

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

**January 18, 2014
Lansing, Michigan**

Minutes

I. Call to Order

The Chair of the Section, Thomas F. Sweeney, called the meeting to order at 10:22 a.m.

II. Attendance

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

Sweeney, Thomas F.	Kerr, J. David
Imami, Shaheen I.	Lentz, Marguerite M.
Steward, James B.	Lucas, David P.
Teahan, Marlaine C.	Marquardt, Michele C.
Ard, W. Josh	Murkowski, Hon. David M.
Ballard, Christopher A.	Ouellette, Patricia M.
Bearup, George F.	Skidmore, David L.J.M.
Brigman, Constance L.	Spica, James P.
Clark-Kreuer, Rhonda M.	Taylor, Robert M.
	Vernon, Geoffrey R.

A total of 19 council members and officers were present representing a quorum.

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

Allen, Susan M.	New, Lorraine F.
Morrissey, Amy N.	Welber, Nancy H.

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

Robert D. Brower Jr.

Hon. Phillip E. Harter

E. Others in attendance:

Mark E. Kellog
Loukas P. Kalliantasis
Rick Mills
Kurt A. Olson
Rebecca Schnelzz

Nazneen H. Syed
Carol M. Hogan
Daniel W. Borst
Richard J. Siriani

Michael Lichterman
Jeanne Murphy
Kathleen M. Goetsch
Paul Vaidya

III. Introduction of Guests

IV. Minutes of December 14, 2013, Meeting of the Council

The minutes of the December 14, 2013, Meeting of the Council were included with the meeting materials posted on the Section's web page prior to the meeting. A few minor corrections were noted. Motion by Patricia M. Ouellette, second by Michele C. Marquardt, to approve the minutes as corrected. The motion was approved on a voice-vote with no nays or abstentions.

V. Treasurer Report – Marlaine C. Teahan

Marlaine C. Teahan presented the Treasurer's report (see Attachment A) and noted in particular the mileage rate change for 2014 to \$0.56 per mile. As of the date of our meeting, a revised Expense Reimbursement Form is not yet available from the State Bar. In the meantime, members will need to be sure to enter the correct rate and calculations themselves. Her report also provides an overview of the information to be supplied when submitting expense reimbursement requests.

VI. Chairperson's Report – Thomas F. Sweeney

Chairperson Sweeney reported that the Guardianship, Conservatorship, and End of Life Committee is continuing to work on its draft of a health care decision making guide; that should be ready for review by Council at the February meeting. He has asked Jeanne Murphy of ICLE for suggestions for disseminating the guide once it has been finalized.

Mr. Sweeney has asked ICLE to let us know what sort of cost savings are likely for their work on preparation of the Journal if we move to an electronic only publication (no paper printing).

VII. Report of the Committee on Special Projects – Marguerite M. Lentz

Marguerite M. Lentz presented the following report for CSP:

- CSP again discussed several proposed revisions to our current Bylaws as presented by the Bylaws Committee. (See materials included with Meeting Agenda). CSP approved those proposed revised Bylaws with minor wording revisions to Article 4 (see Attachment B-1 for the wording of the Proposed Bylaws as approved by CSP on January 18, 2014, and Attachment B-2 for the wording of the current Bylaws). Motion by Ms. Lentz to accept the recommendation of CSP to approve the proposed Bylaws, as revised at CSP (see Attachment B-1), for presentation to the Section membership at this year's annual meeting, including publishing the notice of the proposal as required under our current Bylaws. The motion was approved on a Council vote of 19-0, with no nays and no abstentions.
- CSP reviewed a report from our Ad Hoc Committee on Undue Influence Jury Instructions regarding proposed revisions to those instructions as published by the Michigan Committee on Model Jury Instructions (the "MJI Committee"). Comments are due by April 1, 2014. CSP recommends that Council submit comments and suggested alternative wording for those instructions. Council will again review this issue, probably at its next meeting.
- Jim Spica continued with his explanation and overview of the "directed trustees" proposal that he began at the last CSP meeting. That proposed legislation would amend the Michigan Trust Code to provide a statutory structure permitting separation of fiduciary responsibility between separate trustees for specified duties and obligations. (Mr. Spica's memo is Attachment C-1 and the legislative proposal Attachment C-2). The proposal allows clear separation of responsibilities between the separate trustees, but such trustees would not be co-trustees as that concept currently appears in the Michigan Trust Code. This proposal will be reviewed and discussed further at future CSP meetings.
- CSP discussed draft legislation to eliminate dower (see materials included with Meeting Agenda) and will likely continue that discussion at future meetings.

VIII. **Standing Committee Reports**

A. **Internal Governance**

1. Budget – James B. Steward

No report. The budget for this year was approved at our November meeting.

2. Bylaws – Nancy H. Welber

No further report – the committee's report appears under CSP.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Amy N. Morrissey

No Report.

5. Nominating – Douglas G. Chalgian

No Report.

6. Annual Meeting – Amy N. Morrissey

No Report.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – David L. Skidmore

No Report.

2. Probate Institute – Shaheen I. Imami

Mr. Imaami circulated the draft schedule for the Institute, and reported that the speakers have been finalized; moderators will be listed later. Speakers include: Bruce S. Ross – Fiduciary Litigation issues; William P. LaPiana – DOMA issues; and Samuel A. Donaldson – Charitable Giving.

3. State Bar and Section Journals – Amy N. Morrissey

No Report.

4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the committee has a meeting scheduled to review materials and discuss possible updates and revisions.

5. Electronic Communications – William J. Ard

No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Mr. Ballard reported that HB 5162 and SB 731 were introduced in December 2013 to allow naming a “funeral representative”. The Legislation and Lobbying Committee will watch these bills to see if they are moving forward, and if so will let Council know the status. SB 31-32 regarding insurable interests are still on the floor and action should be forthcoming. SB 425 was passed by the Senate last year to clarify that a trust beneficiary who resides in real estate owned by the trust can claim the personal residence exemption; but action in the House yet. As noted previously, in December

2013, HB 4064 was passed as 2013 PA 199 (see MCL 600.2137; 600.8344; 600.1428), along with HB 4532 (2013 PA 201; see MCL 600.832; 600.859; 600.1427). These acts will allow probate courts to keep records electronically, but the provisions for allowing the Probate Courts to charge fees for on-line access to court records was removed from the bills before they were passed. It was also noted that this is an election year, which will effectively shorten the year for getting any legislation passed.

2. Updating Michigan Law – Marguerite Munson Lentz

Ms. Lentz reported that the Committee is continuing to work on a proposed bill to deal with digital assets, as well as the proposed domestic asset protection trust (“DAPT”) legislation. The Committee is also working on the “directed trustees” proposed legislation as reported under CSP.

3. Insurance Committee – Geoffrey R. Vernon

Mr. Vernon reported, and as previously mentioned, SB 31-32 regarding insurable interests are still on the floor and action should be forthcoming. There does not appear to be opposition.

4. Artificial Reproductive Technology – Nancy H. Welber

In the absence of Nancy H. Welber, Christopher A. Ballard reported that the Committee is meeting regularly and continuing work on a proposed bill. The Committee has added some a few more members to provide additional input regarding these issues.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr -

No report

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

No Report.

3. Specialization and Certification – James B. Steward

No Report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt

Marlaine C. Teahan reported that the Committee has heard from all groups it contacted regarding the proposed court of appeals jurisdiction and procedural changes and will now submit the proposal to be drafted into the form of a legislative bill.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No Report.

F. Areas of Practice

1. Real Estate – George F. Bearup

Mr. Bearup reported that he has been in contact with Matt Blakely, the legislative director for Rep. Peter Pettalia, to see where things stand on our proposed amendment to PA 497 regarding our technical correction proposal. The information we are receiving from Representative Pettalia's office is that he and also Rep. John Walsh (Republican, Livonia) are interested in pursuing an amendment. Further discussions will be forthcoming. See Attachment D.

2. Transfer Tax Committee – Lorraine F. New

Ms. New reported on the current status of Michigan's treatment of income tax returns for same sex couples that are legally married and questions that remain. See Attachment E.

3. Charitable and Exempt Organization – Christopher A. Ballard

Mr. Ballard reported that SB 623 624 625 have been introduced. These bills represent a major overhaul of non-profit corporation act. There is some resistance from the Corporation Bureau. Changes include how boards operate; reduces director liability; changes for private foundations.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

Committee is continuing to work on its draft of a health care decision making guide; that should be ready for review by Council at the February meeting.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison –

Sharri L. Rolland Phillips has resigned as the Alternative Dispute Resolution Section Liaison. We do not have a liaison to that Section at present.

2. Business Law Section Liaison – John R. Dresser

No Report.

3. Elder Law Section Liaison – Amy R. Tripp

No Report.

4. Family Law Section Liaison – Patricia M. Ouellette

Ms. Ouellette reported that the Family Law Section is concerned about notice to a spouse when real estate is being transferred if dower is eliminated. See position statement, Attachment F. However, such a notice requirement raises concerns about real estate title problems arising many years in the future.

5. ICLE Liaison – Jeanne Murphy

No Report.

6. Law Schools Liaison – William J. Ard

No Report.

7. Michigan Bankers Association Liaison – Susan Allan

No Report.

8. Michigan Probate Judges Association Liaison – Hon. Judge David M. Murkowski

No Report.

9. Probate Registers Liaison – Rebecca A. Schnelz

No Report.

