

SUBSTITUTE FOR
HOUSE BILL NO. 5367

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3709 and 3715 (MCL 700.3709 and 700.3715),
section 3715 as amended by 2009 PA 46, and by adding sections 3715a
and 3723.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3709. (1) Except as otherwise provided by a decedent's
2 will or by this section, a personal representative has a right to ~~τ~~
3 and, if necessary for purposes of administration, shall take
4 possession or control of ~~τ~~the decedent's property, **OTHER THAN**
5 **DIGITAL PROPERTY SUBJECT TO SUBSECTION (2)**, except that real
6 property or tangible personal property may be left with or
7 surrendered to the person presumptively entitled to that property

1 unless or until, in the personal representative's judgment,
2 possession of the property will be necessary for purposes of
3 administration. A personal representative's request for delivery of
4 property possessed by an heir or devisee is conclusive evidence, in
5 an action against the heir or devisee for possession of that
6 property, that the possession of the property by the personal
7 representative is necessary for purposes of administration. The
8 personal representative shall pay taxes on, and take all steps
9 reasonably necessary for the management, protection, and
10 preservation of, the estate in the personal representative's
11 possession. The personal representative may maintain an action to
12 recover possession of, or to determine the title to, property.

13 (2) EXCEPT AS OTHERWISE PROVIDED BY A DECEDENT'S WILL, AND
14 SUBJECT TO APPLICABLE STATE AND FEDERAL LAW, INCLUDING COPYRIGHT
15 LAW AND A TERMS-OF-SERVICE AGREEMENT, WITH RESPECT TO A DECEDENT'S
16 DIGITAL PROPERTY, A PERSONAL REPRESENTATIVE HAS THE LAWFUL CONSENT
17 OF THE DECEDENT AND IS AN AUTHORIZED USER UNDER ALL APPLICABLE
18 STATE AND FEDERAL STATUTES. A PERSONAL REPRESENTATIVE HAS THE RIGHT
19 TO, AND IF NECESSARY FOR PURPOSES OF ADMINISTRATION SHALL, EXERCISE
20 CONTROL OVER THE DECEDENT'S DIGITAL PROPERTY. A PERSONAL
21 REPRESENTATIVE'S WRITTEN REQUEST FOR ACCESS TO, OR CONTROL OF,
22 DIGITAL PROPERTY IS CONCLUSIVE EVIDENCE IN ANY ACTION THAT THE
23 ACCESS TO, EXERCISE OF CONTROL OF, OR BOTH, DIGITAL PROPERTY BY THE
24 PERSONAL REPRESENTATIVE IS NECESSARY FOR PURPOSES OF
25 ADMINISTRATION. THE PERSONAL REPRESENTATIVE MAY MAINTAIN AN ACTION
26 TO GAIN ACCESS TO, EXERCISE CONTROL OF, OR BOTH, DIGITAL PROPERTY
27 IN ACCORDANCE WITH SECTION 3715A.

1 Sec. 3715. Except as restricted or otherwise provided by the
2 will or by an order in a formal proceeding, and subject to the
3 priorities stated in section 3902, a personal representative,
4 acting reasonably for the benefit of interested persons, may
5 properly do any of the following:

6 (a) Retain property owned by the decedent pending distribution
7 or liquidation, including property in which the personal
8 representative is personally interested or that is otherwise
9 improper for trust investment.

10 (b) Receive property from a fiduciary or another source.

11 (c) Perform, compromise, or refuse performance of a contract
12 of the decedent that continues as an estate obligation, as the
13 personal representative determines under the circumstances. If the
14 contract is for a conveyance of land and requires the giving of
15 warranties, the personal representative shall include in the deed
16 or other instrument of conveyance the required warranties. The
17 warranties are binding on the estate as though the decedent made
18 them but do not bind the personal representative except in a
19 fiduciary capacity. In performing an enforceable contract by the
20 decedent to convey or lease land, the personal representative,
21 among other possible courses of action, may do any of the
22 following:

23 (i) Execute and deliver a deed of conveyance for cash payment
24 of the amount remaining due or for the purchaser's note for the
25 amount remaining due secured by a mortgage on the land.

26 (ii) Deliver a deed in escrow with directions that the
27 proceeds, when paid in accordance with the escrow agreement, be

1 paid to the decedent's successors, as designated in the escrow
2 agreement.

3 (d) If, in the judgment of the personal representative, the
4 decedent would have wanted the pledge satisfied under the
5 circumstances, satisfy a written charitable pledge of the decedent
6 irrespective of whether the pledge constitutes a binding obligation
7 of the decedent or is properly presented as a claim.

