

**SUBSTITUTE FOR  
HOUSE BILL NO. 4968**

(As amended September 27, 2005)

[A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1104, 2301, 2519, 2908, 3715, 3804, 3919, 5202, 5204, 5217, 5301, 5308, 5423, 7401, 7502, and 7508 (MCL 700.1104, 700.2301, 700.2519, 700.2908, 700.3715, 700.3804, 700.3919, 700.5202, 700.5204, 700.5217, 700.5301, 700.5308, 700.5423, 700.7401, 700.7502, and 700.7508), sections 1104, 2519, 5202, 5204, 5301, and 5308 as amended by 2000 PA 54, sections 2301 and 3715 as amended by 2004 PA 314, section 5423 as amended by 2000 PA 469, and section 7508 as amended by 2000 PA 177.]

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 1104. As used in this act:
- 2       (a) "Environmental law" means a federal, state, or local

1 law, rule, regulation, or ordinance that relates to the  
2 protection of the environment or human health.

3 (b) "Estate" includes the property of the decedent, trust,  
4 or other person whose affairs are subject to this act as the  
5 property is originally constituted and as it exists throughout  
6 administration. ~~Except when used in the term "probate estate",~~  
7 ~~estate includes the right of an estate described in section 7502~~  
8 ~~to proceed against a recipient of a nonprobate transfer on death~~  
9 ~~and against a trust subject to a power of revocation as necessary~~  
10 ~~to enable the estate to discharge claims and family allowances.~~  
11 **ESTATE ALSO INCLUDES THE RIGHTS DESCRIBED IN SECTIONS 3805, 3922,**  
12 **AND 7502 TO COLLECT FROM OTHERS AMOUNTS NECESSARY TO PAY CLAIMS,**  
13 **ALLOWANCES, AND TAXES.**

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

16 (d) "Family allowance" ~~is~~ **MEANS** the allowance prescribed  
17 in section 2403.

18 (e) "Fiduciary" includes, but is not limited to, a personal  
19 representative, guardian, conservator, trustee, plenary or  
20 partial guardian appointed as provided in chapter 6 of the mental  
21 health code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor  
22 fiduciary.

23 (f) "Financial institution" means an organization authorized  
24 to do business under state or federal laws relating to a  
25 financial institution and includes, but is not limited to, a  
26 bank, trust company, savings bank, building and loan association,  
27 savings and loan company or association, and credit union.

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

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

5 (i) "General personal representative" means a personal  
6 representative other than a special personal representative.

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

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

19 (l) "Hazardous substance" means a substance defined as  
20 hazardous or toxic or otherwise regulated by an environmental  
21 law.

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

26 (n) "Homestead allowance" means the allowance prescribed in  
27 section 2402.

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

8           (a) Property devised to or in trust for the benefit of a  
9   child of the testator who was born before the testator married  
10   the surviving spouse and who is not the surviving spouse's child.

11           (b) Property devised to or in trust for the benefit of a  
12   descendant of a child described in subdivision (a).

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

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

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

21           (b) The will expresses the intention that it is to be  
22   effective notwithstanding a subsequent marriage.

23           (c) The testator provided for the spouse by transfer outside  
24   the will, and the intent that the transfer be a substitute for a  
25   testamentary provision is shown by the testator's statements or  
26   is reasonably inferred from the amount of the transfer or other  
27   evidence.



1 with a lawyer before choosing a Michigan statutory will.

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

6 4. This will has no effect on jointly held assets, on  
7 retirement plan benefits, or on life insurance on your life if  
8 you have named a beneficiary who survives you.

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

10 6. This will treats adopted children and children born  
11 outside of wedlock who would inherit if their parent died without  
12 a will the same way as children born or conceived during  
13 marriage.

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

18 8. You may make and sign a new will at any time. If you  
19 marry or divorce after you sign this will, you should make and  
20 sign a new will.

21 INSTRUCTIONS:

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



1 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

2 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

3 \_\_\_\_\_  
4 (Your signature)

5 Full name and address of person or charity to receive cash gift  
6 (Name only 1 person or charity):

7 \_\_\_\_\_  
8 (Insert name of person or charity)

9 \_\_\_\_\_  
10 (Insert address)

11 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

12 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

13 \_\_\_\_\_  
14 (Your signature)

15 2.2 PERSONAL AND HOUSEHOLD ITEMS.

16 I may leave a separate list or statement, either in my  
17 handwriting or signed by me at the end, regarding gifts of  
18 specific books, jewelry, clothing, automobiles, furniture, and  
19 other personal and household items.

20 I give my spouse all my books, jewelry, clothing,  
21 automobiles, furniture, and other personal and household items  
22 not included on such a separate list or statement. If I am not  
23 married at the time I sign this will or if my spouse dies before  
24 me, my personal representative shall distribute those items, as  
25 equally as possible, among my children who survive me. If no  
26 children survive me, these items shall be distributed as set  
27 forth in paragraph 2.3.

28 2.3 ALL OTHER ASSETS.



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

10 Distribution clause, if no spouse, children, or descendants  
 11 of children survive me.

12 (Select only 1)

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

16 \_\_\_\_\_  
 17 (Your signature)

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

20 \_\_\_\_\_

20 \_\_\_\_\_  
 21 (Your signature)

22 GUARDIAN, AND CONSERVATOR

23 Personal representatives, guardians, and conservators have a  
 24 great deal of responsibility. The role of a personal  
 25 representative is to collect your assets, pay debts and taxes  
 26 from those assets, and distribute the remaining assets as  
 27 directed in the will. A guardian is a person who will look after

1 the physical well-being of a child. A conservator is a person who  
 2 will manage a child's assets and make payments from those assets  
 3 for the child's benefit. Select them carefully. Also, before you  
 4 select them, ask them whether they are willing and able to serve.

5 3.1 PERSONAL REPRESENTATIVE.

