



HOUSE BILL No. 4987

August 17, 1993, Introduced by Rep. Fitzgerald and referred to the Committee on Judiciary.

A bill to amend sections 5, 192, 256, 665, and 814 of Act No. 642 of the Public Acts of 1978, entitled as amended "Revised probate code," section 256 as amended by Act No. 108 of the Public Acts of 1984, being sections 700.5, 700.192, 700.256, 700.665, and 700.814 of the Michigan Compiled Laws; to add section 810; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5, 192, 256, 665, and 814 of Act
2 No. 642 of the Public Acts of 1978, section 256 as amended by Act
3 No. 108 of the Public Acts of 1984, being sections 700.5,
4 700.192, 700.256, 700.665, and 700.814 of the Michigan Compiled
5 Laws, are amended and section 810 is added to read as follows:

6 Sec. 5. (1) "Fiduciary" includes a conservator, guardian,
7 personal representative, or a successor fiduciary. ~~Fiduciary~~

1 ~~includes a testamentary trustee until section 598 applies.~~

2 Fiduciary includes a plenary guardian or partial guardian
3 appointed as provided in chapter 6 of THE MENTAL HEALTH CODE, Act
4 No. 258 of the Public Acts of 1974, as amended, being sections
5 330.1600 to 330.1642 of the Michigan Compiled Laws.

6 (2) The following are fiduciaries:

7 (a) Conservator.

8 (b) Foreign personal representative.

9 (c) Guardian.

10 (d) Personal representative including an independent per-
11 sonal representative.

12 ~~(e) Trustee, to the extent included in subsection (1).~~

13 (3) When used as part of the title of ~~any~~ A fiduciary
14 listed in subsection (2):

15 (a) "Successor" fiduciary means a fiduciary who is appointed
16 to succeed a previously appointed fiduciary.

17 (b) "Temporary" fiduciary means a person acting by authority
18 of the court for a brief time until a regular fiduciary is
19 appointed or in the place of a fiduciary whose powers have been
20 suspended or revoked by the court, such as a temporary personal
21 representative or temporary guardian.

22 (4) Whenever the term fiduciary is used in this act, unless
23 otherwise specifically provided, ~~any~~ A grant of authority to a
24 fiduciary with respect to property is limited to a fiduciary
25 serving as a personal representative ~~, trustee,~~ or
26 conservator.

1 Sec. 192. (1) The charges against an estate shall be paid
2 in the following order of priority:

3 (a) Expenses of administration.

4 (b) Funeral and burial expenses for the deceased. Burial
5 expenses include expenses of cremation.

6 (c) Family allowances made for spouse and minor children
7 pursuant to section 287.

8 (d) Homestead provisions for spouse and minor children pur-
9 suant to section 285.

10 (e) Allowances made for spouse and minor children pursuant
11 to section 286.

12 (f) Claims allowed against the estate.

13 (2) After the payment of the charges in subsection (1), or
14 when sufficient assets are reserved in the hands of the personal
15 representative for each of the purposes stated in subsection (1),
16 the court shall, by order for that purpose, assign the residue of
17 the estate, if any, to persons as are by law entitled to the
18 ~~same~~ RESIDUE subject to the right of the personal representa-
19 tive to withhold and pay from that residue all inheritance and
20 estate taxes payable ~~therefrom~~ FROM THE RESIDUE.

21 (3) ~~When~~ IF a person has a life estate in, or the right
22 FOR LIFE to the use or income ~~for life~~, of, property, without
23 unlimited power to take or exhaust that property, the court shall
24 either appoint a trustee to whom the residue of property shall be
25 assigned in trust for the life tenant for the duration of ~~his~~
26 THE LIFE TENANT'S estate, or require a bond with sufficient
27 surety from the life tenant conditioned on his OR HER accounting

1 for that property. The trustee ~~so~~ appointed UNDER THIS
 2 SUBSECTION or the life tenant furnishing bond shall ~~render~~ FILE
 3 AN annual ~~accounts to~~ ACCOUNTING OF THE PROPERTY WITH the
 4 court. ~~in the same manner as that for which provision is made in~~
 5 ~~the case of a testamentary trustee.~~

6 Sec. 256. A testamentary trust provided for in the will of
 7 a testator may be designated as the beneficiary of ~~any~~ A bene-
 8 fit payable after the death of the testator for which the testa-
 9 tor has a contractual right to designate a beneficiary. This
 10 includes, but is not limited to, life insurance, annuity, or
 11 endowment contracts, employment agreements, partnership agree-
 12 ments, and pension, profit sharing, retirement, and survivor ben-
 13 efit plans. ~~Such designations~~ A DESIGNATION UNDER THIS SECTION
 14 shall be in writing and signed by the testator and need not be
 15 witnessed. ~~They shall be~~ A DESIGNATION IS subject to the fol-
 16 lowing conditions:

17 (a) Payment of the benefits to the designated testamentary
 18 trust shall be made upon the appointment and qualification of the
 19 testamentary trustee. Letters of authority issued to the testa-
 20 mentary trustee by, OR PROOF OF FILING BY A NAMED TRUSTEE AS PRO-
 21 VIDED IN SECTION 810 WITH, the probate court in which the will
 22 containing the testamentary trust is admitted to probate ~~shall~~
 23 ~~be~~ IS conclusive proof of the appointment and qualification.

24 (b) If the will providing the testamentary trust and nomi-
 25 nating the testamentary trustee in existence on the date of the
 26 designation is the will admitted to probate, and the trust is

1 clearly identified, it shall be presumed that this constitutes
2 the designated testamentary trust.