10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz

Ms. Schnelz reported that SCAO Guardianship/conservatorship forms committee is working on a re-draft of PC 666 to utilize wording at the 6th grade level. This work will continue for other forms as well. She also noted that the new probate analyst at SCAO is Robin K. Eagleson (formerly a guardian ad litem from Ingham). Robin's contact information is: Robin K. Eagleson, JD, Management Analyst, Trial Court Services, State Court Administrative Office; Direct Line: 517-373-5542; Email: eaglesonr@courts.mi.gov

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No Report.

12. State Bar Liaison – Richard Siriani

No Report.

13. Taxation Section Liaison – George W. Gregory

See report attached to the Council meeting materials.

IX. **Other Business**

None.

X. **Hot Topics**

None.

XI. **Adjournment**

Meeting adjourned by Chair Thomas F. Sweeney, at 11:15 a.m.

ATTACHMENT A

Probate and Estate Planning Council
Treasurer's Report
January 18, 2014

Income/Expense Reports

The State Bar of Michigan (SBM) audited year-end report for fiscal year 2012-13 is attached. An unaudited report through November 30, 2013 is also attached.

New Mileage Reimbursement Rate Effective 1/1/2014

The IRS business mileage reimbursement rate for 2014 is \$0.56 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms.

Expense Reimbursement Requests

Please keep in mind the following when submitting expense reports:

- All expense reimbursement forms are to be submitted to the State Bar of Michigan within 30 days of incurring reimbursable expenses.
- As of the date of this report, the expense reimbursement forms have not yet been modified to reflect the new mileage rate of \$0.56; therefore, please modify the mileage rate on the form until such time that it is updated.
- The purpose for reimbursement of mileage must be on the form.
- The beginning and ending points of travel must be included on the form.
- A proper description for mileage reimbursement for a Council Member living in Grand Rapids would be: P&EP Council meeting; Grand Rapids to Lansing and return trip.
- Sign your form, state your title (e.g., Council Member, Officer, or Ex Officio), and date it.
- Receipts are required for expenses over \$5.00. Credit card statements are not sufficient.
- Consider use of electronic signatures on the form. For more information, see the form's instructions at http://www.michbar.org/generalinfo/pdfs/sectexp_instruction.pdf.
- The reimbursement form can be found online at: <http://www.michbar.org/generalinfo/pdfs/sectexp.pdf>
- Please email expense reimbursement requests to the Treasurer, Marlane Teahan at mteahan@fraserlawfirm.com.

Hearts & Flowers Fund

Council members are asked to contribute \$35.00 to the Hearts and Flowers Fund each year. This fund is used to purchase gifts for Council members, families and others that we wish to recognize with congratulatory or sympathy gifts. If you wish to contribute to the fund, please send a check made payable to Marlane Teahan individually (not to the fund or her firm). These funds are held separately by the Treasurer and are accounted for on a quarterly basis to the Chair.

Marlane C. Teahan, Treasurer
Probate and Estate Planning Section

10/28/13

State Bar of Michigan
 Probate and Estate Planning Section
 For the Twelve Months Ending September 30, 2013

	<u>Current Activity September 2013</u>	<u>Year To Date September 2013</u>	<u>Year to Date September 2012</u>
Revenue:			
1-7-99-775-1050 Probate/Estate Planning Dues		115,710.00	115,185.00
1-7-99-775-1055 Probate/Estate Stud/Affil Dues		945.00	875.00
1-7-99-775-1125 Seminar Income		620.00	3,460.00
1-7-99-775-1470 Publishing Agreement Account		500.00	500.00
Total Revenue		<u>117,775.00</u>	<u>120,020.00</u>
Expenses:			
1-9-99-775-1127 Multi-Section Lobbying Group		30,000.00	29,500.00
1-9-99-775-1145 ListServ	525.00	1,275.00	880.00
1-9-99-775-1276 Meetings	8,564.37	13,938.63	14,435.90
1-9-99-775-1283 Seminars	(6,920.38)	6,518.00	11,557.09
1-9-99-775-1297 Annual Meeting Expenses	1,068.14	1,068.14	1,305.39
1-9-99-775-1458 Speaker Expenses	2,514.13	7,170.38	
1-9-99-775-1493 Travel	869.87	16,966.72	17,142.28
1-9-99-775-1528 Telephone	63.62	206.21	92.97
1-9-99-775-1822 Litigation-Amicus Curiae Brief	9,214.66	9,214.66	
1-9-99-775-1826 Copying			4.00
1-9-99-775-1833 Newsletter	3,658.43	25,445.19	27,378.11
1-9-99-775-1868 Postage		0.99	
1-9-99-775-1987 Miscellaneous	(225.00)	679.61	231.50
Total Expenses	<u>19,332.84</u>	<u>112,483.53</u>	<u>102,527.24</u>
Net Income	(19,332.84)	5,291.47	17,492.76
Beginning Fund Balance:			
1-5-00-775-0001 Fund Bal-Probate/Estate Plan		201,005.13	183,512.37
Total Beginning Fund Balance		<u>201,005.13</u>	<u>183,512.37</u>
Ending Fund Balance		206,296.60	201,005.13

**Probate and Estate Planning Section
Treasurer's Report as of November 30, 2013**

Beginning Fund Balance	206,296.60	255,872.39	206,296.60			
	October	November	FY to Date Actual	Budget 2013-14	Variance	Year to Date Percentage
Revenue						
Membership Dues	62,650.00	40,005.00	102,655.00	115,000.00	(12,345.00)	89%
Publishing Agreements	-	-	-	350.00	(350.00)	0%
Other	35.00	-	35.00	350.00	(315.00)	10%
Total Receipts	62,685.00	40,005.00	102,690.00	115,700.00	(13,010.00)	89%
Disbursements						
Journal			-	27,500.00	(27,500.00)	0%
Chairperson's Dinner*	5,457.20	-	5,457.20	6,500.00	(1,042.80)	84%
Travel	1,418.01	1,574.59	2,992.60	18,000.00	(15,007.40)	17%
Lobbying	5,000.00	2,500.00	7,500.00	30,000.00	(22,500.00)	25%
Meetings	1,159.00	1,037.68	2,196.68	12,000.00	(9,803.32)	18%
Long-range Planning	-	-	-	1,000.00	(1,000.00)	0%
Support for Annual Institute	-	-	-	13,000.00	(13,000.00)	0%
Amicus Briefs	-	-	-	10,000.00	(10,000.00)	0%
ListServ**	75.00	-	75.00	1,400.00	(1,325.00)	5%
Postage	-	-	-	100.00	(100.00)	0%
Telephone	-	-	-	250.00	(250.00)	0%
Other***	-	-	-	1,000.00	(1,000.00)	0%
Total Disbursements	13,109.21	5,112.27	18,221.48	120,750.00	(102,528.52)	15%
Net Increase (Decrease)			84,468.52	(5,050.00)	89,518.52	
Ending Fund Balance ****	255,872.39	290,765.12	290,765.12			

Additional Information

*Includes plaques for outgoing Chair and 2 Council Members

**includes ListServ, e-blast & other electronic communications to members

***includes copying costs; budget for this line increased to \$1,000 & now includes \$750 for Young Lawyers' Summit

****includes \$25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount

ATTACHMENT B-1

Changes as of January, 2014 Meeting

**BYLAWS OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

**ARTICLE 1
NAME AND PURPOSE**

SECTION 1.1 NAME. This Section is known as the Probate and Estate Planning Section of the State Bar of Michigan.

SECTION 1.2 PURPOSE. The purpose of this Section is to enhance and improve the practice and administration of law pertaining to probate; trust and estate planning, and administration; guardianships and conservatorships (including planning alternatives);and tax planning.

**ARTICLE 2
MEMBERSHIP**

SECTION 2.1 SECTION MEMBERSHIP FOR MEMBERS OF THE STATE BAR OF MICHIGAN. Active, inactive, law student, affiliate, and emeritus members of the State Bar of Michigan may become members of the Section by paying to the Section dues in an amount as may be determined from time to time by the Council, and will then become members of the Section for the current fiscal year. Thereafter, dues are payable in advance at the beginning of the fiscal year of the State Bar of Michigan. Any member of the Section whose annual dues are more than six months past due will cease to be a member of this Section. Members enrolled and whose dues are paid constitute the membership of the Section. All lawyers admitted to practice in Michigan are considered members of the Section until the end of the fiscal year of the State Bar of Michigan following the year of their admission to practice and are not required to pay dues until after that time.

SECTION 2.2 SECTION MEMBERSHIP BY PROBATE REGISTERS AND PROBATE COURT ADMINISTRATORS. All Probate Registers and Probate Court Administrators are entitled to membership in the Section and any requirement to pay Section dues is waived. Membership in the Section under this Section 2.2, including the waiver of dues, will continue until a member under this Section 2.2o longer serves as a Probate Register or Probate Court Administrator. If a Probate Register or Probate Court Administrator is a lawyer, then he or she will have the benefits of membership afforded to Section members who are lawyers. If a Probate Register or Probate Court Administrator is not a lawyer, then he or she have the benefits of membership afforded to non-lawyer members of the Section.

SECTION 2.3 ELIGIBILITY TO VOTE; COUNCIL PARTICIPATION. Only lawyers who

are active members of the State Bar of Michigan and who are members of the Section are eligible to vote on any matter before the Section or to be elected as members or officers of the Council.

