



SENATE BILL No. 1059

July 3, 1996, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to codify, revise, consolidate, and classify aspects of the law relating to the affairs of decedents, missing individuals, protected individuals, minors, incapacitated individuals, trust beneficiaries, and certain other individuals and relating to wills and intestacy and the administration and distribution of estates of decedents, missing individuals, protected individuals, minors, incapacitated individuals, trust beneficiaries, and certain other individuals; to provide for certain powers and procedures of the probate court; to provide for the validity and effect of certain nontestamentary transfers, contracts, and deposits that relate to death and appear to have testamentary effect; to provide certain procedures to facilitate enforcement of testamentary and other trusts; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE I

DEFINITIONS, GENERAL PROVISIONS, AND JURISDICTION OF COURT

PART 1

SHORT TITLE AND DEFINITIONS

Sec. 1101. This act shall be known and may be cited as the "estate settlement act".

Sec. 1102. The definitions contained in this part apply throughout this act unless the context requires otherwise or unless a definition set forth elsewhere in this act is applicable to a specific article, part, or section.

Sec. 1103. As used in this act:

(a) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney and an individual authorized to make decisions as a patient advocate concerning another's health care.

(b) "Application" means a written request to the probate register for an order of informal probate or appointment under part 3 of article III.

(c) "Beneficiary" includes all of the following:

(i) In relation to a trust beneficiary, a person that is an interested trust beneficiary.

(ii) In relation to a charitable trust, a person that is entitled to enforce the trust.

(iii) In relation to a beneficiary of a beneficiary designation, a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in

1 beneficiary form (TOD), of a pension, profit-sharing, retirement,
2 or similar benefit plan, or of another nonprobate transfer at
3 death.

4 (iv) In relation to a beneficiary designated in a governing
5 instrument, a grantee of a deed, devisee, trust beneficiary, ben-
6 eficiary of a beneficiary designation, donee, appointee, taker in
7 default of a power of appointment, or person in whose favor a
8 power of attorney or power held in an individual, fiduciary, or
9 representative capacity is exercised.

10 (d) "Beneficiary designation" means the naming in a govern-
11 ing instrument of a beneficiary of an insurance or annuity
12 policy, of an account with POD designation, of a security regis-
13 tered in beneficiary form (TOD), of a pension, profit-sharing,
14 retirement, or similar benefit plan, or of another nonprobate
15 transfer at death.

16 (e) "Child" includes an individual entitled to take as a
17 child under this act by intestate succession from the parent
18 whose relationship is involved. Child does not include an indi-
19 vidual who is only a stepchild, foster child, grandchild, or more
20 remote descendant.

21 (f) "Claim" includes, in respect to a decedent's or pro-
22 tected individual's estate, a liability of the decedent or pro-
23 tected individual, whether arising in contract, tort, or other-
24 wise, and a liability of the estate that arises at or after the
25 decedent's death or after a conservator's appointment, including
26 funeral expenses and expenses of administration. Claim does not
27 include an estate or inheritance tax, or a demand or dispute

1 regarding a decedent's or protected individual's title to
2 specific property alleged to be included in the estate.

3 (g) "Conservator" means a person appointed by a court to
4 manage a protected individual's estate.

5 (h) "Consumer price index" means the consumer price index
6 for all urban consumers United States city average - all items
7 using the official base period for the 12-month period ending
8 December 31 of that calendar year as published by the United
9 States department of labor. In the event that this index is no
10 longer available, the department of treasury shall choose a sub-
11 stitute index.

12 (i) "Cost-of-living adjustment factor" means, for the calen-
13 dar year in which a decedent dies, the percentage by which the
14 consumer price index for the preceding calendar year exceeds the
15 consumer price index for calendar year 1996.

16 (j) "Court" means the probate court.

17 (k) "Current trust beneficiary" means a beneficiary about
18 which 1 of the following is true:

19 (i) The beneficiary has a current right to receive all or a
20 portion of the income, if any, of the trust property.

21 (ii) The beneficiary is currently eligible to receive all or
22 a portion of a mandatory or discretionary distribution of income
23 or principal.

24 (iii) The beneficiary possesses a testamentary or presently
25 exercisable general or special power of appointment.

26 (l) "Descendant" means, in relation to an individual, all of
27 his or her descendants of all generations, with the relationship

1 of parent and child at each generation being determined by the
2 definitions of child and parent contained in this act.

3 (m) "Devise" means, when used as a noun, a testamentary dis-
4 position of real or personal property and, when used as a verb,
5 to dispose of real or personal property by will.

6 (n) "Devisee" means a person designated in a will to receive
7 a devise. For the purposes of article II, for a devise to a
8 trustee of an existing trust or to a trustee under a will, the
9 trustee is a devisee and a beneficiary is not.

10 (o) "Disability" means cause for a protective order as
11 described in section 5401.

12 (p) "Distributee" means a person that receives a decedent's
13 property from the decedent's personal representative other than
14 as a creditor or purchaser. A testamentary trustee is a distrib-
15 utee only to the extent of distributed property or increment
16 thereto remaining in the trustee's hands. A testamentary trust
17 beneficiary to whom the trustee distributes property received
18 from a personal representative is a distributee of the personal
19 representative. For the purposes of this subdivision, testamen-
20 tary trustee includes a trustee to whom property is transferred
21 by will to the extent of the devised property.

22 Sec. 1104. As used in this act:

23 (a) "Environmental law" means a federal, state, or local
24 law, rule, regulation, or ordinance relating to protection of the
25 environment or human health.

26 (b) "Estate" includes the property of the decedent, trust,
27 or other person whose affairs are subject to this act as

1 originally constituted and as it exists from time to time during
2 administration.

3 (c) "Exempt property" means property of a decedent's estate
4 that is described in section 2404.

5 (d) "Family allowance" is the allowance prescribed in sec-
6 tion 2403.

7 (e) "Fiduciary" includes a personal representative, guardi-
8 an, conservator, trustee, plenary guardian or partial guardian
9 appointed as provided in chapter 6 of the mental health code, Act
10 No. 258 of the Public Acts of 1974, being sections 330.1600 to
11 330.1644 of the Michigan Compiled Laws, and successor fiduciary.

12 (f) "Foreign personal representative" means a personal rep-
13 resentative appointed by another jurisdiction.

14 (g) "Formal proceedings" means proceedings conducted before
15 a judge with notice to interested persons.

16 (h) "General personal representative" does not include a
17 special personal representative.

18 (i) "Governing instrument" means a deed; will; trust; insur-
19 ance or annuity policy; account with POD designation; security
20 registered in beneficiary form (TOD); pension, profit-sharing,
21 retirement, or similar benefit plan; instrument creating or exer-
22 cising a power of appointment or a power of attorney; or disposi-
23 tive, appointive, or nominative instrument of any similar type.

24 (j) "Guardian" means a person who qualifies as a guardian of
25 a minor or incapacitated individual under a testamentary or court
26 appointment. Guardian does not include a guardian ad litem.

1 (k) "Hazardous substance" means a substance defined as
2 hazardous or toxic or otherwise regulated by an environmental
3 law.

4 (l) "Heir" means, except as controlled by section 2711, a
5 person, including the surviving spouse or the state, that is
6 entitled under the statutes of intestate succession to a
7 decedent's property.

8 (m) "Homestead allowance" means the allowance prescribed in
9 section 2402.

10 Sec. 1105. As used in this act:

11 (a) "Incapacitated individual" means an individual described
12 as an incapacitated individual in section 5103.

13 (b) "Informal proceedings" means proceedings for probate of
14 a will or appointment of a personal representative conducted by
15 the probate register without notice to interested persons.

16 (c) "Interested person" includes an heir, devisee, child,
17 spouse, creditor, beneficiary, and any other person that has a
18 property right in or claim against a trust estate or the estate
19 of a decedent, ward, or protected individual; a person that has
20 priority for appointment as personal representative; and a fidu-
21 ciary representing an interested person. Identification of
22 interested persons may vary from time to time and shall be deter-
23 mined according to the particular purposes of, and matter
24 involved in, a proceeding.

25 (d) "Interested trust beneficiary" means a person that has 1
26 or more of the following interests in a trust:

1 (i) Life estate.

2 (ii) Eligible recipient of a mandatory or discretionary
3 distribution by the trustee of income or principal.

4 (iii) Eligible recipient of a mandatory or discretionary
5 distribution by the trustee of income or principal upon termina-
6 tion of an interest of a person described in subparagraph (i) or
7 (ii).

8 (iv) Presently exercisable or testamentary general or spe-
9 cial power of appointment.

10 (e) "Issue" means an individual's descendant.

11 (f) "Joint tenants with the right of survivorship" and
12 "community property with the right of survivorship" include
13 co-owners or ownership of property held under circumstances that
14 entitle 1 or more to the whole of the property on the death of
15 the other or others, but do not include forms of co-ownership
16 registration in which the underlying ownership of each party is
17 in proportion to that party's contribution.

18 (g) "Lease" includes an oil, gas, or other mineral lease.

19 (h) "Letters" includes letters testamentary, letters of
20 guardianship, letters of administration, and letters of
21 conservatorship.

22 Sec. 1106. As used in this act:

23 (a) "Michigan prudent investor rule" means the fiduciary
24 investment and management rule described in part 5 of this
25 article.

26 (b) "Minor" means an individual who is under 18 years of
27 age.

1 (c) "Minor ward" is a minor for whom a guardian is appointed
2 solely because of minority.

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

5 (e) "Nonresident decedent" means a decedent who was domi-
6 ciled in another jurisdiction at the time of his or her death.

7 (f) "Organization" means a corporation, business trust,
8 estate, trust, partnership, joint venture, association, limited
9 liability company, government, governmental subdivision or
10 agency, or another legal or commercial entity.

11 (g) "Parent" includes an individual entitled to take, or who
12 would be entitled to take, as a parent under this act by intes-
13 tate succession from a child who dies without a will and whose
14 relationship is in question. Parent does not include an individ-
15 ual who is only a stepparent, foster parent, or grandparent.

16 (h) "Patient advocate" means an individual designated to
17 exercise powers concerning another individual's care, custody,
18 and medical treatment as provided in section 5506.

19 (i) "Patient advocate designation" means the written docu-
20 ment executed and with the effect as described in sections 5506
21 to 5512.

22 (j) "Payor" means a trustee, insurer, business entity,
23 employer, government, governmental subdivision or agency, or
24 another person authorized or obligated by law or a governing
25 instrument to make payments.

26 (k) "Person" means an individual or organization.

1 (l) "Personal representative" includes an executor,
2 administrator, successor personal representative, special
3 personal representative, and any other person who performs sub-
4 stantially the same function under the law governing that
5 person's status.

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

8 (n) "POD" means pay on death.

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

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

15 (q) "Protected individual" means a minor or other individual
16 for whom a conservator has been appointed or other protective
17 order has been made as provided in part 4 of article 5.

18 (r) "Protective proceeding" means a proceeding under the
19 provisions of part 4 of article 5.

20 Sec. 1107. As used in this act:

21 (a) "Register" or "probate register" means the official of
22 the court designated to perform the functions of register as pro-
23 vided in section 1304.

24 (b) "Revised judicature act of 1961" means the revised judi-
25 cature act of 1961, Act No. 236 of the Public Acts of 1961, being
26 sections 600.101 to 600.9947 of the Michigan Compiled Laws.

1 (c) "Security" includes a note, stock, treasury stock, bond,
2 debenture, evidence of indebtedness, certificate of interest or
3 participation in an oil, gas, or mining title or lease or in pay-
4 ments out of production under such a title or lease, collateral
5 trust certificate, transferable share, voting trust certificate,
6 interest in a regulated investment company or other entity gener-
7 ally referred to as a mutual fund, or, in general, an interest or
8 instrument commonly known as a security, or a certificate of
9 interest or participation for, a temporary or interim certifi-
10 cate, receipt, or certificate of deposit for, or any warrant or
11 right to subscribe to or purchase any of the foregoing.

12 (d) "Settlement" includes, in reference to a decedent's
13 estate, the full process of administration, distribution, and
14 closing.

15 (e) "Special personal representative" means a personal rep-
16 resentative as described by sections 3614 to 3618.

17 (f) "State" means a state of the United States, the District
18 of Columbia, the Commonwealth of Puerto Rico, or any territory or
19 insular possession subject to the jurisdiction of the United
20 States.

21 (g) "Successor" means a person, other than a creditor, who
22 is entitled to property of a decedent under the decedent's will
23 or this act.

24 (h) "Successor personal representative" means a personal
25 representative, other than a special personal representative, who
26 is appointed to succeed a previously appointed personal
27 representative.

1 (i) "Supervised administration" means the proceedings
2 described in part 5 of article III.

3 (j) "Survive" means that an individual neither predeceases
4 an event, including the death of another individual, nor is con-
5 sidered to predecease an event under section 2104 or 2702.

6 (k) "Testacy proceeding" means a proceeding to establish a
7 will or determine intestacy.

8 (l) "Testator" includes an individual of either sex.

9 (m) "TOD" means transfer on death.

10 (n) "Trust" includes an express trust, private or charita-
11 ble, with additions to the trust, wherever and however created.
12 Trust includes a trust created or determined by judgment or
13 decree under which the trust is to be administered in the manner
14 of an express trust. Trust does not include another constructive
15 trust or a resulting trust, conservatorship, personal representa-
16 tive, trust account as defined in article VI, custodial arrange-
17 ment under the Michigan uniform gifts to minors act, Act No. 172
18 of the Public Acts of 1959, being sections 554.451 to 554.461 of
19 the Michigan Compiled Laws, business trust providing for a cer-
20 tificate to be issued to a beneficiary, common trust fund, voting
21 trust, security arrangement, liquidation trust, or trust for the
22 primary purpose of paying debts, dividends, interest, salaries,
23 wages, profits, pensions, or employee benefits of any kind, or
24 another arrangement under which a person is nominee or escrowee
25 for another.

26 (o) "Trustee" includes an original, additional, or successor
27 trustee, whether or not appointed or confirmed by the court.

Sec. 1108. As used in this act:

2 (a) "Ward" means an individual for whom a guardian is
3 appointed.

(b) "Will" includes a codicil and a testamentary instrument that appoints a personal representative, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to the decedent's property that is passing by intestate succession.

9 PART 2

10 CONSTRUCTION AND GENERAL PROVISIONS

11 Sec. 1201. (1) This act shall be liberally construed and
12 applied to promote its underlying purposes and policies.

13 (2) The underlying purposes and policies of this act are all
14 of the following:

15 (a) To simplify and clarify the law concerning the affairs
16 of decedents, missing individuals, protected individuals, minors,
17 and legally incapacitated individuals.

18 (b) To discover and make effective a decedent's intent in
19 distribution of the decedent's property.

20 (c) To promote a speedy and efficient system for liquidating
21 a decedent's estate and making distribution to the decedent's
22 successors.

23 (d) To facilitate use and enforcement of certain trusts.

24 (e) To make uniform the law among the various
25 jurisdictions.

1 Sec. 1203. (1) Unless displaced by the particular
2 provisions of this act, general principles of law and equity
3 supplement its provisions.

4 (2) This act is a general act intended as a unified coverage
5 of its subject matter and a part of it shall not be considered
6 impliedly repealed by subsequent legislation if that result can
7 reasonably be avoided.

8 Sec. 1205. (1) The judge may cite a person to appear before
9 the court and be examined upon the matter of a complaint that is
10 filed with the court under oath by a fiduciary, beneficiary,
11 creditor, or another interested person of a decedent's or ward's
12 trust or estate alleging any of the following:

13 (a) The person is suspected to have, or has knowledge that
14 another may have, concealed, embezzled, conveyed away, or dis-
15 posed of the trustee's, decedent's, or ward's property.

16 (b) The person has possession or knowledge of a deed, con-
17 veyance, bond, contract, or other writing that contains evidence
18 of, or tends to disclose, the right, title, interest, or claim of
19 the trustee, decedent, or ward to any of the trust or estate.

20 (c) The person has possession or knowledge of a decedent's
21 last will.

22 (2) If the person cited under subsection (1) refuses to
23 appear and be examined, or refuses to answer the interrogatories
24 asked of the person relating to the complaint, the judge may by
25 warrant commit the person to the county jail to remain in custody
26 until that person submits to the order of the court.

1 (3) If fraud is perpetrated in connection with a proceeding
2 or in a statement filed under this act or if fraud is used to
3 avoid or circumvent the provisions or purposes of this act, a
4 person injured by the fraud may obtain appropriate relief against
5 the perpetrator of the fraud or restitution from a person, other
6 than a bona fide purchaser, benefiting from the fraud, whether
7 innocent or not. An action under this subsection shall be com-
8 menced within 2 years after the discovery of the fraud, but an
9 action shall not be brought against a person that is not a perpe-
10 trator of the fraud later than 5 years after the time of the
11 fraud's commission. This section does not affect a remedy relat-
12 ing to fraud perpetrated against a decedent during his or her
13 lifetime that affects the succession of the decedent's estate.

14 (4) If a person embezzles or wrongfully converts a
15 decedent's property before letters of authority are granted, or
16 refuses, without colorable claim of right, to transfer possession
17 of the decedent's property to the personal representative upon
18 demand, that person is liable in an action brought by the per-
19 sonal representative for the benefit of the estate for double the
20 value of the property embezzled, converted, or withheld.

21 Sec. 1207. In addition to the rules of evidence in courts
22 of general jurisdiction, the court shall determine death or
23 status in accordance with the following:

24 (a) Death occurs when an individual is determined to be dead
25 under the determination of death act, Act No. 90 of the Public
26 Acts of 1992, being sections 333.1031 to 333.1034 of the Michigan
27 Compiled Laws.

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

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

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

15 (e) The procedure to establish the death of an individual
16 who is an accident or disaster victim and whose remains have dis-
17 appeared or are unidentifiable is as follows:

18 (i) If an accident or disaster occurs that apparently causes
19 the death of the individual described in this subdivision, any of
20 the following individuals may petition the court for a determina-
21 tion of the cause and date of the presumed decedent's death:

22 (A) The medical examiner, sheriff, or prosecutor of a county
23 described in subparagraph (ii).

24 (B) The spouse or a next of kin, heir at law, devisee, per-
25 sonal representative named in a will, or creditor or debtor of
26 the presumed decedent.

1 (ii) Venue for a proceeding under this subdivision is in 1
2 of the following:

3 (A) The court in a county in which the accident or disaster
4 or any part of the accident or disaster occurs.

5 (B) If the accident or disaster occurs upon or within the
6 Great Lakes or their connecting waters, the court in a county
7 adjacent to the scene of the accident or disaster.

8 (C) If the accident or disaster did not occur in Michigan or
9 adjoining waters, the court in the county of the presumed
10 decedent's domicile.

11 (iii) A petition to determine the cause and date of death as
12 provided in this subdivision shall not be filed less than 60 days
13 or more than 3 years after the occurrence of the accident or
14 disaster, or more than 3 years after the effective date of this
15 act, whichever is later.

16 (iv) A petition under this subdivision shall set forth the
17 facts and circumstances concerning the accident or disaster, the
18 reasons for the belief that the presumed decedent died in the
19 accident or disaster, that the presumed decedent has disappeared
20 or is unidentifiable, and the names and addresses of all individ-
21 uals known or believed to be heirs at law of the presumed
22 decedent.

23 (v) Upon the filing of a petition under this subdivision,
24 the court shall fix the time and place for a hearing. The peti-
25 tioner shall give or cause to be given notice of the hearing as
26 provided by supreme court rule.

1 (vi) At the hearing upon the petition, the court upon its
2 own motion may, or upon motion of an interested person shall,
3 impanel a jury as provided by law. If it is established by a
4 preponderance of the evidence presented at the hearing that an
5 accident or disaster occurred in which the individual named in
6 the petition was killed or may be presumed to have died, the
7 court shall enter an order establishing the location of the acci-
8 dent or disaster; the date of death; if possible, the time of
9 death; and that the individual is dead.

10 (vii) A certified copy of an order under this subdivision is
11 sufficient when presented to the medical examiner for the prepa-
12 ration of a certificate of death. The medical examiner shall
13 forward the completed certificate of death to the state
14 registrar. The state registrar shall register the death as pro-
15 vided in section 2845 of the public health code, Act No. 368 of
16 the Public Acts of 1978, being section 333.2845 of the Michigan
17 Compiled Laws. The state registrar shall forward a copy of the
18 registered death record to the local registrar of the place where
19 the death occurred as established under this section.

20 (f) An individual whose death is not otherwise established
21 under this section, who is absent for a continuous period of 5
22 years during which he or she has not been heard from, and whose
23 absence is not satisfactorily explained after diligent search or
24 inquiry is presumed to be dead. His or her death is presumed to
25 have occurred at the end of the period unless there is sufficient
26 evidence for determining that death occurred earlier.

1 (g) In the absence of evidence disputing the time of death
2 stated on a document described in subdivision (b), (c), or
3 (e)(vii), a document described in subdivision (b), (c), or
4 (e)(vii) that states a time of death 120 hours or more after the
5 time of death of another individual, however the time of death of
6 the other individual is determined, establishes by clear and con-
7 vincing evidence that the individual survived the other individ-
8 ual by 120 hours.

9 Sec. 1208. For the purpose of granting consent or approval
10 with regard to the acts or accounts of a personal representative
11 or trustee, including relief from liability or penalty for fail-
12 ure to post bond, to register a trust, or to perform other
13 duties, the sole holder or all coholders of a presently exercis-
14 able or testamentary general or special power of appointment,
15 including 1 in the form of a power of amendment or revocation,
16 are considered to act for beneficiaries to the extent their
17 interests, as objects, takers in default, or otherwise, are
18 subject to the power. For the purpose, however, of granting con-
19 sent or approval to modification or termination of a trust or to
20 deviation from its terms, including consent or approval to set-
21 tlement agreements described in section 7207, only the holder or
22 holders of a presently exercisable or testamentary general power
23 of appointment are considered to act for beneficiaries whose
24 interests are subject to the power.

25 Sec. 1209. (1) The specific dollar amounts stated in sec-
26 tions 2102, 2201, 2402, 2404, 2405, and 31102 apply to decedents
27 who die before January 1, 1998. For decedents dying after

1 December 31, 1997, these specific dollar amounts shall be
2 multiplied by the cost-of-living adjustment factor for the calen-
3 dar year in which the decedent dies.

4 (2) Before February 1, 1998, and annually after that year,
5 the department of treasury shall publish a cumulative list of the
6 adjustments made to the specific dollar amounts referred to in
7 subsection (1). If an increase determined under this subsection
8 is not a multiple of \$100.00, the increase shall be rounded to
9 the next lowest multiple of \$100.00.

10 Sec. 1210. Court personnel shall not provide or offer to
11 provide legal advice or legal counsel to a fiduciary or an inter-
12 ested person and shall not complete a form, petition, or document
13 for a fiduciary or interested person. This section does not pro-
14 hibit the court from providing blank forms and routine informa-
15 tion concerning a form provided by the court.

16 Sec. 1211. (1) A fiduciary stands in a position of confi-
17 dence and trust with respect to an heir, devisee, beneficiary, or
18 ward for whom the person is a fiduciary. A fiduciary shall
19 observe the standard of care described in section 7302 and shall
20 discharge all of the duties and obligations of a confidential and
21 fiduciary relationship, including the duties of undivided loyal-
22 ty; impartiality between heirs, devisees, and beneficiaries; care
23 and prudence in actions; and segregation of assets held in the
24 fiduciary capacity.

25 (2) Except in response to legal process, in cases expressly
26 required by law, or in the necessary or proper administration of
27 the estate, a fiduciary shall not disclose facts or knowledge

1 pertaining to property in the fiduciary's possession or to the
 2 affairs of those for whom the fiduciary is acting in any manner
 3 without the consent of the heirs, devisees, beneficiaries, or
 4 wards. The fiduciary of a minor or an incapacitated individual
 5 may give this consent on behalf of that individual. This
 6 subsection's restriction on disclosure does not apply in an
 7 action or proceeding in which the fiduciary and the fiduciary's
 8 heir, devisee, beneficiary, or ward are parties adverse to each
 9 other after the identity and relationship is determined and
 10 established.

11 PART 3

12 SCOPE, JURISDICTION, AND COURTS

13
 14 Sec. 1301. Except as otherwise provided in this act, this
 15 act applies to all of the following:

16 (a) The affairs and estate of a decedent, missing individu-
 17 al, or protected individual who is domiciled in this state.

18 (b) A nonresident's property that is located in this state
 19 or property coming into the control of a fiduciary that is
 20 subject to the laws of this state.

21 (c) An incapacitated individual or minor in this state.

22 (d) Survivorship and related accounts in this state.

23 (e) A trust subject to administration in this state.

24 Sec. 1302. The court has exclusive legal and equitable
 25 jurisdiction of all of the following:

26 (a) A matter relating to the settlement of a deceased
 27 individual's estate, whether testate or intestate, who was at the
 28 time of death domiciled in the county or was at the time of death

1 domiciled out of state leaving an estate within the county to be
2 administered, including, but not limited to, all of the following
3 proceedings:

- 4 (i) The internal affairs of the estate.
- 5 (ii) Estate administration, settlement, and distribution.
- 6 (iii) Declaration of rights involving an estate, devisee,
7 heir, or fiduciary.
- 8 (iv) Construction of a will.
- 9 (v) Determination of heirs.
- 10 (vi) Determination of death of an accident or disaster
11 victim under section 1207.

12 (b) A proceeding concerning the validity, internal affairs,
13 or settlement of a trust; the administration, distribution, modi-
14 fication, reformation, or termination of a trust; or the declara-
15 tion of rights involving a trust, trustee, or trust beneficiary,
16 including, but not limited to, proceedings to do all of the
17 following:

- 18 (i) Appoint or remove a trustee.
- 19 (ii) Review the fees of a trustee.
- 20 (iii) Require, hear, and settle interim or final accounts.
- 21 (iv) Ascertain beneficiaries.
- 22 (v) Determine a question arising in the administration or
23 distribution of a trust, including a question of construction of
24 a will or trust.
- 25 (vi) Instruct a trustee and determine relative to a trustee
26 the existence or nonexistence of an immunity, power, privilege,
27 duty, or right.

1 (vii) Release registration of a trust.

2 (viii) Determine an action or proceeding involving settle-
3 ment of an irrevocable trust.

4 (c) A proceeding concerning a guardianship, conservatorship,
5 or protective proceeding.

6 (d) A proceeding to require, hear, or settle the accounts of
7 a fiduciary and to order, upon request of an interested person,
8 instructions or directions to a fiduciary concerning an estate
9 within the court's jurisdiction.

10 Sec. 1303. (1) In addition to the jurisdiction conferred by
11 section 1302 and other laws, the court has concurrent legal and
12 equitable jurisdiction to do all of the following in regard to an
13 estate of a decedent, ward, or trust:

14 (a) Determine a property right or interest.

15 (b) Authorize partition of property.

16 (c) Authorize or compel specific performance of a contract
17 in a joint or mutual will or of a contract to leave property by
18 will.

19 (d) Ascertain survivorships of persons.

20 (e) Determine cy pres or a gift, grant, bequest, or devise
21 in trust or otherwise as provided in Act No. 280 of the Public
22 Acts of 1915, being sections 554.351 to 554.353 of the Michigan
23 Compiled Laws.

24 (f) Hear and decide an action or proceeding against a dis-
25 tributee of an estate fiduciary to enforce liability arising
26 because the estate was liable upon some claim or demand before
27 distribution of the estate.

1 (g) Impose a constructive trust.

2 (h) Hear and decide a claim by or against a fiduciary or
3 trustee for the return of property.

4 (i) Hear and decide a contract proceeding or action by or
5 against an estate, trust, or ward.

6 (j) Require, hear, or settle an accounting of an agent under
7 a power of attorney.

8 (2) If the probate court has concurrent jurisdiction of an
9 action or proceeding that is pending in another court, on the
10 motion of a party to the action or proceeding and after a finding
11 and order on the jurisdictional issue, the other court may order
12 removal of the action or proceeding to the probate court. If the
13 action or proceeding is removed to the probate court, the other
14 court shall forward to the probate court the original of all
15 papers in the action or proceeding. After that transfer, the
16 other court shall not hear the action or proceeding, except by
17 appeal or review as provided by law or supreme court rule, and
18 the action or proceeding shall be prosecuted in the probate court
19 as a probate court proceeding.

20 (3) The underlying purpose and policy of this section is to
21 simplify the disposition of an action or proceeding involving a
22 decedent's, a ward's, or a trust estate by consolidating the pro-
23 bate and other related actions or proceedings in the probate
24 court.

25 Sec. 1304. If this act specifies that the probate register
26 perform an act or order, the probate judge, or the probate
27 register or a deputy probate register if authorized in accordance

1 with section 834 of the revised judicature act of 1961, being
2 section 600.834 of the Michigan Compiled Laws, or in accordance
3 with supreme court rule, may perform the act or order.

4 Sec. 1305. Appellate review, including the right to appel-
5 late review or interlocutory appeal and provisions as to time,
6 manner, notice, appeal bond, stays, scope of review, record on
7 appeal, briefs, arguments, and the power of the appellate court,
8 is governed by the revised judicature act of 1961 and by supreme
9 court rule.

10 Sec. 1306. Except as otherwise specifically provided in
11 this act or by supreme court rule, a document filed with the
12 court under this act, including an application, petition, or
13 demand for notice, is considered to include an oath, affirmation,
14 or statement to the effect that the document's representations
15 are true as far as the individual executing or filing the docu-
16 ment knows or is informed, and penalties for perjury may follow
17 deliberate falsification in the document.

18 Sec. 1307. (1) Court records shall be maintained in accord-
19 ance with section 832 of the revised judicature act of 1961,
20 being section 600.832 of the Michigan Compiled Laws. Upon pay-
21 ment of the fee required by law, the probate register shall issue
22 a certified copy of a probated will, letters issued to a personal
23 representative, or any other record or paper filed or recorded.
24 A certificate relating to a probated will shall indicate whether
25 the decedent was domiciled in this state and whether the probate
26 was formal or informal. A certificate relating to letters shall

1 show the date of appointment and the date to which the letters
2 continued in force.

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

7 Sec. 1308. (1) A fiduciary is liable for a loss to an
8 estate arising from embezzlement by the fiduciary; for a loss
9 through commingling estate money with the fiduciary's money; for
10 negligence in the handling of an estate; for wanton and willful
11 mishandling of an estate; for loss through self-dealing; for
12 failure to account for an estate; for failure to terminate the
13 estate when it is ready for termination; and for misfeasance,
14 malfeasance, nonfeasance, or other breach of duty.

15 (2) In response to a petition of an interested person or on
16 its own motion, the court may at any time order an estate fidu-
17 ciary under its jurisdiction to file an accounting. After due
18 hearing on the accounting, the court shall enter an order that
19 agrees with the law and the facts of the case.

20 Sec. 1309. Upon reliable information received from an
21 interested person, county or state official, or other informed
22 source, including the court's files, the judge may enter an order
23 to do either or both of the following:

24 (a) Appoint a special fiduciary to perform specified
25 duties.

26 (b) Enjoin a person subject to the court's jurisdiction from
27 conduct that presents an immediate risk of waste, unnecessary

1 dissipation of an estate's or trust's property, or jeopardy to an
2 interested person's interest. An enjoined person shall be given
3 a prompt hearing, if requested, to show cause why the order
4 should be terminated.

5 PART 4

6 NOTICE, PARTIES, AND REPRESENTATION IN ESTATE

7 LITIGATION AND OTHER MATTERS

8 Sec. 1401. (1) If notice of a hearing on a petition is
9 required and except for specific notice requirements as otherwise
10 provided by supreme court rule, the petitioner shall cause notice
11 of the time and place of the hearing on the petition to be given
12 to each interested person or the person's attorney if the person
13 has appeared by attorney or requested that notice be sent to the
14 person's attorney. Unless otherwise provided by supreme court
15 rule, notice shall be given by 1 of the following methods:

16 (a) Mailing a copy at least 14 days before the time set for
17 the hearing by certified, registered, or first-class mail
18 addressed to the person being notified at the post office address
19 given in the person's demand for notice, if any, or at the
20 person's office or place of residence, if known.

21 (b) Delivering a copy to the person being notified person-
22 ally at least 7 days before the time set for the hearing.

23 (c) If the address or identity of the person is not known
24 and cannot be ascertained with reasonable diligence, publishing
25 once a copy in a newspaper having general circulation in the
26 county where the hearing is to be held at least 10 days before
27 the time set for the hearing.

1 (2) The court for good cause shown may provide for a
2 different method or time of giving notice for a hearing.

3 (3) Proof of the giving of notice shall be made at or before
4 the hearing and filed in the proceeding.

5 (4) If a person entitled to notice under section 3306, 3310,
6 3403, 3415, or 3705 is a resident in and a citizen of a foreign
7 country, the person required to give notice shall notify the
8 consul of the foreign nation in the city of New York or of the
9 district having jurisdiction, or the consul, vice-consul, or con-
10 sular agent, resident in this state, if there is one, of the mat-
11 ters and with the particulars described in the relevant section
12 of this act.

13 Sec. 1402. A person, including a guardian ad litem, conser-
14 vator, or other fiduciary, may waive notice and consent to the
15 granting of a petition by a writing signed by the person or the
16 person's attorney and filed in the proceeding. A person for whom
17 a guardianship or other protective order is sought, a ward, or a
18 protected person may not waive notice. A fiduciary shall not
19 waive or consent on a petition, account, or report made as the
20 fiduciary or in a different fiduciary capacity.

21 Sec. 1403. In a formal proceeding involving a trust or
22 estate of a decedent, minor, protected individual, or incapaci-
23 tated individual or in a judicially supervised settlement, the
24 following apply:

25 (a) An interest to be affected shall be described in plead-
26 ings that give reasonable information to owners by name or class,

1 by reference to the instrument creating the interests, or in
2 another appropriate manner.

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

5 (i) An order binding the sole holder or all co-holders of a
6 power of revocation or a presently exercisable or testamentary
7 general or special power of appointment, including one in the
8 form of a power of amendment, binds another person to the extent
9 the person's interest, as an object, taker in default, or other-
10 wise, is subject to the power.

11 (ii) To the extent there is no conflict of interest between
12 the persons represented, an order binding a conservator binds the
13 person whose estate the conservator controls; an order binding a
14 guardian binds the ward if no conservator of the ward's estate
15 has been appointed; an order binding a trustee binds beneficia-
16 ries of the trust in proceedings to probate a will, establishing
17 or adding to a trust, to review an act or account of a prior
18 fiduciary, or in proceedings involving a creditor or another
19 third party; and an order binding a personal representative binds
20 a person interested in the undistributed assets of a decedent's
21 estate in an action or proceeding by or against the estate. If
22 there is no conflict of interest and no conservator or guardian
23 has been appointed, a parent may represent his or her minor
24 child.

25 (iii) An unborn or unascertained person who is not otherwise
26 represented is bound by an order to the extent his or her

1 interest is adequately represented by another party having a
2 substantially identical interest in the proceeding.

3 (c) Notice is required as follows:

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

8 (ii) Notice is given to an unborn or unascertained person,
9 who is not represented under subdivision (b)(i) or (ii), by
10 giving notice to all known persons whose interests in the pro-
11 ceedings are substantially identical to those of the unborn or
12 unascertained person.

13 (d) At any point in a proceeding, the court may appoint a
14 guardian ad litem to represent the interest of a minor, an inca-
15 pacitated individual, an unborn or unascertained person, or a
16 person whose identity or address is unknown, if the court deter-
17 mines that representation of the interest otherwise would be
18 inadequate. If not precluded by a conflict of interest, a guard-
19 ian ad litem may be appointed to represent several persons or
20 interests. The court shall set out the reasons for appointing a
21 guardian ad litem as a part of the record of the proceeding. If
22 he or she accepts the appointment, the guardian ad litem shall
23 report of his or her investigation and recommendation concerning
24 the matters for which he or she is appointed in writing or
25 recorded testimony. After the attorney general files an appear-
26 ance as required by law in an estate proceeding on behalf of an
27 unknown or unascertained heir at law, the attorney general

1 represents the interest of the heir at law, and the court shall
2 not appoint a guardian ad litem. If a guardian ad litem was pre-
3 viously appointed for the interest, the appointment of the guard-
4 ian ad litem terminates.

5 PART 5

6 PRUDENT INVESTOR RULE

7 Sec. 1501. This part shall be known and may be cited as the
8 "Michigan prudent investor rule".

9 Sec. 1502. (1) A fiduciary shall invest and manage assets
10 held in a fiduciary capacity as a prudent investor would, taking
11 into account the purposes, terms, distribution requirements
12 expressed in the governing instrument, and other circumstances of
13 the fiduciary estate. In satisfying this standard, the fiduciary
14 shall exercise reasonable care, skill, and caution. This subsec-
15 tion states the prudent investor rule.

16 (2) The prudent investor rule is a default rule that may be
17 expanded, restricted, eliminated, or otherwise altered by the
18 provisions of the governing instrument. A fiduciary is not
19 liable to a beneficiary to the extent that the fiduciary acted in
20 reasonable reliance on the provisions of the governing
21 instrument.

22 Sec. 1503. (1) A fiduciary's investment and management
23 decisions respecting individual assets shall be evaluated not in
24 isolation, but rather in the context of the fiduciary estate
25 portfolio as a whole and as a part of an overall investment
26 strategy having risk and return objectives reasonably suited to
27 the fiduciary estate.

1 (2) Among circumstances that a fiduciary shall consider in
2 investing and managing fiduciary assets are all of the following
3 that are relevant to the fiduciary estate or its beneficiaries:

4 (a) General economic conditions.

5 (b) The possible effect of inflation or deflation.

6 (c) The expected tax consequences of an investment decision
7 or strategy.

8 (d) The role that each investment or course of action plays
9 within the overall portfolio, which may include financial assets,
10 interests in closely-held enterprises, tangible and intangible
11 personal property, and real property.

12 (e) The expected total return from income and the apprecia-
13 tion of capital.

14 (f) Other resources of the beneficiaries.

15 (g) The need for liquidity, regularity of income, and pre-
16 servation or appreciation of capital.

17 (h) An asset's special relationship or special value, if
18 any, to the purposes of the fiduciary estate or to 1 or more of
19 the beneficiaries.

20 (3) A fiduciary shall make a reasonable effort to verify
21 facts relevant to the investment and management of fiduciary
22 assets.

23 (4) A fiduciary may invest in any kind of property or type
24 of investment consistent with the standards of the prudent
25 investor rule. A particular investment is not inherently prudent
26 or imprudent.

1 (5) A fiduciary who has special skill or expertise, or is
2 named fiduciary in reliance upon the fiduciary's representation
3 that the fiduciary has special skill or expertise, has a duty to
4 use that special skill or expertise.

5 Sec. 1504. A fiduciary shall diversify the investments of a
6 fiduciary estate unless the fiduciary reasonably determines that,
7 because of special circumstances, the purposes of the fiduciary
8 estate are better served without diversifying.

9 Sec. 1505. Within a reasonable time after accepting
10 appointment as a fiduciary or receiving fiduciary assets, a fidu-
11 ciary shall review the assets, and make and implement decisions
12 concerning the retention and disposition of assets, in order to
13 bring the fiduciary portfolio into compliance with the purposes,
14 terms, distribution requirements expressed in the governing
15 instrument, and other circumstances of the fiduciary estate, and
16 with the requirements of the prudent investor rule.

17 Sec. 1506. (1) A fiduciary shall invest and manage fidu-
18 ciary assets solely in the interest of the beneficiaries.

19 (2) Notwithstanding another statute or the common law,
20 unless the governing instrument prohibits the investment, a fidu-
21 ciary may invest fiduciary property in an investment company reg-
22 istered under the investment company act of 1940, title I of
23 chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64, even if
24 either of the following apply:

25 (a) The fiduciary or an affiliate of the fiduciary provides
26 services as an investment advisor, sponsor, distributor, manager,
27 custodian, transfer agent, registrar, or otherwise to the

1 investment company and receives reasonable remuneration for these
2 services.

3 (b) The fiduciary owns or controls a majority of the voting
4 shares of the registered investment company or a majority of the
5 shares voted for the election of the investment company's direc-
6 tors or trustees, or the fiduciary otherwise controls the elec-
7 tion of a majority of the directors or trustees.

8 (3) A bank shall not invest property the bank holds as fidu-
9 ciary in a security or other property purchased from the bank in
10 its individual capacity or from an affiliate of the bank unless
11 any of the following are true:

12 (a) The investment is permitted by this section or other
13 law, by a court order, or by the agreement, instrument, or order
14 creating or defining the trust or other capacity in which a bank
15 is acting.

16 (b) All interested persons or their representatives consent
17 to the investment.

18 (c) If the bank holds the property as agent, the bank's
19 principal directs or permits the investment.

20 Sec. 1507. If a fiduciary estate has 2 or more beneficia-
21 ries, the fiduciary shall act impartially in investing and manag-
22 ing the fiduciary assets, taking into account any differing
23 interests of the beneficiaries.

24 Sec. 1508. In investing and managing fiduciary assets, a
25 fiduciary may only incur costs that are appropriate and reason-
26 able in relation to the assets, the purposes of the fiduciary
27 estate, and the skills of the fiduciary.

1 Sec. 1509. Compliance with the prudent investor rule is
2 determined in light of the facts and circumstances existing at
3 the time of a fiduciary's decision or action, and not by
4 hindsight. The prudent investor rule requires a standard of con-
5 duct, not outcome or performance.

6 Sec. 1510. (1) A fiduciary may delegate investment and man-
7 agement functions provided that the fiduciary exercises reason-
8 able care, skill, and caution in all of the following:

9 (a) Selecting an agent.

10 (b) Establishing the scope and terms of the delegation, con-
11 sistent with the purposes and terms of the governing instrument.

12 (c) Periodically reviewing the agent's actions in order to
13 monitor the agent's performance and compliance with the terms of
14 the delegation.

15 (2) A fiduciary who complies with the requirements of sub-
16 section (1) is not liable to the beneficiaries or to the fidu-
17 ciary estate for a decision or action of the agent to whom the
18 function was delegated.

19 (3) In performing a delegated function, an agent owes a duty
20 to the fiduciary estate to exercise reasonable care to comply
21 with the terms of the delegation. By accepting the delegation of
22 a fiduciary function from a fiduciary that is subject to the laws
23 of this state, an agent submits to the jurisdiction of the
24 Michigan court.

25 Sec. 1511. As used in this section:

26 (a) "Governing instrument" includes a court order.

1 (b) "Portfolio" includes all property of every kind and
2 character held by a fiduciary on behalf of a fiduciary estate.

3 Sec. 1512. The following terms or comparable language in a
4 governing instrument, unless otherwise limited or modified,
5 authorize any investment or strategy permitted under the prudent
6 investor rule:

7 (a) "Investments permissible by law for investment of trust
8 funds".

9 (b) "Legal investments".

10 (c) "Authorized investments".

11 (d) "Using the judgment and care under the circumstances
12 then prevailing that persons of prudence, discretion, and intel-
13 ligence exercise in the management of their own affairs, not in
14 regard to speculation but in regard to the permanent disposition
15 of their funds, considering the probable income as well as the
16 probable safety of their capital".

17 (e) "Prudent man rule".

18 (f) "Prudent trustee rule".

19 (g) "Prudent person rule".

20 (h) "Prudent investor rule".

21 Sec. 1513. The prudent investor rule applies to fiduciary
22 estates existing on and created after this act's effective date.
23 As applied to fiduciary estates existing on this act's effective
24 date, the prudent investor rule governs only a decision or action
25 that occurs after that date.

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

PART 1

INTESTATE SUCCESSION

1 Sec. 2101. (1) Any part of a decedent's estate not effec-
2 tively disposed of by will passes by intestate succession to the
3 decedent's heirs as prescribed in this act, except as modified by
4 the decedent's will.

5 (2) A decedent by will may expressly exclude or limit the
6 right of an individual or class to succeed to property of the
7 decedent passing by intestate succession. If that individual or
8 a member of that class survives the decedent, the share of the
9 decedent's intestate estate to which that individual or class
10 would have succeeded passes as if that individual or each member
11 of that class had disclaimed his or her intestate share.

12 Sec. 2102. The intestate share of a decedent's surviving
13 spouse is 1 of the following:

14 (a) The entire intestate estate if either of the following
15 is true:

16 (i) No descendant or parent of the decedent survives the
17 decedent.

18 (ii) All of the decedent's surviving descendants are also
19 descendants of the surviving spouse and there is no other descen-
20 dant of the surviving spouse who survives the decedent.

21 (b) The first \$200,000.00, adjusted as provided in section
22 1209, plus 3/4 of any balance of the intestate estate, if no

1 descendant of the decedent survives the decedent, but a parent of
2 the decedent survives the decedent.

3 (c) The first \$150,000.00, adjusted as provided in section
4 1209, plus 1/2 of any balance of the intestate estate, if all of
5 the decedent's surviving descendants are also descendants of the
6 surviving spouse and the surviving spouse has 1 or more surviving
7 descendants who are not descendants of the decedent.

8 (d) The first \$100,000.00, adjusted as provided in section
9 1209, plus 1/2 of any balance of the intestate estate, if 1 or
10 more, but not all, of the decedent's surviving descendants are
11 not descendants of the surviving spouse.

12 (e) The first \$50,000.00, adjusted as provided in section
13 1209, plus 1/2 of any balance of the intestate estate, if none of
14 the decedent's surviving descendants are descendants of the sur-
15 viving spouse.

16 Sec. 2103. Any part of the intestate estate not passing to
17 the decedent's surviving spouse under section 2102, or the entire
18 intestate estate if there is no surviving spouse, passes in the
19 following order to the following individuals who survive the
20 decedent:

21 (a) The decedent's descendants by representation.

22 (b) If there is no surviving descendant, the decedent's par-
23 ents equally if both survive or to the surviving parent.

24 (c) If there is no surviving descendant or parent, the
25 descendants of the decedent's parents or either of them by
26 representation.

1 (d) If there is no surviving descendant, parent, or
2 descendant of a parent, but the decedent is survived by 1 or more
3 grandparents or descendants of grandparents, 1/2 of the estate
4 passes to the decedent's paternal grandparents equally if both
5 survive, or to the surviving paternal grandparent, or to the
6 descendants of the decedent's paternal grandparents or either of
7 them if both are deceased, the descendants taking by representa-
8 tion; and the other 1/2 passes to the decedent's maternal rela-
9 tives in the same manner. If there is no surviving grandparent
10 or descendant of a grandparent on either the paternal or the
11 maternal side, the entire estate passes to the decedent's rela-
12 tives on the other side in the same manner as the 1/2.

13 Sec. 2104. An individual who fails to survive the decedent
14 by 120 hours is considered to have predeceased the decedent for
15 purposes of homestead allowance, exempt property, and intestate
16 succession, and the decedent's heirs are determined accordingly.
17 If it is not established by clear and convincing evidence that an
18 individual who would otherwise be an heir survived the decedent
19 by 120 hours, it is considered that the individual failed to sur-
20 vive for the required period. This section does not apply if its
21 application would result in a taking of intestate estate by the
22 state under section 2105.

23 Sec. 2105. If there is no taker under the provisions of
24 this article, the intestate estate passes to this state.

25 Sec. 2106. (1) If, under section 2103(a), a decedent's
26 intestate estate or a part of the estate passes by representation
27 to the decedent's descendants, the estate or part of the estate

1 is divided into as many equal shares as the total of the
2 surviving descendants in the generation nearest to the decedent
3 that contains 1 or more surviving descendants and the deceased
4 descendants in the same generation who left surviving descen-
5 dants, if any. Each surviving descendant in the nearest genera-
6 tion is allocated 1 share. The remaining shares, if any, are
7 combined and then divided in the same manner among the surviving
8 descendants of the deceased descendants as if the surviving
9 descendants who were allocated a share and their surviving
10 descendants had predeceased the decedent.

11 (2) If, under section 2103(c) or (d), a decedent's intestate
12 estate or a part of the estate passes by representation to the
13 descendants of the decedent's deceased parents or either of them
14 or to the descendants of the decedent's deceased paternal or
15 maternal grandparents or either of them, the estate or part of
16 the estate is divided into as many equal shares as the total of
17 the surviving descendants in the generation nearest the deceased
18 parents or either of them, or the deceased grandparents or either
19 of them, that contains 1 or more surviving descendants and the
20 deceased descendants in the same generation who left surviving
21 descendants, if any. Each surviving descendant in the nearest
22 generation is allocated 1 share. The remaining shares, if any,
23 are combined and then divided in the same manner among the sur-
24 viving descendants of the deceased descendants as if the surviv-
25 ing descendants who were allocated a share and their surviving
26 descendants had predeceased the decedent.

1 (3) As used in this section:

2 (a) "Deceased descendant", "deceased parent", or "deceased
3 grandparent" means a descendant, parent, or grandparent who
4 either predeceased the decedent or is considered to have prede-
5 ceased the decedent under section 2104.

6 (b) "Surviving descendant" means a descendant who neither
7 predeceased the decedent nor is considered to have predeceased
8 the decedent under section 2104.

9 Sec. 2107. A relative of the half blood inherits the same
10 share he or she would inherit if he or she were of the whole
11 blood.

12 Sec. 2108. An individual in gestation at a particular time
13 is treated as living at that time if the individual lives 120
14 hours or more after birth.

15 Sec. 2109. (1) If an individual dies intestate as to all or
16 a portion of his or her estate, property the decedent gave during
17 the decedent's lifetime to an individual who, at the decedent's
18 death, is an heir is treated as an advancement against the heir's
19 intestate share only under either of the following
20 circumstances:

21 (a) The decedent declared in a contemporaneous writing or
22 the heir acknowledged in writing that the gift is an
23 advancement.

24 (b) The decedent's contemporaneous writing or the heir's
25 written acknowledgment otherwise indicates that the gift is to be
26 taken into account in computing the division and distribution of
27 the decedent's intestate estate.

1 (2) For purposes of subsection (1), property advanced is
2 valued as of the time the heir came into possession or enjoyment
3 of the property or as of the time of the decedent's death, which-
4 ever first occurs.

5 (3) If the recipient of property advanced fails to survive
6 the decedent, the property is not taken into account in computing
7 the division and distribution of the decedent's intestate estate,
8 unless the decedent's contemporaneous writing provides
9 otherwise.

10 Sec. 2110. A debt owed to a decedent is not charged against
11 the intestate share of any individual except the debtor. If the
12 debtor fails to survive the decedent, the debt is not taken into
13 account in computing the intestate share of the debtor's
14 descendants.

15 Sec. 2111. An individual is not disqualified to take as an
16 heir because the individual or an individual through whom he or
17 she claims is or has been an alien.

18 Sec. 2112. The estate of dower is abolished.

19 Sec. 2113. An individual who is related to the decedent
20 through 2 lines of relationship is entitled to only a single
21 share based on the relationship that would entitle the individual
22 to the larger share.

23 Sec. 2114. (1) Except as provided in subsections (2), (3),
24 and (4), for purposes of intestate succession by, through, or
25 from an individual, an individual is the child of his or her nat-
26 ural parents, regardless of their marital status. The parent and

1 child relationship may be established in any of the following
2 manners:

3 (a) If a child is born or conceived during a marriage, both
4 spouses are presumed to be the natural parents of the child for
5 purposes of intestate succession. A child conceived following
6 artificial insemination of a married woman with the consent of
7 her husband is considered as their child for purposes of intes-
8 tate succession. Consent of the husband is presumed unless the
9 contrary is shown by clear and convincing evidence. If a man and
10 a woman participated in a marriage ceremony in apparent compli-
11 ance with the law before the birth of a child, even though the
12 attempted marriage is void, the child is presumed to be their
13 child for purposes of intestate succession.

14 (b) Only the individual presumed to be the natural parent of
15 a child under subdivision (a) may disprove a presumption that is
16 relevant to the relationship, and the exclusive right to do so
17 terminates upon the death of the presumed parent.

18 (c) If a child is born out of wedlock or if a child is born
19 or conceived during a marriage but is not the issue of that mar-
20 riage, a man is considered to be the natural father of that child
21 for purposes of intestate succession if any of the following
22 occur:

23 (i) The man joins with the mother of the child and acknowl-
24 edges that the child is his child in a writing that is executed
25 and acknowledged in the same manner as deeds of real estate and
26 that is recorded at any time during the child's lifetime in the
27 court for the county in which the man or mother of the child

1 resides at the time of execution and acknowledgment. It is not
2 necessary for the mother of the child to join in the acknowledg-
3 ment if she is disqualified to act by reason of mental incapac-
4 ity, death, or another reason satisfactory to the court for the
5 county in which the acknowledgment is recorded.

6 (ii) The man joins the mother in a written request for a
7 correction of certificate of birth pertaining to the child that
8 results in issuance of a substituted certificate recording the
9 birth of the child.

10 (iii) The man and child have borne a mutually acknowledged
11 relationship of parent and child that begins before the child
12 becomes age 18 and continues until terminated by the death of
13 either.

14 (iv) The man is determined by the court having jurisdiction
15 of probate proceedings relating to the decedent's estate to be
16 the father in accordance with the standards established by the
17 paternity act, Act No. 205 of the Public Acts of 1956, being sec-
18 tions 722.711 to 722.730 of the Michigan Compiled Laws, regard-
19 less of the child's age.

20 (2) An adopted individual is the child of his or her adopt-
21 ing parent or parents and not of his or her natural parents, but
22 adoption of a child by the spouse of either natural parent has no
23 effect on either the relationship between the child and that nat-
24 ural parent or, except as provided in subsection (3), the right
25 of the child or a descendant of the child to inherit from or
26 through the other natural parent. An individual is considered to
27 be adopted for purposes of this subsection when a court of

1 competent jurisdiction enters an interlocutory decree of adoption
2 that is not vacated or reversed.

3 (3) The permanent termination of parental rights of a minor
4 child by order of a court of competent jurisdiction; by a release
5 for purposes of adoption given by the parent, but not a guardian,
6 to the family independence agency or a licensed child placement
7 agency or before a probate or juvenile court, excepting termina-
8 tion by emancipation or death; or by any other process recognized
9 by the law governing the parent-child status at the time of ter-
10 mination, ends kinship between the parent whose rights are so
11 terminated and the child for purposes of intestate succession by
12 that parent from or through that child.

13 (4) Inheritance from or through a child by either natural
14 parent or his or her kindred is precluded unless that natural
15 parent has openly treated the child as his or hers, and has not
16 refused to support the child.

17 PART 2

18 ELECTIVE SHARE OF SURVIVING SPOUSE

19 Sec. 2201. (1) Under the limitations and conditions stated
20 in this part, the surviving spouse of a decedent who dies domi-
21 ciled in this state has a right of election to take an
22 elective-share amount equal to the value of the elective-share
23 percentage of the augmented estate, determined by the length of
24 time the spouse and the decedent were married to each other. If
25 the decedent and his or her spouse were married to each other for
26 less than 1 year, the surviving spouse is only entitled to an
27 elective share equal to the supplemental elective share amount.

1 If they were married to each other for 1 year or more, the
 2 elective share amount shall be determined in accordance with the
 3 following schedule:

4 Length of decedent's marriage 5 to surviving spouse 6	Elective-share as a percentage of augmented estate
8 At least But less than	
9 1 year 2 years	3%
10 2 years 3 years	6%
11 3 years 4 years	9%
12 4 years 5 years	12%
13 5 years 6 years	15%
14 6 years 7 years	18%
15 7 years 8 years	21%
16 8 years 9 years	24%
17 9 years 10 years	27%
18 10 years 11 years	30%
19 11 years 12 years	34%
20 12 years 13 years	38%
21 13 years 14 years	42%
22 14 years 15 years	46%
23 15 years or more	50%

24 (2) If the sum of the amounts described in sections
 25 2202(1)(d), 2203(1)(a), and that portion of the elective-share
 26 amount payable from the decedent's probate estate and nonprobate
 27 transfers to others under section 2203(2) and (3) is less than
 28 \$50,000.00, adjusted as provided in section 1209, the surviving
 29 spouse is entitled to a supplemental elective-share amount equal
 30 to \$50,000.00, adjusted as provided in section 1209, minus the
 31 sum of the amounts described in those sections. The supplemental
 32 elective-share amount is payable from the decedent's probate
 33 estate and from recipients of the decedent's nonprobate transfers
 34 to others in the order of priority set forth in sections 2203(2)
 35 and (3).

36 (3) If the right of election is exercised by or on behalf of
 37 the surviving spouse, the surviving spouse's homestead allowance,

1 exempt property, and family allowance, if any, are not charged
2 against, but are in addition to, the elective-share and supple-
3 mental elective-share amounts.

4 (4) The right, if any, of the surviving spouse of a decedent
5 who dies domiciled outside this state to take an elective share
6 in property in this state is governed by the law of the
7 decedent's domicile at death.

8 Sec. 2202. (1) The augmented estate consists of the sum of
9 all of the following:

10 (a) The value of the decedent's probate estate, reduced by
11 funeral and administration expenses, homestead allowance, family
12 allowances, exempt property, and enforceable claims.

13 (b) The value of the decedent's nonprobate transfers to
14 others, which are composed of all property, whether real or per-
15 sonal, movable or immovable, wherever situated, not included in
16 the decedent's probate estate, of any of the following types:

17 (i) Property of any of the following types that passed out-
18 side probate at the decedent's death:

19 (A) Property over which the decedent alone, immediately
20 before death, held a presently exercisable general power of
21 appointment. The amount included under this sub-subparagraph is
22 the value of the property subject to the power to the extent that
23 property passed at the decedent's death by exercise, release,
24 lapse, in default, or otherwise to or for the benefit of any
25 person other than the decedent's estate or surviving spouse.

26 (B) The decedent's fractional interest in property held by
27 the decedent in joint tenancy with the right of survivorship.

1 The amount included under this sub-subparagraph is the value of
2 the decedent's fractional interest to the extent that that frac-
3 tional interest passed by right of survivorship at the decedent's
4 death to a surviving joint tenant other than the decedent's sur-
5 viving spouse.

6 (C) The decedent's ownership interest in property or
7 accounts held in POD, TOD, or co-ownership registration with the
8 right of survivorship. The amount included under this
9 sub-subparagraph is the value of the decedent's ownership inter-
10 est to the extent that the decedent's ownership interest passed
11 at the decedent's death to or for the benefit of any person other
12 than the decedent's estate or surviving spouse.

13 (D) Proceeds of insurance, including accidental death bene-
14 fits on the life of the decedent, if the decedent owned the
15 insurance policy immediately before death or if and to the extent
16 that the decedent alone and immediately before death held a pres-
17 ently exercisable general power of appointment over the policy or
18 its proceeds. The amount included under this sub-subparagraph is
19 the value of the proceeds to the extent that they were payable at
20 the decedent's death to or for the benefit of any person other
21 than the decedent's estate or surviving spouse.

22 (ii) Property transferred in any of the following forms by
23 the decedent during marriage:

24 (A) An irrevocable transfer in which the decedent retained
25 the right to the possession or enjoyment of, or to the income
26 from, the property if and to the extent that the decedent's right
27 terminated at or continued beyond the decedent's death. The

1 amount included under this sub-subparagraph is the value of the
2 fraction of the property to which the decedent's right related to
3 the extent that fraction of the property passed outside probate
4 to or for the benefit of any person other than the decedent's
5 estate or surviving spouse.

6 (B) An transfer in which the decedent created a power over
7 the income or principal of the transferred property, exercisable
8 by the decedent alone or in conjunction with any other person, or
9 exercisable by a nonadverse party, for the benefit of the dece-
10 dent, the decedent's creditors, the decedent's estate, or the
11 creditors of the decedent's estate. The amount included under
12 this sub-subparagraph is the value of the property subject to the
13 power to the extent that the power was exercisable at the
14 decedent's death to or for the benefit of any person other than
15 the decedent's surviving spouse or to the extent that the prop-
16 erty subject to the power passed at the decedent's death by exer-
17 cise, release, lapse, in default, or otherwise to or for the ben-
18 efit of any person other than the decedent's estate or surviving
19 spouse.

20 (iii) Property that passed during marriage and during the
21 2-year period immediately preceding the decedent's death as a
22 result of a transfer by the decedent if the transfer was of any
23 of the following types:

24 (A) Property that passed as a result of the termination of a
25 right or interest in, or power over, property that would have
26 been included in the augmented estate under subparagraph (i)(A),
27 (B), or (C) or under subparagraph (ii) if the right, interest, or

1 power had not terminated until the decedent's death. The amount
2 included under this sub-subparagraph is the value of the property
3 that would have been included under these subsections, except
4 that property is valued at the time that the right, interest, or
5 power terminated and is included only to the extent that the
6 property passed upon termination to or for the benefit of any
7 person other than the decedent or the decedent's estate, spouse,
8 or surviving spouse.

9 (B) A transfer of or relating to an insurance policy on the
10 life of the decedent if the proceeds would have been included in
11 the augmented estate under subparagraph (i)(D) had the transfer
12 not occurred. The amount included under this sub-subparagraph is
13 the value of the insurance proceeds to the extent that the pro-
14 ceeds were payable at the decedent's death to or for the benefit
15 of any person other than the decedent's estate or surviving
16 spouse.

17 (C) A transfer of property, to the extent not otherwise
18 included in the augmented estate, made to or for the benefit of a
19 person other than the decedent's surviving spouse. The amount
20 included under this sub-subparagraph is the value of the trans-
21 ferred property to the extent that the aggregate transfers to any
22 donee in either of the 2 years exceeded \$10,000.00.

