

# ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

## Act 386 of 1998

### ARTICLE I

#### DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

##### PART 1

##### SHORT TITLE AND DEFINITIONS

#### **700.1101 Short title.**

Sec. 1101. This act shall be known and may be cited as the "estates and protected individuals code".

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1102 Applicability of definitions.**

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1103 Definitions; "cost of living adjustment factor"; A to D.**

Sec. 1103. As used in this act:

(a) "1997 cost-of-living adjustment factor" means a fraction, the numerator of which is the United States Consumer Price Index for the prior calendar year and the denominator of which is the United States Consumer Price Index for 1997. As used in this subdivision, "United States Consumer Price Index" means the annual average of the United States Consumer Price Index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor agency, and as certified by the state treasurer.

(b) "2023 cost-of-living adjustment factor" means a fraction, the numerator of which is the United States Consumer Price Index for the prior calendar year and the denominator of which is the United States Consumer Price Index for 2023. As used in this subdivision, "United States Consumer Price Index" means the annual average of the United States Consumer Price Index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor agency, and as certified by the state treasurer.

(c) "Agent" includes, but is not limited to, 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.

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

(e) "Attorney" means, if appointed to represent a child under the provisions referenced in section 5213, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(f) "Beneficiary" includes, but is not limited to, the following:

(i) In relation to a trust, a person that is a trust beneficiary as defined in section 7103.

(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 person that is a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(iv) In relation to a beneficiary designated in a governing instrument, a person that is a grantee of a deed, devisee, trust beneficiary, beneficiary of a beneficiary designation, donee, appointee, taker in default of a power of appointment, or person in whose favor a power of attorney or power held in an individual, fiduciary, or representative capacity is exercised.

(g) "Beneficiary designation" means the naming in a governing instrument of a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(h) "Child" includes, but is not limited to, an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant.

(i) "Claim" includes, but is not limited to, in respect to a decedent's or protected individual's estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent's death or after a conservator's appointment, including funeral and burial expenses and costs and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent's or protected individual's title to specific property alleged to be included in the estate.

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

(k) "Court" means the probate court or, when applicable, the family division of circuit court.

(l) "Descendant" means, in relation to an individual, all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.

(m) "Devise" means, when used as a noun, a testamentary disposition of real or personal property and, when used as a verb, to dispose of real or personal property by will.

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

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

(p) "Distributee" means a person that receives a decedent's property from the decedent's personal representative or trust property from the trustee other than as a creditor or purchaser. A trustee of a trust created by will is a distributee only to the extent that distributed property or an increment of the distributed property remains in the trustee's hands. A beneficiary of a trust created by will to whom the trustee distributes property received from a personal representative is a distributee of the personal representative. For the purposes of this subdivision, "trustee of a trust created by will" includes a trustee to whom property is transferred by will to the extent of the devised property.

(q) "Do-not-resuscitate order" means that term as defined in section 2 of the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1052.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2013, Act 157, Eff. Feb. 3, 2014;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

**Popular name:** EPIC

## **700.1104 Definitions; E to H.**

Sec. 1104. As used in this act:

(a) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.

(b) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

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

(d) "Family allowance" means the allowance prescribed in section 2403.

(e) "Fiduciary" includes, but is not limited to, a personal representative, funeral representative, guardian, conservator, trustee, plenary guardian, partial guardian, and successor fiduciary.

(f) "Financial institution" means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, credit union, insurance company, and entity that offers mutual fund, securities brokerage, money market, or retail investment accounts.

(g) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

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

(i) "Funeral establishment" means that term as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, and the owners, employees, and agents of the funeral establishment.

(j) "Funeral representative" means an individual designated to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent as provided in section 3206.

(k) "Funeral representative designation" means a written document executed and with the effect as described in sections 3206 to 3206b.

(l) "General personal representative" means a personal representative other than a special personal representative.

(m) "Governing instrument" means a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(n) "Guardian" means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5205, 5206, and 5306. Guardian does not include a guardian ad litem.

(o) "Hazardous substance" means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(p) "Heir" means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent's property.

(q) "Homestead allowance" means the allowance prescribed in section 2402.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2016, Act 57, Eff. June 27, 2016.