3 (c) If the testator's will as admitted to probate does not
4 provide for a testamentary trust, or if the testamentary trust
5 has not been clearly identified as the trust designated, or if
6 the testamentary trustee is not appointed and qualified within 1
7 year after the death of the testator, the designated benefits
8 shall be paid to the testator's estate or as directed in writing
9 by the personal representative of the testator's estate.

10 (d) Benefits paid to a properly designated testamentary
11 trust shall be inventoried and accounted for by the testamentary
12 trustee and ~~shall~~ ARE not ~~be~~ subject to the claims of credi-
13 tors of the testator's estate under article 7. ~~of this act.~~
14 Nothing in this section ~~shall limit~~ LIMITS the rights of credi-
15 tors under other laws of this state.

16 Sec. 665. (1) Subject to confirmation by the court, the
17 fiduciary of an estate may mortgage or pledge an interest in the
18 estate for any of the following purposes:

19 (a) To pay the debts of ~~any~~ A deceased person or ward or
20 against the estate of a deceased person or ward.

21 (b) To pay the devises provided in the last will of ~~any~~ A
22 deceased person.

23 (c) To support a ward.

24 (d) To complete the erection of buildings begun by the
25 deceased person or ward or by some person in his OR HER behalf or
26 for his OR HER benefit.

1 (e) To mortgage a ward's interest by entirety or as a joint
2 tenant.

3 ~~(2) Subject to confirmation by the court and subject to the~~
4 ~~limitations and restrictions contained in the will or other~~
5 ~~instrument creating the testamentary trust, the fiduciary may~~
6 ~~mortgage or pledge an interest in the trust estate for any of the~~
7 ~~following purposes:~~

8 ~~(a) To pay taxes or assessment levied or assessed on the~~
9 ~~trust estate or the expenses of the management of the estate.~~

10 ~~(b) To pay the expense of erecting, altering, completing,~~
11 ~~repairing, or improving a building on the estate.~~

12 ~~(c) To pay an existing lien or mortgage on the trust estate,~~
13 ~~or on a part thereof, or a debt chargeable against the trust~~
14 ~~estate or for which it is liable.~~

15 ~~(d) To raise money for any purpose in order to carry out the~~
16 ~~provisions of the will or other instrument creating the trust.~~

17 (2) ~~(3)~~ The authority given in ~~subsections~~ SUBSECTION
18 (1) ~~and (2)~~ to mortgage or pledge property for the payment of
19 debts and devises extends to the estate only as might be sold for
20 the purpose, unless a mortgage or other lien exists against the
21 homestead of the deceased person or ward, in which event the
22 fiduciary may be authorized to mortgage the homestead for suffi-
23 cient funds to pay the mortgage or other lien and the necessary
24 expenses connected with the proceedings.

25 ~~(4) A testamentary trustee may be authorized to make an~~
26 ~~agreement for the extension or renewal of an existing mortgage.~~

1 SEC. 810. IF A WILL THAT IS ADMITTED TO PROBATE NAMES A
2 PERSON AS TRUSTEE OF A TESTAMENTARY TRUST AND THE PERSON FILES AN
3 ACCEPTANCE OF TRUST WITH THE PROBATE COURT, THE PERSON IS QUALI-
4 FIED AS TRUSTEE OF THE TRUST. IF A TESTAMENTARY TRUST IS ADMIT-
5 TED TO PROBATE AND THE PERSON NAMED AS TRUSTEE FILES AN ACCEP-
6 TANCE OF TRUST, THE COURT SHALL NOT ENTER AN ORDER OR ISSUE LET-
7 TERS OF AUTHORITY IN REGARD TO QUALIFICATION OF THAT PERSON AS
8 TRUSTEE OF THE TESTAMENTARY TRUST.

9 Sec. 814. (1) The trustee shall keep the presently vested
10 beneficiaries of the trust reasonably informed of the trust and
11 its administration.

12 (2) Within 30 days after ~~his~~ acceptance of the trust BY
13 THE TRUSTEE OF AN IRREVOCABLE INTER VIVOS TRUST, AFTER AN INTER
14 VIVOS TRUST BECOMES IRREVOCABLE, OR AFTER THE QUALIFICATION OF
15 THE TRUSTEE OF A TESTAMENTARY TRUST, the trustee shall inform in
16 writing the presently vested beneficiaries, and if possible, 1 or
17 more persons who may represent beneficiaries with future inter-
18 ests, of ~~his~~ THE TRUSTEE'S name and address and of the court in
19 which the trust is registered or probated, and ~~, further,~~ SHALL
20 advise ~~the~~ EACH beneficiary that he OR SHE has the right to
21 request and receive a copy of the terms of the trust ~~which~~ THAT
22 describe or affect his OR HER interest and relevant information
23 about the assets and administration of the trust.

24 (3) Upon reasonable request, the trustee shall provide ~~the~~
25 A beneficiary with a copy of the terms of the trust ~~which~~ THAT
26 describe or affect his OR HER interest and with relevant

1 information about the assets of the trust and the particulars
2 relating to the administration.

3 (4) The trustee shall provide to each presently vested bene-
4 ficiary a statement of the accounts of the trust annually and on
5 termination of the trust or change of the trustee.

6 (5) ~~The~~ A trustee of a testamentary trust ~~shall~~ IS NOT
7 REQUIRED TO file a copy of ~~any~~ A statement required by subsec-
8 tion (4). ~~, together with a verified statement that a copy of~~
9 ~~the filed statement has been provided to each presently vested~~
10 ~~beneficiary.~~

11 Section 2. Sections 598 and 637 of Act No. 642 of the
12 Public Acts of 1978, being sections 700.598 and 700.637 of the
13 Michigan Compiled Laws, are repealed.