23 (c) The value of the decedent's nonprobate transfers to the
24 decedent's surviving spouse that are composed of all property
25 that passed outside probate at the decedent's death from the
26 decedent to the surviving spouse by reason of the decedent's
27 death, including all of the following:

1 (i) The decedent's fractional interest in property held as a
2 joint tenant with the right of survivorship to the extent that
3 the decedent's fractional interest passed to the surviving spouse
4 as surviving joint tenant.

5 (ii) The decedent's ownership interest in property or
6 accounts held in co-ownership registration with the right of sur-
7 vivorship to the extent the decedent's ownership interest passed
8 to the surviving spouse as surviving co-owner.

9 (iii) All other property that would have been included in
10 the augmented estate under subdivision (b)(i) or (ii) had it
11 passed to or for the benefit of a person other than the
12 decedent's spouse, surviving spouse, the decedent, or the
13 decedent's creditors, estate, or estate creditors, but excluding
14 property passing to the surviving spouse under the federal social
15 security system.

16 (d) Except to the extent included in the augmented estate
17 under subdivision (a) or (c), the value of both of the
18 following:

19 (i) Property that was owned by the decedent's surviving
20 spouse at the decedent's death, including all of the following:

21 (A) The surviving spouse's fractional interest in property
22 held in joint tenancy with the right of survivorship.

23 (B) The surviving spouse's ownership interest in property or
24 accounts held in co-ownership registration with the right of
25 survivorship.

26 (C) Property that passed to the surviving spouse by reason
27 of the decedent's death, but not including the spouse's right to

1 homestead allowance, family allowance, exempt property, or
2 payments under the federal social security system.

3 (ii) Property that would have been included in the surviving
4 spouse's nonprobate transfers to others, other than the spouse's
5 fractional and ownership interests included under subparagraph
6 (i)(A) and (B), had the spouse been the decedent. Property
7 included under this subparagraph is valued at the decedent's
8 death, taking the fact that the decedent predeceased the spouse
9 into account, except that, for purposes of subparagraph (i)(A)
10 and (B), the values of the spouse's fractional and ownership
11 interests are determined immediately before the decedent's death
12 if the decedent was then a joint tenant or a co-owner of the
13 property or accounts. For purposes of this subparagraph, pro-
14 ceeds of insurance that would have been included in the spouse's
15 nonprobate transfers to others under subdivision (b)(i)(D) are
16 not valued as if he or she were deceased. The value of property
17 included under this subparagraph is reduced in each category by
18 enforceable claims against the included property and is reduced
19 by enforceable claims against the surviving spouse.

20 (2) The value of property is excluded from the decedent's
21 nonprobate transfers to others in either of the following
22 circumstances:

23 (a) To the extent the decedent received adequate and full
24 consideration in money or money's worth for a transfer of the
25 property.

1 (b) If the property was transferred with the written joinder
2 of, or if the transfer was consented to in writing by, the
3 surviving spouse.

4 (3) The value of property includes the commuted value of
5 present or future interests and the commuted value of amounts
6 payable under any trust, life insurance settlement option, annu-
7 ity contract, public or private pension, disability compensation,
8 death benefit or retirement plan, or any similar arrangement,
9 exclusive of the federal social security system.

10 (4) If more than 1 provision of subsection (1) applies to
11 the same property, the property is included in the augmented
12 estate under the provision yielding the highest value, but under
13 only 1 of the provisions even if they all yield the same value.

14 (5) For a trust described in section 7501(1), the value of
15 the decedent's nonprobate estate transfers described in subsec-
16 tion (1)(b) shall be reduced by funeral and administrative
17 expenses, the homestead allowance, family allowances, exempt
18 property, and enforceable claims paid from the trust, but not
19 from the probate estate.

20 (6) As used in this section:

21 (a) "Decedent's nonprobate transfers to others" means the
22 decedent's nonprobate transfers to persons, other than the
23 decedent's spouse, surviving spouse, the decedent, or the
24 decedent's creditors, estate, or estate creditors, that are
25 included in the augmented estate under subsection (1)(b).

26 (b) "Fractional interest in property held in joint tenancy
27 with the right of survivorship" means, whether the fractional

1 interest is unilaterally severable or not, the fraction, the
2 numerator of which is 1 and the denominator of which, if the
3 decedent was a joint tenant, is 1 plus the number of joint
4 tenants who survive the decedent and of which, if the decedent
5 was not a joint tenant, is the number of joint tenants.

6 (c) "Marriage" means, as it relates to a transfer by the
7 decedent during marriage, any marriage of the decedent to the
8 decedent's surviving spouse.

9 (d) "Nonadverse party" means a person who does not have a
10 substantial beneficial interest in the trust or other property
11 arrangement that would be adversely affected by the exercise or
12 nonexercise of the power that the person possesses respecting the
13 trust or other property arrangement. A person having a general
14 power of appointment over property is considered to have a bene-
15 ficial interest in the property.

16 (e) "Power" or "power of appointment" includes a power to
17 designate the beneficiary of a beneficiary designation.

18 (f) "Presently exercisable general power of appointment"
19 means a power of appointment under which, at the time in ques-
20 tion, the decedent, whether or not he or she then had the capac-
21 ity to exercise the power, held a power to create a present or
22 future interest in himself or herself, his or her creditors, his
23 or her estate, or the creditors of his or her estate, and
24 includes a power to revoke or invade the principal of a trust or
25 other property arrangement. Presently exercisable general power
26 of appointment does not include a power of appointment under
27 which, at the time in question, the decedent, whether or not he

1 or she then had the capacity to exercise the power, held a power
2 to create a present or future interest in himself or herself if
3 that power was created by a person other than the decedent and is
4 limited by an ascertainable standard relating to the decedent's
5 health, education, support, or maintenance.

6 (g) "Probate estate" means property, whether real or person-
7 al, movable or immovable, wherever situated, that would pass by
8 intestate succession if the decedent died without a valid will.

9 (h) "Property" includes values subject to a beneficiary
10 designation.

11 (i) "Right to income" includes a right to payments under a
12 commercial or private annuity, an annuity trust, a unitrust, or a
13 similar arrangement.

14 (j) "Transfer" includes, as it relates to a transfer by or
15 of the decedent, all of the following:

16 (i) An exercise or release of a presently exercisable gen-
17 eral power of appointment held by the decedent.

18 (ii) A lapse at death of a presently exercisable general
19 power of appointment held by the decedent.

20 (iii) An exercise, release, or lapse of a general power of
21 appointment that the decedent created in himself or herself and
22 of a power described in subsection (1)(b)(ii)(B) that the dece-
23 dent conferred on a nonadverse party.

24 (k) As used in subsection (1)(b)(iii)(A), "termination"
25 means, with respect to a right or interest in property, that the
26 right or interest terminated by the terms of the governing
27 instrument or that the decedent transferred or relinquished the

1 right or interest and, with respect to a power over property,
2 means that the power terminated by exercise, release, lapse, in
3 default, or otherwise.

4 (1) "Termination" means, with respect to a power described
5 in subsection (1)(b)(i)(A), that the power terminated by exercise
6 or release, but not by lapse, in default, or otherwise.

7 Sec. 2203. (1) In a proceeding for an elective share, all
8 of the following are applied first to satisfy the elective-share
9 amount and to reduce or eliminate any contributions due from the
10 decedent's probate estate and recipients of the decedent's non-
11 probate transfers to others:

12 (a) An amount included in the augmented estate under section
13 2202(1)(a) that passes or passed to the surviving spouse by tes-
14 tate or intestate succession and an amount included in the aug-
15 mented estate under section 2202(1)(c).

16 (b) An amount included in the augmented estate that would
17 have passed to the spouse but was disclaimed.

18 (c) An amount included in the augmented estate under section
19 2202(1)(d) up to the applicable percentage of that amount. For
20 the purposes of this subdivision, "applicable percentage" means
21 twice the elective-share percentage set forth in the schedule in
22 section 2201(1) appropriate to the length of time the spouse and
23 the decedent were married to each other.

24 (2) If, after the application of subsection (1), the
25 elective-share amount is not fully satisfied or the surviving
26 spouse is entitled to a supplemental elective-share amount, an
27 amount included in the decedent's probate estate and in the

1 decedent's nonprobate transfers to others, other than an amount
2 included under section 2202(1)(b)(iii)(A) or (C), is applied
3 first to satisfy the unsatisfied balance of the elective-share
4 amount or the supplemental elective-share amount. The decedent's
5 probate estate and that portion of the decedent's nonprobate
6 transfers to others are so applied that liability for the unsat-
7 isfied balance of the elective-share amount or for the supplemen-
8 tal elective-share amount is equitably apportioned among the
9 recipients of the decedent's probate estate and of that portion
10 of the decedent's nonprobate transfers to others in proportion to
11 the value of their interests therein.

12 (3) If, after the application of subsections (1) and (2),
13 the elective-share or supplemental elective-share amount is not
14 fully satisfied, unless the governing instrument provides other-
15 wise, the remaining portion of the decedent's nonprobate trans-
16 fers to others shall be applied so that liability for the unsat-
17 isfied balance of the elective-share or supplemental
18 elective-share amount is equitably apportioned among the recip-
19 ients of that remaining portion of the decedent's nonprobate
20 transfers to others in proportion to the value of their interests
21 therein.

22 Sec. 2204. (1) Only an original recipient of the decedent's
23 nonprobate transfers to others and a donee of a recipient of the
24 decedent's nonprobate transfers to others, to the extent the
25 donee has the property or its proceeds, are liable to make a pro-
26 portional contribution toward satisfaction of the surviving
27 spouse's elective-share or supplemental elective-share amount. A

1 person liable to make contribution may choose to give up the
2 proportional part of the decedent's nonprobate transfers to the
3 person or to pay the value of the amount for which the person is
4 liable.

5 (2) If a provision of this part is preempted by federal law
6 with respect to a payment, an item of property, or another bene-
7 fit included in the decedent's nonprobate transfers to others, a
8 person who, not for value, receives the payment, item of proper-
9 ty, or other benefit is obligated to return that payment, item of
10 property, or benefit or is personally liable for the amount of
11 that payment or the value of that item of property or benefit, as
12 provided in section 2203, to the person who would have been enti-
13 tled to it were that provision not preempted.

14 Sec. 2205. (1) Except as provided in subsection (2), an
15 election under this part shall be made by filing in the court,
16 and mailing or delivering to the personal representative, if any,
17 a petition for the elective share within 9 months after the date
18 of the decedent's death or within 6 months after the probate of
19 the decedent's will, whichever limitation expires later. The
20 surviving spouse shall give notice according to supreme court
21 rule. Except as provided in subsection (2), if the petition is
22 filed more than 9 months after the decedent's death, the
23 decedent's nonprobate transfers to others as defined in section
24 2202 are not included within the augmented estate for the purpose
25 of computing the elective share.

26 (2) Within 9 months after the decedent's death, the
27 surviving spouse may petition the court for an extension of time

1 for making an election. If, within 9 months after the decedent's
2 death, the spouse gives notice of the petition to all persons
3 interested in the decedent's nonprobate transfers to others, the
4 court for cause shown by the surviving spouse may extend the time
5 for election to a date not later than 14 months after the date of
6 death. If the court grants the spouse's petition for an exten-
7 sion, the decedent's nonprobate transfers to others as defined in
8 section 2202 are not excluded from the augmented estate for the
9 purpose of computing the elective-share and supplemental
10 elective-share amounts, if the spouse makes an election by filing
11 in the court and mailing or delivering to the personal represen-
12 tative, if any, a petition for the elective share within the time
13 allowed by the extension.

14 (3) The surviving spouse may withdraw his or her demand for
15 an elective share at any time before entry of a final determina-
16 tion by the court.

17 (4) After notice and hearing, the court shall determine the
18 elective-share and supplemental elective-share amounts, and shall
19 order its payment from the assets of the augmented estate or by
20 contribution as appears appropriate under sections 2203 and
21 2204. If it appears that a fund or property included in the aug-
22 mented estate has not come into the possession of the personal
23 representative, or has been distributed by the personal represen-
24 tative, the court nevertheless shall fix the liability of a
25 person who has an interest in the fund or property or who has
26 possession of the fund or property, whether as trustee or
27 otherwise. The proceeding may be maintained against fewer than

1 all persons against whom relief could be sought, but no person is
2 subject to contribution in a greater amount than the person would
3 have been under sections 2203 and 2204 had relief been secured
4 against all persons subject to contribution.

5 (5) An order or judgment of the court may be enforced as
6 necessary in suit for contribution or payment in other courts of
7 this state or other jurisdictions.

8 Sec. 2206. (1) The right of election may be exercised only
9 by a surviving spouse who is living when the petition for the
10 elective share is filed in the court under section 2205. If the
11 election is not exercised by the surviving spouse personally, it
12 may be exercised on the surviving spouse's behalf by his or her
13 conservator, guardian, or agent under the authority of a power of
14 attorney.

15 (2) If the election is exercised on behalf of a surviving
16 spouse who is a legally incapacitated individual, the court shall
17 set aside that portion of the elective-share and supplemental
18 elective-share amounts due from the decedent's probate estate and
19 recipients of the decedent's nonprobate transfers to others under
20 section 2203(2) and (3) and shall appoint a trustee to administer
21 that property for the benefit of the surviving spouse. For the
22 purposes of this subsection, an election on behalf of a surviving
23 spouse by an agent under a durable power of attorney is presumed
24 to be on behalf of a surviving spouse who is a legally incapaci-
25 tated individual. A trust established under this section is con-
26 sidered a testamentary trust created by the decedent regardless
27 of whether the election creating the trust is made by a guardian,

1 conservator, agent under a power of attorney, or another party,
2 or if created by court order. Unless the court orders otherwise,
3 the trustee shall administer the trust in accordance with all of
4 the following terms and the additional terms the court determines
5 appropriate:

6 (a) Expenditure of income and principal may be made in the
7 manner, when, and to the extent that the trustee determines suit-
8 able and proper for the surviving spouse's support, without court
9 order but with regard to other support, income, and property of
10 the surviving spouse exclusive of benefits of medical or other
11 forms of assistance from a state or federal government or govern-
12 mental agency for which the surviving spouse must qualify on the
13 basis of need.

14 (b) During the surviving spouse's incapacity, neither the
15 surviving spouse nor anyone acting on behalf of the surviving
16 spouse has a power to terminate the trust; but if the surviving
17 spouse regains capacity, the surviving spouse then acquires the
18 power to terminate the trust and acquire full ownership of the
19 trust property free of trust by delivering to the trustee a writ-
20 ing signed by the surviving spouse declaring the termination.

21 (3) Upon the surviving spouse's death, the trustee shall
22 transfer the unexpended trust property in the following order:

23 (a) Under the residuary clause, if any, of the will of the
24 predeceased spouse against whom the elective share was taken, as
25 if that predeceased spouse died immediately after the surviving
26 spouse.

(b) To that predeceased spouse's heirs under section 2711.

Sec. 2207. (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves any of the following:

(a) He or she did not execute the waiver voluntarily.

(b) The waiver was unconscionable when it was executed and, before execution of the waiver, any of the following were true:

(i) The surviving spouse was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent.

(ii) The surviving spouse did not voluntarily and expressly waive, in writing, a right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided.

(iii) The surviving spouse did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless the waiver provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property

1 settlement entered into after or in anticipation of separation or
2 divorce is a waiver of all rights of elective share, homestead
3 allowance, exempt property, and family allowance by each spouse
4 in the property of the other and a renunciation by each of all
5 benefits that would otherwise pass to him or her from the other
6 by intestate succession, including an entitlement under section
7 2301, or by virtue of a will executed before the waiver or prop-
8 erty settlement.

9 Sec. 2208. (1) Although under section 2202 a payment, item
10 of property, or other benefit is included in the decedent's non-
11 probate transfers to others, a payor or other third party is not
12 liable for having made a payment or transferred an item of prop-
13 erty or other benefit to a beneficiary designated in a governing
14 instrument, or for having taken another action in good faith
15 reliance on the validity of a governing instrument, upon request
16 and satisfactory proof of the decedent's death, before the payor
17 or other third party received written notice from the surviving
18 spouse or spouse's representative of an intention to file a peti-
19 tion for the elective share or that a petition for the elective
20 share has been filed. A payor or other third party is liable for
21 payments made or other actions taken after the payor or other
22 third party received written notice of an intention to file a
23 petition for the elective share or that a petition for the elec-
24 tive share has been filed.

25 (2) The written notice of intention to file a petition for
26 the elective share or that a petition for the elective share has
27 been filed shall be provided and served as provided by supreme

1 court rule. Upon receipt of written notice of intention to file
2 a petition for the elective share or that a petition for the
3 elective share has been filed, a payor or other third party may
4 pay an amount owed, or transfer or deposit an item of property
5 held by the payor or third party, to or with the court having
6 jurisdiction of the probate proceedings relating to the
7 decedent's estate, or if no proceedings have been commenced, to
8 or with the court having jurisdiction of probate proceedings
9 relating to decedents' estates located in the county of the
10 decedent's residence. The court shall hold the money or item of
11 property and, upon its determination under section 2205(4), shall
12 order disbursement in accordance with the determination. If a
13 petition is not filed in the court within the time specified
14 under section 2205(1) or, if filed, the demand for an elective
15 share is withdrawn under section 2205(3), the court shall order
16 disbursement to the designated beneficiary. Payments, transfers,
17 or deposits made to or with the court discharge the payor or
18 other third party from all claims for the value of amounts paid
19 to or items of property transferred to or deposited with the
20 court.

21 (3) Upon petition to the court by the beneficiary designated
22 in a governing instrument, the court may order that all or part
23 of the property be paid to the beneficiary in an amount and
24 subject to conditions consistent with this section.

25 PART 3

1 ENTITLEMENT OF SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

2 Sec. 2301. (1) Except as provided in subsection (2), if a
3 testator's surviving spouse marries the testator after the testa-
4 tor executes his or her will, the surviving spouse is entitled to
5 receive, as an intestate share, not less than the value of the
6 share of the estate the surviving spouse would have received if
7 the testator had died intestate as to that portion of the
8 testator's estate, if any, that is not any of the following:

9 (a) Property devised to a child of the testator who was born
10 before the testator married the surviving spouse and who is not a
11 child of the surviving spouse.

12 (b) Property devised to a descendant of a child described in
13 subdivision (a).

14 (c) Property that passes under section 2603 or 2604 to a
15 child described in subdivision (a) or to a descendant of such a
16 child.

17 (2) Subsection (1) does not apply if any of the following
18 are true:

19 (a) From the will or other evidence, it appears that the
20 will was made in contemplation of the testator's marriage to the
21 surviving spouse.

22 (b) The will expresses the intention that it is to be effec-
23 tive notwithstanding a subsequent marriage.

24 (c) The testator provided for the spouse by transfer outside
25 the will, and the intent that the transfer be instead of a testa-
26 mentary provision is shown by the testator's statements or is

1 reasonably inferred from the amount of the transfer or other
2 evidence.

3 (3) In satisfying the share provided by this section,
4 devises made by the will to the testator's surviving spouse, if
5 any, are applied first, and other devises, other than a devise to
6 a child of the testator who was born before the testator married
7 the surviving spouse and who is not a child of the surviving
8 spouse or a devise or substitute gift under section 2603 or 2604
9 to a descendant of such a child, abate as provided in section
10 3902.

11 Sec. 2302. (1) Except as provided in subsection (2), if a
12 testator fails to provide in his or her will for a child of the
13 testator born or adopted after the execution of the will, the
14 omitted after-born or after-adopted child receives a share in the
15 estate as provided in 1 of the following:

16 (a) If the testator had no child living when he or she exe-
17 cuted the will, an omitted after-born or after-adopted child
18 receives a share in the estate equal in value to that which the
19 child would have received had the testator died intestate, unless
20 the will devised all or substantially all of the estate to the
21 other parent of the omitted child and that other parent survives
22 the testator and is entitled to take under the will.

23 (b) If the testator had 1 or more children living when he or
24 she executed the will, and the will devised property or an inter-
25 est in property to 1 or more of the then-living children, an
26 omitted after-born or after-adopted child is entitled to share in
27 the testator's estate subject to all of the following:

1 (i) The portion of the testator's estate in which the
2 omitted after-born or after-adopted child is entitled to share is
3 limited to devises made to the testator's then-living children
4 under the will.

5 (ii) The omitted after-born or after-adopted child is enti-
6 tled to receive the share of the testator's estate, as limited in
7 subparagraph (i), that the child would have received had the tes-
8 tator included all omitted after-born and after-adopted children
9 with the children to whom devises were made under the will and
10 had given an equal share of the estate to each child.

11 (iii) To the extent feasible, the interest granted an
12 omitted after-born or after-adopted child under this section must
13 be of the same character, whether equitable or legal, present or
14 future, as that devised to the testator's then-living children
15 under the will.

16 (iv) In satisfying a share provided by this subdivision,
17 devises to the testator's children who were living when the will
18 was executed abate ratably. In abating the devises of the
19 then-living children, the court shall preserve to the maximum
20 extent possible the character of the testamentary plan adopted by
21 the testator.

22 (2) Subsection (1) does not apply if either of the following
23 applies:

24 (a) It appears from the will that the omission was
25 intentional.

26 (b) the testator provided for the omitted after-born or
27 after-adopted child by transfer outside the will and the intent

1 that the transfer be instead of a testamentary provision is shown
2 by the testator's statements or is reasonably inferred from the
3 amount of the transfer or other evidence.

4 (3) If at the time of execution of the will the testator
5 fails to provide in his or her will for a living child solely
6 because he or she believes the child to be dead, the child is
7 entitled to share in the estate as if the child were an omitted
8 after-born or after-adopted child.

9 (4) In satisfying a share provided by subsection (1)(a),
10 devises made by the will abate under section 3902.

11 PART 4

12 EXEMPT PROPERTY AND ALLOWANCES

13 Sec. 2401. This part applies to the estate of a decedent
14 who dies domiciled in Michigan. For a decedent who dies domi-
15 ciled outside of Michigan, rights to homestead allowance, exempt
16 property, and family allowance are governed by the law of the
17 decedent's domicile at death.

18 Sec. 2402. (1) A decedent's surviving spouse is entitled to
19 a homestead allowance of \$15,000.00, adjusted as provided in sec-
20 tion 1209. If there is no surviving spouse, each minor child and
21 each dependent child of the decedent is entitled to a homestead
22 allowance equal to \$15,000.00, adjusted as provided in section
23 1209, divided by the number of the decedent's minor and dependent
24 children. The homestead allowance is exempt from and has prior-
25 ity over all claims against the estate. A homestead allowance is
26 in addition to any share passing to the surviving spouse or minor

1 or dependent child by the will of the decedent, unless otherwise
2 provided, by intestate succession, or by way of elective share.

3 (2) The value of any right in real property of the decedent
4 protected under the state constitution of 1963 to the benefit of
5 the surviving spouse and minor children as homestead shall be
6 deducted from the homestead allowance if not waived.

7 Sec. 2403. (1) In addition to the right of homestead allow-
8 ance and exempt property, the decedent's surviving spouse and
9 minor children whom the decedent was obligated to support, and
10 children of the decedent or another who were in fact being sup-
11 ported by the decedent, are entitled to a reasonable family
12 allowance in money out of the estate for their maintenance during
13 the period of administration, which allowance shall not continue
14 for longer than 1 year if the estate is inadequate to discharge
15 allowed claims. The family allowance may be paid in a lump sum
16 or in periodic installments. The family allowance is payable to
17 the surviving spouse, if living, for the use of the surviving
18 spouse and minor and dependent children; otherwise to the chil-
19 dren, or persons having their care and custody. If a minor child
20 or dependent child is not living with the surviving spouse, the
21 allowance may be paid partially to the child or to a fiduciary or
22 other person having the child's care and custody, and partially
23 to the spouse, as their needs may appear.

24 (2) The family allowance is exempt from and has priority
25 over all claims except the homestead allowance. The family
26 allowance is not chargeable against a benefit or share passing to
27 the surviving spouse or children by the will of the decedent,

1 unless otherwise provided, by intestate succession, or by way of
2 elective share. The death of an individual entitled to family
3 allowance terminates the right to allowances not yet paid.

4 Sec. 2404. (1) In addition to the homestead allowance, the
5 decedent's surviving spouse is entitled to household furniture,
6 automobiles, furnishings, appliances, and personal effects from
7 the estate up to a value not to exceed \$10,000.00 more than the
8 amount of any security interests to which the property is
9 subject. If there is no surviving spouse, the decedent's chil-
10 dren are entitled jointly to the same value.

11 (2) If encumbered assets are selected and the value in
12 excess of security interests, plus that of other exempt property,
13 is less than \$10,000.00, or if there is not \$10,000.00 worth of
14 exempt property in the estate, the spouse or children are enti-
15 tled to other assets of the estate, if any, to the extent neces-
16 sary to make up the \$10,000.00 value. Rights to exempt property
17 and assets needed to make up a deficiency of exempt property have
18 priority over all claims against the estate, except that the
19 right to assets to make up a deficiency of exempt property abates
20 as necessary to permit payment of homestead allowance and family
21 allowance.

22 (3) The rights under this section are in addition to a bene-
23 fit or share passing to the surviving spouse or children by the
24 decedent's will, unless otherwise provided, by intestate succes-
25 sion, or by way of elective share. The \$10,000.00 amount
26 expressed in this section shall be adjusted as provided in
27 section 1209.

1 Sec. 2405. (1) If the estate is otherwise sufficient,
2 property specifically devised shall not be used to satisfy rights
3 to homestead allowance or exempt property. Subject to this
4 restriction, the surviving spouse, fiduciaries or others having
5 the care and custody of minor children, or children who are
6 adults may select property of the estate as homestead allowance
7 and exempt property.

8 (2) The personal representative may make those selections if
9 the surviving spouse, the adult children, or those acting for the
10 minor children are unable or fail to do so within a reasonable
11 time. The personal representative may execute a deed of distri-
12 bution or other instrument to establish the ownership of property
13 taken as homestead allowance or exempt property. The personal
14 representative may determine the family allowance in a lump sum
15 not exceeding \$18,000.00, adjusted as provided in section 1209,
16 or periodic installments not exceeding 1/12 of that amount per
17 month for 1 year, and may disburse funds of the estate in payment
18 of the family allowance and any part of the homestead allowance
19 payable in cash.

20 (3) The personal representative or an interested person
21 aggrieved by a selection, determination, payment, proposed pay-
22 ment, or failure to act under this section may petition the court
23 for appropriate relief, which may include a family allowance
24 other than that which the personal representative determined or
25 could have determined.

26 (4) If the right to an elective share is exercised on behalf
27 of a surviving spouse who is an incapacitated individual, the

1 personal representative may add unexpended portions payable under
2 the homestead allowance, exempt property, and family allowance to
3 the trust established under section 2206(2).

4 PART 5

5 WILLS, WILL CONTRACTS, AND

6 CUSTODY AND DEPOSIT OF WILLS

7 Sec. 2501. An individual 18 or more years of age who is of
8 sound mind may make a will.

9 Sec. 2502. (1) Except as provided in subsection (2) and in
10 sections 2503, 2506, and 2513, a will is valid only if it is all
11 of the following:

12 (a) In writing.

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

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

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

25 (3) Intent that the document constitutes the testator's will
26 can be established by extrinsic evidence, including, for

1 holographic wills, portions of the document that are not in the
2 testator's handwriting.

3 Sec. 2503. Although a document or writing added upon a doc-
4 ument was not executed in compliance with section 2502, the docu-
5 ment or writing is treated as if it had been executed in compli-
6 ance with that section if the proponent of the document or writ-
7 ing establishes by clear and convincing evidence that the dece-
8 dent intended the document or writing to constitute any of the
9 following:

10 (a) The decedent's will.

11 (b) A partial or complete revocation of the decedent's
12 will.

13 (c) An addition to or an alteration of the decedent's will.

14 (d) A partial or complete revival of the decedent's formerly
15 revoked will or of a formerly revoked portion of the decedent's
16 will.

17 Sec. 2504. (1) A will may be simultaneously executed,
18 attested, and made self-proved by acknowledgment of the will by
19 the testator and 2 witnesses' affidavits, each made before an
20 officer authorized to administer oaths under the laws of the
21 state in which execution occurs and evidenced by the officer's
22 certificate, under official seal, in substantially the following
23 form:

24 I, _____, the testator, sign my name to
25 this document on _____, _____. I have taken an oath, admin-
26 istered by the officer whose signature and seal appear on this
27 document, swearing that the statements in this document are

I true. I declare to that officer that this document is my will;
 that I sign it willingly, or willingly direct another to sign for
 me; that I execute it as my voluntary act for the purposes
 expressed in this will; and that I am 18 years of age or older,
 of sound mind, and under no constraint or undue influence.

 (Signature) Testator

We, _____ and

_____, the witnesses, sign our
 names to this document to attest and have taken an oath, adminis-
 tered by the officer whose signature and seal appear on this doc-
 ument, to swear that all of the following statements are true:
 the individual signing this document as the testator executes the
 document as his or her will, signs it willingly, or willingly
 directs another to sign for him or her, and executes it as his or
 her voluntary act for the purposes expressed in this will; each
 of us, in the testator's presence, signs this will as witness to
 the testator's signing; and, to the best of our knowledge, the
 testator is 18 years of age or older, of sound mind, and under no
 constraint or undue influence.

 (Signature) Witness

 (Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the
 testator, and sworn to and signed in my presence by

_____ and _____, witnesses, on

1 _____, _____.
 2 month/day year

3 _____
 4 (SEAL) (Signed)

5 _____
 6 (official capacity of officer)

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

14 The State of _____

15 County of _____

16 We, _____, _____, and

17 _____, the testator and the witnesses, respective-
 18 ly, whose names are signed to the attached or annexed will,

19 acknowledged by this document, sign this document to attest and
 20 have taken an oath, administered by the officer whose signature
 21 and seal appear on this document, to swear that all of the fol-
 22 lowing statements are true: the individual signing this document
 23 as the will's testator executed the will as his or her will,
 24 signed it willingly, or willingly directed another to sign for
 25 him or her, and executed it as his or her voluntary act for the
 26 purposes expressed in the will; each witness, in the testator's
 27 presence, signed the will as witness to the testator's signing;
 28 and, to the best of the witnesses' knowledge, the testator, at
 29 the time of the will's execution, was 18 years of age or older,

1 of sound mind, and under no constraint or undue influence.

2 _____ Testator _____ Witness

3 _____ Witness

4 Sworn to and signed in my presence by _____,

5 the testator, and sworn to and signed in my presence by

6 _____ and _____, witnesses, on _____

7 _____,
8 month/day year.

9 _____
10 (SEAL) (Signed)

11 _____
12 (official capacity of officer)

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

20 I, _____, the testator, sign my name to this docu-
21 ment on _____, _____. I have taken an oath, administered by
22 the officer whose signature and seal appear on this document,
23 swearing that the statements in this document are true. I
24 declare to that officer that this document is a codicil to my
25 will; that I sign it willingly, or willingly direct another to
26 sign for me; that I execute it as my voluntary act for the pur-
27 poses expressed in this codicil; and that I am 18 years of age or
28 older, of sound mind, and under no constraint or undue
29 influence. _____ Testator

1 We, _____ and _____, the witnesses, sign
 2 our names to this document to attest and have taken an oath,
 3 administered by the officer whose signature and seal appear on
 4 this document, to swear that all of the following statements are
 5 true: the individual signing this document as the testator exe-
 6 cutes the document as a codicil to his or her will, signs it
 7 willingly, or willingly directs another to sign for him or her,
 8 and executes it as his or her voluntary act for the purposes
 9 expressed in this codicil; each of us, in the testator's pres-
 10 ence, signs this codicil as witness to the testator's signing;
 11 and, to the best of our knowledge, the testator is 18 years of
 12 age or older, of sound mind, and under no constraint or undue
 13 influence.

14 _____
 15 (Signature) Witness

16 _____
 17 (Signature) Witness

18 The State of _____

19 County of _____

20 Sworn to and signed in my presence by _____, the
 21 testator, and sworn to and signed in my presence by

22 _____ and _____, witnesses, on _____

23 _____, _____.
 24 _____ month/day _____ year

25 _____
 26 (SEAL) (Signed)

27 _____
 28 (official capacity of officer)
 29

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

4 Sec. 2505. (1) An individual generally competent to be a
5 witness may act as a witness to a will.

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

8 Sec. 2506. A written will is valid if executed in compli-
9 ance with section 2502 or 2503, with the law at the time of exe-
10 cution of the place where the will is executed, or with the law
11 of the place where, at the time of execution or at the time of
12 death, the testator is domiciled, has a place of abode, or is a
13 national.

14 Sec. 2507. (1) A will or a part of a will is revoked by
15 either of the following acts:

16 (a) Execution of a subsequent will that revokes the previous
17 will or a part of the will expressly or by inconsistency.

18 (b) Performance of a revocatory act on the will, if the tes-
19 tator performed the act with the intent and for the purpose of
20 revoking the will or a part of the will or if another individual
21 performed the act in the testator's conscious presence and by the
22 testator's direction. For purposes of this subdivision,
23 "revocatory act on the will" includes burning, tearing, cancel-
24 ing, obliterating, or destroying the will or a part of the will.
25 A burning, tearing, or canceling is a revocatory act on the will,
26 whether or not the burn, tear, or cancellation touches any of the
27 words on the will.

1 (2) If a subsequent will does not expressly revoke a
2 previous will, the execution of the subsequent will wholly
3 revokes the previous will by inconsistency if the testator
4 intended the subsequent will to replace rather than supplement
5 the previous will.

6 (3) The testator is presumed to have intended a subsequent
7 will to replace rather than supplement a previous will if the
8 subsequent will makes a complete disposition of the testator's
9 estate. If this presumption arises and is not rebutted by clear
10 and convincing evidence, the previous will is revoked, and only
11 the subsequent will is operative on the testator's death.

12 (4) The testator is presumed to have intended a subsequent
13 will to supplement rather than replace a previous will if the
14 subsequent will does not make a complete disposition of the
15 testator's estate. If this presumption arises and is not
16 rebutted by clear and convincing evidence, the subsequent will
17 revokes the previous will only to the extent the subsequent will
18 is inconsistent with the previous will, and each will is fully
19 operative on the testator's death to the extent they are not
20 inconsistent.

21 Sec. 2508. Except as provided in sections 2802 and 2803, a
22 change of circumstances does not revoke a will or a part of a
23 will.

24 Sec. 2509. (1) If a subsequent will that wholly revoked a
25 previous will is later revoked by a revocatory act under section
26 2507(1)(b), the previous will remains revoked unless it is
27 revived. The previous will is revived if it is evident from the

1 circumstances of the revocation of the subsequent will or from
2 the testator's contemporary or subsequent declarations that the
3 testator intended the previous will to take effect as executed.

4 (2) If a subsequent will that partly revoked a previous will
5 is later revoked by a revocatory act under section 2507(1)(b), a
6 revoked part of the previous will is revived unless it is evident
7 from the circumstances of the revocation of the subsequent will
8 or from the testator's contemporary or subsequent declarations
9 that the testator did not intend the revoked part to take effect
10 as executed.

11 (3) If a subsequent will that revoked a previous will in
12 whole or in part is later revoked by another, later will, the
13 previous will remains revoked in whole or in part, unless it or
14 its revoked part is revived. The previous will or its revoked
15 part is revived to the extent it appears from the terms of the
16 later will that the testator intended the previous will to take
17 effect.

18 Sec. 2510. A writing in existence when a will is executed
19 may be incorporated by reference if the language of the will man-
20 ifests this intent and describes the writing sufficiently to
21 permit its identification.

22 Sec. 2511. (1) A will may validly devise property to the
23 trustee of a trust established or to be established in any of the
24 following manners:

25 (a) During the testator's lifetime by the testator, by the
26 testator and some other person, or by some other person,
27 including a funded or unfunded life insurance trust, although the

1 settlor has reserved any or all rights of ownership of the
2 insurance contracts.

3 (b) At the testator's death by the testator's devise to the
4 trustee, if the trust is identified in the testator's will and
5 its terms are set forth in a written instrument, other than a
6 will, executed before, concurrently with, or after the execution
7 of the testator's will or in another individual's will if that
8 other individual has predeceased the testator, regardless of the
9 existence, size, or character of the corpus of the trust.

10 (2) A devise described in subsection (1) is not invalid
11 because the trust is amendable or revocable, or because the trust
12 was amended after the execution of the will or the testator's
13 death. Unless the testator's will provides otherwise, property
14 devised to a trust described in subsection (1) is not held under
15 a testamentary trust of the testator, but it becomes a part of
16 the trust to which it is devised, and shall be administered and
17 disposed of in accordance with the provisions of the governing
18 instrument setting forth the terms of the trust, including an
19 amendment to the trust made before or after the testator's
20 death.

21 (3) Unless the testator's will provides otherwise, a revoca-
22 tion or termination of the trust before the testator's death
23 causes the devise to lapse.

24 Sec. 2512. A will may dispose of property by reference to
25 acts and events that have significance apart from their effect
26 upon the dispositions made by the will, whether they occur before
27 or after the execution of the will or before or after the

1 testator's death. The execution or revocation of another
2 individual's will is such an event.

3 Sec. 2513. Whether or not the provisions relating to a
4 holographic will apply, a will may refer to a written statement
5 or list to dispose of items of tangible personal property not
6 otherwise specifically disposed of by the will, other than
7 money. To be admissible under this section as evidence of the
8 intended disposition, the writing must be signed by the testator
9 and must describe the items and the devisees with reasonable
10 certainty. The writing may be referred to as one to be in exis-
11 tence at the time of the testator's death; it may be prepared
12 before or after the execution of the will; it may be altered by
13 the testator after its preparation; and it may be a writing that
14 has no significance apart from its effect on the dispositions
15 made by the will.

16 Sec. 2514. (1) If executed after the effective date of this
17 act, a contract to make a will or devise, not to revoke a will or
18 devise, or to die intestate may be established only by 1 or more
19 of the following:

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

22 (b) An express reference in a will to a contract and extrin-
23 sic evidence proving the terms of the contract.

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

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

4 Sec. 2515. (1) A will in writing that is enclosed in a
5 sealed wrapper, on which is endorsed the testator's name, place
6 of residence, and social security number or state of Michigan
7 driver's license number, if any, and the day on which and the
8 name of the person by whom it is delivered, may be deposited by
9 the individual making the will, or by a person for him or her,
10 with the court in the county where the testator lives. The court
11 shall receive and safely keep the will and give a certificate of
12 the deposit of the will. For this service, the court shall
13 charge and collect a fee as provided by supreme court rule or the
14 revised judicature act of 1961.

15 (2) During the lifetime of the testator, the will shall be
16 delivered only to the testator, or to some person authorized by
17 the testator in writing that is duly proved by the oath of a sub-
18 scribing witness. After the death of the testator and at the
19 first session of the court after the court receives notice of the
20 testator's death, the will shall be publicly opened and retained
21 by the court.

22 (3) After the death of the testator, if jurisdiction of the
23 will for probate belongs to a court in another county, upon
24 request of the personal representative named in the will or
25 another person interested in its provisions, the will shall be
26 forwarded by registered mail to the other court or delivered to
27 the personal representative, or to some other person interested

1 in the provisions of the will, to be presented for probate in the
2 other court.

3 Sec. 2516. A custodian of a will or codicil or person
4 having possession or care of a will or codicil shall forward it
5 to the court having jurisdiction with reasonable promptness after
6 the death of the testator either by delivering it personally or
7 by sending it properly addressed by registered mail. A person
8 who neglects to perform this duty without reasonable cause is
9 liable for damages that are sustained by the neglect. A person
10 who willfully refuses or fails to deliver a will or codicil after
11 being ordered by the court in a proceeding brought for the pur-
12 pose of compelling delivery is guilty of contempt of court and
13 subject to the penalty for contempt.

14 Sec. 2517. (1) In the estate of a decedent who died before
15 October 1, 1993, the following apply to the opening of a safe
16 deposit box:

17 (a) A safe deposit box of which the decedent was an individ-
18 ual or joint lessee may be opened following the decedent's death
19 only upon compliance with the Michigan estate tax act, Act
20 No. 188 of the Public Acts of 1899, being sections 205.201 to
21 205.256 of the Michigan Compiled Laws.

22 (b) A safe deposit box of an individual who is an individual
23 or joint lessee and for whom a fiduciary was appointed may be
24 opened by that fiduciary in a like manner as provided by Act
25 No. 188 of the Public Acts of 1899 as it relates to deceased
26 persons.

1 (2) In the estate of a decedent who dies after September 30,
2 1993, the following apply to the opening of a safe deposit box:

3 (a) Whenever it appears to the court by petition of an
4 interested party that a safe and collateral deposit company,
5 trust company, corporation, bank, or other institution has leased
6 to a decedent, either as an individual or joint lessee, a safe
7 deposit box in the county in which the probate court has juris-
8 diction and that the safe deposit box may contain a will of the
9 decedent or a deed to a burial plot in which the decedent is to
10 be interred, the court may make an order directing the institu-
11 tion to permit the person named in the order to examine the safe
12 deposit box in the presence of an officer or other authorized
13 employee of the institution, and if a paper purporting to be a
14 will of the decedent or a deed to a burial plot is found in the
15 box, to deliver the will or deed to the probate register or his
16 or her deputy. The probate register or his or her deputy shall
17 furnish a receipt to the institution. An item contained in the
18 safe deposit box other than the will or deed shall not be removed
19 from the safe deposit box. At the time of the opening of the
20 safe deposit box, all individuals in attendance shall execute a
21 written statement certifying whether a will or deed to a burial
22 plot is found and that no other items are removed, which state-
23 ment shall be delivered within 7 days after execution to the pro-
24 bate register or his or her deputy. Before the court enters the
25 order, there shall be paid to the probate register a fee of
26 \$10.00, which shall be credited to the general fund of the
27 county. If the decedent's estate is administered in a probate

1 court in the state, the party making payment of the fee may file
2 a claim in the estate for that amount, which shall be charged as
3 a cost of administration.

4 (b) The safe deposit box of an individual who is an individ-
5 ual or joint lessee and for whom a fiduciary was appointed may be
6 opened by that fiduciary and its contents removed. If the safe
7 deposit box is jointly leased, then the fiduciary may examine the
8 safe deposit box only in the presence of an officer or other
9 authorized employee of the safe deposit and collateral company,
10 trust company, corporation, bank, or other institution. At the
11 time of the opening of the safe deposit box, all individuals in
12 attendance shall execute a written statement certifying as to
13 what is removed from the box by the fiduciary. The fiduciary
14 shall serve a copy of that statement on the other joint lessees
15 within 7 days after removing the items.

16 (c) Notwithstanding another provision of this section, a
17 surviving joint lessee of a joint safe deposit box has full
18 access to the safe deposit box.

19 Sec. 2518. A provision in a will purporting to penalize an
20 interested person for contesting the will or instituting other
21 proceedings relating to the estate is unenforceable if probable
22 cause exists for instituting proceedings.

23 Sec. 2519. (1) A will executed in the form prescribed by
24 subsection (2) and otherwise in compliance with the terms of the
25 Michigan statutory will form is a valid will. A person printing
26 and distributing the Michigan statutory will shall print and
27 distribute the form verbatim as it appears in subsection (2).

1 The notice provisions shall be printed in 10-point boldfaced
2 type.

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

4 MICHIGAN STATUTORY WILL NOTICE

5 1. An individual age 18 or older and of sound mind may sign
6 a will.

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

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

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

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

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

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

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

INSTRUCTIONS:

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

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

13 MICHIGAN STATUTORY WILL OF _____
14

15 (PRINT OR TYPE YOUR FULL NAME)

16 ARTICLE 1. DECLARATIONS

17 This is my will and I revoke any prior wills and codicils.

18 I live in _____ County, Michigan.

19 My spouse is _____

20 (Insert spouse's name or write "none")

21 My children now living are:

22 _____

23

24

25 (Insert names or write "none")

26 ARTICLE 2. DISPOSITION OF MY ASSETS

27 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

28 (Optional)

29 I can leave no more than two (2) cash gifts. I make the
30 following cash gifts to the persons or charities in the amount

1 stated here. Any transfer tax due upon my death shall be paid
 2 from the balance of my estate and not from these gifts. Full
 3 name and address of person or charity to receive cash gift (name
 4 only 1 person or charity here):

5 _____
 6 (Insert name of person or charity)
 7 _____
 8 (Insert address)

9 AMOUNT OF GIFT (In figures): \$ _____

10 AMOUNT OF GIFT (In words): _____ Dollars

11 _____
 12 (Your signature)

13 Full name and address of person or charity to receive cash gift
 14 (name only 1 person or charity):

15 _____
 16 (Insert name of person or charity)
 17 _____
 18 (Insert address)

19 AMOUNT OF GIFT (In figures): \$ _____

20 AMOUNT OF GIFT (In words): _____ Dollars

21 _____
 22 (Your signature)

23 2.2 PERSONAL AND HOUSEHOLD ITEMS.

24 I may leave a separate list or statement, either in my hand-
 25 writing or signed by me at the end, regarding gifts of specific
 26 books, jewelry, clothing, automobiles, furniture, and other per-
 27 sonal and household items.

28 I give my spouse all my books, jewelry, clothing, automo-
 29 biles, furniture, and other personal and household items not
 30 included on such a separate list or statement. If I am not
 31 married at the time I sign this will or if my spouse dies before
 32 me, my personal representative shall distribute those items, as

1 equally as possible, among my children who survive me. If no
 2 children survive me, these items shall be distributed as set
 3 forth in paragraph 2.3.

4 2.3 ALL OTHER ASSETS.

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

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

15 (Select only 1)

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

19 _____
 20 (Your signature)

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

23 _____
 24 (Your signature)

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

27 Personal representatives, guardians, and conservators have a
 28 great deal of responsibility. The role of a personal

1 representative is to collect your assets, pay debts and taxes
 2 from those assets, and distribute the remaining assets as
 3 directed in the will. A guardian is a person who will look after
 4 the physical well-being of a child. A conservator is a person
 5 who will manage a child's assets and make payments from those
 6 assets for the child's benefit. Select them carefully. Also,
 7 before you select them, ask them whether they are willing and
 8 able to serve.

9 3.1 PERSONAL REPRESENTATIVE.

10 (Name at least 1)

11 I nominate _____
 12 (Insert name of person or eligible financial institution)
 13 of _____ to serve as personal representative.
 14 (Insert address)

15 If my first choice does not serve, I nominate _____
 16 _____
 17 (Insert name of person or eligible financial institution)
 18 of _____ to serve as personal representative.
 19 (Insert address)

20 3.2 GUARDIAN AND CONSERVATOR.

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

26 If a guardian or conservator is needed for a child of mine,
 27 I nominate _____
 28 (Insert name of individual)
 29 of _____ as guardian and
 30 (Insert address)

1
2 (Insert name of individual or eligible financial institution)

3 of _____
4 (Insert address)
5 to serve as conservator.

6 If my first choice cannot serve, I nominate

7 _____
8 (Insert name of individual)

9 of _____ as guardian and
10 (Insert address)

11
12 (Insert name of individual or eligible financial institution)

13 of _____
14 (Insert address)
15 to serve as conservator.

16 3.3 BOND.

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

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

25 _____
26 (Your signature)

27
28 (b) My personal representative and any conservator I have
29 named shall serve without bond.

30 _____
31 (Your signature)

32
33 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

1 I sign my name to this Michigan statutory will on

2 _____, 19____.

3 _____
4 (Your signature)

5 NOTICE REGARDING WITNESSES

6 You must use 2 adults who will not receive assets under this
7 will as witnesses. It is preferable to have 3 adult witnesses.
8 All the witnesses must observe you sign the will, have you tell
9 them you signed the will, or have you tell them the will was
10 signed at your direction in your presence.

11 STATEMENT OF WITNESSES

12 We sign below as witnesses, declaring that the individual
13 who is making this will appears to be of sound mind and appears
14 to be making this will freely, without duress, fraud, or undue
15 influence, and that the individual making this will acknowledges
16 that he or she has read the will, or has had it read to him or
17 her, and understands the contents of this will.

18 _____
19 (Print Name)

20 _____
21 _____
22 (Signature of witness)

23 _____
24 _____
25 (Address)

26

1 _____
 2 (City) _____ (State) _____ (Zip)
 3 _____
 4 _____
 5 (Print name) _____
 6 _____
 7 _____
 8 (Signature of witness) _____
 9 _____
 10 _____
 11 (Address) _____
 12 _____
 13 _____
 14 (City) _____ (State) _____ (Zip)
 15 _____
 16 _____
 17 (Print name) _____
 18 _____
 19 _____
 20 (Signature of witness) _____
 21 _____
 22 _____
 23 (Address) _____
 24 _____
 25 _____
 26 (City) _____ (State) _____ (Zip)
 27 _____
 28

DEFINITIONS

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

31 (a) "Assets" means all types of property you can own, such
 32 as real estate, stocks and bonds, bank accounts, business inter-
 33 ests, furniture, and automobiles.

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

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

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

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

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

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

21 (h) "Person" includes individuals and institutions.

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

24 (j) If a Michigan statutory will states that a person shall
25 perform an act, the person is required to perform that act. If a
26 Michigan statutory will states that a person may do an act, the

1 person's decision to do or not to do the act shall be made in
2 good faith exercise of the person's powers.

3 ADDITIONAL CLAUSES

4 Powers of personal representative

5 1. A personal representative has all powers of administra-
6 tion given by Michigan law to personal representatives and, to
7 the extent funds are not needed to meet debts and expenses cur-
8 rently payable and are not immediately distributable, the power
9 to invest and reinvest the estate from time to time in accordance
10 with the Michigan prudent investor rule. In dividing and dis-
11 tributing the estate, the personal representative may distribute
12 partially or totally in kind, may determine the value of distri-
13 butions in kind without reference to income tax bases, and may
14 make non-pro rata distributions.

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

24 POWERS OF GUARDIAN AND CONSERVATOR

25 A guardian named in this will has the same authority with
26 respect to the child as a parent having legal custody would

1 have. A conservator named in this will has all of the powers
2 conferred by law.

3 PART 6

4 RULES OF CONSTRUCTION

5 APPLICABLE ONLY TO WILLS

6 Sec. 2601. As used in this part:

7 (a) "Alternative devise" means a devise that is expressly
8 created by the will and, under the terms of the will, can take
9 effect instead of another devise on the happening of 1 or more
10 events, including survival of the testator or failure to survive
11 the testator, whether an event is expressed in
12 condition-precedent, condition-subsequent, or another form. A
13 residuary clause constitutes an alternative devise with respect
14 to a nonresiduary devise only if the will specifically provides
15 that, upon lapse or failure, the nonresiduary devise or nonresid-
16 uary devises in general pass under the residuary clause.

17 (b) "Class member" includes an individual who fails to sur-
18 vive the testator but who would have taken under a devise in the
19 form of a class gift had he or she survived the testator.

20 (c) "Devise" includes an alternative devise, a devise in the
21 form of a class gift, and an exercise of a power of appointment.

22 (d) "Devisee" includes all of the following:

23 (i) A class member if the devise is in the form of a class
24 gift.

25 (ii) The beneficiary of a trust, but not the trustee.

26 (iii) An individual or class member who was deceased at the
27 time the testator executed his or her will or an individual or

1 class member who was living at that time, but fails to survive
2 the testator.

3 (iv) An appointee under a power of appointment exercised by
4 the testator's will.

5 (e) "Stepchild" means a child of the surviving, deceased, or
6 former spouse of the testator or of the donor of a power of
7 appointment, who is not the testator's or donor's child.

8 (f) "Surviving devisee" or "surviving descendant" means a
9 devisee or a descendant who neither predeceased the testator nor
10 is considered to have predeceased the testator under section
11 2702.

12 (g) "Testator" includes the donee of a power of appointment
13 if the power is exercised in the testator's will.

14 Sec. 2602. (1) In the absence of a finding of a contrary
15 intention, the rules of construction in this part control the
16 construction of a will.

17 (2) A will may provide for the passage of all property that
18 the testator owns at death and all property acquired by the
19 estate after the testator's death.

20 Sec. 2603. (1) If a devisee fails to survive the testator
21 and is a grandparent, a grandparent's descendant, or a stepchild
22 of either the testator or the donor of a power of appointment
23 exercised by the testator's will, the following apply:

24 (a) Except as provided in subdivision (d), if the devise is
25 not in the form of a class gift and the deceased devisee leaves
26 surviving descendants, a substitute gift is created in the
27 devisee's surviving descendants. They take by representation the

1 property to which the devisee would have been entitled had the
2 devisee survived the testator.

3 (b) Except as provided in subdivision (d), if the devise is
4 in the form of a class gift, other than a devise to "issue",
5 "descendants", "heirs of the body", "heirs", "next of kin",
6 "relatives", or "family", or to a class described by language of
7 similar import, a substitute gift is created in the surviving
8 descendants of a deceased devisee. The property to which the
9 devisee would have been entitled had all class members survived
10 the testator passes to the surviving devisees and the deceased
11 devisees' surviving descendants. Each surviving devisee takes
12 the share to which he or she would have been entitled had the
13 deceased devisees survived the testator. Each deceased devisee's
14 surviving descendants who are substituted for the deceased devi-
15 see take by representation the share to which the deceased devi-
16 see would have been entitled had the deceased devisee survived
17 the testator. For the purposes of this subdivision, "deceased
18 devisee" means a class member who fails to survive the testator
19 and leaves 1 or more surviving descendants.

20 (c) For the purposes of section 2602, words of survivorship,
21 such as in a devise to an individual "if he survives me", or in a
22 devise to "my surviving children", are not, in the absence of
23 additional evidence, a sufficient indication of an intent con-
24 trary to the application of this section.

25 (d) If the will creates an alternative devise with respect
26 to a devise for which a substitute gift is created by
27 subdivision (a) or (b), the substitute gift is superseded by the

1 alternative devise only if an expressly designated devisee of the
2 alternative devise is entitled to take under the will.

3 (e) Unless the language creating a power of appointment
4 expressly excludes the substitution of the appointee's descen-
5 dants for the appointee, a surviving descendant of a deceased
6 appointee of a power of appointment can be substituted for the
7 appointee under this section, whether or not the descendant is an
8 object of the power.

9 (2) If, under subsection (1), substitute gifts are created
10 and not superseded with respect to more than 1 devise and the
11 devises are alternative devises, one to the other, the determina-
12 tion of which of the substitute gifts take effect is resolved as
13 follows:

14 (a) Except as provided in subdivision (b), the devised prop-
15 erty passes under the primary substitute gift.

16 (b) If there is a younger-generation devise, the devised
17 property passes under the younger-generation substitute gift and
18 not under the primary substitute gift.

19 Sec. 2604. (1) Except as provided in section 2603, a
20 devise, other than a residuary devise, that fails for any reason
21 becomes a part of the residue.

22 (2) Except as provided in section 2603, if the residue is
23 devised to 2 or more persons, the share of a residuary devisee
24 that fails for any reason passes to the other residuary devisee,
25 or to other residuary devisees in proportion to the interest of
26 each and the remaining part of the residue.

1 Sec. 2605. (1) If a testator executes a will that devises
2 securities and the testator then owns securities that meet the
3 description in the will, the devise includes additional securi-
4 ties owned by the testator at death to the extent the additional
5 securities are acquired by the testator after the will was exe-
6 cuted as a result of the testator's ownership of the described
7 securities and are securities of any of the following types:

8 (a) Securities of the same organization acquired by reason
9 of action initiated by the organization or any successor, relat-
10 ed, or acquiring organization, excluding any acquired by exercise
11 of purchase options.

12 (b) Securities of another organization acquired as a result
13 of a merger, consolidation, reorganization, or other distribution
14 by the organization or any successor, related, or acquiring
15 organization.

16 (c) Securities of the same organization acquired as a result
17 of a plan of reinvestment.

18 (2) Distributions in cash before death with respect to a
19 described security are not part of the devise.

20 Sec. 2606. (1) A specific devisee has a right to the spe-
21 cifically devised property in the testator's estate at death and
22 all of the following:

23 (a) Any balance of the purchase price, together with any
24 security agreement, owing from a purchaser to the testator at
25 death by reason of sale of the property.

26 (b) Any amount of a condemnation award for the taking of the
27 property unpaid at death.

1 (c) Any proceeds unpaid at death on fire or casualty
2 insurance on, or other recovery for, injury to the property.

3 (d) Property owned by the testator at death and acquired as
4 a result of foreclosure, or obtained in lieu of foreclosure, of
5 the security interest for a specifically devised obligation.

6 (e) Real property or tangible personal property owned by the
7 testator at death that the testator acquired as a replacement for
8 specifically devised real property or tangible personal
9 property.

10 (f) Unless the facts and circumstances indicate that ademp-
11 tion of the devise was intended by the testator or ademption of
12 the devise is consistent with the testator's manifested plan of
13 distribution, the value of the specifically devised property to
14 the extent the specifically devised property is not in the
15 testator's estate at death and its value or its replacement is
16 not covered by subdivisions (a) to (e).

17 (2) If a conservator or an agent acting within the authority
18 of a durable power of attorney for an incapacitated principal
19 sells or mortgages specifically devised property, or if a condem-
20 nation award, insurance proceeds, or recovery for injury to the
21 property are paid to a conservator or to an agent acting within
22 the authority of a durable power of attorney for an incapacitated
23 principal, the specific devisee has the right to a general pecu-
24 niary devise equal to the net sale price, the amount of the
25 unpaid loan, the condemnation award, the insurance proceeds, or
26 the recovery.

1 (3) The right of a specific devisee under subsection (2) is
2 reduced by a right the devisee has under subsection (1) .

3 (4) For the purposes of the references in subsection (2) to
4 a conservator, subsection (2) does not apply if after the sale,
5 mortgage, condemnation, casualty, or recovery, it was adjudicated
6 that the testator's incapacity ceased and the testator survived
7 the adjudication by 1 year.

8 (5) For the purposes of the references in subsection (2) to
9 an agent acting within the authority of a durable power of attor-
10 ney for an incapacitated principal, an incapacitated principal is
11 a principal who is an incapacitated individual, an adjudication
12 of the individual's incapacity before death is not necessary, and
13 the acts of an agent within the authority of a durable power of
14 attorney are presumed to be for an incapacitated principal.

15 Sec. 2607. A specific devise and a transfer under an exer-
16 cise of a power of appointment that is equivalent to a specific
17 devise, including the exercise of a right to withdraw specific
18 property, passes subject to any mortgage interest existing on the
19 date of death, without right of exoneration, regardless of a gen-
20 eral directive in the will to pay debts.

21 Sec. 2608. (1) Property a testator gave in his or her life-
22 time to a person is treated as a satisfaction of a devise in
23 whole or in part only if any of the following are true:

24 (a) The will provides for a deduction of the gift.

25 (b) The testator declared in a contemporaneous writing that
26 the gift is in satisfaction of the devise or that its value is to
27 be deducted from the value of the devise.

1 (c) The devisee acknowledges in writing that the gift is in
2 satisfaction of the devise or that its value is to be deducted
3 from the value of the devise.

4 (2) For purposes of partial satisfaction, property given
5 during the testator's lifetime is valued as of the time the devi-
6 see came into possession or enjoyment of the property or at the
7 testator's death, whichever occurs first.

8 (3) If the devisee fails to survive the testator, the gift
9 is treated as a full or partial satisfaction of the devise, as
10 appropriate, in applying sections 2603 and 2604, unless the
11 testator's contemporaneous writing provides otherwise.

12 PART 7

13 RULES OF CONSTRUCTION APPLICABLE TO DONATIVE

14 DISPOSITIONS IN WILLS AND OTHER GOVERNING INSTRUMENTS

15 Sec. 2701. In the absence of a finding of a contrary inten-
16 tion, the rules of construction in this part control the con-
17 struction of a governing instrument. The rules of construction
18 in this part apply to a governing instrument of any type, except
19 as the application of a particular section is limited by its
20 terms to a specific type of provision or governing instrument.

21 Sec. 2702. (1) For the purposes of this act, except as pro-
22 vided in subsection (4), an individual who is not established by
23 clear and convincing evidence to have survived an event, includ-
24 ing the death of another individual, by 120 hours is considered
25 to have predeceased the event.

26 (2) Except as provided in subsection (4), for purposes of a
27 provision of a governing instrument that relates to an individual

1 surviving an event, including the death of another individual, an
2 individual who is not established by clear and convincing evi-
3 dence to have survived the event by 120 hours is considered to
4 have predeceased the event.

5 (3) Except as provided in subsection (4), if it is not
6 established by clear and convincing evidence that 1 of 2
7 co-owners with right of survivorship survived the other co-owner
8 by 120 hours, 1/2 of the co-owned property passes as if 1 had
9 survived by 120 hours and 1/2 as if the other had survived by 120
10 hours. If there are more than 2 co-owners and it is not estab-
11 lished by clear and convincing evidence that at least 1 of them
12 survived the others by 120 hours, the property passes in the pro-
13 portion that 1 bears to the whole number of co-owners. For the
14 purposes of this subsection, "co-owners with right of
15 survivorship" includes joint tenants, tenants by the entireties,
16 and other co-owners of property or accounts held under circum-
17 stances that entitles 1 or more to the whole of the property or
18 account on the death of the other or others.

19 (4) Survival by 120 hours is not required under any of the
20 following circumstances:

21 (a) The governing instrument contains language dealing
22 explicitly with simultaneous deaths or deaths in a common
23 disaster and that language is operable under the facts of the
24 case.

25 (b) The governing instrument expressly indicates that an
26 individual is not required to survive an event, including the
27 death of another individual, by any specified period or expressly

1 requires the individual to survive the event by a specified
2 period; but survival of the event or the specified period must be
3 established by clear and convincing evidence.