**Popular name:** EPIC

## **700.1105 Definitions; I to L.**

Sec. 1105. As used in this act:

(a) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, 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.

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

(c) "Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

(d) "Issue" means an individual's descendant.

(e) "Joint tenants with the right of survivorship" includes, but is not limited to, co-owners or ownership of property held under circumstances that entitle 1 or more to the whole of the property on the death of the other or others, but does not include forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(f) "Jurisdiction," with respect to a geographic area, includes a county, state, or country.

(g) "Lawyer-guardian ad litem" means an attorney appointed under section 5213 or 5219 who has the powers and duties referenced by and provided in section 5213.

(h) "Lease" includes, but is not limited to, an oil, gas, or other mineral lease.

(i) "Legally incapacitated individual" means an individual, other than a minor, for whom a guardian is appointed under this act or an individual, other than a minor, who has been adjudged by a court to be an incapacitated individual.

(j) "Letters" includes, but is not limited to, letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

## **700.1106 Definitions; M to P.**

Sec. 1106. As used in this act:

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

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

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

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

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

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

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

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

(c) "Minor" means an individual who is less than 18 years of age.

(d) "Minor ward" means a minor for whom a guardian is appointed solely because of minority.

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

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

(g) "Nonopioid directive form" means that term as defined in section 9145 of the public health code, 1978 PA 368, MCL 333.9145.

(h) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.

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

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

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

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

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

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

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

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

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

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

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

(t) "Power of appointment" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

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

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

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

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

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

(z) "Protective proceeding" means a proceeding under part 4 of article V.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001;—Am.

2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2017, Act 155, Eff. Feb. 6, 2018;—Am. 2018, Act 555, Eff. Mar. 28, 2019;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

**Popular name:** EPIC

## **700.1107 Definitions; R to T.**

Sec. 1107. As used in this act:

(a) "Register" or "probate register" means the official of the court designated to perform the functions of register as provided in section 1304.

(b) "Revised judicature act of 1961" means the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(c) "Security" includes, but is not limited to, a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or interest in a regulated investment company or other entity generally referred to as a mutual fund or, in general, an interest or instrument commonly known as a security, or a certificate of interest or participation for, a temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the items listed in this subdivision.

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

(e) "Special personal representative" means a personal representative as described by sections 3614 to 3618.

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

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

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

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

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

(k) "Terms of a trust" or "terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(l) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(m) "Testator" includes an individual of either gender.

(n) "Trust" includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

## **700.1108 Definitions; U to Z.**

Sec. 1108. As used in this act:

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

(b) "Will" includes, but is not limited to, 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.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC



PART 2  
CONSTRUCTION AND GENERAL PROVISIONS

**700.1201 Purposes; rules of construction.**

Sec. 1201. This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

- (a) To simplify and clarify the law concerning the affairs of decedents, missing individuals, protected individuals, minors, and legally incapacitated individuals.
- (b) To discover and make effective a decedent's intent in distribution of the decedent's property.
- (c) To promote a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors.
- (d) To make the law uniform among the various jurisdictions, both within and outside of this state.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

**700.1202 Execution of documents; signing or witnessing documents by 2-way real-time audiovisual technology; requirements; good faith; applies April 30, 2020 until July 1, 2021.**

Sec. 1202. (1) Notwithstanding anything in this act to the contrary, the act of signing or witnessing the execution of a document or instrument under this act, including, but not limited to, a will under article II, a disclaimer under section 2903, a funeral representative designation, a parental appointment of a guardian of a minor under section 5202, an appointment of a guardian of a legally incapacitated individual under section 5301, a durable power of attorney under section 5501, or a patient advocate designation is satisfied by use of a 2-way real-time audiovisual technology if all of the following requirements are met:

(a) The 2-way real-time audiovisual technology must allow direct, contemporaneous interaction by sight and sound between the signatory and the witnesses.

(b) The interaction between the signatory and the witnesses must be recorded and preserved by the signatory or the signatory's designee for a period of at least 3 years.

(c) The signatory must affirmatively represent either that the signatory is physically situated in this state, or that the signatory is physically located outside the geographic boundaries of this state and that either of the following applies:

(i) The document or instrument is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of this state.