8 (e) If ~~funds are~~ **MONEY IS** not needed to meet a debt or
9 expenses currently payable and ~~are~~ **IS** not immediately
10 distributable, deposit or invest liquid assets of the estate,
11 including ~~funds~~ **MONEY** received from the sale of other property, in
12 accordance with the Michigan prudent investor rule.

13 (f) Acquire or dispose of property, including land in this or
14 another state, for cash or on credit, at public or private sale;
15 and manage, develop, improve, exchange, partition, change the
16 character of, or abandon estate property.

17 (g) Make an ordinary or extraordinary repair or alteration in
18 a building or other structure, demolish an improvement, or raze an
19 existing or erect a new party wall or building.

20 (h) Subdivide, develop, or dedicate land to public use, make
21 or obtain the vacation of a plat or adjust a boundary, adjust a
22 difference in valuation on exchange or partition by giving or
23 receiving consideration, or dedicate an easement to public use
24 without consideration.

25 (i) Enter into a lease as lessor or lessee for any purpose,
26 with or without an option to purchase or renew, for a term within
27 or extending beyond the period of administration.

1 (j) Enter into a lease or arrangement for exploration and
2 removal of minerals or another natural resource, or enter into a
3 pooling or unitization agreement.

4 (k) Abandon property ~~when~~ **IF**, in the opinion of the personal
5 representative, it is valueless, or is so encumbered or in such a
6 condition as to be of no benefit to the estate.

7 (l) Vote stocks or another security in person or by general or
8 limited proxy.

9 (m) Pay a call, assessment, or other amount chargeable or
10 accruing against or on account of a security, unless barred by a
11 provision relating to claims.

12 (n) Hold a security in the name of a nominee or in other form
13 without disclosure of the estate's interest. However, the personal
14 representative is liable for an act of the nominee in connection
15 with the security so held.

16 (o) Insure the estate property against damage, loss, and
17 liability and insure the personal representative against liability
18 as to third persons.

19 (p) Borrow property with or without security to be repaid from
20 the estate property or otherwise, and advance money for the
21 estate's protection.

22 (q) Effect a fair and reasonable compromise with a debtor or
23 obligor, or extend, renew, or in any manner modify the terms of an
24 obligation owing to the estate. If the personal representative
25 holds a mortgage, pledge, or other lien ~~upon~~ **ON** another person's
26 property, the personal representative may, in lieu of foreclosure,
27 accept a conveyance or transfer of encumbered property from the

1 property's owner in satisfaction of the indebtedness secured by
2 lien.

3 (r) Pay a tax, an assessment, the personal representative's
4 compensation, or another expense incident to the estate's
5 administration.

6 (s) Sell or exercise a stock subscription or conversion right.

7 (t) Consent, directly or through a committee or other agent,
8 to the reorganization, consolidation, merger, dissolution, or
9 liquidation of a corporation or other business enterprise.

10 (u) Allocate items of income or expense to either estate
11 income or principal, as permitted or provided by law.

12 (v) Employ, and pay reasonable compensation for reasonably
13 necessary services performed by, a person, including, but not
14 limited to, an auditor, investment advisor, or agent, even if the
15 person is associated with the personal representative, to advise or
16 assist the personal representative in the performance of
17 administrative duties; act on such a person's recommendations
18 without independent investigation; and, instead of acting
19 personally, employ 1 or more agents to perform an act of
20 administration, whether or not discretionary.

21 (w) Employ an attorney to perform necessary legal services or
22 to advise or assist the personal representative in the performance
23 of the personal representative's administrative duties, even if the
24 attorney is associated with the personal representative, and act
25 without independent investigation ~~upon~~ **ON** the attorney's
26 recommendation. An attorney employed under this subdivision shall
27 receive reasonable compensation for his or her employment.

1 (x) Prosecute or defend a claim or proceeding in any
2 jurisdiction for the protection of the estate and of the personal
3 representative in the performance of the personal representative's
4 duties.

5 (y) Sell, mortgage, or lease estate property or an interest in
6 estate property for cash, credit, or part cash and part credit, and
7 with or without security for unpaid balances.

8 (z) Continue a business or venture in which the decedent was
9 engaged at the time of death as a sole proprietor or a general
10 partner, including continuation as a general partner by a personal
11 representative that is a corporation, in any of the following
12 manners:

13 (i) In the same business form for a period of not more than 4
14 months after the date of appointment of a general personal
15 representative if continuation is a reasonable means of preserving
16 the value of the business, including goodwill.

17 (ii) In the same business form for an additional period of time
18 if approved by court order in a formal proceeding to which the
19 persons interested in the estate are parties.

20 (iii) Throughout the period of administration if the personal
21 representative incorporates the business or converts the business
22 to a limited liability company and if none of the probable
23 distributees of the business who are competent adults object to its
24 incorporation or conversion and its retention in the estate.

