

SENATE BILL No. 293

April 10, 2013, Introduced by Senator BIEDA and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

1 (c) Perform, compromise, or refuse performance of a contract
2 of the decedent that continues as an estate obligation, as the
3 personal representative determines under the circumstances. If the
4 contract is for a conveyance of land and requires the giving of
5 warranties, the personal representative shall include in the deed
6 or other instrument of conveyance the required warranties. The
7 warranties are binding on the estate as though the decedent made
8 them but do not bind the personal representative except in a
9 fiduciary capacity. In performing an enforceable contract by the
10 decedent to convey or lease land, the personal representative,
11 among other possible courses of action, may do any of the
12 following:

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

16 (ii) Deliver a deed in escrow with directions that the
17 proceeds, when paid in accordance with the escrow agreement, be
18 paid to the decedent's successors, as designated in the escrow
19 agreement.

20 (d) If, in the judgment of the personal representative, the
21 decedent would have wanted the pledge satisfied under the
22 circumstances, satisfy a written charitable pledge of the decedent
23 irrespective of whether the pledge constitutes a binding obligation
24 of the decedent or is properly presented as a claim.

25 (e) If funds are not needed to meet a debt or expenses
26 currently payable and are not immediately distributable, deposit or
27 invest liquid assets of the estate, including funds received from

1 the sale of other property, in accordance with the Michigan prudent
2 investor rule.

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

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

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

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

21 (k) Abandon property when, in the opinion of the personal
22 representative, it is valueless, or is so encumbered or in such a
23 condition as to be of no benefit to the estate.

24 (l) Vote stocks or another security in person or by general or
25 limited proxy.

26 (m) Pay a call, assessment, or other amount chargeable or
27 accruing against or on account of a security, unless barred by a

1 provision relating to claims.

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

6 (o) Insure the estate property against damage, loss, and
7 liability and insure the personal representative against liability
8 as to third persons.

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

12 (q) Effect a fair and reasonable compromise with a debtor or
13 obligor, or extend, renew, or in any manner modify the terms of an
14 obligation owing to the estate. If the personal representative
15 holds a mortgage, pledge, or other lien upon another person's
16 property, the personal representative may, in lieu of foreclosure,
17 accept a conveyance or transfer of encumbered property from the
18 property's owner in satisfaction of the indebtedness secured by
19 lien.

20 (r) Pay a tax, an assessment, the personal representative's
21 compensation, or another expense incident to the estate's
22 administration.

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

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

27 (u) Allocate items of income or expense to either estate

1 income or principal, as permitted or provided by law.

2 (v) Employ, and pay reasonable compensation for reasonably
3 necessary services performed by, a person, including, but not
4 limited to, an auditor, investment advisor, or agent, even if the
5 person is associated with the personal representative, to advise or
6 assist the personal representative in the performance of
7 administrative duties; act on such a person's recommendations
8 without independent investigation; and, instead of acting
9 personally, employ 1 or more agents to perform an act of
10 administration, whether or not discretionary.

11 (w) Employ an attorney to perform necessary legal services or
12 to advise or assist the personal representative in the performance
13 of the personal representative's administrative duties, even if the
14 attorney is associated with the personal representative, and act
15 without independent investigation upon the attorney's
16 recommendation. An attorney employed under this subdivision shall
17 receive reasonable compensation for his or her employment.

18 (x) Prosecute or defend a claim or proceeding in any
19 jurisdiction for the protection of the estate and of the personal
20 representative in the performance of the personal representative's
21 duties.

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

25 (z) Continue a business or venture in which the decedent was
26 engaged at the time of death as a sole proprietor or a general
27 partner, including continuation as a general partner by a personal

1 representative that is a corporation, in any of the following
2 manners:

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

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

10 (iii) Throughout the period of administration if the personal
11 representative incorporates the business or converts the business
12 to a limited liability company and if none of the probable
13 distributees of the business who are competent adults object to its
14 incorporation or conversion and its retention in the estate.

15 (aa) Change the form of a business or venture in which the
16 decedent was engaged at the time of death through incorporation or
17 formation as a limited liability company or other entity offering
18 protection against or limiting exposure to liabilities.

19 (bb) Provide for the personal representative's exoneration
20 from personal liability in a contract entered into on the estate's
21 behalf.

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

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

26 (ee) Make, revise, or revoke an available allocation, consent,
27 or election in connection with a tax matter as appropriate in order

1 to carry out the decedent's estate planning objectives and to
2 reduce the overall burden of taxation, both in the present and in
3 the future. This authority includes, but is not limited to, all of
4 the following:

5 (i) Electing to take expenses as estate tax or income tax
6 deductions.

7 (ii) Electing to allocate the exemption from the tax on
8 generation skipping transfers among transfers subject to estate or
9 gift tax.

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

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

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

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

17 (vii) Joining with the surviving spouse or the surviving
18 spouse's personal representative in the execution and filing of a
19 joint income tax return and consenting to a gift tax return filed
20 by the surviving spouse or the surviving spouse's personal
21 representative.

22 (ff) Divide portions of the estate, including portions to be
23 allocated into trust, into 2 or more separate portions or trusts
24 with substantially identical terms and conditions, and allocate
25 property between them, in order to simplify administration for
26 generation skipping transfer tax purposes, to segregate property
27 for management purposes, or to meet another estate or trust

1 objective.

2 (GG) TAKE CONTROL OF, CONDUCT, CONTINUE, OR TERMINATE ANY
3 ACCOUNTS OF THE DECEDENT ON ANY SOCIAL NETWORKING WEBSITE, ANY
4 MICROBLOGGING OR SHORT MESSAGE SERVICE WEBSITE, OR ANY ELECTRONIC
5 MAIL SERVICE WEBSITE.