

Act No. 463
Public Acts of 2000
Approved by the Governor
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senators Hart, Murphy and Vaughn

ENROLLED SENATE BILL No. 863

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 1106, 5106, 5212, 5313, and 5409 (MCL 700.1106, 700.5106, 700.5212, 700.5313, and 700.5409), section 1106 as amended by 2000 PA 54 and section 5313 as amended by 2000 PA 312.

The People of the State of Michigan enact:

Sec. 1106. As used in this act:

(a) "Mental health professional" means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A social worker registered as a certified social worker under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A physician's assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) "Michigan prudent investor rule" means the fiduciary investment and management rule prescribed by part 5 of this article.

(c) "Minor" means an individual who is less than 18 years of age.

(d) "Minor ward" means a minor for whom a guardian is appointed solely because of minority.

(e) "Money" means legal tender or a note, draft, certificate of deposit, stock, bond, check, or credit card.

(f) “Mortgage” means a conveyance, agreement, or arrangement in which property is encumbered or used as security.

(g) “Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(h) “Organization” means a corporation, business trust, estate, trust, partnership, joint venture, association, limited liability company, government, governmental subdivision or agency, or another legal or commercial entity.

(i) “Parent” includes, but is not limited to, an individual entitled to take, or who would be entitled to take, as a parent under this act by intestate succession from a child who dies without a will and whose relationship is in question. Parent does not include an individual who is only a stepparent, foster parent, or grandparent.

(j) “Patient advocate” means an individual designated to exercise powers concerning another individual’s care, custody, and medical treatment as provided in section 5506.

(k) “Patient advocate designation” means the written document executed and with the effect as described in sections 5506 to 5512.

(l) “Payor” means a trustee, insurer, business entity, employer, government, governmental subdivision or agency, or other person authorized or obligated by law or a governing instrument to make payments.

(m) “Person” means an individual or an organization.

(n) “Personal representative” includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person who performs substantially the same function under the law governing that person’s status.

(o) “Petition” means a written request to the court for an order after notice.

(p) “Proceeding” includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may be denominated a civil action under court rules.

(q) “Professional conservator” means a person that provides conservatorship services for a fee. Professional conservator does not include a person who is an individual who is related to all but 2 of the protected individuals for whom he or she is appointed as conservator.

(r) “Professional guardian” means a person that provides guardianship services for a fee. Professional guardian does not include a person who is an individual who is related to all but 2 of the wards for whom he or she is appointed as guardian.

(s) “Property” means anything that may be the subject of ownership, and includes both real and personal property or an interest in real or personal property.

(t) “Protected individual” means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V.

(u) “Protective proceeding” means a proceeding under the provisions of part 4 of article V.

Sec. 5106. (1) Subject to the other provisions of this section, the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward’s, developmentally disabled individual’s, incapacitated individual’s, or protected individual’s best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond shall be as provided in sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward’s care visits the ward within 3 months after the professional guardian’s appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

Sec. 5212. The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person

the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

Enacting section 1. This amendatory act takes effect June 1, 2001.

Carol Morey Viventi

Secretary of the Senate.

Sam E. Randall

Clerk of the House of Representatives.

Approved

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Governor.