6 (Name at least 1)

7 I nominate \_\_\_\_\_  
 8 (Insert name of person or eligible financial institution)

9 of \_\_\_\_\_ to serve as personal representative.  
 10 (Insert address)

11 If my first choice does not serve, I nominate \_\_\_\_\_

12 \_\_\_\_\_  
 13 (Insert name of person or eligible financial institution)

14 of \_\_\_\_\_ to serve as personal representative.  
 15 (Insert address)

16 3.2 GUARDIAN AND CONSERVATOR.

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

22 If a guardian or conservator is needed for a child of mine,

23 I nominate \_\_\_\_\_  
 24 (Insert name of individual)

25 of \_\_\_\_\_ as guardian and  
 26 (Insert address)

27 \_\_\_\_\_  
 28 (Insert name of individual or eligible financial institution)

29 of \_\_\_\_\_ to serve as conservator.  
 30 (Insert address)

31 If my first choice cannot serve, I nominate

1 \_\_\_\_\_  
 2 (Insert name of individual)  
 3 of \_\_\_\_\_ as guardian and  
 4 (Insert address)  
 5 \_\_\_\_\_  
 6 (Insert name of individual or eligible financial institution)  
 7 of \_\_\_\_\_ to serve as conservator.  
 8 (Insert address)

9 3.3 BOND.

10 A bond is a form of insurance in case your personal  
 11 representative or a conservator performs improperly and  
 12 jeopardizes your assets. A bond is not required. You may choose  
 13 whether you wish to require your personal representative and any  
 14 conservator to serve with or without bond. Bond premiums would be  
 15 paid out of your assets. (Select only 1)

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

18 \_\_\_\_\_  
 19 (Your signature)

20 (b) My personal representative and any conservator I have  
 21 named shall serve without bond.

22 \_\_\_\_\_  
 23 (Your signature)

24 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

25 Definitions and additional clauses found at the end of this  
 26 form are part of this will.

27 I sign my name to this Michigan statutory will on

1 \_\_\_\_\_ , 20\_\_\_\_.

2 \_\_\_\_\_  
3 (Your signature)

4 NOTICE REGARDING WITNESSES

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

10 STATEMENT OF WITNESSES

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

17 \_\_\_\_\_  
18 (Print Name)

19 \_\_\_\_\_  
20 (Signature of witness)

21 \_\_\_\_\_  
22 (Address)

23 \_\_\_\_\_  
24 (City) (State) (Zip)

25 \_\_\_\_\_  
26 (Print name)

27 \_\_\_\_\_  
28 (Signature of witness)

29 \_\_\_\_\_  
30 (Address)

1 \_\_\_\_\_  
 2 (City) (State) (Zip)  
 3 \_\_\_\_\_  
 4 (Print name)  
 5 \_\_\_\_\_  
 6 (Signature of witness)  
 7 \_\_\_\_\_  
 8 (Address)  
 9 \_\_\_\_\_  
 10 (City) (State) (Zip)

11 DEFINITIONS

12 The following definitions and rules of construction apply to  
13 this Michigan statutory will:

14 (a) "Assets" means all types of property you can own, such  
15 as real estate, stocks and bonds, bank accounts, business  
16 interests, furniture, and automobiles.

17 (b) "Descendants" means your children, grandchildren, and  
18 their descendants.

19 (c) "Descendants" or "children" includes individuals born or  
20 conceived during marriage, individuals legally adopted, and  
21 individuals born out of wedlock who would inherit if their parent  
22 died without a will.

23 (d) "Jointly held assets" means those assets to which  
24 ownership is transferred automatically upon the death of 1 of the  
25 owners to the remaining owner or owners.

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

28 (f) Whenever a distribution under a Michigan statutory will  
29 is to be made to an individual's descendants, the assets are to

1 be divided into as many equal shares as there are then living  
2 descendants of the nearest degree of living descendants and  
3 deceased descendants of that same degree who leave living  
4 descendants. Each living descendant of the nearest degree shall  
5 receive 1 share. The remaining shares, if any, are combined and  
6 then divided in the same manner among the surviving descendants  
7 of the deceased descendants as if the surviving descendants who  
8 were allocated a share and their surviving descendants had  
9 predeceased the descendant. In this manner, all descendants who  
10 are in the same generation will take an equal share.

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

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

15 (i) Plural and singular words include each other, where  
16 appropriate.

17 (j) If a Michigan statutory will states that a person shall  
18 perform an act, the person is required to perform that act. If a  
19 Michigan statutory will states that a person may do an act, the  
20 person's decision to do or not to do the act shall be made in  
21 good faith exercise of the person's powers.

## 22 ADDITIONAL CLAUSES

### 23 Powers of personal representative

24 1. A personal representative has all powers of  
25 administration given by Michigan law to personal representatives  
26 and, to the extent funds are not needed to meet debts and

1 expenses currently payable and are not immediately distributable,  
2 the power to invest and reinvest the estate from time to time in  
3 accordance with the Michigan prudent investor rule. In dividing  
4 and distributing the estate, the personal representative may  
5 distribute partially or totally in kind, may determine the value  
6 of distributions in kind without reference to income tax bases,  
7 and may make non-pro rata distributions.

8         2. The personal representative may distribute estate assets  
9 otherwise distributable to a minor beneficiary to the minor's  
10 conservator or, in amounts not exceeding \$5,000.00 per year,  
11 either to the minor, if married; to a parent or another adult  
12 with whom the minor resides and who has the care, custody, or  
13 control of the minor; or to the guardian. The personal  
14 representative is free of liability and is discharged from  
15 further accountability for distributing assets in compliance with  
16 the provisions of this paragraph.

17                                 POWERS OF GUARDIAN AND CONSERVATOR

18         A guardian named in this will has the same authority with  
19 respect to the child as a parent having legal custody would have.  
20 A conservator named in this will has all of the powers conferred  
21 by law.