(ii) The document or instrument involves property located in the territorial jurisdiction of this state or a transaction substantially connected to this state.

(d) The signatory must affirmatively state during his or her interaction with the witnesses on the 2-way real-time audiovisual technology what document they are executing.

(e) Each title page and signature page of the document or instrument being witnessed must be shown to the witnesses on the 2-way real-time audiovisual technology in a manner clearly legible to the witnesses, and every page of the document or instrument must be numbered to reflect both the page number of the document or instrument and the total number of pages of the document or instrument.

(f) Each act of signing the document or instrument must be captured sufficiently up close on the 2-way real-time audiovisual technology for the witnesses to observe.

(g) The signatory or the signatory's designee must transmit by facsimile, mail, or electronic means a legible copy of the entire signed document or instrument directly to the witnesses within 72 hours after it is executed.

(h) Within 72 hours after receipt, the witnesses must sign the transmitted copy of the document or instrument as a witness and return the signed copy of the document or instrument to the signatory or the signatory's designee by facsimile, mail, or electronic means.

(i) The document or instrument is either of the following:

(i) In writing.

(ii) A record that is readable as text at the time of signing.

(2) The rights or interests of a person that relies in good faith and without actual notice that a document or instrument described in subsection (1) was executed on or after April 30, 2020 and before July 1, 2021, but was not executed in accordance with subsection (1) are not impaired, challenged, or terminated on that basis alone.

(3) Compliance with this section is presumed. A person challenging a document or instrument described in and executed in accordance with subsection (1) may overcome the presumption by establishing, by clear and convincing evidence, that the signatory or a witness intentionally failed to comply with the requirements

under subsection (1).

(4) This section applies to a document or instrument described in subsection (1) executed on or after April 30, 2020 and before July 1, 2021.

(5) As used in this section:

(a) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(b) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(c) "Sign" or "signing" means with present intent to authenticate or adopt a record to do either of the following:

(i) Execute or adopt a tangible symbol.

(ii) Affix to or logically associate with the record an electronic symbol or process.

**History:** Add. 2020, Act 246, Imd. Eff. Nov. 5, 2020;—Am. 2020, Act 338, Imd. Eff. Dec. 29, 2020.

**Popular name:** EPIC

### **700.1203 Supplementary general principles of law applicable; construction against implied repeal.**

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

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1205 Discovery and remedies for fraud, embezzlement, conversion, or withholding of assets.**

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

(a) The person is suspected of having, or has knowledge that another may have, concealed, embezzled, conveyed away, or disposed of the trustee's, decedent's, or ward's property.

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

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

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

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. An action under this subsection shall be commenced within 2 years after the discovery of the fraud, but an action shall not be brought against a person that is not a perpetrator of the fraud later than 5 years after the time of the fraud's commission. This section does not affect a remedy relating to fraud perpetrated against a decedent during his or her lifetime that affects the succession of the decedent's estate.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1207 Evidence of death or status.**

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

(a) Death occurs when an individual is determined to be dead under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034.

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

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

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

(e) The fact of death may be established under the procedure prescribed in section 1208 to establish the death of an individual described in that section.

(f) At the hearing upon the petition, the court upon its own motion may, or upon motion of an interested person shall, impanel a jury as provided by law. If it is established by a preponderance of the evidence presented at the hearing that an accident or disaster occurred in which the individual named in the petition was killed or may be presumed to have died, the court shall enter an order that establishes the location of the accident or disaster, the date of death, and, if possible, the time of death and that states that the individual is dead.

(g) A certified copy of an order issued under this section is sufficient when presented to the medical examiner for the preparation of a certificate of death. The medical examiner shall forward the completed certificate of death to the state registrar. The state registrar shall register the death as provided in section 2845 of the public health code, 1978 PA 368, MCL 333.2845. The state registrar shall forward a copy of the registered death record to the local registrar of the place where the death occurred as established under this section.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1208 Procedure to establish death of accident or disaster victim.**

Sec. 1208. (1) The procedure to establish the death of an individual who is an accident or disaster victim and whose remains have disappeared or are unidentifiable is as follows:

(a) If an accident or disaster occurs that apparently causes the death of the individual described in this section, any of the following individuals may petition the court for a determination of the cause and date of the presumed decedent's death:

(i) The medical examiner, sheriff, or prosecutor of a county described in subdivision (b).