SECTION 2.4 INVITED GUESTS. Without a vote of the Council, the chairperson may invite guests who are not Section members to address one or more Council meetings from time to time concerning issues that the Chairperson believes will assist the Council in its consideration of particular issues that are before the Council.

ARTICLE 3 COUNCIL AND OFFICERS

SECTION 3.1 NUMBER OF MEMBERS AND OFFICERS. There is a Council of the Section consisting of the Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and a Treasurer, together with 18 other members to be elected as provided below. Past Chairpersons also automatically remain as ex-officio members of the Council so long as they maintain membership in the Section. However, ex-officio members of the Council are not included in determining whether a quorum is present at any meeting and they have no right to vote on matters brought before the Council.

SECTION 3.2 ELECTION OF OFFICERS. The Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and Treasurer will be nominated and elected in the manner provided in the following paragraphs at each annual meeting of the Section. Each officer, other than the Chairperson, will hold office for a term commencing at the beginning of the Section's fiscal year following the annual meeting of the Section at which the officers are elected, and ending at the close of the next succeeding fiscal year of the Section, and until their successors have been elected and qualified. The Chairperson's term will automatically commence after the close of the annual meeting of the Section at which the Chairperson is elected and qualified or automatically succeeds to the office of Chairperson, as provided in Paragraph 4.2.3.

SECTION 3.3 ELECTION OF COUNCIL MEMBERS. Six members of the Council will be elected at each annual meeting of the Section for terms of three years. "Year" as used in these Bylaws means a term beginning on the first day of the fiscal year of the Section and ending on the last day of the fiscal year of the Section.

SECTION 3.4 TERM LIMITS FOR COUNCIL MEMBERS. A person is not eligible for election other than as an officer if he or she has served without interruption for six consecutive years immediately preceding the term for which the election is held.

SECTION 3.5 TERM LIMITS FOR OFFICERS. A person who has served as Chairperson, Chairperson-Elect, Vice-Chairperson, Treasurer or Secretary without interruption for 2 consecutive terms is not eligible for election to that office.

SECTION 3.6 VACANCY. The Council may appoint any lawyer member of the Section who is an active member of the State Bar of Michigan as an officer or Council member to act until the next election in the event of death, disability, removal or resignation of any officer or Council member, or on a temporary basis.

ARTICLE 4 ELECTIONS

SECTION 4.1 NOMINATIONS.

4.1.1 Nominating Committee. The Nominating Committee will submit nominations to the Section for the offices of Chairperson, if needed, Chairperson-Elect, Vice-Chairperson, Secretary, Treasurer and members of the Council, to succeed those whose terms will expire at the close of the fiscal year following the annual meeting of the Section at the regular meeting of the Council prior to the annual meeting of the Section, and to fill vacancies for unexpired terms existing at the time of such report at any other regular meeting of the Council. The Nominating Committee will continue to function as needed and report nominations to the Council to fill vacancies in the office of an officer or member of the Council in accordance with Paragraph 6.3. 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.

4.1.2 Close of Nominations. All nominations, including nominations from the floor, for the offices of Chairperson, if the Chairperson-Elect has given notice as provided in Paragraph 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson, Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, to succeed to those whose terms will expire at the close of the fiscal year following the forthcoming annual meeting of the Section, or at the close of the forthcoming annual meeting of the Section in the case of the Chairperson, will be made at the regular meeting of the Council prior to the annual meeting of the Section.

SECTION 4.2 ELECTION PROCEDURE.

4.2.1 Vacancies. When there is only one candidate nominated for a vacancy, that election will be held by voice vote at the meeting during which the nomination has been made. When there is more than one candidate nominated, the election will be held at the next regular council meeting where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method. This section 4.2.1 does not apply to interim vacancies as described in section 6.3.

4.2.2 Annual Meeting of the Section. Except as provided in Paragraphs 4.1.2 and 4.2.1, the election for the offices of Chairperson (if the Chairperson-Elect has given notice as provided in Paragraph 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson), Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, will be held at the annual meeting of the Section, where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method.

4.2.3 Automatic Succession of Chairperson-Elect. Unless the Chairperson-Elect gives written notice to the Chairperson before the regular meeting of the Council prior to the annual meeting of the Section, the Chairperson-Elect will automatically succeed to the office of the

Chairperson after the close of the Annual Meeting of the Section.

ARTICLE 5 DUTIES OF OFFICERS

SECTION 5.1 CHAIRPERSON. The Chairperson presides at all meetings of the Section and of the Council. The Chairperson will formulate and present at each Annual Meeting of the State Bar of Michigan a report of the work of the Section for the past year. The Chairperson will perform other duties and acts as usually pertain to the Chairperson's office.

SECTION 5.2 CHAIRPERSON-ELECT. Upon the death, resignation or during the disability of the Chairperson, or upon his or her refusal to serve, the Chairperson-Elect will perform the duties of the Chairperson for the remainder of the Chairperson's term except in the case of the Chairperson's disability and then only during so much of the term as the disability continues. The Chairperson-Elect automatically succeeds to the office of the Chairperson after the close of the annual meeting of the Section at which the Chairperson-Elect is elected.

SECTION 5.3 VICE-CHAIRPERSON. Upon the death, resignation, or during the disability of both the Chairperson and the Chairperson-Elect, or upon the refusal of both to serve, the Vice-Chairperson will perform the duties of the Chairperson and the Chairperson-Elect until either of them is again able to serve in such officer's elected capacity, to the end of the termination of the respective terms of each.

SECTION 5.4 SECRETARY. The Secretary is the custodian of all books, papers, documents, and other property of the Section except money. The Secretary keeps a true record of the proceedings of all meetings of the Section and of the Council. Along, with the Chairperson, the Secretary will prepare a summary or digest of the proceedings of the Section at its annual meeting for publication in the Annual Report of the State Bar of Michigan, after approval by the Commissioners of the State Bar of Michigan. The Secretary, along with the appropriate section committee chair and personnel from the State Bar, will review and maintain the Section webpages on the State Bar website. The Secretary, in conjunction with the Chairperson, as authorized by the Council, attends generally to the business of the Section.

SECTION 5.5 TREASURER. The Treasurer reports regularly on the finances of the Section to the Council and to the State Bar of Michigan. The Treasurer is not responsible for the Section funds but will transmit a financial report for presentation to the membership of the Section annually. The officer of the State Bar of Michigan designated for such purpose will be the custodian of all funds and will keep a record of all monies received and disbursed and report on the status of the funds to the Council or Treasurer whenever requested. Payment of expenses by the Section, before being paid, must be approved by the Treasurer, except those of the Treasurer, which must be approved by the Chairperson or the Chairperson elect, or otherwise as the Council directs, and checks for all disbursements will be signed by the officer of the State Bar of Michigan designated for such purpose. The Treasurer will sign any application for, and execute, any bond as may be requested by any officer of the Section and/or member of the Council pursuant to any resolution adopted for any bond for the purpose of protecting the monies of the Section. Any cost or premium for the bond, however, will not be borne by the Treasurer, but

will be an expense of the Section and paid from the funds of the Section.

ARTICLE 6 DUTIES AND POWERS OF THE COUNCIL

SECTION 6.1 IN GENERAL. The Council has general supervision and control of the affairs of the Section subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan and the Bylaws of the Section. The Council authorizes all commitments or contracts which require the payment of money and authorizes the expenditure of all monies appropriated for the use or benefit of the Section.

SECTION 6.2 COMMITTEES. The Council may authorize the Chairperson, with the Chairperson-Elect, to appoint committees and their chairpersons from Section members to perform such duties and exercise such powers as the Council may direct. The Chairperson, on direction from the Council, will remove any chairperson or member from such committees and fill vacancies on such committees created by removal or resignation.

SECTION 6.3 FILL INTERIM VACANCIES. The Council, during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of the Vice-Chairperson, Secretary or Treasurer, or, in the event of a vacancy in both the office of Chairperson and Chairperson-Elect, then in the office of Chairperson. Members of the Council and officers, other than the Chairperson, serve until the close of the fiscal year of the Section. The Chairperson serves until the close of the next annual meeting of the Section. The vacancies are filled for the remainder of their respective terms by a special election conducted concurrently with the regular elections as provided in Article 4.

SECTION 6.4 QUORUM. A quorum of the Council consists of a majority of the voting members of the Council then in office. A quorum being present, the Council acts on the affirmative vote of a majority of those present at any meeting.

SECTION 6.5 VOTING PROCEDURES. A member of the Council, when present at a meeting of the Council, votes in person or electronically, but when absent may communicate his or her vote, in writing, upon any proposition, to the Secretary and have it counted, with the same effect as if cast personally at the meeting.

SECTION 6.6 PRESENCE AT A MEETING. A member will be deemed “present” at a meeting if the member is physically in attendance at the meeting or participates in the meeting by electronic communication. For purposes of this Article 6, “electronic communication” means any form of communication designed to allow a person to attend a meeting from a remote location, as long as the member’s presence is identified, all participants are advised of the communications equipment, and all in-person attendees and attendees at any remote location are able to communicate effectively with each other.

