3610(3) of the Estates and Protected Individuals Code, 1998 PA 386, MCL 700.3610.

[Note: by requiring a petition to be filed before a PA files a resignation, it requires probate court involvement and will allow the probate court to determine whether it makes economical sense to change PRs at that particular point in the administration of the estate and also to determine whether the potential successor PR is qualified, etc.]

2) Other than the portion of this statute that directs the state public administrator to deliver all money paid to it, as personal representative, to the state treasurer to be credited to the general fund of the state, we believe that all other portions of this section are unnecessary because they are already covered by EPIC. Under EPIC, a personal representative is entitled to reasonable compensation for services performed, and this is considered a cost and expense of administration which has the highest priority for payment from an estate. For this reason, most of (2) can probably be deleted. We’d suggest the following language, assuming the drafter agrees:
If the state public administrator is the personal representative of a decedent’s estate and the residue of the estate is not assigned to this state as an escheated estate, the state public administrator shall deliver all money paid to it as costs and expenses of administration to the state treasurer, to be credited to the general fund of the state.

If Representative Runestad’s office doesn’t believe the majority of (2) should be deleted as suggested, then, at a minimum, the language pertaining to “the order assigning the residue” must be either removed as unnecessary or changed to fit current law. Orders assigning residue are something that was required in estates administered in 1947 (when this Act was passed), but not any longer. Today, estates are closed many ways, all of which are described in Parts 10 and 11 of Article 3 of EPIC. Additionally, the language should be changed to allow the personal representative only reasonable compensation for services performed, not “all expenses incurred by the personal representative in administering the estate, together with other fees, compensation, and allowances.”

A phone conference was set up between Rep. Runestad's office, our lobbyist, the AG's office, Michael Moody (SCAO), and our Section in late July. That phone conference went very well. As a result, our suggested changes were sent to the bill drafter (on Rep. Runestad's request), and the bill drafter is working on an updated draft with our suggested language. See the attached email for more detailed information.

Respectfully submitted,

Melisa M. W. Mysliwiec
Probate; other; duties of state and county public administrators after discovery of heir; revise
Probate; other; Probate: wills and estates; State agencies (existing): attorney general

DRAFT 1

A bill to amend 1947 PA 194, entitled
"An act to provide for the administration of the estates of deceased persons in certain cases; to provide for the appointment of a public administrator for the state; to provide for the appointment of county public administrators; and to define and prescribe their powers and duties,"
by amending section 20 (MCL 720.220).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 20. Whenever the state public administrator or a county public administrator shall be appointed fiduciary of any estate under the provisions of this act, and it shall subsequently appear or be discovered that the deceased left surviving a husband, wife, or next of kin entitled to a distributive share in such estate, and such heir or next of kin shall, under the provisions of the general probate laws of this state, be competent and willing to administer such estate, the state public administrator or such county public administrator...
administer or shall nevertheless continue as fiduciary of such estate. When such fiduciary shall be if the state public administrator is the personal representative of a decedent's estate and the residue of the estate is not assigned to this state as an escheated estate, the judge of probate court, before making the order assigning the residue in any such of the estate, and wherein the residue is not assigned to the state of Michigan as an escheated estate, shall first allow and order paid to the said state public administrator out of the corpus principal of said the estate all of the expenses incurred by such fiduciary the personal representative in administering said the estate, together with such other fees, compensation, and allowances as are authorized by the general probate laws of this state and by order of such the probate judge court to be paid to such fiduciary out of such the personal representative from the estate. All monies so paid to the the state public administrator shall forthwith delivered by him deliver all money paid under this section to the state treasurer, who in turn, shall place such money to the credit of be credited to the general fund of this state.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
A bill to amend 1947 PA 194, entitled

"An act to provide for the administration of the estates of deceased persons in certain cases; to provide for the appointment of a public administrator for the state; to provide for the appointment of county public administrators; and to define and prescribe their powers and duties,"

by amending section 20 (MCL 720.220).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 20. (1) Whenever, if the state public administrator or a county public administrator shall be IS appointed fiduciary personal representative of any a decedent's estate under the provisions of this act, and it shall subsequently appear appears or be IS discovered that the deceased decedent left surviving a husband, wife, surviving spouse or next of kin entitled to a distributive share in such of the estate, and such THE heir or next of kin shall IS, under the provisions of the general probate laws