22         Sec. 2908. (1) If ~~the~~ **A** disclaimed interest arises out of  
23 joint property created by a governing instrument, testamentary or  
24 nontestamentary, the following apply:

25             (a) If the disclaimant is the only living owner, the

1 disclaimed interest devolves to the estate of the last to die of  
2 the other joint owners.

3 (b) If the disclaimant is not the only living owner, the  
4 disclaimed interest devolves to the other living joint owners  
5 equally or, if there is only 1 living owner, all to the other  
6 living owner.

7 ~~—— (2) If the donee of a power of appointment disclaims the  
8 power of appointment, the property that is subject to the power  
9 of appointment devolves as follows:~~

10 ~~—— (a) If the power of appointment arises out of a will or  
11 testamentary instrument, as if the donee died before the  
12 decedent.~~

13 ~~—— (b) If the power of appointment arises out of a governing  
14 instrument other than a will or testamentary trust, as if the  
15 disclaimant died before the effective date of the governing  
16 instrument.~~

17 (2) IF THE DONEE OF A POWER OF APPOINTMENT OR OTHER POWER  
18 NOT HELD IN A FIDUCIARY CAPACITY DISCLAIMS THE POWER, ALL OF THE  
19 FOLLOWING APPLY:

20 (A) IF THE DONEE HAS NOT EXERCISED THE POWER, THE DISCLAIMER  
21 TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE POWER  
22 BECOMES EFFECTIVE.

23 (B) IF THE DONEE HAS EXERCISED THE POWER, THE DISCLAIMER  
24 TAKES EFFECT IMMEDIATELY AFTER THE LAST EXERCISE OF THE POWER.

25 (C) THE INSTRUMENT CREATING THE POWER IS CONSTRUED AS IF THE  
26 POWER EXPIRED WHEN THE DISCLAIMER BECAME EFFECTIVE.

27 (3) If all incumbent trustees disclaim a disclaimable



1 interest, and the governing instrument does not provide for  
2 another disposition of the disclaimed interest if it is  
3 disclaimed or for another disposition of disclaimed or failed  
4 interests in general, then the disclaimed interest devolves as if  
5 the trust with respect to which the disclaimer was made never  
6 existed. If less than all incumbent trustees disclaim a  
7 disclaimable interest and the governing instrument does not  
8 provide for another disposition of the disclaimed interest under  
9 those circumstances, then the trustee who disclaims is treated as  
10 never having had any interest in or power over the disclaimed  
11 interest.

12 (4) If a fiduciary disclaims a fiduciary power, the  
13 fiduciary power ceases to exist as of the effective date of the  
14 disclaimer. A disclaimer of a fiduciary power by 1 of multiple  
15 incumbent fiduciaries is binding only on the fiduciary who  
16 disclaims and is not binding on the other incumbent fiduciaries  
17 or on successor fiduciaries. A disclaimer of a fiduciary power by  
18 all incumbent fiduciaries is binding on all successor  
19 fiduciaries, unless the disclaimer states otherwise.

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

25 (a) Retain property owned by the decedent pending  
26 distribution or liquidation, including property in which the  
27 personal representative is personally interested or that is

1 otherwise improper for trust investment.

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

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

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

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

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

27 (e) If funds are not needed to meet a debt or expenses

1 currently payable and are not immediately distributable, deposit  
2 or invest liquid assets of the estate, including funds received  
3 from the sale of other property, in accordance with the Michigan  
4 prudent investor rule.

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

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

12 (h) Subdivide, develop, or dedicate land to public use, make  
13 or obtain the vacation of a plat or adjust a boundary, adjust a  
14 difference in valuation on exchange or partition by giving or  
15 receiving consideration, or dedicate an easement to public use  
16 without consideration.

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

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

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

26 (l) Vote stocks or another security in person or by general  
27 or limited proxy.

- 1 (m) Pay a call, assessment, or ~~another~~ **OTHER** amount  
2 chargeable or accruing against or on account of a security,  
3 unless barred by a provision relating to claims.
- 4 (n) Hold a security in the name of a nominee or in other  
5 form without disclosure of the estate's interest. However, the  
6 personal representative is liable for an act of the nominee in  
7 connection with the security so held.
- 8 (o) Insure the estate property against damage, loss, and  
9 liability and insure the personal representative against  
10 liability as to third persons.
- 11 (p) Borrow money with or without security to be repaid from  
12 the estate property or otherwise, and advance money for the  
13 estate's protection.
- 14 (q) Effect a fair and reasonable compromise with a debtor or  
15 obligor, or extend, renew, or in any manner modify the terms of  
16 an obligation owing to the estate. If the personal representative  
17 holds a mortgage, pledge, or other lien upon another person's  
18 property, the personal representative may, in lieu of  
19 foreclosure, accept a conveyance or transfer of encumbered  
20 property from the property's owner in satisfaction of the  
21 indebtedness secured by lien.
- 22 (r) Pay a tax, an assessment, the personal representative's  
23 compensation, or another expense incident to the estate's  
24 administration.
- 25 (s) Sell or exercise a stock subscription or conversion  
26 right.
- 27 (t) Consent, directly or through a committee or other agent,

1 to the reorganization, consolidation, merger, dissolution, or  
2 liquidation of a corporation or other business enterprise.

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

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

14 (w) Employ an attorney to perform necessary legal services  
15 or to advise or assist the personal representative in the  
16 performance of the personal representative's administrative  
17 duties, **EVEN IF THE ATTORNEY IS ASSOCIATED WITH THE PERSONAL**  
18 **REPRESENTATIVE, AND ACT WITHOUT INDEPENDENT INVESTIGATION UPON**  
19 **THE ATTORNEY'S RECOMMENDATION.** An attorney employed under this  
20 subdivision shall receive reasonable compensation for ~~that~~ **HIS**  
21 **OR HER** employment.

22 (x) Prosecute or defend a claim or proceeding in any  
23 jurisdiction for the protection of the estate and of the personal  
24 representative in the performance of the personal  
25 representative's duties.