SECTION 6.7 WRITTEN VOTE. The Chairperson of the Section at any time may, and upon the request of any member of the Council will, submit or cause to be submitted in writing, to each of the members of the Council, any proposition upon which the Council may be authorized to

act, and the members of the Council may vote upon such proposition or propositions so submitted, by communicating their vote on the proposition, in writing over their respective signatures, to the Secretary, who will record in his or her minutes each proposition so submitted, when, how, at whose request the proposition was submitted, and the vote of each member of the Council on the proposition, and keep on file the written and signed votes. If the recorded votes of a majority of the members of the Council are in favor of the proposition, or if a majority is against the proposition, the majority vote constitutes the binding action of the Council. A submission by the Chairperson or a vote by the members by email or other electronic means is deemed to be in writing.

SECTION 6.8 MEETINGS. The Council will designate the time and place of its regular meetings. Special meetings may be called upon notice by the Chairperson or upon written request to the Secretary of any 5 members of the Council. Council and committee meetings may be held by electronic communication. A regular meeting will not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 6.9 ABSENCES Any member of the Council (except Past Chairpersons) who are absent without having been excused by the Chairperson at three meetings of the Council during a year may be removed at the discretion of the Chairperson and the vacancy created by the member's removal will be filled by the Council. The "year" for this purpose begins on the first day of the fiscal year of the Section and ends on the last day of the fiscal year of the Section.

SECTION 6.10 POWERS OF THE COUNCIL. The powers of the Council include the power to act to further the purposes of the Section, including the power to consider, draft, and actively support or oppose proposed legislation through committees or agents consistent with the Bylaws of the State Bar of Michigan. The Council has the additional powers to consider, draft, and actively support or oppose proposed court rules; to further Section efforts to provide advice to courts during the course of pending litigation and sponsor meetings and institutes (together with publishing and disseminating information in print or online) as a means of educating the Bar and the public concerning the role of estate planning, guardianships and conservatorships (including planning alternatives), tax planning, trust planning and administration, and probate.

ARTICLE 7 SECTION MEETINGS

SECTION 7.1 ANNUAL MEETING OF THE SECTION. The annual meeting of the Section will be held in September of each year at a place and time as arranged by the Council, with the program and order of business as arranged by the Council. The annual meeting of the Section may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 7.2 SPECIAL MEETINGS. Special meetings of the Section may be called by the Chairperson upon the approval of the Council at a time and place as the Council may determine. A special meeting may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 7.3 QUORUM. The members of the Section present at any meeting constitute a quorum for the transaction of business.

ARTICLE 8 MISCELLANEOUS PROVISIONS

SECTION 8.1 FISCAL YEAR. The fiscal year of the Section is the same as that of the State Bar of Michigan.

SECTION 8.2 COMPENSATION. No salary or compensation will be paid to any officer, council member, or member of a committee for fulfilling his or her duties to the Section and the Council. Authorization to compensate an officer or Council member for a service to the Section by the officer or Council member or his or her law firm or other organization that is not defined by the Section's bylaws as a duty of an officer, Council member, or Section member requires a two-thirds vote of the Council. The person to be compensated, or the person whose firm or other organization is to be compensated, may not participate in the vote. The vote must be recorded in the minutes of the meeting, and the minutes must be made available on the Section's website.

SECTION 8.3 WHEN EFFECTIVE. These Bylaws become effective upon their approval by the Commissioners of the State Bar of Michigan and by the Section in the same manner provided in Article 9 for their amendment.

SECTION 8.4 PRINTING. All printing for the Section or for the Council or any committee of the Section is done under the supervision of the Executive Secretary of the State Bar of Michigan.

ARTICLE 9 AMENDMENTS

SECTION 9.1 PROCEDURE. These Bylaws may be amended at any annual meeting of the Section or special meeting of the members of the Section by a majority vote of the members of the Section present and voting, provided the proposed amendment is first submitted to the Council for its recommendation and the amendment, once adopted, is not effective until approved by the Commissioners of the State Bar of Michigan.

SECTION 9.2 PROPOSED AMENDMENTS. Any proposed amendment must be submitted in writing to the Council in the form of a motion by an officer or member of the Council or by a petition by at least 10 other members of the Section. The Council will consider the proposed amendment and prepare recommendations that, together with a complete and accurate text of the proposed amendment, will be published in the Michigan Bar Journal at least 15 days prior to the meeting of the Section when the amendment is to be voted upon.

Adopted September 14, 1955

Amended 10/14/94

Amended 9/22/00

Amended 9/27/02

Amended 9/15/03

Amended 7/23/04 Effective 9/11/04 Amended 1/21/05

Dues increase effective 6/9/06

Dues increase effective 6/19/07

Amended 9/__/2014

ATTACHMENT B-2

Changes as of January, 2014 Meeting

**BYLAWS OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

ARTICLE I

1

NAME AND PURPOSE

SECTION 1.1 NAME. This Section ~~shall be~~ known as the Probate and Estate Planning Section of the State Bar of Michigan.

SECTION 1.2 PURPOSE. The purpose of this Section ~~shall be~~ to enhance and improve the practice and administration of law pertaining to probate; trust and estate planning ~~by the study of statutes, cases, and procedures, by the consideration, drafting, and active support or opposition of proposed legislation; by the providing of advice to courts during the course of pending litigation; and by the sponsoring of meetings and institutes (together with publishing and disseminating pamphlets, brochures, a Journal of the Section and legal writings) as a means of educating members of the Bar and the public, all in connection with advancing the proper preparation of wills, trusts, tax returns, and other documents; the efficient administration of trusts as well as estates of decedents, minors, incompetents, and missing persons; and the advance; guardianships and conservatorships (including planning for the orderly disposition of property, minimization of taxes, and well being of persons alternatives); and tax planning.~~

**ARTICLE II
MEMBERSHIP**

SECTION 2.1 SECTION MEMBERSHIP FOR MEMBERS OF THE STATE BAR OF MICHIGAN. Active, inactive, law student, affiliate, and emeritus members of the State Bar of Michigan may become members of the Section by paying to the Section dues in an amount as may be determined from time to time by the Council, and ~~shall~~ will then become members of the Section for the current fiscal year. Thereafter, dues ~~shall be~~ payable in advance at the beginning of the fiscal year of the State Bar of Michigan. Any member of the Section whose annual dues ~~shall be~~ more than six months past due ~~shall~~ will cease to be a member of this Section. Members enrolled and whose dues are paid ~~shall~~ constitute the membership of the Section. All lawyers admitted to practice in Michigan ~~shall be~~ considered members of the Section until the end of the fiscal year of the State Bar of Michigan following the year of their admission to practice and ~~shall~~ are not ~~be~~ required to pay dues until after that time.

SECTION 2. ~~Only active members of the State Bar of Michigan who are members of the Section shall be eligible to vote or hold office.~~

SECTION 2.2 SECTION MEMBERSHIP BY PROBATE REGISTERS AND PROBATE COURT ADMINISTRATORS. All Probate Registers and Probate Court Administrators are entitled to membership in the Section and any requirement to pay Section dues is waived. Membership in the Section under this Section 2.2, including the waiver of dues, will continue until a member under this Section 2.2o longer serves as a Probate

Register or Probate Court Administrator. If a Probate Register or Probate Court Administrator is a lawyer, then he or she will have the benefits of membership afforded to Section members who are lawyers. If a Probate Register or Probate Court Administrator is not a lawyer, then he or she have the benefits of membership afforded to non-lawyer members of the Section.

SECTION 2.3 ELIGIBILITY TO VOTE; COUNCIL PARTICIPATION. Only lawyers who are active members of the State Bar of Michigan and who are members of the Section are eligible to vote on any matter before the Section or to be elected as members or officers of the Council.

SECTION 2.4 INVITED GUESTS. Without a vote of the Council, the chairperson may invite guests who are not Section members to address one or more Council meetings from time to time concerning issues that the Chairperson believes will assist the Council in its consideration of particular issues that are before the Council.

ARTICLE ~~II~~3 **COUNCIL AND OFFICERS**

SECTION 3.1- NUMBER OF MEMBERS AND OFFICERS. There ~~shall be~~ a Council of the Section consisting of the Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and a Treasurer, together with 18 other members to be elected as ~~hereinafter~~ provided below. Past Chairpersons ~~shall~~ also automatically remain as ex-officio members of the Council so long as they maintain membership in the Section. However, ~~past Chairpersons shall not be ex-officio members of the Council are not~~ included in determining whether a quorum is present at any meeting and they ~~shall~~ have no right to vote on matters brought before the Council.

SECTION 3.2. ELECTION OF OFFICERS. The Chairperson, Chairperson-Elect, Vice-Chairperson, Secretary and Treasurer ~~shall~~will be nominated and elected in the manner ~~hereinafter~~ provided ~~in the following paragraphs~~ at each annual meeting of the Section ~~to~~. ~~Each officer, other than the Chairperson, will~~ hold office for a term ~~commencing at the~~ beginning ~~at of the close of~~ ~~Section's fiscal year following~~ the annual meeting ~~of the Section~~ at which ~~they have been the~~ ~~officers are~~ elected, and ending at the close of the next succeeding ~~annual meeting~~fiscal year of the Section, and until their successors ~~shall~~ have been elected and qualified. ~~The Chairperson's term will automatically commence after the close of the annual meeting of the Section at which the Chairperson is elected and qualified or automatically succeeds to the office of Chairperson, as provided in Paragraph 4.2.3.~~

SECTION 3. ~~Subject to the provisions of the next sentence, six~~3 ELECTION OF COUNCIL MEMBERS. ~~Six~~ members of the Council ~~shall~~will be elected at each annual meeting of the Section for terms of three years. ~~At the annual meeting in 2004 only, eight member of the council shall be elected, six of whom shall serve terms of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year. ("Year" as herein used in these Bylaws means a term beginning at on the close first day of the annual meeting at which fiscal year of the Council member shall have been elected~~ ~~Section~~ and ending ~~at on the close last day of the succeeding annual meeting~~fiscal year of the Section~~).~~

SECTION 4. ~~No~~3.4 TERM LIMITS FOR COUNCIL MEMBERS. A person ~~shall be~~is not eligible for election other than as an officer if he~~/~~ or she has served without interruption for six consecutive years immediately preceding the term for which the election is held.