4 (c) The imposition of a 120-hour requirement of survival
5 would cause a nonvested property interest or a power of appoint-
6 ment to fail to qualify for validity under section 2(1)(a),
7 (2)(a), or (3)(a) of the uniform statutory rule against perpetu-
8 ities, Act No. 418 of the Public Acts of 1988, being
9 section 554.72 of the Michigan Compiled Laws, or to become
10 invalid under section 2(1)(b), (2)(b), or (3)(b) of Act No. 418
11 of the Public Acts of 1988.

12 (d) The application of a 120-hour requirement of survival to
13 multiple governing instruments would result in an unintended
14 failure or duplication of a disposition; but survival must be
15 established by clear and convincing evidence.

16 Sec. 2703. (1) A payor or other third party is not liable
17 for having made a payment or transferred an item of property or
18 another benefit to a beneficiary designated in a governing
19 instrument who, under section 2702, is not entitled to the pay-
20 ment or item of property, or for having taken another action in
21 good faith reliance on the beneficiary's apparent entitlement
22 under the terms of the governing instrument, before the payor or
23 other third party received written notice of a claimed lack of
24 entitlement under section 2702. A payor or other third party is
25 liable for a payment made or other action taken after the payor
26 or other third party received written notice of a claimed lack of
27 entitlement under section 2702.

1 (2) Written notice of a claimed lack of entitlement under
2 subsection (1) shall be mailed to the payor's or other third
3 party's main office or home by registered or certified mail,
4 return receipt requested, or served upon the payor or other third
5 party in the same manner as a summons in a civil action. Upon
6 receipt of written notice of a claimed lack of entitlement under
7 section 2702, a payor or other third party may pay the amount
8 owed, or transfer the item of property held by it, to the court
9 having jurisdiction of the probate proceedings relating to the
10 decedent's estate, or if proceedings have not been commenced, to
11 the court having jurisdiction of probate proceedings relating to
12 decedents' estates located in the county of the decedent's
13 residence. The court shall hold the money or item of property
14 and, upon its determination under section 2702, shall order dis-
15 bursement in accordance with the determination. A payment or
16 transfer made to the court discharges the payor or other third
17 party from all claims for the value of amounts paid or items of
18 property transferred to the court.

19 Sec. 2704. (1) Section 2702 does not obligate a person who
20 purchases property for value and without notice, or who receives
21 a payment or other item of property in partial or full satisfac-
22 tion of a legally enforceable obligation, to return the payment,
23 item of property, or benefit and does not make such a person
24 liable for the amount of the payment or the value of the item of
25 property or benefit. However, a person who, not for value,
26 receives a payment, item of property, or another benefit to which
27 the person is not entitled under section 2702 is obligated to

1 return the payment, item of property, or benefit or is personally
2 liable for the amount of the payment, or the value of the item of
3 property or benefit, to the person who is entitled to it under
4 section 2702.

5 (2) If section 2702 or any part of that section is preempted
6 by federal law with respect to a payment, an item of property, or
7 another benefit covered by section 2702, a person who, not for
8 value, receives the payment, item of property, or another benefit
9 to which the person is not entitled under section 2702 is obli-
10 gated to return the payment, item of property, or benefit or is
11 personally liable for the amount of the payment, or the value of
12 the item of property or benefit, to the person who would have
13 been entitled to it were section 2702 or part of that section not
14 preempted.

15 Sec. 2705. A governing instrument's meaning and legal
16 effect are determined by the local law of the state selected in
17 the governing instrument, unless the application of that law is
18 contrary to the provisions relating to the elective share
19 described in part 2 of this article, the provisions relating to
20 exempt property and allowances described in part 4 of this arti-
21 cle, or another public policy of this state otherwise applicable
22 to the disposition.

23 Sec. 2706. If a governing instrument creating a power of
24 appointment expressly requires that the power be exercised by a
25 reference, an express reference, or a specific reference to the
26 power or its source, it is presumed that the donor's intention,
27 in requiring that the donee exercise the power by making

1 reference to the particular power or to the creating instrument,
2 was to prevent an inadvertent exercise of the power.

3 Sec. 2707. (1) An adopted individual or an individual born
4 out of wedlock, and his or her respective descendants if appro-
5 priate to the class, are included in class gifts and other terms
6 of relationship in accordance with the rules for intestate
7 succession. Terms of relationship that do not differentiate
8 relationships by blood from those by affinity, such as "uncles",
9 "aunts", "nieces", or "nephews", are construed to exclude rela-
10 tives by affinity. Terms of relationship that do not differenti-
11 ate relationships by the half blood from those by the whole
12 blood, such as "brothers", "sisters", "nieces", or "nephews", are
13 construed to include both types of relationships.

14 (2) In addition to the requirements of subsection (1), in
15 construing a dispositive provision of a transferor who is not a
16 natural parent, an individual born to the natural parent is not
17 considered the child of that parent unless the individual lived
18 while a minor as a regular member of the household of that natu-
19 ral parent or of that natural parent's parent, brother, sister,
20 spouse, or surviving spouse.

21 (3) In addition to the requirements of subsection (1), in
22 construing a dispositive provision of a transferor who is not an
23 adopting parent, an adopted individual is not considered the
24 child of the adopting parent unless the adopted individual lived
25 while a minor, either before or after the adoption, as a regular
26 member of the household of the adopting parent.

1 Sec. 2708. As used in this section and sections 2709 to
2 2712:

3 (a) "Alternative beneficiary designation" means a benefi-
4 ciary designation that is expressly created by the governing
5 instrument and, under the terms of the governing instrument, can
6 take effect instead of another beneficiary designation on the
7 happening of 1 or more events, including survival of the decedent
8 or failure to survive the decedent, whether an event is expressed
9 in condition-precedent, condition-subsequent, or another form.

10 (b) "Beneficiary" means the beneficiary of a beneficiary
11 designation under which the beneficiary must survive the
12 decedent. Beneficiary includes a class member if the beneficiary
13 designation is in the form of a class gift; an individual or
14 class member who was deceased at the time the beneficiary desig-
15 nation was executed; and an individual or class member who was
16 then living but who failed to survive the decedent. Beneficiary
17 excludes a joint tenant of a joint tenancy with the right of sur-
18 vivorship and a party to a joint and survivorship account.

19 (c) "Beneficiary designation" includes an alternative bene-
20 ficiary designation and a beneficiary designation in the form of
21 a class gift.

22 (d) "Class member" includes an individual who fails to sur-
23 vive the decedent, but who would have taken under a beneficiary
24 designation in the form of a class gift had he or she survived
25 the decedent.

26 (e) "Stepchild" means a child of the decedent's surviving,
27 deceased, or former spouse, and not of the decedent.

1 (f) "Surviving beneficiary" or "surviving descendant" means
2 a beneficiary or a descendant who did not predecease the decedent
3 and is not considered to have predeceased the decedent under sec-
4 tion 2702.

5 Sec. 2709. If a beneficiary fails to survive the decedent
6 and is a grandparent, a grandparent's descendant, or the
7 decedent's stepchild, the following apply:

8 (a) Except as provided in subdivision (d), if the benefi-
9 ciary designation is not in the form of a class gift and the
10 deceased beneficiary leaves surviving descendants, a substitute
11 gift is created in the beneficiary's surviving descendants. They
12 take by representation the property to which the beneficiary
13 would have been entitled had the beneficiary survived the
14 decedent.

15 (b) Except as provided in subdivision (d), if the benefi-
16 ciary designation is in the form of a class gift, other than a
17 beneficiary designation to "issue", "descendants", "heirs of the
18 body", "heirs", "next of kin", "relatives", or "family" or a
19 class described by language of similar import, a substitute gift
20 is created in the surviving descendants of each deceased
21 beneficiary. The property to which the beneficiaries would have
22 been entitled had all of them survived the decedent passes to the
23 surviving beneficiaries and the surviving descendants of the
24 deceased beneficiaries. Each surviving beneficiary takes the
25 share to which he or she would have been entitled had the
26 deceased beneficiaries survived the decedent. Each deceased
27 beneficiary's surviving descendants who are substituted for the

1 deceased beneficiary take by representation the share to which
2 the deceased beneficiary would have been entitled had the
3 deceased beneficiary survived the decedent. For the purposes of
4 this subdivision, "deceased beneficiary" means a class member who
5 failed to survive the decedent and left 1 or more surviving
6 descendants.

7 (c) For the purposes of section 2701, words of survivorship,
8 such as in a beneficiary designation to an individual "if he sur-
9 vives me" or in a beneficiary designation to "my surviving
10 children", are not, in the absence of additional evidence, a suf-
11 ficient indication of an intent contrary to the application of
12 this section.

13 (d) If a governing instrument creates an alternative benefi-
14 ciary designation with respect to a beneficiary designation for
15 which a substitute gift is created by subdivision (a) or (b), the
16 substitute gift is superseded by the alternative beneficiary des-
17 ignation only if an expressly designated beneficiary of the
18 alternative beneficiary designation is entitled to take.

19 Sec. 2710. (1) If, under section 2709, substitute gifts are
20 created and not superseded with respect to more than 1 benefi-
21 ciary designation and the beneficiary designations are alterna-
22 tive beneficiary designations, one to the other, the determina-
23 tion of which of the substitute gifts takes effect is resolved as
24 follows:

25 (a) Except as provided in subdivision (b), the property
26 passes under the primary substitute gift.

1 (b) If there is a younger-generation beneficiary
2 designation, the property passes under the younger-generation
3 substitute gift and not under the primary substitute gift.

4 (2) As used in this section:

5 (a) "Primary beneficiary designation" means the beneficiary
6 designation that would have taken effect had all the deceased
7 beneficiaries of the alternative beneficiary designations who
8 left surviving descendants survived the decedent.

9 (b) "Primary substitute gift" means the substitute gift cre-
10 ated with respect to the primary beneficiary designation.

11 (c) "Younger-generation beneficiary designation" means a
12 beneficiary designation that is all of the following:

13 (i) To a descendant of a beneficiary of the primary benefi-
14 ciary designation.

15 (ii) Is an alternative beneficiary designation with respect
16 to the primary beneficiary designation.

17 (iii) Is a beneficiary designation for which a substitute
18 gift is created.

19 (iv) Would have taken effect had all the deceased beneficia-
20 ries who left surviving descendants survived the decedent except
21 the deceased beneficiary or beneficiaries of the primary benefi-
22 ciary designation.

23 (d) "Younger-generation substitute gift" means the substi-
24 tute gift created with respect to the younger-generation benefi-
25 ciary designation.

26 Sec. 2711. (1) A payor is protected from liability in
27 making a payment under the terms of the beneficiary designation

1 until the payor has received written notice of a claim to a
2 substitute gift under sections 2709 and 2710. Payment made
3 before the receipt of written notice of a claim to a substitute
4 gift discharges the payor, but not the recipient, from a claim
5 for the amount paid. A payor is liable for a payment made after
6 the payor has received written notice of the claim. A recipient
7 is liable for a payment received, whether or not written notice
8 of the claim is given.

9 (2) A written notice of a substitute claim shall be mailed
10 to the payor's main office or home by registered or certified
11 mail, return receipt requested, or served upon the payor in the
12 same manner as a summons in a civil action. Upon receipt of a
13 written notice of the claim, a payor may pay any amount the payor
14 owes to the court having jurisdiction of the probate proceedings
15 relating to the decedent's estate or, if no proceedings have been
16 commenced, to the court having jurisdiction of probate proceed-
17 ings relating to decedents' estates located in the county of the
18 decedent's residence. The court shall hold the funds and, upon
19 its determination under sections 2709 and 2710, shall order dis-
20 bursement in accordance with the determination. Payment made to
21 the court discharges the payor from all claims for the amount
22 paid.

23 Sec. 2712. (1) A person who purchases property for value
24 and without notice, or who receives a payment or other item of
25 property in partial or full satisfaction of a legally enforceable
26 obligation, is not obligated to return the payment, item of
27 property, or benefit and is not liable for the amount of the

1 payment or the value of the item of property or benefit.

2 However, a person who, not for value, receives a payment, item of
3 property, or another benefit to which the person is not entitled
4 under sections 2709 and 2710 is obligated to return the payment,
5 item of property, or benefit, or is personally liable for the
6 amount of the payment or the value of the item of property or
7 benefit, to the person who is entitled to it under those
8 sections.

9 (2) If this section and sections 2709 and 2710 are, or any
10 part of 1 of those sections is, preempted by federal law with
11 respect to a payment, an item of property, or another benefit
12 covered by those sections, a person who, not for value, receives
13 the payment, item of property, or another benefit to which the
14 person is entitled under those sections is obligated to return
15 the payment, item of property, or benefit, or is personally
16 liable for the amount of the payment or the value of the item of
17 property or benefit, to the person who would have been entitled
18 to it were those sections or a part of those sections not
19 preempted.

20 Sec. 2713. As used in this section and sections 2714 to
21 2716:

22 (a) "Alternative future interest" means an expressly created
23 future interest that can take effect in possession or enjoyment
24 instead of another future interest on the happening of 1 or more
25 events, including survival of an event or failure to survive an
26 event, whether an event is expressed in condition-precedent,
27 condition-subsequent, or another form. A residuary clause in a

1 will does not create an alternative future interest with respect
2 to a future interest created in a nonresiduary devise in the
3 will, whether or not the will specifically provides that a lapsed
4 or failed devise is to pass under the residuary clause.

5 (b) "Beneficiary" means the beneficiary of a future interest
6 and includes a class member if the future interest is in the form
7 of a class gift.

8 (c) "Class member" includes an individual who fails to sur-
9 vive the distribution date but who would have taken under a
10 future interest in the form of a class gift had he or she sur-
11 vived the distribution date.

12 (d) "Distribution date" means, with respect to a future
13 interest, the time when the future interest takes effect in pos-
14 session or enjoyment. The distribution date does not need to
15 occur at the beginning or end of a calendar day, but can occur at
16 a time during the course of a day.

17 (e) "Future interest" includes an alternative future inter-
18 est and a future interest in the form of a class gift.

19 (f) "Future interest under the terms of a trust" means a
20 future interest that is created by a transfer creating a trust or
21 to an existing trust or by an exercise of a power of appointment
22 to an existing trust, directing the continuance of an existing
23 trust, designating a beneficiary of an existing trust, or creat-
24 ing a trust.

25 (g) "Surviving beneficiary" or "surviving descendant" means
26 a beneficiary or a descendant who does not predecease the

1 distribution date and who is not considered to have predeceased
2 the distribution date under section 2702.

3 Sec. 2714. A future interest under the terms of a trust is
4 contingent on the beneficiary's surviving the distribution date.
5 If a beneficiary of a future interest under the terms of a trust
6 fails to survive the distribution date, the following apply:

7 (a) Except as provided in subdivision (d), if the future
8 interest is not in the form of a class gift and the deceased ben-
9 eficiary leaves surviving descendants, a substitute gift is cre-
10 ated in the beneficiary's surviving descendants. They take by
11 representation the property to which the beneficiary would have
12 been entitled had the beneficiary survived the distribution
13 date.

14 (b) Except as provided in subdivision (d), if the future
15 interest is in the form of a class gift, other than a future
16 interest to "issue", "descendants", "heirs of the body", "heirs",
17 "next of kin", "relatives", or "family" or a class described by
18 language of similar import, a substitute gift is created in the
19 surviving descendants of a deceased beneficiary. The property to
20 which the beneficiaries would have been entitled had all of them
21 survived the distribution date passes to the surviving beneficia-
22 ries and the surviving descendants of the deceased
23 beneficiaries. Each surviving beneficiary takes the share to
24 which he or she would have been entitled had the deceased benefi-
25 ciaries survived the distribution date. Each deceased
26 beneficiary's surviving descendants who are substituted for the
27 deceased beneficiary take by representation the share to which

1 the deceased beneficiary would have been entitled had the
2 deceased beneficiary survived the distribution date. For the
3 purposes of this subdivision, "deceased beneficiary" means a
4 class member who fails to survive the distribution date and
5 leaves 1 or more surviving descendants.

6 (c) For the purposes of section 2701, words of survivorship
7 attached to a future interest are not, in the absence of addi-
8 tional evidence, a sufficient indication of an intent contrary to
9 the application of this section. Words of survivorship include
10 words of survivorship that relate to the distribution date or to
11 an earlier or an unspecified time, whether those words of survi-
12 vorship are expressed in condition-precedent,
13 condition-subsequent, or another form.

14 (d) If a governing instrument creates an alternative future
15 interest with respect to a future interest for which a substitute
16 gift is created by subdivision (a) or (b), the substitute gift is
17 superseded by the alternative future interest only if an
18 expressly designated beneficiary of the alternative future inter-
19 est is entitled to take in possession or enjoyment.

20 Sec. 2715. (1) If, under section 2714, substitute gifts are
21 created and not superseded with respect to more than 1 future
22 interest and the future interests are alternative future inter-
23 ests, one to the other, the determination of which of the substi-
24 tute gifts takes effect is resolved as follows:

25 (a) Except as provided in subdivision (b), the property
26 passes under the primary substitute gift.

1 (b) If there is a younger-generation future interest, the
2 property passes under the younger-generation substitute gift and
3 not under the primary substitute gift.

4 (2) As used in this section:

5 (a) "Primary future interest" means the future interest that
6 would have taken effect had all the deceased beneficiaries of the
7 alternative future interests who left surviving descendants sur-
8 vived the distribution date.

9 (b) "Primary substitute gift" means the substitute gift cre-
10 ated with respect to the primary future interest.

11 (c) "Younger-generation future interest" means a future
12 interest for which all of the following are true:

13 (i) Is to a descendant of a beneficiary of the primary
14 future interest.

15 (ii) Is an alternative future interest with respect to the
16 primary future interest.

17 (iii) Is a future interest for which a substitute gift is
18 created.

19 (iv) Would have taken effect had all the deceased beneficia-
20 ries who left surviving descendants survived the distribution
21 date except the deceased beneficiary or beneficiaries of the pri-
22 mary future interest.

23 (d) "Younger-generation substitute gift" means the substi-
24 tute gift created with respect to the younger-generation future
25 interest.

1 Sec. 2716. (1) Except as provided in subsection (2), if,
2 after the application of sections 2714 and 2715, there is no
3 surviving taker, the property passes in the following order:

4 (a) If the trust is created in a nonresiduary devise in the
5 transferor's will or in a codicil to the transferor's will, the
6 property passes under the residuary clause in the transferor's
7 will. For purposes of this section, the residuary clause is
8 treated as creating a future interest under the terms of a
9 trust.

10 (b) If a taker is not produced by the application of
11 subdivision (a), the property passes to the transferor's heirs
12 under section 2720.

13 (2) If, after the application of sections 2714 and 2715,
14 there is no surviving taker and if the future interest was cre-
15 ated by the exercise of a power of appointment, the following
16 apply:

17 (a) The property passes under the donor's gift-in-default
18 clause, if any, which clause is treated as creating a future
19 interest under the terms of a trust.

20 (b) If a taker is not produced by the application of subdi-
21 vision (a), the property passes as provided in subsection (1).
22 For purposes of subsection (1), "transferor" means the donor if
23 the power was a nongeneral power and means the donee if the power
24 was a general power.

25 Sec. 2717. If a class gift in favor of "descendants",
26 "issue", or "heirs of the body" does not specify the manner in
27 which the property is to be distributed among the class members,

1 the property is distributed among the class members who are
2 living when the interest is to take effect in possession or
3 enjoyment, in the shares they would receive, under the applicable
4 law of intestate succession, if the designated ancestor had then
5 died intestate owning the subject matter of the class gift.

6 Sec. 2718. (1) If an applicable statute or a governing
7 instrument calls for the property to be distributed "by
8 representation" or "per capita at each generation", the property
9 is divided into as many equal shares as there are surviving
10 descendants in the generation nearest to the designated ancestor
11 that contains 1 or more surviving descendants and deceased
12 descendants in the same generation who left surviving descen-
13 dants, if any. Each surviving descendant in the nearest genera-
14 tion is allocated 1 share. The remaining shares, if any, are
15 combined and then divided in the same manner among the surviving
16 descendants of the deceased descendants as if the surviving
17 descendants of the deceased descendants who were allocated a
18 share and their surviving descendants had predeceased the distri-
19 bution date. This rule of construction applies to documents
20 originally created after the effective date of this act and to
21 all instruments amended after that date that use the phrase "by
22 representation" or "per capita at each generation". If an amend-
23 ment uses either phrase, the rule of this section applies to the
24 entire instrument.

25 (2) If a governing instrument calls for property to be dis-
26 tributed "per stripes", the property is divided into as many
27 equal shares as there are surviving children of the designated

1 ancestor and deceased children who left surviving descendants.
2 Each surviving child, if any, is allocated 1 share. The share of
3 each deceased child with surviving descendants is divided in the
4 same manner, with subdivision repeating at each succeeding gener-
5 ation until the property is fully allocated among surviving
6 descendants.

7 (3) For the purposes of subsections (1) and (2), an individ-
8 ual who is deceased and left no surviving descendant is disre-
9 garded, and an individual who leaves a surviving ancestor who is
10 a descendant of the designated ancestor is not entitled to a
11 share.

12 (4) As used in this section:

13 (a) "Deceased child" or "deceased descendant" means a child
14 or descendant who either predeceases the distribution date or is
15 considered to predecease the distribution date under section
16 2702.

17 (b) "Distribution date" means, with respect to an interest,
18 the time when the interest is to take effect in possession or
19 enjoyment. The distribution date does not need to occur at the
20 beginning or end of a calendar day, but can occur at a time
21 during the course of a day.

22 (c) "Surviving ancestor", "surviving child", or "surviving
23 descendant" means an ancestor, a child, or a descendant who does
24 not predecease the distribution date and is not considered to
25 have predeceased the distribution date under section 2702.

26 Sec. 2719. The doctrine of worthier title is abolished as a
27 rule of law and as a rule of construction. Language in a

1 governing instrument describing the beneficiaries of a
2 disposition as the transferor's "heirs", "heirs at law", "next of
3 kin", "distributees", "relatives", or "family", or language of
4 similar import, does not create or presumptively create a rever-
5 sionary interest in the transferor.

6 Sec. 2720. If an applicable statute or a governing instru-
7 ment calls for a present or future distribution to or creates a
8 present or future interest in a designated individual's "heirs",
9 "heirs at law", "next of kin", "relatives", or "family" or lan-
10 guage of similar import, the property passes to those persons,
11 including the state, and in the shares as would succeed to the
12 designated individual's intestate estate under the intestate suc-
13 cession law of the designated individual's domicile if the desig-
14 nated individual died when the disposition is to take effect in
15 possession or enjoyment. If the designated individual's surviv-
16 ing spouse is living, but is remarried at the time the disposi-
17 tion is to take effect in possession or enjoyment, the surviving
18 spouse is not an heir of the designated individual.

19 Sec. 2721. A provision contained in a governing instrument
20 that makes reference to a "minor", "age of majority", or a simi-
21 lar phrase differentiating between an individual's majority and
22 minority status shall be construed to refer to the legal age of
23 majority in effect at the time the governing instrument was
24 executed.

25 Sec. 2722. (1) Subject to subsection (3), if a trust is for
26 a specific lawful noncharitable purpose or for lawful
27 noncharitable purposes to be selected by the trustee, and if

1 there is no definite or definitely ascertainable beneficiary
2 designated, the trust may be performed by the trustee for 21
3 years, but no longer, whether or not the terms of the trust con-
4 template a longer duration.

5 (2) Subject to this subsection and subsection (3), a trust
6 for the care of a designated domestic or pet animal is valid.
7 The trust terminates when no living animal is covered by the
8 trust. A governing instrument shall be liberally construed to
9 bring the transfer within this subsection, to presume against the
10 merely precatory or honorary nature of the disposition, and to
11 carry out the general intent of the transferor. Extrinsic evi-
12 dence is admissible in determining the transferor's intent.

13 (3) In addition to the provisions of subsection (1) or (2),
14 a trust covered by either of those subsections is subject to the
15 following provisions:

16 (a) Except as expressly provided otherwise in the trust
17 instrument, no portion of the principal or income may be con-
18 verted to the use of the trustee or to a use other than for the
19 trust's purposes or for the benefit of a covered animal.

20 (b) Upon termination, the trustee shall transfer the unex-
21 pended trust property in the following order:

22 (i) As directed in the trust instrument.

23 (ii) If the trust was created in a nonresiduary clause in
24 the transferor's will or in a codicil to the transferor's will,
25 under the residuary clause in the transferor's will.

1 (iii) if no taker is produced by the application of
2 subparagraph (i) or (ii), to the transferor's heirs under section
3 2720.

4 (c) For the purposes of sections 2714 to 2716, the residuary
5 clause is treated as creating a future interest under the terms
6 of a trust.

7 (d) The intended use of the principal or income can be
8 enforced by an individual designated for that purpose in the
9 trust instrument or, if none, by an individual appointed by a
10 court upon application to it by an individual.

11 (e) Except as ordered by the court or required by the trust
12 instrument, no filing, report, registration, periodic accounting,
13 separate maintenance of funds, appointment, or fee is required by
14 reason of the existence of the fiduciary relationship of the
15 trustee.

16 (f) A court may reduce the amount of the property trans-
17 ferred, if it determines that that amount substantially exceeds
18 the amount required for the intended use. The amount of the
19 reduction, if any, passes as unexpended trust property under
20 subdivision (b).

21 (g) If a trustee is not designated or no designated trustee
22 is willing or able to serve, a court shall name a trustee. A
23 court may order the transfer of the property to another trustee,
24 if required to assure that the intended use is carried out and if
25 a successor trustee is not designated in the trust instrument or
26 if no designated successor trustee agrees to serve or is able to
27 serve. A court may also make other orders and determinations as

1 are advisable to carry out the intent of the transferor and the
2 purpose of this section.

3 (h) The trust is not subject to the uniform statutory rule
4 against perpetuities, Act No. 418 of the Public Acts of 1988,
5 being sections 554.71 to 554.78 of the Michigan Compiled Laws.

6 PART 8

7 GENERAL PROVISIONS CONCERNING PROBATE

8 AND NONPROBATE TRANSFERS

9 Sec. 2801. (1) An individual who is divorced from the dece-
10 dent or whose marriage to the decedent has been annulled is not a
11 surviving spouse unless, by virtue of a subsequent marriage, he
12 or she is married to the decedent at the time of death. A decree
13 of separation that does not terminate the status of husband and
14 wife is not a divorce for purposes of this section.

15 (2) For purposes of parts 1 to 4 of this article and of sec-
16 tion 3203, a surviving spouse does not include any of the
17 following:

18 (a) An individual who obtains or consents to a judgment of
19 divorce from the decedent or an annulment of their marriage,
20 which judgment is not recognized as valid in this state, unless
21 they subsequently participate in a marriage ceremony purporting
22 to marry each to the other or live together as husband and wife.

23 (b) An individual who, following an invalid judgment of
24 divorce or annulment obtained by the decedent, participates in a
25 marriage ceremony with a third individual.

1 (c) An individual who was a party to a valid proceeding
2 concluded by an order purporting to terminate all marital
3 property rights.

4 (d) An individual who, at the time of the decedent's death,
5 is living in a bigamous relationship with another individual.

6 (e) An individual who did any of the following for 1 year or
7 more previous to the death of the deceased person:

8 (i) Was willfully absent from the decedent spouse.

9 (ii) Deserted the decedent spouse.

10 (iii) Willfully neglected or refused to provide support for
11 the decedent spouse if required to do so by law.

12 Sec. 2802. As used in this section and sections 2803 to
13 2805:

14 (a) "Disposition or appointment of property" includes a
15 transfer of an item of property or another benefit to a benefi-
16 ciary designated in a governing instrument.

17 (b) "Governing instrument" means a governing instrument exe-
18 cuted by the decedent.

19 (c) "Revocable" means, with respect to a disposition,
20 appointment, provision, or nomination, one under which the dece-
21 dent, at the time of or immediately before death, was alone
22 empowered, by law or under the governing instrument, to cancel
23 the designation in favor of the killer, whether or not the dece-
24 dent was then empowered to designate himself or herself in place
25 of his or her killer and whether or not the decedent then had the
26 capacity to exercise the power.

1 Sec. 2803. (1) An individual who feloniously and
2 intentionally kills the decedent forfeits all benefits under this
3 article with respect to the decedent's estate, including an
4 intestate share, an elective share, an omitted spouse's or
5 child's share, a homestead allowance, exempt property, and a
6 family allowance. If the decedent died intestate, the decedent's
7 intestate estate passes as if the killer disclaimed his or her
8 intestate share.

9 (2) The felonious and intentional killing of the decedent
10 does all of the following:

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

12 (i) Disposition or appointment of property made by the dece-
13 dent to the killer in a governing instrument.

14 (ii) Provision in a governing instrument conferring a gen-
15 eral or nongeneral power of appointment on the killer.

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

20 (b) Severs the interests of the decedent and killer in prop-
21 erty held by them at the time of the killing as joint tenants
22 with the right of survivorship, transforming the interests of the
23 decedent and killer into tenancies in common.

24 (3) A severance under subsection (2)(b) does not affect a
25 third party interest in property acquired for value and in good
26 faith reliance on an apparent title by survivorship in the killer
27 unless a writing declaring the severance has been noted,

1 registered, filed, or recorded in records appropriate to the kind
2 and location of the property that are relied upon, in the ordi-
3 nary course of transactions involving that type of property, as
4 evidence of ownership.

5 (4) A provision of a governing instrument is given effect as
6 if the killer disclaimed all provisions revoked by this section
7 or, in the case of a revoked nomination in a fiduciary or repre-
8 sentative capacity, as if the killer predeceased the decedent.

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

12 (6) After all right to appeal has been exhausted, a judgment
13 of conviction establishing criminal accountability for the felo-
14 nious and intentional killing of the decedent conclusively estab-
15 lishes the convicted individual as the decedent's killer for pur-
16 poses of this section. In the absence of a conviction, the
17 court, upon the petition of an interested person, shall determine
18 whether, under the preponderance of evidence standard, the indi-
19 vidual would be found criminally accountable for the felonious
20 and intentional killing of the decedent. If the court determines
21 that, under that standard, the individual would be found crimi-
22 nally accountable for the felonious and intentional killing of
23 the decedent, the determination conclusively establishes that
24 individual as the decedent's killer for purposes of this
25 section.

26 Sec. 2804. (1) A payor or other third party is not liable
27 for having made a payment or transferred an item of property or

1 another benefit to a beneficiary designated in a governing
2 instrument affected by an intentional and felonious killing, or
3 for having taken another action in good faith reliance on the
4 validity of the governing instrument, upon request and satisfac-
5 tory proof of the decedent's death, before the payor or other
6 third party receives written notice of a claimed forfeiture or
7 revocation under section 2803. A payor or other third party is
8 liable for a payment made or other action taken after the payor
9 or other third party receives written notice of a claimed forfei-
10 ture or revocation under section 2803.

11 (2) Written notice of a claimed forfeiture or revocation
12 under subsection (1) shall be mailed to the payor's or other
13 third party's main office or home by registered or certified
14 mail, return receipt requested, or served upon the payor or other
15 third party in the same manner as a summons in a civil action.
16 Upon receipt of written notice of a claimed forfeiture or revoca-
17 tion under this section, a payor or other third party may pay an
18 amount owed or transfer an item of property held by it to the
19 court having jurisdiction of the probate proceedings relating to
20 the decedent's estate or, if no proceedings have been commenced,
21 to the court having jurisdiction of probate proceedings relating
22 to decedents' estates located in the county of the decedent's
23 residence. The court shall hold the money or item of property
24 and, upon its determination under section 2803, shall order dis-
25 bursement in accordance with the determination. A payment or
26 transfer made to the court discharges the payor or other third

1 party from a claim for the value of an amount paid or item of
2 property transferred to the court.

3 Sec. 2805. (1) Section 2803 does not obligate a person who
4 purchases property for value and without notice, or who receives
5 a payment or other item of property in partial or full satisfac-
6 tion of a legally enforceable obligation, to return the payment,
7 item of property, or benefit, and such a person is not liable
8 under section 2803 for the amount of the payment or the value of
9 the item of property or benefit. However, a person who, not for
10 value, receives a payment, an item of property, or another bene-
11 fit to which the person is not entitled under section 2803 is
12 obligated to return the payment, item of property, or benefit, or
13 is personally liable for the amount of the payment or the value
14 of the item of property or benefit, to the person who is entitled
15 to it under section 2803.

16 (2) If this section and sections 2803 and 2804 are, or a
17 part of 1 of those sections is, preempted by federal law with
18 respect to a payment, an item of property, or another benefit
19 covered by those sections, a person who, not for value, receives
20 the payment, item of property, or another benefit to which the
21 person is not entitled under those sections is obligated to
22 return the payment, item of property, or benefit, or is person-
23 ally liable for the amount of the payment or the value of the
24 item of the property or benefit, to the person who would have
25 been entitled to it were those sections or a part of 1 of those
26 sections not preempted.

1 Sec. 2806. As used in this section and sections 2807 to
2 2809:

3 (a) "Disposition or appointment of property" includes a
4 transfer of an item of property or another benefit to a benefi-
5 ciary designated in a governing instrument.

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

12 (c) "Divorced individual" includes an individual whose mar-
13 riage has been annulled.

14 (d) "Governing instrument" refers to a governing instrument
15 executed by the divorced individual before the divorce or annul-
16 ment of his or her marriage to his or her former spouse.

17 (e) "Relative of the divorced individual's former spouse"
18 means an individual who is related to the divorced individual's
19 former spouse by blood, adoption, or affinity and who, after the
20 divorce or annulment, is not related to the divorced individual
21 by blood, adoption, or affinity.

22 (f) "Revocable" means, with respect to a disposition,
23 appointment, provision, or nomination, one under which the
24 divorced individual, at the time of the divorce or annulment, was
25 alone empowered, by law or under the governing instrument, to
26 cancel the designation in favor of his or her former spouse or
27 former spouse's relative, whether or not the divorced individual

1 was then empowered to designate himself or herself in place of
2 his or her former spouse or in place of his or her former
3 spouse's relative and whether or not the divorced individual then
4 had the capacity to exercise the power.

5 Sec. 2807. (1) Except as provided by the express terms of a
6 governing instrument, court order, or contract relating to the
7 division of the marital estate made between the divorced individ-
8 uals before or after the marriage, divorce, or annulment, the
9 divorce or annulment of a marriage does all of the following:

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

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

16 (ii) A provision in a governing instrument conferring a gen-
17 eral or nongeneral power of appointment on the divorced
18 individual's former spouse or on a relative of the divorced
19 individual's former spouse.

20 (iii) A nomination in a governing instrument, nominating a
21 divorced individual's former spouse or a relative of the divorced
22 individual's former spouse to serve in a fiduciary or representa-
23 tive capacity, including a personal representative, executor,
24 trustee, conservator, agent, or guardian.

25 (b) Severs the interests of the former spouses in property
26 held by them at the time of the divorce or annulment as joint
27 tenants with the right of survivorship or as community property

1 with the right of survivorship, transforming the interests of the
2 former spouses into tenancies in common.

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

11 (3) Each provision of a governing instrument is given effect
12 as if the former spouse and relatives of the former spouse dis-
13 claimed all provisions revoked by this section or, in the case of
14 a revoked nomination in a fiduciary or representative capacity,
15 as if the former spouse and relatives of the former spouse died
16 immediately before the divorce or annulment.

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

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

23 Sec. 2808. (1) A payor or other third party is not liable
24 for having made a payment or transferred an item of property or
25 another benefit to a beneficiary designated in a governing
26 instrument affected by a divorce, annulment, or remarriage, or
27 for having taken another action in good faith reliance on the

1 validity of the governing instrument, before the payor or other
2 third party receives written notice of the divorce, annulment, or
3 remarriage. A payor or other third party is liable for a payment
4 made or other action taken after the payor or other third party
5 receives written notice of a claimed forfeiture or revocation
6 under section 2807.

7 (2) Written notice of the divorce, annulment, or remarriage
8 under subsection (1) shall be mailed to the payor's or other
9 third party's main office or home by registered or certified
10 mail, return receipt requested, or served upon the payor or other
11 third party in the same manner as a summons in a civil action.
12 Upon receipt of written notice of the divorce, annulment, or
13 remarriage, a payor or other third party may pay an amount owed
14 or transfer a item of property held by it to the court having
15 jurisdiction of the probate proceedings relating to the
16 decedent's estate or, if no proceedings have been commenced, to
17 or with the court having jurisdiction of probate proceedings
18 relating to the decedents' estates located in the county of the
19 decedent's residence. The court shall hold the money or item of
20 property and, upon its determination under section 2807, shall
21 order disbursement or transfer in accordance with the
22 determination. A payment or transfer made to the court dis-
23 charges the payor or other third party from a claim for the value
24 of an amount paid or item of property transferred to the court.

25 Sec. 2809. (1) Section 2807 does not obligate a person who
26 purchases property from a former spouse, relative of a former
27 spouse, or another person for value and without notice, or who

1 receives from a former spouse, relative of a former spouse, or
2 another person a payment or other item of property in partial or
3 full satisfaction of a legally enforceable obligation, to return
4 the payment, item of property, or benefit, and such a person is
5 not liable under section 2803 for the amount of the payment or
6 the value of the item of property or benefit. However, a former
7 spouse, relative of a former spouse, or other person who, not for
8 value, received a payment, item of property, or another benefit
9 to which that person is not entitled to under section 2803 is
10 obligated to return the payment, item of property, or benefit, or
11 is personally liable for the amount of the payment or the value
12 of the item of property or benefit, to the person who is entitled
13 to it under section 2803.

14 (2) If this section and sections 2807 and 2808 are, or a
15 part of 1 of those sections is, preempted by federal law with
16 respect to a payment, an item of property, or another benefit
17 covered by those sections, a former spouse, relative of the
18 former spouse, or another person who, not for value, receives a
19 payment, an item of property, or another benefit to which that
20 person is not entitled under those sections is obligated to
21 return the payment, item of property, or benefit, or is person-
22 ally liable for the amount of the payment or the value of the
23 item of property or benefit, to the person who would have been
24 entitled to it were those sections or a part of 1 of those sec-
25 tions not preempted.

PART 9

DISCLAIMERS

Sec. 2901. As used in this part:

(a) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of his, her, or its authority.

(b) "Disclaimable interest" includes property, the right to receive or control property, and a power of appointment, but does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property.

(c) "Effective date of a governing instrument other than a will or testamentary trust" means the date on which a property right vests, or a contract right arises, even though either right is subject to divestment.

(d) "Fiduciary" includes an agent, a conservator, a guardian if no conservator has been appointed, a guardian ad litem, a personal representative including an independent personal representative, a trustee, a probate court acting through a protective order under the revised probate code, and a temporary, successor, or foreign fiduciary.

(e) "Fiduciary power" means a management power relating to the administration or management of assets similar to those powers granted to a personal representative in section 3715 and a

1 trustee in section 7401, and granted by law to a fiduciary or
2 conferred upon a fiduciary in a governing instrument.

3 (f) "Governing instrument" means a deed, assignment, bill of
4 sale, will, trust, beneficiary designation, contract, instrument
5 creating or exercising a power of appointment or a power of
6 attorney, or another instrument under which property devolves, a
7 property right is created, or a contract right is created.
8 Governing instrument includes the provable terms of an oral con-
9 tract or arrangement under which property devolves or a property
10 right is created.

11 (g) "Joint property" means property that is owned by 2 or
12 more persons with rights of survivorship, and includes a tenancy
13 by the entireties in real property, a tenancy in personal prop-
14 erty as provided in section 1 of Act No. 212 of the Public Acts
15 of 1927, being section 557.151 of the Michigan Compiled Laws, a
16 joint tenancy, a joint tenancy with rights of survivorship, and a
17 joint life estate with contingent remainder in fee. For purposes
18 of this act, joint property is considered to consist of a present
19 interest and a future interest. The future interest is the right
20 of survivorship.

21 (h) "Person" includes an entity and an individual, but does
22 not include a fiduciary, an estate, or a trust.

23 (i) "Property" means anything that may be the subject of
24 ownership. Property includes both real and personal property and
25 an interest in property, including a present interest; a future
26 interest; a legal interest; an equitable interest; an interest
27 acquired by intestate or testate succession, by succession to a

1 disclaimed interest, or by lapse or release of a power of
2 appointment; or an interest that may be otherwise acquired under
3 a governing instrument.

4 (j) "Trust" means a fiduciary relationship with respect to
5 property that subjects the person who holds title to the property
6 to equitable duties to deal with the property for the benefit of
7 another person, which fiduciary relationship arises as a result
8 of a manifestation of an intention to create it. Trust includes
9 an express trust, private or charitable, with additions to the
10 trust, whether created by will or other than by will, and
11 includes a trust created by statute, judgment, or decree under
12 which the trust is to be administered in the manner of an express
13 trust. Trust does not include a constructive trust or a result-
14 ing trust.

15 Sec. 2902. (1) A person, or a fiduciary representing a
16 person to whom a disclaimable interest devolves, may disclaim a
17 disclaimable interest in whole or in part. A trustee, with
18 respect to the trust as a whole or with respect to a separate
19 trust that is or will be established under the governing instru-
20 ment, may disclaim a disclaimable interest, in whole or in part,
21 but only to the extent that the governing instrument expressly
22 gives the trustee the right to disclaim.

23 (2) A disclaimer may be of a fractional or percentage share
24 or of a limited interest or estate. A provision in a power of
25 attorney granting the agent the authority to do whatever the
26 principal could do, or words of similar effect, includes the
27 authority to disclaim, unless the authority to disclaim is

1 specifically excluded or limited. Except for a trust or a power
2 of attorney, the right to disclaim a disclaimable interest exists
3 notwithstanding a spendthrift provision or a restriction or limi-
4 tation on the right to disclaim contained in the governing
5 instrument.

6 (3) A fiduciary may disclaim a fiduciary power. The right
7 to disclaim a fiduciary power exists notwithstanding a restric-
8 tion or limitation on the right to disclaim contained in the gov-
9 erning instrument.

10 Sec. 2903. (1) A disclaimer is not valid unless it complies
11 with all of the following:

12 (a) Is in writing.

13 (b) Declares the disclaimer.

14 (c) Describes the disclaimed interest.

15 (d) Is signed by the disclaimant.

16 (e) Is delivered as provided in sections 2904, 2905, and
17 2906.

18 (2) If a disclaimable interest is disclaimed by a fiduciary
19 on behalf of the person to whom the disclaimable interest
20 devolves, the disclaimer shall be signed by all incumbent
21 fiduciaries. Unless the governing instrument requires otherwise,
22 a disclaimer of a disclaimable interest by a trustee may be
23 signed by less than all incumbent trustees. A disclaimer of a
24 fiduciary power by a fiduciary may be signed by less than all
25 incumbent fiduciaries.

26 Sec. 2904. (1) Except as provided in section 2905, if a
27 disclaimed interest arises under a will or testamentary trust, or

1 by the laws of intestacy, the disclaimer shall be delivered after
2 the death of the owner of the property and before any event
3 described in section 2910. If a disclaimed interest arises under
4 a will or by the laws of intestacy, the disclaimer shall be
5 delivered to the personal representative of the deceased owner's
6 estate. If a disclaimed interest arises under a testamentary
7 trust, the disclaimer shall be delivered to the trustee of the
8 testamentary trust or, if a trustee has not been appointed, to
9 the personal representative of the deceased owner's estate.

10 (2) Except as provided in section 2905, if a disclaimed
11 interest arises under a governing instrument other than a will or
12 testamentary trust, the disclaimer shall be delivered after the
13 effective date of the governing instrument and before any event
14 described in section 2910. A disclaimer under this subsection
15 shall be delivered in 1 of the following manners:

16 (a) If the disclaimer is made by a beneficiary of a trust,
17 the disclaimer shall be delivered to the trustee.

18 (b) If the disclaimer is made by a donee with respect to a
19 gift from a living donor, the disclaimer shall be delivered to
20 the donor of the gift.

21 (c) If the disclaimer is made by a beneficiary under a bene-
22 ficiary designation, the disclaimer shall be delivered to the
23 payor.

24 (d) If the disclaimer is made by a trustee with respect to a
25 separate trust that is or will be established under the governing
26 instrument, the disclaimer shall be delivered to another
27 incumbent trustee of that trust who has not disclaimed or to all

1 the beneficiaries of that trust who are then living and whose
2 whereabouts are known or reasonably ascertainable.

3 Sec. 2905. (1) A disclaimed interest that is subject to, or
4 arises under, an exercise, release, or lapse of a power of
5 appointment, shall comply with the following:

6 (a) A disclaimer by an appointee shall be delivered to the
7 donee, to the personal representative of the donee's estate, or
8 to the fiduciary under the instrument that created the power of
9 appointment. The disclaimer by the appointee shall be delivered
10 after the exercise of the power of appointment by the donee and
11 before any event described in section 2910.

12 (b) A disclaimer by a taker in default shall be delivered to
13 the donee, to the fiduciary under the instrument that created the
14 power of appointment, or to 1 of the persons entitled to the
15 property in the event of a disclaimer. The disclaimer by a taker
16 in default may be delivered before or after the lapse or release
17 of the power of appointment, and shall be delivered before any
18 event described in section 2910.

19 (2) If the disclaimed interest arises out of joint property,
20 the disclaimer shall be delivered after creation of the joint
21 ownership and before any event described in section 2910, to the
22 person who created the joint property, to a remaining owner who
23 has not disclaimed, or to the person entitled to the disclaimed
24 interest in the event of a disclaimer. The barring of the right
25 to disclaim a present interest under section 2910 does not bar
26 the right to disclaim the future interest.

1 (3) A fiduciary power may be disclaimed at any time, before
2 or after exercise of the power. The disclaimer shall be
3 delivered to the person who established the instrument that gave
4 rise to the power or to 1 of the following:

5 (a) If the fiduciary is a personal representative, to all
6 the devisees under the will who are then living and whose where-
7 abouts are known or reasonably ascertainable.

8 (b) If the fiduciary is a trustee, to another incumbent
9 trustee who has not disclaimed the power or to all the beneficia-
10 ries of the trust who are then living and whose whereabouts are
11 known or reasonably ascertainable.

12 (c) If the fiduciary is a guardian or conservator, to the
13 interested parties.

14 (d) If the fiduciary is an agent to the principal, or if the
15 principal is legally incapacitated, to the principal's presump-
16 tive heirs at law.

17 Sec. 2906. (1) A disclaimer shall be delivered in 1 of the
18 following manners:

19 (a) By personally handing it to the person to whom it is to
20 be delivered or to a fiduciary representing that person.

21 (b) By enclosing it in a sealed envelope with first-class
22 postage fully prepaid, addressed to the person to whom it is to
23 be delivered or to a fiduciary representing that person, and
24 depositing the envelope and its contents in the United States
25 mail.

1 (c) By another means that is reasonably likely to accomplish
2 delivery to the person who is to receive the disclaimer or to a
3 fiduciary representing that person.

4 (2) If delivery is to be made to a fiduciary, the following
5 apply:

6 (a) If a fiduciary is not currently serving, the delivery of
7 the disclaimer shall be made by filing the disclaimer with the
8 probate court that has jurisdiction to entertain proceedings to
9 appoint or qualify the fiduciary.

10 (b) If the fiduciary cannot be located, the delivery of the
11 disclaimer shall be made by filing the disclaimer with the pro-
12 bate court that has jurisdiction over the fiduciary.

13 (3) A copy of a disclaimer may be filed in a probate court
14 where proceedings are pending concerning the disclaimed interest,
15 or in the probate court that would have jurisdiction if proceed-
16 ings were commenced. If the disclaimed interest pertains to real
17 property, a copy of the disclaimer may be recorded in the office
18 of the register of deeds of the county in which the property is
19 located.

20 Sec. 2907. (1) Except as otherwise provided in this section
21 and section 2908, if a disclaimed interest arises under a will or
22 testamentary trust, or by the laws of intestacy, and the decedent
23 has not provided for another disposition of that interest should
24 it be disclaimed, or for another disposition of disclaimed or
25 failed interests in general, the disclaimed interest devolves as
26 if the disclaimant had predeceased the decedent. However, if by
27 law, or under the will or testamentary trust, the descendants of

1 the disclaimant would take the disclaimant's share by
2 representation if the disclaimant predeceased the decedent, then
3 the disclaimed interest passes by representation to the descen-
4 dants of the disclaimant who survive the decedent.

5 (2) A future interest that takes effect in possession or
6 enjoyment upon the termination of the disclaimed interest, takes
7 effect as if the disclaimant had predeceased the decedent. A
8 future interest that is held by the disclaimant and that takes
9 effect at a time certain is not accelerated and takes effect at
10 the time certain.

11 (3) Except as otherwise provided in this section and section
12 2908, if the disclaimed interest arises under a governing instru-
13 ment other than a will or testamentary trust, and the governing
14 instrument does not provide for another disposition of that
15 interest should it be disclaimed, or for another disposition of
16 disclaimed or failed interests in general, the disclaimed inter-
17 est devolves as if the disclaimant had died before the time when
18 the interest was entitled to take effect in possession or
19 enjoyment. However, if by law or under the governing instrument
20 the descendants of the disclaimant would take the disclaimant's
21 share by representation if the disclaimant predeceased the effec-
22 tive date of the instrument, then the disclaimed interest passes
23 by representation to the descendants of the disclaimant who sur-
24 vive the effective date of the instrument.

25 (4) A future interest that takes effect in possession or
26 enjoyment at or after the termination of the disclaimed interest
27 takes effect as if the disclaimant had died before the time when

1 the interest was entitled to take effect in possession or
2 enjoyment. A future interest that is held by the disclaimant and
3 that takes effect at a time certain is not accelerated and takes
4 effect at the time certain.

5 Sec. 2908. (1) If the disclaimed interest arises out of
6 joint property created by a governing instrument, testamentary or
7 nontestamentary, the following apply:

8 (a) If the disclaimant is the only living owner, the dis-
9 claimed interest devolves to the estate of the last to die of the
10 other joint owners.

11 (b) If the disclaimant is not the only living owner, the
12 disclaimed interest devolves to the living joint owners equally,
13 or all to the other living owner, if there is only 1 living
14 owner.

15 (2) If the donee of a power of appointment disclaims the
16 power of appointment, the property that is subject to the power
17 of appointment devolves as follows:

18 (a) If the power of appointment arises out of a will or tes-
19 tamentary instrument, as if the donee died before the decedent.

20 (b) If the power of appointment arises out of a governing
21 instrument other than a will or testamentary trust, as if the
22 disclaimant died before the effective date of the governing
23 instrument.

24 (3) If all incumbent trustees disclaim a disclaimable inter-
25 est and the governing instrument does not provide for another
26 disposition of the disclaimed interest should it be disclaimed,
27 or for another disposition of disclaimed or failed interests in

1 general, then the disclaimed interest devolves as if the trust
2 with respect to which the disclaimer was made never existed. If
3 less than all incumbent trustees disclaim a disclaimable interest
4 and the governing instrument does not provide for another dispo-
5 sition of the disclaimed interest under those circumstances, then
6 the trustee who disclaims is treated as never having had any
7 interest in or power over the disclaimed interest.

8 (4) If a fiduciary disclaims a fiduciary power, the fidu-
9 ciary power ceases to exist as of the effective date of the
10 disclaimer. A disclaimer of a fiduciary power by 1 of multiple
11 incumbent fiduciaries is binding only on the fiduciary who dis-
12 claims, and is not binding on the other incumbent fiduciaries or
13 on successor fiduciaries. A disclaimer of a fiduciary power by
14 all incumbent fiduciaries is binding on all successor fiducia-
15 ries, unless the disclaimer states otherwise.

16 Sec. 2909. (1) A disclaimer, or a written waiver of the
17 right to disclaim, is binding upon the disclaimant or person
18 waiving the right to disclaim, and all persons claiming through
19 or under him or her.

20 (2) A disclaimer acts as a nonacceptance of the disclaimed
21 interest, rather than as a transfer of the disclaimed interest.
22 The disclaimant is treated as never having received the dis-
23 claimed interest.

24 Sec. 2910. (1) The right to disclaim property is barred by
25 any of the following events that occur after the event giving
26 rise to the right to disclaim and before the disclaimer is
27 perfected:

1 (a) An assignment, conveyance, encumbrance, pledge, or
2 transfer of the property, or a contract for such a transaction.

3 (b) A written waiver of the right to disclaim.

4 (c) An acceptance of the disclaimable interest or a benefit
5 under the disclaimable interest after actual knowledge that a
6 property right has been conferred.

7 (d) A sale of the property under judicial sale.

8 (e) The expiration of the permitted applicable perpetuities
9 period.

10 (2) The right to disclaim is barred to the extent provided
11 by other applicable law. A partial bar does not preclude the
12 disclaimant from disclaiming all or any part of the balance of
13 the property if the disclaimant has received a portion of the
14 property and there still remains an interest that the disclaimant
15 is yet to receive. An act that bars the right to disclaim a
16 present interest in joint property does not bar the right to dis-
17 claim a future interest in joint property.

18 Sec. 2911. The common law right of disclaimer or renuncia-
19 tion is abolished. This act does not abridge the right of a
20 person to waive, release, disclaim, or renounce property or an
21 interest in property under another statute.

22 Sec. 2912. An interest in property that exists on the
23 effective date of this act as to which, if a present interest,
24 the time for delivering a disclaimer under this part has not
25 expired, or if a future interest, the interest has not become
26 indefeasibly vested or the taker finally ascertained, may be

1 disclaimed after the effective date of this act and before any
2 event described in section 2910.

3 PART 10

4 INTERNATIONAL WILLS

5 Sec. 21001. As used in this part:

6 (a) "International will" means a will executed in conformity
7 with sections 21002 to 21005.

8 (b) "Authorized individual" means an individual who by sec-
9 tion 21009 or by the laws of the United States, including members
10 of the diplomatic and consular service of the United States des-
11 ignated by foreign service regulations, is empowered to supervise
12 the execution of international wills.

13 Sec. 21002. (1) If a will is made in the form of an inter-
14 national will that complies with the requirements of this part,
15 the will is valid in regard to its form irrespective of the par-
16 ticular place where the will is made, of the location of assets,
17 or of the testator's nationality, domicile, or residence.

18 (2) A will's invalidity as an international will does not
19 affect its formal validity as a will of another kind.

20 (3) This part does not apply to the form of a testamentary
21 disposition made by 2 or more individuals in 1 instrument.

22 Sec. 21003. To comply with this part as a valid interna-
23 tional will, a will shall meet all of the following requirements
24 regarding form and procedure:

25 (a) The will shall be made in writing, but does not need to
26 be written by the testator personally. The will may be written

1 in any language and may be written by hand or by any other
2 means.

3 (b) The testator shall declare in the presence of 2 wit-
4 nesses and an authorized individual that the document is the
5 testator's will and that he or she knows its contents. The tes-
6 tator need not inform the witnesses or the authorized person of
7 the will's contents.

8 (c) In the witnesses' and the authorized individual's pres-
9 ence, the testator shall sign the will or, if the testator has
10 previously signed the will, shall acknowledge his or her
11 signature.

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

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

24 Sec. 21004. (1) To further assure an international will's
25 acceptance as valid, in addition to the section 21003 require-
26 ments, all of the following are recommended regarding form and
27 procedure:

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

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

11 (c) The authorized individual shall ask the testator whether
12 he or she wishes to make a declaration concerning the will's
13 safekeeping. If so and at the testator's express request, the
14 place where the testator intends to have the will kept shall be
15 mentioned in the certificate provided for in section 21005.

16 (2) A will executed in compliance with section 21003 is not
17 invalid merely because it does not comply with this section.

18 Sec. 21005. The authorized individual shall attach to the
19 will a certificate signed by the authorized individual establish-
20 ing that the will complies with the requirements of this part for
21 valid execution of an international will. The authorized indi-
22 vidual shall keep a copy of the certificate and deliver another
23 to the testator. The certificate shall be in substantially the
24 following form, except the provisions of the form that are
25 optional provisions need only be included if the circumstances of
26 the will render them applicable:

CERTIFICATE

(CONVENTION OF OCTOBER 26, 1973)

1. I, _____,
(Name, address and capacity)

a person authorized to act in connection with international wills

2. Certify that on _____ at _____
(Date) (Place)

3. (Testator) _____
(Name, address, date and place of birth)

in my presence and that of the witnesses

4. (a) _____
(Name, address, date and place of birth)

(b) _____
(Name, address, date and place of birth)

has declared that the attached document is his (or her) will and
that he (or she) knows the contents thereof.

5. I furthermore certify that:

6. (a) In my presence and in that of the witnesses (1) the
testator has signed the will or has acknowledged his (or her)
signature previously affixed. * following a declaration of the
testator stating that he (or she) (2) was unable to sign his (or
her) will for the following reason _____, I
have mentioned this declaration on the will * and the signature
has been affixed by

(Name and address)

7. (b) The witnesses and I have signed the will;

8. *(c) Each page of the will has been signed by
_____ and numbered;

1 9. (d) I have satisfied myself as to the identity of the
2 testator and of the witnesses as designated above;

3 10. (e) The witnesses have met the conditions requisite to
4 act as such according to the law under which I am acting;

5 11. *(f) The testator has requested me to include the fol-
6 lowing statement concerning the safekeeping of his (or her)
7 will:

8 12. PLACE OF EXECUTION

9 13. DATE

10 14. SIGNATURE and, if necessary, SEAL

11 * to be completed if appropriate

12 Sec. 21006. In the absence of evidence to the contrary, the
13 authorized individual's certificate is conclusive of an interna-
14 tional will's validity under this part. The absence or irregu-
15 larity of a certificate does not affect the validity of a will
16 under this part.

17 Sec. 21007. An international will is subject to the ordi-
18 nary rules of revocation of wills.

19 Sec. 21008. Sections 21001 to 21007 derive from "Annex to
20 Convention of October 26, 1973, Providing a Uniform Law on the
21 Form of an International Will". In interpreting and applying
22 this part, regard shall be had to its international origin and to
23 the need for uniformity in its interpretation.

24 Sec. 21009. An individual who is admitted to practice law
25 before the courts of this state and who is in good standing as an
26 active law practitioner of this state is an authorized individual
27 empowered to supervise the execution of an international will.

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

1 Sec. 3101. An individual's power to leave property by will,
2 and the rights of creditors, devisees, and heirs to his or her
3 property, are subject to the restrictions and limitations con-
4 tained in this act to facilitate the prompt settlement of
5 estates. Upon an individual's death, the decedent's property
6 devolves to the persons to whom the property is devised by the
7 decedent's last will or to those indicated as substitutes for
8 them in cases involving lapse, disclaimer, or other circumstances
9 affecting devolution of a testate estate, or in the absence of
10 testamentary disposition, to the decedent's heirs or to those
11 indicated as substitutes for them in cases involving disclaimer
12 or other circumstances affecting devolution of an intestate
13 estate, subject to homestead allowance, exempt property, and
14 family allowance, to rights of creditors, to the surviving
15 spouse's elective share, and to administration.

16 Sec. 3102. Except as provided in section 31101, to be
17 effective to prove the transfer of property or to nominate a per-
18 sonal representative, a will must be declared valid by a
19 register's order of informal probate or by a court's adjudication
20 of probate.

21 Sec. 3103. Except as otherwise provided in article IV, to
22 acquire the powers and undertake the duties and liabilities of a
23 decedent's personal representative, a person must be appointed by
24

1 the register or by court order, must qualify, and must be issued
2 letters. The issuance of letters commences an estate's
3 administration.

4 Sec. 3104. (1) Except as otherwise provided in subsection
5 (2), a proceeding to enforce a claim against a decedent's estate
6 or the decedent's successors shall not be revived or commenced
7 before the appointment of a personal representative. After the
8 appointment and until distribution, a proceeding or action to
9 enforce a claim against the estate is governed by the procedure
10 prescribed by this article. After distribution, a creditor whose
11 claim has not been barred may recover from the distributees as
12 provided in section 31005 or from a former personal representa-
13 tive individually liable as provided in section 31005.

14 (2) Subsection (1) does not apply to a proceeding by a
15 secured creditor of the decedent to enforce the creditor's right
16 to the creditor's security except as to a deficiency judgment
17 that might be sought in the proceeding.

18 Sec. 3105. A person interested in a decedent's estate may
19 apply to the register for a determination in the informal pro-
20 ceedings provided in this article and may petition the court for
21 orders in formal proceedings within the court's jurisdiction.

22 Sec. 3106. In a proceeding within the court's jurisdiction
23 in which notice is required by this act or court rule, and in a
24 proceeding to construe a probated will or determine heirs that
25 concerns an estate that has not been and cannot now be open for
26 administration, an interested person may be bound by court order
27 in respect to property in, or subject to the laws of, this state

1 by notice in conformity with section 1401. An order is binding
2 as to all who are given notice of the proceeding even if less
3 than all interested persons are notified.

4 Sec. 3107. (1) Unless a proceeding involves supervised
5 administration as described in part 5 of this article, either of
6 the following apply:

7 (a) Each proceeding before the court or register is indepen-
8 dent of any other proceeding involving the same estate.

9 (b) A petition for formal court orders may combine various
10 requests for relief in a single proceeding if the orders sought
11 may be finally granted without delay.

12 (2) Except as required in this article for another proceed-
13 ing, the following apply:

14 (a) A petition is not defective because it fails to embrace
15 all matters that might then be the subject of a final order.

16 (b) A proceeding for probate of a will or an adjudication of
17 no will may be combined with a proceeding for appointment of a
18 personal representative.

