

HOUSE BILL No. 4968

June 16, 2005, Introduced by Reps. Schuitmaker, Van Regenmorter, Gosselin, Lipsey, Bieda, Condino, Gillard, McConico, Elsenheimer, Virgil Smith, David Law and Kahn and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1104, 2301, 2908, 3715, 3804, 3919, 5202, 5217, 5423, 7401, 7502, and 7508 (MCL 700.1104, 700.2301, 700.2908, 700.3715, 700.3804, 700.3919, 700.5202, 700.5217, 700.5423, 700.7401, 700.7502, and 700.7508), sections 1104 and 5202 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 law,
3 rule, regulation, or ordinance that relates to the protection of

1 the environment or human health.

2 (b) "Estate" includes the property of the decedent, trust, or
3 other person whose affairs are subject to this act as the property
4 is originally constituted and as it exists throughout
5 administration. ~~Except when used in the term "probate estate",~~
6 ~~estate includes the right of an estate described in section 7502 to~~
7 ~~proceed against a recipient of a nonprobate transfer on death and~~
8 ~~against a trust subject to a power of revocation as necessary to~~
9 ~~enable the estate to discharge claims and family allowances.~~

10 **ESTATE ALSO INCLUDES THE RIGHTS DESCRIBED IN SECTIONS 3805, 3922,**
11 **AND 7502 TO COLLECT FROM OTHERS AMOUNTS NECESSARY TO PAY CLAIMS,**
12 **ALLOWANCES, AND TAXES.**

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

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

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

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

27 (g) "Foreign personal representative" means a personal

1 representative appointed by another jurisdiction.

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

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

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

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

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

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

24 (n) "Homestead allowance" means the allowance prescribed in
25 section 2402.

26 Sec. 2301. (1) Except as provided in subsection (2), if a
27 testator's surviving spouse marries the testator after the testator

1 executes his or her will, the surviving spouse is entitled to
2 receive, as an intestate share, not less than the value of the
3 share of the estate the surviving spouse would have received if the
4 testator had died intestate as to that portion of the testator's
5 estate, if any, that is not any of the following:

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

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

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

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

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

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

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

25 (3) In satisfying the share provided by this section, devises
26 made by the will to the testator's surviving spouse, if any, are
27 applied first, and other devises, other than a devise to or in

1 trust for the benefit of a child of the testator who was born
 2 before the testator married the surviving spouse and who is not the
 3 surviving spouse's child or a devise or substitute gift under
 4 section 2603 or 2604 to a descendant of such a child, abate as
 5 provided in section 3902.

6 **(4) A SPOUSE WHO RECEIVES AN INTESTATE SHARE UNDER THIS**
 7 **SECTION MAY ALSO EXERCISE THE RIGHT OF ELECTION UNDER SECTION 2202,**
 8 **BUT THE INTESTATE SHARE RECEIVED BY THE SPOUSE UNDER THIS SECTION**
 9 **REDUCES THE SUM AVAILABLE TO THE SPOUSE UNDER SECTION 2202(2)(B).**

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

13 (a) If the disclaimant is the only living owner, the
 14 disclaimed interest devolves to the estate of the last to die of
 15 the other joint owners.

16 (b) If the disclaimant is not the only living owner, the
 17 disclaimed interest devolves to the other living joint owners
 18 equally or, if there is only 1 living owner, all to the other
 19 living owner.

20 ~~—— (2) If the donee of a power of appointment disclaims the power~~
 21 ~~of appointment, the property that is subject to the power of~~
 22 ~~appointment devolves as follows:~~

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

25 ~~—— (b) If the power of appointment arises out of a governing~~
 26 ~~instrument other than a will or testamentary trust, as if the~~
 27 ~~disclaimant died before the effective date of the governing~~

1 ~~instrument.~~

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

5 (A) IF THE DONEE HAS NOT EXERCISED THE POWER, THE DISCLAIMER
6 TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE POWER
7 BECOMES EFFECTIVE.