04919'17 Draft 1 DAW
of this state, be competent and willing to administer such THE
estate, the state public administrator or such THE county public
administrator shall nevertheless continue as fiduciary of such
estate. When such fiduciary shall be RESIGN AS PERSONAL
REPRESENTATIVE BY GIVING NOTICE AS REQUIRED UNDER SECTION 3610(3)
OF THE ESTATES AND PROTECTED INDI V IDUAL CODE, 1998 PA 386, MCL
700.3610. THE RESIGNATION IS SUBJECT TO THE SURVIVING SPOUSE OR
NEXT OF KIN APPLYING OR PETITIONING FOR APPOINTMENT AS SUCCESSOR
PERSONAL REPRESENTATIVE AS PROVIDED IN SECTION 3610(3) OF THE
ESTATES AND PROTECTED INDI V IDUAL CODE, 1998 PA 386, MCL 700.3610.
(2) IF the state public administrator IS THE PERSONAL
REPRESENTATIVE OF A DECEDENT'S ESTATE AND THE RESIDUE OF THE ESTATE
IS NOT ASSIGNED TO THIS STATE AS AN ESCHEATED ESTATE, the judge of
probate COURT, before making the order assigning the residue in any
such OF THE estate, and wherein the residue is not assigned to the
state of Michigan as an escheated estate, shall first allow and
order paid to the said state public administrator out of the corpus
PRINCIPAL of said THE estate—all of the expenses incurred by such
fiduciary THE PERSONAL REPRESENTATIVE in administering said THE
estate, together with such other fees, compensation, and allowances
as are authorized by the general probate laws of this state and by
order of such THE probate judge—COURT to be paid to such fiduciary
out of such PERSONAL REPRESENTATIVE FROM THE estate. All monies so
paid to the THE state public administrator shall be forthwith
delivered by him DELIVER ALL MONEY PAID UNDER THIS SUBSECTION TO
the state treasurer, who in turn, shall place such money to the
credit of BE CREDITED the general fund of the state.
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
Derek, the bill drafter, provides an email below confirming that the language provided will work and he will give us an updated draft early next week.

I would be happy to send that draft along to Stephanie for Probate Judges once we have it. Becky, if you get a chance will you please give her the information as well.

Thank you!

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From: Derek Walters <Dwalters@legislature.mi.gov>
Sent: Thursday, July 26, 2018 2:56 PM
To: Krista Vincent <kvincent@house.mi.gov>
Subject: RE: 04919'17 * Draft 1 Language from Probate section

Hi, Krista.

I’ve reviewed the suggested language from the probate section (below) and I think it works. I’ll try and get you a new draft by early next week.

Please let me know if you have any questions.

Thanks,
Derek

---

Derek A. Walters
Legal Counsel
Legislative Service Bureau, Legal Division
124 West Allegan, Third Floor
Lansing, MI 48909-7536
Email: dwalters@legislature.mi.gov
Telephone: (517) 373-9425
Good afternoon,

Rep. Runestad asked me to sincerely thank everyone for their time today and willingness to work to verify that our statutes are protecting heirs as intended.

I have copied our bill drafter Derek, who will be able to review this information when he is back in the office and give us feedback on the suggested changes and his recommendation for language from a drafting perspective and we can request a new draft.

Thank you again,

Krista Vincent
Legislative Director
Office of Rep. Jim Runestad
Serving the 44th District

517-373-2616
www.RepJimRunestad.com
As discussed during today’s conference call, below you’ll find the Probate and Estate Planning Section’s suggested changes to 04949’17 * Draft 1.