19 (c) A proceeding for appointment of a personal representa-
20 tive is concluded by an order making or declining the
21 appointment.

22 Sec. 3108. (1) Subsection (2) does not apply to a proceed-
23 ing to probate a will previously probated at the testator's domi-
24 cile or to an appointment proceeding relating to an estate in
25 which there has been a prior appointment.

26 (2) An informal probate or appointment proceeding or a
27 formal testacy or appointment proceeding shall not be commenced

1 more than 3 years after the decedent's death, except under 1 or
2 more of the following circumstances:

3 (a) If a previous proceeding is dismissed because of doubt
4 about the fact of the decedent's death, an appropriate probate
5 proceeding, appointment proceeding, or testacy proceeding may be
6 maintained at any time after the 3-year period upon a finding
7 that the decedent's death occurred before the initiation of the
8 previous proceeding and the applicant or petitioner has not
9 unduly delayed in initiating the subsequent proceeding.

10 (b) An appropriate probate proceeding, appointment proceed-
11 ing, or testacy proceeding may be maintained in relation to the
12 estate of an absent, disappeared, or missing individual for whose
13 estate a conservator has been appointed at any time within 3
14 years after the conservator becomes able to establish the pro-
15 tected individual's death.

16 (c) A proceeding to contest an informally probated will and
17 to secure appointment of the person with legal priority for
18 appointment in the event the contest is successful may be com-
19 menced within the later of 12 months after the informal probate
20 or the 3-year period.

21 (d) An informal appointment proceeding or a formal testacy
22 or appointment proceeding may be commenced at any time after the
23 3-year period if a proceeding concerning the succession or estate
24 administration has not occurred within the 3-year period after
25 the decedent's death. However, in a proceeding commenced under
26 this subdivision, the personal representative does not have the
27 right provided in section 3709 to possess and control estate

1 property except for the possession necessary to confirm title to
2 the property in the successors to the estate and claims against
3 the estate shall not be presented except for the expenses of
4 administration.

5 (e) A formal testacy proceeding may be commenced at any time
6 after the 3-year period for the purpose of establishing an
7 instrument to direct or control the ownership of property passing
8 or distributable after the decedent's death from someone other
9 than the decedent if the property is to be distributed by the
10 terms of the decedent's will or is to pass or be distributed as a
11 part of the decedent's estate, or if the terms of the decedent's
12 will are to otherwise control the property's transfer. These
13 limitations do not apply to a proceeding to construe a probated
14 will or determine heirs.

15 (3) In a proceeding commenced under subsection (2)(a) or
16 (b), the date on which a testacy or appointment proceeding is
17 properly commenced shall be considered the date of the decedent's
18 death for purposes of other limitations provisions of this act
19 that relate to the date of death.

20 Sec. 3109. A statute of limitations running on a cause of
21 action belonging to a decedent, which action was not barred as of
22 the date of his or her death, does not apply to bar a cause of
23 action surviving the decedent's death sooner than 12 months after
24 death. A cause of action that, but for this section, would have
25 been barred less than 12 months after the decedent's death is
26 barred after 12 months unless tolled.

PART 2

VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY
TO ADMINISTER, AND DEMAND FOR NOTICE

Sec. 3201. (1) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is of the following:

(a) The county where the decedent was domiciled at the time of death.

(b) If the decedent was not domiciled in this state, in a county where property of the decedent was located at the time of death.

(2) Venue for a proceeding subsequent to the proceeding described in subsection (1), which is within the court's exclusive jurisdiction, is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection (3) or section 1303.

(3) If the first proceeding described in subsection (1) was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) On motion by a party or on the court's own initiative, a proceeding's venue may be changed to another county by court order for the convenience of the parties and witnesses, for the attorneys' convenience, or if an impartial trial cannot be had in the county where the action is pending.

(5) For the purpose of aiding determinations concerning location of property that may be relevant in cases involving

1 nondomiciliaries, other than a debt evidenced by investment or
2 commercial paper or other instrument in favor of a nondomicili-
3 ary, a debt is located where the debtor resides or, if the debtor
4 is a person other than an individual, at the place where the
5 debtor has its principal office. Commercial paper, investment
6 paper, and other instruments are located where the instrument
7 is. An interest in property held in trust is located where the
8 trustee may be sued.

9 Sec. 3202. If conflicting claims as to the decedent's domi-
10 cile are made in a formal testacy or appointment proceeding com-
11 menced in this state and in a testacy or appointment proceeding
12 after notice pending at the same time in another state, the court
13 of this state shall stay, dismiss, or permit suitable amendment
14 in the proceeding in this state unless it is determined that this
15 state's proceeding was commenced before the proceeding
16 elsewhere. The determination of domicile in the proceeding first
17 commenced is determinative in this state's proceeding.

18 Sec. 3203. (1) For either formal or informal proceedings,
19 subject to subsection (2), persons who are not disqualified have
20 priority for appointment as personal representative in the fol-
21 lowing order:

22 (a) The person with priority as determined by a probated
23 will including a person nominated by a power conferred in a
24 will.

25 (b) The decedent's surviving spouse if the spouse is a devi-
26 see of the decedent.

1 (c) Other devisees of the decedent.

2 (d) The decedent's surviving spouse.

3 (e) Other heirs of the decedent.

4 (f) After 45 days after the decedent's death, any creditor.

5 (2) An objection to a personal representative's appointment

6 can be made only in a formal proceeding. If an objection is

7 made, the priorities prescribed by subsection (1) apply except in

8 either of the following circumstances:

9 (a) If the estate appears to be more than adequate to meet

10 exemptions and costs of administration but inadequate to dis-

11 charge anticipated unsecured claims, on petition of creditors,

12 the court may appoint any qualified person.

13 (b) If a devisee or heir who appears to have a substantial

14 interest in the estate objects to the appointment of a person

15 whose priority is not determined by will, the court may appoint a

16 person who is acceptable to the devisees and heirs whose inter-

17 ests in the estate appear to be worth in total more than 1/2 of

18 the probable distributable value or, if no person is acceptable

19 to these devisees and heirs, any suitable person.

20 (3) A person entitled to letters under subsection (1)(b) to

21 (e) may nominate a qualified person to act as personal

22 representative. A person may renounce his or her right to nomi-

23 nate or to an appointment by filing an appropriate writing with

24 the court. If 2 or more persons share a priority, those of them

25 who do not renounce shall concur in nominating another to act for

26 them or in applying for appointment.

1 Sec. 3204. (1) A conservator of a protected individual's
2 estate or, if there is no conservator, a guardian of a minor or
3 incapacitated individual may exercise the same right to nominate,
4 to object to another's appointment, or to participate in deter-
5 mining the preference of a majority in interest of the devisees
6 and heirs that the protected individual or ward would have if
7 qualified for appointment.

8 (2) A person who does not have priority, including priority
9 resulting from renunciation or nomination determined under this
10 section or section 3203, shall be appointed only in a formal
11 proceeding. Before appointing a person without priority, the
12 court shall determine that persons having priority have been
13 notified of the proceedings and have failed to request appoint-
14 ment or to nominate another person for appointment, and that
15 administration is necessary.

16 (3) A person is not qualified to serve as a personal repre-
17 sentative if the person is either under the age of 19 or is a
18 person whom the court finds unsuitable in formal proceedings.

19 (4) A personal representative appointed by a court of the
20 decedent's domicile has priority over all other persons except if
21 the decedent's will nominates different persons to be personal
22 representatives in this state and in the state of domicile. The
23 domiciliary personal representative may nominate another person,
24 who has the same priority as the domiciliary personal
25 representative.

1 (5) This section and section 3203 govern priority for
2 appointment of a successor personal representative, but do not
3 apply to the selection of a special administrator.

4 Sec. 3205. A person who wants notice of any order or filing
5 pertaining to a decedent's estate in which the person has a
6 financial or property interest may file a demand for notice with
7 the court at any time after the decedent's death stating the
8 decedent's name, the nature of the person's interest in the
9 estate, and the address of the person or the person's attorney.
10 The person filing a demand shall mail a copy of the demand to the
11 decedent's attorney, if known, to the personal representative if
12 one has been appointed, and to the personal representative's
13 attorney. After filing the demand, the person is an interested
14 person entitled to notice as provided in section 1401 and the
15 other provisions of this act.

16 PART 3

17 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

18 Sec. 3301. (1) An application for informal probate or
19 informal appointment shall be made by an interested person and
20 directed to the register. The applicant shall verify the appli-
21 cation to be accurate and complete to the best of the applicant's
22 knowledge and belief as to all of the following information:

23 (a) In an application for informal probate of a will or for
24 informal appointment of a personal representative, other than a
25 special or successor representative, all of the following:

26 (i) A statement of the applicant's interest.

1 (ii) The decedent's name, date of death, and age; the
2 decedent's county and state of domicile at the time of death; and
3 the names and addresses of the spouse, children, devisees, and
4 heirs with the ages of any who are minors so far as known or
5 ascertainable with reasonable diligence by the applicant.

6 (iii) If the decedent was not domiciled in the state at the
7 time of the decedent's death, a statement showing venue.

8 (iv) A statement identifying and indicating the address of a
9 personal representative of the decedent appointed in this state
10 or elsewhere whose appointment has not been terminated.

11 (v) That the time limit for informal probate or appointment
12 as provided in this article has not expired either because 3
13 years or less have passed since the decedent's death or, if more
14 than 3 years have passed since the death, that circumstances
15 described in section 3108 have occurred allowing filing after the
16 3-year period of limitation.

17 (b) In an application for informal probate of a will, in
18 addition to the statements and information required by
19 subdivision (a), all of the following:

20 (i) That the original of the decedent's last will is in the
21 court's possession or accompanies the application, or that an
22 authenticated copy of a will probated in another jurisdiction
23 accompanies the application.

24 (ii) That, to the best of the applicant's knowledge, the
25 will was validly executed.

26 (iii) That, after the exercise of reasonable diligence, the
27 applicant is unaware of an instrument revoking the will and that

1 the applicant believes that the instrument that is the subject of
2 the application is the decedent's last will.

3 (c) In an application for informal appointment of a personal
4 representative to administer an estate under a will, all of the
5 following:

6 (i) A description of the will by date of execution.

7 (ii) The time and place of probate or the pending applica-
8 tion for probate.

9 (iii) A statement adopting the statements in the application
10 or petition for probate.

11 (iv) The name, address, and priority for appointment of the
12 person whose appointment is sought.

13 (d) In an application for informal appointment of a personal
14 representative in intestacy, in addition to the statements and
15 information required by subdivision (a), all of the following:

16 (i) That, after the exercise of reasonable diligence, the
17 applicant is unaware of any unrevoked testamentary instrument
18 relating to property located in this state under section 1301, or
19 a statement why such an instrument of which the applicant is
20 aware is not being probated.

21 (ii) The priority of the person whose appointment is sought
22 and the names of any other persons having a prior or equal right
23 to the appointment under section 3203.

24 (e) In an application for appointment of a personal repre-
25 sentative to succeed a personal representative appointed under a
26 different testacy status, all of the following:

1 (i) A reference to the order in the most recent testacy
2 proceeding.

3 (ii) The name and address of the person whose appointment is
4 sought and of the person whose appointment will be terminated if
5 the application is granted.

6 (iii) A description of the applicant's priority.

7 (f) In an application for appointment of a personal repre-
8 sentative to succeed a personal representative who tenders a res-
9 ignation as provided in section 3610 or whose appointment is ter-
10 minated by death or removal, all of the following:

11 (i) A statement adopting the statements in the application
12 or petition that led to the appointment of the person being suc-
13 ceeded, except as specifically changed or corrected.

14 (ii) The name and address of the person who seeks appoint-
15 ment as successor.

16 (iii) A description of the applicant's priority.

17 (2) By verifying an application for informal probate or
18 informal appointment, the applicant submits personally to the
19 jurisdiction of the court in any proceeding for relief from fraud
20 relating to the application or for perjury that may be instituted
21 against the applicant.

22 Sec. 3302. Upon receipt of an application requesting infor-
23 mal probate of a will and after making the findings required by
24 section 3303, the register shall issue a written statement of
25 informal probate. Informal probate is conclusive as to all per-
26 sons until superseded by an order in a formal testacy
27 proceeding. A defect in an application or procedure relating to

1 the application that leads to informal probate of a will does not
2 render the probate void.

3 Sec. 3303. (1) In an informal proceeding for original pro-
4 bate of a will, the register shall determine whether all of the
5 following are true:

6 (a) The application is complete.

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

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

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

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

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

17 (g) It appears from the application that the time limit for
18 original probate has not expired.

19 (2) The register shall deny the application if the applica-
20 tion indicates that a personal representative has been appointed
21 in another county of this state or, except as provided in subsec-
22 tion (4), if it appears that this or another will of the decedent
23 has been the subject of a previous probate order.

24 (3) A will that appears to have the required signatures and
25 that contains an attestation clause showing that requirements of
26 execution under section 2502 or 2506 have been met shall be
27 probated without further proof. In other cases, the register may

1 assume execution if the will appears to have been properly
2 executed, or the register may accept a sworn statement or affida-
3 vit of a person having knowledge of the circumstances of execu-
4 tion, whether or not the person was a witness to the will.

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

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

17 Sec. 3304. The register shall deny an application for
18 informal probate if the probate relates to 1 or more of a known
19 series of testamentary instruments, not including a will and 1 or
20 more codicils to that will, the latest of which instruments does
21 not expressly revoke the earlier.

22 Sec. 3305. If the register is not satisfied that a will is
23 entitled to be probated in informal proceedings because of fail-
24 ure to meet the requirements of section 3303 or 3304 or for
25 another reason, the register may deny the application. A
26 register's denial of informal probate is not an adjudication and
27 does not preclude formal probate proceedings. If the application

1 is denied, the register shall clearly state the reason for
2 denial.

3 Sec. 3306. (1) Within 30 days after an informal probate is
4 granted, the applicant shall give written information of the pro-
5 bate to the heirs, devisees, a person who demands it under sec-
6 tion 3204, and other interested persons. The applicant also
7 shall give information of the probate to the attorney general,
8 public administration division, if the devisees under the will
9 would not be entitled to share in the estate but for the terms of
10 the will and the decedent died without leaving any known heirs.

11 (2) The information required by subsection (1) shall include
12 the applicant's name and address, the name and location of the
13 court granting the informal probate, and the date of the
14 probate. The information shall be delivered or sent by ordinary
15 mail to each person entitled to notice whose address is reason-
16 ably available to the applicant. There is no duty to give infor-
17 mation as required by this section if a personal representative
18 is appointed who is required to give the written information
19 required by section 3705. An applicant's failure to give infor-
20 mation as required by this section is a breach of the applicant's
21 duty to a person entitled to notice, but does not affect the
22 validity of the probate.

23 Sec. 3307. (1) Upon receipt of an application for informal
24 appointment of a personal representative, other than a special
25 personal representative as provided in section 3614, and after
26 making the findings required by section 3308, the register shall
27 appoint the applicant subject to qualification and acceptance.

1 If the decedent was a nonresident, the register shall delay the
2 order of appointment until 30 days after the death unless the
3 personal representative appointed at the decedent's domicile is
4 the applicant or unless the decedent's will directs that the
5 estate be subject to the laws of this state.

6 (2) The personal representative's status and the powers and
7 duties pertaining to the office are fully established by informal
8 appointment. An appointment, and the office of personal repre-
9 sentative created by the appointment, is subject to termination
10 as provided in sections 3608 to 3612, but is not subject to ret-
11 roactive vacation.

12 Sec. 3308. (1) In informal appointment proceedings, the
13 register shall determine whether all of the following are true:

14 (a) The application for the personal representative's infor-
15 mal appointment is complete.

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

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

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

23 (e) A will to which the requested appointment relates has
24 been formally or informally probated. This subdivision does not
25 apply to the appointment of a special personal representative.

1 (f) From the statements in the application, the person whose
2 appointment is sought has priority to the appointment or the
3 requirements of section 3310 have been satisfied.

4 (2) Unless section 3612 controls, the register shall deny
5 the application if it indicates any of the following:

6 (a) That a personal representative who has not filed a writ-
7 ten statement of resignation as provided in section 3610 has been
8 appointed in this or another county of this state.

9 (b) That, unless the applicant is the domiciliary personal
10 representative or his or her nominee, the decedent was not domi-
11 ciled in this state and that a personal representative whose
12 appointment has not been terminated has been appointed by a court
13 in the state of domicile.

14 (c) That the other requirements of this section are not
15 met.

16 Sec. 3309. If the register is not satisfied that a
17 requested personal representative's informal appointment should
18 be made because of failure to meet the requirements of section
19 3307 or 3308, or for another reason, the register may deny the
20 application. A register's denial of informal appointment is not
21 an adjudication and does not preclude appointment in formal
22 proceedings. If the application is denied, the register shall
23 clearly state the reason for denial.

24 Sec. 3310. The applicant shall give notice as described by
25 section 1401 of the applicant's intention to seek an appointment
26 informally to each person having a prior or equal right to an
27 appointment not waived in writing and filed with the court.

1 Sec. 3311. If an application for informal appointment
2 indicates the existence of a possible unrevoked testamentary
3 instrument that may relate to property subject to the laws of
4 this state and that is not filed for probate in this court, the
5 register shall deny the application.

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

9 Sec. 3401. (1) A formal testacy proceeding is litigation to
10 determine whether a decedent left a valid will. An interested
11 person may commence a formal testacy proceeding by filing 1 of
12 the following:

13 (a) A petition described in section 3402(1) in which the
14 petitioner requests that after notice and hearing, the court
15 enter an order probating a will.

16 (b) A petition to set aside a will's informal probate or to
17 prevent a will's informal probate that is the subject of a pend-
18 ing application.

19 (c) A petition in accordance with section 3402(2) for an
20 order that the decedent died intestate.

(2) A petitioner may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

25 (3) During the pendency of a formal testacy proceeding, the
26 register shall not act upon an application for informal probate
27 of a will of the decedent or an application for informal
28 appointment of a personal representative of the decedent.

1 (4) Unless a petition in a formal testacy proceeding also
2 requests confirmation of the previous informal appointment, after
3 receipt of notice of the commencement of a formal probate pro-
4 ceeding, a previously appointed personal representative shall
5 refrain from exercising the power to make any further distribu-
6 tion of the estate during the pendency of the formal proceeding.
7 A petitioner who seeks a different personal representative's
8 appointment in a formal proceeding may also request an order
9 restraining the acting personal representative from exercising
10 that office's powers and may request a special personal
11 representative's appointment. In the absence of a request under
12 this subsection or if the request is denied, the commencement of
13 a formal proceeding has no effect on the powers and duties of a
14 previously appointed personal representative other than those
15 relating to distribution.

16 Sec. 3402. (1) A petition for formal probate of a will or
17 for adjudication of intestacy with or without request for
18 appointment of a personal representative shall be directed to the
19 court, shall request a judicial order after notice and hearing,
20 and shall contain the statements required by this section. A
21 petition for formal probate of a will shall include all of the
22 following:

23 (a) A request for an order as to the testacy of the decedent
24 in relation to a particular instrument that may or may not have
25 been informally probated and a request for an order determining
26 the decedent's heirs.

1 (b) The statements required for an informal application
2 prescribed by section 3301(1)(a) and (b)(i) and (iii).

3 (c) A statement as to whether the original of the decedent's
4 last will is in the court's possession or accompanies the
5 petition. If the original will is not in the court's possession
6 or neither the original will nor an authenticated copy of a will
7 probated in another jurisdiction accompanies the petition, the
8 petition shall also state the will's contents and shall indicate
9 that the will is lost, destroyed, or otherwise unavailable.

10 (2) A petition for adjudication of intestacy and appointment
11 of a personal representative in intestacy shall include all of
12 the following:

13 (a) A request for a judicial finding and order that the
14 decedent left no will and determining the heirs.

15 (b) The statements required by section 3301(1)(a) and (d).

16 (c) A statement indicating whether supervised administration
17 is sought. A petition under this subsection may request an order
18 determining intestacy and heirs without requesting the appoint-
19 ment of a personal representative, in which case, the statements
20 required by section 3301(1)(d)(ii) may be omitted.

21 Sec. 3403. (1) Upon commencement of a formal testacy pro-
22 ceeding, the court shall fix a time and place of hearing. The
23 petitioner shall give notice in the manner prescribed by
24 section 1401 to each of the following persons:

25 (a) The decedent's heirs.

26 (b) The devisees and personal representatives named in a
27 will that is being, or has been, probated or offered for informal

1 or formal probate in the county, or that is known by the
2 petitioner to have been probated or offered for informal or
3 formal probate elsewhere.

4 (c) A personal representative of the decedent whose appoint-
5 ment has not been terminated.

6 (d) A person who has filed a demand for notice under
7 section 3204.

8 (2) Notice may be given to other persons. In addition, the
9 petitioner shall give notice by publication to each person who
10 has an interest in the matters being litigated. If the proceed-
11 ing involves a request for appointment of a personal representa-
12 tive and it appears that the deceased died intestate without
13 leaving a known heir, the petitioner shall give notice to the
14 attorney general, public administration division.

15 (3) If it appears by the petition or otherwise that the fact
16 of the decedent's death may be in doubt, or on the written demand
17 of an interested person, a copy of the notice of the hearing on
18 the petition shall be sent by registered mail to the alleged
19 decedent at his or her last known address. The court shall
20 direct the petitioner to report the results of, or make and
21 report back concerning, a reasonably diligent search for the
22 alleged decedent in any manner that may seem advisable, including
23 by any of the following methods:

24 (a) Inserting in 1 or more suitable periodicals a notice
25 requesting information from anyone having knowledge of the
26 alleged decedent's whereabouts.

1 (b) Notifying law enforcement officials and public welfare
2 agencies in appropriate locations of the alleged decedent's
3 disappearance.

4 (c) Engaging an investigator's services.

5 (4) The costs of a search conducted under subsection (3)
6 shall be paid by the petitioner if there is no administration or
7 by the decedent's estate if there is administration.

8 Sec. 3404. A party to a formal proceeding who opposes the
9 probate of a will for any reason shall state in his or her plead-
10 ings the party's objections to probate of the will.

11 Sec. 3405. (1) If a petition in a testacy proceeding is
12 unopposed, the court may either order probate or intestacy on the
13 strength of the pleadings if satisfied that the conditions of
14 section 3409 have been met or conduct a hearing in open court and
15 require proof of the matters necessary to support the order
16 sought.

17 (2) If evidence concerning execution of the will is neces-
18 sary, the affidavit or testimony of 1 of the attesting witnesses
19 to the instrument is sufficient. If the affidavit or testimony
20 of an attesting witness is not available, execution of the will
21 may be proved by other evidence or affidavit. If, after diligent
22 search and effort and after the signature of the testator is
23 identified, it appears that the whereabouts of the witnesses to a
24 will cannot be ascertained and it appears on the face of the will
25 that the requirements in this section for a valid will have been
26 met, a presumption arises that the will was executed in all
27 particulars as required by law.

1 Sec. 3406. (1) If evidence concerning execution of an
2 attested will that is not self-proved is necessary in a contested
3 case, the testimony of at least 1 of the attesting witnesses, if
4 within the state, and competent and able to testify, is
5 required. Due execution of an attested or unattested will may be
6 proved by other evidence.

7 (2) If a will is self-proved, compliance with signature
8 requirements for execution is conclusively presumed and other
9 requirements of execution are presumed subject to rebuttal with-
10 out the testimony of any witness upon filing the will and the
11 acknowledgment and affidavits annexed or attached to the will,
12 unless there is proof of fraud or forgery affecting the acknowl-
13 edgment or affidavit.

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

18 Sec. 3407. (1) All of the following apply in a contested
19 case:

20 (a) A petitioner who seeks to establish intestacy has the
21 burden of establishing prima facie proof of death, venue, and
22 heirship.

23 (b) A proponent of a will has the burden of establishing
24 prima facie proof of due execution in all cases and, if the pro-
25 ponent is also a petitioner, prima facie proof of death and
26 venue.

1 (c) A contestant of a will has the burden of establishing
2 lack of testamentary intent or capacity, undue influence, fraud,
3 duress, mistake, or revocation.

4 (d) A party has the ultimate burden of persuasion as to a
5 matter with respect to which the party has the initial burden of
6 proof.

7 (2) If a will is opposed by a petition for probate of a
8 later will revoking the former, the court shall first determine
9 whether the later will is entitled to probate. If a will is
10 opposed by a petition for a declaration of intestacy, the court
11 shall first determine whether the will is entitled to probate.

12 Sec. 3408. This state's court shall accept as determinative
13 a final order of a court of another state determining testacy, or
14 the validity or construction of a will, made in a proceeding
15 involving notice to and an opportunity for contest by all inter-
16 ested persons if the order includes, or is based upon, a finding
17 that the decedent was domiciled at death in the state where the
18 order was made.

19 Sec. 3409. (1) After the time expires for any required
20 notice, upon proof of notice, and after a hearing, if necessary,
21 if the court finds that the testator is dead, that venue is
22 proper, and that the proceeding was commenced within the limita-
23 tion prescribed by section 3108, the court shall determine the
24 decedent's domicile at death, the decedent's heirs, and the
25 decedent's state of testacy. The petition shall be dismissed or
26 appropriate amendment allowed if the court is not satisfied that
27 the alleged decedent is dead.

1 (2) A will found to be valid and unrevoked shall be formally
2 probated. Termination of a previous informal appointment of a
3 personal representative, which may be appropriate in view of the
4 relief requested and findings, is governed by section 3612. A
5 will from a place that does not provide for probate of a will
6 after death may be proved for probate in this state by a duly
7 authenticated certificate of its legal custodian that the copy
8 introduced is a true copy and that the will is effective under
9 the law of the other place.

10 Sec. 3410. If 2 or more instruments are offered for probate
11 before a final order is entered in a formal testacy proceeding,
12 more than 1 instrument may be probated if neither expressly
13 revokes the other and neither contains provisions that work a
14 total revocation by implication. If more than 1 instrument is
15 probated, the order shall indicate which provisions control in
16 respect to the personal representative's nomination, if any. The
17 order may, but need not, indicate how any provisions of a partic-
18 ular instrument are affected by another instrument. After a
19 final order in a testacy proceeding has been entered, a petition
20 for probate of another instrument of the decedent shall not be
21 entertained, except incident to a petition to vacate or modify a
22 previous probate order and subject to the time limits of section
23 3413.

24 Sec. 3411. If it becomes evident in the course of a formal
25 testacy proceeding that, though 1 or more instruments are enti-
26 tled to be probated, the decedent's estate is or may be partially
27 intestate, the court shall enter an order to that effect.

1 Sec. 3412. (1) The finding of the fact of death is
2 conclusive as to the alleged decedent only if notice of the hear-
3 ing on the petition in the formal testacy proceeding was sent by
4 registered or certified mail addressed to the alleged decedent at
5 his or her last known address and the court finds that a search
6 under section 3403(3) was made.

7 (2) If the alleged decedent is not dead, even if notice was
8 sent and the search was made, the alleged decedent may recover
9 estate assets in the hands of the personal representative. In
10 addition to any remedies available to the alleged decedent by
11 reason of any fraud or intentional wrongdoing, the alleged dece-
12 dent may recover any estate or its proceeds from distributees
13 that is in their hands, or the value of distributions received by
14 them, to the extent that any recovery from distributees is equi-
15 table in view of all of the circumstances.

16 Sec. 3413. Subject to appeal and subject to vacation as
17 provided in this section and section 3414, a formal testacy order
18 under sections 3409 to 3411, including an order that the decedent
19 did not leave a valid will and that determines heirs, is final as
20 to all persons with respect to all issues concerning the
21 decedent's estate that the court considered or might have consid-
22 ered incident to its rendition relevant to the question of
23 whether the decedent left a valid will and to the determination
24 of heirs, except that:

25 (a) The court shall entertain a petition for modification or
26 vacation of its order and probate of another will of the decedent
27 if it is shown that the proponents of the later-offered will were

1 unaware of that will's existence at the time of the earlier
2 proceeding or were unaware and were given no notice of the ear-
3 lier proceeding, except by publication.

4 (b) If intestacy of all or part of the estate has been
5 ordered, the determination of the decedent's heirs may be recon-
6 sidered if it is shown that an individual was omitted from the
7 determination and that the omitted individual was unaware of his
8 or her relationship to the decedent, was unaware of the
9 decedent's death, or was not given notice of any proceeding con-
10 cerning the decedent's estate, except by publication.

11 (2) A petition for vacation filed under subsection (1) shall
12 be filed before the earliest of the following time limits:

13 (a) If a personal representative is appointed for the
14 estate, the time of entry of an order approving final distribu-
15 tion of the estate or, if the estate is closed by statement, 6
16 months after the filing of the closing statement.

17 (b) Whether or not a personal representative is appointed
18 for the decedent's estate, the time limit prescribed by section
19 3108 when it is no longer possible to initiate an original pro-
20 ceeding to probate a will of the decedent.

21 (c) Twelve months after the entry of the order sought to be
22 vacated.

23 (3) The order originally rendered in the testacy proceeding
24 may be modified or vacated, if appropriate under the circum-
25 stances, by the order of probate of the later-offered will or the
26 order redetermining heirs.

1 Sec. 3414. For good cause shown, an order in a formal
2 testacy proceeding may be modified or vacated within the time
3 allowed for appeal.

4 Sec. 3415. (1) If an issue concerning the decedent's tes-
5 tacy is or may be involved, a formal proceeding for adjudication
6 regarding the priority or qualification of an individual who is
7 an applicant for appointment as personal representative or who
8 was previously appointed personal representative in informal pro-
9 ceedings is governed by this section and section 3402. In other
10 cases, the petition shall contain or adopt the statements
11 required by section 3301(1)(a) and shall describe the question
12 relating to the personal representative's priority or qualifica-
13 tion that is to be resolved.

14 (2) If a formal proceeding precedes a personal
15 representative's appointment, the formal proceeding stays an
16 informal appointment proceeding that is pending or that is com-
17 menced after the formal proceeding's commencement. A personal
18 representative appointed before a formal proceeding's commence-
19 ment shall not exercise a power of administration after a formal
20 proceeding's commencement except as necessary to preserve the
21 estate unless the court orders otherwise.

22 (3) After notice to interested persons, including all per-
23 sons interested in the estate's administration as successors
24 under the applicable assumption concerning testacy, a previously
25 appointed personal representative, a person having or claiming
26 priority for appointment as personal representative, and any
27 other person described in section 3403(1) or (2), the court shall

1 determine who is entitled to appointment under section 3202, make
2 a proper appointment, and, if appropriate, terminate a prior
3 appointment found to be improper as provided in cases of removal
4 under section 3611.

5 Sec. 3416. Unless supervised administration is sought and
6 ordered, a person interested in an estate, including a personal
7 representative, whether appointed informally or after notice, may
8 make 1 or more independent requests to the court so that a ques-
9 tion or assumption relating to the estate, including the status
10 of an estate as testate or intestate, a matter relating to 1 or
11 more claims, a disputed title, an account of a personal represen-
12 tative, and distribution, may be resolved or established by adju-
13 dication after notice without necessarily subjecting the estate
14 to the necessity of a judicial order in regard to other or fur-
15 ther questions or assumptions.

16 PART 5

17 SUPERVISED ADMINISTRATION

18 Sec. 3501. (1) Supervised administration is a single in rem
19 proceeding to secure complete administration and settlement of a
20 decedent's estate under the court's continuing authority that
21 extends until entry of an order approving estate distribution and
22 discharging the personal representative or other order terminat-
23 ing the proceeding.

24 (2) A supervised personal representative is responsible to
25 the court, as well as to the interested parties, and is subject
26 to directions concerning the estate made by the court on its own
27 motion or on the motion of an interested party.

1 (3) Except as otherwise provided in this part or as
2 otherwise ordered by the court, a supervised personal representa-
3 tive has the same duties and powers as a personal representative
4 who is not supervised.

5 Sec. 3502. (1) Any interested person or a personal repre-
6 sentative may file a petition for supervised administration at
7 any time, or a petition for supervised administration may be
8 joined with a petition in a formal testacy or appointment
9 proceeding.

10 (2) If a decedent's testacy and a personal representative's
11 priority and qualification have not been previously adjudicated,
12 a petition for supervised administration shall include the mat-
13 ters required of a petition in a formal testacy proceeding, and
14 the notice requirements and procedures applicable to a formal
15 testacy proceeding apply. If not previously adjudicated, the
16 court shall adjudicate the decedent's testacy and questions
17 relating to the personal representative's priority and qualifica-
18 tions in any case involving a request for supervised administra-
19 tion, even though the request for supervised administration may
20 be denied.

21 (3) After notice to interested persons, the court shall
22 order supervised administration of a decedent's estate in any of
23 the following circumstances:

24 (a) If the decedent's will directs supervised administra-
25 tion, the court shall order supervised administration unless the
26 court finds that circumstances bearing on the need for supervised

1 administration have changed since the execution of the will and
2 that supervised administration is not necessary.

3 (b) If the decedent's will directs unsupervised administra-
4 tion, the court shall only order supervised administration on a
5 finding that it is necessary for protection of persons interested
6 in the estate.

7 (c) In other cases, the court shall order supervised admin-
8 istration if the court finds that supervised administration is
9 necessary under the circumstances.

10 Sec. 3503. (1) The pendency of a proceeding for supervised
11 administration of a decedent's estate stays action on a pending
12 informal application or an informal application filed after com-
13 mencement of the proceeding for supervised administration.

14 (2) If a will has been previously probated in informal pro-
15 ceedings, the filing of a petition for supervised administration
16 has the same effect as a formal testacy proceeding under
17 section 3401.

18 (3) After receipt of notice of the filing of a supervised
19 administration petition, a personal representative who has been
20 previously appointed shall not exercise the power to distribute
21 the estate. The filing of such a petition does not affect the
22 personal representative's other powers and duties unless the
23 court restricts the exercise of any of those powers and duties
24 pending full hearing on the petition.

25 Sec. 3504. Unless restricted by the court, a supervised
26 personal representative has, without an interim order approving
27 exercise of a power, all the powers of a personal representative

1 under this act, but shall not exercise the power to make a
2 distribution of the estate without prior court order. Any other
3 restriction on a supervised personal representative's power that
4 the court may order shall be endorsed on the letters of
5 appointment. Unless a power is endorsed as provided in this sec-
6 tion, the power is ineffective as to persons dealing in good
7 faith with the personal representative.

8 Sec. 3505. Unless otherwise ordered by the court, super-
9 vided administration is terminated by an order in accordance with
10 time restrictions, notices, and contents of orders prescribed for
11 proceedings under section 31001. The court may issue an interim
12 order approving or directing a partial distribution or granting
13 other relief at any time during the pendency of a supervised
14 administration on the petition of the personal representative or
15 an interested person.

16 PART 6

17 PERSONAL REPRESENTATIVE AND APPOINTMENT, CONTROL, AND
18 TERMINATION OF AUTHORITY

19 Sec. 3601. (1) Prior to receiving letters, a personal rep-
20 resentative shall qualify by filing with the appointing court any
21 required bond and a statement of acceptance of the duties of the
22 office.

23 (2) In filing the statement of acceptance, the personal rep-
24 resentative may exclude from the scope of the personal
25 representative's responsibility, for a period not to exceed 3
26 months, real estate or an ownership interest in a business entity
27 if the personal representative reasonably believes the real

1 estate or other property owned by the business entity is or may
2 be contaminated by a hazardous substance, as defined in
3 section 3715(a)(27)(vii), or is or has been used for any activity
4 directly or indirectly involving a hazardous substance that could
5 result in liability to the estate or otherwise impair the value
6 of property held in the estate. The personal representative
7 shall identify the real estate or ownership interest being
8 excluded and shall specify the time period of exclusion.

9 (3) If the personal representative identifies excluded prop-
10 erty under subsection (2), the personal representative's respon-
11 sibilities extend to the excluded property at the end of the
12 exclusion period or until the personal representative's notice to
13 the court of acceptance of that property, unless, before the end
14 of the exclusion period, the personal representative requests the
15 court to appoint a special personal representative with respect
16 to the excluded property or to exercise administrative authority
17 over the excluded property by direct judicial order.

18 (4) In response to a request by the general personal repre-
19 sentative under subsection (3), the court may do either of the
20 following:

21 (a) Appoint a special personal representative with the duty
22 and authority to collect and manage the excluded property, but
23 only to the extent necessary for proper settlement of the estate,
24 to preserve it, to account with respect to it, and to distribute
25 or otherwise dispose of it as directed by the general personal
26 representative or other court order.

1 (b) Directly administer the excluded property by judicial
2 orders without the appointment of a personal representative with
3 respect to the property.

4 Sec. 3602. By accepting appointment, a personal representa-
5 tive submits personally to the court's jurisdiction in a proceed-
6 ing relating to the estate that may be instituted by an inter-
7 ested person. The interested person instituting the proceeding
8 shall give notice of the proceeding to the personal representa-
9 tive by personal service or by ordinary first-class mail mailed
10 to the personal representative's address as stated in the appli-
11 cation or petition for appointment, or as otherwise reported to
12 the court, and if different, to the personal representative's
13 address as then known to the interested person.

14 Sec. 3603. (1) A bond is not required of a personal repre-
15 sentative appointed in informal proceedings, except in any of the
16 following circumstances:

17 (a) A special personal representative is appointed.

18 (b) The personal representative is appointed to administer
19 an estate under a will containing an express requirement of
20 bond.

21 (c) Bond is required under section 3605.

22 (2) Except as otherwise provided in this subsection, in a
23 formal proceeding, the court may order bond at the time of the
24 personal representative's appointment. The court shall not order
25 bond of the personal representative in the formal proceeding if
26 the will relieves the personal representative of bond, unless an
27 interested party requests bond and the court is satisfied that

1 bond is desirable. If a will in a formal proceeding requires
2 bond, bond may be dispensed with if the court determines it is
3 unnecessary.

4 (3) Bond is not required of a personal representative who
5 deposits, as provided by statute, cash or collateral with an
6 agency of this state to secure performance of the fiduciary
7 duties.

8 Sec. 3604. If bond is required and the provisions of the
9 will or order do not specify the amount, unless stated in the
10 person's application or petition, a person qualifying shall file
11 a statement under oath with the register indicating the person's
12 best estimate of the value of the decedent's personal estate and
13 of the income expected from the personal and real estate during
14 the next year, and shall execute and file a bond with the regis-
15 ter, or give other suitable security, in an amount not less than
16 the estimate. The register shall determine that the bond is duly
17 executed by a corporate surety, or 1 or more individual sureties
18 whose performance is secured by pledge of personal property,
19 mortgage on real property, or other adequate security. The reg-
20 ister may permit the amount of the bond to be reduced by the
21 value of estate property deposited with a domestic financial
22 institution, as defined in section 6201, in a manner that pre-
23 vents the property's unauthorized disposition. On petition of
24 the personal representative or another interested person, the
25 court may excuse a requirement of bond, increase or reduce the
26 amount of the bond, release sureties, or permit the substitution
27 of another bond with the same or different sureties.

1 Sec. 3605. A person apparently having an interest in the
2 estate worth in excess of \$2,500.00 or a creditor having a claim
3 against the estate in excess of \$2,500.00 may make a written
4 demand that a personal representative give bond. The demand
5 shall be filed with the register, and if appointment and qualifi-
6 cation have occurred, a copy shall be mailed to the personal
7 representative. Upon filing of the demand, bond is required, but
8 the requirement ceases if the person demanding bond ceases to be
9 interested in the estate or if bond is excused as provided in
10 section 3603 or 3604. After receipt of notice and until the
11 filing of the bond or cessation of the requirement of bond, the
12 personal representative shall refrain from exercising any powers
13 of the fiduciary office except as necessary to preserve the
14 estate. Failure of the personal representative to meet a
15 requirement of bond by giving suitable bond within 30 days after
16 receipt of notice is cause for removal and appointment of a suc-
17 cessor personal representative.

18 Sec. 3606. The following requirements and provisions apply
19 to a bond required by this part:

20 (a) A bond shall name the state of Michigan as obligee for
21 the benefit of the persons interested in the estate and shall be
22 conditioned upon the faithful discharge by the fiduciary of all
23 duties according to law.

24 (b) Unless otherwise provided by the terms of the approved
25 bond, sureties are jointly and severally liable with the personal
26 representative and with each other. The address of sureties
27 shall be stated in the bond.

1 (c) By executing an approved bond of a personal
2 representative, the surety consents to the jurisdiction of the
3 court that issues letters to the primary obligor in a proceeding
4 pertaining to the personal representative's fiduciary duties and
5 naming the surety as a party. The petitioner shall notify a
6 surety of a proceeding by personal service or by registered or
7 certified mail to the surety's address as listed with the court
8 where the bond is filed and to the surety's address as then known
9 to the petitioner.

10 (d) On petition of a successor personal representative,
11 another personal representative of the same decedent, or an
12 interested person, a proceeding in the court may be initiated
13 against a surety for breach of the obligation of the personal
14 representative's bond.

15 (e) The personal representative's bond is not void after the
16 first recovery but may be proceeded against from time to time
17 until the whole penalty is exhausted.

18 (f) An action or proceeding shall not be commenced against
19 the surety on a matter as to which an action or proceeding
20 against the primary obligor is barred by adjudication or
21 limitation.

22 Sec. 3607. (1) On petition of a person who appears to be an
23 interested person or acting on the court's own motion, the court,
24 by temporary order, may restrain a personal representative from
25 performing a specified act of administration, disbursement, or
26 distribution, or from exercising a power or discharging a duty of
27 the personal representative's office, or may make another order

1 to secure proper performance of the personal representative's
2 duty, if it appears to the court that the personal representative
3 otherwise may take some action that would jeopardize unreasonably
4 the interest of the petitioner or of some other interested
5 person. A person with whom the personal representative may
6 transact business may be made a party.

7 (2) A matter described in subsection (1) shall be set for
8 hearing within 10 days unless the parties otherwise agree.
9 Notice shall be given as the court directs to the personal repre-
10 sentative, to the personal representative's attorney of record,
11 if any, and to any parties named defendant in the petition.

12 Sec. 3608. Termination of appointment of a personal repre-
13 sentative occurs as provided in sections 3609 to 3612.
14 Termination ends the right and power pertaining to the office of
15 personal representative as conferred by this act or a will,
16 except that a personal representative, at any time before distri-
17 bution or until restrained or enjoined by court order, may per-
18 form an act necessary to protect the estate and may deliver prop-
19 erty to a successor personal representative. Termination does
20 not discharge a personal representative from liability for a
21 transaction or omission occurring before termination, or relieve
22 the personal representative of the duty to preserve property
23 subject to the personal representative's control, and to account
24 for and to deliver that property. Termination does not affect
25 the court's jurisdiction over the personal representative, but
26 does terminate the personal representative's authority to
27 represent the estate in a pending or future proceeding.

1 Sec. 3609. The personal representative's death or a
2 conservator's appointment for the personal representative's
3 estate terminates the appointment of that individual. Until
4 appointment and qualification of a successor or special personal
5 representative to replace the deceased or protected personal rep-
6 resentative, the personal representative of the estate of the
7 deceased or protected personal representative, if any, has the
8 duty to protect the estate possessed and being administered by
9 the decedent or ward at the time the appointment terminates, has
10 the power to perform acts necessary for that protection, and
11 shall account for and deliver the estate property to a successor
12 or special personal representative upon the successor's appoint-
13 ment and qualification.

14 Sec. 3610. (1) A personal representative's appointment ter-
15 minates 1 year after the filing of a closing statement as pro-
16 vided in section 31004.

17 (2) A personal representative's appointment terminates when
18 the court enters an order closing an estate as provided in
19 section 31002 or 31003.

20 (3) After giving at least 15 days' written notice to known
21 interested persons, a personal representative may resign by
22 filing a written statement of resignation with the register. If
23 no one applies or petitions for appointment of a successor per-
24 sonal representative within the time indicated in the notice, the
25 filed statement of resignation is ineffective as a termination of
26 appointment and is effective only upon the appointment and

1 qualification of a successor personal representative and delivery
2 of the estate property to the successor personal representative.

3 Sec. 3611. (1) An interested person may petition for
4 removal of a personal representative for cause at any time. Upon
5 filing of the petition, the court shall fix a time and place for
6 hearing. The petitioner shall give notice to the personal repre-
7 sentative and to other persons as the court orders. Except as
8 otherwise ordered under section 3607, after receipt of notice of
9 removal proceedings, the personal representative shall not act
10 except to account, to correct maladministration, or preserve the
11 estate. If removal is ordered, the court shall also direct by
12 order the disposition of the property remaining in the name of,
13 or under the control of, the personal representative being
14 removed.

15 (2) The court may remove a personal representative under any
16 of the following circumstances:

17 (a) Removal is in the best interests of the estate.

18 (b) It is shown that the personal representative or the
19 person seeking the personal representative's appointment inten-
20 tionally misrepresented material facts in a proceeding leading to
21 the appointment.

22 (c) The personal representative does any of the following:

23 (i) Disregards a court order.

24 (ii) Becomes incapable of discharging the duties of office.

25 (iii) Mismanages the estate.

26 (iv) Fails to perform a duty pertaining to the office.

1 (3) Unless the decedent's will directs otherwise, a personal
2 representative appointed at the decedent's domicile, incident to
3 securing appointment of an ancillary personal representative, may
4 obtain removal of another who was appointed personal representa-
5 tive in this state to administer local assets.

6 Sec. 3612. Except as otherwise ordered in formal proceed-
7 ings, the probate of a will after the appointment of a personal
8 representative in intestacy or under a will that is superseded by
9 formal probate of another will, or the vacation of an informal
10 probate of a will after the appointment of the personal represen-
11 tative under that will, does not terminate the personal
12 representative's appointment, although the personal
13 representative's powers may be reduced as provided in section
14 3401. Termination occurs upon appointment in informal or formal
15 appointment proceedings of a person entitled to appointment under
16 the later assumption concerning testacy. If no request for new
17 appointment is made within 30 days after expiration of time for
18 appeal from the order in formal testacy proceedings, or from the
19 informal probate, changing the assumption concerning testacy, the
20 previously appointed personal representative upon request may be
21 appointed personal representative under the subsequently probated
22 will, or as in intestacy as the case may be.

23 Sec. 3613. The appointment of a personal representative to
24 succeed a personal representative whose appointment is terminated
25 is governed by parts 3 and 4 of this article. After appointment
26 and qualification, a successor personal representative may be
27 substituted in all actions and proceedings in which the former

1 personal representative was a party. A notice, process, or claim
2 that was given or served upon the terminated personal representa-
3 tive need not be given to or served upon the successor personal
4 representative in order to preserve a position or right the
5 person that gave the notice or filed the claim may have obtained
6 or preserved with reference to the former personal
7 representative. Except as the court otherwise orders, the suc-
8 cessor personal representative has the powers and duties in
9 respect to the continued administration that the former personal
10 representative would have had if the appointment had not been
11 terminated.

12 Sec. 3614. A special personal representative may be
13 appointed in any of the following circumstances:

14 (a) Informally by the register on the application of an
15 interested person if necessary to protect the estate of a dece-
16 dent before the appointment of a general personal representative
17 or if a prior appointment is terminated as provided in
18 section 3609.

19 (b) In a formal proceeding by court order on the petition of
20 an interested person and if, after notice and hearing, the court
21 finds that the appointment is necessary to preserve the estate or
22 to secure its proper administration, including its administration
23 in circumstances in which a general personal representative
24 cannot or should not act. If it appears to the court that an
25 emergency exists, the court may order the appointment without
26 notice.

1 Sec. 3615. (1) If a special personal representative is to
2 be appointed pending the probate of a will that is the subject of
3 a pending application or petition for probate, the person named
4 personal representative in the will shall be appointed as the
5 special personal representative, if available and qualified.

6 (2) In any other case, the court may appoint any proper
7 person as special personal representative.

8 Sec. 3616. A special personal representative appointed by
9 the register in informal proceedings as provided in section 3614
10 has the duty to collect and manage the estate property, to pre-
11 serve and account for the property, and to deliver the property
12 to the general personal representative upon qualification. This
13 special personal representative has the power of a personal rep-
14 resentative under this act necessary to perform his or her
15 duties.

16 Sec. 3617. A special personal representative appointed by
17 order of the court in a formal proceeding has a general personal
18 representative's power except as limited in the appointment and
19 duties as prescribed in the order. The appointment may be for a
20 specified time, to perform particular acts, or on other terms as
21 the court directs.

22 Sec. 3618. A special personal representative's appointment
23 terminates in accordance with the provisions of the order of
24 appointment or on the appointment of a general personal
25 representative. In any other case, a special personal
26 representative's appointment is subject to termination as
27 provided in sections 3608 to 3611.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

1
2
3 Sec. 3701. A personal representative's duties and powers
4 commence upon appointment. A personal representative's powers
5 relate back in time to give acts by the person appointed that are
6 beneficial to the estate occurring before appointment the same
7 effect as those occurring after appointment. Before or after
8 appointment, a person named as personal representative in a will
9 may carry out the decedent's written instructions relating to the
10 decedent's body, funeral, and burial arrangements. A personal
11 representative may ratify and accept an act on behalf of the
12 estate done by another if the act would have been proper for a
13 personal representative.

14 Sec. 3702. A person to whom general letters are issued
15 first has exclusive authority under the letters until the
16 appointment is terminated or modified. If, through error, gen-
17 eral letters are afterwards issued to another person, the first
18 appointed representative may recover estate property in the hands
19 of the representative subsequently appointed, but the acts of the
20 latter done in good faith before notice of the first letters are
21 not void for want of validity of appointment.

22 Sec. 3703. (1) A personal representative is a fiduciary who
23 shall observe the standard of care applicable to a trustee as
24 described by section 7302. A personal representative is under a
25 duty to settle and distribute the decedent's estate in accordance
26 with the terms of a probated and effective will and this act, and
27 as expeditiously and efficiently as is consistent with the best

1 interests of the estate. The personal representative shall use
2 the authority conferred by this act, the terms of the will, if
3 any, and an order in a proceeding to which the personal represen-
4 tative is party for the best interests of successors to the
5 estate.

6 (2) A personal representative shall not be surcharged for
7 acts of administration or distribution if the conduct in question
8 was authorized at the time. Subject to other obligations of
9 administration, an informally probated will is authority to
10 administer and distribute the estate according to its terms.
11 Whether issued in an informal or formal proceeding, an order of
12 appointment of a personal representative is authority to distrib-
13 ute apparently intestate property to the decedent's heirs if, at
14 the time of distribution, the personal representative is not
15 aware of a pending testacy proceeding, a proceeding to vacate an
16 order entered in an earlier testacy proceeding, a formal proceed-
17 ing questioning the personal representative's appointment or fit-
18 ness to continue, or a supervised administration proceeding.
19 Nothing in this section affects the personal representative's
20 duty to administer and distribute the estate in accordance with
21 the rights of a claimant, the surviving spouse, a minor or depen-
22 dent child, or a pretermitted child of the decedent as described
23 elsewhere in this act.

24 (3) Except as to a proceeding that does not survive the
25 decedent's death, a personal representative of a decedent domi-
26 ciled in this state at death has the same standing to sue and be

1 sued in the courts of this state and the courts of another
2 jurisdiction as the decedent had immediately prior to death.

3 (4) The personal representative shall keep each presumptive
4 distributee informed of the estate settlement. Until a
5 beneficiary's share is fully distributed, the personal represen-
6 tative shall annually, and upon completion of the estate settle-
7 ment, account to each beneficiary by supplying a statement of the
8 activities of the estate and of the personal representative,
9 specifying all receipts and disbursements and identifying prop-
10 erty belonging to the estate.

11 Sec. 3704. A personal representative shall proceed expedi-
12 tiously with the settlement and distribution of a decedent's
13 estate and, except as otherwise specified or ordered in regard to
14 a supervised personal representative, do so without adjudication,
15 order, or direction of the court. However, the personal repre-
16 sentative may invoke the court's jurisdiction in a proceeding
17 authorized by this act to resolve a question concerning the
18 estate or its administration.

19 Sec. 3705. (1) Not later than 30 days after a personal
20 representative's appointment or other time specified by court
21 rule, the personal representative, except a special personal rep-
22 resentative, shall give notice of the appointment to the
23 decedent's heirs and devisees, except those who have executed a
24 written waiver of notice, including, if there has been no formal
25 testacy proceeding and if the personal representative is
26 appointed on the assumption that the decedent died intestate, the
27 devisees in a will mentioned in the application for appointment

1 of a personal representative. The personal representative shall
2 give the notice by personal service or by ordinary first-class
3 mail to each of the heirs and devisees whose address is reason-
4 ably available to the personal representative. However, the per-
5 sonal representative is not required to notify a person who was
6 adjudicated in a prior formal testacy proceeding to have no
7 interest in the estate. The notice required under this section
8 shall be in a form approved by the supreme court and shall
9 include all of the following information:

10 (a) That the court will not supervise the personal
11 representative. This statement shall not be included if the
12 appointment is made in a supervised proceeding under part 5 of
13 this article.

14 (b) That, unless a person files a written objection to the
15 appointment of the person named as personal representative in the
16 notice or files a demand that bond or higher bond be posted, the
17 person named in the notice is the personal representative without
18 bond or with bond in the amount shown in the notice. This state-
19 ment shall not be included if the personal representative is
20 appointed in a formal appointment proceeding.

21 (c) The name and address of the person appointed as the
22 estate's personal representative.

23 (d) That, during the course of administering the estate, the
24 personal representative must provide all interested persons with
25 all of the following:

26 (i) A copy of the petition for the personal representative's
27 appointment and a copy of the will, if any, with the notice.

1 (ii) A copy of the inventory.

2 (iii) A copy of the settlement petition or of the closing
3 statement.

4 (e) That an interested party may petition the court for a
5 court hearing on any matter at any time during the estate's
6 administration.

7 (f) That federal and Michigan estate taxes, if any, must be
8 paid within 9 months after the date of the decedent's death, or
9 another time period specified by law, to avoid penalties.

10 (g) That, if the estate is not settled within 12 months
11 after the personal representative's appointment, within 30 days
12 after the anniversary of the appointment, the personal represen-
13 tative must file with the court and send to each interested
14 person a notice that the estate remains under administration and
15 must specify the reason for the continuation of settlement
16 proceedings. If such a notice is not received, an interested
17 person may petition the court for a hearing on the necessity for
18 continued administration or for closure of the estate.

19 (h) The identity and location of the court where papers
20 relating to the estate are on file.

21 (2) The personal representative's failure to give the infor-
22 mation required by subsection (1) is a breach of the personal
23 representative's duty to the persons concerned, but does not
24 affect the validity of the personal representative's appointment,
25 powers, or other duties. A personal representative may inform
26 other persons of the appointment by delivery or ordinary
27 first-class mail.

1 (3) A personal representative shall also give notice that
2 includes the information described in subsection (1) to the
3 attorney general, public administration division, under any of
4 the following circumstances:

5 (a) It appears from the petition that the decedent died
6 intestate without leaving a known heir.

7 (b) In the administration of an intestate estate, it appears
8 that the decedent did not leave a known heir.

9 (c) In the administration of a testate estate, it appears
10 that devisees of the purported will would not be entitled to
11 share in the estate but for the terms of the will and that the
12 decedent died without leaving a known heir.

13 (4) If notice is given to the attorney general as prescribed
14 by subsection (3), the attorney general, representing the state,
15 has all the rights of an heir to be heard and to contest the
16 validity of a claim, the appointment of a personal representa-
17 tive, an action of the personal representative, an order, an
18 appointment, or an instrument purporting to be a decedent's con-
19 tract or will, and has all the rights granted or accruing to an
20 heir, representative, or creditor by a law relating to the set-
21 tlement of a testate or intestate estate in court, or by way of
22 rehearing or appeal.

23 Sec. 3706. (1) Within 3 months after appointment or other
24 time specified by court rule, a personal representative, who is
25 not a special personal representative or a successor to another
26 representative who has previously discharged this duty, shall
27 prepare an inventory of property owned by the decedent at the

1 time of death, listing it with reasonable detail, and indicating
2 as to each listed item, its fair market value as of the date of
3 the decedent's death, and the type and amount of an encumbrance
4 that may exist with reference to each listed item.

5 (2) The personal representative shall send a copy of the
6 inventory to all presumptive distributees and to all other inter-
7 ested persons who request it, and may also file the original of
8 the inventory with the court. The personal representative shall
9 submit to the court on a timely basis information necessary to
10 calculate the probate inventory fee.

11 Sec. 3707. The personal representative may employ a quali-
12 fied and disinterested appraiser to assist in ascertaining the
13 fair market value as of the date of the decedent's death of prop-
14 erty, the value of which may be subject to reasonable doubt.
15 Different persons may be employed to appraise different kinds of
16 property included in the estate. Each appraiser's name and
17 address shall be indicated on the inventory with the item or
18 items he or she appraised.

19 Sec. 3708. If property not included in the original inven-
20 tory comes to the knowledge of a personal representative or if
21 the personal representative learns that the value or description
22 indicated in the original inventory for an item is erroneous or
23 misleading, the personal representative shall make a supplemen-
24 tary inventory or appraisal showing the market value as of the
25 date of the decedent's death of the new item or the revised
26 market value or description, and showing the appraiser or other
27 data relied upon, if any. The personal representative shall

1 furnish copies or information of the supplementary inventory to
2 persons interested in the new information, and shall file it with
3 the court if the original inventory was filed or submit the
4 information contained in the supplemental inventory to the court
5 for recalculation of the probate inventory fee.

6 Sec. 3709. Except as otherwise provided by a decedent's
7 will, by this section, or by section 3108, a personal representa-
8 tive has a right to, and if necessary for purposes of administra-
9 tion, shall take possession or control of, the decedent's proper-
10 ty, except that real property or tangible personal property may
11 be left with or surrendered to the person presumptively entitled
12 to that property unless or until, in the personal
13 representative's judgment, possession of the property will be
14 necessary for purposes of administration. A personal
15 representative's request for delivery of property possessed by an
16 heir or devisee is conclusive evidence, in an action against the
17 heir or devisee for possession of that property, that the posses-
18 sion of the property by the personal representative is necessary
19 for purposes of administration. The personal representative
20 shall pay taxes on, and take all steps reasonably necessary for
21 the management, protection, and preservation of, the estate in
22 the representative's possession. The personal representative may
23 maintain an action to recover possession of, or to determine the
24 title to, property.

25 Sec. 3710. The property liable for the payment of unsecured
26 debts of a decedent includes all property transferred by the
27 decedent by any means that is in law void or voidable as against

1 the decedent's creditors, and subject to prior liens, the right
2 to recover this property, so far as necessary for the payment of
3 the decedent's unsecured debts, is exclusively in the personal
4 representative.

5 Sec. 3711. Until termination of the appointment, a personal
6 representative has the same power over the title to estate prop-
7 erty that an absolute owner would have, in trust, however, for
8 the benefit of a creditor or another interested in the estate.
9 This power may be exercised without notice, hearing, or court
10 order.

11 Sec. 3712. If the exercise or failure to exercise a power
12 concerning the estate is improper, the personal representative is
13 liable to an interested person for damage or loss resulting from
14 breach of fiduciary duty to the same extent as a trustee of an
15 express trust. The right of a purchaser and another person deal-
16 ing with a personal representative shall be determined as pro-
17 vided in sections 3713 and 3714.

18 Sec. 3713. A sale or encumbrance to the personal represen-
19 tative, the personal representative's spouse, agent, or attorney,
20 or a corporation or trust in which the personal representative
21 has a substantial beneficial interest, or a transaction that is
22 affected by a substantial conflict of interest on the part of the
23 personal representative, is voidable by an interested person
24 except a person who consents after fair disclosure, unless any of
25 the following are true:

26 (a) The will or a contract entered into by the decedent
27 expressly authorized the transaction.

1 (b) The transaction is approved by the court after notice to
2 interested persons.

3 (c) The transaction is otherwise permitted by statute.

4 Sec. 3714. (1) A person who in good faith either assists a
5 personal representative or deals with the personal representative
6 for value is protected as if the personal representative properly
7 exercised a power. The fact that a person knowingly deals with a
8 personal representative does not alone require the person to
9 inquire into the existence of a power or the propriety of its
10 exercise.

11 (2) Except for restrictions on powers of supervised personal
12 representatives that are endorsed on letters as provided in sec-
13 tion 3504, a provision in a will or court order purporting to
14 limit a personal representative's power is not effective except
15 as to a person with actual knowledge of the limit.

16 (3) A person is not bound to see to the proper application
17 of estate property paid or delivered to a personal
18 representative.

19 (4) The protection under this section extends to instances
20 in which a procedural irregularity or jurisdictional defect
21 occurs in a proceeding leading to the issuance of letters,
22 including a case in which the alleged decedent is found to be
23 alive. The protection under this section does not substitute for
24 the protection provided by a comparable provision of law relating
25 to a commercial transaction or a law simplifying a transfer of
26 securities by a fiduciary. Nothing in this section discharges a

1 lien for transfer taxes that may affect title to estate
2 property.

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

8 (a) Retain property owned by the decedent pending distribu-
9 tion or liquidation including property in which the personal rep-
10 resentative is personally interested or that is otherwise
11 improper for trust investment.

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

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

25 (i) Execute and deliver a deed of conveyance for cash pay-
26 ment of the amount remaining due or for the purchaser's note for
27 the amount remaining due secured by a mortgage on the land.

1 (ii) Deliver a deed in escrow with directions that the
2 proceeds, when paid in accordance with the escrow agreement, be
3 paid to the decedent's successors, as designated in the escrow
4 agreement.