26 (y) Sell, mortgage, or lease estate property or an interest  
27 in estate property for cash, credit, or part cash and part

1 credit, and with or without security for unpaid balances.

2 (z) Continue a business or venture in which the decedent was  
3 engaged at the time of death as a sole proprietor or a general  
4 partner, including continuation as a general partner by a  
5 personal representative that is a corporation in any of the  
6 following manners:

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

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

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

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

23 (bb) Provide for the personal representative's exoneration  
24 from personal liability in a contract entered into on the  
25 estate's behalf.

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

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

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

9 (i) Electing to take expenses as estate tax or income tax  
10 deductions.

11 (ii) Electing to allocate the exemption from the tax on  
12 generation skipping transfers among transfers subject to estate  
13 or gift tax.

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

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

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

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

21 (vii) Joining with the surviving spouse or the surviving  
22 spouse's personal representative in the execution and filing of a  
23 joint income tax return and consenting to a gift tax return filed  
24 by the surviving spouse or the surviving spouse's personal  
25 representative.

26 (ff) Divide portions of the estate, including portions to be  
27 allocated into trust, into 2 or more separate portions or trusts

1 with substantially identical terms and conditions, and allocate  
2 property between them, in order to simplify administration for  
3 generation skipping transfer tax purposes, to segregate property  
4 for management purposes, or to meet another estate or trust  
5 objective.

6       Sec. 3804. (1) A claimant must present a claim against a  
7 decedent's estate in either of the following ways:

8       (a) By delivering or mailing a written statement to the  
9 personal representative ~~or proposed personal representative~~  
10 indicating the claim's basis, the claimant's name and address,  
11 and the amount claimed, or by filing with the court a written  
12 statement of the claim in the form prescribed by supreme court  
13 rule and delivering or mailing a copy of the statement to the  
14 personal representative. ~~or proposed personal representative.~~  
15 The claim shall be considered presented on receipt of the claim  
16 statement by the personal representative or the filing of the  
17 claim statement with the court, whichever occurs first. If a  
18 claim is not yet due, the statement shall state the date when it  
19 will become due. If the claim is contingent or unliquidated, the  
20 statement shall state the nature of the uncertainty. If the claim  
21 is secured, the statement shall describe the security. Failure to  
22 describe correctly the security, the nature of any uncertainty,  
23 or the due date of a claim not yet due does not invalidate the  
24 claim's presentation.

25       (b) By commencing a proceeding to obtain payment of a claim  
26 against the estate in a court in which the personal  
27 representative may be subjected to jurisdiction. The commencement



1 of the proceeding shall occur within the time limit for  
2 presenting the claim. The presentation of a claim is not required  
3 in regard to a matter claimed in a proceeding against the  
4 decedent that is pending at the time of death.

5 (2) Except as otherwise provided in this subsection, if a  
6 claim is presented under subsection (1)(a), a proceeding on the  
7 claim shall not be commenced more than 63 days after the personal  
8 representative delivers or mails a notice of disallowance to the  
9 claimant. For a claim that is not presently due or that is  
10 contingent or unliquidated, the personal representative may  
11 consent to an extension of the 63-day period or, to avoid  
12 injustice, the court, on petition, may order an extension of the  
13 63-day period, but an extension shall not be consented to or  
14 ordered if the extension would run beyond the applicable statute  
15 of limitations.

16 (3) A claim by the personal representative against the  
17 estate shall be in the form prescribed by supreme court rule. The  
18 personal representative must give a copy of the claim to all  
19 interested persons not later than 7 days after the time for the  
20 claim's original presentation expires. The claim must contain a  
21 warning that the personal representative's claim will be allowed  
22 unless a notice of objection is delivered or mailed to the  
23 personal representative within 63 days after the time for the  
24 claim's original presentation expires. This subsection does not  
25 apply to a claim for compensation for services rendered or for  
26 reimbursement of expenses advanced by the personal  
27 representative.

1           Sec. 3919. (1) If there is a personal representative of the  
2 decedent's domicile willing to receive it, a nonresident  
3 decedent's estate being administered by a personal representative  
4 appointed in this state shall be distributed to the domiciliary  
5 personal representative for the benefit of the decedent's  
6 successors unless any of the following apply:

7           (a) By virtue of the decedent's will, if any, and applicable  
8 choice of law rules, the successors are identified under the law  
9 of this state without reference to the law of the decedent's  
10 domicile.

11           (b) After reasonable inquiry, this state's personal  
12 representative is unaware of the existence or identity of a  
13 domiciliary personal representative.

14           (c) The court orders otherwise in a proceeding for a closing  
15 order under section ~~3951~~ **3952** or incident to the closing of a  
16 supervised administration.

17           (2) If subsection (1) is not applicable to an estate,  
18 distribution of the decedent's estate shall be made in accordance  
19 with the other provisions of this article.

20           Sec. 5202. (1) The parent of an unmarried minor may appoint  
21 a guardian for the minor by will or by another writing signed by  
22 the parent and attested by at least 2 witnesses.

23           (2) Subject to the right of the minor under section 5203, if  
24 both parents are dead or have been adjudged to be legally  
25 incapacitated or the surviving parent has no parental rights or  
26 has been adjudged to be legally incapacitated, a parental  
27 appointment becomes effective when the guardian's acceptance is

1 filed in the court in which ~~a nominating instrument~~ **THE WILL**  
2 **CONTAINING THE NOMINATION** is probated or, ~~in the case of~~ **IF THE**  
3 **NOMINATION IS CONTAINED IN** a nontestamentary nominating  
4 instrument ~~—~~ **OR THE TESTATOR WHO MADE THE NOMINATION IS NOT**  
5 **DECEASED, WHEN THE GUARDIAN'S ACCEPTANCE IS FILED** in the court at  
6 the place where the minor resides or is present. If both parents  
7 are dead, an effective appointment by the parent who died later  
8 has priority.

