

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4821**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3203, 3204, and 3414 (MCL 700.3203, 700.3204,
and 700.3414), sections 3204 and 3414 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3203. (1) For either formal or informal proceedings,
2 subject to subsection (2), persons who are not disqualified have
3 priority for appointment as personal representative in the
4 following order:

5 (a) The person with priority as determined by a probated will
6 including a person nominated by a power conferred in a will.

7 (b) The decedent's surviving spouse if the spouse is a devisee
8 of the decedent.

1 (c) Other devisees of the decedent.

2 (d) The decedent's surviving spouse.

3 (e) Other heirs of the decedent.

4 (f) After 42 days after the decedent's death, the nominee of a
5 creditor if the court finds the nominee suitable.

6 (g) ~~The~~**AFTER 63 DAYS AFTER THE DECEDENT'S DEATH, OR AFTER 42**
7 **DAYS BUT BEFORE 63 DAYS AFTER THE DECEDENT'S DEATH IF THE COURT**
8 **DETERMINES EXIGENT CIRCUMSTANCES EXIST, THE** state or county public
9 administrator if ~~any~~**BOTH** of the following apply:

10 (i) No interested person applied or petitioned for appointment
11 of a personal representative within ~~42~~**63** days **OR THE NUMBER OF**
12 **DAYS DETERMINED BY THE COURT UNDER THIS SUBDIVISION** after the
13 decedent's death.

14 (ii) **EITHER OF THE FOLLOWING APPLY:**

15 (A) The decedent died apparently leaving no known heirs.

16 (B) ~~(iii)~~ There is no spouse, heir, or beneficiary under a
17 will who is a United States resident and is entitled to a
18 distributive share in the decedent's estate.

19 (2) An objection to the appointment of a personal
20 representative may be made only in a formal proceeding. If an
21 objection is made, the priorities prescribed by subsection (1)
22 apply except in either of the following circumstances:

23 (a) If the estate appears to be more than adequate to meet
24 exemptions and costs of administration but inadequate to discharge
25 anticipated unsecured claims, on petition of creditors, the court
26 may appoint any qualified person.

27 (b) If a devisee or heir who appears to have a substantial

1 interest in the estate objects to the appointment of a person whose
2 priority is not determined by will, the court may appoint a person
3 who is acceptable to the devisees and heirs whose interests in the
4 estate appear to be worth in total more than 1/2 of the probable
5 distributable value or, if no person is acceptable to these
6 devisees and heirs, any suitable person.

7 (3) A person entitled to letters under subsection (1)(b) to
8 (e) may nominate a qualified person to act as personal
9 representative. A person may renounce his or her right to nominate
10 or to an appointment by filing an appropriate writing with the
11 court. If 2 or more persons share a priority, those of them who do
12 not renounce shall concur in nominating another to act for them or
13 in applying for appointment.

14 Sec. 3204. (1) A conservator of a protected individual's
15 estate or, if there is no conservator, a guardian of a minor or
16 legally incapacitated individual may exercise the same right to
17 nominate, to object to another's appointment, or to participate in
18 determining the preference of a majority in interest of the
19 devisees and heirs that the protected individual or ward would have
20 if qualified for appointment.

21 (2) Except as provided in sections 3308(1)(f) and 3310, a
22 person who does not have priority **PRESCRIBED IN SECTION 3203(1)(A)**
23 **TO (F)**, including priority resulting from renunciation or
24 nomination determined under this section or section 3203, shall be
25 appointed only in a formal proceeding. **THE STATE OR COUNTY PUBLIC**
26 **ADMINISTRATOR MUST BE APPOINTED ONLY IN A FORMAL PROCEEDING.** Before
27 appointing a ~~THE STATE OR COUNTY PUBLIC ADMINISTRATOR OR ANY OTHER~~

1 person without priority, the court shall determine that persons
2 having priority have been notified of the proceedings and have
3 failed to request appointment or to nominate another person for
4 appointment, and that administration is necessary.

5 (3) A person is not qualified to serve as a personal
6 representative if the person is either under the age of 18 or is a
7 person whom the court finds unsuitable in formal proceedings.

8 (4) A personal representative appointed by a court of the
9 decedent's domicile has priority over all other persons except if
10 the decedent's will nominates different persons to be personal
11 representatives in this state and in the state of domicile. The
12 domiciliary personal representative may nominate another person,
13 who then has the same priority as the domiciliary personal
14 representative.

15 (5) This section and section 3203 govern priority for
16 appointment of a successor personal representative, but do not
17 apply to the selection of a special personal representative.