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

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

12 (3) If all incumbent trustees disclaim a disclaimable
13 interest, and the governing instrument does not provide for another
14 disposition of the disclaimed interest if it is disclaimed or for
15 another disposition of disclaimed or failed interests in general,
16 then the disclaimed interest devolves as if the trust with respect
17 to which the disclaimer was made never existed. If less than all
18 incumbent trustees disclaim a disclaimable interest and the
19 governing instrument does not provide for another disposition of
20 the disclaimed interest under those circumstances, then the trustee
21 who disclaims is treated as never having had any interest in or
22 power over the disclaimed interest.

23 (4) If a fiduciary disclaims a fiduciary power, the fiduciary
24 power ceases to exist as of the effective date of the disclaimer. A
25 disclaimer of a fiduciary power by 1 of multiple incumbent
26 fiduciaries is binding only on the fiduciary who disclaims and is
27 not binding on the other incumbent fiduciaries or on successor

1 fiduciaries. A disclaimer of a fiduciary power by all incumbent
2 fiduciaries is binding on all successor fiduciaries, unless the
3 disclaimer states otherwise.

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

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

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

14 (c) Perform, compromise, or refuse performance of a contract
15 of the decedent that continues as an estate obligation, as the
16 personal representative determines under the circumstances. If the
17 contract is for a conveyance of land and requires the giving of
18 warranties, the personal representative shall include in the deed
19 or other instrument of conveyance the required warranties. The
20 warranties are binding on the estate as though the decedent made
21 them but do not bind the personal representative except in a
22 fiduciary capacity. In performing an enforceable contract by the
23 decedent to convey or lease land, the personal representative,
24 among other possible courses of action, may do any of the
25 following:

26 (i) Execute and deliver a deed of conveyance for cash payment
27 of the amount remaining due or for the purchaser's note for the

1 amount remaining due secured by a mortgage on the land.

2 (ii) Deliver a deed in escrow with directions that the
3 proceeds, when paid in accordance with the escrow agreement, be
4 paid to the decedent's successors, as designated in the escrow
5 agreement.

6 (d) If, in the judgment of the personal representative, the
7 decedent would have wanted the pledge satisfied under the
8 circumstances, satisfy a written charitable pledge of the decedent
9 irrespective of whether the pledge constitutes a binding obligation
10 of the decedent or is properly presented as a claim.

11 (e) If funds are not needed to meet a debt or expenses
12 currently payable and are not immediately distributable, deposit or
13 invest liquid assets of the estate, including funds received from
14 the sale of other property, in accordance with the Michigan prudent
15 investor rule.

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

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

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

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

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

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

10 (l) Vote stocks or another security in person or by general or
11 limited proxy.

12 (m) Pay a call, assessment, or another amount chargeable or
13 accruing against or on account of a security, unless barred by a
14 provision relating to claims.

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

19 (o) Insure the estate property against damage, loss, and
20 liability and insure the personal representative against liability
21 as to third persons.

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

25 (q) Effect a fair and reasonable compromise with a debtor or
26 obligor, or extend, renew, or in any manner modify the terms of an
27 obligation owing to the estate. If the personal representative

1 holds a mortgage, pledge, or other lien upon another person's
2 property, the personal representative may, in lieu of foreclosure,
3 accept a conveyance or transfer of encumbered property from the
4 property's owner in satisfaction of the indebtedness secured by
5 lien.

6 (r) Pay a tax, an assessment, the personal representative's
7 compensation, or another expense incident to the estate's
8 administration.

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

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

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

15 (v) Employ, and pay reasonable compensation for reasonably
16 necessary services performed by, a person, including, but not
17 limited to, an auditor, investment advisor, or agent, even if the
18 person is associated with the personal representative, to advise or
19 assist the personal representative in the performance of
20 administrative duties; act on such a person's recommendations
21 without independent investigation; and instead of acting
22 personally, employ 1 or more agents to perform an act of
23 administration, whether or not discretionary.

24 (w) Employ an attorney to perform necessary legal services or
25 to advise or assist the personal representative in the performance
26 of the personal representative's administrative duties, **EVEN IF THE**
27 **ATTORNEY IS ASSOCIATED WITH THE TRUSTEE, AND ACT WITHOUT**

1 **INDEPENDENT INVESTIGATION UPON THE ATTORNEY'S RECOMMENDATION.** An
2 attorney employed under this subdivision shall receive reasonable
3 compensation for ~~that~~ **HIS OR HER** employment.

