

Act No. 130  
Public Acts of 1996  
Approved by the Governor  
March 15, 1996  
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March 18, 1996

**STATE OF MICHIGAN**  
**88TH LEGISLATURE**  
**REGULAR SESSION OF 1996**

Introduced by Senator Van Regenmorter

# **ENROLLED SENATE BILL No. 490**

AN ACT to amend sections 497, 703, 704, 710, 712, and 717 of Act No. 642 of the Public Acts of 1978, entitled as amended "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts, and powers of attorney; to prescribe penalties and liabilities; and to repeal certain acts and parts of acts," sections 703, 704, 710, 712, and 717 as added by Act No. 222 of the Public Acts of 1988, being sections 700.497, 700.703, 700.704, 700.710, 700.712, and 700.717 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 497, 703, 704, 710, 712, and 717 of Act No. 642 of the Public Acts of 1978, sections 703, 704, 710, 712, and 717 as added by Act No. 222 of the Public Acts of 1988, being sections 700.497, 700.703, 700.704, 700.710, 700.712, and 700.717 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 497. (1) The death of a principal who has executed a power of attorney in writing, durable or otherwise, does not revoke or terminate the agency of the attorney in fact, agent, or other person who, without actual knowledge of the death, acts in good faith under the power of attorney or agency. An action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives. The disability or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency of the attorney in fact, agent, or other person who, without actual knowledge of the disability or incompetence, acts in good faith under the power of attorney or agency. An action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives. This subsection does not apply to a power of attorney described in section 495.

(2) In the absence of fraud, an affidavit executed by the attorney in fact or agent stating that he or she did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect a provision for revocation or termination contained in the power of attorney.

Sec. 703. (1) Unless notice has already been given, upon appointment a personal representative shall publish and a temporary personal representative may publish a notice, as provided by supreme court rule, notifying creditors of the estate to present their claims within 4 months after the date of the publication of the notice or be forever barred. The personal representative who publishes the notice also shall send pursuant to subsection (2) a copy of the notice or a similar notice to any creditor of the estate who at the time of publication or during the 4 months following publication is known to the personal representative. For purposes of this section, a creditor of the decedent is known to the personal representative if the personal representative has actual notice of the creditor or the existence of the creditor was reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding the death and mail following the death.

(2) Notice to known creditors of the estate shall be given as follows:

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

(b) If the personal representative first learns of a creditor of the estate less than 1 month before the expiration of the time period in subdivision (a), within 1 month after the personal representative first learns of the creditor.

Sec. 704. (1) If the personal representative or his or her attorney in good faith believes that notice to a creditor of the estate is or may be required by section 703 and gives notice based on that belief, the personal representative or his or her attorney is not liable to any person for giving notice.

(2) If the personal representative or his or her attorney in good faith fails to give the notice required by section 703, the personal representative or his or her attorney is not personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

Sec. 710. (1) A claim against a decedent's estate that arose before the death of the decedent, including a claim of the state or any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, is barred against the estate, the personal representative, and the decedent's heirs and devisees unless presented as follows:

(a) If notice is given in compliance with section 703(1), within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

(b) In the case of a creditor known to the personal representative at the time of publication or during the 4 months following publication, within 1 month after the subsequent sending of notice or 4 months after the date of the publication of notice to creditors, whichever is later.

(c) If the notice requirements of section 703 have not been met, within 3 years after the decedent's death.

(2) A claim against a decedent's estate that arises at or after the death of the decedent, including a claim of the state or any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or founded on contract, tort, or other legal basis, is barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) If for a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due.

(b) For a claim not within subdivision (a), within 4 months after the claim arises or the time specified in subsection (1)(a), whichever is later.

(3) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien upon property of the estate.

(b) A proceeding to establish the decedent's or the personal representative's liability for which the decedent or the personal representative is protected by liability insurance to the limits of the insurance protection only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the personal representative of the estate.

Sec. 712. (1) A claimant with a claim against a decedent's estate shall present the claim by doing either of the following:

(a) Delivering or mailing to the personal representative or proposed personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or by filing a written statement of the claim, in the form prescribed by supreme court rule, with the court and delivering or mailing a copy of the statement to the personal representative or proposed personal representative. The claim shall be considered presented on receipt of the written statement of claim by the personal representative or the filing of the claim with the court, whichever occurs first. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of an uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) Commencing a proceeding to obtain payment of a claim against the estate in a court where the personal representative may be subjected to jurisdiction. The claimant shall commence the proceeding within the time limited for presenting the claim. A presentation of a claim is not required in matters claimed in proceedings against the decedent that were pending at the time of death.

(2) Except as otherwise provided in this subsection, if a claim is presented under subsection (1)(a), a proceeding on the claim shall not be commenced more than 63 days after the personal representative has mailed a notice of disallowance. For a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 63-day period, or to avoid injustice the court, on petition, may order an extension of

the 63-day period, but an extension shall not be consented to or ordered if the extension would run beyond the applicable statute of limitations.

(3) Claims by the personal representative against the estate shall be in the form prescribed by supreme court rule. The personal representative shall give a copy of the claim to all interested persons not later than 7 days after the time for original presentation of the claim has expired. The claim shall contain a warning that the personal representative's claim will be allowed unless a notice of objection is delivered or mailed to the personal representative within 63 days after the time for original presentation of the claim has expired. This subsection does not apply to a claim for collection of compensation for services rendered or for reimbursement of expenses advanced by the personal representative.

Sec. 717. (1) If a claim is presented in a manner described in section 712 and within the time limit prescribed in section 710, the personal representative may deliver or mail a notice to a claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative shall not change a decision disallowing a claim if the time for the claimant to file a petition for allowance has passed or if the time to commence a proceeding on the claim has run and the claim has been barred. A claim that is disallowed in whole or in part by the personal representative is barred to the extent not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure by the personal representative to deliver or mail to a claimant notice of action on the claim within 63 days after the time for original presentation of the claim has expired or within 63 days after the appointment of the personal representative, whichever is later, constitutes a notice of allowance. Failure by an interested person to deliver or mail to the personal representative notice of an objection to a personal representative's claim within 63 days after the time for original presentation of the claim has expired constitutes a notice of allowance.

(2) Upon the personal representative's or a claimant's petition, the court may allow in whole or in part a claim presented to the personal representative or filed with the court in due time and not barred by subsection (1). Upon an interested person's petition concerning a claim by the personal representative, the court may allow in whole or in part a claim of the personal representative presented to the interested persons in due time and not previously allowed by subsection (1).

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(4) Unless otherwise provided in a judgment in another court entered against the estate, allowed claims bear interest at a rate determined under section 6013 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.6013 of the Michigan Compiled Laws, for the period commencing 63 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Section 2. This amendatory act shall take effect June 1, 1996.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.