9 (3) A parental appointment effected by filing the guardian's  
10 acceptance under a will probated in the state of the testator's  
11 domicile is effective in this state.

12 (4) Upon acceptance of appointment, the guardian shall give  
13 written notice of acceptance to the minor and to the person  
14 having the minor's care or the minor's nearest adult relative.

15 Sec. 5204. (1) A person interested in the welfare of a  
16 minor, or a minor if 14 years of age or older, may petition for  
17 the appointment of a guardian for the minor. The court may order  
18 the family independence agency or a court employee or agent to  
19 conduct an investigation of the proposed guardianship and file a  
20 written report of the investigation.

21 (2) The court may appoint a guardian for an unmarried minor  
22 if any of the following circumstances exist:

23 (a) The parental rights of both parents or the surviving  
24 parent are terminated or suspended by prior court order, by  
25 judgment of divorce or separate maintenance, by death, by  
26 judicial determination of mental incompetency, by disappearance,  
27 or by confinement in a place of detention.

1 (b) The parent or parents permit the minor to reside with  
2 another person and do not provide the other person with legal  
3 authority for the minor's care and maintenance, and the minor is  
4 not residing with his or her parent or parents when the petition  
5 is filed.

6 (c) All of the following:

7 (i) The minor's biological parents have never been married to  
8 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  
11 custody 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  
14 marriage, 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  
20 appointment is not prevented or nullified under section 5203 has  
21 priority over a guardian who may be appointed by the court. The  
22 court may proceed with an appointment upon a finding that ~~the~~  
23 ~~testamentary~~ **A guardian APPOINTED IN A MANNER DESCRIBED IN**  
24 **SECTION 5202** has failed to accept the appointment within 28 days  
25 after the notice of the guardianship proceeding.

26 (5) For the minor ward's welfare, the court may at any time  
27 order the minor ward's parents to pay reasonable support and

1 order reasonable parenting time and contact of the minor ward  
2 with his or her parents.

3 Sec. 5217. A guardian's authority and responsibility  
4 terminate upon the guardian's death, resignation, or removal or  
5 upon the minor's death, adoption, marriage, or attainment of  
6 majority. However, a termination does not affect the guardian's  
7 liability for prior acts or the obligation to account for the  
8 ward's money and property. The guardian's resignation does not  
9 terminate the guardianship until it is approved by the court. A  
10 parental appointment under an **UNPROBATED OR** informally probated  
11 will terminates if the will is later denied probate in a formal  
12 proceeding.

13 Sec. 5301. (1) If serving as guardian, the parent of an  
14 unmarried legally incapacitated individual may appoint by will,  
15 or other writing signed by the parent and attested by at least 2  
16 witnesses, a guardian for the legally incapacitated individual.  
17 If both parents are dead or the surviving parent is adjudged  
18 legally incapacitated, a parental appointment becomes effective  
19 when, after having given 7 days' prior written notice of  
20 intention to do so to the legally incapacitated individual and to  
21 the person having the care of the legally incapacitated  
22 individual or to the nearest adult relative, the guardian files  
23 acceptance of appointment in the court in which the will  
24 **CONTAINING THE NOMINATION** is probated or, ~~in the case of~~ **IF THE**  
25 **NOMINATION IS CONTAINED IN** a nontestamentary nominating  
26 instrument — **OR THE TESTATOR WHO MADE THE NOMINATION IS NOT**  
27 **DECEASED, WHEN THE GUARDIAN'S ACCEPTANCE IS FILED** in the court at

1 the place where the legally incapacitated individual resides or  
2 is present. The notice must state that the appointment may be  
3 terminated by filing a written objection in the court as provided  
4 by subsection (4). If both parents are dead, an effective  
5 appointment by the parent who died later has priority.

6 (2) If serving as guardian, the spouse of a married legally  
7 incapacitated individual may appoint by will, or other writing  
8 signed by the spouse and attested by at least 2 witnesses, a  
9 guardian of the legally incapacitated individual. The appointment  
10 becomes effective when, after having given 7 days' prior written  
11 notice of intention to do so to the legally incapacitated  
12 individual and to the person having care of the legally  
13 incapacitated individual or to the nearest adult relative, the  
14 guardian files acceptance of appointment in the court in which  
15 the will **CONTAINING THE NOMINATION** is probated or, ~~in the case~~  
16 ~~of~~ **IF THE NOMINATION IS CONTAINED IN** a nontestamentary  
17 nominating instrument ~~—~~ **OR THE TESTATOR WHO MADE THE NOMINATION**  
18 **IS NOT DECEASED, WHEN THE GUARDIAN'S ACCEPTANCE IS FILED** in the  
19 court at the place where the legally incapacitated individual  
20 resides or is present. The notice must state that the appointment  
21 may be terminated by filing a written objection in the court as  
22 provided by subsection (4).

23 (3) An appointment effected by filing the guardian's  
24 acceptance under a will probated in the state of the decedent's  
25 domicile is effective in this state.

26 (4) Upon the filing of the legally incapacitated  
27 individual's written objection to a guardian's appointment under

House Bill No. 4968 (H-2) as amended September 22, 2005

1 this section in either the court in which the will was probated  
 2 or, for a nontestamentary nominating instrument **OR A TESTAMENTARY**  
 3 **NOMINATING INSTRUMENT MADE BY A TESTATOR WHO IS NOT DECEASED**, the  
 4 court at the place where the legally incapacitated individual  
 5 resides or is present, the appointment is terminated. An  
 6 objection does not prevent appointment by the court in a proper  
 7 proceeding of the parental or spousal nominee or another suitable  
 8 person upon an adjudication of incapacity in a proceeding under  
 9 sections 5302 to 5317.

[Sec. 5308. The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5310. Testamentary appointment of a guardian under **AN UNPROBATED WILL OR** a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.]