4 (x) Prosecute or defend a claim or proceeding in any
5 jurisdiction for the protection of the estate and of the personal
6 representative in the performance of the personal representative's
7 duties.

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

11 (z) Continue a business or venture in which the decedent was
12 engaged at the time of death as a sole proprietor or a general
13 partner, including continuation as a general partner by a personal
14 representative that is a corporation in any of the following
15 manners:

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

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

23 (iii) Throughout the period of administration if the personal
24 representative incorporates the business or converts the business
25 to a limited liability company and if none of the probable
26 distributees of the business who are competent adults object to its
27 incorporation or conversion and its retention in the estate.

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

5 (bb) Provide for the personal representative's exoneration
6 from personal liability in a contract entered into on the estate's
7 behalf.

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

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

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

18 (i) Electing to take expenses as estate tax or income tax
19 deductions.

20 (ii) Electing to allocate the exemption from the tax on
21 generation skipping transfers among transfers subject to estate or
22 gift tax.

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

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

27 (v) Excluding or including property from the gross estate for

1 federal estate tax purposes.

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

3 (vii) Joining with the surviving spouse or the surviving
4 spouse's personal representative in the execution and filing of a
5 joint income tax return and consenting to a gift tax return filed
6 by the surviving spouse or the surviving spouse's personal
7 representative.

8 (ff) Divide portions of the estate, including portions to be
9 allocated into trust, into 2 or more separate portions or trusts
10 with substantially identical terms and conditions, and allocate
11 property between them, in order to simplify administration for
12 generation skipping transfer tax purposes, to segregate property
13 for management purposes, or to meet another estate or trust
14 objective.

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

17 (a) By delivering or mailing a written statement to the
18 personal representative ~~or proposed personal representative~~
19 indicating the claim's basis, the claimant's name and address, and
20 the amount claimed, or by filing with the court a written statement
21 of the claim in the form prescribed by supreme court rule and
22 delivering or mailing a copy of the statement to the personal
23 representative. ~~or proposed personal representative.~~ The claim
24 shall be considered presented on receipt of the claim statement by
25 the personal representative or the filing of the claim statement
26 with the court, whichever occurs first. If a claim is not yet due,
27 the statement shall state the date when it will become due. If the

1 claim is contingent or unliquidated, the statement shall state the
2 nature of the uncertainty. If the claim is secured, the statement
3 shall describe the security. Failure to describe correctly the
4 security, the nature of any uncertainty, or the due date of a claim
5 not yet due does not invalidate the claim's presentation.

6 (b) By commencing a proceeding to obtain payment of a claim
7 against the estate in a court in which the personal representative
8 may be subjected to jurisdiction. The commencement of the
9 proceeding shall occur within the time limit for presenting the
10 claim. The presentation of a claim is not required in regard to a
11 matter claimed in a proceeding against the decedent that is pending
12 at the time of death.

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

23 (3) A claim by the personal representative against the estate
24 shall be in the form prescribed by supreme court rule. The personal
25 representative must give a copy of the claim to all interested
26 persons not later than 7 days after the time for the claim's
27 original presentation expires. The claim must contain a warning

1 that the personal representative's claim will be allowed unless a
2 notice of objection is delivered or mailed to the personal
3 representative within 63 days after the time for the claim's
4 original presentation expires. This subsection does not apply to a
5 claim for compensation for services rendered or for reimbursement
6 of expenses advanced by the personal representative.

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

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

16 (b) After reasonable inquiry, this state's personal
17 representative is unaware of the existence or identity of a
18 domiciliary personal representative.

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

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

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

1 (2) Subject to the right of the minor under section 5203, if
2 both parents are dead or have been adjudged to be legally
3 incapacitated or the surviving parent has no parental rights or has
4 been adjudged to be legally incapacitated, a parental appointment
5 becomes effective when the guardian's acceptance is filed in the
6 court in which ~~a nominating instrument~~ **THE WILL CONTAINING THE**
7 **NOMINATION** is probated or, ~~in the case of~~ **IF THE NOMINATION IS**
8 **CONTAINED IN** a nontestamentary nominating instrument ~~—~~ **OR THE**
9 **TESTATOR WHO MADE THE NOMINATION IS NOT DECEASED, IS FILED** in the
10 court at the place where the minor resides or is present. If both
11 parents are dead, an effective appointment by the parent who died
12 later has priority.