18 Sec. 3414. (1) An interested person or a person that has a
19 right or cause of action that cannot be enforced without
20 appointment may file a petition for a formal proceeding regarding
21 the priority or qualification of a prospective or appointed
22 personal representative.

23 (2) If an issue concerning the decedent's testacy is or may be
24 involved, a formal proceeding for adjudication regarding the
25 priority or qualification of an individual who is seeking
26 appointment as personal representative or who was previously
27 appointed personal representative in informal proceedings is

1 governed by this section and section 3402. In other cases, the
2 petition must ~~contain~~**INCLUDE** or adopt the statements required by
3 section 3301(1)(a) and ~~shall~~**MUST** describe the question relating to
4 the personal representative's priority or qualification that is to
5 be resolved.

6 (3) If a formal proceeding precedes the appointment of a
7 personal representative, the formal proceeding stays an informal
8 appointment proceeding that is pending or that is commenced after
9 the formal proceeding's commencement. If the formal proceeding is
10 commenced after the appointment of a personal representative and
11 after the personal representative receives notice of the
12 commencement, the personal representative shall not exercise a
13 power of administration except as necessary to preserve the estate
14 or unless the court orders otherwise.

15 (4) After notice to interested persons, including all persons
16 interested in the administration of the estate as successors under
17 the applicable assumption concerning testacy, a previously
18 appointed personal representative, a person having or claiming
19 priority for appointment as personal representative, and any other
20 person described in section 3403(1) or (2), the court shall
21 determine who is entitled to appointment under section 3203, make a
22 proper appointment, and, if appropriate, terminate a prior
23 appointment found to be improper as provided in cases of removal
24 under section 3611.

25 **(5) IF THE STATE OR COUNTY PUBLIC ADMINISTRATOR IS SEEKING**
26 **APPOINTMENT AS PERSONAL REPRESENTATIVE AND THE STATE OR COUNTY**
27 **PUBLIC ADMINISTRATOR HAS KNOWLEDGE THAT THE DECEDENT'S REAL**

1 PROPERTY HAS DELINQUENT PROPERTY TAXES ON IT OR IS SUBJECT TO A
2 MORTGAGE FORECLOSURE, ALL OF THE FOLLOWING APPLY:

3 (A) IN ADDITION TO ANY OTHER NOTICE REQUIRED UNDER THIS ACT,
4 THE PETITIONER SHALL GIVE NOTICE OF HEARING TO THE DECEDENT'S HEIRS
5 IN THE MANNER PRESCRIBED BY SECTION 1401. THE PETITIONER SHALL ALSO
6 POST THE NOTICE OF HEARING AND THE STATE COURT ADMINISTRATIVE
7 OFFICE FORM TO CHALLENGE THE PETITION ON THE DECEDENT'S REAL
8 PROPERTY. A NOTICE REQUIRED UNDER THIS SUBDIVISION MUST BE IN A
9 FORM APPROVED BY THE SUPREME COURT AND MUST INCLUDE ALL OF THE
10 FOLLOWING INFORMATION:

11 (i) A STATEMENT DESCRIBING WHY THE HEIR IS RECEIVING THE
12 NOTICE.

13 (ii) THAT THE HEIR MAY OBJECT TO THE PETITIONER'S APPOINTMENT.

14 (iii) THAT THE HEIR MAY PETITION THE COURT FOR A COURT HEARING
15 ON ANY MATTER, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

16 (A) A PETITION FOR REMOVAL OF A PERSONAL REPRESENTATIVE FOR
17 CAUSE UNDER SECTION 3611, AT ANY TIME DURING THE ESTATE'S
18 ADMINISTRATION.

19 (B) A PETITION FOR THE HEIR TO BE APPOINTED PERSONAL
20 REPRESENTATIVE.

21 (B) THE PETITION MUST INCLUDE A STATEMENT THAT DETAILS THE
22 PETITIONER'S REASONABLE SEARCH FOR THE DECEDENT'S HEIRS. A SEARCH
23 REQUIRED UNDER THIS SUBDIVISION MUST INCLUDE THE USE OF AN
24 ELECTRONIC SEARCHING SERVICE.

25 (6) A STATE OR COUNTY PUBLIC ADMINISTRATOR WHO KNOWINGLY FAILS
26 TO PROVIDE THE NOTICES REQUIRED UNDER SUBSECTION (5) IS GUILTY OF A
27 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR

1 A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

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

4 Enacting section 2. This amendatory act does not take effect
5 unless House Bill No. 4822 of the 99th Legislature is enacted into
6 law.