10 Sec. 5423. (1) Subject to a limitation ~~provided in~~ **IMPOSED**  
 11 **UNDER** section 5427, a conservator has all of the powers conferred  
 12 in this section and the additional powers conferred by law on  
 13 trustees in this state. In addition, a conservator of the estate  
 14 of an unmarried minor, as to whom no one has parental rights, has  
 15 the powers, responsibilities, and duties of a guardian described  
 16 in section 5215 until the individual is no longer a minor or  
 17 marries. The parental rights conferred on a conservator by this  
 18 section do not preclude a guardian's appointment as provided in  
 19 part 2.

20 (2) Acting reasonably in an effort to accomplish the purpose  
 21 of the appointment and without court authorization or  
 22 confirmation, a conservator may do any of the following:

23 (a) Collect, hold, or retain estate property, including land  
 24 in another state, until ~~judging~~ **THE CONSERVATOR DETERMINES** that  
 25 disposition of the property should be made. Property may be  
 26 retained even though it includes property in which the  
 27 conservator is personally interested.

1 (b) Receive an addition to the estate.

2 (c) Continue or participate in the operation of a business  
3 or other enterprise.

4 (d) Acquire an undivided interest in estate property in  
5 which the conservator, in a fiduciary capacity, holds an  
6 undivided interest.

7 (e) Invest or reinvest estate property. If the conservator  
8 exercises the power conferred by this subdivision, the  
9 conservator must invest or reinvest the property in accordance  
10 with the Michigan prudent investor rule.

11 (f) Deposit estate money in a state or federally insured  
12 financial institution including one operated by the conservator.

13 (g) Except as provided in subsection (3), acquire or dispose  
14 of estate property, including land in another state, for cash or  
15 on credit, at public or private sale, or manage, develop,  
16 improve, exchange, partition, change the character of, or abandon  
17 estate property.

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

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

26 (j) Enter for any purpose into a lease as lessor or lessee  
27 with or without option to purchase or renew for a term within or



- 1 extending beyond the term of the conservatorship.
- 2 (k) Enter into a lease or arrangement for exploration and  
3 removal of a mineral or other natural resource or enter into a  
4 pooling or unitization agreement.
- 5 (l) Grant an option involving disposition of estate property  
6 or take an option for the acquisition of property.
- 7 (m) Vote a security, in person or by general or limited  
8 proxy.
- 9 (n) Pay a call, assessment, or ~~another~~ **OTHER** amount  
10 chargeable or accruing against or on account of a security.
- 11 (o) Sell or exercise stock subscription or conversion  
12 rights.
- 13 (p) Consent, directly or through a committee or other agent,  
14 to the reorganization, consolidation, merger, dissolution, or  
15 liquidation of a corporation or other business enterprise.
- 16 (q) Hold a security in the name of a nominee or in other  
17 form without disclosure of the conservatorship so that title to  
18 the security may pass by delivery. However, the conservator is  
19 liable for an act of the nominee in connection with the stock so  
20 held.
- 21 (r) Insure the estate property against damage or loss or the  
22 conservator against liability with respect to third persons.
- 23 (s) Borrow money to be repaid from estate property or  
24 otherwise.
- 25 (t) Advance money for the protection of the estate or the  
26 protected individual, and for all expense, loss, or liability  
27 sustained in the estate's administration or because of the

1 holding or ownership of estate property. ~~—, for which the~~ **THE**  
2 conservator has a lien on the estate as against the protected  
3 individual for **SUCH** an advance. ~~—so made.~~

4 (u) Pay or contest a claim; settle a claim by or against the  
5 estate or the protected individual by compromise, arbitration, or  
6 otherwise; and release, in whole or in part, a claim belonging to  
7 the estate to the extent that the claim is uncollectible.

8 (v) Pay a tax, assessment, conservator's compensation, or  
9 other expense incurred in the estate's collection, care,  
10 administration, and protection.

11 (w) Allocate an item of income or expense to either estate  
12 income or principal, as provided by law, including creation of a  
13 reserve out of income for depreciation, obsolescence, or  
14 amortization, or for depletion in a mineral or timber property.

15 (x) Pay money distributable to a protected individual or the  
16 protected individual's dependent by paying the money to the  
17 distributee or by paying the money for the use of the distributee  
18 to the distributee's guardian, or if none, to a relative or other  
19 person having custody of the distributee.

20 (y) Employ a person, including an auditor, investment  
21 advisor, or agent, even though the person is associated with the  
22 conservator, to advise or assist in the performance of an  
23 administrative duty; act upon the person's recommendation without  
24 independent investigation; and, instead of acting personally,  
25 employ an agent to perform an act of administration, whether or  
26 not discretionary.

27 (z) Employ an attorney to perform necessary legal services

1 or to advise or assist the conservator in the performance of the  
2 conservator's administrative duties, **EVEN IF THE ATTORNEY IS**  
3 **ASSOCIATED WITH THE CONSERVATOR, AND ACT WITHOUT INDEPENDENT**  
4 **INVESTIGATION UPON THE ATTORNEY'S RECOMMENDATION.** An attorney  
5 employed under this subdivision shall receive reasonable  
6 compensation for ~~that~~ **HIS OR HER** employment.

7 (aa) Prosecute or defend an action, claim, or proceeding in  
8 any jurisdiction for the protection of estate property and of the  
9 conservator in the performance of a fiduciary duty.

10 (bb) Execute and deliver an instrument that will accomplish  
11 or facilitate the exercise of a power vested in the conservator.

12 (cc) Respond to an environmental concern or hazard affecting  
13 property as provided in section 5424.

14 (3) A conservator shall not sell or otherwise dispose of the  
15 protected individual's real property or interest in real property  
16 without approval of the court. The court shall only approve the  
17 sale or other disposal of the real property or interest in real  
18 property if, after a hearing with notice to interested persons as  
19 specified in the Michigan court rules, the court considers  
20 evidence of the value of the real property or interest in real  
21 property and otherwise determines that the sale or other disposal  
22 is in the protected individual's best interest.