5 (d) If, in the judgment of the personal representative, the
6 decedent would have wanted the pledge satisfied under the circum-
7 stances, satisfy a written charitable pledge of the decedent
8 irrespective of whether the pledge constitutes a binding obliga-
9 tion of the decedent or is properly presented as a claim.

10 (e) If money is not needed to meet a debt or expenses cur-
11 rently payable and is not immediately distributable, deposit or
12 invest liquid assets of the estate, including money received from
13 the sale of other property in accordance with the Michigan pru-
14 dent investor rule.

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

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

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

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

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

7 (k) Abandon property when, in the opinion of the personal
8 representative, it is valueless, or is so encumbered or in such a
9 condition as to be of no benefit to the estate.

10 (l) Vote stocks or another security in person or by general
11 or limited proxy.

12 (m) Pay a call, assessment, or another amount chargeable or
13 accruing against or on account of a security, unless barred by a
14 provision relating to claims.

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

19 (o) Insure the estate property against damage, loss, and
20 liability and insure the personal representative against liabil-
21 ity as to third persons.

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

25 (q) Effect a fair and reasonable compromise with a debtor or
26 obligor, or extend, renew, or in any manner modify the terms of
27 an obligation owing to the estate. If the personal

1 representative holds a mortgage, pledge, or other lien upon
2 another person's property, the personal representative may, in
3 lieu of foreclosure, accept a conveyance or transfer of encum-
4 bered property from the property's owner in satisfaction of the
5 indebtedness secured by lien.

6 (r) Pay a tax, an assessment, the personal representative's
7 compensation, or another expense incident to the estate's
8 administration.

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

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

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

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

25 (w) Prosecute or defend a claim or proceeding in any juris-
26 diction for the protection of the estate and of the personal

1 representative in the performance of the personal
2 representative's duties.

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

6 (y) Continue a business or venture in which the decedent was
7 engaged at the time of death as a sole proprietor or a general
8 partner, including continuation as a general partner by a per-
9 sonal representative that is a corporation in any of the follow-
10 ing manners:

11 (i) In the same business form for a period of not more than
12 4 months after the date of appointment of a general personal rep-
13 resentative if continuation is a reasonable means of preserving
14 the value of the business, including goodwill.

15 (ii) In the same business form for an additional period of
16 time that may be approved by court order in a formal proceeding
17 to which the persons interested in the estate are parties.

18 (iii) Throughout the period of administration if the per-
19 sonal representative incorporates or converts the business to a
20 limited liability company and if none of the probable distrib-
21 utees of the business who are competent adults object to its
22 incorporation or conversion and its retention in the estate.

23 (z) Change the form of a business or venture in which the
24 decedent was engaged at the time of death through incorporation
25 or formation as a limited liability company.

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

4 (bb) Respond to an environmental concern or hazard affecting
5 estate property as provided in section 3716.

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

8 (dd) Make tax elections that are appropriate in order to
9 carry out the decedent's estate planning objectives and to reduce
10 the overall burden of taxation, both in the present and in the
11 future. This authority includes, but is not limited to, all of
12 the following:

13 (i) Electing to take expenses as estate tax or income tax
14 deductions.

15 (ii) Electing to allocate the exemption from the tax on gen-
16 eration skipping transfers among transfers subject to estate or
17 gift tax.

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

20 (ee) Divide portions of the estate, including portions to be
21 allocated into trust, into 2 or more separate portions or trusts
22 with substantially identical terms and conditions, and allocate
23 property between them, in order to simplify administration for
24 generation skipping transfer tax purposes, to segregate property
25 for management purposes, or to meet another estate or trust
26 objective.

1 Sec. 3716. A successor personal representative has the same
2 power and duty as the original personal representative to
3 complete the administration and distribution of the estate, as
4 expeditiously as possible, but the successor personal representa-
5 tive shall not exercise a power expressly made personal to the
6 personal representative named in the will.

7 Sec. 3717. If 2 or more persons are appointed personal cor-
8 epresentatives and unless the will provides otherwise, the con-
9 currence of all is required on an act connected with the estate's
10 administration or distribution. This restriction does not apply
11 if a personal corepresentative receives and receipts for property
12 due the estate, if the concurrence of all cannot readily be
13 obtained in the time reasonably available for emergency action
14 necessary to preserve the estate, or if a personal corepresenta-
15 tive has been delegated to act for the other. If actually
16 unaware that another also has been appointed to serve or if
17 advised by the personal representative with whom the person deals
18 that 1 personal representative alone has authority to act for a
19 reason mentioned in this section, a person dealing with a per-
20 sonal corepresentative is as fully protected as if the personal
21 corepresentative with whom the person deals is the sole personal
22 representative.

23 Sec. 3718. Unless the will provides otherwise, each power
24 exercisable by personal corepresentatives may be exercised by the
25 1 or more remaining personal corepresentatives after the appoint-
26 ment of 1 or more is terminated. Unless the will provides
27 otherwise, if 1 of 2 or more persons nominated as personal

1 corepresentatives is not appointed, those or the 1 appointed may
2 exercise all the powers incident to the office.

3 Sec. 3719. A personal representative is entitled to reason-
4 able compensation for services performed. If a will provides for
5 the personal representative's compensation and there is no con-
6 tract with the decedent regarding compensation, the personal rep-
7 resentative may renounce the provision before qualifying and be
8 entitled to reasonable compensation. A personal representative
9 also may renounce the right to all or a part of the
10 compensation. A written renunciation of fee may be filed with
11 the court and shall be served on all affected interested
12 persons.

13 Sec. 3720. If a personal representative or person nominated
14 as personal representative defends or prosecutes a proceeding in
15 good faith, whether successful or not, the personal representa-
16 tive is entitled to receive from the estate necessary expenses
17 and disbursements including reasonable attorney fees incurred.

18 Sec. 3721. After notice to all interested persons, on peti-
19 tion of an interested person, or on appropriate motion if admin-
20 istration is supervised, the court may review the propriety of
21 employment of a person by a personal representative, including,
22 but not limited to, an attorney, accountant, investment advisor,
23 or other specialized agent or assistant, the reasonableness of
24 such a person's compensation, or the reasonableness of the com-
25 pensation determined by the personal representative for the per-
26 sonal representative's own services. A person who receives
27 excessive compensation from an estate for services rendered may

1 be ordered to make an appropriate refund. The determination and
2 payment of compensation for the personal representative or a
3 person employed by the personal representative is also subject to
4 applicable court rules.

5 Sec. 3722. (1) In response to an environmental concern or
6 hazard, a personal representative may do any of the following:

7 (a) Inspect property or the operation of a business activity
8 on property held by the personal representative, including prop-
9 erty held in or operated by a sole proprietorship, partnership,
10 corporation, or limited liability company or any other type of
11 entity, for the purpose of determining compliance with environ-
12 mental law affecting the property and to respond to an actual or
13 threatened violation of an environmental law affecting property
14 held by the personal representative.

15 (b) Take action necessary to prevent, abate, or otherwise
16 remedy an actual or threatened violation of an environmental law
17 affecting property held by the personal representative, either
18 before or after a governmental body initiates an enforcement
19 action.

20 (c) Settle or compromise at any time a claim against the
21 estate that a governmental body or private party may assert
22 involving the alleged violation of an environmental law affecting
23 property held in the trust or estate.

24 (d) Disclaim a power granted by a document, statute, or rule
25 of law that, in the sole discretion of the personal representa-
26 tive, may cause the personal representative to incur personal
27 liability under an environmental law.

1 (e) Decline to serve or resign as a personal representative
2 if the personal representative reasonably believes that there is
3 or may be a conflict of interest between it in its fiduciary
4 capacity and in its individual capacity because of a potential
5 claim or liability that may be asserted against the personal rep-
6 resentative on the estate's behalf because of the type or condi-
7 tion of property held in the estate.

8 (f) Charge the cost of an inspection, review, abatement,
9 response, cleanup, settlement of claim, or remedial action autho-
10 rized by this section against the income or principal of the
11 estate.

12 (2) A personal representative is not personally liable to a
13 beneficiary or other party for a decrease in value of estate
14 property by reason of the personal representative's compliance
15 with an environmental law, specifically including a reporting
16 requirement under that law. The personal representative's accep-
17 tance of property or failure to inspect property or a business
18 operation does not create an inference that there is or may be
19 liability under an environmental law with respect to the property
20 or business operation. The authority granted by this section is
21 solely to facilitate the administration and protection of estate
22 property and is not to impose greater responsibility or liability
23 on the personal representative than imposed by law absent this
24 section.

25 PART 8

CREDITORS' CLAIMS

1
2 Sec. 3801. (1) Unless notice has already been given, upon
3 appointment a personal representative shall publish, and a spe-
4 cial personal representative may publish, a notice as provided by
5 supreme court rule notifying estate creditors to present their
6 claims within 4 months after the date of the notice's publication
7 or be forever barred. A personal representative who has pub-
8 lished notice shall also send, within the time prescribed in sub-
9 section (2), a copy of the notice or a similar notice to each
10 estate creditor whom the personal representative knows at the
11 time of publication or during the 4 months following publication
12 and to the trustee of a trust described in section 7501(a) as to
13 which the decedent is settlor. For purposes of this section, the
14 personal representative knows a creditor of the decedent if the
15 personal representative has actual notice of the creditor or can
16 reasonably ascertain the creditor's existence.

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

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

21 (b) If the personal representative first knows of an estate
22 creditor less than 1 month before the expiration of the time
23 limit in subdivision (a), within 1 month after the personal rep-
24 resentative first knows of the creditor.

25 (3) If the personal representative or the attorney for the
26 estate in good faith believes that notice to a creditor of the
27 estate is or may be required by this section, and if the personal

1 representative gives notice based on that belief, neither the
2 personal representative nor the attorney is liable to any person
3 for having given notice.

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

11 Sec. 3802. (1) Unless an estate is insolvent, the personal
12 representative, with the consent of all interested parties whose
13 interests would be affected, may waive a statute of limitations
14 defense available to the estate. If a statute of limitations
15 defense is not waived, a claim that was barred by a statute of
16 limitations at the time of the decedent's death shall not be
17 allowed or paid.

18 (2) The running of a statute of limitations measured from an
19 event other than death or publication for a claim against a dece-
20 dent is suspended during the 4 months following the decedent's
21 death but resumes after that time as to a claim not barred under
22 this part.

23 (3) For purposes of a statute of limitations, the proper
24 presentation of a claim under section 3804 is equivalent to com-
25 mencement of a proceeding on the claim.

26 Sec. 3803. (1) A claim against a decedent's estate that
27 arose before the decedent's death, including a claim of the state

1 or a subdivision of the state, whether due or to become due,
2 absolute or contingent, liquidated or unliquidated, based on con-
3 tract, tort, or another legal basis, if not barred earlier by
4 another statute of limitations, is barred against the estate, the
5 personal representative, and the decedent's heirs and devisees,
6 unless presented within 1 of the following time limits:

7 (a) If notice is given in compliance with section 3801(2),
8 within 4 months after the date of the publication of notice to
9 creditors, except that a claim barred by a statute at the
10 decedent's domicile before the publication for claims in this
11 state is also barred in this state.

12 (b) In the case of a creditor whom the personal representa-
13 tive knows at the time of publication or during the 4 months fol-
14 lowing publication, within 1 month after the subsequent sending
15 of notice or 4 months after the date of the publication of notice
16 to creditors, whichever is later.

17 (c) If the notice requirements of section 3801 have not been
18 met, within 3 years after the decedent's death.

19 (2) A claim against the estate that arises at or after the
20 decedent's death, including a claim of the state or a subdivision
21 of the state, whether due or to become due, absolute or contin-
22 gent, liquidated or unliquidated, based on contract, tort, or
23 another legal basis, is barred against the estate, the personal
24 representative, and the decedent's heirs and devisees, unless
25 presented within 1 of the following time limits:

1 (a) For a claim based on a contract with the personal
2 representative, within 4 months after performance by the personal
3 representative is due.

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

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

9 (a) A proceeding to enforce a mortgage, pledge, or other
10 lien on estate property.

11 (b) A proceeding to establish the decedent's or the personal
12 representative's liability for which the decedent or the personal
13 representative is protected by liability insurance to the insur-
14 ance protection limits only.

15 (c) Collection of compensation for services rendered and
16 reimbursement of expenses advanced by the personal representative
17 or by an attorney, auditor, investment adviser, or other special-
18 ized agent or assistant for the personal representative of the
19 estate.

20 Sec. 3804. (1) A claimant shall present a claim against a
21 decedent's estate in either of the following ways:

22 (a) By delivering or mailing a written statement to the per-
23 sonal representative or proposed personal representative indicat-
24 ing the claim's basis, the claimant's name and address, and the
25 amount claimed, or by filing with the court a written statement
26 of the claim in the form prescribed by supreme court rule and
27 delivering or mailing a copy of the statement to the personal

1 representative or proposed personal representative. The claim
2 shall be considered presented on receipt of the claim statement
3 by the personal representative or the filing of the claim state-
4 ment with the court, whichever occurs first. If a claim is not
5 yet due, the statement shall state the date when it will become
6 due. If the claim is contingent or unliquidated, the statement
7 shall state the nature of the uncertainty. If the claim is
8 secured, the statement shall describe the security. Failure to
9 describe correctly the security, the nature of any uncertainty,
10 or the due date of a claim not yet due does not invalidate the
11 claim's presentation.

12 (b) The claimant may commence a proceeding to obtain payment
13 of a claim against the estate in a court in which the personal
14 representative may be subjected to jurisdiction. The commence-
15 ment of the proceeding shall occur within the time limit for
16 presenting the claim. The presentation of a claim is not
17 required in regard to a matter claimed in a proceeding against
18 the decedent that is pending at the time of death.

19 (2) Except as otherwise provided in this subsection, if a
20 claim is presented under subsection (1)(a), a proceeding on the
21 claim shall not be commenced more than 63 days after the personal
22 representative delivers or mails a notice of disallowance to the
23 claimant. For a claim that is not presently due or that is con-
24 tingent or unliquidated, the personal representative may consent
25 to an extension of the 63-day period or, to avoid injustice, the
26 court, on petition, may order an extension of the 63-day period,
27 but an extension shall not be consented to or ordered if the

1 extension would run beyond the applicable statute of
2 limitations.

3 (3) A claim by the personal representative against the
4 estate shall be in the form prescribed by supreme court rule.
5 The personal representative shall give a copy of the claim to all
6 interested persons not later than 7 days after the time for the
7 claim's original presentation expires. The claim shall contain a
8 warning that the personal representative's claim will be allowed
9 unless a notice of objection is delivered or mailed to the per-
10 sonal representative within 63 days after the time for the
11 claim's original presentation expires. This subsection does not
12 apply to a claim for compensation for services rendered or for
13 reimbursement of expenses advanced by the personal
14 representative.

15 Sec. 3805. (1) If the applicable estate property is insuf-
16 ficient to pay all claims in full, the personal representative
17 shall make payment in the following order of priority:

- 18 (a) Costs and expenses of administration.
19 (b) Reasonable funeral and burial expenses.
20 (c) Debts and taxes with priority under federal law.
21 (d) Reasonable and necessary medical and hospital expenses
22 of the decedent's last illness, including a compensation of per-
23 sons attending the decedent.
24 (e) Debts and taxes with priority under other laws of this
25 state.
26 (f) All other claims.

1 (2) A preference shall not be given in the payment of a
2 claim over another claim of the same class, and a claim due and
3 payable is not entitled to a preference over a claim not due.

4 Sec. 3806. (1) If a claim is presented in the manner
5 described in section 3804 and within the time limit prescribed in
6 section 3803, the personal representative may deliver or mail a
7 notice to a claimant stating that the claim has been disallowed
8 in whole or in part. If, after allowing or disallowing a claim,
9 the personal representative changes a decision concerning the
10 claim, the personal representative shall notify the claimant.
11 The personal representative shall not change a decision disallow-
12 ing a claim if the time for the claimant to file a petition for
13 allowance passes or if the time to commence a proceeding on the
14 claim expires and the claim is barred. A claim that the personal
15 representative disallows in whole or in part is barred to the
16 extent disallowed unless the claimant files a petition for allow-
17 ance in the court or commences a proceeding against the personal
18 representative not later than 63 days after the mailing of the
19 notice of disallowance or partial allowance if the notice warns
20 the claimant of the impending bar.

21 (2) The personal representative's failure to deliver or mail
22 to a claimant notice of action on the claim within 63 days after
23 the time for the claim's presentation expires or within 63 days
24 after the personal representative's appointment, whichever is
25 later, constitutes a notice of allowance. An interested person's
26 failure to deliver or mail to the personal representative notice
27 of an objection to a personal representative's claim within 63

1 days after the time the claim's original presentation expires
2 constitutes a notice of allowance.

3 (3) After allowing or disallowing a claim, the personal rep-
4 resentative may change the allowance or disallowance as provided
5 in this subsection. Before payment of a claim, the personal rep-
6 resentative may change the allowance to a disallowance in whole
7 or in part, but not after allowance by a court order or judgment
8 or an order directing the claim's payment. The personal repre-
9 sentative shall notify the claimant of the change to disallow-
10 ance, and the disallowed claim is then subject to bar as provided
11 in subsection (1). The personal representative may change a dis-
12 allowance to an allowance, in whole or in part, until it is
13 barred under subsection (1). After a claim is barred, it may be
14 allowed and paid only if the estate is solvent and all successors
15 whose interests would be affected consent.

16 (4) Upon the personal representative's or a claimant's peti-
17 tion, the court may allow in whole or in part a claim properly
18 presented in due time and not barred by subsection (1). Upon an
19 interested person's petition concerning a personal
20 representative's claim, the court may allow in whole or in part
21 the personal representative's claim properly presented in due
22 time and not previously allowed under subsection (1).

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

26 (6) Unless otherwise provided in a judgment in another court
27 entered against the personal representative, an allowed claim

1 bears interest at a rate determined under section 6013 of the
2 revised judicature act of 1961, Act No. 236 of the Public Acts
3 of 1961, being section 600.6013 of the Michigan Compiled Laws,
4 for the period commencing 63 days after the time for the claim's
5 original presentation expires unless based on a contract provid-
6 ing for interest, in which case the claim bears interest in
7 accordance with the contract.

8 Sec. 3807. (1) Upon the expiration of 4 months after the
9 publication date of the notice to creditors, and after providing
10 for the homestead, family, and exempt property allowances, for
11 claims already presented that have not yet been allowed or whose
12 allowance has been appealed, and for unbarred claims that may yet
13 be presented, including costs and expenses of administration, the
14 personal representative shall pay the claims allowed against the
15 estate in the order of priority as provided in this act. A
16 claimant whose claim has been allowed, but not paid as provided
17 in this section, may petition the court to secure an order
18 directing the personal representative to pay the claim to the
19 extent that money of the estate is available for the payment.

20 (2) The personal representative may pay a claim that is not
21 barred at any time, with or without formal presentation, but is
22 individually liable to another claimant whose claim is allowed
23 and who is injured by the payment if either of the following
24 occurs:

25 (a) Payment is made before the expiration of the time limit
26 stated in subsection (1) and the personal representative fails to

1 require the payee to give adequate security for the refund of any
2 of the payment necessary to pay another claimant.

3 (b) Payment is made, due to the negligence or willful fault
4 of the personal representative, in a manner that deprives the
5 injured claimant of priority.

6 (3) If a claim is allowed, but the claimant's whereabouts
7 are unknown at the time the personal representative attempts to
8 pay the claim, upon petition by the personal representative and
9 after notice that the court considers advisable, the court may
10 disallow the claim. If the court disallows a claim under this
11 subsection, the claim is barred.

12 Sec. 3808. (1) Unless otherwise provided in the contract, a
13 personal representative is not individually liable on a contract
14 properly entered into in the personal representative's fiduciary
15 capacity in the course of administration of the estate unless the
16 personal representative fails to reveal his or her representative
17 capacity and to identify the estate in the contract.

18 (2) A personal representative is individually liable for an
19 obligation arising from ownership or control of the estate or for
20 a tort committed in the course of estate administration only if
21 the personal representative is personally at fault.

22 (3) A claim based on a contract entered into by a personal
23 representative in the personal representative's fiduciary capac-
24 ity, on an obligation arising from ownership or control of the
25 estate, or on a tort committed in the course of estate adminis-
26 tration may be asserted against the estate by proceeding against
27 the personal representative in the personal representative's

1 fiduciary capacity, whether or not the personal representative is
2 individually liable.

3 (4) An issue of liability between the estate and the per-
4 sonal representative individually may be determined in a proceed-
5 ing for accounting, surcharge, or indemnification or in another
6 appropriate proceeding.

7 Sec. 3809. A personal representative shall pay a secured
8 claim on the basis of the amount allowed if the creditor surren-
9 ders the security. Otherwise, the personal representative shall
10 pay on the basis of 1 of the following:

11 (a) If the creditor exhausts the security before receiving
12 payment, upon the amount of the claim allowed less the fair value
13 of the security.

14 (b) If the creditor does not have the right to exhaust the
15 security or has not done so, upon the amount of the claim allowed
16 less the value of the security determined by converting it into
17 money according to the terms of the agreement under which the
18 security was delivered to the creditor or by the creditor and
19 personal representative by agreement, arbitration, compromise, or
20 litigation.

21 Sec. 3810. (1) This section applies to a claim that will
22 become due at a future time, a contingent claim, and an unliqui-
23 dated claim.

24 (2) If a claim becomes due or certain before estate distri-
25 bution and if the claim has been allowed or established by a pro-
26 ceeding, the claim shall be paid in the same manner as a
27 presently due and absolute claim of the same class.

1 (3) For a claim not covered by subsection (2), the personal
2 representative or, on the personal representative's or claimant's
3 petition in a proceeding for the purpose, the court may provide
4 for payment in 1 of the following manners:

5 (a) If the claimant consents, the claimant may be paid the
6 claim's present or agreed value, taking any uncertainty into
7 account.

8 (b) Arrangement for future payment, or possible payment, on
9 the happening of a contingency or on liquidation may be made by
10 creating a trust, giving a mortgage, obtaining a bond or security
11 from a distributee, or otherwise.

12 Sec. 3811. In allowing a claim, the personal representative
13 may deduct a counterclaim that the estate has against the
14 claimant. In determining a claim against an estate, the court
15 shall reduce the amount allowed by the amount of a counterclaim
16 and, if counterclaims exceed the claim, render a judgment against
17 the claimant in the excess amount. A counterclaim, liquidated or
18 unliquidated, may arise from a transaction other than that upon
19 which the claim is based. A counterclaim may give rise to relief
20 exceeding in amount or different in kind from that sought in the
21 claim.

22 Sec. 3812. An execution shall not issue upon nor shall a
23 levy be made against estate property under a judgment against a
24 decedent or personal representative. This section shall not be
25 construed to prevent the enforcement of a mortgage, pledge, or
26 lien upon property in an appropriate proceeding.

1 Sec. 3813. If a claim against the estate is presented in
2 the manner provided in section 3804 and it appears to be in the
3 best interest of the estate, the personal representative may
4 settle the claim, whether due or not due, absolute or contingent,
5 liquidated or unliquidated.

6 Sec. 3814. If estate property is encumbered by mortgage,
7 pledge, lien, or other security interest and it appears to be in
8 the best interest of the estate, the personal representative may
9 pay the encumbrance or a part of the encumbrance, renew or extend
10 an obligation secured by the encumbrance, or convey or transfer
11 the property to the creditor in satisfaction of the lien, in
12 whole or in part, whether or not the encumbrance holder has
13 presented a claim. Payment of an encumbrance does not increase
14 the share of the distributee entitled to the encumbered property
15 unless the distributee is entitled to exoneration.

16 Sec. 3815. (1) Estate property being administered in this
17 state is subject to a claim, allowance, or charge existing or
18 established against the personal representative wherever
19 appointed.

20 (2) If the estate, either in this state or as a whole, is
21 insufficient to cover all family exemptions and allowances deter-
22 mined by the law of the decedent's domicile, prior charges, and
23 claims, after satisfaction of the exemptions, allowances, and
24 charges, each claimant whose claim has been allowed, either in
25 this state or elsewhere in administrations of which the personal
26 representative is aware, is entitled to receive payment of an
27 equal proportion of the claim. If a preference or security in

1 regard to a claim is allowed in another jurisdiction but not in
2 this state, the benefited creditor shall receive dividends from
3 local property only upon the balance of the claim after deducting
4 the amount of the benefit.

5 (3) If the family exemptions, allowances, prior charges, and
6 claims of the entire estate exceed the total value of the por-
7 tions of the estate being administered in separate states and if
8 this state is not the state of the decedent's last domicile, a
9 claim allowed in this state shall be paid from local property if
10 local property is adequate for the purpose, and after that pay-
11 ment, the balance of local property shall be transferred to the
12 domiciliary personal representative. If local property is not
13 sufficient to pay all claims allowed in this state, local prop-
14 erty shall be marshaled so that each claim allowed in this state
15 shall be paid its proportion as far as possible, after taking
16 into account all dividends on claims allowed in this state from
17 property in other jurisdictions.

18 PART 9

19 SPECIAL PROVISIONS RELATING TO DISTRIBUTION

20 Sec. 3901. In the absence of administration, the decedent's
21 heirs and devisees are entitled to the estate in accordance with
22 the terms of a probated will or the laws of intestate
23 succession. A devisee may establish title by the probated will
24 to devised property. An individual entitled to property by home-
25 stead allowance, exemption, or intestacy may establish title to
26 the property by proof of the decedent's ownership, the decedent's
27 death, and the individual's relationship to the decedent. A

1 successor takes subject to charges for administration, including
2 the creditors' claims and the surviving spouse's and dependent
3 children's allowances, and subject to the rights of others
4 resulting from abatement, retainer, advancement, or redemption.

5 Sec. 3902. (1) Except as provided in subsection (2) and
6 except as provided in connection with the share of the surviving
7 spouse who elects to take an elective share, distributees' shares
8 abate, without a preference or priority between real and personal
9 property, in the following order:

10 (a) Property not disposed of by the will.

11 (b) Residuary devises.

12 (c) General devises.

13 (d) Specific devises.

14 (2) For purposes of abatement, a general devise charged on
15 specific property is a specific devise to the extent of the value
16 of the property on which it is charged and, upon the failure or
17 insufficiency of the property on which the devise is charged, a
18 general devise to the extent of the failure or insufficiency.
19 Abatement within each classification is in proportion to the
20 amount of property each beneficiary would have received if full
21 distribution of the property had been made in accordance with the
22 terms of the will.

23 (3) If the will expresses a different order of abatement,
24 the will controls. If the testamentary plan or the devise's
25 express or implied purpose would be defeated by the order of
26 abatement stated in subsection (1), the distributees' shares

1 abate as found necessary to give effect to the testator's
2 intention.

3 (4) If the subject of a preferred devise is sold or used
4 incident to administration, abatement shall be achieved by appro-
5 priate adjustments in, or contribution from, other interests in
6 the remaining assets.

7 Sec. 3903. The amount of a successor's noncontingent
8 indebtedness to the estate if due, or its present value if not
9 due, shall be offset against the successor's interest. However,
10 the successor has the benefit of a defense that would be avail-
11 able to the successor in a direct proceeding for recovery of the
12 debt.

13 Sec. 3904. Unless a contrary intent is indicated by the
14 will, a general pecuniary devise bears interest at the legal rate
15 beginning 1 year after the first appointment of a personal repre-
16 sentative until payment.

17 Sec. 3905. In accordance with section 2518, a provision in
18 a will purporting to penalize an interested person for contesting
19 the will or instituting another proceeding relating to the estate
20 shall not be given effect if probable cause exists for institut-
21 ing a proceeding contesting the will or another proceeding relat-
22 ing to the estate.

23 Sec. 3906. (1) Unless the will indicates a contrary inten-
24 tion, the distributable property of a decedent's estate shall be
25 distributed in kind to the extent possible through application of
26 the following provisions:

1 (a) A specific devisee is entitled to distribution of the
2 property devised to him or her, and a spouse or child who selects
3 particular estate property as provided in section 2404 shall
4 receive the property selected.

5 (b) A homestead or family allowance, or devise of a stated
6 sum of money, may be satisfied in kind provided all of the fol-
7 lowing are true:

8 (i) The person entitled to the payment does not demand pay-
9 ment in cash.

10 (ii) The property distributed in kind is valued at fair
11 market value as of its distribution date.

12 (iii) A residuary devisee does not request that the property
13 in question remain a part of the estate residue.

14 (c) The residuary estate may be distributed in any equitable
15 manner.

16 (2) Property described in subsection (1)(b) shall be valued
17 in accordance with the following:

18 (a) A security regularly traded on recognized exchanges, if
19 distributed in kind, is valued at the price for the last sale of
20 like securities traded on the business day before distribution
21 or, if there was no sale on that day, at the median between
22 amounts bid and offered at the close of that day.

23 (b) Property consisting of money owed the decedent or the
24 estate by a solvent debtor as to which there is no known dispute
25 or defense is valued at the amount due with accrued interest or
26 discounted to the distribution date.

1 (c) Property that does not have a readily ascertainable
2 value is valued as of a date not more than 30 days before the
3 distribution date, if otherwise reasonable.

4 (d) For purposes of facilitating distribution, the personal
5 representative may ascertain property value as of the time of the
6 proposed distribution in any reasonable way, including the
7 employment of qualified appraisers, even if the property may have
8 been previously appraised.

9 Sec. 3907. (1) This section governs a distribution in kind
10 in satisfaction, wholly or partly, of a pecuniary bequest or
11 transfer in trust of a pecuniary amount.

12 (2) Whether a devise or transfer in trust is pecuniary in
13 character depends upon the testator's or settlor's intention.

14 (3) If the fiduciary elects to satisfy wholly or partly in
15 kind a pecuniary devise or transfer in trust of a pecuniary
16 amount, unless the governing instrument otherwise expressly pro-
17 vides, the property the fiduciary selects for that purpose shall
18 be valued at its value on the distribution date.

19 (4) If a will or a trust agreement requires the personal
20 representative or trustee to value the property the fiduciary
21 selects for distribution as of a date other than the distribution
22 date, unless the governing instrument otherwise expressly pro-
23 vides, the property selected to satisfy the pecuniary devise or
24 transfer in trust, together with any cash distributed, shall have
25 an aggregate value on the distribution date amounting to not less
26 than, and to the extent practicable to not more than, the amount

1 of the devise or transfer in trust as stated in, or determined
2 by, the formula stated in the governing instrument.

3 (5) As used in this section, "pecuniary bequest" and
4 "transfer in trust of a pecuniary amount" mean a devise in a will
5 or a transfer under a trust agreement to, or for the benefit of,
6 the testator's or settlor's spouse of a specific amount of money
7 which amount is either expressly stated in the instrument or
8 determinable by means of a formula that is stated in the
9 instrument.

10 Sec. 3908. After the probable charges against the estate
11 are known, the personal representative may mail or deliver a pro-
12 posal for distribution to all persons who have a right to object
13 to the proposed distribution. The right of a distributee to
14 object to the proposed distribution on the basis of the kind or
15 value of property the distributee is to receive, if not waived
16 earlier in writing, terminates if the distributee fails to object
17 in a writing received by the personal representative within 30
18 days after mailing or delivery of the proposal.

19 Sec. 3909. If distribution in kind is made, the personal
20 representative shall execute an instrument or deed of distribu-
21 tion assigning, transferring, or releasing the property to the
22 distributee as evidence of the distributee's title to the
23 property.

24 Sec. 3910. Proof that a distributee has received an instru-
25 ment or deed of distribution of property in kind, or payment in
26 distribution, from a personal representative is conclusive
27 evidence that the distributee has succeeded to the interest of

1 the estate in the distributed property, as against all persons
2 interested in the estate, except that the personal representative
3 may recover the property or its value if the distribution was
4 improper.

5 Sec. 3911. Unless the distribution or payment no longer can
6 be questioned because of adjudication, estoppel, or limitation, a
7 distributee of property that is improperly distributed or paid,
8 or a claimant that is improperly paid, is liable to return the
9 property improperly received and its income since distribution if
10 the recipient has the property. If the recipient does not have
11 the property, then the recipient is liable to return the value as
12 of the disposition date of the property improperly received and
13 its income and gain received by the recipient.

14 Sec. 3912. (1) If property distributed in kind or a secur-
15 ity interest in that property is acquired for value by a pur-
16 chaser from or lender to a distributee who has received an
17 instrument or deed of distribution from the personal representa-
18 tive, or is so acquired by a purchaser from or lender to a trans-
19 feree from such a distributee, the purchaser or lender takes
20 title free of rights of an interested person in the estate and
21 incurs no personal liability to the estate, or to an interested
22 person, whether or not the distribution was proper or supported
23 by court order or the personal representative's authority was
24 terminated before execution of the instrument or deed.

25 (2) This section protects a purchaser from or lender to a
26 distributee who, as personal representative, has executed a deed
27 of distribution to himself or herself, as well as a purchaser

1 from or lender to another distributee or his or her transferee.
2 To be protected under this section, a purchaser or lender does
3 not need to inquire whether a personal representative acted prop-
4 erly making the distribution in kind, even if the personal repre-
5 sentative and the distributee are the same person, or whether the
6 authority of the personal representative had terminated before
7 the distribution.

8 (3) A recorded instrument described in this section on which
9 an exemption listed in section 5 of Act No. 134 of the Public
10 Acts of 1966, being section 207.505 of the Michigan Compiled
11 Laws, or section 6 of the state real estate transfer tax act, Act
12 No. 330 of the Public Acts of 1993, being section 207.526 of the
13 Michigan Compiled Laws, is not noted is prima facie evidence that
14 the transfer is made for value. Notwithstanding this section, a
15 purchaser or lender takes title free of the lien for Michigan
16 estate tax only to the extent provided by section 43 of the
17 Michigan estate tax act, Act No. 188 of the Public Acts of 1899,
18 being section 205.243 of the Michigan Compiled Laws.

19 Sec. 3913. If 2 or more heirs or devisees are entitled to
20 distribution of an undivided interest in estate property, the
21 personal representative or 1 or more of the heirs or devisees may
22 petition the court to make partition before the formal or infor-
23 mal closing of the estate. After notice to the interested heirs
24 or devisees, the court shall partition the property in the same
25 manner as provided by law for a civil action of partition. The
26 court may direct the personal representative to sell property

1 that cannot be partitioned without prejudice to the owners and
2 that cannot conveniently be allotted to 1 party.

3 Sec. 3914. (1) Subject to the rights of creditors and
4 taxing authorities, competent successors may agree among them-
5 selves to alter the interests, shares, or amounts to which they
6 are entitled under the will of the decedent, or under the laws of
7 intestacy, in any way that they provide in a written agreement
8 executed by all who are affected by its provisions. If there is,
9 or may be, an interested party to the agreement who is a minor or
10 incapacitated individual or if there is an inalienable estate or
11 future contingent interest, after notice to the representative of
12 the individual or interest as provided by supreme court rule, the
13 probate court having jurisdiction of the matter may, if the
14 agreement is made in good faith and appears just and reasonable
15 for the individual or interest, direct the representative of the
16 individual or interest to sign and enter into the agreement. The
17 personal representative shall abide by the agreement's terms
18 subject to the personal representative's obligation to administer
19 the estate for the benefit of creditors, to pay all taxes and
20 costs of administration, and to carry out the fiduciary office's
21 responsibilities for the benefit of a successor of the decedent
22 who is not a party.

23 (2) A personal representative of a decedent's estate is not
24 required to see to the performance of a trust if the trustee of
25 the trust is another person who is willing to accept the trust.
26 Accordingly, a trustee of a testamentary trust is a successor for

1 the purposes of this section. Nothing in this section relieves a
2 trustee of a duty owed to a trust beneficiary.

3 Sec. 3915. (1) Before distributing to a trustee, the per-
4 sonal representative may require that the trust be registered if
5 the state in which it is to be administered provides for regis-
6 tration and that the trustee inform the beneficiaries as provided
7 in section 7303.

8 (2) If the trust instrument does not excuse the trustee from
9 giving bond, the personal representative may petition the appro-
10 priate court to require that the trustee post bond if the per-
11 sonal representative apprehends that distribution might jeopar-
12 dize the interests of persons who are not able to protect them-
13 selves, and the personal representative may withhold distribution
14 until the court acts.

15 (3) An inference of negligence on the personal
16 representative's part shall not be drawn from failure to exercise
17 the authority conferred by subsections (1) and (2).

18 (4) If it becomes necessary or convenient in the settlement
19 or distribution of a decedent's estate to appoint a trustee to
20 take charge of or invest and distribute a portion of the estate,
21 the court may appoint a trustee upon the application of the per-
22 sonal representative or another interested person.

23 Sec. 3916. (1) In exchange for suitable receipts and fol-
24 lowing a court order if the administration is supervised, a fidu-
25 ciary making final distribution shall deposit with the county
26 treasurer the money or personal property the fiduciary has that
27 belongs to any of the following:

1 (a) An heir, devisee, trust beneficiary, or claimant whose
2 whereabouts the fiduciary cannot ascertain after diligent
3 inquiry.

4 (b) An heir, devisee, trust beneficiary, or claimant who
5 declines to accept the money awarded to the person.

6 (c) A person if the right of the person is the subject of
7 appeal from an order of the court.

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

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

22 (4) The county treasurer shall receive and safely keep money
23 deposited under this section in a separate fund and keep a sepa-
24 rate account for each distributee. The county treasurer shall
25 deposit the money in a county depository at the current rate of
26 interest, shall pay out from the fund upon the order of the
27 court, and shall turn over any surplus left in the treasurer's

1 hands at the termination of the treasurer's term of office to the
2 treasurer's successor.

3 Sec. 3917. (1) At the commencement of each term of office
4 and before receiving money under section 3916, the county trea-
5 surer shall give a bond running to the judge and the judge's suc-
6 cessor in office, with 2 or more sufficient sureties approved by
7 the court. The bond shall be in the amount the judge directs,
8 conditioned that the county treasurer and his or her deputy shall
9 do all of the following:

10 (a) Pay out the money described in section 3916 only on
11 court order, whether the money was turned over to the treasurer
12 by his or her predecessor in office, or deposited with the trea-
13 surer during the term that he or she is then commencing or during
14 a prior term of office.

15 (b) At the end of each year, render to the court, and to the
16 county board of commissioners, a true account of that money.

17 (c) Deliver over to his or her successor in office the money
18 deposited under section 3916, and books, papers, and other
19 records relating to that money.

20 (2) The court may at any time require the county treasurer
21 to give new or additional bond, as the court considers necessary,
22 conditioned as provided in subsection (1). A bond deposited by
23 the county treasurer and his or her sureties on the bond are dis-
24 charged from further liability under the bond upon the filing of
25 a new bond by a successor to the office who is named on the new
26 bond, unless the county treasurer fails to account for any money

1 as required in this article, or fails to turn that money over to
2 the successor in office.

3 (3) For the care of the fund described in section 3916, the
4 county treasurer may take 1% from the different amounts paid out
5 under court order unless the amount paid out to a single individ-
6 ual exceeds \$1,000.00, in which case the county treasurer shall
7 take \$10.00 plus 1/2 of 1% of the excess of the amount over
8 \$1,000.00.

9 (4) A person entitled to the money may apply to the court
10 having jurisdiction for an order directing the county treasurer
11 to pay over money that is deposited under section 3916. Upon
12 receiving the application, the court shall make an order as to
13 notice of the hearing as the court considers proper. Upon satis-
14 factory proof being made to the court of the claimant's right to
15 the money, the court shall order the county treasurer to pay the
16 money to the claimant.

17 (5) If a person does not make a claim before the expiration
18 of 3 years after the deposit date, the money that would be dis-
19 tributed under this section to the person, if alive, less
20 expenses, shall be distributed by court order to each person who
21 would be entitled to the money if the person were deceased, and
22 the person is forever barred from all claim or right to the
23 money.

24 (6) An action on the bond given by the county treasurer
25 under this section may be started in the name of the state, for
26 the use and benefit of anyone interested, in the same manner and
27 with the same effect as allowed by law upon fiduciary bonds.

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

5 (2) Unless contrary to an express provision in the will, the
6 personal representative may discharge the personal
7 representative's obligation to distribute to a minor or individ-
8 ual under other disability as authorized by section 5101 or
9 another statute. If the personal representative knows that a
10 conservator or a guardian for a developmentally disabled
11 individual's estate has been appointed, or that a proceeding for
12 appointment of such a conservator or guardian is pending, under
13 the mental health code, Act No. 258 of the Public Acts of 1974,
14 being sections 330.1001 to 333.2106 of the Michigan Compiled
15 Laws, the personal representative is authorized to distribute
16 only to the conservator or guardian.

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

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

21 (b) An attorney in fact who has authority under a power of
22 attorney to receive property for that person.

23 (c) The spouse, parent, or other close relative with whom
24 the individual under disability resides if the distribution is in
25 amounts not exceeding \$10,000.00 a year, or property not exceed-
26 ing \$10,000.00 in value, unless the court authorizes a larger
27 amount or greater value.

1 (4) A person receiving money or property for a disabled
2 individual shall use the money or property for that individual's
3 support and shall not pay themselves except by way of reimburse-
4 ment for out-of-pocket expenses for goods and services necessary
5 for the disabled person's support. Excess money shall be pre-
6 served for the disabled person's future support. The personal
7 representative is not responsible for the proper use of money in
8 compliance with this section.

9 Sec. 3919. (1) If there is a personal representative of the
10 decedent's domicile willing to receive it, a nonresident
11 decedent's estate being administered by a personal representative
12 appointed in this state shall be distributed to the domiciliary
13 personal representative for the benefit of the decedent's succes-
14 sors unless any of the following apply:

15 (a) By virtue of the decedent's will, if any, and applicable
16 choice of law rules, the successors are identified under the law
17 of this state without reference to the law of the decedent's
18 domicile.

19 (b) After reasonable inquiry, this state's personal repre-
20 sentative is unaware of the existence or identity of a domicili-
21 ary personal representative.

22 (c) The court orders otherwise in a proceeding for a closing
23 order under section 31001 or incident to the closing of a super-
24 vised administration.

25 (2) If subsection (1) is not applicable to an estate, dis-
26 tribution of the decedent's estate shall be made in accordance
27 with the other provisions of this article.

1 Sec. 3920. (1) An estate, inheritance, or other death tax
2 levied or assessed under the laws of this or another state,
3 political subdivision, or country or under a United States reve-
4 nue act concerning property included in the gross estate under
5 the law, including an increase in the estate tax due to an excess
6 retirement accumulation under section 4980A of the internal reve-
7 nue code of 1986, 26 U.S.C. 4980A, but excluding taxes for which
8 sources of payment are provided within sections 2206, 2207,
9 2207A, 2207B, and 2603 of the internal revenue code of 1986, 26
10 U.S.C. 2206, 2207, 2207A, 2207B, and 2603, shall be apportioned
11 in the following manner:

12 (a) If a part of the property concerning which the tax is
13 levied or assessed passed under a will, then, unless the govern-
14 ing instrument directs otherwise, the tax shall be charged as
15 follows:

16 (i) If any portion of such property passed under the will as
17 a devise to be satisfied by reference to a specific property or
18 type of property, fund, money, or other nonresiduary form, the
19 net amount of the tax attributable to that portion shall be
20 charged to and paid from the residuary estate without requiring
21 contribution from a person receiving or benefiting from the non-
22 residuary interest and without apportionment among the residuary
23 beneficiaries. If the residuary estate is insufficient to pay
24 the tax attributable to all nonresiduary interests, the balance
25 of the tax shall be apportioned pro rata among the recipients of
26 those interests generating the tax based on the value of those
27 interests.

1 (ii) The net amount of a tax attributable to the residuary
2 estate shall be apportioned pro rata among the residuary benefi-
3 ciaries based on the value of the residuary interests generating
4 the tax. If a residuary interest is a temporary interest, the
5 tax attributable to it shall be charged to principal and not
6 apportioned between temporary and remainder interests.

7 (b) If a part of the property concerning which the tax is
8 levied or assessed is held under the terms of an inter vivos
9 trust, then, unless the governing instrument directs otherwise,
10 the tax shall be charged as follows:

11 (i) If a portion of the trust is directed to pass or to be
12 held in further trust by reference to a specific property or type
13 of property, fund, money, or other nonresiduary form, the net
14 amount of the tax attributable to that portion shall be charged
15 to and paid from the principal of the residuary share of the
16 trust without requiring contribution from a person receiving or
17 benefiting from the nonresiduary interest and without appor-
18 tionment among the residuary beneficiaries. If the residuary share
19 of the trust is insufficient to pay the tax attributable to all
20 nonresiduary interests, the balance of the tax shall be appor-
21 tioned pro rata among the recipients of those interests generat-
22 ing the tax based on the value of those interests.

23 (ii) The net amount of tax attributable to the residuary
24 share of the trust shall be charged as follows:

25 (A) The net amount of tax attributable to each residuary
26 temporary interest shall be charged to that portion of residuary

1 principal that supports the temporary interest without
2 apportionment.

3 (B) The net amount of tax attributable to the balance of the
4 residuary share shall be apportioned pro rata among the residuary
5 beneficiaries by charge to the principal of their interest based
6 on the value of the residuary interests.

7 (c) Except as otherwise directed by the governing instru-
8 ment, tax liability remaining after the application of subdivi-
9 sions (a) and (b), including, but not limited to, a tax imposed
10 with respect to property passing by survivorship, to property
11 passing by intestacy, to an annuity not created under a will or
12 an inter vivos trust, and to an excess retirement accumulation as
13 provided in section 4980A of the internal revenue code of 1986,
14 26 U.S.C. 4980A, shall be apportioned pro rata among, and paid
15 by, the recipients and beneficiaries of the properties or inter-
16 ests, based on the value of the properties and interests generat-
17 ing the tax. Except as otherwise directed by the governing
18 instrument, with respect to a temporary interest not in trust,
19 the amount charged to the recipients or beneficiaries shall not
20 be apportioned between temporary and remainder interests, but
21 shall be charged to and paid out of the principal of the property
22 or fund.

23 (2) As used in this section and sections 3921 and 3922:

24 (a) "Governing instrument" means a will, trust agreement, or
25 other document that controls the devolution of property at death
26 with respect to which the tax is being levied.

1 (b) "Net estate" means the gross estate, as defined by the
2 estate, inheritance, or death tax law of the particular state,
3 country, or political subdivision whose tax is being apportioned,
4 less the deductions allowed.

5 (c) "Temporary interest" means an interest in income or an
6 estate for a specific period of time, for life, or for some other
7 period controlled by reference to extrinsic events.

8 (d) "Value" means the pecuniary worth of the interest
9 involved as finally determined for purposes of the tax then under
10 consideration, without regard to a diminution of the interest by
11 reason of the charge of a part of the tax.

12 Sec. 3921. (1) Unless specific directions to that effect
13 are contained in the governing instrument under which the fidu-
14 ciary is acting, section 3920 shall not be construed to require
15 the personal representative or other concerned fiduciary to pay
16 an estate, inheritance, or other death tax levied or assessed by
17 a foreign country.

18 (2) The net amount of tax attributable to the interests
19 encompassed by any 1 of section 3920(1)(a), (b), or (c) consid-
20 ered separately shall be the part of the net amount of tax as
21 finally determined, with any interest and penalties on it, as the
22 value of the interests generating the tax and included in the
23 subdivision bears to the amount of the net estate. However, for
24 an inheritance or similar tax, the tax that is imposed on each
25 beneficiary's interest, as determined under the law of the state,
26 country, or political subdivision then under consideration, shall
27 be considered the tax attributable to the interest. In prorating

1 taxes within each subdivision of section 3920 listed in this
2 subsection based on the value of those interests generating the
3 tax, each separate tax that an interest may incur shall be pro-
4 rated in the same manner. In determining the proportion that
5 each interest bears to the total value of all interests generat-
6 ing each tax, only interests generating that particular tax are
7 considered. Property or interests generating a tax do not
8 include property or interests, whether passing under a will,
9 trust, or otherwise, to the extent the property or interest is
10 exempt or is initially deductible from the gross estate, without
11 regard to any subsequent diminution of the deduction by reason of
12 the charge of a part of the tax to the property or interest.

13 (3) A direction in a governing instrument for tax, alloca-
14 tion, and payment in a manner different than that provided in
15 sections 3920 to 3923 is effective to allocate and pay tax only
16 from property whose devolution is subject to that instrument's
17 control and with respect to which the tax is being levied.
18 However, a direction to allocate and pay tax contained in a will
19 is effective to allocate and pay tax even if the will does not
20 control the devolution of property at death with respect to which
21 the tax is being levied, including a direction in a will to allo-
22 cate and pay tax from a trust of which the testator was the set-
23 tlor and that was revocable by the settlor, or would have been
24 revocable if the settlor was not incapacitated, until the
25 settlor's death. If there is a conflict between directions in a
26 will to allocate and pay tax and the terms of another governing
27 instrument, the directions in the will control.

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

5 Sec. 3922. (1) Unless the governing instrument provides
6 otherwise, if a credit is given under the United States estate
7 tax laws for a tax paid to another country or a political subdi-
8 vision, the credit shall be apportioned under section 3920 to
9 this section among the recipients or interests finally charged
10 with the payment of the foreign tax in reduction of a United
11 States estate tax chargeable to the recipients or interests,
12 whether or not the United States estate tax is attributable to
13 the foreign interests. An excess of the credit shall be applied
14 in reduction of the part of United States estate tax chargeable
15 to the residue, and an excess of the credit over the United
16 States estate tax chargeable to the residue shall be apportioned
17 pro rata among those persons or interests finally charged with
18 the balance of the payment of United States estate tax.

19 (2) Unless otherwise directed by the governing instrument,
20 the personal representative shall pay the tax out of the estate,
21 or if a personal representative is not acting under appointment,
22 a person receiving or holding an interest generating the tax
23 shall pay the tax. In a case in which property required to be
24 included in the gross estate does not come into the personal
25 representative's possession, he or she shall recover the
26 following:

1 (a) From the fiduciary in possession of the trust principal
2 or of property subject to the power of appointment in cases in
3 which inter vivos trust property or property subject to a power
4 of appointment is included in the gross estate.

5 (b) In all other cases, from the recipients or beneficiaries
6 of property or interests with respect to which the tax is levied
7 or assessed, the proportionate amount of the tax payable by the
8 fiduciary or persons with which they are chargeable under the
9 provisions of this act.

10 (3) Subsection (2) does not authorize the recovery of taxes
11 from a company issuing insurance included in the gross estate, or
12 from a bank, trust company, savings and loan association, or sim-
13 ilar institution with respect to an account in the name of the
14 decedent and another person that passed by operation of law on
15 the decedent's death. If the fiduciary brings an action to
16 recover a share of tax apportioned to an interest not within the
17 fiduciary's control, the judgment that the fiduciary obtains may
18 include costs and reasonable attorney fees.

19 (4) A personal representative or other fiduciary shall not
20 be required to transfer property until the amount of a tax due
21 from the transferee is paid or, if apportionment of the tax has
22 not been determined, until adequate security is furnished for the
23 payment. The fiduciary shall not be required to distribute prop-
24 erty that the fiduciary reasonably anticipates may be necessary
25 to pay a state or federal tax and related interest or penalties.

26 (5) On petition of the person required to pay a tax, the
27 probate court having jurisdiction over the administration of a

1 decedent's estate may determine the apportionment of the tax. If
2 there are no probate proceedings, on the petition of the person
3 required to pay a tax, the probate court of the county where the
4 decedent was domiciled at death shall determine the apportionment
5 of the tax.

6 Sec. 3923. (1) If the probate court finds that it is ineq-
7 uitable to apportion interest and penalties in the manner pro-
8 vided in sections 3920 to 3922 because of special circumstances,
9 the court may direct apportionment in the manner it finds
10 equitable.

11 (2) If the probate court finds that the assessment of penal-
12 ties and interest assessed in relation to the tax is due to delay
13 caused by the negligence of the fiduciary, the court may charge
14 the fiduciary with the amount of the assessed penalties and
15 interest.

16 (3) In an action or proceeding to recover from a person
17 interested in the estate the amount of the tax apportioned to the
18 person in accordance with this act, the court's determination in
19 respect to the apportionment is prima facie correct.

20 Sec. 3924. (1) For the purpose of settling a claim as to
21 which an action is not pending in another court for damages for
22 wrongful death or for a claim existing under this state's laws
23 relating to the survival of actions, if a personal representative
24 petitions the court in writing asking leave to settle the claim
25 and after notice to all persons who may be entitled to damages as
26 provided in section 2922 of the revised judicature act of 1961,
27 Act No. 236 of the Public Acts of 1961, being section 600.2922 of

1 the Michigan Compiled Laws, the court may conduct a hearing and
2 approve or reject the settlement.

3 (2) The proceeds of a court settlement of a cause of action
4 for wrongful death shall be distributed in accordance with all of
5 the following:

6 (a) The personal representative shall file with the court a
7 petition for authority to distribute the proceeds. Upon the
8 filing of the petition, the court shall order a hearing.

9 (b) Unless waived, notice of hearing shall be given to all
10 persons who may be entitled to damages as provided in
11 section 2922 of Act No. 236 of the Public Acts of 1961. A notice
12 under this subdivision shall contain both of the following:

13 (i) The name and address of the personal representative and
14 of the personal representative's attorney.

15 (ii) A statement that, to recover damages under this sec-
16 tion, the person who may be entitled to damages must present a
17 claim for damages to the personal representative on or before the
18 date set for hearing on the petition for distribution of the pro-
19 ceeds, and that failure to present a claim for damages within the
20 time provided bars the person from making a claim to any of the
21 proceeds.

22 (c) If an interested person is a minor, disappeared person,
23 or incapacitated individual for whom a fiduciary is not appoint-
24 ed, the court shall first appoint a fiduciary or guardian ad
25 litem, and the notice as provided in subdivision (b) shall be
26 given to the fiduciary or guardian ad litem.

1 (d) After a hearing on the personal representative's
2 petition, the court shall order payment from the proceeds of the
3 decedent's reasonable medical, hospital, funeral, and burial
4 expenses for which the estate is liable. The proceeds shall not
5 be applied to the payment of any other charges against the
6 decedent's estate. The court shall then enter an order distrib-
7 uting the proceeds to those persons designated in section 2922 of
8 Act No. 236 of the Public Acts of 1961 who suffered damages and
9 to the decedent's estate for compensation for conscious pain and
10 suffering, if any, in the amount the court considers fair and
11 equitable considering the relative damages sustained by each of
12 the persons and the decedent's estate.

13 (e) If none of the persons entitled to the proceeds are a
14 minor, disappeared person, or incapacitated individual and all of
15 the persons entitled to the proceeds execute a verified stipula-
16 tion or agreement in writing in which each person's portion of
17 the proceeds is specified, the court order shall be entered in
18 accordance with the stipulation or agreement.

19 (f) A person who may be entitled to damages under this sec-
20 tion shall present a claim for damages to the personal represen-
21 tative on or before the date set for hearing on the petition for
22 distribution of the proceeds. Failure to present a claim for
23 damages within the time provided by this section bars the person
24 from making a claim to any of the proceeds.

25 (g) If a claim for wrongful death is pending in another
26 court, the procedures prescribed in section 2922 of Act No. 236

1 of the Public Acts of 1961 are applicable to the distribution of
2 proceeds of a settlement or judgment.

3 PART 10

4 CLOSING ESTATES

5 Sec. 31001. (1) If the personal representative does not
6 complete estate administration within 12 months after the origi-
7 nal appointment by petitioning for a settlement order under
8 section 31002 or 31003 or by filing a verified statement under
9 section 31004, the personal representative shall file with the
10 court and send to all interested persons a notice that the estate
11 remains under administration and specifying the reason for con-
12 tinuation of administration. This notice of continued adminis-
13 tration shall be filed not later than 30 days after the anniver-
14 sary of the personal representative's appointment and, if admin-
15 istration remains incomplete, not later than 30 days after each
16 subsequent anniversary of the appointment.

17 (2) If the notice described in subsection (1) is not filed,
18 an interested person may petition the court for a hearing on the
19 necessity for continued administration or petition for a settle-
20 ment order under either section 31002 or 31003. In response to
21 such a petition, the court may issue appropriate orders to assure
22 prompt estate settlement.

23 (3) If the notice described in subsection (1) is not filed
24 and an interested party's petition is not pending, the court may
25 notify the personal representative and all interested persons
26 that the court will close the estate administration and terminate

1 the personal representative's authority within 60 days unless
2 within that time period any of the following occur:

3 (a) The personal representative files a notice under
4 subsection (1), a petition for settlement under either
5 section 31002 or 31003, or a verified statement under
6 section 31004.

7 (b) An interested person files a petition requesting a hear-
8 ing on the necessity for continued administration or a petition
9 for an order of settlement under either section 31002 or 31003.

10 Sec. 31002. (1) A personal representative or an interested
11 person may petition for an order of complete estate settlement.
12 The personal representative may petition at any time, and an
13 interested person may petition after 1 year from the original
14 personal representative's appointment. However, the court shall
15 not accept a petition under this section until the time expires
16 for presenting a claim that arises before the decedent's death.

17 (2) A petition under this section may request the court to
18 determine testacy, if not previously determined, to consider the
19 final account, to compel or approve an accounting and distribu-
20 tion, to construe a will or determine heirs, and to adjudicate
21 the estate's final settlement and distribution. After notice to
22 all interested persons and a hearing, the court may enter an
23 order or orders, on appropriate conditions, determining the per-
24 sons entitled to distribution of the estate, and as circumstances
25 require, approving settlement, directing or approving estate dis-
26 tribution, and discharging the personal representative from
27 further claim or demand of an interested person.

1 (3) If 1 or more heirs or devisees were omitted as parties
2 in, or were not given notice of, a previous formal testacy pro-
3 ceeding, on proper petition for an order of complete estate set-
4 tlement under this section and after notice to the omitted or
5 unnotified persons and other interested parties determined to be
6 interested on the assumption that the previous order concerning
7 testacy is conclusive as to those given notice of the earlier
8 proceeding, the court may determine testacy as it affects the
9 omitted persons, and confirm or alter the previous testacy order
10 as it affects all interested persons as appropriate in the light
11 of the new proofs. In the absence of objection by an omitted or
12 unnotified person, evidence received in the original testacy pro-
13 ceeding constitutes prima facie proof of due execution of a will
14 previously admitted to probate, or of the fact that the decedent
15 left no valid will if the prior proceeding determined this fact.

16 Sec. 31003. (1) A personal representative administering an
17 estate under an informally probated will or a devisee under an
18 informally probated will may petition for a settlement order for
19 the estate that will not adjudicate the decedent's testacy
20 status. The personal representative may petition at any time,
21 and a devisee may petition after 1 year after the original per-
22 sonal representative's appointment. However, the court shall not
23 accept a petition under this section until the time expires for
24 presenting a claim that arises before the decedent's death.

25 (2) A petition under this section may request the court to
26 consider the final account, to compel or approve an accounting
27 and distribution, to construe the will, or to adjudicate the

1 estate's final settlement and distribution. After notice to all
2 devisees and the personal representative and a hearing, the court
3 may enter appropriate orders, on appropriate conditions, deter-
4 mining the persons entitled to distribution of the estate under
5 the will, and, as circumstances require, approving settlement,
6 directing or approving estate distribution, and discharging the
7 personal representative from further claim or demand of a devisee
8 who is a party to the proceeding and those the devisee
9 represents. If it appears that a part of the estate is intes-
10 tate, the proceedings shall be dismissed or amendments made to
11 meet the provisions of section 31002.

12 Sec. 31004. (1) Unless prohibited by court order and except
13 for an estate being administered in a supervised administration
14 proceeding, a personal representative may close an estate by
15 filing with the court, no earlier than 5 months after the date of
16 a general personal representative's original appointment, a veri-
17 fied statement stating that the personal representative or a pre-
18 vious personal representative has done all of the following:

19 (a) Determined that notice was published and the time
20 limited for presentation of creditors claims has expired.

21 (b) Fully administered the decedent's estate by making pay-
22 ment, settlement, or other disposition of all claims that were
23 presented, of administration and estate expenses, and of inheri-
24 tance and other death taxes, except as specified in the state-
25 ment, including distribution of the estate property to the per-
26 sons entitled. If a claim remains undischarged, the statement
27 shall state whether the personal representative distributed the

1 estate subject to possible liability with the distributee's
2 agreement or shall state in detail other arrangements that have
3 been made to accommodate outstanding liabilities.

4 (c) Sent a copy of the statement to all estate distributees
5 and to all creditors or other claimants of whom the personal rep-
6 resentative is aware whose claims are neither paid nor barred.

7 (d) Furnished a full account in writing of the personal
8 representative's administration to the distributees whose inter-
9 ests are affected by the administration.

10 (2) If a proceeding involving the personal representative is
11 not pending in the court 1 year after the closing statement is
12 filed, the personal representative's appointment terminates.

13 Sec. 31005. After estate property is distributed, and
14 subject to section 31007, an undischarged claim not barred may be
15 prosecuted in a proceeding against 1 or more distributees. A
16 distributee is not liable to a claimant for an amount received as
17 exempt property or as a homestead or family allowance, or for an
18 amount in excess of the value of the distributee's distribution
19 as of the time of distribution. As between distributees, each
20 shall bear the cost of satisfaction of an unbarred claim as if
21 the claim had been satisfied in the course of administration. If
22 a distributee fails to notify other distributees of the demand
23 made upon the distributee by the claimant in sufficient time to
24 permit them to join in a proceeding in which the claim is assert-
25 ed, the distributee loses the right of contribution against other
26 distributees.

