

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4822

<<A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3705 and 3715 (MCL 700.3705 and 700.3715), as
amended by 2009 PA 46.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3705. (1) Not later than 28 days after a personal
2 representative's appointment or other time specified by court rule,
3 the personal representative, except a special personal
4 representative, shall give notice of the appointment to the
5 decedent's heirs and devisees, except those who have executed a
6 written waiver of notice, including, if there has been no formal
7 testacy proceeding and if the personal representative is appointed
8 on the assumption that the decedent died intestate, the devisees in
9 a will mentioned in the application for appointment of a personal

1 representative and to the trustee of a trust described in section
2 7605(1) as to which the decedent was settlor. The personal
3 representative shall give the notice by personal service or by
4 ordinary first-class mail to each person required to receive notice
5 under this subsection whose address is reasonably available to the
6 personal representative. However, the personal representative is
7 not required to notify a person who was adjudicated in a prior
8 formal testacy proceeding to have no interest in the estate. The
9 notice required under this subsection must be in a form approved by
10 the supreme court and must include all of the following
11 information:

12 (a) That the court will not supervise the personal
13 representative. This statement ~~shall~~**MUST** not be included if the
14 appointment is made in a supervised proceeding under part 5 of this
15 article.

16 (b) That, unless a person files a written objection to the
17 appointment of the person named as personal representative in the
18 notice or files a demand that bond or higher bond be posted, the
19 person named in the notice is the personal representative without
20 bond or with bond in the amount shown in the notice. This statement
21 ~~shall~~**MUST** not be included if the personal representative is
22 appointed in a formal appointment proceeding.

23 (c) The name and address of the person appointed as the
24 estate's personal representative.

25 (d) That, during the course of administering the estate, the
26 personal representative must provide all interested persons with
27 all of the following:

1 (i) A copy of the petition for the personal representative's
2 appointment and a copy of the will, if any, with the notice.

3 (ii) A copy of the inventory.

4 (iii) A copy of the settlement petition or of the closing
5 statement.

6 (iv) Unless waived, a copy of the account, including, but not
7 limited to, fiduciary fees and attorney fees charged to the estate.

8 **(v) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY**
9 **PUBLIC ADMINISTRATOR, A COPY OF ANY SETTLEMENT STATEMENTS FROM THE**
10 **SALE OF REAL PROPERTY.**

11 (e) That an interested person may petition the court for a
12 court hearing on any matter at any time during the estate's
13 administration, including, but not limited to, distribution of
14 assets and expenses of administration.

15 (f) That federal and Michigan estate taxes, if any, must be
16 paid within 9 months after the date of the decedent's death or
17 another time period specified by law, to avoid penalties.

18 (g) That, if the estate is not settled within 1 year after the
19 personal representative's appointment, within 28 days after the
20 anniversary of the appointment, the personal representative must
21 file with the court and send to each interested person a notice
22 that the estate remains under administration and must specify the
23 reason for the continuation of settlement proceedings. If such a
24 notice is not received, an interested person may petition the court
25 for a hearing on the necessity for continued administration or for
26 closure of the estate.

27 (h) The identity and location of the court where papers

1 relating to the estate are on file.

2 (2) The personal representative's failure to give the
3 information required by subsection (1) is a breach of the personal
4 representative's duty to the persons concerned, but does not affect
5 the validity of the personal representative's appointment, powers,
6 or other duties. A personal representative may inform other persons
7 of the appointment by delivery or ordinary first-class mail.

8 (3) A personal representative shall also give notice that
9 includes the information described in subsection (1) to the
10 attorney general, public administration division, under any of the
11 following circumstances:

12 (a) It appears from the petition that the decedent died
13 intestate without leaving a known heir.

14 (b) In the administration of an intestate estate, it appears
15 that the decedent did not leave a known heir.

16 (c) In the administration of a testate estate, it appears that
17 devisees of the purported will would not be entitled to share in
18 the estate but for the terms of the will and that the decedent died
19 without leaving a known heir.

20 (4) If notice is required to be given to the attorney general
21 under subsection (3), the attorney general, representing this
22 state, has all the rights of an heir to be heard and to contest the
23 validity of a claim, the appointment of a personal representative,
24 an action of the personal representative, an order, an appointment,
25 or an instrument purporting to be a decedent's contract or will,
26 and has all the rights granted or accruing to an heir,
27 representative, or creditor by a law relating to the settlement of

1 a testate or intestate estate in court, or by way of rehearing or
2 appeal.

3 (5) Within 28 days after the personal representative's
4 appointment or another time specified by court rule, the personal
5 representative, except a special personal representative, shall
6 notify the decedent's surviving spouse, if any, of the spouse's
7 right to election under part 2 of article II and of the time within
8 which the election must be exercised.

9 (6) Except as otherwise provided in this subsection, at the
10 same time the notice required by subsection (1) is given, the
11 personal representative shall give notice to the friend of the
12 court for the county in which the estate is being administered,
13 which notice identifies the decedent's surviving spouse and the
14 individuals who are, for a testate estate, the devisees or, for an
15 intestate estate, the heirs. The personal representative is not
16 required to notify the friend of the court of a devise to a trustee
17 of an existing trust or to a trustee under the will. A personal
18 representative incurs no obligation or liability to the friend of
19 the court or to another person for an error or omission made in
20 good faith compliance with this subsection.