SECTION 3.5. ~~No~~TERM LIMITS FOR OFFICERS. A person who has served as Chairperson, Chairperson-Elect, Vice-Chairperson, Treasurer or Secretary without interruption for 2 consecutive terms ~~shall be~~is not eligible for election to that office.

SECTION 3.6 VACANCY. The Council may appoint any lawyer member of the Section who is an active member of the State Bar of Michigan as an officer or ~~councilperson~~Council member to act until the next election in the event of death, disability, removal or resignation of any officer or ~~councilperson~~Council member, or on a temporary basis.

**ARTICLE IV
ELECTIONS**

SECTION 4.1. NOMINATIONS.

4.1.1 Nominating Committee. The Nominating Committee ~~shall~~will submit nominations to the Section for the offices of Chairperson, if needed, Chairperson-Elect, Vice-Chairperson, Secretary, Treasurer and members of the Council, to succeed those whose terms will expire at the close of the ~~forthcoming~~fiscal year following the annual meeting ~~of the Section~~ at the regular meeting of the Council prior to the annual meeting ~~of the Section~~, and to fill vacancies for unexpired terms existing at the time of such report at any other regular meeting of the Council~~.~~. The Nominating Committee ~~shall~~will continue to function as needed and report nominations to

the Council to fill vacancies in the office of an officer or member of the Council in accordance with ~~Article VI, Section Paragraph 6.3~~. The Nominating Committee ~~shall~~will consist of the three immediately past Chairpersons of the Section, unless ~~such~~the committee ~~shall be~~is otherwise appointed by the Chairperson and the Chairperson-Elect.

4.1.2 Close of Nominations. All nominations, including nominations from the floor, for the offices of Chairperson, if the Chairperson-Elect has given notice as provided in Paragraph 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson, Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, to succeed to those whose terms will expire at the close of the fiscal year following the forthcoming annual meeting of the Section, or at the close of the forthcoming annual meeting of the Section in the case of the Chairperson, will be made at the regular meeting of the Council prior to the annual meeting of the Section.

SECTION 2. ~~ELECTIONS~~4.2 ELECTION PROCEDURE.

A. **4.2.1 Vacancies.** When there is only one candidate nominated for a vacancy, that election ~~shall~~will be held by voice vote at the meeting during which the nomination has been made. When there is more than one candidate nominated, the election ~~shall~~will be held at the next regular council meeting where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method. This section 4.2.1 does not apply to interim vacancies as described in section 6.3.

B. **4.2.2 Annual Meeting.** ~~All nominations, including nominations from~~ of the floor, for **Section.** ~~Except as provided in Paragraphs 4.1.2 and 4.2.1, the election for the offices of Chairperson, (if the Chairperson-Elect has given notice as provided in Paragraph 4.2.3 that he or she will not serve as chair or there is otherwise a vacancy in the office of the Chairperson), Chairperson-Elect, Vice Chairperson, Secretary, Treasurer and members of the Council, to succeed to those whose terms will expire at the close of the forthcoming annual meeting shall be made at the regular meeting of the Council prior to the annual meeting. The election for such offices and Council members shall~~will be held at the annual meeting of the Section, where the Chairperson may conduct that election by voice vote, or may direct another method of conducting the election, such as a show of hands, paper ballot or other method.

C.

4.2.3 Automatic Succession of Chairperson-Elect. Unless the Chairperson-Elect gives written notice to the Chairperson before the regular meeting of the Council prior to the annual meeting of the Section, the Chairperson-Elect will automatically succeed to the office of the Chairperson after the close of the Annual Meeting of the Section.

ARTICLE ~~V~~5 DUTIES OF OFFICERS

SECTION 5.1. CHAIRPERSON. The Chairperson ~~shall preside~~presides at all meetings of the Section and of the Council. The Chairperson ~~shall~~will formulate and present at each Annual Meeting of the State Bar of Michigan a report of the work of the Section for the ~~then~~ past year. The Chairperson ~~shall~~ will perform ~~such~~ other duties and acts as usually pertain to ~~such officer's~~the Chairperson's office.

SECTION 5.2. CHAIRPERSON-ELECT. Upon the death, resignation or during the disability of the Chairperson, or upon ~~such officer's~~his or her refusal to serve, the Chairperson-Elect ~~shall~~will perform the duties of the Chairperson for the remainder of the Chairperson's term except in the case of the Chairperson's disability and then only during so much of the term as the disability continues. The Chairperson-Elect ~~shall~~ automatically ~~succeeds~~succeeds to the office of the Chairperson ~~the day~~ after the close of the annual meeting ~~succeeding of~~ the annual meeting ~~Section~~ at which the Chairperson-Elect is elected.

SECTION 5.3. VICE-CHAIRPERSON. Upon the death, resignation, or during the disability of both the Chairperson and the Chairperson-Elect, or upon the refusal of both to serve, the Vice-Chairperson ~~shall~~will perform the duties of the Chairperson and the Chairperson-Elect until either of them is again able to serve in such officer's elected capacity, to the end of the termination of the respective terms of each.

SECTION 5.4. SECRETARY. The Secretary ~~shall be~~ the custodian of all books, papers, documents, and other property of the Section except money. ~~Such officer shall keep~~ The Secretary keeps a true record of the proceedings of all meetings of the Section and of the Council. ~~With~~ Along, with the Chairperson, ~~such officer shall~~ the Secretary will prepare a summary or digest of the proceedings of the Section at its annual meeting for publication in the Annual Report of the State Bar of Michigan, after approval by the Commissioners of the State Bar of Michigan. The Secretary, along with the appropriate section committee chair and personnel from the State Bar, will review and maintain the Section webpages on the State Bar website. The Secretary, in conjunction with the Chairperson, as authorized by the Council, attends generally to the business of the Section.

~~Commissioners of the State Bar of Michigan. Such officer, in conjunction with the Chairperson, as authorized by the Council, shall attend generally to the business of the Section.~~

SECTION 5.5 TREASURER. The Treasurer reports regularly on the finances of the Section to the Council and to the State Bar of Michigan. The Treasurer is not responsible for the Section funds but will transmit a financial report for presentation to the membership of the Section annually. The officer of the State Bar of Michigan designated for such purpose will be the custodian of all funds and will keep a record of all monies received and disbursed and report ~~thereon on the status of the funds~~ to the Council or Treasurer ~~of the Section~~ whenever requested. ~~The Treasurer Payment of expenses by the Section shall not, before being paid, must be responsible for such funds but shall transmit a financial report for presentation to the membership approved by the Treasurer, except those of the Section annually.~~

~~**SECTION 6. TREASURER.** The Treasurer shall, which must be approved by the Chairperson or the Chairperson elect, or otherwise as the Council directs, and checks for all disbursements will be signed by the officer of the State Bar of Michigan designated for such purpose. The Treasurer will sign any application for, and execute, any bond as may be requested by any officer of the Section and/or member of the Council pursuant to any resolution duly adopted for any bond for the purpose of protecting the monies of the Section. Any cost or premium for such the bond, however, shall will not be borne by the Treasurer, but shall will be an expense of the Section and paid from the funds of the Section. The Treasurer shall submit a financial report regularly.~~

ARTICLE VI

DUTIES AND POWERS OF THE COUNCIL

SECTION 6.1 IN GENERAL. The Council ~~shall have~~ has general supervision and control of the affairs of the Section subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan and the Bylaws of the Section. ~~It shall authorize~~ The Council authorizes all commitments or contracts which ~~shall entail require~~ the payment of money and ~~shall authorize~~ authorizes the expenditure of all monies appropriated for the use or benefit of the Section.

SECTION 6.2 COMMITTEES. The Council may authorize the Chairperson, with the Chairperson-Elect, to appoint committees and their chairpersons from Section members to perform such duties and exercise such powers as the Council may direct. The Chairperson, on direction from the Council, ~~shall will~~ remove any chairperson or member from such committees and fill vacancies on such committees created by removal or resignation.

SECTION 6.3 FILL INTERIM VACANCIES. The Council, during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of the Vice-Chairperson, Secretary or Treasurer, or, in the event of a vacancy in both the office of Chairperson and Chairperson-Elect, then in the office of Chairperson. Members of the Council and officers ~~shall, other than the Chairperson,~~ serve until the close of the fiscal year of the Section. The Chairperson serves until the close of the next annual meeting of the Section, ~~at which the. The~~ vacancies ~~shall be~~ are filled for the remainder of their respective terms by a special election

conducted concurrently with the regular elections as provided in Article ~~IV~~ herein4.

SECTION 6.4 QUORUM. A quorum of the Council ~~shall consist~~ consists of a majority of the ~~officers and elected~~ voting members. of the Council then in office. A quorum being present, the Council ~~shall act~~ acts on the affirmative vote of a majority of those present at any meeting.