23 Sec. 7401. (1) A trustee has the power to perform in a  
24 reasonable and prudent manner every act that a reasonable and  
25 prudent person would perform incident to the collection,  
26 preservation, management, use, and distribution of the trust  
27 property to accomplish the desired result of administering the

1 trust legally and in the trust beneficiaries' best interest.

2 (2) Subject to the standards described in subsection (1) and  
3 except as otherwise provided in the trust instrument, a trustee  
4 possesses all of the following specific powers:

5 (a) To take possession, custody, or control of property  
6 transferred to the trust.

7 (b) To retain property that the trustee receives, including  
8 property in which the trustee is personally interested, in  
9 accordance with the Michigan prudent investor rule.

10 (c) To receive property from a fiduciary or another source  
11 that is acceptable to the trustee.

12 (d) To perform, compromise, or refuse to perform a contract  
13 of the settlor that is an obligation of the trust, as the trustee  
14 may determine under the circumstances. In performing an  
15 enforceable contract by the settlor to convey or lease land, if  
16 the contract for a conveyance requires the giving of a warranty,  
17 the deed or other instrument of conveyance to be given by the  
18 trustee must contain the warranty required. The warranty is  
19 binding on the trust as though made by the settlor, but does not  
20 bind the trustee except in the trustee's fiduciary capacity. The  
21 trustee, among other possible courses of action, may do either of  
22 the following:

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

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

1 paid to the trustee, as designated in the escrow agreement.

2 (e) To satisfy a settlor's written charitable pledge  
3 irrespective of whether the pledge constitutes a binding  
4 obligation of the settlor or was properly presented as a claim,  
5 if in the trustee's judgment the settlor would have wanted the  
6 pledge completed under the circumstances.

7 (f) To deposit trust money in a bank, including a bank  
8 operated by the trustee and to invest and reinvest trust property  
9 as would a prudent investor acting in accordance with the  
10 Michigan prudent investor rule.

11 (g) To acquire property, including property in this or  
12 another state or country, in any manner for cash or on credit, at  
13 public or private sale; and to manage, develop, improve,  
14 exchange, partition, or change the character of trust property.

15 (h) To make an ordinary or extraordinary repair or  
16 alteration in a building or another structure, to demolish an  
17 improvement, or to raze an existing or erect a new party wall or  
18 building.

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

24 (j) To enter for any purpose into a lease as lessor or  
25 lessee, with or without an option to purchase or renew, for any  
26 term.

27 (k) To enter into a lease or arrangement for exploration and

1 removal of minerals or another natural resource or to enter into  
2 a pooling or unitization agreement.

3 (l) To abandon property if, in the trustee's opinion, the  
4 property is valueless, or is so encumbered or in such a condition  
5 that it is of no benefit to the trust.

6 (m) To vote a stock or other security in person, by general  
7 or limited proxy, or in another manner provided by law.

8 (n) To pay a call, assessment, ~~and another~~ **OR OTHER** amount  
9 chargeable or accruing against or on account of a security.

10 (o) To hold property in the name of a nominee or in another  
11 form without disclosure of the interest of the trust. However,  
12 the trustee is liable for an act of the nominee in connection  
13 with the property so held.

14 (p) To insure the trust property against damage, loss, or  
15 liability and to insure the trustee against liability as to a  
16 third person.

17 (q) To borrow money for any purpose from the trustee or  
18 others and to mortgage or pledge trust property.

19 (r) To effect a fair and reasonable compromise with a debtor  
20 or obligor, or extend, renew, or in any manner modify the terms  
21 of an obligation owing to the trust. If the trustee holds a  
22 mortgage, pledge, or another lien on property of another person,  
23 the trustee may, instead of foreclosure, accept a conveyance or  
24 transfer of encumbered property from the property's owner in  
25 satisfaction of the indebtedness secured by a lien.

26 (s) To pay a tax, an assessment, the trustee's compensation,  
27 or another expense incident to the administration of the trust.

1 (t) To sell or exercise a subscription or conversion right  
2 or to consent, directly or through a committee or another agent,  
3 to the reorganization, consolidation, merger, dissolution, or  
4 liquidation of a business enterprise.

5 (u) To allocate an item of income or expense to either trust  
6 income or principal, as permitted or provided by law.

7 (v) To employ, and pay reasonable compensation for services  
8 performed by, a person, including an auditor, investment advisor,  
9 accountant, appraiser, broker, custodian, rental agent, realtor,  
10 or agent, even if the person is associated with the trustee, for  
11 the purpose of advising or assisting the trustee in the  
12 performance of an administrative duty; to act without independent  
13 investigation upon such a person's recommendation; and, instead  
14 of acting personally, to employ 1 or more agents to perform an  
15 act of administration, whether or not discretionary.

16 (w) To employ an attorney to perform necessary legal  
17 services or to advise or assist the trustee in the performance of  
18 the trustee's administrative duties, **EVEN IF THE ATTORNEY IS**  
19 **ASSOCIATED WITH THE TRUSTEE, AND TO ACT WITHOUT INDEPENDENT**  
20 **INVESTIGATION UPON THE ATTORNEY'S RECOMMENDATION.** An attorney  
21 employed under this subdivision shall receive reasonable  
22 compensation for ~~that~~ **HIS OR HER** employment.

23 (x) To prosecute, defend, arbitrate, settle, release,  
24 compromise, or agree to indemnify a claim or proceeding in any  
25 jurisdiction or under an alternative dispute resolution  
26 procedure. The trustee may act under this subsection for the  
27 trustee's protection in the performance of the trustee's duties.

1           (y) To sell, exchange, partition, or otherwise dispose of,  
2 or grant an option with respect to, trust property for any  
3 purpose upon any terms or conditions.

4           (z) To continue or participate in a business or venture in  
5 any manner, in any form, and for any length of time.

6           (aa) To change the form, in any manner, of a business or  
7 venture in which the settlor was engaged at the time of death.

8           (bb) To provide for exoneration of the trustee from personal  
9 liability in a contract entered into on behalf of the trust.