(ii) The spouse or a next of kin, heir at law, devisee, personal representative named in a will, or creditor or debtor of the presumed decedent.

(b) Venue for a proceeding under this section is in 1 of the following:

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

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

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

(c) A petition to determine the cause and date of death as provided in this section shall not be filed less than 63 days or more than 7 years after the occurrence of the accident or disaster.

(d) A petition under this section shall set forth the facts and circumstances concerning the accident or disaster, the reasons for the belief that the presumed decedent died in the accident or disaster, that the presumed decedent has disappeared or is unidentifiable, and the names and addresses of all individuals known or believed to be heirs at law of the presumed decedent.

(e) Upon the filing of a petition under this section, the court shall fix the time and place for a hearing. The petitioner shall give or cause to be given notice of the hearing as provided by supreme court rule.

(2) An individual whose death is not otherwise established under this section or section 1207, who is absent for a continuous period of 5 years during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence to determine that death occurred earlier.

(3) In the absence of evidence disputing the time of death stated on a document described in section 1207(b), (c), or (g), a document described in section 1207(b), (c), or (g) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.



**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1209 Acts by holder of power of appointment.**

Sec. 1209. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable or testamentary general or special power of appointment, including 1 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

**Compiler's note:** Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

**Popular name:** EPIC

#### **700.1210 Cost-of-living adjustment.**

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, and 2405, and the specific dollar amounts stated in sections 3982 and 3983 before those sections were amended by the amendatory act that added section 1215, apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts must be multiplied by the 1997 cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) Before January 1, 2024, the specific amounts stated in sections 2519, 3605, 3916, 3918, 3981, and 5102, and the specific amounts stated in sections 3982 and 3983 as amended by the amendatory act that added section 1215, apply to those sections. Beginning January 1, 2024, those specific dollar amounts must be multiplied by the 2023 cost-of-living adjustment factor for the calendar year in which the decedent dies.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

**Popular name:** EPIC

#### **700.1211 Court personnel prohibited from providing legal advice.**

Sec. 1211. Court personnel shall not provide or offer to provide legal advice or legal counsel to a fiduciary or an interested person and shall not complete a form, petition, or document for a fiduciary or interested person. This section does not prohibit the court from providing general information, blank forms, and information concerning the preparation of a form provided by the court.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1212 Fiduciary relationship.**

Sec. 1212. (1) A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7803 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.

(2) Except in response to legal process, in cases expressly required by law, or in the necessary or proper administration of the estate, a fiduciary shall not disclose facts or knowledge pertaining to property in the fiduciary's possession or to the affairs of those for whom the fiduciary is acting in any manner without the consent of the heirs, devisees, beneficiaries, protected individuals, or wards. The fiduciary of a minor or an incapacitated individual may give this consent on behalf of that individual. This subsection's restriction on disclosure does not apply in an action or proceeding in which the fiduciary and the fiduciary's heir, devisee, beneficiary, protected individual, or ward are parties adverse to each other after the identity and relationship is determined and established.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

#### **700.1213 Reference to unified credits, exemption, or deductions.**

Sec. 1213. If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero or the lowest possible amount payable by describing a portion or amount measured by reference to the unified credit, the exemption equivalent, other credits, or other deductions, then unless specifically stated otherwise, the reference to the credits, exemption, or deductions shall be considered to include a reference to the family-owned business deduction available under section 2057 of the internal revenue code of 1986, 26 USC 2057, if that deduction is elected. Unless specifically stated otherwise, and subject to section 2723, the reference to the unified credit or exemption equivalent, or to the family-owned business deduction, shall be considered to refer to the credit, exemption, or deduction as it exists at the time of death of the individual.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2010, Act 224, Imd. Eff. Dec. 10, 2010.

**Popular name:** EPIC

#### **700.1214 Fiduciary; prohibited conduct.**

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

#### **700.1215 Notice or knowledge of facts.**

Sec. 1215. (1) Subject to subsection (2), a person has knowledge of a fact if 1 or more of the following apply:

- (a) The person has actual knowledge of it.
- (b) The person has received a notice or notification of it.
- (c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact only from the time the information was received by an employee having responsibility to act or from the time the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter that would be materially affected by the information.