SECTION 6.5. ~~Members~~ VOTING PROCEDURES. A member of the Council, when ~~personally~~ present at a meeting of the Council, ~~shall vote~~ votes in person or electronically, but when absent may communicate ~~their~~ his or her vote, in writing, upon any proposition, to the Secretary and have it counted, with the same effect as if cast personally at ~~sueh~~ the meeting.

SECTION 6.6 PRESENCE AT A MEETING. A member will be deemed “present” at a meeting if the member is physically in attendance at the meeting or participates in the meeting by electronic communication. For purposes of this Article 6, “electronic communication” means any form of communication designed to allow a person to attend a meeting from a remote location, as long as the member’s presence is identified, all participants are advised of the communications equipment, and all in-person attendees and attendees at any remote location are able to communicate effectively with each other.

SECTION 6.7 WRITTEN VOTE. The Chairperson of the Section at any time may, and upon the request of any member of the Council ~~shall will~~, submit or cause to be submitted in writing, to each of the members of the Council, any proposition upon which the Council may be authorized to act, and the members of the Council may vote upon such proposition or propositions so submitted, by communicating their vote ~~thereon~~ on the proposition, in writing over their respective signatures, to the Secretary, who ~~shall will~~ record ~~upon~~ in his or her minutes each proposition so submitted, when, how, at whose request ~~same~~ the proposition was submitted, and the vote of each member of the Council ~~thereon~~ on the proposition, and keep on file ~~sueh~~ the written and signed votes. If the recorded votes of a majority of the members of the Council ~~shall be~~ are in favor of ~~sueh~~ the proposition, or if ~~sueh~~ a majority ~~shall be~~ is against ~~sueh~~ the proposition, ~~sueh~~ the majority vote ~~shall constitute~~ constitutes the binding action of the Council. A submission by the Chairperson or a vote by the members by email or other electronic means is deemed to be in writing.

SECTION 7.8 MEETINGS. The Council ~~shall will~~ designate the time and place of its regular meetings. Special meetings may be called upon notice by the Chairperson or upon written request to the Secretary of any 5 members of the Council. Council and committee meetings may be held by ~~a telephone conference or by other similar communications equipment through which all persons participating in the meeting may communicate with the other participants. All participants will be advised of the communications equipment, and the names of the participants in the conference will be divulged to all participants. Such participation will constitute presence in person at the meeting~~ electronic communication. A regular meeting will not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 8.6.9 ABSENCES Any member of the Council (except Past Chairpersons) who ~~shall be~~ are absent without having been excused by the Chairperson at three ~~consecutive~~ consecutive meetings of the Council ~~shall be deemed to have resigned~~ during a year may be removed at the discretion of the Chairperson and the vacancy ~~thereby~~ created ~~shall by the member’s removal will~~ be filled by the Council. The “year” for this purpose begins on the first day of the fiscal year of the Section and

SECTION 2. Special meetings of the Section may be called by the Chairperson upon approval of the Council at such time and place as the Council may determine.

ends on the last day of the fiscal year of the Section.

SECTION 9.6.10 POWERS OF THE COUNCIL. The powers of the Council ~~will~~ include the power to act to further the purposes of the Section, including the power to consider, draft, and actively support or oppose proposed legislation through committees or agents consistent with the Bylaws of the State Bar of Michigan. The Council has the additional powers to consider, draft, and actively support or oppose proposed court rules; to further Section efforts to provide advice to courts during the course of pending litigation and sponsor meetings and institutes (together with publishing and disseminating information in print or online) as a means of educating the Bar and the public concerning the role of estate planning, guardianships and conservatorships (including planning alternatives), tax planning, trust planning and administration, and probate.

ARTICLE ~~VII~~7
SECTION MEETINGS

SECTION 7.1. ANNUAL MEETING OF THE SECTION. The annual meeting of the Section ~~shall~~will be held ~~during the Annual Meeting of the State Bar of Michigan, in the same city or place as such Annual Meeting of the State Bar of Michigan, or September of each year~~ at ~~such~~other place and time as ~~may be~~ arranged by the Council, with ~~such~~the program and order of business as ~~may be~~ arranged by the Council. The annual meeting of the Section may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 3.

SECTION 7.2 SPECIAL MEETINGS. Special meetings of the Section may be called by the Chairperson upon the approval of the Council at a time and place as the Council may determine. A special meeting may not take place during the annual meeting of the State Bar of Michigan, unless it is held in conjunction with the annual meeting of the State Bar.

SECTION 7.3 QUORUM. The members of the Section present at any meeting ~~shall~~ constitute a quorum for the transaction of business.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

SECTION 8.1 FISCAL YEAR. The fiscal year of the Section ~~shall be~~ the same as that of the State Bar of Michigan.

~~**SECTION 2.** All bills incurred by the Section before being paid shall be approved by the Treasurer, except those of the Treasurer, which shall be approved by the Chairperson or the Chairperson elect, or otherwise as the Council shall direct, and checks for all disbursements shall be signed by an officer of the State Bar of Michigan, or someone designated by the State Bar Commissioners.~~

SECTION 8.2 COMPENSATION. No salary or compensation will be paid to any officer, council member, or member of a committee for fulfilling his or her duties to the Section and the Council. Authorization to compensate an officer or Council member for a service to the Section by the officer or Council member or his or her law firm or other organization that is not defined by the Section's bylaws as a duty of an officer, Council member, or Section member requires a two-thirds vote of the Council. The person to be compensated, or the person whose firm or other organization is to be compensated, may not participate in the vote. The vote must be recorded in the minutes of the meeting, and the minutes must be made available on the Section's website.

SECTION 8.3 WHEN EFFECTIVE.

~~**SECTION 3.** No salary or compensation shall be paid to any officer, councilor or member of a committee.~~

~~**SECTION 4.** These Bylaws shall become effective upon ~~the~~their approval ~~thereof~~ by the Commissioners of the State Bar of Michigan and by the Section in the same manner provided in Article ~~IX~~9 for their amendment.~~

SECTION 58.4 PRINTING. All printing for the Section or for the Council or any committee of the Section ~~shall be~~ done under the supervision of the Executive Secretary of the State Bar of Michigan.

ARTICLE IX
AMENDMENTS

SECTION 9.1 PROCEDURE. These Bylaws may be amended at any annual meeting of the
Created prior to 1948

Section ~~or special meeting of the members of the Section~~ by a majority vote of the members of the Section present and voting, provided ~~such~~the proposed amendment ~~shall~~is first ~~have been~~ submitted to the Council for its recommendation; ~~further, that no and the~~ amendment ~~so, once~~ adopted ~~shall become, is not~~ effective until approved by the Commissioners of the State Bar of Michigan.

SECTION 9.2. PROPOSED AMENDMENTS. Any proposed amendment ~~shall~~must be submitted in writing to the Council in the form of a motion by an officer or member of the Council or by a petition by at least 10 other members of the Section. The Council ~~shall~~will consider the proposed amendment and ~~shall~~—prepare recommendations ~~thereon—~~which recommendations~~that~~, together with a complete and accurate text of ~~said~~the proposed amendment, ~~shall~~will be published in the Michigan Bar Journal ~~or the Journal of the Section~~ at least 15 days prior to the ~~annual~~ meeting of the Section ~~at which it~~when the amendment is to be voted upon.

Adopted September 14, 1955

Amended 10/14/94

Amended 9/22/00

Amended 9/27/02

Amended 9/15/03

Amended 7/23/04 Effective 9/11/04 Amended 1/21/05

Dues increase effective 6/9/06

Dues increase effective 6/19/07

Amended 9/ /2014

ATTACHMENT C-1

MEMORANDUM

To: Susan M. Allan, Henry P. Lee and Richard C. Mills
From: James P. Spica
Re: Separate Trustees Proposal
Date: September 16, 2013

The attached proposal for amendments to the Michigan Trust Code (MTC) is an attempt to go the protection of “directed trustees” and “excluded co-trustees” one better. It’s unique (as far as I know): the answer to the question, “What do other states do?” has to be, “Well, they don’t do *this*.”

The proposal allows settlors to partition trusteeship into separately acceptable trust relations pertaining, respectively, to investment, dispositive discretions and the residuum of incumbent trustee functions. The resulting fiduciary regime is expressly distinguished from a co-trusteeship for purposes of determining each “separate trustee’s” authority and liability; separate trustees are statutorily disabled from accepting one another’s fiduciary duties; interpretive difficulties are avoided by the requirement of an express reference to the statute by way of election; and the election to partition overlies all of the facility for directed trustees and excluded co-trustees that is already provided in the MTC. Thus, a given trust may involve two or more separate trustees, *viz.*, a separate “resultant trustee” and either a separate investment trustee or one or more separate discretionary distributions trustees; and any of those separate trusteeships may itself comprise a co-trusteeship or be subject to the direction (and presumptively insulated from liability for the imprudence) of a “trust protector.”

The proposal is based on two assumptions, one legal and the other practical. The legal assumption is that under an express trust, the *sine qua non* for fiduciary obligation—and, hence, potential liability for breach—is the trustee’s acceptance. Maitland has put the matter succinctly:

You will find it laid down as an elementary rule that no one can be compelled to undertake a trust. Until a man has accepted a trust he is not a trustee. You, without my knowledge, convey land unto and to the use of me and my heirs upon trust for X. . . . I do not think that in strictness any active renunciation can be expected of me any more than I can be compelled to answer a letter in which you propose to sell me a horse. If, when I hear of the trust I simply do nothing, then I am no trustee, I thereby disclaim the estate.¹

¹ F. W. MAITLAND, EQUITY AND THE FORMS OF ACTION AT COMMON LAW: TWO COURSES OF LECTURES 55 (photo. reprint 1984) (1929).