10          (cc) To respond to environmental concerns and hazards  
11 affecting trust property as provided in section 7407.

12          (dd) To collect, pay, contest, settle, release, agree to  
13 indemnify against, compromise, or abandon a claim of or against  
14 the trust, including a claim against the trust by the trustee.

15          (ee) To respond to a tax matter as provided in section 7408.

16          (ff) To divide trust property into 2 or more separate  
17 portions or trusts with substantially identical terms and  
18 conditions and to allocate property between them, in order to  
19 simplify administration for generation skipping transfer tax  
20 purposes, to segregate property for management purposes, or to  
21 meet another trust objective.

22          (gg) To make a payment of money, or other property instead  
23 of money, to or for a minor or incapacitated individual as  
24 provided in section 7409.

25          (hh) To make a distribution or division of trust property in  
26 cash or in kind, or both; to allot a different kind or  
27 disproportionate portion of, or an undivided interest in, trust



1 property among beneficiaries and determine the value of allotted  
2 trust property; or to distribute an unclaimed share as described  
3 in section 3916.

4 (ii) To transfer the property of a trust to another  
5 jurisdiction and appoint, compensate, or remove a successor  
6 trustee, individual or corporate, for trust property in another  
7 jurisdiction, with any trust powers set out in this part that the  
8 trustee delegates to the successor trustee.

9 (jj) To execute and deliver an instrument that accomplishes  
10 or facilitates the exercise of a power vested in the trustee.

11 (3) A trust that contains substantially identical provisions  
12 as another trust established for the same beneficiary or  
13 beneficiaries may be consolidated and administered as 1 trust. If  
14 the rule against perpetuities speaks from different dates with  
15 reference to the trusts or if there are other variations in  
16 terms, consolidation may still take place, but the property of  
17 the trusts shall be maintained in separate accounts if necessary  
18 to recognize and give effect to the differences.

19 Sec. 7502. (1) A trustee of a trust described in section  
20 7501(1) shall pay to the personal representative of the settlor's  
21 estate the amount from time to time that the personal  
22 representative certifies in writing to the trustee is required to  
23 pay the administration expenses of the settlor's estate; an  
24 enforceable and timely presented claim of a creditor of the  
25 settlor, including a claim for the settlor's funeral and burial  
26 expenses; and homestead, family, and exempt property allowances.  
27 Without liability to a trust beneficiary or another party, the

1 trustee may rely on the certificate of the personal  
 2 representative. In the event there is no personal representative  
 3 appointed for the settlor's estate, the trustee shall pay  
 4 directly to the creditor an enforceable and timely served claim  
 5 of a creditor of the settlor, including a claim for the settlor's  
 6 funeral and burial expenses. ~~When there is no~~ **IF A** personal  
 7 representative **IS NOT** appointed for the settlor's estate **WITHIN 4**  
 8 **MONTHS AFTER THE DATE OF THE PUBLICATION OF NOTICE TO CREDITORS,**  
 9 a trust described in section 7501(1) is not liable for payment of  
 10 homestead, family, or exempt property ~~allowance~~ **ALLOWANCES.** A  
 11 payment made by a trustee is subject to this section, but the  
 12 payment shall be made exclusively out of property, or the  
 13 proceeds of property, that is includable in the settlor's gross  
 14 estate for federal estate tax purposes, other than assets  
 15 ~~prescribed~~ **DESCRIBED** in section 7501(2), (3), and (4).

16 (2) Unless a settlor provides in his or her will or, in the  
 17 absence of such a provision, designates in the trust the money or  
 18 property passing under a trust to be used as described in section  
 19 7501, the administration expenses of the settlor's estate; an  
 20 enforceable and timely filed claim of a creditor of the settlor,  
 21 including a claim for the settlor's funeral and burial expenses;  
 22 or homestead, family, and exempt property allowances, to be paid  
 23 in accordance with subsection (1), shall be paid from the  
 24 property of the trust in the following order:

25 (a) Property of the trust residue remaining after all  
 26 distributions that are to be satisfied by reference to a specific  
 27 property or type of property, fund, money, or statutory amount.

1 (b) Property that is not to be distributed out of specified  
2 or identified property or a specified or identified item of  
3 property.

4 (c) Property that is to be distributed out of specified or  
5 identified property or a specified or identified item of  
6 property.

7 Sec. 7508. (1) Upon the expiration of 4 months after the  
8 date of the publication of the notice to creditors, the trustee  
9 shall proceed to pay the claims allowed against the trust in the  
10 order of priority prescribed in section 7503(2)(f) to (g), after  
11 making provision for costs and expenses of trust administration,  
12 for reasonable funeral and burial expenses, ~~for the homestead,~~  
13 ~~family, and exempt property allowances,~~ for each claim already  
14 presented that is not yet allowed or whose allowance is appealed,  
15 and for each unbarred claim that may yet be presented. A claimant  
16 whose claim is allowed, but not paid as provided in this section,  
17 may petition the court to secure an order directing the trustee  
18 to pay the claim to the extent that money of the trust is  
19 available for the payment.

20 (2) At any time, the trustee may pay a claim that is not  
21 barred, with or without formal presentation, but is individually  
22 liable to another claimant whose claim is allowed and who is  
23 injured by the payment if either of the following occurs:

24 (a) Payment is made before the expiration of the time limit  
25 stated in subsection (1) and the trustee fails to require the  
26 payee to give adequate security for the refund of any of the  
27 payment necessary to pay another claimant.

1           (b) Payment is made, due to the negligence or willful fault  
2 of the trustee, in a manner that deprives the injured claimant of  
3 priority.

4           (3) If a claim is allowed, but the whereabouts of the  
5 claimant is unknown at the time the trustee attempts to pay the  
6 claim, upon petition by the trustee and after notice the court  
7 considers advisable, the court may disallow the claim. If the  
8 court disallows a claim under this subsection, the claim is  
9 barred.