1 Sec. 31006. Unless previously barred by adjudication and
2 except as provided in the closing statement, the right of a
3 successor or creditor whose claim is not otherwise barred against
4 the personal representative for breach of fiduciary duty is
5 barred unless a proceeding to assert the claim is commenced
6 within 6 months after the filing of the closing statement. The
7 right barred under this section does not include the right to
8 recover from a personal representative for fraud, misrepresenta-
9 tion, or inadequate disclosure related to the settlement of the
10 decedent's estate.

11 Sec. 31007. Unless previously adjudicated in a formal tes-
12 tacy proceeding or in a proceeding settling a personal
13 representative's accounts, or otherwise barred, a claimant's
14 claim to recover from a distributee who is liable to pay the
15 claim, and the right of an heir or devisee, or of a successor
16 personal representative acting in their behalf, to recover prop-
17 erty improperly distributed or its value from a distributee, is
18 forever barred at the later of 3 years after the decedent's death
19 or 1 year after the time of the property's distribution.
20 However, all claims of the decedent's creditors are barred in
21 accordance with the time periods specified in section 3803. This
22 section does not bar an action to recover property or value
23 received as a result of fraud.

24 Sec. 31008. If an objection to the closing statement is not
25 filed within 30 days after the filing date, the personal repre-
26 sentative, his or her sureties, or a successor of either is
27 entitled to receive a certificate from the register that the

1 personal representative appears to have fully administered the
2 estate in question. The certificate is evidence of discharge of
3 a lien on property given to secure the personal representative's
4 obligation in lieu of bond or a surety. The certificate does not
5 preclude action against the personal representative or the
6 surety.

7 Sec. 31009. If estate property is discovered after an
8 estate is settled and either the personal representative is dis-
9 charged or 1 year has expired after a closing statement is filed,
10 or if there is other good cause to reopen a previously adminis-
11 tered estate, including an estate administratively closed, upon
12 petition of an interested person and notice as the court directs,
13 the court may appoint the same or a successor personal represen-
14 tative to administer the subsequently discovered estate. If a
15 new appointment is made, unless the court orders otherwise, the
16 provisions of this act apply as appropriate. A claim previously
17 barred shall not be asserted in the subsequent administration.

18 PART 11

19 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND
20 SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

21 Sec. 31101. A hospital, convalescent or nursing home,
22 morgue, or law enforcement agency holding \$500.00 or less and
23 wearing apparel of a decedent may deliver the money and wearing
24 apparel to an individual furnishing identification and an affida-
25 vit that the individual is the decedent's spouse, child, or
26 parent and that there is no application or petition pending for
27 administration of the decedent's estate. The hospital, home,

1 morgue, or law enforcement agency making the delivery is released
2 to the same extent as if delivery were made to a legally quali-
3 fied personal representative of the decedent's estate and is not
4 required to see to the property's disposition. The individual to
5 whom delivery is made is answerable for the property to a person
6 with a prior right and accountable to a personal representative
7 of the decedent's estate appointed after the delivery.

8 Sec. 31102. (1) Thirty days after a decedent's death, a
9 person indebted to the decedent or having possession of tangible
10 personal property or an instrument evidencing a debt, obligation,
11 stock, or chose in action belonging to the decedent shall pay the
12 indebtedness or deliver the tangible personal property or the
13 instrument to a person claiming to be the decedent's successor
14 upon being presented an affidavit made by or on behalf of the
15 successor stating all of the following:

16 (a) The value of the entire estate, wherever located, net of
17 liens and encumbrances, does not exceed \$15,000.00, adjusted as
18 provided in section 1109.

19 (b) Thirty days have elapsed since the decedent's death.

20 (c) An application or petition for the appointment of a per-
21 sonal representative is not pending or has not been granted in
22 any jurisdiction.

23 (d) The claiming successor is entitled to payment or deliv-
24 ery of the property.

25 (2) A transfer agent of a security shall change the regis-
26 tered ownership on the books of a corporation from the decedent

1 to the successor or successors upon the presentation of an
2 affidavit as provided in subsection (1).

3 Sec. 31103. (1) A person paying, delivering, transferring,
4 or issuing personal property or the evidence of personal property
5 under an affidavit as provided in section 31102 is discharged and
6 released to the same extent as if the person dealt with the
7 decedent's personal representative. The person is not required
8 to see to the application of the personal property or evidence of
9 the application, or to inquire into the truth of a statement in
10 the affidavit.

11 (2) If a person to whom an affidavit is delivered under
12 section 31102 refuses to pay, deliver, transfer, or issue per-
13 sonal property or evidence of personal property, the property may
14 be recovered or its payment, delivery, transfer, or issuance com-
15 pelled upon proof of a person's right to the property in a pro-
16 ceeding brought for the purpose by or on behalf of the persons
17 entitled to the property. A person to whom payment, delivery,
18 transfer, or issuance is made is answerable and accountable for
19 the property to a personal representative of the estate or to
20 another person having a superior right.

21 Sec. 31104. If it appears from the inventory and appraisal
22 that the value of the entire estate, less liens and encumbrances,
23 does not exceed homestead allowance, exempt property, family
24 allowance, administration costs and expenses, reasonable funeral
25 expenses, and reasonable, necessary medical and hospital expenses
26 of the decedent's last illness, the personal representative,
27 without giving notice to creditors, may immediately disburse and

1 distribute the estate to the persons entitled to the estate and
2 may file a closing statement as provided in section 31105.

3 Sec. 31105. (1) Unless prohibited by court order and except
4 for an estate being administered by a supervised personal repre-
5 sentative, a personal representative may close an estate adminis-
6 tered under the summary procedures of section 31104 by filing
7 with the court, at any time after disbursement and distribution
8 of the estate, a verified statement stating all of the
9 following:

10 (a) To the best knowledge of the personal representative,
11 the value of the entire estate, less liens and encumbrances, did
12 not exceed homestead allowance, exempt property, family allow-
13 ance, administration costs and expenses, reasonable funeral
14 expenses, and reasonable, necessary medical and hospital expenses
15 of the decedent's last illness.

16 (b) The personal representative has fully administered the
17 estate by disbursing and distributing it to the persons entitled
18 to the estate.

19 (c) The personal representative has sent a copy of the clos-
20 ing statement to all estate distributees and to all creditors or
21 other claimants of whom the personal representative is aware
22 whose claims are neither paid nor barred, and has furnished a
23 full account in writing of the estate administration to the dis-
24 tributees whose interests are affected.

25 (2) If an action or proceeding involving the personal repre-
26 sentative is not pending in the court 1 year after the closing

1 statement is filed under this section, the personal
2 representative's appointment terminates.

3 (3) A closing statement filed under this section has the
4 same effect as one filed under section 31004.

ARTICLE IV

FOREIGN PERSONAL REPRESENTATIVES AND

ANCILLARY ADMINISTRATION

PART 1

DEFINITIONS

Sec. 4101. As used in this article:

(a) "Local administration" means administration by a personal representative appointed in this state under an appointment proceeding described in article III.

(b) "Local personal representative" includes a personal representative appointed in this state under an appointment proceeding described in article III and excludes a foreign personal representative who acquires the power of a local personal representative under section 4205.

(c) "Resident creditor" means a person domiciled or doing business in this state that is, or could be, a claimant against a nonresident decedent's estate.

PART 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

Sec. 4201. At any time after the expiration of 60 days after a nonresident decedent's death, a person indebted to the nonresident decedent's estate, or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the nonresident decedent's estate, may pay the debt or deliver the personal property or the instrument, to the domiciliary foreign personal representative of the nonresident decedent upon being presented

1 with proof of the domiciliary personal representative's
2 appointment and an affidavit made by or on behalf of the repre-
3 sentative stating all of the following:

4 (a) The date of the nonresident decedent's death.

5 (b) That local administration, or an application or petition
6 for local administration, is not pending in this state.

7 (c) That the domiciliary foreign personal representative is
8 entitled to payment or delivery.

9 Sec. 4202. (1) Payment or delivery made in good faith on
10 the basis of proof of authority and affidavit as provided in
11 section 4201 releases the debtor or person having possession of
12 the personal property to the same extent as if payment or deliv-
13 ery is made to a local personal representative.

14 (2) Payment or delivery under section 4201 shall not be made
15 if a resident creditor of the nonresident decedent notifies the
16 debtor of the nonresident decedent or the person having posses-
17 sion of the personal property belonging to the nonresident dece-
18 dent that the debt should not be paid nor the property delivered
19 to the domiciliary foreign personal representative.

20 Sec. 4203. (1) If local administration, or an application
21 or petition for local administration, is not pending in this
22 state, a domiciliary foreign personal representative may file
23 with a court in this state, in a county in which property belong-
24 ing to the decedent is located, authenticated copies of the
25 representative's appointment and of any official bond the repre-
26 sentative has given.

1 (2) As to property in this state, a domiciliary foreign
2 personal representative who complies with this section may
3 exercise the power of a local personal representative, including,
4 but not limited to, the execution and delivery of a deed under
5 and in satisfaction of a land contract for the purchase of real
6 property located in this state, a discharge of a mortgage, or a
7 discharge of a security interest or financing statement or both,
8 and may maintain an action or proceeding in this state subject to
9 any conditions imposed upon nonresident parties generally.

10 Sec. 4204. (1) A domiciliary foreign personal
11 representative's power under sections 4201 and 4203 shall be
12 exercised only if estate administration or an application for
13 administration is not pending in this state. An application or
14 petition for local administration of the estate terminates the
15 power of the foreign personal representative to act under section
16 4203, but the local court may allow the foreign personal repre-
17 sentative to exercise limited powers to preserve the estate.

18 (2) A person who, before receiving actual notice of a pend-
19 ing local administration, changes his or her position in reliance
20 upon a foreign personal representative's power shall not be prej-
21 udiced by reason of the application or petition for, or grant of,
22 local administration. The local personal representative is
23 subject to all duties and obligations that have accrued by virtue
24 of the exercise of the powers by the foreign personal representa-
25 tive and may be substituted for the foreign personal representa-
26 tive in an action or proceeding in this state.

1 Sec. 4205. In respect to a nonresident decedent, article
2 III governs all of the following:

3 (a) A proceeding in a court of this state for probate of the
4 will, appointment, removal, supervision, and discharge of the
5 local personal representative, and another order concerning the
6 estate.

7 (b) The status, powers, duties, and liabilities of a local
8 personal
9 representative and a right of a claimant, purchaser, dis-
10 tributee, and another in regard to a local administration.

11 PART 3

12 JURISDICTION OVER FOREIGN REPRESENTATIVES

13 Sec. 4301. (1) A foreign personal representative submits
14 personally to the jurisdiction of the courts of this state in a
15 proceeding relating to the estate by doing any of the following:

16 (a) Filing an authenticated copy of appointment as provided
17 in section 4203.

18 (b) Receiving payment of money or taking delivery of per-
19 sonal property under section 4201.

20 (c) Doing an act as a personal representative in this state
21 that would give the state jurisdiction over an individual.

22 (2) Jurisdiction under subsection (1)(b) is limited to the
23 money or value of personal property collected.

24 Sec. 4302. In addition to jurisdiction conferred by section
25 4301, a foreign personal representative is subject to the juris-
26 diction of the courts of this state to the same extent that the

1 representative's decedent was subject to that jurisdiction
2 immediately before death.

3 Sec. 4303. (1) Service of process may be made upon the for-
4 eign personal representative by registered or certified mail,
5 addressed to the representative's last reasonably ascertainable
6 address, requesting a return receipt signed by addressee only.
7 Notice by ordinary first-class mail is sufficient if registered
8 or certified mail service to the addressee is unavailable.
9 Service may be made upon a foreign personal representative in the
10 manner in which service could have been made under other laws of
11 this state on either the foreign personal representative or the
12 representative's decedent immediately before death.

13 (2) If service is made upon a foreign personal representa-
14 tive as provided in subsection (1), the representative is allowed
15 not less than 30 days within which to appear or respond.

16 PART 4

17 JUDGMENTS AND PERSONAL REPRESENTATIVE

18 Sec. 4401. An adjudication rendered in any jurisdiction in
19 favor of or against a personal representative of the estate is as
20 binding on the local personal representative as if the local per-
21 sonal representative were a party to the adjudication.

ARTICLE V

PROTECTION OF AN INDIVIDUAL UNDER DISABILITY

AND HIS OR HER PROPERTY

PART 1

GENERAL PROVISIONS

Sec. 5101. As used in parts 1 to 4 of this article:

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

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

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

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

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

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

(vi) The moral fitness of the parties involved.

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

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

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

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

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

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

(c) "Conservator" includes a limited conservator described in section 5419(1).

(d) "Guardian" means a person who qualifies as a guardian of a minor or incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5206 and 5306. Guardian does not include a guardian ad litem.

(e) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

1 (f) "Mental health professional" means a person who is
2 trained and experienced in the area of mental illness and who is
3 any of the following:

4 (i) A physician who is licensed to practice medicine or
5 osteopathic medicine in this state.

6 (ii) A psychologist who has been granted a full or limited
7 license to practice in this state.

8 (iii) A social worker who is registered as a certified
9 social worker in this state.

10 (iv) A registered nurse who is licensed to practice nursing
11 in this state and who is a graduate of a state-approved school of
12 nursing.

13 (g) "Visitor" means an individual appointed in a guardian-
14 ship or protective proceeding who is trained in law, nursing, or
15 social work, is an officer, employee, or special appointee of the
16 court, and has no personal interest in the proceeding.

17 Sec. 5102. (1) A person under a duty to pay or deliver
18 money or personal property to a minor may perform this duty, in
19 an amount not exceeding \$5,000.00 each year, by paying or deliv-
20 ering the money or property to any of the following:

21 (a) The minor if he or she is married.

22 (b) An individual having the care and custody of the minor
23 with whom the minor resides.

24 (c) A guardian of the minor.

25 (d) A financial institution incident to a deposit in a state
26 or federally insured savings account in the sole name of the
27 minor with notice of the deposit to the minor.

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

5 (3) Other than the minor or a financial institution, a
6 person receiving money or property for a minor is obligated to
7 apply the money to the minor's support and education, but shall
8 not pay itself except by way of reimbursement for out-of-pocket
9 expenses for goods and services necessary for the minor's
10 support. An excess amount shall be preserved for the minor's
11 future support and education. A balance not used for those pur-
12 poses and property received for the minor shall be turned over to
13 the minor when majority is attained. A person who pays or deliv-
14 ers money or property in accordance with this section is not
15 responsible for the proper application of the money or property.

16 Sec. 5103. By a properly executed power of attorney, a
17 parent or guardian of a minor or incapacitated individual may
18 delegate to another person, for a period not exceeding 6 months,
19 a power regarding care, custody, or property of the minor child
20 or ward. A parent or guardian shall not exercise the power to
21 consent to marriage or adoption of a minor ward under this
22 section.

23 Sec. 5104. (1) Upon payment of a required fee, an inter-
24 ested person who desires to be notified before an order is made
25 in a guardianship proceeding, including a proceeding subsequent
26 to the appointment of a guardian under section 5312, or in a
27 protective proceeding under section 5401 may file a request for

1 notice with the register of the court in which the proceeding is
2 pending. The register shall mail a copy of the request to the
3 guardian and to the conservator if one has been appointed. A
4 request is not effective unless it contains a statement showing
5 the interest of the person making it and the address of that
6 person or an attorney to whom notice is to be given. The request
7 is effective only as to a proceeding that occurs after the
8 filing.

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

12 Sec. 5105. The court has jurisdiction of the matter
13 described in this section. If authorized by order of the court
14 that has jurisdiction of the prospective donor, a person of 14
15 years of age or more may give 1 of his or her 2 kidneys to a
16 father, mother, son, daughter, brother, or sister for a trans-
17 plantation needed by the intended donee. A guardian, parent,
18 spouse, child, or other next of kin of the prospective donor,
19 other than the intended donee, may file a petition for an order
20 under this section. If the prospective donor does not have a
21 guardian, the court shall appoint a guardian ad litem to protect
22 the prospective donor's interests. The court shall hold a hear-
23 ing on the petition and cause notice of the hearing to be given.
24 The prospective donor shall be present at the hearing and shall
25 be examined by the petitioner or the court, or both. If the
26 court determines that the prospective donor is sufficiently sound
27 of mind to understand the needs and probable consequences of the

1 gift to both the donor and donee and agrees to the gift, the
2 court may enter an order authorizing the making of the gift.

3 Sec. 5106. (1) Subject to subsections (2) and (3), the
4 court may appoint or approve as a guardian, limited or temporary
5 guardian, or conservator under this act, or as a plenary or par-
6 tial guardian as those terms are defined in section 600 of the
7 mental health code, Act No. 258 of the Public Acts of 1974, being
8 section 330.1600 of the Michigan Compiled Laws, a nonprofit cor-
9 poration incorporated under the nonprofit corporation act, Act
10 No. 162 of the Public Acts of 1982, being sections 450.2101 to
11 450.3192 of the Michigan Compiled Laws, which corporation's pri-
12 mary function is to provide fiduciary services in the same manner
13 as other fiduciaries under this act. This section shall not be
14 construed to make a person that is not a nonprofit corporation
15 described in this subsection ineligible to be appointed or
16 approved as a fiduciary.

17 (2) The court shall only appoint a corporation as authorized
18 under subsection (1) if the court finds on the record both of the
19 following:

20 (a) The appointment of the nonprofit corporation is in the
21 ward's or developmentally disabled individual's best interests.

22 (b) Another qualified, suitable person has not come before
23 the court and expressed a willingness to serve in that fiduciary
24 capacity.

25 (3) If a nonprofit corporation described in subsection (1)
26 is appointed, the court shall determine whether to require a
27 bond. If bond is required, the court shall set the amount of

1 bond, and the sureties and liabilities of the bond shall be as
2 provided in sections 5410 and 5411. The court shall not appoint
3 a corporation described in subsection (1) as a personal represen-
4 tative or trustee.

5 (4) A corporation appointed under this section shall not
6 receive as a result of that appointment a benefit beyond compen-
7 sation specifically authorized for that type of fiduciary by this
8 act or the mental health code, Act No. 258 of the Public Acts of
9 1974, being sections 330.1001 to 330.2106 of the Michigan
10 Compiled Laws.

11 PART 2

12 GUARDIANS OF MINORS

13 Sec. 5201. A person may become a minor's guardian by paren-
14 tal appointment or court appointment. The guardianship status
15 continues until terminated, without regard to the location from
16 time to time of the guardian or minor ward.

17 Sec. 5202. (1) The parent of an unmarried minor may appoint
18 a guardian for the minor by will or by another writing signed by
19 the parent and attested by at least 2 witnesses.

20 (2) Subject to the right of the minor under section 5203, if
21 both parents are dead or incapacitated or the surviving parent
22 has no parental rights or has been adjudged to be incapacitated,
23 a parental appointment becomes effective when the guardian's
24 acceptance is filed in the court in which a nominating instrument
25 is probated or, in the case of a nontestamentary nominating
26 instrument, in the court at the place where the minor resides or

1 is present. If both parents are dead, an effective appointment
2 by the parent who died later has priority.

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

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

9 Sec. 5203. A minor of 14 or more years of age who is the
10 subject of a parental appointment may prevent an appointment or
11 cause it to terminate by filing with the court in which the nomi-
12 nating instrument is filed a written objection to the appointment
13 before it is accepted or within 30 days after its acceptance. An
14 objection may be withdrawn. An objection does not preclude
15 appointment by the court in a proper proceeding of the parental
16 nominee or another suitable person.

17 Sec. 5204. (1) A person interested in the welfare of a
18 minor, or a minor if 14 years of age or older, may petition for
19 the appointment of a guardian for the minor. The court may order
20 the family independence agency or a court employee or agent to
21 conduct an investigation of the proposed guardianship and file a
22 written report of the investigation.

23 (2) The court may appoint a guardian for an unmarried minor
24 if any of the following circumstances exist:

25 (a) The parental rights of both parents or the surviving
26 parent are terminated or suspended by prior court order, by
27 judgment of divorce or separate maintenance, by death, by

1 judicial determination of mental incompetency, by disappearance,
2 or by confinement in a place of detention.

3 (b) The parent or parents permit the minor to reside with
4 another person and do not provide the other person with legal
5 authority for the minor's care and maintenance.

6 (c) All of the following:

7 (i) The minor's biological parents have never been married
8 to one another.

9 (ii) The minor's parent who has custody of the minor dies or
10 is missing and the other parent has not been granted legal cus-
11 tody under court order.

12 (iii) The person whom the petition asks to be appointed
13 guardian is related to the minor within the fifth degree by mar-
14 riage, blood, or adoption.

15 (3) A minor's limited guardian may petition to be appointed
16 a guardian for that minor, except that the petition shall not be
17 based upon suspension of parental rights by the order that
18 appointed that person the limited guardian for that minor.

19 (4) A guardian appointed under section 5202 whose appoint-
20 ment is not prevented or nullified under section 5203 has prior-
21 ity over a guardian who may be appointed by the court. The court
22 may proceed with an appointment upon a finding that the testamen-
23 tary guardian has failed to accept the appointment within 30 days
24 after the notice of the guardianship proceeding.

25 (5) For the minor ward's welfare, the court may at any time
26 order reasonable support and reasonable parenting time and
27 contact of the minor ward by his or her parents.

1 Sec. 5205. (1) The court may appoint a limited guardian for
2 an unmarried minor upon the petition of the minor's parent or
3 parents if all of the following requirements are met:

4 (a) The parents with custody of the minor consent or, in the
5 case of only 1 parent having custody of the minor, the sole
6 parent consents to the appointment of a limited guardian.

7 (b) The parent or parents voluntarily consent to the suspen-
8 sion of their parental rights.

9 (c) The court approves a limited guardianship placement plan
10 agreed to by both of the following parties:

11 (i) The parents with custody of the minor or, in the case of
12 only 1 parent having custody of the minor, the sole parent who
13 has custody of the minor.

14 (ii) The person or persons who the court will appoint as the
15 minor's limited guardian.

16 (2) A minor's parent or parents who desire to have the court
17 appoint a limited guardian for that minor and the person or per-
18 sons who desire to be appointed limited guardian for that minor
19 shall develop a limited guardianship placement plan. The parties
20 shall use a limited guardianship placement plan form prescribed
21 by the state court administrator. A limited guardianship place-
22 ment plan form shall include a notice that informs a parent who
23 is a party to the plan that substantial failure to comply with
24 the plan without good cause may result in the termination of the
25 parent's parental rights under chapter XIIA of Act No. 288 of the
26 Public Acts of 1939, being sections 712A.1 to 712A.31 of the
27 Michigan Compiled Laws. The proposed limited guardianship

1 placement plan shall be attached to the petition requesting the
2 court to appoint a limited guardian. The limited guardianship
3 placement plan shall include provisions concerning all of the
4 following:

5 (a) The reason why the parent or parents are requesting the
6 court to appoint a limited guardian for the minor.

7 (b) Visitation and contact with the minor by his or her
8 parent or parents sufficient to maintain a parent and child
9 relationship.

10 (c) The duration of the limited guardianship.

11 (d) Financial support for the minor.

12 (e) Any other provisions that the parties agree to include
13 in the plan.

14 Sec. 5206. (1) The court shall review a proposed limited
15 guardianship placement plan filed with the court under section
16 5205 and shall do 1 of the following:

17 (a) Approve the proposed plan.

18 (b) Disapprove the proposed plan.

19 (c) On its own motion, modify a proposed plan and approve it
20 as modified, if the parties agree to the modification. The modi-
21 fied plan shall be filed with the court.

22 (2) A limited guardianship placement plan that has been
23 approved by the court may be modified upon agreement of the par-
24 ties and approval of the court. A modified limited guardianship
25 placement plan shall be filed with the court.

26 (3) The voluntary suspension of parental rights under
27 section 5205 does not prevent the parent or parents from filing a

1 petition to terminate the limited guardianship at any time as
2 provided in section 5208. Appointment of a limited guardian
3 under this section shall be a continuing appointment.

4 (4) A limited guardian appointed under this section has all
5 of the powers and duties enumerated in section 5215 except that a
6 minor's limited guardian may not consent to the minor's adoption
7 or release for adoption and may not consent to the minor ward's
8 marriage.

9 Sec. 5207. (1) The court may review a guardianship for a
10 minor as it considers necessary and shall review a guardianship
11 annually if the minor is under 6 years of age. In conducting the
12 review, the court shall consider all of the following factors:

13 (a) The parent's and guardian's compliance with either of
14 the following, as applicable:

15 (i) A limited guardianship placement plan.

16 (ii) A court-structured plan under subsection (3)(b)(ii)(B)
17 or section 5209(2)(b)(ii).

18 (b) Whether the guardian has adequately provided for the
19 minor's welfare.

20 (c) The necessity of continuing the guardianship.

21 (d) The guardian's willingness and ability to continue to
22 provide for the minor's welfare.

23 (e) The effect upon the minor's welfare if the guardianship
24 is continued.

25 (f) Any other factor that the court considers relevant to
26 the minor's welfare.

1 (2) The court may order the family independence agency or a
2 court employee or agent to conduct an investigation and file a
3 written report of the investigation regarding the factors listed
4 in subsection (1) .

5 (3) Upon completion of a guardianship review, the court may
6 do either of the following:

7 (a) Continue the guardianship.

8 (b) Schedule and conduct a hearing on the guardianship's
9 status and do any of the following:

10 (i) If the guardianship is a limited guardianship, do either
11 of the following:

12 (A) Continue the limited guardianship.

13 (B) Order the parties to modify the limited guardianship
14 placement plan as a condition to continuing the limited
15 guardianship.

16 (ii) If the guardianship was established under section 5204,
17 do either of the following:

18 (A) Continue the guardianship.

19 (B) Order the parties to follow a court-structured plan
20 designed to resolve the conditions identified at the review
21 hearing.

22 (iii) Take an action described in section 5209(2).

23 Sec. 5208. (1) A minor's parent or parents may petition the
24 court to terminate a guardianship for the minor as follows:

25 (a) If the guardianship is a limited guardianship, the par-
26 ents or the sole parent with a right to custody of the minor.

1 (b) If the guardianship was established under section 5204,
2 the minor's parent or parents.

3 (2) If a petition is filed to terminate a guardianship under
4 this section, the court may do 1 or more of the following:

5 (a) Order the family independence agency or a court employee
6 or agent to conduct an investigation and file a written report of
7 the investigation regarding the best interests of the minor or
8 give testimony concerning the investigation.

9 (b) Utilize the community resources in behavioral sciences
10 and other professions in the investigation and study of the best
11 interests of the minor and consider their recommendations for the
12 disposition of the petition.

13 (c) Appoint a guardian ad litem or attorney to represent the
14 minor.

15 (d) Take any other action considered necessary in a particu-
16 lar case.

17 (3) This section and section 5209 apply to all guardianships
18 established before, on, or after the effective date of this
19 section.

20 Sec. 5209. (1) After notice and hearing on a petition under
21 section 5208 to terminate a limited guardianship, the court shall
22 terminate the limited guardianship if it determines that the
23 minor's parent or parents have substantially complied with the
24 limited guardianship placement plan. The court may enter orders
25 to facilitate the minor's reintegration into the home of the
26 parent or parents for a period of up to 6 months before the
27 termination.

1 (2) For a petition to terminate a guardianship in which
2 subsection (1) does not apply, after notice and hearing, the
3 court may do any of the following:

4 (a) Terminate the guardianship if the court determines that
5 it is in the best interests of the minor, and may do any of the
6 following:

7 (i) Enter orders to facilitate the minor's reintegration
8 into the parent's home for a period of up to 6 months before the
9 termination.

10 (ii) Order the family independence agency to supervise the
11 transition period when the minor is being reintegrated into his
12 or her parent's home.

13 (iii) Order the family independence agency to provide serv-
14 ices to facilitate the minor's reintegration into his or her
15 parent's home.

16 (b) Continue the guardianship for not more than 1 year after
17 the hearing date if the court determines that it is in the best
18 interests of the minor, and do any of the following:

19 (i) If the guardianship is a limited guardianship, order the
20 parent or parents to comply with 1 of the following:

21 (A) The limited guardianship placement plan.

22 (B) A court-modified limited guardianship placement plan.

23 (C) If the limited guardianship was established before
24 December 20, 1990, a court-structured plan that enables the minor
25 to return to the home of his or her parent or parents.

26 (ii) If the guardianship is ordered under section 5204,
27 order the parent or parents to follow a court-structured plan

1 that enables the minor to return to the home of his or her parent
2 or parents.

3 (iii) If a guardianship is continued under subparagraph (i)
4 or (ii), schedule and conduct a hearing to review the guardian-
5 ship before the expiration of the period of time that the guard-
6 ianship is continued and either terminate the guardianship or
7 limited guardianship or proceed under subdivision (c) or (d).

8 (c) If the minor resides with the guardian or limited guard-
9 ian for not less than 1 year and if the court finds that the
10 minor's parent or parents have failed to provide the minor with
11 parental care, love, guidance, and attention appropriate to the
12 child's age and individual needs resulting in a substantial dis-
13 ruption of the parent-child relationship, continue the guardian-
14 ship if it is established by clear and convincing evidence that
15 the continuation would serve the best interests of the minor.

16 (d) Appoint an attorney to represent the minor or refer the
17 matter to the family independence agency. The attorney or the
18 family independence agency may file a complaint on behalf of the
19 minor requesting the juvenile division of the probate court to
20 take jurisdiction of the minor under section 2(b) of chapter XIIIA
21 of Act No. 288 of the Public Acts of 1939, being section 712A.2
22 of the Michigan Compiled Laws.

23 Sec. 5210. Upon receipt of a copy of a judgment or an order
24 of disposition in a child custody action regarding a minor that
25 is sent to the court as provided in section 6b of the child cus-
26 tody act of 1970, Act No. 91 of the Public Acts of 1970, being
27 section 722.26b of the Michigan Compiled Laws, the court shall

1 terminate the guardianship or limited guardianship for that
2 minor.

3 Sec. 5211. The venue for a guardianship proceeding for a
4 minor is in the place where the minor resides or is present at
5 the time the proceeding is commenced.

6 Sec. 5212. The court may appoint as guardian a person whose
7 appointment serves the minor's welfare, including a nonprofit
8 corporation described in section 5106. If the minor is 14 or
9 more years of age, the court shall appoint a person nominated by
10 the minor, unless the court finds the appointment contrary to the
11 minor's welfare.

12 Sec. 5213. (1) The petitioner shall give notice of the time
13 and place of hearing of a petition for the appointment of a
14 minor's guardian to each of the following:

15 (a) The minor, if 14 years of age or older.

16 (b) The person who had the principal care and custody of the
17 minor during the 60 days preceding the date of the petition.

18 (c) Each living parent of the minor or, if neither of them
19 is living, the adult nearest of kin to the minor.

20 (2) Upon hearing, if the court finds that a qualified person
21 seeks appointment, venue is proper, the required notices have
22 been given, the requirements of section 5204, 5205, or 5206 are
23 satisfied, and the minor's welfare will be served by the
24 requested appointment, the court shall make the appointment. In
25 other cases, the court may dismiss the proceeding or make another
26 disposition of the matter that will serve the minor's welfare.

1 (3) If necessary, the court may appoint a temporary guardian
2 with the status of an ordinary guardian of a minor, but the
3 temporary guardian's authority shall not exceed 6 months.

4 (4) If, at any time in the proceeding, the court determines
5 that the minor's interests are or may be inadequately represent-
6 ed, the court may appoint an attorney to represent the minor,
7 giving a consideration to the preference of the minor if the
8 minor is 14 years of age or older.

9 Sec. 5214. By accepting a parental or court appointment as
10 guardian, a guardian submits personally to the court's jurisdic-
11 tion in a proceeding relating to the guardianship that may be
12 instituted by an interested person. The petitioner shall cause
13 notice of a proceeding to be delivered to the guardian or mailed
14 to the guardian by first-class mail at the guardian's address
15 listed in the court records and to the address then known to the
16 petitioner. Letters of guardianship shall indicate whether the
17 guardian was appointed by court order or parental nomination.

18 Sec. 5215. A minor's guardian has the powers and responsi-
19 bilities of a parent who is not deprived of custody of the
20 parent's minor and unemancipated child, except that a guardian is
21 not legally obligated to provide for the ward from the guardian's
22 own money and is not liable to third persons by reason of the
23 parental relationship for the ward's acts. A guardian has all of
24 the following powers and duties:

25 (a) The guardian shall take reasonable care of a ward's per-
26 sonal effects and commence a protective proceeding if necessary
27 to protect the ward's other property.

1 (b) The guardian may receive money payable for the ward's
2 support to the ward's parent, guardian, or custodian under the
3 terms of a statutory benefit or insurance system, or a private
4 contract, devise, trust, conservatorship, or custodianship. The
5 guardian may receive the ward's money or property paid or deliv-
6 ered under section 5102. Money or property received under that
7 section shall be applied to the ward's current needs for support,
8 care, and education. The guardian shall exercise due care to
9 conserve any excess for the ward's future needs unless a conser-
10 vator is appointed for the ward's estate, in which case excess
11 shall be paid over at least annually to the conservator. The
12 guardian shall not use that money or property for compensation
13 for the guardian's services except as approved by court order or
14 as determined by a duly appointed conservator other than the
15 guardian. A guardian may institute a proceeding to compel a
16 person's performance of a duty to support the ward or to pay
17 money for the ward's welfare.

18 (c) The guardian shall facilitate the ward's education and
19 social or other activities, and shall authorize medical or other
20 professional care, treatment, or advice. A guardian is not
21 liable by reason of this consent for injury to the ward resulting
22 from the negligence or acts of third persons unless it would be
23 illegal for a parent to have consented.

24 (d) A guardian may consent to a minor ward's marriage.

25 (e) Subject to the conditions and restrictions of chapter X
26 of Act No. 288 of the Public Acts of 1939, being sections 710.21

1 to 710.70 of the Michigan Compiled Laws, a guardian may consent
2 to a minor ward's adoption or release for adoption.

3 (f) A guardian shall report the condition of the ward and of
4 the ward's estate that is subject to the guardian's possession or
5 control, as ordered by the court on petition of a person inter-
6 ested in the minor's welfare or as required by court rule. The
7 report shall detail the condition of the ward, medical or sani-
8 tary treatment or care to which the ward was subjected, and what
9 reason, if any, exists for the continuation of the guardianship.

10 Sec. 5216. (1) A guardian is entitled to reasonable compen-
11 sation for services as guardian and to reimbursement for room,
12 board, and clothing personally provided to the ward, but only as
13 approved by court order. If a conservator, other than the guard-
14 ian or a person affiliated with the guardian, is appointed for
15 the ward's estate, reasonable compensation and reimbursement to
16 the guardian may be approved and paid by the conservator without
17 order of the court controlling the guardian.

18 (2) If a minor dies while under guardianship and a conserva-
19 tor has not been appointed for the minor's estate, and if the
20 guardian has possession of any money of the deceased minor, upon
21 petition of the guardian and with or without notice, the court
22 may hear a claim for burial expenses or another claim as the
23 court considers advisable. Upon hearing the claim, the court may
24 enter an order allowing or disallowing the claim or a part of it
25 and may provide in an order of allowance that the claim or a part
26 of it be paid immediately if the payment can be made without
27 injury or serious inconvenience to the minor's estate.

1 Sec. 5217. A guardian's authority and responsibility
2 terminate upon the guardian's death, resignation, or removal or
3 upon the minor's death, adoption, marriage, or attainment of
4 majority. However, a termination does not affect the guardian's
5 liability for prior acts, or the obligation to account for the
6 ward's money and property. The guardian's resignation does not
7 terminate the guardianship until it is approved by the court. A
8 parental appointment under an informally probated will terminates
9 if the will is later denied probate in a formal proceeding.

10 Sec. 5218. (1) The court at the place where the ward
11 resides has concurrent jurisdiction over resignation, removal,
12 accounting, or another proceeding relating to the guardianship
13 with the court that appointed the guardian or in which acceptance
14 of a parental appointment was filed.

15 (2) If the court located where the ward resides is neither
16 the appointing court nor the court in which acceptance of
17 appointment is filed, the court in which a proceeding subsequent
18 to appointment is commenced in all appropriate cases shall notify
19 the other court, in this or another state, and after consultation
20 with that court, shall determine whether to retain jurisdiction
21 or transfer the proceeding to the other court, whichever will
22 serve the ward's welfare. A copy of an order accepting a resig-
23 nation or removing a guardian shall be sent to the appointing
24 court or the court in which acceptance of appointment is filed.

25 Sec. 5219. (1) A person interested in the ward's welfare
26 or, if 14 or more years of age, the ward may petition for a
27 guardian's removal on the ground that removal would serve the

1 ward's welfare or for another order that would serve the ward's
2 welfare. A guardian may petition for permission to resign. A
3 petition for removal or for permission to resign may, but need
4 not, include a request for a successor guardian's appointment.

5 (2) Notice of a hearing on a petition for an order after a
6 guardian's appointment shall be given to the ward, the guardian,
7 and any other person as ordered by the court.

8 (3) After notice and hearing on a petition for removal or
9 for permission to resign, the court may terminate the guardian-
10 ship and make further order that may be appropriate.

11 (4) If the court determines at any time in a proceeding that
12 the ward's interest is or may be inadequately represented, the
13 court may appoint an attorney to represent the minor, giving con-
14 sideration to the preference of the minor if the minor is 14 or
15 more years of age.

16 PART 3

17 GUARDIANS OF INCAPACITATED INDIVIDUALS

18 Sec. 5301. (1) If serving as guardian, the parent of an
19 unmarried incapacitated individual may appoint by will, or other
20 writing signed by the parent and attested by at least 2 wit-
21 nesses, a guardian for the incapacitated individual. If both
22 parents are dead or the surviving parent is adjudged incapaci-
23 tated, a parental appointment becomes effective when, after
24 having given 7 days' prior written notice of intention to do so
25 to the incapacitated individual and to the person having the care
26 of the incapacitated individual or to the nearest adult relative,
27 the guardian files acceptance of appointment in the court in

1 which the will is probated or, in the case of a nontestamentary
2 nominating instrument, in the court at the place where the inca-
3 pacitated individual resides or is present. The notice shall
4 state that the appointment may be terminated by filing a written
5 objection in the court as provided by subsection (4). If both
6 parents are dead, an effective appointment by the parent who died
7 later has priority.

8 (2) If serving as guardian, the spouse of a married incapac-
9 itated individual may appoint by will, or other writing signed by
10 the spouse and attested by at least 2 witnesses, a guardian of
11 the incapacitated individual. The appointment becomes effective
12 when, after having given 7 days' prior written notice of inten-
13 tion to do so to the incapacitated individual and to the person
14 having care of the incapacitated individual or to the nearest
15 adult relative, the guardian files acceptance of appointment in
16 the court in which the will is probated or, in the case of a non-
17 testamentary nominating instrument, in the court at the place
18 where the incapacitated individual resides or is present. The
19 notice shall state that the appointment may be terminated by
20 filing a written objection in the court as provided by subsection
21 (4).

22 (3) An appointment effected by filing the guardian's accep-
23 tance under a will probated in the state of the decedent's domi-
24 cile is effective in this state.

25 (4) Upon the filing in the court in which the will was pro-
26 bated or, in the case of a nontestamentary nominating instrument,
27 in the court at the place where the incapacitated individual

1 resides or is present, of the incapacitated individual's written
2 objection to a guardian's appointment under this section, the
3 appointment is terminated. An objection does not prevent
4 appointment by the court in a proper proceeding of the parental
5 or spousal nominee or another suitable person upon an adjudica-
6 tion of incapacity in a proceeding under sections 5302 to 5315.

7 Sec. 5302. The venue for a guardianship proceeding for an
8 incapacitated individual is in the place where the incapacitated
9 individual resides or is present. If the incapacitated individ-
10 ual is admitted to an institution by order of a court of compe-
11 tent jurisdiction, venue is also in the county in which that
12 court is located.

13 Sec. 5303. (1) An individual in his or her own behalf, or
14 any person interested in the individual's welfare, may petition
15 for a finding of incapacity and appointment of a guardian. The
16 petition shall contain specific facts about the individual's con-
17 dition and specific examples of the individual's recent conduct
18 that demonstrate the need for a guardian's appointment.

19 (2) Upon the filing of a petition under subsection (1), the
20 court shall set a date for hearing on the issue of incapacity.
21 Unless the allegedly incapacitated individual has legal counsel
22 of his or her own choice, the court shall appoint a guardian ad
23 litem to represent the person in the proceeding.

24 Sec. 5304. (1) If necessary, the court may order that an
25 individual alleged to be incapacitated be examined by a physician
26 or mental health professional appointed by the court who shall
27 submit a report in writing to the court at least 5 days before

1 the hearing set under section 5303. A report prepared as
2 provided in this subsection shall not be made a part of the
3 proceeding's public record, but shall be available to the court
4 or an appellate court in which the proceeding is subject to
5 review, to the alleged incapacitated individual, to the petition-
6 er, to their respective legal counsels, and to other persons as
7 the court directs. The report may be used as provided in the
8 Michigan rules of evidence.

9 (2) The alleged incapacitated individual has the right to
10 secure an independent evaluation, at his or her own expense or,
11 if indigent, at the expense of the state. Compensation for an
12 independent evaluation at public expense shall be in an amount
13 that, based upon time and expense, the court approves as
14 reasonable.

15 (3) A report prepared under this section shall contain all
16 of the following:

17 (a) A detailed description of the individual's physical or
18 psychological infirmities.

19 (b) An explanation of how and to what extent each infirmity
20 interferes with the individual's ability to receive or evaluate
21 information in making decisions.

22 (c) A listing of all medications the individual is receiv-
23 ing, the dosage of each medication, and a description of the
24 effects each medication has upon the individual's behavior.

25 (d) A prognosis for improvement in the individual's condi-
26 tion and a recommendation for the most appropriate rehabilitation
27 plan.

1 (e) The signatures of all individuals who performed the
2 evaluations upon which the report is based.

3 (4) The individual alleged to be incapacitated is entitled
4 to be present at the hearing in person, and to see or hear all
5 evidence bearing upon the individual's condition. If the indi-
6 vidual wishes to be present at the hearing, all practical steps
7 shall be taken to ensure his or her presence, including, if nec-
8 essary, moving the hearing site.

9 (5) The individual is entitled to be represented by legal
10 counsel, to present evidence, to cross-examine a witness, includ-
11 ing the court-appointed physician or mental health professional
12 and the visitor, and to trial by jury.

13 (6) The issue of incapacity may be determined at a closed
14 hearing without a jury if requested by the individual alleged to
15 be incapacitated or that individual's legal counsel.

16 Sec. 5305. (1) The guardian ad litem's duties include all
17 of the following:

18 (a) Personally visiting the individual alleged to be
19 incapacitated.

20 (b) Explaining to the individual alleged to be incapacitated
21 the nature, purpose, and legal effects of a guardian's
22 appointment.

23 (c) Explaining to the individual alleged to be incapacitated
24 the hearing procedure and the individual's rights in the hearing
25 procedure, including, but not limited to, the right to contest
26 the petition, to request limits on the guardian's powers, to
27 object to a particular person being appointed guardian, to be

1 present at the hearing, to be represented by legal counsel, and
2 to have legal counsel appointed for the individual if he or she
3 is unable to afford legal counsel.

4 (d) Informing the individual alleged to be incapacitated of
5 the name of any person known to be seeking appointment as
6 guardian.

7 (e) Making determinations, and informing the court of those
8 determinations, on all of the following:

9 (i) Whether the individual alleged to be incapacitated
10 wishes to be present at the hearing.

11 (ii) Whether the individual alleged to be incapacitated
12 wishes to contest the petition.

13 (iii) Whether the individual alleged to be incapacitated
14 wishes limits placed on the guardian's powers.

15 (iv) Whether the individual alleged to be incapacitated
16 objects to a particular person being appointed guardian.

17 (2) The court shall not order compensation of the guardian
18 ad litem unless the guardian at litem states on the record that
19 he or she has complied with subsection (1).

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

1 (4) If the individual alleged to be incapacitated requests
2 legal counsel or the guardian ad litem determines it is in the
3 best interest of the individual to have legal counsel, and if
4 legal counsel has not been secured, the court shall appoint legal
5 counsel. If the individual alleged to be incapacitated is indi-
6 gent, the state shall bear the expense of legal counsel.

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

10 Sec. 5306. (1) The court may appoint a guardian if it is
11 satisfied by clear and convincing evidence that the individual
12 for whom a guardian is sought is an incapacitated individual, and
13 that the appointment is necessary as a means of providing con-
14 tinuing care and supervision of the incapacitated individual.
15 Alternately, the court may dismiss the proceeding or enter
16 another appropriate order.

17 (2) A guardian shall be granted only those powers and only
18 for that period of time as is necessary to provide for the demon-
19 strated need of the incapacitated individual, and the guardian-
20 ship shall be designed to encourage the development of maximum
21 self-reliance and independence in the individual. A court order
22 establishing a guardianship shall specify any limitations on the
23 guardian's powers and any time limits on the guardianship.

24 (3) If it is found by clear and convincing evidence that the
25 individual is incapacitated and lacks the capacity to do some,
26 but not all, of the tasks necessary to care for himself or
27 herself, the court may appoint a limited guardian to provide

1 guardianship services to the individual, but the court shall not
2 appoint a full guardian.

3 (4) If it is found by clear and convincing evidence that the
4 individual is incapacitated and is totally without capacity to
5 care for himself or herself, the court shall specify that finding
6 of fact in an order and may appoint a full guardian.

7 Sec. 5307. By accepting appointment, a guardian personally
8 submits to the court's jurisdiction in a proceeding relating to
9 the guardianship that may be instituted by an interested person.
10 Notice of a proceeding shall be delivered to the guardian or
11 mailed to the guardian by first-class mail at the guardian's
12 address as listed in the court records and to his or her address
13 as then known to the petitioner.

14 Sec. 5308. The guardian's authority and responsibility for
15 an incapacitated individual terminates upon the death of the
16 guardian or ward, upon the determination of incapacity of the
17 guardian, or upon removal or resignation as provided in section
18 5310. Testamentary appointment of a guardian under a will pro-
19 bated under article III terminates if the will is later denied
20 probate under a supervised probate proceeding.

21 Sec. 5309. The court shall review a guardianship not later
22 than 1 year after the guardian's appointment and not later than
23 every 3 years after each review.

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

1 (2) The ward or a person interested in the ward's welfare
2 may petition for an order removing the guardian, appointing a
3 successor guardian, modifying the guardianship's terms, or termi-
4 nating the guardianship. A request for this order may be made by
5 informal letter to the court or judge. A person who knowingly
6 interferes with the transmission of this kind of request to the
7 court or judge is subject to a finding of contempt of court.

8 (3) Except as otherwise provided in the order finding inca-
9 pacity, upon receiving a petition or request under this section,
10 the court shall set a date for a hearing to be held within 28
11 days after the receipt of the petition or request. An order
12 finding incapacity may specify a minimum period, not exceeding
13 180 days, during which a petition or request for a finding that a
14 ward is no longer incapacitated, or for an order removing the
15 guardian, modifying the guardianship's terms, or terminating the
16 guardianship, shall not be filed without special leave of the
17 court.

18 (4) Before removing a guardian, appointing a successor
19 guardian, modifying the guardianship's terms, or terminating a
20 guardianship, and following the same procedures to safeguard the
21 ward's rights as apply to a petition for a guardian's appoint-
22 ment, the court may send a visitor to the present guardian's res-
23 idence and to the place where the ward resides or is detained, to
24 observe conditions and report in writing to the court.

25 Sec. 5311. (1) In a proceeding for the appointment or
26 removal of an incapacitated individual's guardian, other than the
27 appointment of a temporary guardian or temporary suspension of a

1 guardian, notice of hearing shall be given to each of the
2 following:

3 (a) The ward or the individual alleged to be incapacitated
4 and that individual's spouse, parents, and adult children.

5 (b) A person who is serving as the guardian, conservator, or
6 who has the individual's care and custody.

7 (c) If known, a person named as attorney in fact under a
8 durable power of attorney.

9 (d) If no other person is notified under subdivision (a),
10 (b), or (c), at least 1 of the individual's closest adult rela-
11 tives, if any can be found.

12 (2) Notice shall be served personally on the alleged inca-
13 pacitated individual. Notice to all other persons shall be given
14 as prescribed by court rule. Waiver of notice by the individual
15 alleged to be incapacitated is not effective unless the individ-
16 ual attends the hearing or a waiver of notice is confirmed in an
17 interview with the visitor.

18 (3) In a proceeding for a guardian's appointment under sec-
19 tions 5303 and 5304, a copy of the petition shall be attached to
20 the hearing notice, and the notice to the alleged incapacitated
21 individual shall contain all of the following information:

22 (a) The nature, purpose, and legal effects of the appoint-
23 ment of a guardian.

24 (b) The alleged incapacitated individual's rights in the
25 proceeding, including the right to appointed legal counsel.

26 Sec. 5312. (1) If an individual does not have a guardian,
27 an emergency exists, and no other person appears to have

1 authority to act in the circumstances, the court shall provide
2 notice to the individual alleged to be incapacitated and shall
3 hold a hearing. Upon a showing that the individual is incapac-
4 itated, the court may exercise the power of a guardian, or appoint
5 a temporary guardian with only the powers and for the period of
6 time as ordered by the court. A hearing with notice as provided
7 in section 5311 shall be held within 28 days after the court has
8 acted under this subsection.

9 (2) If an appointed guardian is not effectively performing
10 the guardian's duties and the court further finds that the inca-
11 pacitated individual's welfare requires immediate action, the
12 court may appoint, with or without notice, a temporary guardian
13 for the incapacitated individual for a specified period not to
14 exceed 6 months.

15 (3) A temporary guardian is entitled to the care and custody
16 of the ward, and the authority of a permanent guardian previously
17 appointed by the court is suspended as long as a temporary guard-
18 ian has authority. A temporary guardian may be removed at any
19 time. A temporary guardian shall make reports as the court
20 requires. In other respects, the provisions of this act concern-
21 ing guardians apply to temporary guardians.

22 Sec. 5313. (1) A competent person, including a nonprofit
23 corporation described in section 5106, may be appointed guardian
24 of an incapacitated individual. The court shall not appoint as a
25 guardian an agency, public or private, that financially benefits
26 from directly providing housing, medical, or social services to
27 the incapacitated individual.

1 (2) In appointing a guardian under this section, the court
2 shall appoint a person, if suitable and willing to serve, desig-
3 nated by the individual who is the subject of the petition. If a
4 specific designation is not made or a person designated is not
5 suitable or willing to serve, the court may appoint as a guardian
6 a person named as attorney in fact through a durable power of
7 attorney.

8 (3) If a person is not designated under subsection (2) or a
9 person designated under subsection (2) is not suitable or willing
10 to serve, the court may appoint as a guardian an individual who
11 is related to the subject of the petition in the following order
12 of preference:

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

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

17 (c) A parent of the incapacitated individual. This subdivi-
18 sion shall be considered to include a person nominated by will or
19 other writing signed by a deceased parent.

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

23 (e) A person nominated by the person who is caring for the
24 individual or paying benefits to the individual.

25 (4) If none of the persons listed in subsection (3) are
26 suitable or willing to serve, the court may appoint any competent
27 person who is suitable and willing to serve.

1 Sec. 5314. Except as limited under 5305(3), an
2 incapacitated individual's guardian is responsible for the ward's
3 care, custody, and control, but is not liable to third persons by
4 reason of that responsibility for the ward's acts. In particular
5 and without qualifying the foregoing, a guardian has all of the
6 following powers and duties, except as modified by court order:

7 (a) To the extent that it is consistent with the terms of an
8 order by a court of competent jurisdiction relating to detention
9 or commitment of the ward, the guardian is entitled to custody of
10 the person of the guardian's ward and may establish the ward's
11 place of residence within or without this state. The guardian
12 shall notify the court within 14 days of a change in the ward's
13 place of residence.

14 (b) If entitled to custody of the ward, the guardian shall
15 make provision for the ward's care, comfort, and maintenance and,
16 when appropriate, arrange for the ward's training and education.
17 The guardian has the responsibility of securing services to
18 restore the ward to the best possible state of mental and physi-
19 cal well-being so that the ward can return to self-management at
20 the earliest possible time. Without regard to custodial rights
21 of the ward's person, the guardian shall take reasonable care of
22 the ward's clothing, furniture, vehicles, and other personal
23 effects and commence a protective proceeding if the ward's other
24 property is in need of protection.

25 (c) A guardian may give the consent or approval that may be
26 necessary to enable the ward to receive medical or other
27 professional care, counsel, treatment, or service.

1 (d) If a conservator for the ward's estate is not appointed,
2 a guardian may:

3 (i) Institute a proceeding to compel a person under a duty
4 to support the ward or to pay sums for the ward's welfare to per-
5 form that duty.

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

15 (e) The guardian shall report the condition of the ward and
16 the ward's estate that is subject to the guardian's possession or
17 control, as required by the court, but not less often than
18 annually. A report under this subdivision shall contain all of
19 the following:

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

22 (ii) Any improvement or deterioration in the ward's mental,
23 physical, and social condition that occurred during the past
24 year.

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

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

3 (v) Medical treatment received by the ward.

4 (vi) Services received by the ward.

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

7 (viii) A recommendation as to the need for continued
8 guardianship.

9 (f) If a conservator is appointed, the guardian shall pay to
10 the conservator, for management as provided in this act, the
11 amount of the ward's estate received by the guardian in excess of
12 the amount the guardian expends for the ward's current support,
13 care, and education. The guardian shall account to the conserva-
14 tor for the amount expended.

15 Sec. 5315. (1) A guardian of an individual for whom a con-
16 servator also is appointed controls the ward's custody and care
17 and is entitled to receive reasonable amounts for those services
18 and for room and board furnished to the ward as agreed upon
19 between the guardian and the conservator if the amounts agreed
20 upon are reasonable under the circumstances. The guardian may
21 request the conservator to expend the ward's estate by payment to
22 a third person or institution for the ward's care and
23 maintenance.

24 (2) If a ward dies while under guardianship and a conserva-
25 tor has not been appointed for the ward's estate, and if the
26 guardian has possession of money of the deceased ward, upon
27 petition of the guardian and with or without notice, the court

1 may hear a claim for burial expenses or any other claim as the
2 court considers advisable. Upon hearing the claim, the court may
3 enter an order allowing or disallowing the claim or a part of the
4 claim and may provide in the order of allowance that the claim or
5 a part of it be paid immediately if the payment can be made with-
6 out injury or serious inconvenience to the ward's estate.

7 Sec. 5316. To encourage self-reliance and independence in
8 an incapacitated individual, the court may authorize the individ-
9 ual to function without the consent or supervision of the
10 individual's guardian or conservator in the handling of part of
11 his or her money or other property, including the maintenance of
12 a savings or checking account in a bank or other institution, and
13 to the extent authorized, any person may deal with that individ-
14 ual as though the individual were mentally competent.

15 Sec. 5317. (1) The court in the county where the ward
16 resides has concurrent jurisdiction over resignation, removal,
17 accounting, and other proceedings relating to the guardianship
18 with the court that appointed the guardian or in which acceptance
19 of a parental or spousal appointment was filed.

20 (2) If the court in the county where the ward resides is not
21 the court in which acceptance of appointment is filed, the court
22 in which a proceeding is commenced after the appointment in
23 appropriate cases shall notify the other court, in this or
24 another state, and after consultation with that court shall
25 determine whether to retain jurisdiction or transfer the proceed-
26 ing to the other court, whichever is in the best interests of the
27 ward. After this determination is made, the court accepting a

1 resignation or removing a guardian shall direct this fiduciary to
2 prepare and submit a final report to both courts. A copy of an
3 order accepting a resignation or removing a guardian and a copy
4 of the final report shall be sent to the court in which accep-
5 tance of appointment is filed. The court entering this order may
6 permit closing of the guardianship in the court in which accep-
7 tance of appointment is filed, without notice to interested
8 persons.

9 Sec. 5318. A third person who, in good faith, deals with a
10 guardian or assists a guardian in the conduct of a transaction
11 may assume the existence of the guardian's authority and its
12 proper exercise without inquiry. The third person is not bound
13 to inquire whether the guardian may act or is properly exercising
14 the power. A third person, without actual knowledge that the
15 guardian is exceeding the guardian's powers or improperly exer-
16 cising them, is fully protected in dealing with the guardian as
17 if the guardian possessed and properly exercised the power. A
18 third person is not bound to see to the proper application of
19 property paid or delivered to the guardian.

20 PART 4

21 PROTECTION OF PROPERTY OF AN INDIVIDUAL UNDER DISABILITY OR OF A
22 MINOR

23 Sec. 5401. (1) Upon petition and after notice and hearing
24 in accordance with this part, the court may appoint a conservator
25 or make another protective order for cause as provided in this
26 section.

1 (2) The court may appoint a conservator or make another
2 protective order in relation to a minor's estate and affairs if
3 the court determines that the minor owns money or property that
4 requires management or protection that cannot otherwise be pro-
5 vided, has or may have business affairs that may be jeopardized
6 or prevented by minority, or needs money for support and educa-
7 tion and that protection is necessary or desirable to obtain or
8 provide money.

9 (3) The court may appoint a conservator or make another pro-
10 tective order in relation to an individual's estate and affairs
11 if the court determines any of the following:

12 (a) The individual is unable to manage property and business
13 affairs effectively for reasons such as mental illness, mental
14 deficiency, physical illness or disability, advanced age, chronic
15 use of drugs, chronic intoxication, confinement, detention by a
16 foreign power, or disappearance.

17 (b) The individual has property that will be wasted or dis-
18 sipated unless proper management is provided, or money is needed
19 for the individual's support, care, and welfare or those entitled
20 to the individual's support, and that protection is necessary or
21 desirable to obtain or provide money.

22 (4) The court may appoint a conservator in relation to the
23 estate and affairs of an individual who is mentally competent,
24 but due to age or physical infirmity is unable to manage his or
25 her property and affairs effectively and who, recognizing this
26 disability, requests a conservator's appointment.

1 Sec. 5402. After the service of notice in a proceeding
2 seeking a conservator's appointment or other protective order and
3 until the proceeding's termination, the court in which the peti-
4 tion is filed has the following jurisdiction:

5 (a) Exclusive jurisdiction to determine the need for a con-
6 servator or other protective order until the proceeding is
7 terminated.

8 (b) Exclusive jurisdiction to determine how the protected
9 individual's estate that is subject to the laws of this state
10 shall be managed, expended, or distributed to or for the use of
11 the protected individual or any of the protected individual's
12 dependents or other claimants.

13 (c) Concurrent jurisdiction to determine the validity of a
14 claim against the protected individual or the protected
15 individual's estate, and questions of title concerning estate
16 property.

17 Sec. 5403. Venue for a proceeding under this part is as
18 follows:

19 (a) In the court at the place in this state where the indi-
20 vidual to be protected resides whether or not a guardian has been
21 appointed in another place.

22 (b) If the individual to be protected does not reside in
23 this state, in the court at a place where property of the indi-
24 vidual is located.

25 Sec. 5404. (1) The individual to be protected, a person who
26 is interested in the individual's estate, affairs, or welfare,
27 including a parent, guardian, or custodian, or a person who would

1 be adversely affected by lack of effective management of the
2 individual's property and business affairs may petition for a
3 conservator's appointment or for another appropriate protective
4 order.

5 (2) The petition shall set forth to the extent known the
6 petitioner's interest; the name, age, residence, and address of
7 the individual to be protected; the name and address of the
8 guardian, if any; the name and address of the nearest relative
9 known to the petitioner; a general statement of the individual's
10 property with an estimate of the value of the property, including
11 compensation, insurance, a pension, or an allowance to which the
12 person is entitled; and the reason why a conservator's appoint-
13 ment or another protective order is necessary. If a
14 conservator's appointment is requested, the petition shall also
15 set forth the name and address of the person whose appointment is
16 sought and the basis of the claim to priority for appointment.

17 Sec. 5405. (1) On a petition for a conservator's appoint-
18 ment or another protective order, the requirements for notice
19 described in section 5311 apply, subject to the following:

20 (a) If the individual to be protected has disappeared or is
21 otherwise situated so as to make personal service of notice
22 impracticable, notice to the individual shall be given by publi-
23 cation as provided in section 1401.

24 (b) If the individual to be protected is a minor, section
25 5206 also applies.

26 (2) Notice of a hearing on a petition for an order after a
27 conservator's appointment or another protective order shall be

1 given to the protected individual, a conservator of the protected
2 individual's estate, and any other person as ordered by the
3 court.

4 Sec. 5406. (1) Upon receipt of a petition for a
5 conservator's appointment or another protective order because of
6 minority, the court shall set a date for hearing. If, at any
7 time in the proceeding, the court determines that the minor's
8 interests are or may be inadequately represented, the court may
9 appoint an attorney to represent the minor, giving consideration
10 to the minor's choice if 14 or more years of age. An attorney
11 appointed by the court to represent a minor has the powers and
12 duties of a guardian ad litem.

13 (2) Upon receipt of a petition for a conservator's appoint-
14 ment or another protective order for a reason other than minori-
15 ty, the court shall set a date for hearing. Unless the individ-
16 ual to be protected has chosen counsel, the court shall appoint
17 an attorney to represent the individual who may be granted the
18 powers and duties of a guardian ad litem. If the alleged dis-
19 ability is mental illness, mental deficiency, physical illness or
20 disability, chronic use of drugs, or chronic intoxication, the
21 court may direct that the individual to be protected be examined
22 by a physician designated by the court, preferably a physician
23 who is not connected with an institution in which the individual
24 is a patient or is detained. The court may send a visitor to
25 interview the individual to be protected. The visitor may be a
26 guardian ad litem or a court officer or employee.