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

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

19 Sec. 5217. A guardian's authority and responsibility terminate
20 upon the guardian's death, resignation, or removal or upon the
21 minor's death, adoption, marriage, or attainment of majority.
22 However, a termination does not affect the guardian's liability for
23 prior acts or the obligation to account for the ward's money and
24 property. The guardian's resignation does not terminate the
25 guardianship until it is approved by the court. A parental
26 appointment under an **UNPROBATED OR** informally probated will
27 terminates if the will is later denied probate in a formal

1 proceeding.

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

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

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

19 (b) Receive an addition to the estate.

20 (c) Continue or participate in the operation of a business or
21 other enterprise.

22 (d) Acquire an undivided interest in estate property in which
23 the conservator, in a fiduciary capacity, holds an undivided
24 interest.

25 (e) Invest or reinvest estate property. If the conservator
26 exercises the power conferred by this subdivision, the conservator
27 must invest or reinvest the property in accordance with the

1 Michigan prudent investor rule.

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

4 (g) Except as provided in subsection (3), acquire or dispose
5 of estate property, including land in another state, for cash or on
6 credit, at public or private sale, or manage, develop, improve,
7 exchange, partition, change the character of, or abandon estate
8 property.

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

12 (i) 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 (j) Enter for any purpose into a lease as lessor or lessee
18 with or without option to purchase or renew for a term within or
19 extending beyond the term of the conservatorship.

20 (k) Enter into a lease or arrangement for exploration and
21 removal of a mineral or other natural resource or enter into a
22 pooling or unitization agreement.

23 (l) Grant an option involving disposition of estate property or
24 take an option for the acquisition of property.

25 (m) Vote a security, in person or by general or limited proxy.

26 (n) Pay a call, assessment, or another amount chargeable or
27 accruing against or on account of a security.

1 (o) Sell or exercise stock subscription or conversion rights.

2 (p) Consent, directly or through a committee or other agent,
3 to the reorganization, consolidation, merger, dissolution, or
4 liquidation of a corporation or other business enterprise.

5 (q) Hold a security in the name of a nominee or in other form
6 without disclosure of the conservatorship so that title to the
7 security may pass by delivery. However, the conservator is liable
8 for an act of the nominee in connection with the stock so held.

9 (r) Insure the estate property against damage or loss or the
10 conservator against liability with respect to third persons.

11 (s) Borrow money to be repaid from estate property or
12 otherwise.

13 (t) Advance money for the protection of the estate or the
14 protected individual, and for all expense, loss, or liability
15 sustained in the estate's administration or because of the holding
16 or ownership of estate property. ~~—, for which the~~ **THE** conservator
17 has a lien on the estate as against the protected individual for
18 **SUCH** an advance. ~~—so made—~~

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

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

26 (w) Allocate an item of income or expense to either estate
27 income or principal, as provided by law, including creation of a

1 reserve out of income for depreciation, obsolescence, or
2 amortization, or for depletion in a mineral or timber property.

3 (x) Pay money distributable to a protected individual or the
4 protected individual's dependent by paying the money to the
5 distributee or by paying the money for the use of the distributee
6 to the distributee's guardian, or if none, to a relative or other
7 person having custody of the distributee.

8 (y) Employ a person, including an auditor, investment advisor,
9 or agent, even though the person is associated with the
10 conservator, to advise or assist in the performance of an
11 administrative duty; act upon the person's recommendation without
12 independent investigation; and, instead of acting personally,
13 employ an agent to perform an act of administration, whether or not
14 discretionary.

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

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

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

27 (cc) Respond to an environmental concern or hazard affecting

1 property as provided in section 5424.