Memo To: Susan M. Allan, Henry P. Lee
and Richard C. Mills
Date: September 16, 2013
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Conceptually, this means the scope of acceptance is the ultimate scope of fiduciary liability. Thus, the proposal allows a settlor to splinter trusteeship, along prescribed lines, into separately acceptable relations of trust.

The practical assumption on which the proposal is based is that the notion of a “directed trustee” or “excluded co-trustees” is practicable, *i.e.*, that we can parse certain, discrete (if peripherally overlapping), practical trustee functions and identify the trustee powers implicated by those functions. Like “directed” or “excluded” trusteeships, the proposal’s “separate trusteeships” will certainly involve practical problems of coordination; but only such problems as may be *unique* to “separate trusteeships” can amount to criticisms of the proposal. With respect to practical problems that are *common* to these creatures, the relevant question is, “If you were in the position of the fiduciary to be directed or excluded, would you rather operate under this proposal or one of the existing ‘directed’ or ‘excluded’ trustee regimes?”

JPS

DETROIT 40411-1 1292765v2

ATTACHMENT C-2

LEGISLATIVE PROPOSAL FOR SEPARATE TRUSTEES

700.7105 Duties and powers of trustee; provisions of law prevailing over terms of trust

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~~sections 7401 and 7402 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 power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

(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.

(f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

(g) The requirements under sections 7703a for creating a separate trustee provision.

(h) 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.

(hi) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).

(ij) 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.

(jk) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

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

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

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

(no) The power of the court to take action and exercise jurisdiction.

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

(pg) 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.

700.7103 Definitions

Sec. 7103. As used in this article:

...

(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 any of the following:

(i) A trustee of the trust

(ii) The settlor(s) of a the trust.

(iii) The holder of a power of appointment over property of the trust.

700.7208 Trust proceedings; initiation by notice; interested persons

Sec. 7208. [A TECHNICAL PROVISION PERTAINING TO PROCEEDINGS ON COMPLAINT IS CURRENTLY UNDER CONSTRUCTION.]

700.7703 Cotrustees; powers and duties

Sec. 7703. (1) Cotrustees shall act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

(5) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated pursuant to section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

(6) Unless a delegation under subsection (5) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection shall be in writing and shall be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation shall be given to the qualified trust beneficiaries within 28 days after the revocation.

(7) If 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

(a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.

(b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.

(c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each faction is entitled to vote the securities proportionately.

(8) A trustee is not liable for the action or omission of a cotrustee if all of the following apply:

(a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.

(b) The trustee is aware of but does not join in the action or omission of the cotrustee.

(c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.

(9) A trustee who is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.

(10) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.

700.7703a Separate trustees; powers and duties

Sec. 7703a. (1) As used in this section:

(a) A "separate trustee provision" is a trust provision that complies with all of the requirements of this section, including that it designates, or provides a method of designating, (1) a separate resultant trustee and (2) a separate investment trustee or 1 or more separate distributions trustees.

(b) A "separate resultant trustee" is a separate trustee designated to perform all trustee functions not allocated by the separate trustee provision to a separate investment trustee or to any separate distributions trustee.

(c) A "separate investment trustee" is a separate trustee designated by the separate trustee provision to perform the trustee investment function.

(d) A “separate distributions trustee” is a separate trustee designated by the separate trustee provision to exercise discretion under a discretionary trust provision.

(e) A “separate trustee” is any separate resultant trustee, separate investment trustee or separate distributions trustee. Any separate trustee may be either a trustee that is a person or a cotrusteeship described in section 7703.

(f) A “separate trusteeship” is the office of any separate trustee.

(g) As used in this section, “the trust” refers to the inclusive set of separate relations of trust to be separately accepted by the separate trustees under a given separate trustee provision.

(h) Though a separate trustee provision may define the trustee investment function more narrowly or more broadly, that function generally includes determining for trust investment purposes the retention, purchase, sale, assignment, exchange, tender or encumbrance of trust property and the investment and reinvestment of undistributed income and principal of the trust; management, control and exercise of voting powers related directly or indirectly to any trust asset; and for nonpublicly traded investments or property for which there is no readily available market value, determining the frequency and methodology for valuing such property.

(2) A trust instrument may include 1 or more separate trustee provisions. No more than 1 separate trustee provision shall apply in the administration of any given trust at any given time.

(3) No more than 1 separate investment trustee shall perform the trustee investment function of any given trust at any given time. There may be more than 1 separate distributions trustee acting for any given trust at any given time. The separate investment trustee (if any) may be a separate distributions trustee.

(4) While a separate trustee provision applies, the whole trusteeship of the trust is divided, along the lines created by the designation of separate trustees, into discrete sets of separately accepted fiduciary responsibilities, each set separately allocated to 1 or another of the trust’s separate trustees.

(a) Except as provided in paragraph (b) of this subsection, the trust’s separate trustees are not cotrustees in their relations to 1 another. Each separate trustee shall act as to [his or hers or its] separate trustee function(s) upon [his or her or its] own authority without need of approval from any other separate trustee of the trust. The trust’s separate trustees are not cotrustees for purposes of joinder of necessary parties in a proceeding for breach of fiduciary duty or for any other purpose not specifically described in paragraph (b) of this subsection.

(b) The trust’s separate trustees are cotrustees only for purposes of:

(i) Taking, holding, transferring and defending title to trust property.

(ii) Determining venue and interested persons in proceedings concerning the trust.

(iii) The right to have expenses incurred in connection with trusteeship paid from the trust property.

(iv) The privileges and immunities of co-trustees to comment, to the trust’s beneficiaries or settlor(s) or others, on one another’s performance of fiduciary duties, notwithstanding that each separate trustee is expressly relieved, by subsection (10) of this section, of any duty whatsoever to make any such comment.

[(v) Section 5(i) of the qualified dispositions in trust act.]

(c) The trust's separate trustees are not cotrustees for purposes of the requirement in section 7402 that the same person is not the sole trustee and sole beneficiary of the trust: if a trust has only 1 beneficiary, that beneficiary may not be a separate trustee of the trust unless the separate trustee in question comprises a cotrusteeship of which the beneficiary is a cotrustee and the trust instrument prohibits the beneficiary from serving alone.

(d) A separate trustee shall not accept the trust associated with, nor, except as provided elsewhere in this subsection, participate in or provide advice regarding the performance of, the separate trustee function(s) of any other separate trustee of the trust. Ministerial acts on the part of 1 separate trustee (such as confirming that an investment or distribution directive of another separate trustee has been carried out, recording and reporting the actions of another separate trustee or conferring with another separate trustee for purposes of administrative coordination or efficiency) shall not be deemed to constitute an acceptance of the trust associated with the separate trustee function(s) of the other separate trustee. While a separate trustee provision applies, the prohibition of this subsection against the acceptance by one of the trust's separate trustees of the trust associated with the separate trustee function(s) of any other of the trust's separate trustees shall constitute a legal disability.

(e) If a vacancy that is required to be filled under section 7704 occurs in a separate investment trusteeship or a separate distributions trusteeship and prompt action is reasonably thought to be necessary to avoid injury to trust property, the separate resultant trustee may elect, in spite of having no duty to do so, to act for the trust within the function(s) of the vacant separate trusteeship. A separate resultant trustee who acts pursuant to this paragraph shall not be deemed to have accepted the trust associated with the separate trustee function(s) of the vacant separate trusteeship. A separate resultant trustee who acts pursuant to this paragraph on a given occasion shall not thereby be obligated to act pursuant to this paragraph on any other occasion.

(5) The separate trustee provision shall include an express reference, by section number, to this section of the Michigan trust code and shall indicate all of the following.

(a) That the trustee investment function shall be performed by the separate investment trustee (if there is 1) or that 1 or more separate distributions trustees (if any) shall exercise discretion under 1 or more specified discretionary trust provisions.

(b) Which of the trust's separate trustees shall perform the function of allocating between principal and income, for fiduciary accounting purposes, receipts and disbursements or distributions affected by the separate trustees' separate trustee functions.

(c) Which of the trust's separate trustees shall be responsible for preparation and filing of tax and information returns for the trust and for responding on behalf of the trust to inquiries from governmental agencies.

(d) Which of the trust's separate trustees shall be responsible for responding to attacks upon the trust's validity or purpose(s).

(e) Which of the trust's separate trustees shall be responsible for determining whether at any time cash or other property will be loaned by the trust to one or more beneficiaries of the trust; which shall be responsible for determining whether at any time cash or other property will be loaned by the trust to one or more business enterprises in which any beneficiary of the trust has an ownership interest; and which shall be responsible for determining whether at any time cash or other trust property will

be loaned by the trust to one or more business enterprises in which the trust itself has an ownership interest.

(f) In the case of a separate investment trustee, whether the separate investment trustee or the separate resultant trustee shall determine the trust's asset allocation for investment purposes.

(6) The separate resultant trustee shall be responsible for custody of the trust property.

(7) Within [his or her or its] separate trustee function(s):

(a) A separate trustee has all of the rights, privileges, powers, immunities and duties of a trustee under Michigan law, including those described in this Part 7 and in Part 8 of the Michigan trust code.