25 (aa) Change the form of a business or venture in which the
26 decedent was engaged at the time of death through incorporation or
27 formation as a limited liability company or other entity offering

1 protection against or limiting exposure to liabilities.

2 (bb) Provide for the personal representative's exoneration
3 from personal liability in a contract entered into on the estate's
4 behalf.

5 (cc) Respond to an environmental concern or hazard affecting
6 estate property as provided in section 3722.

7 (dd) Satisfy and settle claims and distribute the estate as
8 provided in this act.

9 (ee) Make, revise, or revoke an available allocation, consent,
10 or election in connection with a tax matter as appropriate in order
11 to carry out the decedent's estate planning objectives and to
12 reduce the overall burden of taxation, both in the present and in
13 the future. This authority includes, but is not limited to, all of
14 the following:

15 (i) Electing to take expenses as estate tax or income tax
16 deductions.

17 (ii) Electing to allocate the exemption from the tax on
18 generation skipping transfers among transfers subject to estate or
19 gift tax.

20 (iii) Electing to have all or a portion of a transfer for a
21 spouse's benefit qualify for the marital deduction.

22 (iv) Electing the date of death or an alternate valuation date
23 for federal estate tax purposes.

24 (v) Excluding or including property from the gross estate for
25 federal estate tax purposes.

26 (vi) Valuing property for federal estate tax purposes.

27 (vii) Joining with the surviving spouse or the surviving

1 spouse's personal representative in the execution and filing of a
2 joint income tax return and consenting to a gift tax return filed
3 by the surviving spouse or the surviving spouse's personal
4 representative.

5 (ff) Divide portions of the estate, including portions to be
6 allocated into trust, into 2 or more separate portions or trusts
7 with substantially identical terms and conditions, and allocate
8 property between them, in order to simplify administration for
9 generation skipping transfer tax purposes, to segregate property
10 for management purposes, or to meet another estate or trust
11 objective.

12 (GG) SUBJECT TO STATE AND FEDERAL LAW, INCLUDING COPYRIGHT
13 LAW, AND THE APPLICABLE TERMS-OF-SERVICE AGREEMENT, EXERCISE
14 CONTROL OVER THE DECEDENT'S DIGITAL PROPERTY.

15 SEC. 3715A. (1) ON RECEIPT OF A PERSONAL REPRESENTATIVE'S
16 WRITTEN REQUEST UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL
17 PROPERTY, OWNERSHIP OF DIGITAL PROPERTY, OR A COPY OF A DIGITAL
18 ASSET, A DIGITAL CUSTODIAN SHALL PROVIDE THE PERSONAL
19 REPRESENTATIVE WITH THE REQUESTED ACCESS, OWNERSHIP, OR COPY, AS
20 APPLICABLE. A PERSONAL REPRESENTATIVE'S WRITTEN REQUEST UNDER THIS
21 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF LETTERS
22 ISSUED TO THE PERSONAL REPRESENTATIVE.

23 (2) A DIGITAL CUSTODIAN SHALL COMPLY NOT LATER THAN 56 DAYS
24 AFTER RECEIPT OF A REQUEST MADE UNDER SUBSECTION (1). IF, NOT LATER
25 THAN 56 DAYS AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (1),
26 THE DIGITAL CUSTODIAN FAILS TO COMPLY WITH THE REQUEST, THE
27 PERSONAL REPRESENTATIVE MAY PETITION THE COURT FOR AN ORDER

1 DIRECTING COMPLIANCE.

2 (3) A DIGITAL CUSTODIAN IS NOT LIABLE FOR AN ACTION DONE IN
3 COMPLIANCE WITH THIS SECTION.

4 SEC. 3723. (1) A PERSON INTERESTED IN THE ESTATE MAY FILE A
5 PETITION IN THE COURT FOR AN ORDER TO LIMIT OR ELIMINATE A PERSONAL
6 REPRESENTATIVE'S POWER OVER DIGITAL PROPERTY.

7 (2) ON RECEIPT OF A PETITION UNDER THIS SECTION, THE COURT
8 SHALL SET A DATE FOR A HEARING ON THE PETITION. THE HEARING DATE
9 SHALL BE NOT LESS THAN 14 DAYS AND NOT MORE THAN 56 DAYS AFTER THE
10 DATE THE PETITION IS FILED.

11 Enacting section 1. This amendatory act does not take effect
12 unless all of the following bills of the 97th Legislature are
13 enacted into law:

14 (a) House Bill No. 5366.

15 (b) House Bill No. 5368.

16 (c) House Bill No. 5369.

17 (d) House Bill No. 5370.