1 (3) The court may utilize, as an additional visitor, the
2 service of a public or charitable agency to evaluate the
3 condition of the individual to be protected and make appropriate
4 recommendations to the court.

5 (4) The individual to be protected is entitled to be present
6 at the hearing in person. The individual is entitled to be rep-
7 resented by counsel, to present evidence, to cross-examine wit-
8 nesses, including a court-appointed physician or other qualified
9 person and a visitor, and to trial by jury. The issue may be
10 determined at a closed hearing or without a jury if the individ-
11 ual to be protected or counsel for the individual so requests.

12 (5) Any person may apply for permission to participate in
13 the proceeding, and the court may grant the request, with or
14 without hearing, upon determining that the best interest of the
15 individual to be protected will be served by granting the
16 request. The court may attach appropriate conditions to the
17 permission.

18 (6) After hearing, upon finding that a basis for a
19 conservator's appointment or another protective order is estab-
20 lished, the court shall make the appointment or other appropriate
21 protective order.

22 Sec. 5407. (1) The court shall exercise the authority con-
23 ferred in this part to encourage the development of maximum
24 self-reliance and independence of a protected individual and make
25 protective orders only to the extent necessitated by the pro-
26 tected individual's mental and adaptive limitations and other
27 conditions warranting the procedure.

1 (2) The court has the following powers that may be exercised
2 directly or through a conservator in respect to a protected
3 individual's estate and business affairs:

4 (a) While a petition for a conservator's appointment or
5 another protective order is pending and after preliminary hearing
6 and without notice to others, the court has the power to preserve
7 and apply the individual's property to be protected as may be
8 required for the support of the individual or the individual's
9 dependents.

10 (b) After hearing and upon determining that a basis for an
11 appointment or other protective order exists with respect to a
12 minor without other disability, the court has all those powers
13 over the minor's estate and business affairs that are or may be
14 necessary for the best interests of the minor and members of the
15 minor's immediate family.

16 (c) After hearing and upon determining that a basis for an
17 appointment or other protective order exists with respect to an
18 individual for a reason other than minority, the court, for the
19 benefit of the individual and members of the individual's immedi-
20 ate family, has all the powers over the estate and business
21 affairs that the individual could exercise if present and not
22 under disability, except the power to make a will. Those powers
23 include, but are not limited to, all of the following:

24 (i) To make gifts.

25 (ii) To convey or release a contingent or expectant interest
26 in property including marital property rights and a right of

1 survivorship incident to joint tenancy or tenancy by the
2 entirety.

3 (iii) To exercise or release a power held by the protected
4 individual as trustee, personal representative, custodian for a
5 minor, conservator, or donee of a power of appointment.

6 (iv) To enter into a contract.

7 (v) To create a revocable or irrevocable trust of estate
8 property that may extend beyond the disability or life of the
9 protected individual.

10 (vi) To exercise an option of the protected individual to
11 purchase securities or other property.

12 (vii) To exercise a right to elect an option and change a
13 beneficiary under an insurance or annuity policy and to surrender
14 the policy for its cash value.

15 (viii) To exercise a right to an elective share in the
16 estate of the individual's deceased spouse and to renounce or
17 disclaim an interest by testate or intestate succession or by
18 inter vivos transfer.

19 (3) The court may exercise or direct the exercise of the
20 following powers only if satisfied, after the notice and hearing,
21 that it is in the protected individual's best interests and that
22 the individual either is incapable of consenting or has consented
23 to the proposed exercise of the power:

24 (a) To exercise or release a power of appointment of which
25 the protected individual is donee.

26 (b) To renounce or disclaim an interest.

1 (c) To make a gift in trust or otherwise exceeding 20% of a
2 year's income of the estate.

3 (d) To change a beneficiary under an insurance and annuity
4 policy.

5 (4) A determination that a basis for a conservator's
6 appointment or another protective order exists has no effect on
7 the protected individual's capacity.

8 Sec. 5408. (1) If it is established in a proper proceeding
9 that a basis exists as described in section 5401 for affecting an
10 individual's property and business affairs, the court, without
11 appointing a conservator, may authorize, direct, or ratify a
12 transaction necessary or desirable to achieve a security, serv-
13 ice, or care arrangement meeting the protected individual's fore-
14 seeable needs. Protective arrangements include, but are not
15 limited to, payment, delivery, deposit, or retention of money or
16 property; sale, mortgage, lease, or other transfer of property;
17 entry into an annuity contract, contract for life care, deposit
18 contract, or contract for training and education; or an addition
19 to or establishment of a suitable trust.

20 (2) If it is established in a proper proceeding that a basis
21 exists as described in section 5401 for affecting an individual's
22 property and business affairs, the court, without appointing a
23 conservator, may authorize, direct, or ratify a contract, trust,
24 or other transaction relating to the protected individual's prop-
25 erty and business affairs if the court determines that the trans-
26 action is in the protected individual's best interests.

1 (3) Before approving a protective arrangement or other
2 transaction under this section, the court shall consider the
3 interests of the protected individual's creditors and dependents
4 and, in view of the disability, whether the protected individual
5 needs the continuing protection of a conservator. The court may
6 appoint a special conservator to assist in the accomplishment of
7 a protective arrangement or other transaction authorized under
8 this section. The special conservator has the authority con-
9 ferred by the order and serves until discharged by order after
10 reporting to the court on all matters done under the appointment
11 order.

12 Sec. 5409. (1) The court may appoint an individual, a cor-
13 poration authorized to exercise fiduciary powers, or a nonprofit
14 corporation described in section 5106 to serve as conservator of
15 a protected individual's estate. The following are entitled to
16 consideration for appointment in the following order of
17 priority:

18 (a) A conservator, guardian of property, or similar fidu-
19 ciary appointed or recognized by the appropriate court of another
20 jurisdiction in which the protected individual resides.

21 (b) An individual or corporation nominated by the protected
22 individual if he or she is 14 or more years of age and of suffi-
23 cient mental capacity to make an intelligent choice.

24 (c) The protected individual's spouse.

25 (d) An adult child of the protected individual.

26 (e) A parent of the protected individual or a person
27 nominated by the will of a deceased parent.

1 (f) A relative of the protected individual with whom he or
2 she has resided for more than 6 months before the petition is
3 filed.

4 (g) A person nominated by the person who is caring for or
5 paying benefits to the protected individual.

6 (2) A person named in subsections (1)(a), (c), (d), (e), or
7 (f) may designate in writing a substitute to serve instead, and
8 that designation transfers the priority to the substitute. If
9 persons have equal priority, the court shall select the person
10 the court considers best qualified to serve. Acting in the pro-
11 tected individual's best interest, the court may pass over a
12 person having priority and appoint a person having a lower prior-
13 ity or no priority.

14 Sec. 5410. The court may require a conservator to furnish a
15 bond conditioned upon faithful discharge of all duties of the
16 trust according to law, with sureties as the court specifies.
17 Unless otherwise directed, the bond shall be in the amount of the
18 aggregate capital value of the estate property in the
19 conservator's control plus 1 year's estimated income minus the
20 value of securities deposited under arrangements requiring a
21 court order for their removal and the value of land that the
22 fiduciary, by express limitation of power, lacks power to sell or
23 convey without court authorization. Instead of sureties on a
24 bond, the court may accept other security for the performance of
25 the bond, including a pledge of securities or a mortgage of
26 land.

1 Sec. 5411. (1) The following requirements and provisions
2 apply to a bond required under section 5410:

3 (a) Unless otherwise provided by the terms of the approved
4 bond, sureties are jointly and severally liable with the conser-
5 vator and with each other.

6 (b) By executing an approved bond of a conservator, a surety
7 consents to the jurisdiction of the court that issued letters to
8 the primary obligor in a proceeding pertaining to the
9 conservator's fiduciary duties and naming the surety as a party
10 respondent. Notice of a proceeding shall be delivered to the
11 surety or mailed by registered or certified mail to the address
12 listed with the court where the bond is filed and to the address
13 as then known to the petitioner.

14 (c) On petition of a successor conservator or an interested
15 person, a proceeding may be initiated against a surety for breach
16 of the obligation of the conservator's bond.

17 (d) The conservator's bond is not void after the first
18 recovery but may be proceeded against from time to time until the
19 whole penalty is exhausted.

20 (2) A proceeding shall not be commenced against a surety on
21 a matter as to which an action or proceeding against the primary
22 obligor is barred by adjudication or limitation.

23 Sec. 5412. (1) Before receiving letters, a conservator
24 shall qualify by filing with the appointing court a required bond
25 and a statement of acceptance of the duties of the office.

26 (2) In filing the statement of acceptance, the conservator
27 may exclude from the scope of the conservator's responsibility,

1 for a period not exceeding 3 months, real estate or an ownership
2 interest in a business entity if the conservator reasonably
3 believes the real estate or property owned by the business entity
4 is or may be contaminated by a hazardous substance, or is or has
5 been used for an activity directly or indirectly involving a haz-
6 ardous substance that could result in liability to the estate or
7 otherwise impair the value of property held in the estate. The
8 conservator shall identify the real estate or ownership interest
9 being excluded and specify the time period of exclusion.

10 (3) If the conservator identifies excluded property under
11 subsection (2), the conservator's responsibilities extend to the
12 excluded property at the end of the exclusion period or upon
13 prior notice of acceptance of that property filed by the conser-
14 vator with the court, unless, before the end of the exclusion
15 period, the conservator requests the court to appoint a special
16 conservator with respect to the excluded property or to exercise
17 administrative authority over the excluded property by direct
18 judicial order.

19 (4) In response to a request by the general conservator
20 under subsection (3), the court may do either of the following:

21 (a) Appoint a special conservator with the duty and author-
22 ity to collect and manage the excluded property, but only to the
23 extent necessary for proper settlement of the estate, to preserve
24 the property, to account with respect to the property, and to
25 distribute or otherwise dispose of the property as directed by
26 the general conservator or other court order.

1 (b) Direct administration of the excluded property by
2 judicial order without the appointment of a conservator with
3 respect to the property.

4 (5) By accepting appointment, a conservator submits person-
5 ally to the court's jurisdiction in a proceeding relating to the
6 estate that may be instituted by an interested person. Notice of
7 a proceeding shall be delivered to the conservator or mailed by
8 registered or certified mail to the address listed in the peti-
9 tion for appointment or as reported to the court after appoint-
10 ment and to the address as then known to the petitioner.

11 Sec. 5413. If not otherwise compensated for services
12 rendered, a visitor, attorney, physician, conservator, or special
13 conservator appointed in a protective proceeding, or an attorney
14 whose services resulted in a protective order or in an order that
15 was beneficial to a protected individual's estate, is entitled to
16 reasonable compensation from the estate.

17 Sec. 5414. The court may remove a conservator for good
18 cause, upon notice and hearing, or accept a conservator's
19 resignation. Upon the conservator's death, resignation, or
20 removal, the court may appoint another conservator. A conserva-
21 tor so appointed succeeds to the title and powers of the
22 predecessor.

23 Sec. 5415. (1) A person interested in the welfare of an
24 individual for whom a conservator is appointed may file a peti-
25 tion in the appointing court for an order to do any of the
26 following:

1 (a) Require bond or security or additional bond or security,
2 or reduce bond.

3 (b) Require an accounting for the administration of the
4 trust.

5 (c) Direct distribution.

6 (d) Remove the conservator and appoint a temporary or suc-
7 cessor conservator.

8 (e) Grant other appropriate relief.

9 (2) A conservator may petition the appointing court for
10 instructions concerning fiduciary responsibility.

11 (3) Upon notice and hearing, the court may give appropriate
12 instructions or make an appropriate order.

13 Sec. 5416. In relation to powers conferred by this part or
14 implicit in the title acquired by virtue of the proceeding, a
15 conservator shall act as a fiduciary and observe the standard of
16 care applicable to a trustee.

17 Sec. 5417. (1) Within 90 days after appointment or within
18 another time period specified by court rule, a conservator shall
19 prepare and file with the appointing court a complete inventory
20 of the estate subject to the conservatorship together with an
21 oath or affirmation that the inventory is believed to be complete
22 and accurate so far as information permits. The conservator
23 shall provide a copy of the inventory to the protected individual
24 if practicable and if the individual is 14 years of age or older
25 and has sufficient mental capacity to understand the
26 arrangement. A copy shall also be provided to a parent or
27 guardian with whom the protected individual resides.

1 (2) The conservator shall keep suitable records of the
2 administration and exhibit those records on the request of an
3 interested person.

4 Sec. 5418. A conservator shall account to the court for
5 administration of the trust not less than annually unless the
6 court directs otherwise, upon resignation or removal, and at
7 other times as the court directs. On termination of the pro-
8 tected individual's minority or disability, a conservator shall
9 account to the court or to the formerly protected individual or
10 that individual's successors. Subject to appeal or vacation
11 within the time permitted, an order, after notice and hearing,
12 allowing an intermediate account of a conservator adjudicates as
13 to liabilities concerning the matters considered in connection
14 with the accounts, and an order, after notice and hearing, allow-
15 ing a final account adjudicates as to all previously unsettled
16 liabilities of the conservator to the protected individual or the
17 protected individual's successors relating to the
18 conservatorship. In connection with any account, the court may
19 require a conservator to submit to a physical check of the estate
20 to be made in any manner the court specifies.

21 Sec. 5419. (1) A conservator's appointment vests in the
22 conservator title as trustee to all of the protected individual's
23 property, or to the part of that property specified in the order,
24 held at the time of or acquired after the order, including title
25 to property held for the protected individual by a custodian or
26 attorney-in-fact. An order specifying that only a part of the

1 protected individual's property vests in the conservator creates
2 a limited conservatorship.

3 (2) Except as otherwise provided in this act, the protected
4 individual's interest in property vested in a conservator by this
5 section is not transferable or assignable by the protected
6 individual. Though ineffective to affect property rights, an
7 attempted transfer or assignment by the protected individual may
8 generate a claim for restitution or damages that, subject to pre-
9 sentation and allowance, may be satisfied as provided in section
10 5427.

11 (3) Property vested in a conservator by this section or the
12 protected individual's interest in that property is not subject
13 to levy, garnishment, or similar process other than an order
14 issued in the protective proceeding made as provided in section
15 5427.

16 Sec. 5420. (1) Letters of conservatorship are evidence of
17 transfer of all of the protected individual's property, or the
18 part of that property specified in the letters, to the
19 conservator. An order terminating a conservatorship is evidence
20 of transfer of the property subjected to the conservatorship from
21 the conservator to the protected individual or that individual's
22 successors.

23 (2) Subject to the requirements of general statutes govern-
24 ing the filing or recordation of documents of title to land or
25 other property, letters of conservatorship or an order terminat-
26 ing a conservatorship may be filed or recorded to give record

1 notice of title as between the conservator and the protected
2 individual.

3 Sec. 5421. A sale or encumbrance to a conservator, the
4 conservator's spouse, agent, or attorney, or a corporation,
5 trust, or other organization in which the conservator has a sub-
6 stantial beneficial interest, or a transaction involving the
7 estate being administered by the conservator that is affected by
8 a substantial conflict between fiduciary and personal interests,
9 is voidable unless the transaction is approved by the court after
10 notice as directed by the court.

11 Sec. 5422. (1) A person who in good faith either assists or
12 deals with a conservator for value in a transaction other than
13 those requiring a court order as provided in section 5407 is pro-
14 tected as if the conservator properly exercised the power. The
15 fact that a person knowingly deals with a conservator does not
16 alone require the person to inquire into the existence of a power
17 or the propriety of its exercise, but a restriction on a
18 conservator's powers that is endorsed on letters as provided in
19 section 5427 is effective as to third persons. A person is not
20 bound to see to the proper application of estate property paid or
21 delivered to a conservator.

22 (2) The protection expressed in this section extends to a
23 procedural irregularity or jurisdictional defect that occurs in a
24 proceeding leading to the issuance of letters and is not a sub-
25 stitution for protection provided by a comparable provision of
26 the law relating to a commercial transaction or to simplifying a
27 transfer of securities by a fiduciary.

1 Sec. 5423. (1) Subject to a limitation provided in section
2 5427, a conservator has all of the powers conferred in this sec-
3 tion and the additional powers conferred by law on trustees in
4 this state. In addition, a conservator of the estate of an
5 unmarried minor, as to whom no one has parental rights, has the
6 duties and powers of a guardian described in section 5209 until
7 the individual is no longer a minor or marries. The parental
8 rights conferred on a conservator by this section do not preclude
9 a guardian's appointment as provided in part 2.

10 (2) Acting reasonably in an effort to accomplish the purpose
11 of the appointment and without court authorization or confirma-
12 tion, a conservator may do any of the following:

13 (a) Collect, hold, or retain estate property, including land
14 in another state, until judging that property disposition should
15 be made. Property may be retained even though it includes prop-
16 erty in which the conservator is personally interested.

17 (b) Receive an addition to the estate.

18 (c) Continue or participate in the operation of a business
19 or other enterprise.

20 (d) Acquire an undivided interest in estate property in
21 which the conservator, in a fiduciary capacity, holds an undi-
22 vided interest.

23 (e) Invest or reinvest estate property. If the conservator
24 exercises the power conferred by this subdivision, the conserva-
25 tor shall invest or reinvest the property in accordance with the
26 Michigan prudent investor rule.

1 (f) Deposit estate money in a state or federally insured
2 financial institution including one operated by the conservator.

3 (g) Acquire or dispose of estate property, including land in
4 another state, for cash or on credit, at public or private sale,
5 or manage, develop, improve, exchange, partition, change the
6 character of, or abandon estate property.

7 (h) Make an ordinary or extraordinary repair or alteration
8 in a building or other structure, demolish an improvement, or
9 raze an existing or erect a new party wall or building.

10 (i) Subdivide, develop, or dedicate land to public use; make
11 or obtain the vacation of a plat or adjust a boundary; adjust a
12 difference in valuation on exchange or partition by giving or
13 receiving consideration; or dedicate an easement to public use
14 without consideration.

15 (j) Enter for any purpose into a lease as lessor or lessee
16 with or without option to purchase or renew for a term within or
17 extending beyond the term of the conservatorship.

18 (k) Enter into a lease or arrangement for exploration and
19 removal of a mineral or other natural resource or enter into a
20 pooling or unitization agreement.

21 (l) Grant an option involving disposition of estate property
22 or take an option for the acquisition of property.

23 (m) Vote a security, in person or by general or limited
24 proxy.

25 (n) Pay a call, assessment, or another amount chargeable or
26 accruing against or on account of a security.

1 (o) Sell or exercise stock subscription or conversion
2 rights.

3 (p) Consent, directly or through a committee or other agent,
4 to the reorganization, consolidation, merger, dissolution, or
5 liquidation of a corporation or other business enterprise.

6 (q) Hold a security in the name of a nominee or in other
7 form without disclosure of the conservatorship so that title to
8 the security may pass by delivery. However, the conservator is
9 liable for an act of the nominee in connection with the stock so
10 held.

11 (r) Insure the estate property against damage or loss or the
12 conservator against liability with respect to third persons.

13 (s) Borrow money to be repaid from estate property or
14 otherwise.

15 (t) Advance money for the protection of the estate or the
16 protected individual, and for all expense, loss, or liability
17 sustained in the estate's administration or because of the hold-
18 ing or ownership of estate property, for which the conservator
19 has a lien on the estate as against the protected individual for
20 an advance so made.

21 (u) Pay or contest a claim; settle a claim by or against the
22 estate or the protected individual by compromise, arbitration, or
23 otherwise; and release, in whole or in part, a claim belonging to
24 the estate to the extent that the claim is uncollectible.

25 (v) Pay a tax, assessment, conservator's compensation, or
26 other expense incurred in the estate's collection, care,
27 administration, and protection.

1 (w) Allocate an item of income or expense to either estate
2 income or principal, as provided by law, including creation of a
3 reserve out of income for depreciation, obsolescence, or amorti-
4 zation, or for depletion in a mineral or timber property.

5 (x) Pay money distributable to a protected individual or the
6 protected individual's dependent by paying the money to the dis-
7 tributee or by paying the money for the use of the distributee to
8 the distributee's guardian, or if none, to a relative or other
9 person having custody of the distributee.

10 (y) Employ a person, including an attorney, auditor, invest-
11 ment advisor, or agent, even though the person is associated with
12 the conservator, to advise or assist in the performance of an
13 administrative duty; act upon the person's recommendation without
14 independent investigation; and, instead of acting personally,
15 employ an agent to perform an act of administration, whether or
16 not discretionary.

17 (z) Prosecute or defend an action, claim, or proceeding in
18 any jurisdiction for the protection of estate property and of the
19 conservator in the performance of a fiduciary duty.

20 (aa) Execute and deliver an instrument that will accomplish
21 or facilitate the exercise of a power vested in the conservator.

22 (bb) Respond to an environmental concern or hazard affecting
23 property as provided in section 5424.

24 Sec. 5424. (1) To respond to an environmental concern or
25 hazard affecting property, the conservator may do any of the
26 following:

1 (a) Inspect property and the operation of business activity
2 on property held by the conservator, including property held in
3 or operated by a sole proprietorship, partnership, corporation,
4 or limited liability company for the purpose of determining com-
5 pliance with environmental law affecting the property, and
6 respond to an actual or threatened violation of an environmental
7 law affecting property held by the conservator.

8 (b) Take action necessary to prevent, abate, or otherwise
9 remedy an actual or threatened violation of an environmental law
10 affecting property held by the conservator, either before or
11 after the initiation of an enforcement action by a governmental
12 body.

13 (c) Settle or compromise at any time a claim against the
14 estate that is asserted by a governmental body or private party
15 involving the alleged violation of an environmental law affecting
16 property held in the trust or estate.

17 (d) Disclaim a power granted by a document, statute, or rule
18 of law that, in the sole discretion of the conservator, may cause
19 the conservator to incur personal liability under an environmen-
20 tal law.

21 (e) Decline to serve or resign as a conservator if the con-
22 servator reasonably believes that there is or may be a conflict
23 of interest between the conservator in its fiduciary capacity and
24 in its individual capacity because of a potential claim or
25 liability that may be asserted against the conservator on behalf
26 of the estate because of the type or condition of property held
27 in the estate.

1 (f) Charge the cost of an inspection, review, abatement,
2 response, cleanup, claim settlement, or remedial action autho-
3 rized in this section against the estate income or principal.

4 (2) The powers listed in subsection (1) are by way of enu-
5 meration and not limitation on the conservator's power to respond
6 to an environmental concern or hazard.

7 (3) As used in this section, "environmental law" means any
8 federal, state, or local law, rule, regulation, or ordinance
9 relating to protection of the environment or human health; and
10 "hazardous substance" means any substance defined as hazardous or
11 toxic or otherwise regulated by any environmental law. A conser-
12 vator shall not be personally liable to any beneficiary or other
13 party for any decrease in value of assets in the estate by reason
14 of the conservator's compliance with any environmental law, spe-
15 cifically including any reporting requirement under such law.
16 Neither the acceptance by the conservator of property nor a fail-
17 ure by the conservator to inspect property or business operations
18 shall create any inference that there is or may be any liability
19 under any environmental law with respect to such property or
20 business operations. The authority granted by these provisions
21 is solely to facilitate the administration and protection of
22 estate assets and is not to impose greater responsibility or
23 liability on the conservator than imposed by law absent these
24 provisions.

25 Sec. 5425. A conservator may expend or distribute estate
26 income or principal without court authorization or confirmation
27 for the support, education, care, or benefit of the protected

1 individual or the protected individual's dependents in accordance
2 with the following principles:

3 (a) The conservator shall consider a recommendation relating
4 to the appropriate standard of support, education, and benefit
5 for the protected individual or a dependent made by a parent or
6 guardian, if any. The conservator shall not be surcharged for
7 money paid to a person or organization furnishing support, educa-
8 tion, or care to the protected individual or a dependent in com-
9 pliance with the recommendation of the protected individual's
10 parent or guardian unless the conservator knows that the parent
11 or guardian derives personal financial benefit from that payment,
12 including a benefit by relief from a personal duty of support, or
13 that the recommendation is clearly not in the protected
14 individual's best interests.

15 (b) The conservator shall expend or distribute money reason-
16 ably necessary for the support, education, care, or benefit of
17 the protected individual or a dependent with due regard to all of
18 the following:

19 (i) The estate size, the conservatorship's probable dura-
20 tion, and the likelihood that the protected individual, at some
21 future time, may be fully able to be wholly self-sufficient and
22 able to manage business affairs and the estate.

23 (ii) The accustomed standard of living of the protected
24 individual and the dependents.

25 (iii) Other money or sources used for the protected
26 individual's support.

1 (c) The conservator may expend estate money for the support
2 of an individual legally dependent on the protected individual
3 and others who are members of the protected individual's house-
4 hold who are unable to support themselves and who are in need of
5 support.

6 (d) The conservator may pay money to be expended under this
7 subsection to any person, including the protected individual, to
8 reimburse for an expenditure that the conservator makes or in
9 advance for a service to be rendered to the protected individual,
10 if it is reasonable to expect the service will be performed and
11 an advance payment is customary or reasonably necessary under the
12 circumstances.

13 (e) In discharging a responsibility conferred by court order
14 or this part, a conservator shall implement the principles
15 described in section 5407(1) to the extent possible.

16 Sec. 5426. (1) If the estate is sufficient to provide for
17 the purposes implicit in the distributions authorized by section
18 5425, a conservator for the protected individual, other than a
19 minor, has the power to make a gift to charity or another object,
20 as the protected individual might have been expected to make, in
21 amounts that do not exceed an annual total of 20% of the estate
22 income.

23 (2) If a minor who has not been adjudged disabled under sec-
24 tion 5401(3) attains majority, and after meeting all claims and
25 expenses of administration, the conservator shall pay over and
26 distribute all money and property to the formerly protected
27 individual as soon as possible.

1 (3) If satisfied that a protected individual's disability,
2 other than minority, has ceased, and after meeting all claims and
3 expenses of administration, the conservator shall pay over and
4 distribute all money and property to the formerly protected indi-
5 vidual as soon as possible.

6 (4) If a protected individual dies, the conservator shall
7 deliver to the court for safekeeping a will of the deceased pro-
8 tected individual that has come into the conservator's posses-
9 sion, shall inform the personal representative or a beneficiary
10 named in the will of the delivery, and shall retain the estate
11 for delivery to a duly appointed personal representative of the
12 decedent or another person entitled to the delivery. If within
13 40 days after the protected individual's death another person is
14 not appointed personal representative and an application or peti-
15 tion for appointment is not before the court, the conservator may
16 apply to exercise a personal representative's powers and duties
17 in order to be able to proceed to administer and distribute the
18 decedent's estate. Upon application for an order granting a per-
19 sonal representative's powers to a conservator, after notice to a
20 person nominated personal representative by a will of which the
21 applicant is aware, the court may grant the application upon
22 determining that there is no objection and may endorse the let-
23 ters of the conservator to note that the formerly protected indi-
24 vidual is deceased and that the conservator acquires all of the
25 powers and duties of a personal representative. An order made
26 and entered under this section has the effect of an order for a
27 personal representative's appointment as provided in section 3308

1 and parts 6 to 10 of article III. However, after administration,
2 the estate in the conservator's name may be distributed to the
3 decedent's successors without prior retransfer to the conservator
4 as personal representative.

5 Sec. 5427. Subject to the restrictions in section 5407(3),
6 at the time of appointment or later, the court may confer on a
7 conservator, in addition to the powers conferred by sections 5423
8 to 5426, any power that the court itself could exercise under
9 section 5407(2)(b) and (c). At the time of appointment or later,
10 the court may limit the powers of a conservator otherwise con-
11 ferred by sections 5423 to 5426 or previously conferred by the
12 court, and may at any time remove or modify a limitation. If the
13 court limits a power conferred on the conservator by sections
14 5423 to 5426 or specifies, as provided in section 5419(1), that
15 title to some, but not all, of the protected individual's prop-
16 erty vests in the conservator, the limitation or specification of
17 property subject to the conservatorship shall be endorsed upon
18 the letters of appointment.

19 Sec. 5428. (1) When doing any of the following, the conser-
20 vator and the court shall take into account the protected
21 individual's estate plan as known to them, including a will, a
22 revocable trust of which the person is settlor, and a contract,
23 transfer, or joint ownership arrangement originated by the pro-
24 tected individual with provisions for payment or transfer of a
25 benefit or interest at the individual's death to another or
26 others:

1 (a) Investing the estate.

2 (b) Selecting estate property for distribution under section
3 5424(1) or (2).

4 (c) Utilizing a power of revocation or withdrawal available
5 for the protected individual's support and exercisable by the
6 conservator or the court.

7 (2) The conservator may examine the protected individual's
8 will.

9 Sec. 5429. (1) A conservator may pay or secure from the
10 estate a claim against the estate or against the protected indi-
11 vidual arising before or after the conservatorship upon the
12 claim's presentation and allowance in accordance with the priori-
13 ties in subsection (4). A claim may be presented by either of
14 the following methods:

15 (a) The claimant may deliver or mail to the conservator a
16 written statement of the claim indicating its basis, the name and
17 mailing address of the claimant, and the amount claimed.

18 (b) The claimant may file a written statement of the claim
19 with the court in the form prescribed by court rule and, deliver
20 or mail a copy of the statement to the conservator.

21 (2) The court shall consider a claim presented when the con-
22 servator receives the written statement of claim or when the
23 claim is filed with the court, whichever happens first. A
24 presented claim is allowed if it is not disallowed by written
25 statement mailed by the conservator to the claimant within 63
26 days after the claim's presentation. The presentation of a claim

1 tolls a statute of limitations relating to the claim until 28
2 days after its disallowance.

3 (3) A claimant whose claim has not been paid may petition
4 the court for determination of the claim at any time before it is
5 barred by the applicable statute of limitations and, upon due
6 proof, may procure an order for the claim's allowance, payment,
7 or security from the estate. If a proceeding is pending against
8 a protected individual at the time of a conservator's appointment
9 or is initiated against the protected individual after the
10 appointment, the moving party shall give notice of the proceeding
11 to the conservator if the proceeding could result in creating a
12 claim against the estate.

13 (4) If it appears that the estate in conservatorship is
14 likely to be exhausted before all existing claims are paid, the
15 conservator shall distribute the estate in money or in kind in
16 payment of claims in the following order:

17 (a) Costs and expenses of administration.

18 (b) Claims of the federal or state government having prior-
19 ity under law.

20 (c) Claims incurred by the conservator for care, mainte-
21 nance, and education that were previously provided to the pro-
22 tected individual or the protected individual's dependents.

23 (d) Claims arising before the conservatorship.

24 (e) All other claims.

25 (5) A preference shall not be given in the payment of a
26 claim over another claim of the same class, and a claim due and
27 payable is not entitled to a preference over a claim not due.

1 However, if it appears that the assets of the conservatorship are
2 adequate to meet all existing claims, acting in the protected
3 individual's best interest, the court may order the conservator
4 to give a mortgage or other security on the conservatorship
5 estate to secure payment at some future date of any or all claims
6 listed in subsection (4)(e).

7 (6) If a protected individual dies while under conservator-
8 ship, upon petition of the conservator and with or without
9 notice, the court may hear a claim for burial expense or another
10 claim as the court considers advisable. Upon hearing the claim,
11 the court may enter an order allowing or disallowing the claim or
12 a part of it and may provide in an order of allowance that the
13 claim or a part of it shall be paid immediately if payment can be
14 made without injury or serious inconvenience to the protected
15 individual's estate.

16 Sec. 5430. (1) Unless otherwise provided in the contract, a
17 conservator is not individually liable on a contract properly
18 entered into in a fiduciary capacity in the course of estate
19 administration unless the conservator fails to reveal the repre-
20 sentative capacity and identify the estate in the contract.

21 (2) A conservator is personally liable for an obligation
22 arising from ownership or control of estate property or for torts
23 committed in the course of estate administration only if person-
24 ally at fault.

25 (3) A claim based on a contract entered into by a conserva-
26 tor in a fiduciary capacity, an obligation arising from ownership
27 or control of the estate, or a tort committed in the course of

1 estate administration may be asserted against the estate by
2 proceeding against the conservator in the conservator's fiduciary
3 capacity, whether or not the conservator is personally liable for
4 the claim.

5 (4) A question of liability between the estate and the con-
6 servator personally may be determined in a proceeding for
7 accounting, surcharge, indemnification, or other appropriate pro-
8 ceeding or action.

9 Sec. 5431. The protected individual, conservator, or
10 another interested person may petition the court to terminate the
11 conservatorship. A protected individual seeking termination is
12 entitled to the same rights and procedures as in an original pro-
13 ceeding for a protective order. Upon determining after notice
14 and hearing that the minority or disability of the protected
15 individual has ceased, the court shall terminate the
16 conservatorship. Upon termination, title to the estate property
17 passes to the formerly protected individual or to successors.
18 The order of termination shall provide for expenses of adminis-
19 tration and shall direct the conservator to execute appropriate
20 instruments to evidence the transfer.

21 Sec. 5432. (1) A person indebted to a protected individual
22 or having possession of property or of an instrument evidencing a
23 debt, stock, or chose in action belonging to a protected individ-
24 ual may pay or deliver the money, property, or instrument to a
25 conservator, guardian of the estate, or other fiduciary appointed
26 by a court of the state of residence of the protected individual
27 upon being presented with proof of appointment and an affidavit

1 made by or on behalf of the fiduciary stating both of the
2 following:

3 (a) That no protective proceeding relating to the protected
4 individual is pending in this state.

5 (b) That the foreign fiduciary is entitled to payment or to
6 receive delivery.

7 (2) If the person to whom the affidavit is presented is not
8 aware of a protective proceeding pending in this state, payment
9 or delivery in response to the demand and affidavit discharges
10 the debtor or possessor.

11 Sec. 5433. If a conservator has not been appointed in this
12 state and a petition in a protective proceeding is not pending in
13 this state, a conservator appointed in the state in which the
14 protected individual resides may file in a court of this state,
15 in a county in which property belonging to the protected individ-
16 ual is located, an authenticated copy of letters of appointment
17 and of any bond. After the filing, the domiciliary foreign con-
18 servator may exercise as to property in this state all the powers
19 of a conservator appointed in this state and may maintain an
20 action or proceeding in this state subject to any conditions
21 imposed upon nonresident parties generally.

22 PART 5

23 DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

24 Sec. 5501. A durable power of attorney is a power of attor-
25 ney by which a principal designates another as the principal's
26 attorney in fact in writing and the writing contains the words
27 "This power of attorney is not affected by the principal's

1 subsequent disability or incapacity, or by the lapse of time", or
2 "This power of attorney is effective upon the disability or inca-
3 pacity of the principal", or similar words showing the
4 principal's intent that the authority conferred is exercisable
5 notwithstanding the principal's subsequent disability or incapac-
6 ity and, unless the power states a termination time, notwith-
7 standing the lapse of time since the execution of the
8 instrument.

9 Sec. 5502. An act done by an attorney in fact under a dura-
10 ble power of attorney during a period of disability or incapacity
11 of the principal has the same effect and inures to the benefit of
12 and binds the principal and the principal's successors in inter-
13 est as if the principal were competent and not disabled. Unless
14 the instrument states a termination time, the power is exercis-
15 able notwithstanding the lapse of time since the execution of the
16 instrument. A durable power of attorney that authorizes the
17 agent to convey or otherwise exercise power over real estate does
18 not need to contain the real estate's legal description.

19 Sec. 5503. (1) If, following execution of a durable power
20 of attorney, a court of the principal's domicile appoints a con-
21 servator, estate guardian, or other fiduciary charged with the
22 management of all of the principal's property or all of his or
23 her property except specified exclusions, the attorney in fact is
24 accountable to the fiduciary as well as to the principal. The
25 fiduciary has the same power to revoke or amend the power of
26 attorney that the principal would have had if he or she were not
27 disabled or incapacitated.

1 (2) A principal may nominate, by a durable power of
2 attorney, the conservator, guardian of his or her estate, or
3 guardian of his or her person for consideration by the court if a
4 protective proceeding for the principal's person or estate is
5 thereafter commenced. The court shall make its appointment in
6 accordance with the principal's most recent nomination in a dura-
7 ble power of attorney except for good cause or disqualification.

8 Sec. 5504. (1) The death of a principal who has executed a
9 written power of attorney, durable or otherwise, does not revoke
10 or terminate the agency as to the attorney in fact or other
11 person who, without actual knowledge of the principal's death,
12 acts in good faith under the power. An action taken as provided
13 in this subsection, unless otherwise invalid or unenforceable,
14 binds the principal's successors in interest.

15 (2) The disability or incapacity of a principal who has pre-
16 viously executed a written power of attorney that is not a dura-
17 ble power does not revoke or terminate the agency as to the
18 attorney in fact or other person who, without actual knowledge of
19 the principal's disability or incapacity, acts in good faith
20 under the power. An action taken as provided in this subsection,
21 unless otherwise invalid or unenforceable, binds the principal
22 and his or her successors in interest.

23 Sec. 5505. (1) If an attorney in fact acts in good-faith
24 reliance on a power of attorney, durable or otherwise, and exe-
25 cutes an affidavit stating that, at the time of the action, the
26 attorney in fact did not have actual knowledge of the principal's
27 death, disability, or incapacity or of the power's termination by

1 revocation, the affidavit is conclusive proof of the power's
2 nontermination or nonrevocation.

3 (2) If the exercise of the power of attorney requires execu-
4 tion and delivery of an instrument that is recordable, the affi-
5 davit when authenticated for record is also recordable.

6 (3) This section does not affect a provision in a power of
7 attorney for its termination by expiration of time or occurrence
8 of an event other than express revocation or a change in the
9 principal's capacity.

10 Sec. 5506. (1) An individual 18 years of age or older who
11 is of sound mind at the time the designation is made may desig-
12 nate in writing another individual who is 18 years of age or
13 older to exercise powers concerning care, custody, and medical
14 treatment decisions for the individual making the designation.
15 For purposes of this section and sections 5507 to 5512, an indi-
16 vidual who is named in a designation to exercise powers concern-
17 ing care, custody, and medical treatment decisions is known as a
18 patient advocate and an individual who makes a designation is
19 known as a patient.

20 (2) A designation under this section shall be in writing,
21 signed, witnessed as provided in subsection (3) , dated, executed
22 voluntarily and before its implementation, shall be made part of
23 the patient's medical record with the patient's attending physi-
24 cian and, if applicable, with the facility where the patient is
25 located. The designation shall include a statement that the
26 authority conferred under this section is exercisable only when

1 the patient is unable to participate in medical treatment
2 decisions.

3 (3) A designation under this section shall be executed in
4 the presence of and signed by 2 witnesses. A witnesses under
5 this section shall not be the patient's spouse, parent, child,
6 grandchild, sibling, presumptive heir, known devisee at the time
7 of the witnessing, physician, or patient advocate or an employee
8 of a life or health insurance provider for the patient, of a
9 health facility that is treating the patient, or of a home for
10 the aged as defined in section 20106 of the public health code,
11 Act No. 368 of the Public Acts of 1978, being section 333.20106
12 of the Michigan Compiled Laws, where the patient resides. A wit-
13 ness shall not sign the designation unless the patient appears to
14 be of sound mind and under no duress, fraud, or undue influence.

15 Sec. 5507. (1) A patient advocate designation may include a
16 statement of the patient's desires on care, custody, and medical
17 treatment. The patient may authorize the patient advocate to
18 exercise 1 or more powers concerning the patient's care, custody,
19 and medical treatment that the patient could have exercised on
20 his or her own behalf.

21 (2) A patient may designate in the designation a successor
22 individual as a patient advocate who may exercise powers concern-
23 ing care, custody, and medical treatment decisions for the
24 patient if the first individual named as patient advocate does
25 not accept, is incapacitated, resigns, or is removed.

26 (3) Before a patient advocate designation is implemented, a
27 copy of the designation shall be given to the proposed patient

1 advocate and shall be given to a successor patient advocate
2 before the successor acts as patient advocate. Before acting as
3 a patient advocate, the proposed patient advocate shall sign an
4 acceptance of the designation.

5 (4) The acceptance of a designation as a patient advocate
6 shall include substantially all of the following statements:

7 "(1) This designation is not effective unless the patient is
8 unable to participate in medical treatment decisions.

9 (2) A patient advocate shall not exercise powers concerning
10 the patient's care, custody, and medical treatment that the
11 patient, if the patient were able to participate in the decision,
12 could not have exercised on his or her own behalf.

13 (3) This designation cannot be used to make a medical treat-
14 ment decision to withhold or withdraw treatment from a patient
15 who is pregnant that would result in the pregnant patient's
16 death.

17 (4) A patient advocate may make a decision to withhold or
18 withdraw treatment that would allow a patient to die only if the
19 patient has expressed in a clear and convincing manner that the
20 patient advocate is authorized to make such a decision, and that
21 the patient acknowledges that such a decision could or would
22 allow the patient's death.

23 (5) A patient advocate shall not receive compensation for
24 the performance of his or her authority, rights, and responsibil-
25 ities, but a patient advocate may be reimbursed for actual and
26 necessary expenses incurred in the performance of his or her
27 authority, rights, and responsibilities.

1 (6) A patient advocate shall act in accordance with the
2 standards of care applicable to fiduciaries when acting for the
3 patient and shall act consistent with the patient's best
4 interests. The known desires of the patient expressed or evi-
5 denced while the patient is able to participate in medical treat-
6 ment decisions are presumed to be in the patient's best
7 interests.

8 (7) A patient may revoke his or her designation at any time
9 and in any manner sufficient to communicate an intent to revoke.

10 (8) A patient advocate may revoke his or her acceptance to
11 the designation at any time and in any manner sufficient to com-
12 municate an intent to revoke.

13 (9) A patient admitted to a health facility or agency has
14 the rights enumerated in section 20201 of the public health code,
15 Act No. 368 of the Public Acts of 1978, being section 333.20201
16 of the Michigan Compiled Laws.".

17 Sec. 5508. (1) The authority under a patient advocate des-
18 ignation is exercisable by a patient advocate only when the
19 patient is unable to participate in medical treatment decisions.
20 The patient's attending physician and another physician or
21 licensed psychologist shall determine upon examination of the
22 patient when the patient is unable to participate in medical
23 treatment decisions, shall put the determination in writing,
24 shall make the determination part of the patient's medical
25 record, and shall review the determination not less than
26 annually. If the patient's religious beliefs prohibit an
27 examination and this is stated in the designation, the patient

1 shall indicate in the designation how it shall be determined when
2 the patient advocate shall exercise powers concerning decisions
3 on behalf of the patient.

4 (2) If a dispute arises as to whether the patient is unable
5 to participate in medical treatment decisions, a petition may be
6 filed with the court in the county in which the patient resides
7 or is found requesting the court's determination as to whether
8 the patient is unable to participate in medical treatment
9 decisions. If a petition is filed under this subsection, the
10 court shall appoint a guardian ad litem to represent the patient
11 for the purposes of this subsection. The court shall conduct a
12 hearing on a petition under this subsection as soon as possible
13 and within 7 days after the court receives the petition. As soon
14 as possible and within 7 days after the hearing, the court shall
15 determine whether or not the patient is able to participate in
16 medical treatment decisions. If the court determines that the
17 patient is unable to participate in medical treatment decisions,
18 the patient advocate's authority, rights, and responsibilities
19 are effective. If the court determines that the patient is able
20 to participate in medical treatment decisions, the patient
21 advocate's authority, rights, and responsibilities are not
22 effective.

23 Sec. 5509. (1) An individual designated as a patient advo-
24 cate has the following authority, rights, responsibilities, and
25 limitations:

1 (a) A patient advocate shall act in accordance with the
2 standards of care applicable to fiduciaries in exercising his or
3 her powers.

4 (b) A patient advocate shall take reasonable steps to follow
5 the desires, instructions, or guidelines given by the patient
6 while the patient was able to participate in care, custody, or
7 medical treatment decisions, whether given orally or as written
8 in the designation.

9 (c) A patient advocate shall not exercise powers concerning
10 the patient's care, custody, and medical treatment that the
11 patient, if the patient were able to participate in the decision,
12 could not have exercised on his or her own behalf.

13 (d) This designation cannot be used to make a medical treat-
14 ment decision to withhold or withdraw treatment from a patient
15 who is pregnant that would result in the pregnant patient's
16 death.

17 (e) A patient advocate may make a decision to withhold or
18 withdraw treatment that would allow a patient to die only if the
19 patient has expressed in a clear and convincing manner that the
20 patient advocate is authorized to make such a decision, and that
21 the patient acknowledges that such a decision could or would
22 allow the patient's death.

23 (f) A patient advocate under this section shall not delegate
24 his or her powers to another individual without prior authoriza-
25 tion by the patient.

26 (2) A patient advocate designation is suspended when the
27 patient regains the ability to participate in medical treatment

1 decisions. The suspension is effective as long as the patient is
2 able to participate in medical treatment decisions. If the
3 patient subsequently is determined under section 5508 to be
4 unable to participate in medical treatment decisions, the patient
5 advocate's authority, rights, responsibilities, and limitations
6 are again effective.

7 Sec. 5510. (1) A designation executed under this section is
8 revoked by any of the following:

9 (a) The patient's death.

10 (b) An order of dissolution by the probate court under
11 section 5511(4).

12 (c) The patient advocate's resignation or removal by the
13 court, unless a successor patient advocate has been designated.

14 (d) The patient's revocation of the designation. Even if
15 the patient is unable to participate in medical treatment deci-
16 sions, a patient may revoke a designation at any time and in any
17 manner by which he or she is able to communicate an intent to
18 revoke the designation. If there is a dispute as to the intent
19 of the patient to revoke the designation, the court may make a
20 determination on the patient's intent to revoke the designation.
21 If the revocation is not in writing, a person who witnesses a
22 revocation of a designation shall describe in writing the circum-
23 stances of the revocation, shall sign the writing, and shall
24 notify, if possible, the patient advocate of the revocation. If
25 the patient's physician or health facility has notice of the
26 patient's revocation of a designation, the physician or health

1 facility shall note the revocation in the patient's medical
2 records and bedside chart and shall notify the patient advocate.

3 (e) A subsequent designation that revokes the prior designa-
4 tion either expressly or by inconsistency.

5 (f) The occurrence of a provision for revocation contained
6 in the designation.

7 (g) If a designation is executed during a patient's marriage
8 naming the patient's spouse as the patient advocate, the designa-
9 tion is suspended during the pendency of an action for separate
10 maintenance, annulment, or divorce and is revoked upon the entry
11 of a judgment of separate maintenance, annulment, or divorce,
12 unless the patient has named a successor individual to serve as a
13 patient advocate. If a successor patient advocate is named, that
14 individual shall act as the patient advocate.

15 (2) The revocation of a patient advocate designation under
16 subsection (1) does not revoke or terminate the agency as to the
17 patient advocate or other person who acts in good faith under the
18 designation and without actual knowledge of the revocation.
19 Unless the action is otherwise invalid or unenforceable, an
20 action taken without knowledge of the revocation binds the
21 patient and his or her heirs, devisees, and personal
22 representatives. An affidavit executed by the patient advocate
23 stating that, at the time of doing an act in accordance with the
24 designation, he or she did not have actual knowledge of the revo-
25 cation of the designation is, in the absence of fraud, conclusive
26 proof that the patient advocate did not have actual knowledge of
27 the revocation at the time of the act.

1 Sec. 5511. (1) Irrespective of a previously expressed or
2 evidenced desire, a current desire by a patient to have provided,
3 and not withheld or withdrawn, a specific life-extending care,
4 custody, or medical treatment is binding on the patient advocate,
5 if known by the patient advocate, regardless of the then ability
6 or inability of the patient to participate in care, custody, or
7 medical treatment decisions or the patient's competency.

8 (2) A person providing, performing, withholding, or with-
9 drawing care, custody, or medical treatment as a result of the
10 decision of an individual who is reasonably believed to be a
11 patient advocate and who is reasonably believed to be acting
12 within the authority granted by the designation is liable in the
13 same manner and to the same extent as if the patient had made the
14 decision on his or her own behalf.

15 (3) A person providing care, custody, or medical treatment
16 to a patient is bound by sound medical practice and by a patient
17 advocate's instructions if the patient advocate complies with
18 this section, but is not bound by the patient advocate's instruc-
19 tions if the patient advocate does not comply with this section.

20 (4) If a dispute arises as to whether a patient advocate is
21 acting consistent with the patient's best interests or is not
22 complying with this section, a petition may be filed with the
23 court in the county in which the patient resides or is found
24 requesting the court's determination as to the continuation of
25 the designation or the removal of the patient advocate.

26 Sec. 5512. (1) A patient advocate cannot make a medical
27 treatment decision under the authority of or under the process

1 created by this section and sections 5506 to 5511 to withhold or
2 withdraw treatment from a pregnant patient that would result in
3 the pregnant patient's death.

4 (2) A health care provider shall not require a patient advo-
5 cate designation to be executed as a condition of providing,
6 withholding, or withdrawing care, custody, or medical treatment.

7 (3) A life or health insurer shall not do any of the follow-
8 ing because of the execution or implementation of a patient advo-
9 cate designation or because of the failure or refusal to execute
10 or implement such a designation:

11 (a) Refuse to provide or continue coverage to the patient.

12 (b) Limit the amount of coverage available to a patient.

13 (c) Charge a patient a different rate.

14 (d) Consider the terms of an existing policy of life or
15 health insurance to have been breached or modified.

16 (e) Invoke a suicide or intentional death exemption or
17 exclusion in a policy covering the patient.

18 (4) A patient advocate designation shall not be construed to
19 condone, allow, permit, authorize, or approve suicide or
20 homicide.

21 (5) Except as provided in subsections (2) and (3), this sec-
22 tion and sections 5506 to 5511 only apply to or affect an indi-
23 vidual who has executed a patient advocate designation or an
24 individual acting for or on behalf of another individual who has
25 executed a patient advocate designation.

26 (6) Nothing in this section or sections 5506 to 5511 shall
27 be considered to authorize or compel care, custody, or medical

1 treatment decisions for a patient who objects on religious
2 grounds.

3 (7) A designation executed before the effective date of this
4 section with the intent of accomplishing a similar purpose as
5 this section is valid but is subject to this section,
6 section 5506(1), and sections 5507 to 5511; shall be in writing,
7 signed, witnessed or notarized, dated, and executed voluntarily;
8 and, before its implementation, shall be made part of the
9 patient's medical record.

10 Sec. 5513. If a provision of this article conflicts with a
11 provision of the mental health code, Act No. 258 of the Public
12 Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan
13 Compiled Laws, that act controls.

ARTICLE VI

NONPROBATE TRANSFERS ON DEATH

PART 1

EFFECT OF DEATH

Sec. 6101. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision in the instrument that is intended to result in any of the following:

(a) Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.

(c) Property the decedent controls or owns decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

1 (2) This section and section 6102 do not limit creditors'
2 rights under other laws of this state.

3 Sec. 6102. (1) Except as otherwise provided by law, if the
4 probate estate property is insufficient, a decedent's nonprobate
5 TOD is not effective against the decedent's probate estate to the
6 extent needed to discharge timely presented and allowed claims
7 against the estate and statutory allowances to the surviving
8 spouse and children.

9 (2) A surviving party or beneficiary who receives payment or
10 property after the decedent's death in a nonprobate transfer is
11 liable to account to the decedent's personal representative for a
12 proportionate share of the amount received to the extent neces-
13 sary to discharge the claims and allowances described in subsec-
14 tion (1) remaining unpaid after application of the decedent's
15 probate estate property. A proceeding to assert liability under
16 this section shall not be commenced unless the personal represen-
17 tative receives a written demand by the surviving spouse, a cred-
18 itor, a child, or a person acting for a child of the decedent.
19 The proceeding shall be commenced within 1 year after the
20 decedent's death.

21 (3) A trustee or custodian receiving a nonprobate payment or
22 TOD under an obligation to hold for or redistribute to a benefi-
23 ciary is subject to the liability described in subsection (2) to
24 the extent of assets remaining subject to the trust or custodial
25 arrangement as of the time of receipt of a written notice from
26 the decedent's estate notifying of an apparent or probable
27 insufficiency of probate property to satisfy the claims and

1 allowances described in subsection (1). A property distribution
2 to beneficial owners by a trustee or custodian before the trustee
3 or custodian receives written notice from the decedent's estate
4 of a probable deficiency of probate estate property subjects
5 recipients to a duty to account under subsection (2) and relieves
6 the trustee or custodian of liability for property distributed as
7 if the distribution had been made directly to the beneficiaries
8 of the trust or custodial arrangement at the decedent's death.

9 (4) A surviving party or beneficiary against whom a proceed-
10 ing to account is brought may join as a party to the proceeding a
11 surviving party or beneficiary of another nonprobate TOD of the
12 decedent. A beneficiary, trustee, or custodian is under no duty
13 to determine the apparent or probable insufficiency of probate
14 property or the nature and scope of other available nonprobate
15 transfers. A beneficiary, trustee, or custodian has no liability
16 to a beneficiary or other party for failing to determine the
17 apparent or probable insufficiency of probate property or the
18 nature and scope of other available nonprobate transfers regard-
19 less of the beneficiary's, trustee's, or custodian's actual or
20 constructive knowledge of that information.

21 (5) Money recovered by the personal representative shall be
22 administered as part of the decedent's estate.

23 (6) This section does not affect the protection from claims
24 of a decedent's personal representative or estate as provided in
25 section 6226 or of a financial institution that makes payment in
26 accordance with the terms of the account.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART 1

DEFINITIONS AND GENERAL PROVISIONS

Sec. 6201. As used in this part:

(a) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(b) "Agent" means a person authorized to make account transactions for a party.

(c) "Beneficiary" means a person named as one to whom money on deposit in an account is payable on request after death of all parties or for whom a party is named as trustee.

(d) "Financial institution" means an organization authorized to do business under state or federal laws relating to a financial institution, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(e) "Money on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of a party's death.

(f) "Multiple-party account" means an account payable on request to 1 or more of 2 or more parties, whether or not a right of survivorship is mentioned.

1 (g) "Party" means a person who, by the terms of an account,
2 has a present right, subject to request, to payment from the
3 account other than as a beneficiary or agent.

4 (h) "Payment" of sums on deposit includes withdrawal, pay-
5 ment to a party or third person pursuant to check or other
6 request, and a pledge of sums on deposit by a party, or a
7 set-off, reduction, or other disposition of all or part of an
8 account pursuant to a pledge.

9 (i) "POD designation" means the designation of either of the
10 following:

11 (i) A beneficiary in an account payable on request to 1
12 party during the party's lifetime and on the party's death to 1
13 or more beneficiaries, or to 1 or more parties during their life-
14 times and on the death of all of them to 1 or more
15 beneficiaries.

16 (ii) A beneficiary in an account in the name of 1 or more
17 parties as trustee for 1 or more beneficiaries if the relation-
18 ship is established by the terms of the account and there is no
19 subject of the trust other than the money on deposit in the
20 account, whether or not payment to the beneficiary is mentioned.

21 (j) "Receive" means, in relation to notice to a financial
22 institution, receipt in the office or branch office of the finan-
23 cial institution in which the account is established, but if the
24 terms of the account require notice at a particular place,
25 "receive" means receipt in the place required.

26 (k) "Request" means a request for payment complying with all
27 terms of the account, including special requirements concerning

1 necessary signatures and regulations of the financial
2 institution. However, for purposes of this part, if terms of the
3 account condition payment on advance notice, a request for pay-
4 ment is treated as immediately effective and a notice of intent
5 to withdraw is treated as a request for payment.

6 (1) "Terms of the account" includes the deposit agreement
7 and other terms and conditions, including the form, of the con-
8 tract of deposit.

9 Sec. 6202. This part does not apply to any of the
10 following:

11 (a) An account established for a partnership, joint venture,
12 or other organization for a business purpose.

13 (b) An account controlled by 1 or more persons as an agent
14 or trustee for a corporation, unincorporated association, or
15 charitable or civic organization.

16 (c) A fiduciary or trust account in which the relationship
17 is established other than by the terms of the account.

18 Sec. 6203. (1) An account may be for a single party or
19 multiple parties. A multiple-party account may be with or with-
20 out a right of survivorship between the parties. Subject to sec-
21 tion 6212(3), either a single-party account or a multiple-party
22 account may have a POD designation, an agency designation, or
23 both.

24 (2) An account established before, on, or after the effec-
25 tive date of this part, whether in the form prescribed in
26 section 6204 or in any other form, is either a single-party
27 account or a multiple-party account, with or without right of

1 survivorship, and with or without a POD designation or an agency
2 designation, within the meaning of this part, and is governed by
3 this part.

4 Sec. 6204. (1) A contract of deposit that contains provi-
5 sions in substantially the following form establishes the type of
6 account provided, and the account is governed by the provisions
7 of this part applicable to an account of that type:

8 (a) Single-party account with POD designation:

9 "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE NAMED
10 PARTY. UPON THE DEATH OF THAT PARTY, OWNERSHIP PASSES TO THE
11 NAMED POD BENEFICIARY.".

12 (b) Multiple-party account with no survivorship provision
13 and no POD designation:

14 "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE NAMED
15 PARTIES. UPON THE DEATH OF A PARTY, THE DECEASED PARTY'S
16 OWNERSHIP PASSES AS PART OF THE DECEASED PARTY'S ESTATE.".

17 (c) Multiple-party account with survivorship provision and
18 no POD designation:

19 "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE NAMED
20 PARTIES. UPON THE DEATH OF A PARTY, THE DECEASED PARTY'S
21 OWNERSHIP PASSES TO THE SURVIVING PARTIES.".

22 (d) Multiple-party account with survivorship provision and
23 POD designation:

24 "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE NAMED
25 PARTIES. UPON THE DEATH OF A PARTY, THE DECEASED PARTY'S
26 OWNERSHIP PASSES TO THE SURVIVING PARTIES. UPON THE DEATH OF THE

1 LAST SURVIVING PARTY, OWNERSHIP PASSES TO THE NAMED POD
2 BENEFICIARY."

3 (e) Durable agency or power of attorney designation:

4 "THE NAMED AGENT MAY MAKE AN ACCOUNT TRANSACTION FOR THE
5 PARTY. THIS AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY
6 OF THE PARTY, EXCEPT AS PROVIDED BY STATUTE."

7 (f) Nondurable agency or power of attorney designation:

8 "THE NAMED AGENT MAY MAKE AN ACCOUNT TRANSACTION FOR THE
9 PARTY. THIS AGENCY DESIGNATION TERMINATES ON DISABILITY OR
10 INCAPACITY OF THE PARTY."

11 (2) A contract of deposit that does not contain provisions
12 in substantially 1 of the forms provided in subsection (1) is
13 governed by the provisions of this part applicable to the type of
14 account that most nearly conforms to the depositor's intent.

15 Sec. 6205. (1) By a writing signed by all parties, the par-
16 ties may designate as agent of all parties on an account a person
17 other than a party.

18 (2) Unless the terms of an agency designation provide that
19 the authority of the agent terminates on disability or incapacity
20 of a party, the agent's authority survives disability and inca-
21 pacity of the parties. The agent may act for a disabled or inca-
22 pacitated party until the authority of the agent is terminated.

23 (3) Death of the sole party or last surviving party termi-
24 nates the authority of an agent.

25 Sec. 6206. The provisions of subpart 2 of this part con-
26 cerning beneficial ownership as between parties or as between
27 parties and beneficiaries apply only to controversies between

1 those persons and their creditors and other successors, and do
2 not apply to the right of those persons to payment as determined
3 by the terms of the account. Subpart 3 of this part governs the
4 liability and set-off rights of financial institutions that make
5 payments pursuant to it.

6 SUBPART 2

7 OWNERSHIP AS BETWEEN PARTIES AND OTHERS

8 Sec. 6211. (1) During the lifetime of all parties, an
9 account belongs to the parties in proportion to the net contribu-
10 tion of each to the money on deposit, unless there is clear and
11 convincing evidence of a different intent. As between parties
12 married to each other, in the absence of proof otherwise, the net
13 contribution of each is presumed to be an equal amount.

14 (2) A beneficiary in an account having a POD designation
15 does not have a right to money on deposit during the lifetime of
16 a party.

17 (3) An agent in an account with an agency designation has no
18 beneficial right to money on deposit.

19 (4) As used in this section, "net contribution" means the
20 sum of all deposits to an account made by or for a party, minus
21 all payments from the account made to or for the party that have
22 not been paid to or applied to the use of another party and a
23 proportionate share of charges deducted from the account, plus a
24 proportionate share of interest or dividends earned, whether or
25 not included in the current balance. The term includes deposit
26 life insurance proceeds added to the account by reason of death
27 of the party whose net contribution is being determined.

1 Sec. 6212. (1) Except as otherwise provided in this part,
2 on a party's death, money on deposit in a multiple-party account
3 belongs to the surviving party or parties. If 2 or more parties
4 survive and 1 is the surviving spouse of the decedent, the amount
5 to which the decedent, immediately before death, was beneficially
6 entitled under section 6211 belongs to the surviving spouse. If
7 2 or more parties survive and none is the surviving spouse of the
8 decedent, the amount to which the decedent, immediately before
9 death, was beneficially entitled under section 6211 belongs to
10 the surviving parties in equal shares, and augments the propor-
11 tion to which each survivor, immediately before the decedent's
12 death, was beneficially entitled under section 6211. The right
13 of survivorship continues between the surviving parties.

