

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4822**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3705, 3715, and 3721 (MCL 700.3705, 700.3715,
and 700.3721), sections 3705 and 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

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

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

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

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

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

1 all of the following:

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

4 (ii) A copy of the inventory.

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

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

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

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

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

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

1 (h) The identity and location of the court where papers
2 relating to the estate are on file.

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

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

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

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

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

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

1 representative, or creditor by a law relating to the settlement of
2 a testate or intestate estate in court, or by way of rehearing or
3 appeal.

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

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

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

1 TREASURER MAY SUBMIT AN AFFIDAVIT TO THE COURT REGARDING THE STATUS
2 OF THE REAL PROPERTY FOR THE COURT TO CONSIDER IN MAKING ITS
3 DETERMINATION UNDER SECTION 3715(2) (A) .

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

1 without independent investigation upon the attorney's
2 recommendation. An attorney employed under this subdivision shall
3 receive reasonable compensation for 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
21 time 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 (2) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
16 PUBLIC ADMINISTRATOR, ALL OF THE FOLLOWING APPLY:

17 (A) THE PERSONAL REPRESENTATIVE SHALL NOT SELL THE DECEDENT'S
18 REAL PROPERTY WITHOUT APPROVAL OF THE COURT. THE COURT SHALL ONLY
19 APPROVE THE SALE 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 CONSIDERS ANY
22 INFORMATION SUBMITTED BY THE COUNTY TREASURER UNDER SECTION 3705(7)
23 AND OTHERWISE DETERMINES THAT THE SALE IS IN THE ESTATE'S BEST
24 INTEREST. IN DETERMINING WHETHER TO APPROVE THE SALE OF REAL
25 PROPERTY UNDER THIS SUBDIVISION, THE COURT SHALL CONSIDER ANY
26 INFORMATION SUBMITTED BY THE COUNTY TREASURER UNDER SECTION
27 3705(7).

House Bill No. 4822 as amended January 18, 2018

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

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

9 (D) EXCEPT AS OTHERWISE PROVIDED BY THE COURT, IF THE
10 DECEDENT'S ESTATE INCLUDES REAL PROPERTY SUBJECT TO TAX OR MORTGAGE
11 FORECLOSURE, THE PERSONAL REPRESENTATIVE SHALL NOT PAY REAL ESTATE
12 FEES OR FEES RELATED TO IDENTIFYING REAL PROPERTY SUBJECT TO
13 FORECLOSURE, OR BOTH, << >> IN
14 EXCESS OF 10% OF THE NET PROCEEDS PAYABLE TO THE ESTATE <<TO PERSONS
EMPLOYED BY THE PERSONAL REPRESENTATIVE, INCLUDING AN ATTORNEY, REAL
ESTATE AGENT, OR ASSET RECOVERY AGENT>>.

15 <<
16
17
18
19
20
21
22
23
24
25
26
27

House Bill No. 4822 as amended January 18, 2018

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

>>

16

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

18

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

20