21 **(7) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY**
22 **PUBLIC ADMINISTRATOR, AND IF THE DECEDENT'S REAL PROPERTY HAS**
23 **DELINQUENT PROPERTY TAXES, THE PERSONAL REPRESENTATIVE SHALL ALSO**
24 **GIVE WRITTEN NOTICE THAT INCLUDES THE INFORMATION DESCRIBED IN**
25 **SUBSECTION (1) TO THE TREASURER OF THE COUNTY IN WHICH THE REAL**
26 **PROPERTY SUBJECT TO THE TAX FORECLOSURE IS LOCATED. THE COUNTY**
27 **TREASURER MAY SUBMIT AN AFFIDAVIT TO THE COURT REGARDING THE STATUS**

1 **OF THE REAL PROPERTY FOR THE COURT TO CONSIDER IN MAKING ITS**
2 **DETERMINATION UNDER SECTION 3715(2) (A) .**

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

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

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

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

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

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

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

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

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

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

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

27 (i) Enter into a lease as lessor or lessee for any purpose,

1 with or without an option to purchase or renew, for a term within
2 or extending beyond the period of administration.

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

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

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

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

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

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

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

24 (q) Effect a fair and reasonable compromise with a debtor or
25 obligor, or extend, renew, or in any manner modify the terms of an
26 obligation owing to the estate. If the personal representative
27 holds a mortgage, pledge, or other lien upon another person's

1 property, the personal representative may, in lieu of foreclosure,
2 accept a conveyance or transfer of encumbered property from the
3 property's owner in satisfaction of the indebtedness secured by
4 lien.

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

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

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

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

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

23 (w) Employ an attorney to perform necessary legal services or
24 to advise or assist the personal representative in the performance
25 of the personal representative's administrative duties, even if the
26 attorney is associated with the personal representative, and act
27 without independent investigation upon the attorney's

1 recommendation. An attorney employed under this subdivision shall
2 receive reasonable compensation for his or her employment.

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

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

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

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

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

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

27 (aa) Change the form of a business or venture in which the

1 decedent was engaged at the time of death through incorporation or
2 formation as a limited liability company or other entity offering
3 protection against or limiting exposure to liabilities.

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
15 PUBLIC ADMINISTRATOR, ALL OF THE FOLLOWING APPLY:

16 (A) THE PERSONAL REPRESENTATIVE SHALL NOT SELL THE DECEDENT'S
17 REAL PROPERTY WITHOUT APPROVAL OF THE COURT. THE COURT SHALL ONLY
18 APPROVE THE SALE IF, AFTER A HEARING WITH NOTICE TO INTERESTED
19 PERSONS AS SPECIFIED IN THE MICHIGAN COURT RULES, THE COURT
20 CONSIDERS EVIDENCE OF THE VALUE OF THE PROPERTY AND CONSIDERS ANY
21 INFORMATION SUBMITTED BY THE COUNTY TREASURER UNDER SECTION 3705(7)
22 AND OTHERWISE DETERMINES THAT THE SALE IS IN THE ESTATE'S BEST
23 INTEREST. IN DETERMINING WHETHER TO APPROVE THE SALE OF REAL
24 PROPERTY UNDER THIS SUBDIVISION, THE COURT SHALL CONSIDER ANY
25 INFORMATION SUBMITTED BY THE COUNTY TREASURER UNDER SECTION
26 3705(7) .

27 (B) IF THE PERSONAL REPRESENTATIVE IS THE COUNTY PUBLIC

1 ADMINISTRATOR, AND IF THE DECEDENT'S REAL PROPERTY IS OCCUPIED BY
2 AN HEIR OF THE DECEDENT, THE COUNTY PUBLIC ADMINISTRATOR SHALL
3 PROVIDE THE STATE PUBLIC ADMINISTRATOR WITH ALL PLEADINGS FILED IN
4 THE CASE.

5 (C) UNLESS WAIVED BY THE COURT, THE PERSONAL REPRESENTATIVE
6 SHALL ADVANCE ANY OF THE PERSONAL REPRESENTATIVE'S COURT FILING
7 FEES ASSOCIATED WITH THE ADMINISTRATION OF THE ESTATE.

8 (D) IF THE DECEDENT'S ESTATE INCLUDES REAL PROPERTY SUBJECT TO
9 TAX OR MORTGAGE FORECLOSURE, FOR REAL ESTATE FEES OR FEES RELATED
10 TO IDENTIFYING REAL PROPERTY SUBJECT TO FORECLOSURE, OR BOTH,
11 PAYABLE TO PERSONS EMPLOYED BY THE PERSONAL REPRESENTATIVE,
12 INCLUDING AN ATTORNEY, REAL ESTATE AGENT, OR ASSET RECOVERY AGENT,
13 BOTH OF THE FOLLOWING APPLY:

14 (i) EXCEPT AS OTHERWISE PROVIDED BY THE COURT, IF THE NET
15 PROCEEDS FROM THE SALE OF THE REAL PROPERTY PAYABLE TO THE ESTATE
16 EXCEED \$30,000.00, THE TOTAL FEES DESCRIBED IN THIS SUBSECTION MUST
17 NOT EXCEED 10% OF THE NET PROCEEDS FROM THE SALE OF THE REAL
18 PROPERTY PAYABLE TO THE ESTATE.

19 (ii) IF THE NET PROCEEDS FROM THE SALE OF REAL PROPERTY
20 PAYABLE TO THE ESTATE ARE LESS THAN \$30,000.00, THE COURT SHALL
21 DETERMINE THE REASONABLENESS OF THE FEES DESCRIBED IN THIS
22 SUBSECTION.

23 (3) AS USED IN SUBSECTION (2), "NET PROCEEDS FROM THE SALE OF
24 THE REAL PROPERTY" MEANS THE SALE PRICE OF THE REAL PROPERTY LESS
25 THE AMOUNT PAID TO SATISFY THE TAX OR MORTGAGE, OR BOTH.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless House Bill No. 4821 of the 99th Legislature is enacted into
3 law.