**History:** Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

**Popular name:** EPIC

#### **700.1216 Governing instrument; substantial gift to drafting attorney; void; exceptions; definitions.**

Sec. 1216. (1) Any part of a governing instrument that directly or indirectly makes a substantial gift to an attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument is void unless the attorney who drafted the governing instrument or the person related to the attorney who drafted the governing instrument is related to the individual making the substantial gift.

(2) This section does not apply to a provision in a governing instrument appointing the attorney who drafted the governing instrument, or a person related to the attorney who drafted the governing instrument, as a fiduciary.

(3) A provision in a governing instrument purporting to waive or otherwise avoid the application of this section is unenforceable.

(4) If a purchaser or lender for value acquires property distributed in kind or a security interest in property from a person that has received a substantial gift pursuant to a part of a governing instrument that is void under subsection (1), the purchaser or lender takes title free of any claims arising under, and incurs no personal liability by reason of, this section. This section does not directly or indirectly impose liability on a person that honors or relies on a part of a governing instrument that is void under subsection (1) and that contains or effectuates a substantial gift, unless the person has knowledge that the part of the governing instrument is void.

(5) If a part of a governing instrument is void under subsection (1), the part that is void is severable and does not affect any other part of the governing instrument that can be given effect, including a term that makes an alternate or substitute gift. If the part of the governing instrument that is void under subsection (1) cannot be severed, the entire governing instrument is void. For a power of appointment, this section does not affect the power to appoint in favor of persons other than the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument.

(6) If the court determines that an attorney who drafted the governing instrument disguised or attempted to disguise a substantial gift, to the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument, as a conveyance for consideration for less than fair market value, the court may find the conveyance void under subsection (1).

(7) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law. A part of a governing instrument that is not void under subsection (1) may be challenged under other legal grounds.

(8) This section applies only to a governing instrument executed after the effective date of the amendatory act that added this section.

(9) For purposes of this section, a person is related to an individual if, at the time the attorney who drafted the governing instrument prepared or supervised the preparation or execution of the governing instrument, the person is any of the following:

- (a) A spouse of the individual.
- (b) A lineal ascendant or descendant of the individual or the individual's spouse.
- (c) A sibling of the individual.
- (d) A spouse of the individual described in subdivision (b) or (c).

(10) For purposes of this section, an organization is related to an attorney if the attorney owns a 50% or greater interest in the organization or otherwise controls the organization.

(11) As used in this section:

(a) "Attorney who drafted the governing instrument" means an individual to whom both of the following apply:

(i) The individual is or was licensed to practice law in this state or any other state, before or at the time the governing instrument was prepared or executed, or both.

(ii) The individual directly or indirectly prepared or supervised the preparation, execution, or both, of the governing instrument. For purposes of this subparagraph, among other ways, the individual is considered to have prepared, or supervised the execution of, the governing instrument if the preparation, or supervision of the execution, of the governing instrument was performed by an employee, subordinate, partner, co-owner, or other person or lawyer employed by the same firm or company as the individual as of the time of preparation or execution, or both.

(b) "Gift" includes an inter vivos gift, a testamentary transfer of property, and the power to make the testamentary transfer regardless of any of the following:

- (i) Whether the gift or testamentary transfer is outright or in trust.
- (ii) When the gift or testamentary transfer is to take effect.
- (iii) Whether the power is held in a fiduciary or nonfiduciary capacity.

(c) "Substantial gift" means a gift, the value of which exceeds \$5,000.00 as a result of a single governing instrument or 2 or more related governing instruments.

**History:** Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

**Popular name:** EPIC

## PART 3

### SCOPE, JURISDICTION, AND COURTS

#### **700.1301 Territorial application.**

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

(a) The affairs and estate of a decedent, missing individual, or protected individual who is domiciled in this

state.

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

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

(d) Survivorship and related accounts in this state.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1302 Exclusive subject matter jurisdiction.**

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

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

(i) The internal affairs of the estate.

(ii) Estate administration, settlement, and distribution.

(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

(iv) Construction of a will.

(v) Determination of heirs.

(vi) Determination of death of an accident or disaster victim under section 1208.

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

(i) Appoint or remove a trustee.