2 (3) A conservator shall not sell or otherwise dispose of the
3 protected individual's real property or interest in real property
4 without approval of the court. The court shall only approve the
5 sale or other disposal of the real property or interest in real
6 property if, after a hearing with notice to interested persons as
7 specified in the Michigan court rules, the court considers evidence
8 of the value of the real property or interest in real property and
9 otherwise determines that the sale or other disposal is in the
10 protected individual's best interest.

11 Sec. 7401. (1) A trustee has the power to perform in a
12 reasonable and prudent manner every act that a reasonable and
13 prudent person would perform incident to the collection,
14 preservation, management, use, and distribution of the trust
15 property to accomplish the desired result of administering the
16 trust legally and in the trust beneficiaries' best interest.

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

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

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

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

27 (d) To perform, compromise, or refuse to perform a contract of

1 the settlor that is an obligation of the trust, as the trustee may
2 determine under the circumstances. In performing an enforceable
3 contract by the settlor to convey or lease land, if the contract
4 for a conveyance requires the giving of a warranty, the deed or
5 other instrument of conveyance to be given by the trustee must
6 contain the warranty required. The warranty is binding on the trust
7 as though made by the settlor, but does not bind the trustee except
8 in the trustee's fiduciary capacity. The trustee, among other
9 possible courses of action, may do either of the following:

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

13 (ii) Deliver a deed in escrow with directions that the
14 proceeds, when paid in accordance with the escrow agreement, be
15 paid to the trustee, as designated in the escrow agreement.

16 (e) To satisfy a settlor's written charitable pledge
17 irrespective of whether the pledge constitutes a binding obligation
18 of the settlor or was properly presented as a claim, if in the
19 trustee's judgment the settlor would have wanted the pledge
20 completed under the circumstances.

21 (f) To deposit trust money in a bank, including a bank
22 operated by the trustee and to invest and reinvest trust property
23 as would a prudent investor acting in accordance with the Michigan
24 prudent investor rule.

25 (g) To acquire property, including property in this or another
26 state or country, in any manner for cash or on credit, at public or
27 private sale; and to manage, develop, improve, exchange, partition,

1 or change the character of trust property.

2 (h) To make an ordinary or extraordinary repair or alteration
3 in a building or another structure, to demolish an improvement, or
4 to raze an existing or erect a new party wall or building.

5 (i) To subdivide, develop, or dedicate land to public use; to
6 make or obtain the vacation of a plat or adjust a boundary; to
7 adjust a difference in valuation on exchange or partition by giving
8 or receiving consideration; or to dedicate an easement to public
9 use without consideration.

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

12 (k) To enter into a lease or arrangement for exploration and
13 removal of minerals or another natural resource or to enter into a
14 pooling or unitization agreement.

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

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

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

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

26 (p) To insure the trust property against damage, loss, or
27 liability and to insure the trustee against liability as to a third

1 person.

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

4 (r) To effect a fair and reasonable compromise with a debtor
5 or obligor, or extend, renew, or in any manner modify the terms of
6 an obligation owing to the trust. If the trustee holds a mortgage,
7 pledge, or another lien on property of another person, the trustee
8 may, instead of foreclosure, accept a conveyance or transfer of
9 encumbered property from the property's owner in satisfaction of
10 the indebtedness secured by a lien.

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

13 (t) To sell or exercise a subscription or conversion right or
14 to consent, directly or through a committee or another agent, to
15 the reorganization, consolidation, merger, dissolution, or
16 liquidation of a business enterprise.

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

19 (v) To employ, and pay reasonable compensation for services
20 performed by, a person, including an auditor, investment advisor,
21 accountant, appraiser, broker, custodian, rental agent, realtor, or
22 agent, even if the person is associated with the trustee, for the
23 purpose of advising or assisting the trustee in the performance of
24 an administrative duty; to act without independent investigation
25 upon such a person's recommendation; and, instead of acting
26 personally, to employ 1 or more agents to perform an act of
27 administration, whether or not discretionary.

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

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

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

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

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

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

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

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

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

1 (ff) To divide trust property into 2 or more separate portions
2 or trusts with substantially identical terms and conditions and to
3 allocate property between them, in order to simplify administration
4 for generation skipping transfer tax purposes, to segregate
5 property for management purposes, or to meet another trust
6 objective.

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

10 (hh) To make a distribution or division of trust property in
11 cash or in kind, or both; to allot a different kind or
12 disproportionate portion of, or an undivided interest in, trust
13 property among beneficiaries and determine the value of allotted
14 trust property; or to distribute an unclaimed share as described in
15 section 3916.

16 (ii) To transfer the property of a trust to another
17 jurisdiction and appoint, compensate, or remove a successor
18 trustee, individual or corporate, for trust property in another
19 jurisdiction, with any trust powers set out in this part that the
20 trustee delegates to the successor trustee.

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

23 (3) A trust that contains substantially identical provisions
24 as another trust established for the same beneficiary or
25 beneficiaries may be consolidated and administered as 1 trust. If
26 the rule against perpetuities speaks from different dates with
27 reference to the trusts or if there are other variations in terms,

1 consolidation may still take place, but the property of the trusts
2 shall be maintained in separate accounts if necessary to recognize
3 and give effect to the differences.

4 Sec. 7502. (1) A trustee of a trust described in section
5 7501(1) shall pay to the personal representative of the settlor's
6 estate the amount from time to time that the personal
7 representative certifies in writing to the trustee is required to
8 pay the administration expenses of the settlor's estate; an
9 enforceable and timely presented claim of a creditor of the
10 settlor, including a claim for the settlor's funeral and burial
11 expenses; and homestead, family, and exempt property allowances.
12 Without liability to a trust beneficiary or another party, the
13 trustee may rely on the certificate of the personal representative.
14 In the event there is no personal representative appointed for the
15 settlor's estate, the trustee shall pay directly to the creditor an
16 enforceable and timely served claim of a creditor of the settlor,
17 including a claim for the settlor's funeral and burial expenses.
18 ~~When there is no~~ **IF A** personal representative **IS NOT** appointed for
19 the settlor's estate **WITHIN 4 MONTHS AFTER THE DATE OF THE**
20 **PUBLICATION OF NOTICE TO CREDITORS**, a trust described in section
21 7501(1) is not liable for payment of homestead, family, or exempt
22 property ~~allowance~~ **ALLOWANCES**. A payment made by a trustee is
23 subject to this section, but the payment shall be made exclusively
24 out of property, or the proceeds of property, that is includable in
25 the settlor's gross estate for federal estate tax purposes, other
26 than assets ~~prescribed~~ **DESCRIBED** in section 7501(2), (3), and
27 (4).

1 (2) Unless a settlor provides in his or her will or, in the
2 absence of such a provision, designates in the trust the money or
3 property passing under a trust to be used as described in section
4 7501, the administration expenses of the settlor's estate; an
5 enforceable and timely filed claim of a creditor of the settlor,
6 including a claim for the settlor's funeral and burial expenses; or
7 homestead, family, and exempt property allowances, to be paid in
8 accordance with subsection (1), shall be paid from the property of
9 the trust in the following order:

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

13 (b) Property that is not to be distributed out of specified or
14 identified property or a specified or identified item of property.

15 (c) Property that is to be distributed out of specified or
16 identified property or a specified or identified item of property.

17 Sec. 7508. (1) Upon the expiration of 4 months after the date
18 of the publication of the notice to creditors, the trustee shall
19 proceed to pay the claims allowed against the trust in the order of
20 priority prescribed in section 7503(2)(f) to (g), after making
21 provision for costs and expenses of trust administration, for
22 reasonable funeral and burial expenses, ~~for the homestead, family,~~
23 ~~and exempt property allowances,~~ for each claim already presented
24 that is not yet allowed or whose allowance is appealed, and for
25 each unbarred claim that may yet be presented. A claimant whose
26 claim is allowed, but not paid as provided in this section, may
27 petition the court to secure an order directing the trustee to pay

1 the claim to the extent that money of the trust is available for
2 the payment.

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

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

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

14 (3) If a claim is allowed, but the whereabouts of the claimant
15 is unknown at the time the trustee attempts to pay the claim, upon
16 petition by the trustee and after notice the court considers
17 advisable, the court may disallow the claim. If the court disallows
18 a claim under this subsection, the claim is barred.