(b) Is subject to control by the settlor of a revocable trust or by a trust protector (if any) in the same circumstances an ordinary trustee or cotrusteeship would be.

(c) Is bound to seek or consider the advice of a designated trust advisor (if any) in the same circumstances an ordinary trustee or cotrusteeship would be.

(8) If a separate trustee comprises a cotrusteeship, then within that separate trustee's separate trustee function(s), those cotrustees have all of the rights, privileges, powers, immunities and duties of cotrustees under Michigan law, including those described in this Part 7 of the Michigan trust code.

(9) Each separate trustee has the duty to inform and report on [his or her or its] separate trustee function(s):

(a) To beneficiaries of the trust as described in section 7814, provided, however, that no separate trustee is required to provide any beneficiary any report that [he or she or it] knows will be duplicative of a report provided that beneficiary by another separate trustee of the trust.

(b) To each other separate trustee of the trust as is reasonably necessary for the other separate trustee to perform [his or hers or its] separate trustee function(s).

(10) A separate trustee has no duty whatsoever either to monitor or review the actions of any other separate trustee of the trust or to notify or warn any beneficiary of any possible breach of fiduciary duty on the part of any other separate trustee of the trust. A separate trustee who elects, in spite of having no duty to do so, to notify or warn a beneficiary of a possible breach of fiduciary duty on the part of another separate trustee shall not be deemed to have accepted the trust associated with the separate trustee function(s) of that other separate trustee, and a separate trustee who elects thus to notify or warn a beneficiary on a given occasion shall not thereby be obligated to do so on any other occasion.

(11) Absent clear and convincing evidence of collusion in the breach of a fiduciary duty to a beneficiary of the trust:

(a) A separate trustee is not liable for the act or omission of any other separate trustee of the trust.

(b) A separate trustee in breach of fiduciary duty of [his or her or its] separate trustee function(s) shall be the only separate trustee of the trust obligated to defend any action brought by a beneficiary of the trust regarding that breach.

(c) Except as provided in paragraph (d) of this subsection, a separate trustee shall be liable to trust beneficiaries for breach of a fiduciary duty of [his or her or its] separate trustee function(s) as if the other separate trustees of the trust were not in office.

(d) A separate trustee may be liable concerning a separate trustee function of another separate trustee of the trust only for [his or her or its] own act(s) or omission(s) in the performance of ministerial offices pursuant to that other separate trustee's instruction(s), and then only to the extent, and on the basis that, an agent of that other separate trustee would be liable for the same act(s) or omission(s).

700.7704 Vacancy in trusteeship; manner of filling; priority; appointment by court of additional trustee or fiduciary

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

- (a) A person designated as trustee rejects the trusteeship.
- (b) A person designated as trustee cannot be identified or does not exist.
- (c) A trustee resigns.
- (d) A trustee is disqualified or removed.
- (e) A trustee dies.
- (f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if ~~the trust~~:

(a) a separate trusteeship described in section 7703a has no remaining trustee.

(b) a trust without separate trusteeships (within the meaning of section 7703a) has no remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy shall be filled in the following order of priority:

- (a) In the manner designated by the terms of the trust.
- (b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy shall be filled in the following order of priority:

- (a) In the manner designated by the terms of the trust.
- (b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection.
- (c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	83

ATTACHMENT D



SMITH HAUGHEY

RICE & ROEGGE

ATTORNEYS AT LAW

MEMORANDUM

TO: Probate and Estate Planning Council

FROM: George F. Bearup, Real Estate Committee Chair

DATE: December 13, 2013

RE: Clarification of MCL 211.27(a)(7)(s): Intra-Family Residential "Uncapping" Exemption.

Background: After November's Council meeting a subcommittee consisting of Jeff Ammon, James Ramer, David Fry and myself discussed the type of amendment that is more likely to be acceptable to Representative Peter Pettalia who is the original sponsor of the current exemption.

David Fry had been in frequent contact with Representative Pettalia's office and discussed with his Chief Legislative Assistant the need for an amendment to the exemption to more clearly express the will of the legislature. Apparently one of Representative Pettalia's motives for the original exemption was to protect the transfer of family farms from one generation to the next.

The subcommittee observed that the entire real property tax statute is confusing with respect to "uncapping" transfers. The property tax statute is in two parts: one part, MCL 211.27a(6), defines which transfers are "uncapping" transfers, while the second part, MCL 211.27a(7), attempts to define what kinds of transfers are not "uncapping" transfers. The problem is that both parts include exceptions to the general rules stated in the other part.

While the subcommittee debated whether we should consider amendments to both subsections (6) and (7), since both contain descriptions of the kind of transfers which we wish to clarify that are not "uncapping" intra-family transfers, we decided to err on the side of "the possible over the perfect" in order to not attract any more opposition for our efforts to clarify what intra-family residential transfers are exempt from the "uncapping" rules.

Proposed Amendment: The subcommittee's proposed amendment follows:

Amendment to MCL 211.27a(6)(d):

(d) A conveyance by distribution from a trust, except as provided in subsection (7)(s).

Amendment to MCL 211.27a(7)(s):

(s) Beginning December 31, 2013, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer. As used in this subdivision, (i) "residential real property" means real property classified as residential real property under section 34c; and (ii) "transferor" shall include (a) a person for whom another is acting in a fiduciary capacity, including a conservator, as defined in MCL 700.1103(h), a guardian as defined in MCL 700.1104(l), a personal representative as defined in MCL 700.1106(o), and a trustee of a trust, as defined in MCL 700.1107(o); and (b) shall include a testator as defined in MCL 700.1107(m) of a will as defined in MCL 700.1108(b) and a settlor of a trust, as defined in MCL 700.7103(i); and (iii) "transferee" shall include a beneficiary as defined in MCL 700.1103(d). A change in trust beneficiaries that adds to or substitutes a person or persons related to the present beneficiary or beneficiaries by blood or affinity to the first degree is not a transfer with respect to residential real property held in the trust. A transfer of an ownership interest in a corporation, limited liability company, limited partnership or other legal entity that owns residential real property between persons related by blood or affinity to the first degree is not a transfer with respect to residential real property held in the entity.

Proposed Action Steps:

1. Our intention is for David Fry to submit this proposed amendment as a "technical correction" to Representative Pettalia's office to confirm that Representative Pettalia is supportive of this proposed technical correction. We believe that he will be supportive, as he has recognized the need for a technical correction, and he has indicated that he is willing to sponsor a technical correction to the exemption, but only so long as he has the clear backing of the State Bar of Michigan.
2. If Representative Pettalia finds the proposed technical correction acceptable, the subcommittee will communicate with Representative Pettalia our commitment to obtain the endorsement of the technical correction by the Probate and Estate Planning Council, the Real Estate Section and the Tax Law Section of the State Bar of Michigan.
3. We will then ask for the Probate and Estate Planning Council's formal support of the proposed technical correction.
4. We will then seek to obtain formal support from the Real Estate and Tax Sections to the Council's formal endorsement of the proposed technical correction.

George F. Bearup
Chairperson, Real Estate Committee

ATTACHMENT E

TAX NUGGET
January, 2014

Update on the state of Michigan treatment of income tax returns for same sex couples that are legally married. The Michigan Department of Treasury has removed the comment that they would provide a worksheet so that married same-sex taxpayers could compute their separate income. This leads to the question of how the income should be computed. Other states have dealt with this situation by requiring a pro-forma federal tax return for state tax purposes (Indiana and North Carolina) or passed executive orders or emergency regulations allowing same-sex couples to file joint tax returns(Colorado, Missouri); and still others have provided special schedules (Arizona, Kansas North Dakota, Ohio, Wisconsin). Virginia has decoupled state income tax from federal income tax for same-sex couples, requiring the recalculation of above-the-line deductions, causing consternation for same-sex couple employees and employers. What approach will Michigan take?

Thanks to Eric Gregory, Employee Benefits Associate, Dickinson Wright PLLC, Ann Arbor, for access to his article, “In Wake of United States v. Windsor: A Lack of Guidance from the Michigan Department of Treasury for Same-Sex Couples Legally Married in Other Jurisdictions”.

ATTACHMENT F

Patricia Ouellette < pouellette@borpc.com >
To: Marguerite Lentz < meglentz@gmail.com >

Mon, Jan 6, 2014 at 3:04 PM

Hi Meg:

Here is the Official position of the Family Law Section:

"We also reviewed early drafts of two bills aimed at eliminating dower. Dower allows widows a one-third share of the rents from any property owned by their husband during the marriage, even if that property is transferred before the husband's death. This means that a wife has to sign off on any transfer or encumbrance of a husband's property during the marriage, and sign off her dower rights on divorce. Dower does not apply to property held by a corporation, LLC, or a partnership.

Dower is not popular with probate attorneys, who find the election to maintain dower rights awkward in estate settlements, nor with title companies, who have to track the marital status of any man who attempts to transfer property to make sure that dower rights aren't lingering. It is also obviously gender linked, because widowers have no reciprocal rights in the property of their former wives.

The family law section has supported dower, not because of the rent implications, but because it requires a wife to be given clear notice that real estate is being encumbered or sold. Our response to concerns over gender bias has been to suggest that husbands have reciprocal rights. This current legislative initiative may be an opportunity to find some common ground; eliminating dower but requiring a spouse's signature on any transfer or encumbrance of real property held during a marriage."

Kent also mentioned that he would hope to meet at some common ground with us and doesn't know how the real estate section would react.

Patricia M. Ouellette
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