(ii) Review the fees of a trustee.

(iii) Require, hear, and settle interim or final accounts.

(iv) Ascertain beneficiaries.

(v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.

(vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

(vii) Release registration of a trust.

(viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1303 Concurrent jurisdiction; removal; purpose and policy.**

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

(a) Determine a property right or interest.

(b) Authorize partition of property.

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

(d) Ascertain if individuals have survived as provided in this act.

(e) Determine cy pres or a gift, grant, bequest, or devise in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to 554.353.

(f) Hear and decide an action or proceeding against a distributee of a fiduciary of the estate to enforce liability that arises because the estate was liable upon some claim or demand before distribution of the estate.

(g) Impose a constructive trust.

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

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

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

(2) If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another

court, on the motion of a party to the action or proceeding and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court shall forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court shall not hear the action or proceeding.

(3) The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2016, Act 287, Eff. Dec. 26, 2016;—Am. 2016, Act 490, Eff. Apr. 6, 2017.

**Popular name:** EPIC

#### **700.1304 Register; powers.**

Sec. 1304. If this act specifies that the probate register perform an act or order, the probate judge, or the probate register or a deputy probate register if authorized in accordance with section 834 of the revised judicature act of 1961, being section 600.834 of the Michigan Compiled Laws, or in accordance with supreme court rule, may perform the act or order.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1305 Appeals.**

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1306 Oath or affirmation on filed documents.**

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1307 Records and certified copies.**

Sec. 1307. (1) Court records shall be maintained in accordance with section 832 of the revised judicature act of 1961, being section 600.832 of the Michigan Compiled Laws. Upon payment of the fee required by law, the probate register shall issue a certified copy of a probated will, letters issued to a personal representative, or any other record or paper filed or recorded. A certificate that relates to a probated will shall indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. A certificate that relates to letters shall show the date of appointment and the date to which the letters continued in force.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1308 Breach of duty; remedies; order for accounting.**

Sec. 1308. (1) A violation by a fiduciary of a duty the fiduciary owes to an heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary is a breach of duty. To remedy a breach of duty that has occurred or may occur, the court may do any of the following:

- (a) Compel the fiduciary to perform the fiduciary's duties.
- (b) Enjoin the fiduciary from committing a breach of duty.
- (c) Compel the fiduciary to redress a breach of duty by paying money, restoring property, or other means.
- (d) Order a fiduciary to account.
- (e) Appoint a special fiduciary to take possession of the estate's, ward's, protected individual's, or trust



property and administer the property.

(f) Suspend the fiduciary.

(g) Remove the fiduciary as provided in this act.

(h) For a fiduciary otherwise entitled to compensation, reduce or deny compensation to the fiduciary.

(i) Subject to other provisions of this act protecting persons dealing with a fiduciary, void an act of the fiduciary, impose a lien or a constructive trust on property, or trace property wrongfully disposed of and recover the property or its proceeds.

(2) In response to an interested person's petition or on its own motion, the court may at any time order a fiduciary of an estate under its jurisdiction to file an accounting. After due hearing on the accounting, the court shall enter an order that agrees with the law and the facts of the case.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

### **700.1309 Appointment of special fiduciary or injunction.**

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

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

(b) Enjoin a person subject to the court's jurisdiction from conduct that presents an immediate risk of waste, unnecessary dissipation of an estate's or trust's property, or jeopardy to an interested person's interest. Under this subdivision, the court shall not enjoin a respondent in a proceeding to appoint a guardian or conservator or enjoin a ward or protected individual. An enjoined person shall be given a prompt hearing, if requested, to show cause why the order should be terminated.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

## **PART 4**

### **NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS**

### **700.1401 Notice; method and time of giving.**

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

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

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

(c) If the address or identity of the person is not known and cannot be ascertained with reasonable diligence, publishing once a copy in a newspaper having general circulation in the county where the hearing is to be held at least 14 days before the time set for the hearing.

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

(3) Proof that notice was given must be made at or before the hearing and filed in the proceeding.