14 (2) In an account with a POD designation, all of the follow-
15 ing apply:

16 (a) On death of 1 of 2 or more parties, the rights in money
17 on deposit are governed by subsection (1).

18 (b) On death of the sole party or the last survivor of 2 or
19 more parties, money on deposit belongs to the surviving benefi-
20 ciary or beneficiaries. If 2 or more beneficiaries survive,
21 money on deposit belongs to them in equal and undivided shares,
22 and there is no right of survivorship in the event of a
23 beneficiary's death after the death. If no beneficiary survives,
24 money on deposit belongs to the last surviving party's estate.

25 (3) Money on deposit in a single-party account without a POD
26 designation, or in a multiple-party account that, by the terms of
27 the account, is without right of survivorship, is not affected by

1 a party's death, but the amount to which the decedent,
2 immediately before death, was beneficially entitled under section
3 6211 is transferred as part of the decedent's estate. A POD des-
4 ignation in a multiple-party account without right of survivor-
5 ship is ineffective. For purposes of this section, designation
6 of an account as a tenancy in common establishes that the account
7 is without right of survivorship.

8 (4) The ownership right of a surviving party or beneficiary,
9 or of the decedent's estate, in money on deposit is subject to
10 requests for payment made by a party before the party's death,
11 whether paid by the financial institution before or after death,
12 or unpaid. The surviving party or beneficiary, or the decedent's
13 estate, is liable to the payee of an unpaid request for payment.
14 The liability is limited to a proportionate share of the amount
15 transferred under this section, to the extent necessary to dis-
16 charge the request for payment.

17 Sec. 6213. (1) Rights at death under section 6212 are
18 determined by the type of account at the death of a party. The
19 type of account may be altered by written notice given by a party
20 to the financial institution to change the type of account or to
21 stop or vary payment under the terms of the account. The notice
22 shall be signed by a party and is not effective unless received
23 by the financial institution during the party's lifetime.

24 (2) A right of survivorship arising from the express terms
25 of the account, section 6212, or a POD designation shall not be
26 altered by will.

1 Sec. 6214. Except as provided in part 2 of article II or as
2 a consequence of, and to the extent directed by, section 6102, a
3 transfer resulting from the application of section 6212 is effec-
4 tive by reason of the terms of the account involved and this part
5 and is not testamentary or subject to articles I to IV.

6 Sec. 6215. (1) A deposit of community property in an
7 account does not alter the community character of the property or
8 community rights in the property, but a right of survivorship
9 between parties married to each other arising from the express
10 terms of the account or section 6212 shall not be altered by
11 will.

12 (2) This part does not affect the law governing tenancy by
13 the entirety.

14 (3) A multiple-party account in a financial institution held
15 only by a husband and wife shall constitute evidence of indebted-
16 ness within the meaning of section 1 of Act No. 212 of 1927,
17 being section 557.151 of the Michigan Compiled Laws.

SUBPART 3

PROTECTION OF FINANCIAL INSTITUTIONS

20 Sec. 6221. A financial institution may enter into a con-
21 tract of deposit for a multiple-party account to the same extent
22 it may enter into a contract of deposit for a single-party
23 account, and may provide for a POD designation and an agency des-
24 ignation in either a single-party account or a multiple-party
25 account. A financial institution need not inquire as to the
26 source of a deposit to an account or as to the proposed
27 application of a payment from an account.

1 Sec. 6222. On request, a financial institution may pay
2 money on deposit in a multiple-party account to either of the
3 following:

4 (a) One or more of the parties, whether or not another party
5 is disabled, incapacitated, or deceased when payment is requested
6 and whether or not the party making the request survives another
7 party.

8 (b) The personal representative, if any, or if there is
9 none, the heirs or devisees of a deceased party if proof of death
10 is presented to the financial institution showing that the
11 deceased party was the survivor of all other persons named on the
12 account either as a party or beneficiary, unless the account is
13 without right of survivorship under section 6212.

14 Sec. 6223. On request, a financial institution may pay
15 money on deposit in an account with a POD designation to any of
16 the following:

17 (a) One or more of the parties, whether or not another party
18 is disabled, incapacitated, or deceased when the payment is
19 requested and whether or not a party survives another party.

20 (b) The beneficiary or beneficiaries, if proof of death is
21 presented to the financial institution showing that the benefi-
22 ciary or beneficiaries survived all persons named as parties.

23 (c) The personal representative, if any, or if there is
24 none, the heirs or devisees of a deceased party, if proof of
25 death is presented to the financial institution showing that the
26 deceased party was the survivor of all other persons named on the
27 account either as a party or beneficiary.

1 Sec. 6224. On request of an agent under an agency
2 designation for an account, a financial institution may pay to
3 the agent money on deposit in the account, whether or not a party
4 is disabled, incapacitated, or deceased when the request is made
5 or received, and whether or not the authority of the agent termi-
6 nates on the disability or incapacity of a party.

7 Sec. 6225. If a financial institution is required or per-
8 mitted to make payment under this part to a minor designated as a
9 beneficiary, payment may be made in accordance with section
10 5101.

11 Sec. 6226. (1) Payment made under this part in accordance
12 with the type of account discharges the financial institution
13 from all claims for amounts so paid, whether or not the payment
14 is consistent with the beneficial ownership of the account as
15 between parties, beneficiaries, or their successors. Payment may
16 be made whether or not a party, beneficiary, or agent is dis-
17 abled, incapacitated, or deceased when payment is requested,
18 received, or made.

19 (2) A financial institution's protection under this section
20 does not extend to a payment made after the financial institution
21 receives written notice from a party, or from the personal repre-
22 sentative, surviving spouse, or heir or devisee of a deceased
23 party, to the effect that a payment in accordance with the terms
24 of the account, including one having an agency designation,
25 should not be permitted, and the financial institution has had a
26 reasonable opportunity to act on the notice when the payment is
27 made. Unless the notice is withdrawn by the person giving it,

1 the successor of a deceased party must concur in a request for
2 payment if the financial institution is to be protected under
3 this section. Unless a financial institution has been served
4 with process in an action or proceeding, no other notice or other
5 information shown to have been available to the financial insti-
6 tution affects its right to protection under this section.

7 (3) A financial institution that receives written notice
8 under this section or that otherwise has reason to believe that a
9 dispute exists as to the rights of the parties may refuse, with-
10 out liability, to make payments in accordance with the terms of
11 the account.

12 (4) A financial institution's protection under this section
13 does not affect the rights of parties in disputes between them-
14 selves or their successors concerning the beneficial ownership of
15 money on deposit in an account or a payment made from an
16 account.

17 Sec. 6227. Without qualifying any other statutory right to
18 set-off or lien and subject to any contractual provision, if a
19 party is indebted to a financial institution, the financial
20 institution has a right to set-off against the account. The
21 amount of the account subject to set-off is the proportion to
22 which the party is, or immediately before death was, beneficially
23 entitled under section 6211 or, in the absence of proof of that
24 proportion, an equal share with all parties.

25 PART 3

26 UNIFORM TOD SECURITY REGISTRATION PROVISIONS

1 Sec. 6301. As used in this part:

2 (a) "Beneficiary form" means a registration of a security
3 that indicates the present owner of the security and the owner's
4 intention regarding the person who will become the security's
5 owner upon the owner's death.

6 (b) "Register" means to issue a certificate showing the
7 ownership of a certificated security or, in the case of an uncer-
8 tificated security, to initiate or transfer an account showing
9 ownership of securities.

10 (c) "Registering entity" means a person who originates or
11 transfers a security title by registration, and includes a broker
12 maintaining security accounts for customers and a transfer agent
13 or other person acting for or as an issuer of securities.

14 (d) "Security" means a share, participation, or other inter-
15 est in property, in a business, or in an obligation of an enter-
16 prise or other issuer, and includes a certificated security,
17 uncertificated security, and security account.

18 (e) "Security account" means any of the following;

19 (i) A reinvestment account associated with a security, a
20 securities account with a broker, a cash balance in a brokerage
21 account, cash, interest, earnings, or dividends earned or
22 declared on a security in an account, a reinvestment account, or
23 a brokerage account, whether or not credited to the account
24 before the owner's death.

25 (ii) A cash balance or other property held for or due to the
26 owner of a security as a replacement for or product of an account

1 security, whether or not credited to the account before the
2 owner's death.

3 Sec. 6302. Only an individual whose registration of a
4 security shows sole ownership by 1 individual or multiple owner-
5 ship by 2 or more with right of survivorship, rather than as
6 tenants in common, may obtain registration in beneficiary form.
7 Multiple owners of a security registered in beneficiary form hold
8 as joint tenants with right of survivorship, as tenants by the
9 entireties, or as owners of community property held in survivor-
10 ship form, and not as tenants in common.

11 Sec. 6303. A security may be registered in beneficiary form
12 if the form is authorized by this or a similar statute of the
13 state of organization of the issuer or registering entity, the
14 location of the registering entity's principal office, or the
15 office of its transfer agent or its office making the registra-
16 tion or by this or a similar statute of the law of the state
17 listed as the owner's address at the time of registration. A
18 registration governed by the law of a jurisdiction in which this
19 or similar legislation is not in force or was not in force when a
20 registration in beneficiary form was made is nevertheless pre-
21 sumed to be valid and authorized as a matter of contract law.

22 Sec. 6304. Whether evidenced by certificate or account, a
23 security is registered in beneficiary form when the registration
24 includes a designation of a beneficiary to take the ownership at
25 the death of the owner or the deaths of all multiple owners.

26 Sec. 6305. Registration in beneficiary form may be shown by
27 the words "transfer on death" or the abbreviation "TOD", or by

1 the words "pay on death" or the abbreviation "POD", after the
2 name of the registered owner and before the name of a
3 beneficiary.

4 Sec. 6306. The designation of a TOD beneficiary on a regis-
5 tration in beneficiary form does not effect ownership until the
6 owner's death. A registration of a security in beneficiary form
7 may be canceled or changed at any time by the sole owner or all
8 the surviving owners without the consent of the beneficiary.

9 Sec. 6307. On death of a sole owner or the last to die of
10 all multiple owners, ownership of securities registered in bene-
11 ficiary form passes to the beneficiary or beneficiaries who sur-
12 vived all owners. On proof of death of all owners and compliance
13 with any applicable requirements of the registering entity, a
14 security registered in beneficiary form may be reregistered in
15 the name of the beneficiary or beneficiaries who survived the
16 death of all owners. Until division of the security after the
17 death of all owners, multiple beneficiaries surviving the death
18 of all owners hold their interests as tenants in common. If no
19 beneficiary survives the death of all owners, the security
20 belongs to the estate of the deceased sole owner or the estate of
21 the last to die of all multiple owners.

22 Sec. 6308. (1) A registering entity is not required to
23 offer or to accept a request for security registration in benefi-
24 ciary form. If a registration in beneficiary form is offered by
25 a registering entity, the owner requesting registration in bene-
26 ficiary form assents to the protections given to the registering
27 entity by this part.

1 (2) By accepting a request for registration of a security in
2 beneficiary form, the registering entity agrees that the regis-
3 tration will be implemented on the deceased owner's death as pro-
4 vided in this part.

5 (3) A registering entity is discharged from all claims to a
6 security by a deceased owner's estate, creditors, heirs, or devi-
7 sees if the entity registers a transfer of the security in
8 accordance with section 6307 and does so in good-faith reliance
9 on all of the following:

10 (a) The registration.

11 (b) This part.

12 (c) Information provided to it by affidavit of the deceased
13 owner's personal representative, or by the surviving beneficiary
14 or by the surviving beneficiary's representatives, or other
15 information available to the registering entity.

16 (4) This part's protections do not extend to a reregistra-
17 tion or payment made after a registering entity receives written
18 notice from a claimant to an interest in the security objecting
19 to implementation of a registration in beneficiary form. No
20 other notice or other information available to the registering
21 entity affects its right to protection under this part.

22 (5) The protection provided by this part to the registering
23 entity of a security does not affect the rights of beneficiaries
24 in disputes between themselves and other claimants to ownership
25 of the security transferred or its value or proceeds.

26 **Sec. 6309. (1) A transfer on death resulting from a**
27 registration in beneficiary form is effective by reason of the

1 contract regarding the registration between the owner and the
2 registering entity and this part, and is not testamentary.

3 (2) This part does not limit the rights of creditors of
4 security owners against beneficiaries and other transferees under
5 other laws of this state.

6 Sec. 6310. (1) A registering entity offering to accept reg-
7 istrations in beneficiary form may establish the terms and condi-
8 tions under which it will receive requests for registrations in
9 beneficiary form or for implementation of registrations in bene-
10 ficiary form, including requests for cancellation of previously
11 registered TOD beneficiary designations and requests for reregis-
12 tration to effect a change of beneficiary. The terms and condi-
13 tions so established may provide for proving death, avoiding or
14 resolving a problem concerning fractional shares, designating
15 primary and contingent beneficiaries, and substituting a named
16 beneficiary's descendants to take in the place of the named bene-
17 ficiary in the event of the beneficiary's death.

18 (2) Substitution may be indicated by appending to the name
19 of the primary beneficiary the letters LDPS, standing for "lineal
20 descendants per stripes". This designation substitutes a
21 deceased beneficiary's descendants who survive the owner for a
22 beneficiary who fails to survive, the descendants to be identi-
23 fied and to share in accordance with the law of the beneficiary's
24 domicile at the owner's death governing inheritance by an
25 intestate's descendants. Other forms of identifying beneficia-
26 ries who are to take on 1 or more contingencies, and rules for
27 providing proofs and assurances needed to satisfy reasonable

1 concerns by registering entities regarding conditions and
2 identities relevant to accurate implementation or registrations
3 in beneficiary form, may be contained in a registering entity's
4 terms and conditions.

5 (3) The following are illustrations of registrations in ben-
6 eficiary form that a registering entity may authorize:

7 (a) Sole owner-sole beneficiary:

8 "John S. Brown TOD or POD John S. Brown Jr."

9 (b) Multiple owners-sole beneficiary:

10 "John S. Brown and Mary B. Brown JT TEN TOD John S. Brown
11 Jr."

12 (c) Multiple owners-primary and secondary substituted
13 beneficiaries:

14 "John S. Brown and Mary B. Brown JT TEN TOD John S. Brown
15 Jr. SUB BENE Peter Q. Brown" or "John S. Brown, Mary B. Brown JT
16 TEN TOD John S. Brown Jr. LDPS."

ARTICLE VII

PART I

TRUST REGISTRATION

1 Sec. 7101. (1) The trustee of a trust having its principal
2 place of administration in this state may register the trust in
3 the court at the place designated in the trust instrument or, if
4 none is designated, then at the principal place of
5 administration. The principal place of the trust's administra-
6 tion is the trustee's usual place of business where the records
7 pertaining to the trust are kept or the trustee's residence if
8 the trustee does not have such a place of business. For a corpo-
9 rate trustee, the usual place of business is the business loca-
10 tion of the primary trust officer for the trust.

11 (2) For cotrustees, if not designated in the trust instru-
12 ment, the principal place of administration is 1 of the
13 following:

14 (a) If there is only 1 corporate cotrustee, the corporate
15 trustee's usual place of business.

16 (b) If there is only 1 professional fiduciary who is an
17 individual and no corporate trustee, the professional fiduciary's
18 usual place of business or residence.

19 (c) If (a) or (b) does not apply, the usual place of busi-
20 ness or residence of any of the cotrustees as agreed upon by
21 them.

22 Sec. 7102. (1) A trust is registered by the filing of a
23 statement that states the trustee's name and address and in which
24 the trustee acknowledges the trusteeship. The statement shall

1 indicate if the trust has been registered elsewhere. The
2 statement shall identify the trust in 1 of the following
3 manners:

4 (a) For a testamentary trust, by the name of the testator
5 and the date and place of domiciliary probate.

6 (b) For a written inter vivos trust, by the name of each
7 settlor and the original trustee and the date of the trust
8 instrument and all amendments existing on the date of
9 registration.

10 (c) For an oral trust, by information identifying the set-
11 tlor or other source of money and describing the trust's time and
12 manner of creation and the trust's terms, including the subject
13 matter, beneficiaries, and time of performance.

14 (2) The trust instrument and amendments are not required to
15 be filed with the court as part of the trust registration. If a
16 trust is registered elsewhere, registration in this state is
17 ineffective until the earlier registration is released by order
18 of the court where that registration occurred or until an instru-
19 ment executed by the trustee and all beneficiaries is filed with
20 the registration in this state.

21 Sec. 7103. (1) By registering a trust or accepting the
22 trusteeship of a registered trust, the trustee submits personally
23 to the court's jurisdiction in a proceeding under section 7201
24 relating to the trust that is initiated by an interested person
25 while the trust remains registered. Notice of a proceeding shall
26 be given to the trustee in accordance with section 1401 at the
27 trustee's address as stated in the registration or as reported to

1 the court and to the trustee's address then known to the
2 petitioner.

3 (2) To the extent of the beneficiary's interest in the trust
4 and if notice is given in accordance with section 1401, a benefi-
5 ciary of a trust properly registered in this state is subject to
6 the jurisdiction of the court of registration for the purposes of
7 a proceeding under section 7201.

8 Sec. 7104. For purposes of a proceeding commenced by a
9 trust beneficiary before registration, a trustee of a trust that
10 is not registered in a proper place is subject to the personal
11 jurisdiction of a court in which the trust could have been
12 registered. In addition, a trustee who, within 30 days after
13 receipt of a written demand by a trust settlor or beneficiary,
14 fails to register a trust as required by the trust instrument is
15 subject to removal and denial of compensation or to surcharge as
16 the court may direct.

17 Sec. 7105. A foreign corporate trustee is required to qual-
18 ify as a foreign corporation doing business in this state if it
19 maintains a trust's principal place of administration within the
20 state. A foreign cotrustee is not required to qualify in this
21 state solely because its cotrustee maintains the principal place
22 of administration in this state. Unless otherwise doing business
23 in this state, local qualification by a foreign trustee, corpo-
24 rate or individual, is not required for the trustee to receive
25 distribution from a local estate, to hold, invest in, manage, or
26 acquire property located in this state, or to maintain
27 litigation. This section does not affect a determination of what

1 other acts require qualification as doing business in this
2 state.

3 PART 2

4 COURT JURISDICTION CONCERNING TRUSTS

5 Sec. 7201. (1) The court has exclusive jurisdiction of pro-
6 ceedings concerning trusts as provided in section 1302(b) and (d)
7 and concurrent jurisdiction regarding matters affecting trusts as
8 provided in section 1303.

9 (2) Neither registration of a trust nor another proceeding
10 concerning a trust results in a continuing supervisory
11 proceeding. Subject to court jurisdiction as invoked by a inter-
12 ested party or as otherwise exercised as provided by law, the
13 management and distribution of a trust estate, submission of an
14 account or report to beneficiaries, payment of a trustee's fees
15 and other trust obligations, acceptance and change of trustee-
16 ship, and any other aspect of trust administration shall proceed
17 expeditiously consistent with the terms of the trust, free of
18 judicial intervention, and without court order or approval, or
19 other court action.

20 Sec. 7202. Venue for a proceeding under section 7201
21 involving a registered trust is in the place of registration.
22 Venue for a proceeding under section 7201 involving a trust not
23 registered in this state is in any place where the trust properly
24 could have been registered, and is governed otherwise by the
25 rules of civil procedure.

26 Sec. 7203. (1) If a party objects, the court shall not
27 entertain a proceeding under section 7201 involving a trust

1 registered or having its principal place of administration in
2 another state, unless either of the following applies:

3 (a) All appropriate parties could not be bound by litigation
4 in the courts of the state where the trust is registered or has
5 its principal place of administration.

6 (b) If the interests of justice would otherwise seriously be
7 impaired.

8 (2) The court may condition a stay or dismissal of a pro-
9 ceeding under this section on the consent of a party to jurisdic-
10 tion of the state in which the trust is registered or has its
11 principal place of business, or the court may grant a continuance
12 or enter another appropriate order.

13 Sec. 7204. The court where a trust is registered has con-
14 current jurisdiction with other courts of this state of an action
15 on proceeding to determine the existence or nonexistence of the
16 trust if created other than by will, of an action or proceeding
17 against a creditor or debtor of the trust, and of another action
18 or proceeding involving a trustee or a third party. Venue is
19 determined by the rules generally applicable to civil actions.

20 Sec. 7205. On petition of an interested person, after
21 notice to all interested persons, the court may review the pro-
22 priety of employment of a person by a trustee including an attor-
23 ney, auditor, investment advisor, or other specialized agent or
24 assistant, and the reasonableness of the compensation of a person
25 so employed and of the compensation determined by the trustee for
26 the trustee's own services. The court may order a person who

1 receives excessive compensation from a trust to make an
2 appropriate refund.

3 Sec. 7206. A proceeding under section 7201 is initiated by
4 filing a petition in the court and giving notice to interested
5 parties as provided in section 1401. The court may order notifi-
6 cation of additional persons. A judgment or order is valid for
7 each person who is given notice of the proceeding even if not all
8 interested parties are notified.

9 Sec. 7207. (1) On petition of an interested party, the
10 court may approve an interpretation, construction, modification,
11 or other settlement that is agreed upon in writing by all pres-
12 ently identified and competent beneficiaries whose interests in
13 the trust may be affected, to resolve a contest, controversy, or
14 question of construction or interpretation concerning the exis-
15 tence, administration, or termination of an irrevocable trust.

16 (2) If the present or future interest of an unborn, unascer-
17 tained, missing, or disappeared person; of a trustee or a trust
18 beneficiary described in the trust document but not yet estab-
19 lished; or of a minor or other person without legal capacity is
20 not represented or is not represented adequately under the provi-
21 sions of section 1208 or section 1403, the court may appoint 1 or
22 more guardians ad litem to represent the interest or interests.

23 (3) The court shall approve an agreement if it appears to
24 have been reached in good faith and its effects are just and rea-
25 sonable under all of the relevant facts and circumstances.

26 (4) The order in response to a petition under subsection (1)
27 is binding on all parties who are represented in the proceeding

1 and on others in accordance with section 1403(b), and after
2 issuance of the order, the agreement as approved by the court
3 shall be considered a part of the governing instrument of the
4 trust.

5 PART 3

6 DUTIES AND LIABILITIES OF TRUSTEES

7 Sec. 7301. Except as specifically provided, the general
8 duty of a trustee to administer a trust expeditiously for the
9 benefit of the beneficiaries is not altered by this act.

10 Sec. 7302. Except as otherwise provided by the terms of the
11 trust, the trustee shall observe the standards in dealing with
12 the trust property that would be observed by a prudent person
13 dealing with the property of another, and if the trustee has spe-
14 cial skills or is named trustee on the basis of representation of
15 special skills or expertise, the trustee is under a duty to use
16 those skills.

17 Sec. 7303. (1) Subject to subsection (2), the trustee of a
18 revocable trust shall keep the settlor reasonably informed of the
19 trust and its administration. Unless otherwise provided in the
20 trust instrument, the trustee of a revocable trust does not have
21 a duty to inform a trust beneficiary of the trust and its admin-
22 istration, other than the settlor or, if the settlor is an inca-
23 pacitated person, the settlor's designated agent.

24 (2) Unless otherwise provided in the trust instrument, if
25 the trustee reasonably believes the settlor of a revocable trust
26 is an incapacitated person and has no designated agent, the
27 trustee shall keep each beneficiary, who, if the settlor were

1 then deceased, would be a current trust beneficiary, reasonably
2 informed of the trust and its administration. Notwithstanding
3 the provisions of the trust instrument, upon good cause shown,
4 the court may order the trustee to keep other beneficiaries rea-
5 sonably informed of the trust and its administration.

6 (3) For a revocable trust, within 30 days after acceptance
7 of trust or the death of the settlor, whichever is later, and for
8 all other trusts, within 30 days after acceptance of the trust,
9 the trustee shall inform in writing each beneficiary of the
10 trust's existence, of the court in which the trust is registered,
11 if it is registered, of the trustee's name and address, and of
12 the beneficiary's right to request and receive both a copy of the
13 trust's terms that describe or affect the beneficiary's interest
14 and relevant information about the trust property. In addition,
15 all of the following apply:

16 (a) Upon reasonable request, the trustee shall provide a
17 beneficiary with a copy of the trust's terms that describe or
18 affect the beneficiary's interest and with relevant information
19 about the trust property.

20 (b) Unless the settlor directs or requests in the trust
21 instrument that the trustee provide accounts to less than all
22 interested trust beneficiaries, all of the following apply:

23 (i) At least annually and on termination of the trust or a
24 change of the trustee, the trustee shall provide a statement of
25 account to each current trust beneficiary and shall keep each
26 current trust beneficiary informed of the trust and its
27 administration.

1 (ii) Upon reasonable request, the trustee shall provide a
2 statement of account to each interested trust beneficiary who is
3 not also a current trust beneficiary and shall keep each of those
4 persons reasonably informed of the trust and its administration.

5 (iii) The trustee shall provide a statement of account and
6 other information to a beneficiary as the court directs.

7 (iv) In the trustee's discretion, the trustee may provide a
8 statement of account and other information to a beneficiary not
9 described in subparagraphs (i) to (iii).

10 (c) If the settlor requests or directs the trustee in the
11 trust instrument to provide accounts and information to less than
12 all interested trust beneficiaries, the trustee shall provide
13 statements of account and information as provided in the trust
14 instrument. At the court's direction, the trustee shall provide
15 statements of account and other information to persons excluded
16 by the settlor's request or direction to the extent and in the
17 manner the court directs.

18 Sec. 7304. A trustee need not provide bond to secure per-
19 formance of the trustee's duties unless required by the terms of
20 the trust, reasonably requested by a beneficiary, or found by the
21 court to be necessary to protect the interests of the beneficia-
22 ries who are not able to protect themselves and whose interests
23 are not otherwise adequately represented. On petition of the
24 trustee or an interested person, the court may excuse a require-
25 ment of bond, reduce the amount of the bond, release the surety,
26 or permit the substitution of another bond with the same or
27 different sureties. If bond is required, the bond shall be filed

1 in the court of registration or another appropriate court in an
2 amount and with the sureties and liabilities as provided in sec-
3 tions 3604 and 3606 relating to the bond of a personal
4 representative.

5 Sec. 7305. A trustee is under a continuing duty to adminis-
6 ter the trust at a place appropriate to the purposes of the trust
7 and to its sound, efficient management. If the principal place
8 of administration becomes inappropriate for any reason, the court
9 may enter an order furthering efficient administration and the
10 interests of beneficiaries, including, if appropriate, release of
11 registration, removal of the trustee, and appointment of a
12 trustee in another state. A trust provision relating to the
13 place of administration and to changes in the place of adminis-
14 tration or of trustee control unless compliance would be contrary
15 to efficient administration or the purposes of the trust. The
16 view of an adult beneficiary shall be given weight in determining
17 the suitability of the trustee and the place of administration.

18 Sec. 7306. (1) Unless otherwise provided in the contract, a
19 trustee is not personally liable on a contract properly entered
20 into in the trustee's fiduciary capacity in the course of admin-
21 istration of the trust estate unless the trustee fails to reveal
22 the trustee's representative capacity and identify the trust
23 estate in the contract.

24 (2) A trustee is personally liable for an obligation arising
25 from ownership or control of the trust estate property or for a
26 tort committed in the course of administration of the trust
27 estate only if the trustee is personally at fault.

1 (3) A claim based on a contract entered into by a trustee in
2 trustee's fiduciary capacity on an obligation arising from owner-
3 ship or control of the trust estate, or on a tort committed in
4 the course of trust administration, may be asserted against the
5 trust estate by proceeding against the trustee in the trustee's
6 fiduciary capacity, whether or not the trustee is personally
7 liable for the claim.

8 (4) The question of liability as between the trust estate
9 and the trustee individually may be determined in a proceeding
10 for accounting, surcharge, or indemnification or in another
11 appropriate proceeding.

12 Sec. 7307. (1) Unless previously barred by adjudication,
13 consent, or limitation, a claim against a trustee for breach of
14 trust is barred unless a proceeding to assert the claim is com-
15 menced within 12 months after receipt of an annual or final
16 account as to each beneficiary who receives the annual or final
17 account. Those barred include all of the following:

18 (a) A beneficiary when an interested trust beneficiary pos-
19 sessed the same interest preceding that of the beneficiary
20 receives an annual or final account.

21 (b) An object, taker in default, or another who may receive
22 property by virtue of the exercise of or failure to exercise a
23 presently exercisable or testamentary general or special power of
24 appointment if the person possessing the power of appointment
25 receives the annual or final account.

26 (c) A person described in section 1403(b) as bound by
27 another if that other receives the annual or final account.

1 (2) A beneficiary or another person is considered to receive
2 an annual or final account if the account is provided to the
3 person in 1 of the same manners specified for a notice by section
4 1401.

5 (3) For purposes of section 7307(a), an accounting shall be
6 considered an annual or final account if the account does all of
7 the following:

8 (a) Is stated in a manner and with terminology that is rea-
9 sonably understandable.

10 (b) Begins with a concise summary of its purpose and
11 content.

12 (c) Contains sufficient information to put interested par-
13 ties on notice as to all significant transactions affecting
14 administration during the accounting period.

15 (d) Includes both the carrying values, representing the
16 value of property at tax cost, and current values at the begin-
17 ning and end of the accounting period.

18 (e) Shows gains and losses incurred during the accounting
19 period separately in the same schedule.

20 (f) Shows significant transactions that do not affect the
21 amount for which the trustee is accountable.

22 Sec. 7308. (1) A person who succeeds to the position of
23 trustee of a revocable trust upon the death, resignation, or
24 incapacity of a trustee who was also the trust settlor is not
25 liable for an act or omission of the settlor while serving as
26 trustee.

1 (2) The successor trustee has no responsibility to
2 investigate a transaction of the settlor/trustee, to review an
3 account, act, or omission of the settlor/trustee, or to take
4 action against the settlor/trustee for a breach of trust.

5 (3) A successor trustee does not have a greater responsibil-
6 ity to locate property in the trust, or passing to the trust,
7 than it would have if the successor trustee were acting as per-
8 sonal representative of the settlor/trustee estate. The succes-
9 sor trustee may act upon any information that the successor
10 trustee believes true or any document that the successor trustee
11 believes genuine.

12 PART 4

13 POWERS OF TRUSTEES

14 Sec. 7401. (1) A trustee has the power to perform in a rea-
15 sonable and prudent manner every act that a reasonable and pru-
16 dent person would perform incident to the collection, preserva-
17 tion, management, use, and distribution of the trust property to
18 accomplish the desired result of administering the trust legally
19 and in the trust beneficiaries' best interest. Subject to the
20 authority described in this subsection and except as otherwise
21 provided in the trust instrument, a trustee possesses all of the
22 following specific powers:

23 (a) To take possession, custody, or control of property
24 transferred to the trust.

25 (b) To retain property that the trustee receives, including
26 property in which the trustee is personally interested, in
27 accordance with the Michigan prudent investor rule.

1 (c) To receive property from a fiduciary or another source
2 that is acceptable to the trustee.

3 (d) To perform, compromise, or refuse to perform a contract
4 of the settlor that is an obligation of the trust, as the trustee
5 may determine under the circumstances. In performing an enforce-
6 able contract by the settlor to convey or lease land, the trust-
7 ee, among other possible courses of action, may do either of the
8 following:

9 (i) Execute and deliver a deed of conveyance for cash pay-
10 ment of money remaining due or the purchaser's note for the money
11 remaining due secured by a mortgage on the land.

12 (ii) Deliver a deed in escrow with directions that the pro-
13 ceeds, when paid in accordance with the escrow agreement, be paid
14 to the trustee, as designated in the escrow agreement. If the
15 contract for a conveyance requires the giving of a warranty, the
16 deed or other instrument of conveyance to be given by the trustee
17 shall contain the warranty required. The warranty is binding on
18 the trust as though made by the settlor, but does not bind the
19 trustee except in the trustee's fiduciary capacity.

20 (e) To satisfy a settlor's written charitable pledge irre-
21 spective of whether the pledge constitutes a binding obligation
22 of the settlor or was properly presented as a claim, if in the
23 trustee's judgment the settlor would have wanted the pledge com-
24 pleted under the circumstances.

25 (f) To deposit trust money in a bank, including a bank oper-
26 ated by the trustee and to invest and reinvest trust property as

1 would a prudent investor acting in accordance with the Michigan
2 prudent investor rule.

3 (g) To acquire property, including property in this or
4 another state or country, in any manner for cash or on credit, at
5 public or private sale; and to manage, develop, improve,
6 exchange, partition, or change the character of trust property.

7 (h) To make a repair or alteration in a building or another
8 structure, to demolish an improvement, or to raze an existing or
9 erect a new party wall or building.

10 (i) To subdivide, develop, or dedicate land to public use;
11 to make or obtain the vacation of a plat or adjust a boundary or
12 adjust a difference in valuation on exchange or partition by
13 giving or receiving consideration; or to dedicate an easement to
14 public use without consideration.

15 (j) To enter into a lease as lessor or lessee, with or with-
16 out an option to purchase or renew, for any term.

17 (k) To enter into a lease or arrangement for exploration and
18 removal of minerals or another natural resource or to enter into
19 a pooling or unitization agreement.

20 (l) To abandon property if, in the trustee's opinion, the
21 property is valueless, or is so encumbered or in a condition that
22 it is of no benefit to the trust.

23 (m) To vote a stock or other security in person, by general
24 or limited proxy, or in another manner provided by law.

25 (n) To pay a call, assessment, and another amount chargeable
26 or accruing against or on account of a security.

1 (o) To hold property in the name of a nominee or in another
2 form without disclosure of the interest of the trust. However,
3 the trustee is liable for an act of the nominee in connection
4 with the property so held.

5 (p) To insure the trust property against damage, loss, or
6 liability and to insure the trustee against liability as to a
7 third person.

8 (q) To borrow money for any purpose from the trustee or
9 others and to mortgage or pledge trust property.

10 (r) To effect a fair and reasonable compromise with a debtor
11 or obligor, or extend, renew, or in any manner modify the terms
12 of an obligation owing to the trust. If the trustee holds a
13 mortgage, pledge, or another lien on property of another person,
14 the trustee may, instead of foreclosure, accept a conveyance or
15 transfer of encumbered property from the property's owner in sat-
16 isfaction of the indebtedness secured by a lien.

17 (s) Pay a tax, an assessment, the trustee's compensation, or
18 another expense incident to the administration of the trust.

19 (t) To sell or exercise a subscription or conversion right
20 or to consent, directly or through a committee or another agent,
21 to the reorganization, consolidation, merger, dissolution, or
22 liquidation of a business enterprise.

23 (u) To allocate an item of income or expense to either trust
24 income or principal, as permitted or provided by law.

25 (v) To employ, and pay reasonable compensation for services
26 performed, a person, including an attorney, auditor, investment
27 advisor, accountant, appraiser, broker, custodian, rental agent,

1 realtor, or agent, even if the person is associated with the
2 trustee, for the purpose of advising or assisting the trustee in
3 the performance of an administrative duty; to act without inde-
4 pendent investigation upon such a person's recommendation; and,
5 instead of acting personally, to employ 1 or more agents to per-
6 form an act of administration, whether or not discretionary.

7 (w) To prosecute, defend, arbitrate, settle, release, com-
8 promise, or agree to indemnify a claim or proceeding in any
9 jurisdiction or under an alternative dispute resolution
10 procedure. The trustee may act under this subsection for the
11 trustee's protection in the performance of the trustee's duties.

12 (x) To sell, exchange, partition, or otherwise dispose of,
13 or grant an option with respect to, trust property for any pur-
14 pose upon any terms or conditions.

15 (y) To continue or participate in a business or venture in
16 any manner, in any form, and for any length of time.

17 (z) To change the form, in any manner, of a business or ven-
18 ture in which the settlor was engaged at the time of death.

19 (aa) To provide for exoneration of the trustee from personal
20 liability in a contract entered into on behalf of the trust.

21 (bb) To respond to environmental concerns and hazards
22 affecting trust property as provided in section 7407.

23 (cc) To collect, pay, contest, settle, release, agree to
24 indemnify against, compromise, or abandon a claim of or against
25 the trust, including a claim against the trust by the trustee.

26 (dd) To respond to a tax matter as provided in section
27 7408.

1 (ee) To divide trust property into 2 or more separate
2 portions or trusts with substantially identical terms and condi-
3 tions and to allocate property between them, in order to simplify
4 administration for generation skipping transfer tax purposes, to
5 segregate property for management purposes, or to meet another
6 trust objective.

7 (ff) To make a payment of money, or other property instead
8 of money, to or for a minor or incapacitated individual as pro-
9 vided in section 7409.

10 (gg) To make a distribution or division of trust property in
11 cash or in kind, or both; to allot a different kind or disporpor-
12 tionate portion or an undivided interest in trust property among
13 beneficiaries and determine the value of allotted trust property;
14 or to distribute an unclaimed share as described in section
15 3916.

16 (hh) To transfer the property of a trust to another juris-
17 diction and appoint, compensate, or remove a successor trustee,
18 individual or corporate, for trust property in another jurisdic-
19 tion, with any trust powers set out in this part that the trustee
20 delegates to the successor trustee.

21 (ii) To execute and deliver a instrument that accomplishes
22 or facilitates the exercise of a power vested in the trustee.

23 (2) A trust that contains substantially identical provisions
24 as another trust established for the same beneficiary or benefi-
25 ciaries may be consolidated and administered as 1 trust. If the
26 rule against perpetuities speaks from different dates with
27 reference to the trusts or if there are other variations in

1 terms, consolidation may still take place, but the property of
2 the trusts shall be maintained in separate accounts if necessary
3 to recognize and give effect to the differences.

4 Sec. 7402. For cause shown and on the petition of the
5 trustee or an affected beneficiary and on appropriate notice to
6 the affected parties, the court may relieve a trustee from a
7 restriction on the trustee's powers that would otherwise be
8 placed on the trustee by the trust instrument or by this part.

9 Sec. 7403. If the trustee's duty and the trustee's individ-
10 ual interest or the trustee's interest as a trustee of another
11 trust conflict in the exercise of a trust power, the power may be
12 exercised by court authorization on petition by the trustee.
13 Under this section, personal profit or advantage to an affiliated
14 or subsidiary company or association is personal profit to a cor-
15 porate trustee.

16 Sec. 7404. With respect to a third person dealing with a
17 trustee or assisting a trustee in the conduct of a transaction,
18 the existence of a trust power and its proper exercise by the
19 trustee may be assumed without inquiry. The third person is not
20 bound to inquire whether the trustee may act or is properly exer-
21 cising the power. A third person, without actual knowledge that
22 the trustee is exceeding a trust power or improperly exercising
23 it, is fully protected in dealing with the trustee as if the
24 trustee possessed and properly exercised the power the trustee
25 purports to exercise. A third person is not bound to assure the
26 proper application of trust property paid or delivered to the
27 trustee.

1 Sec. 7405. Unless otherwise provided in the trust
2 instrument, if 1 of several trustees dies, resigns, or is
3 removed, the remaining trustees have all rights, title, and
4 powers of all previous trustees. If the trust instrument pro-
5 vides that a successor trustee be appointed to fill a vacancy,
6 the remaining trustees may exercise the powers of all previous
7 trustees until the successor is appointed.

8 Sec. 7406. (1) If there are more than 2 trustees and the
9 trust instrument expressly makes provision for the execution of
10 any of the trustees' powers by all of them or by any 1 or more of
11 them, the provisions of the trust instrument govern.

12 (2) If there is no governing provision in the trust instru-
13 ment, cotrustees may provide, by written agreement signed by all
14 of them and filed with and approved by the court where the trust
15 would be registered, as determined in accordance with section
16 7101, that any 1 or more of the powers designated in section 7401
17 may be exercised by any designated 1 or more of the trustees.

18 (3) Subject to subsection (1), if 2 or more trustees own
19 securities, their acts with respect to voting have 1 of the fol-
20 lowing effects:

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

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

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

1 (4) Subject to subsections (1) to (3), all other acts and
2 duties shall be performed by both of the trustees if there are 2,
3 or by a majority of the trustees if there are more than 2. A
4 trustee who has not joined in exercising a power is not liable to
5 a beneficiary or another person for the consequences of the exer-
6 cise of that power. A dissenting trustee is not liable for the
7 consequences of an act in which the dissenting trustee joins at
8 the direction of the other trustees, if the dissenting trustee
9 expressed dissent in writing to a cotrustee at or before the time
10 of joinder.

11 (5) A trustee is not relieved of liability by entering into
12 an agreement under this section.

13 Sec. 7407. (1) In response to an environmental concern or
14 hazard, a trustee may do any of the following:

15 (a) Inspect property or the operation of a business activity
16 on property, including property held in or operated by a sole
17 proprietorship, partnership, corporation, or limited liability
18 company or any other type of entity, for the purpose of determin-
19 ing compliance with environmental law affecting the property and
20 to respond to an actual or threatened violation of an environmen-
21 tal law affecting property held or tendered to the trustee.

22 (b) Take action necessary to prevent, abate, or otherwise
23 remedy an actual or threatened violation of an environmental law
24 affecting property held by the personal representative, either
25 before or after a governmental body initiates an enforcement
26 action.

1 (c) Refuse to accept property in trust if the trustee
2 determines that the property to be transferred to the trust
3 either is or may be contaminated by a hazardous substance or has
4 been or is being used for an activity directly or indirectly
5 involving a hazardous substance that could result in liability to
6 the trust or otherwise impair the value of the trust property.

7 (d) Settle or compromise at any time a claim against the
8 estate that a governmental body or private party may assert
9 involving the alleged violation of an environmental law affecting
10 property held in the trust.

11 (e) Disclaim a power granted by a document, statute, or rule
12 of law that, in the sole discretion of the trustee, may cause the
13 trustee to incur personal liability under an environmental law.

14 (f) Decline to serve or resign as a trustee if the trustee
15 reasonably believes that there is or may be a conflict of inter-
16 est between it in its fiduciary capacity and in its individual
17 capacity because of a potential claim or liability that may be
18 asserted against the trustee on the trust's behalf because of the
19 type or condition of property held in trust.

20 (g) Appoint an independent special trustee to hold title to,
21 and take a reasonably required action, as provided in this sec-
22 tion, relating to environmental law in regard to, property
23 tendered to the trust, until the time that the trustee determines
24 no substantial risk exists if the tendered property becomes part
25 of the trust property or abandons the tendered property.

1 (h) Charge the cost of an inspection, review, abatement,
2 response, cleanup, settlement of claim, or remedial action
3 authorized by this section against the trust property.

4 (2) A trustee is not personally liable to a beneficiary or
5 other party for a decrease in value of trust property by reason
6 of the trustee's compliance with an environmental law, specifi-
7 cally including a reporting requirement under that law. The
8 trustee's acceptance of property or failure to inspect property
9 or a business operation does not create an inference that there
10 is or may be liability under an environmental law with respect to
11 the property or business operation. The authority granted by
12 this section is solely to facilitate the administration and pro-
13 tection of trust property and is not to impose greater responsi-
14 bility or liability on the trustee than imposed by law absent
15 this section.

16 Sec. 7408. (1) A trustee may do any of the following in
17 response to a tax matter:

18 (a) Make, revise, or revoke an available allocation, con-
19 sent, or election affecting a tax that is appropriate in order to
20 carry out the settlor's estate planning objectives and to reduce
21 the overall burden of taxation, both in the present and in the
22 future. This authority includes, but is not limited to, all of
23 the following:

24 (i) Electing to take expenses as estate tax or income tax
25 deductions.

1 (ii) Electing to allocate the exemption from the tax on
2 generation skipping transfers among transfers subject to estate
3 or gift tax.

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

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

8 (b) Exclude or include property from the gross estate for
9 federal estate tax purposes.

10 (c) Value property assets for federal estate tax purposes.

11 (d) Join with the surviving spouse or the surviving spouse's
12 personal representative in the execution and filing of joint
13 income tax return and consenting to a gift tax return filed by
14 the surviving spouse or the surviving spouse's personal
15 representative.

16 (2) A trustee's decision binds all beneficiaries.

17 (3) A trustee may make compensating adjustments between
18 principal and income.

19 Sec. 7409. (1) A trustee may act under section 7401(1)(ff)
20 by paying money or other property to 1 or more of the following:

21 (a) The minor or incapacitated individual directly.

22 (b) A person or institution providing support, maintenance,
23 education, or medical, surgical, hospital, or other institutional
24 care for the minor or incapacitated individual in direct payment
25 for those services.

26 (c) The legal or natural guardian of the minor or
27 incapacitated individual.

1 (d) A person, whether or not appointed guardian by a court,
2 who shall in fact have the care and custody of the minor or inca-
3 pacitated individual.

4 (e) A custodian for the minor or incapacitated individual
5 under a uniform gifts or transfers to minors act.

6 (2) If the trustee exercises due care in the selection of
7 the person to whom a payment is made, including a minor or inca-
8 pacitated individual, the trustee does not have a duty to see to
9 the proper payment's application.

10 PART 5

11 CLAIMS AGAINST A DECEDENT'S REVOCABLE TRUST

12 Sec. 7501. (1) The trust property over which the settlor
13 has the right, at his or her death, either alone or in conjunc-
14 tion with another person, to revoke the trust and reinvest prin-
15 cipal in himself or herself is subject to all of the following:

16 (a) The administration expenses of the settlor's estate.

17 (b) An enforceable and timely presented claim of a creditor
18 of the settlor, including a claim for the settlor's funeral and
19 burial expenses.

20 (c) Homestead allowance, exempt property, and family allow-
21 ance, to the extent of the right, but only to the extent that the
22 settlor's property subject to probate administration is insuffi-
23 cient to satisfy those expenses, claims, and allowances.

24 (2) A trust established as part of, and all payments from,
25 an employee annuity described in section 403 of the internal rev-
26 enue code of 1986, an individual retirement account described in
27 section 408 of the internal revenue code of 1986, a Keogh (HR-10

1 plan), or a retirement or other plan that is qualified under
2 section 401 of the internal revenue code of 1986 shall not be
3 considered to be a trust described in subsection (1).

4 (3) This section does not impair a right that an individual
5 has under a qualified domestic relations order as that term is
6 defined in section 414(p) of the internal revenue code of 1986.

7 (4) For purposes of this section, property held or received
8 by a trust to the extent that the property would not have been
9 subject to a claim against the settlor's estate if it had been
10 paid directly to a trust created under the settlor's will or
11 other than to the settlor's estate, or property received from a
12 trust other than a trust described in this section, shall not be
13 considered trust property available for the payment of the admin-
14 istration expenses, a claim against the settlor's estate, or an
15 allowance described in subsection (1).

16 Sec. 7502. (1) A trustee of a trust described in section
17 7501(1) shall pay to the personal representative of the settlor's
18 estate the amount from time to time that the personal representa-
19 tive certifies in writing to the trustee is required to pay the
20 administration expenses of the settlor's estate, an enforceable
21 and timely presented claim of a creditor of the settlor, and
22 homestead, exempt property, or family allowance. Without liabil-
23 ity to a trust beneficiary or another party, the trustee may rely
24 on the certificate of the personal representative. In the event
25 there is no personal representative appointed for the settlor's
26 estate, the trustee shall pay an enforceable and timely served
27 claim of a creditor of the settlor directly to the creditor. A

1 payment made by a trustee is subject to this section, but the
2 payment shall be made exclusively out of property, or the pro-
3 ceeds of property, that is, includable in the settlor's gross
4 estate for federal estate tax purposes, other than assets pro-
5 scribed in section 7501(2), (3), and (4).

6 (2) Unless a settlor provides in his or her will or, in the
7 absence of such a provision, designates in the trust the money or
8 property passing under a trust to be used as described in section
9 7501, the administration expenses of the settlor's estate, an
10 enforceable and timely filed claim of a creditor of the settlor,
11 or homestead, exempt property, or family allowance, to be paid in
12 accordance with subsection (1), shall be paid from the property
13 of the trust in the following order:

14 (a) Property of the trust residue remaining after all dis-
15 tributions that are to be satisfied by reference to a specific
16 property or type of property, fund, money, or statutory amount.

17 (b) Property that is not to be distributed out of specified
18 or identified property or a specified or identified item of
19 property.

20 (c) Property that is to be distributed out of specified or
21 identified property or a specified or identified item of
22 property.

23 Sec. 7503. (1) Upon the failure or insufficiency of money
24 or property out of which payment should be made, to the extent of
25 the insufficiency, a distribution of property from the trust that
26 is to be satisfied out of specified or identified property shall
27 be classed as a distribution to be satisfied out the general

1 trust property not otherwise disposed of in the trust
2 instrument. A distribution of property from the trust given for
3 valuable consideration shall abate with other distributions of
4 the same class only to the extent of the excess over the amount
5 of the value of the consideration until all others of the same
6 class are exhausted. Except as otherwise provided in this sec-
7 tion, distributions of property from the trust shall abate
8 equally and ratably and without preference or priority as between
9 real and personal property. If a specified or identified item of
10 property that has been designated for distribution in the trust
11 instrument or that is charged with a distribution is sold or
12 taken by the trustee, other beneficiaries shall contribute
13 according to their respective interests to the beneficiary whose
14 property is sold or taken, and before distribution, the trustee
15 shall determine the amounts of the respective contributions,
16 which shall be paid or withheld before distribution is made.

17 (2) Costs and expenses of trust administration, including
18 trustee compensation and attorney fees, shall be paid by the
19 trustee before and in preference to the administration expenses
20 of the settlor's estate, an enforceable and timely filed claim of
21 a creditor of the settlor, and homestead, exempt property, and
22 family allowances. If, after paying costs and expenses of trust
23 administration, the trust property is insufficient to pay in full
24 all charges for which the trust is liable under section 7501(1),
25 the trustee shall make payment in the following order of
26 priority:

1 (a) Costs and expenses of administration of the decedent's
2 estate.

3 (b) Homestead, exempt property, and family allowances.

4 (c) Reasonable funeral and burial expenses.

5 (d) Debts and taxes with priority under federal law.

6 (e) Reasonable and necessary medical and hospital expenses
7 of the decedent's last illness, including compensation of a
8 person attending the decedent.

9 (f) Debts and taxes with priority under other laws of this
10 state.

11 (g) All other claims.

12 (3) A preference shall not be given in the payment of a
13 charge over another charge of the same class under subsection
14 (2), and a charge due and payable is not entitled to a preference
15 over a charge not due.

16 (4) If the decedent was the settlor of more than 1 trust
17 described in section 7501(1), the charges described in that sec-
18 tion are payable pro rata from those trusts, based on the gross
19 values of the respective trusts on the date of the decedent's
20 death. Each trustee is entitled to right of contribution as nec-
21 essary to effect the pro rata liability. The allocation and con-
22 tribution, however, are subject to provisions in the trusts
23 regarding the allocation and burden of the charges. If there is
24 conflict between the governing instruments regarding the alloca-
25 tion and burden of the charges, the decedent's will controls.

26 **Sec. 7504. (1) If there is no personal representative of**
27 **the settlor's estate to whom letters of administration have been**

1 issued so that the publication and notice requirements of section
2 3801 have not been discharged, then every trustee of a trust
3 described in section 7501(1) shall cause a notice to creditors to
4 be published and served in the same manner, with the same duties,
5 and with the same protection for the trustee and the attorney for
6 the trustee as described in section 3801 for a personal
7 representative.

8 (2) The notice shall comply with an applicable court rule
9 and contain the name of the trust's deceased settlor; the trust's
10 name or other designation, if any; the date the trust was estab-
11 lished; the name and address of each trustee serving at the time
12 of or as a result of the settlor's death; and the name and
13 address of the trustee's attorney, if any. The notice shall
14 state the date of publication.

15 Sec. 7505. (1) If notice to claimants is given by a trustee
16 as provided in section 7504, a claimant shall present a claim
17 against a trust described in section 7501(1) in either of the
18 following ways:

19 (a) The claimant may mail or deliver to the trustee a writ-
20 ten statement of the claim indicating its basis, the name and
21 address of the claimant, and the amount claimed. The claim is
22 considered presented on the trustee's receipt of the claim. If a
23 claim is not yet due, the date when it will become due shall be
24 stated. If the claim is contingent or unliquidated, the nature
25 of the uncertainty shall be stated. If the claim is secured, the
26 security shall be described. Failure to describe correctly the

1 security, the nature of any uncertainty, and the due date of a
2 claim not yet due does not invalidate a claim's presentation.

3 (b) The claimant may commence a proceeding to obtain payment
4 of a claim against the trust in a court where the trustee is
5 subject to jurisdiction. The commencement of the proceeding
6 shall occur within the time limit for presenting the claim.
7 Presentation of a claim is not required in regard to matters
8 claimed in proceedings against the trust or settlor that were
9 pending at the time of the settlor's death.

10 (2) If a personal representative is appointed for the
11 settlor's estate, presentation of a claim against the settlor's
12 estate shall be made in the manner described in section 3804 and
13 such a presentation is sufficient to assert liability against a
14 trust described in section 7501(1) without an additional presen-
15 tation of the claim against the trustee.

16 Sec. 7506. (1) If not barred earlier by another statute of
17 limitations, a claim against the settlor of a trust described in
18 section 7501(1) that arose at or before the settlor's death that
19 a person seeks to recover from the trust is barred against the
20 trust, each trustee of the trust, and a trust beneficiary, unless
21 presented within 1 of the following times:

22 (a) If notice is given in compliance either with section
23 3801 or section 7504(1) and (2), within 4 months after the date
24 of publication of notice to creditors.

25 (b) For a creditor known to the personal representative at
26 the time of publication or during the 4 months following
27 publication, or known to the trustee at or during such a time of

1 publication occurred under section 7504, within 1 month after the
2 subsequent sending of notice or 4 months after the date of publi-
3 cation of notice to creditors, whichever is later.

4 (c) If the notice requirements of either section 3801 or
5 section 7504(1) and (2) are not met, within 3 years after the
6 settlor's death.

7 (2) This section does not affect or prevent any of the
8 following:

9 (a) A proceeding to enforce a mortgage, pledge, or other
10 lien upon property held in the trust.

11 (b) A proceeding to establish the settlor's or the trustee's
12 liability for which the settlor or the trustee is protected by
13 liability insurance to the limits of the insurance protection
14 only.

15 (c) Collection of compensation for services rendered and
16 reimbursement of expenses advanced by the trustee or by an attor-
17 ney, auditor, investment adviser, or other specialized agent or
18 assistant for the trustee.

19 Sec. 7507. If there is no personal representative appointed
20 for the settlor's estate and notice is given pursuant to section
21 7504, the allowance or disallowance of a claim presented in the
22 manner described in section 7505(1) and within a time period
23 described in section 7506 is governed by the following
24 provisions:

25 (a) The trustee may deliver or mail a notice to the claimant
26 stating that the claim has been disallowed in whole or in part.
27 If, after allowing or disallowing a claim, the trustee changes a

1 decision concerning the claim, the trustee shall notify the
2 claimant. The trustee may not change a decision disallowing a
3 claim if the time for the claimant to file a petition for allow-
4 ance has passed or if the time to commence a proceeding on the
5 claim has run and the claim has been barred. A claim that is
6 disallowed in whole or in part by the trustee is barred to the
7 extent not allowed unless the claimant files a petition for
8 allowance in the court or commences a proceeding against the
9 trustee not later than 63 days after the mailing of the notice of
10 disallowance or partial allowance if the notice warns the claim-
11 ant of the impending bar. Failure by the trustee to deliver or
12 mail to a claimant notice of action on the claim within 63 days
13 after the time for the claim's presentation has expired consti-
14 tutes a notice of allowance.

15 (b) After allowing or disallowing a claim, the trustee may
16 change the allowance or disallowance as provided in this
17 subdivision. Before payment, the trustee may change the allow-
18 ance to a disallowance in whole or in part, but not after allow-
19 ance by a court order or judgment, or an order directing payment
20 of the claim. The trustee shall notify the claimant of the
21 change to disallowance, and the disallowed claim is then subject
22 to bar as provided in subdivision (a). The trustee may change a
23 disallowance to an allowance, in whole or in part, until it is
24 barred under subdivision (a). After a claim is barred, it may be
25 allowed and paid only if the trust is solvent and all whose
26 interests would be affected consent.

1 (c) Upon the trustee's or a claimant's petition, the court
2 may allow in whole or in part a claim properly presented in due
3 time and not barred by subdivision (a).

4 (d) A judgment in a proceeding in another court against a
5 trustee to enforce a claim against a decedent's estate consti-
6 tutes an allowance of the claim.

7 (e) Unless otherwise provided in a judgment in another court
8 entered against the trustee, an allowed claim bears interest at a
9 rate determined under section 6013 of the revised judicature act
10 of 1961, Act No. 236 of the Public Acts of 1961, being section
11 600.6013 of the Michigan Compiled Laws, for the period commencing
12 63 days after the time for original presentation of the claim has
13 expired, unless based on a contract that provides for interest,
14 in which case the claim bears interest in accordance with the
15 contract.

16 Sec. 7508. (1) Upon the expiration of 4 months after the
17 date of the publication of the notice to creditors, the trustee
18 shall proceed to pay the claims allowed against the trustee in
19 the order of priority prescribed in section 7503(2)(c) to (e),
20 after making provision for costs and expenses of trust adminis-
21 tration, for a claim already presented that is not yet allowed or
22 whose allowance is appealed, and for an unbarred claim that may
23 yet be presented. A claimant whose claim is allowed, but not
24 paid as provided in this section, may petition the court to
25 secure an order directing the trustee to pay the claim to the
26 extent that money of the trustee is available for the payment.

1 (2) At any time, the trustee may pay a claim that is not
2 barred, with or without formal presentation, but is individually
3 liable to another claimant whose claim is allowed and who is
4 injured by the payment if either of the following occurs:

5 (a) Payment is made before the expiration of the time limit
6 stated in subsection (1) and the trustee fails to require the
7 payee to give adequate security for the refund of any of the pay-
8 ment necessary to pay another claimant.

9 (b) Payment is made, due to the negligence or willful fault
10 of the trustee, in a manner that deprives the injured claimant of
11 priority.

12 (3) If a claim is allowed, but the whereabouts of the claim-
13 ant is unknown at the time the trustee attempts to pay the claim,
14 upon petition by the trustee and after notice the court considers
15 advisable, the court may disallow the claim. If the court disal-
16 lows a claim under this subsection, the claim is barred.

17 Sec. 7509. Payment of a secured claim shall be upon the
18 basis of the amount allowed if the creditor surrenders the
19 security. Otherwise payment shall be upon the basis of 1 of the
20 following:

21 (a) If the creditor exhausts the security before receiving
22 payment, upon the claim amount allowed less the fair value of the
23 security.

24 (b) If the creditor does not have the right to exhaust the
25 security or does not do so, upon the claim amount allowed less
26 the value of the security determined by converting it into money
27 according to the terms of the agreement under which the security

1 is delivered to the creditor, or by the creditor and trustee by
2 agreement, arbitration, compromise, or litigation.

3 Sec. 7510. A claim that will become due at a future time, a
4 contingent claim, and an unliquidated claim are governed by the
5 following:

6 (a) If a claim becomes due or certain before the distribu-
7 tion of the trust, and if the claim is allowed or established by
8 a proceeding, the claim shall be paid in the same manner as pres-
9 ently due and absolute claims of the same class.

10 (b) For a claim not covered by subdivision (a), the trustee
11 or, on petition of the trustee or the claimant in a proceeding
12 for the purpose, the court may provide for payment as follows:

13 (i) If the claimant consents, the claimant may be paid the
14 present or agreed value of the claim, taking any uncertainty into
15 account.

16 (ii) Arrangement for future payment, or possible payment, on
17 the happening of the contingency or on liquidation may be made by
18 creating a trust, giving a mortgage, obtaining a bond or security
19 from a distributee, or otherwise.

20 Sec. 7511. In allowing a claim, the trustee may deduct a
21 counterclaim that the trustee has against the claimant. In
22 determining a claim against a trustee, the court shall reduce the
23 amount allowed by the amount of a counterclaim and, if the total
24 counterclaims exceed the claim, render a judgment against the
25 claimant in the amount of the excess. A counterclaim, liquidated
26 or unliquidated, may arise from a transaction other than that
27 upon which the claim is based. A counterclaim may give rise to

1 relief exceeding in amount or different in kind from that sought
2 in the claim.

ARTICLE VIII

EFFECTIVE DATE AND REPEALER

Sec. 8101. (1) This act takes effect January 1, 1997.

(2) Except as provided elsewhere in this act, on this act's effective date, all of the following apply:

(a) The act applies to a governing instrument executed by a decedent dying after the date.

(b) The act applies to a proceeding in court pending on that date or commenced after that date regardless of the time of the decedent's death except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of applying this act's procedure.

(c) Every fiduciary, including a person administering an estate of a minor or incompetent, holding an appointment on that date continues to hold the appointment, but has only the powers conferred by this act and is subject to the duties imposed with respect to an act occurring or done after that date.

(d) This act does not impair an accrued right or an act done before that date in a proceeding. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that commences to run by the provision of a statute before this act's effective date, the provision remains in force with respect to that right.

(e) Rule of construction or presumption provided in this act applies to a governing instrument executed before that date unless there is a clear indication of a contrary intent.

1 (f) A person holding office as judge of the court on that
2 date continues the office of judge of this court and may be
3 selected for additional terms after the effective date of this
4 act.

5 Sec. 8102. Act No. 642 of the Public Acts of 1978, being
6 sections 700.1 to 700.993 of the Michigan Compiled Laws, is
7 repealed.