(1) Suggested language for (1) of MCL 720.220:

If the state public administrator or a county public administrator is appointed personal representative of a decedent’s estate under this act, and a person with higher priority for appointment as personal representative under Section 3203 of the Estates and Protected Individuals Code, 1998 PA 386, MCL 700.3203, files a petition for appointment as successor personal representative, the state public administrator or the county public administrator shall file a resignation as personal representative under Section 3610(3) of the Estates and Protected Individuals Code, 1998 PA 386, MCL 700.3610.

[Note: by requiring a petition to be filed before a PA files a resignation, it requires probate court involvement and will allow the probate court to determine whether it makes economical sense to change PRs at that particular point in the administration of the estate and also to determine whether the potential successor PR is qualified, etc.]

(2) Other than the portion of this statute that directs the state public administrator to deliver all money paid to it, as personal representative, to the state treasurer to be credited to the general fund of the state, we believe that all other portions of this section are unnecessary because they are already covered by EPIC. Under EPIC, a personal representative is entitled to reasonable compensation for services performed, and this is considered a cost and expense of administration which has the highest priority for payment from an estate. For this reason, most of (2) can probably be deleted. We’d suggest the following language, assuming the drafter agrees:

If the state public administrator is the personal representative of a decedent’s estate and the residue of the estate is not assigned to this state as an escheated estate, the state public administrator shall deliver all money paid to it as costs and expenses of administration to the state treasurer, to be credited to the general fund of the state.

If Representative Runestad’s office doesn’t believe the majority of (2) should be deleted as suggested, then, at a minimum, the language pertaining to “the order assigning the residue” must be either removed as unnecessary or changed to fit current law. Orders assigning residue are something that was required in estates administered in 1947 (when this Act was passed), but not any longer. Today, estates are closed many ways, all of which are described in Parts 10 and 11 of Article 3 of EPIC. Additionally, the language should be changed to allow the personal representative only reasonable compensation for services performed, not “all expenses incurred by the personal representative in administering the estate, together with other fees, compensation, and allowances.”

Please forward this to all the others. I would have, but I didn’t have everyone’s email addresses.

Thank you,

Melisa M. W. Mysliwiec, Chair
Court Rules, Forms & Procedures Committee
Probate and Estate Planning Section
State Bar of Michigan

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MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
From: James P. Spica
Re: Divided and Directed Trusteeships ad Hoc Committee (DDTC) Chair’s Report
Date: August 30, 2018

In order to allow the DDTC legislative proposal to be introduced in the Michigan Legislature in June (on Thursday, June 7, 2018 to be precise), I delayed three technical corrections that needed to be made to the draft House Bills initially prepared by the Legislative Service Bureau (LSB). The changes concerned a “tie bar,” the definition of “trust director” in section 7703a(24)(f), and a ULC-recommended amendment to section 7105(2)(b). Over the summer, with the help of Becky Bechler and Rep. Kesto’s Legislative Assistant, Morgan Pickering, I got the LSB to make those changes. So, we have technically accurate “substitutes” for HBs 6129, 6130, and 6131 in time for hearings this fall before the House Committee on Law and Justice.
Attachment 7
MEMORANDUM

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

From: James P. Spica

Re: Uniform Fiduciary Income and Principal Act ad Hoc Committee Chair’s Report

Date: August 30, 2018

With one hiatus in July (owing to the Uniform Law Commission’s Annual Meeting), the committee met bi-weekly (Wednesdays, from 1:00 to 2:30 PM) throughout the summer—from June 13 through August 22. The committee’s fall-term schedule is as follows:

- September 19
- October 3
- October 17
- October 31
- November 14
- November 28
- December 12

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 materials page 173
Attachment 8
MEMORANDUM

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

From: James P. Spica

Re: Uniform Law Commission Liaison Report

Date: August 30, 2018

UFIPA Approved

At its 127th Annual Meeting in July, the Uniform Law Commission approved the Uniform Fiduciary Income and Principal Act. The current form of the Act—which is subject to final Style Committee review and should be released in final form for enactment by the states sometime this fall—is available at:


Electronic Wills

The draft Electronic Will Act received its first reading at the Annual Meeting. The current draft is available at:


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