(4) If a person entitled to notice under section 3306, 3310, 3403, 3414, 3705, or 5426 is a resident in and a citizen of a foreign country, the person required to give notice must notify the consul of the foreign nation in the city of New York or of the district having jurisdiction, or the consul, vice-consul, or consular agent resident in this state, if there is one, of the matters and with the particulars described in the relevant section of this act.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1402 Notice; waiver; order.**

Sec. 1402. (1) Except as provided in subsection (2), a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice and consent to the granting of a petition by a writing signed by the person or the person's attorney and filed in the proceeding. If every person affected by the proceeding waives

notice and consents in writing to the granting of a petition, the court may enter an appropriate order on the petition without a hearing.

(2) A person for whom a guardianship or other protective order is sought, a ward, or a protected person cannot waive notice. A fiduciary shall not waive or consent on a petition, account, or report made as the fiduciary or in a different fiduciary capacity.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1403 Formal proceeding; pleadings; parties bound by others; notice.**

Sec. 1403. In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

(a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument that creates the interests, or in another appropriate manner.

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

(i) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(ii) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(iii) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

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

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

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

## **PART 5**

## PRUDENT INVESTOR RULE

### **700.1501 Short title of part; definitions.**

Sec. 1501. (1) This part shall be known and may be cited as the "Michigan prudent investor rule". This part prescribes the Michigan prudent investor rule.

(2) As used in this part:

(a) "Governing instrument" includes, but is not limited to, a court order.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1502 Prudent investor rule.**

Sec. 1502. (1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1503 Portfolio strategy; risk and return objectives.**

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

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

(a) General economic conditions.

(b) The possible effect of inflation or deflation.

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

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

(e) The expected total return from income and the appreciation of capital.

(f) Other resources of the beneficiaries.

(g) The need for liquidity, regularity of income, and preservation or appreciation of capital.

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

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

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

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1504 Diversification.**

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

### **700.1505 Duties at inception.**

Sec. 1505. Within a reasonable time after accepting appointment as a fiduciary or receiving fiduciary

assets, a fiduciary shall review the assets, and make and implement decisions concerning the retention and disposition of assets, in order to bring the fiduciary portfolio into compliance with the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate, and with the requirements of the Michigan prudent investor rule.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1506 Duties of fiduciary in interest of beneficiaries.**

Sec. 1506. A fiduciary shall invest and manage fiduciary assets solely in the interest of the beneficiaries.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1507 Impartiality.**

Sec. 1507. If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing, managing, and distributing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

#### **700.1508 Investment costs.**

Sec. 1508. In investing and managing fiduciary assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the fiduciary estate, and the skills of the fiduciary.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1509 Reviewing compliance.**

Sec. 1509. Compliance with the prudent investor rule is determined in light of the facts and circumstances that exist at the time of a fiduciary's decision or action, and not by hindsight. The prudent investor rule requires a standard of conduct, not outcome or performance.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1510 Delegation of investment and management functions.**

Sec. 1510. (1) A fiduciary may delegate investment and management functions provided that the fiduciary exercises reasonable care, skill, and caution in all of the following:

- (a) Selecting an agent.
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the governing instrument.
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- (2) A fiduciary who complies with the requirements of subsection (1) is not liable to the beneficiaries or to the fiduciary estate for a decision or action of the agent to whom the function was delegated.
- (3) In performing a delegated function, an agent owes a duty to the fiduciary estate to exercise reasonable care to comply with the terms of the delegation. If an agent accepts the delegation of a fiduciary function from a fiduciary that is subject to the laws of this state, the agent submits to the jurisdiction of this state's court.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1511 Language invoking standard of prudent investor rule.**

Sec. 1511. The following terms or similar language in a governing instrument, unless otherwise limited or modified, authorize any investment or strategy permitted under the Michigan prudent investor rule:

- (a) "Investments permissible by law for investment of trust funds".
- (b) "Legal investments".
- (c) "Authorized investments".
- (d) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".

- (e) "Prudent man rule".
- (f) "Prudent trustee rule".
- (g) "Prudent person rule".
- (h) "Prudent investor rule".

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.1512 Application to existing fiduciary estates.**

Sec. 1512. The Michigan prudent investor rule applies to a fiduciary estate that exists on or is created after this act's effective date. As applied to a fiduciary estate that exists on this act's effective date, the Michigan prudent investor rule governs only a decision or action that occurs after that date.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC