

HOUSE BILL No. 5983

October 17, 2012, Introduced by Reps. Greimel, Townsend, Ananich, Rutledge, Durhal, Howze, Talabi, Smiley, Brunner, Stanley, Dillon, Segal, McBroom, Foster, Santana, Cavanagh, Geiss, Lane, Switalski, Lipton, Darany, Lindberg, Walsh, Irwin and Oakes and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3715 and 5423 (MCL 700.3715 and 700.5423), section 3715 as amended by 2009 PA 46 and section 5423 as amended by 2012 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 (a) Retain property owned by the decedent pending distribution
7 or liquidation, including property in which the personal

1 representative is personally interested or that is otherwise
2 improper for trust investment.

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

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

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

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

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

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

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

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

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

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

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

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

27 (l) Vote stocks or another security in person or by general or

1 limited proxy.

2 (m) Pay a call, assessment, or other amount chargeable or
3 accruing against or on account of a security, unless barred by a
4 provision relating to claims.

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

9 (o) Insure the estate property against damage, loss, and
10 liability and insure the personal representative against liability
11 as to third persons.

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

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

23 (r) Pay a tax, an assessment, the personal representative's
24 compensation, or another expense incident to the estate's
25 administration.

26 (s) Sell or exercise a stock subscription or conversion 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 or
9 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 or
15 to advise or assist the personal representative in the performance
16 of the personal representative's administrative duties, even if the
17 attorney is associated with the personal representative, and act
18 without independent investigation upon the attorney's
19 recommendation. An attorney employed under this subdivision shall
20 receive reasonable compensation for his or her employment.

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

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

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

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

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

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

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

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

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

27 (dd) Satisfy and settle claims and distribute the estate as

1 provided in this act.

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

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

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

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

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

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

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

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

25 (ff) Divide portions of the estate, including portions to be
26 allocated into trust, into 2 or more separate portions or trusts
27 with substantially identical terms and conditions, and allocate

1 property between them, in order to simplify administration for
2 generation skipping transfer tax purposes, to segregate property
3 for management purposes, or to meet another estate or trust
4 objective.

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

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

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

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

27 (b) Receive an addition to the estate.

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

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

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

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

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

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

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

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

1 (k) Enter into a lease or arrangement for exploration and
2 removal of a mineral or other natural resource or enter into a
3 pooling or unitization agreement.

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

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

7 (n) Pay a call, assessment, or other amount chargeable or
8 accruing against or on account of a security.

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

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

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

19 (s) Borrow money to be repaid from estate property or
20 otherwise.

21 (t) Advance money for the protection of the estate or the
22 protected individual, and for all expense, loss, or liability
23 sustained in the estate's administration or because of the holding
24 or ownership of estate property. The conservator has a lien on the
25 estate as against the protected individual for such an advance.

26 (u) Pay or contest a claim; settle a claim by or against the
27 estate or the protected individual by compromise, arbitration, or

1 otherwise; and release, in whole or in part, a claim belonging to
2 the estate to the extent that the claim is uncollectible.

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

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

10 (x) Pay money distributable to a protected individual or the
11 protected individual's dependent by paying the money to the
12 distributee or by paying the money for the use of the distributee
13 to the distributee's guardian, or if none, to a relative or other
14 person having custody of the distributee.

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

22 (z) Employ an attorney to perform necessary legal services or
23 to advise or assist the conservator in the performance of the
24 conservator's administrative duties, even if the attorney is
25 associated with the conservator, and act without independent
26 investigation upon the attorney's recommendation. An attorney
27 employed under this subdivision shall receive reasonable

1 compensation for his or her employment.

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

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

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

9 **(DD) TAKE CONTROL OF, CONDUCT, CONTINUE, OR TERMINATE ANY**
10 **ACCOUNTS OF THE PROTECTED INDIVIDUAL ON ANY SOCIAL NETWORKING**
11 **WEBSITE, ANY MICROBLOGGING OR SHORT MESSAGE SERVICE WEBSITE, OR ANY**
12 **ELECTRONIC MAIL SERVICE WEBSITE.**

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