

Act No. 314
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Cropsey

ENROLLED SENATE BILL No. 1051

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 1105, 2114, 2301, 2714, 2902, 2910, 3715, 3803, 3917, 3920, 3923, 7303, 7307, 7406, and 7408 (MCL 700.1105, 700.2114, 700.2301, 700.2714, 700.2902, 700.2910, 700.3715, 700.3803, 700.3917, 700.3920, 700.3923, 700.7303, 700.7307, 700.7406, and 700.7408), sections 1105, 2114, 3917, and 7303 as amended by 2000 PA 54, and by adding section 7410.

The People of the State of Michigan enact:

Sec. 1105. As used in this act:

(a) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

(b) "Informal proceedings" means proceedings for probate of a will or appointment of a personal representative conducted by the probate register without notice to interested persons.

(c) "Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

(d) "Interested trust beneficiary" means a person that has 1 or more of the following interests in the trust:

(i) Life estate.

(ii) Eligible recipient of a mandatory or discretionary distribution by the trustee of income or principal.

(iii) Eligible recipient of a mandatory or discretionary distribution by the trustee of income or principal upon termination of an interest of a person described in subparagraph (i) or (ii).

(iv) Presently exercisable or testamentary general or special power of appointment.

(e) "Issue" means an individual's descendant.

(f) “Joint tenants with the right of survivorship” includes, but is not limited to, co-owners or ownership of property held under circumstances that entitle 1 or more to the whole of the property on the death of the other or others, but does not include forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party’s contribution.

(g) “Lawyer-guardian ad litem” means an attorney appointed under section 5213 or 5219 who has the powers and duties referenced by and provided in section 5213.

(h) “Lease” includes, but is not limited to, an oil, gas, or other mineral lease.

(i) “Legally incapacitated individual” means an individual, other than a minor, for whom a guardian is appointed under this act or an individual, other than a minor, who has been adjudged by a court to be an incapacitated individual.

(j) “Letters” includes, but is not limited to, letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child’s natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child’s mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child’s birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child’s father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child’s age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent’s estate determines that the man is the child’s father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child’s parents marry after the conception or birth of the child.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

Sec. 2301. (1) Except as provided in subsection (2), if a testator’s surviving spouse marries the testator after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value

of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

Sec. 2714. (1) Subject to subsection (2), a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in subdivision (d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subdivision (d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. As used in this subdivision, "deceased beneficiary" means a class member who fails to survive the distribution date and leaves 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or another form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(2) Subsection (1) does not apply to a future interest if the beneficiary of the interest died or irrevocably transferred the interest before April 1, 2000.

Sec. 2902. (1) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest in whole or in part. A trustee, with respect to the trust as a whole or with respect to a separate trust that is or will be established under the governing instrument, may disclaim a disclaimable interest, in whole or in part, but only to the extent that the governing instrument expressly gives the trustee the right to disclaim.

(2) A disclaimer may be of a specific asset, an interest in a specific asset, a pecuniary amount, a fractional or percentage share, or a limited interest or estate. A provision in a power of attorney granting the agent the authority to do whatever the principal could do, or words of similar effect, includes the authority to disclaim, unless the authority to disclaim is specifically excluded or limited. Unless the governing instrument is a trust instrument that does not

authorize the trustee to disclaim or a power of attorney that denies the agent the authority to disclaim, the right to disclaim exists notwithstanding the existence of either of the following:

- (a) A spendthrift provision or similar restriction that limits the interest of the disclaimant.
- (b) A restriction or limitation on the right to disclaim contained in the governing instrument.
- (3) A fiduciary may disclaim a fiduciary power. The right to disclaim a fiduciary power exists notwithstanding a restriction or limitation on the right to disclaim contained in the governing instrument.

Sec. 2910. (1) The right to disclaim property is barred by any of the following events that occur after the event giving rise to the right to disclaim and before the disclaimer is perfected:

- (a) An assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract for such a transaction.
- (b) A written waiver of the right to disclaim.
- (c) An acceptance of the disclaimable interest or a benefit under the disclaimable interest after actual knowledge that a property right has been conferred.
- (d) A sale of the property under judicial sale.
- (e) The expiration of the permitted applicable perpetuities period.

(2) The right to disclaim is barred to the extent provided by other applicable law. A partial bar does not preclude the disclaimant from disclaiming all or any part of the balance of the property if the disclaimant has received a portion of the property and there still remains an interest that the disclaimant is yet to receive. An act that bars the right to disclaim a present interest in joint property does not bar the right to disclaim a future interest in joint property.

Sec. 3715. Except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to the priorities stated in section 3902, a personal representative, acting reasonably for the benefit of interested persons, may properly do any of the following:

- (a) Retain property owned by the decedent pending distribution or liquidation, including property in which the personal representative is personally interested or that is otherwise improper for trust investment.
- (b) Receive property from a fiduciary or another source.

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

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

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

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

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

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

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

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

(i) Enter into a lease as lessor or lessee for any purpose, with or without an option to purchase or renew, for a term within or extending beyond the period of administration.

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

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

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

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

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

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

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

(q) Effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon another person's property, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by lien.

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

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

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

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

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

(w) Employ an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative's administrative duties. An attorney employed under this subdivision shall receive reasonable compensation for that employment.

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

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

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

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

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

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

(aa) Change the form of a business or venture in which the decedent was engaged at the time of death through incorporation or formation as a limited liability company or other entity offering protection against or limiting exposure to liabilities.

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

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

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

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

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

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

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

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

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

(vi) Valuing property for federal estate tax purposes.

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

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

Sec. 3803. (1) A claim against a decedent's estate that arose before the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, if not barred earlier by another statute of limitations or nonclaim statute, is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent unless presented within 1 of the following time limits:

(a) If notice is given in compliance with section 3801 or 7504, within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, within 1 month after the subsequent sending of notice or 4 months after the date of the publication of notice to creditors, whichever is later.

(c) If the notice requirements of section 3801 or 7504 have not been met, within 3 years after the decedent's death.

(2) A claim against a decedent's estate that arises at or after the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, is barred against the estate, the personal representative, and the decedent's heirs and devisees, unless presented within 1 of the following time limits:

(a) For a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due.

(b) For a claim to which subdivision (a) does not apply, within 4 months after the claim arises or the time specified in subsection (1)(a), whichever is later.

(3) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien on estate property.

(b) A proceeding to establish the decedent's or the personal representative's liability for which the decedent or the personal representative is protected by liability insurance to the insurance protection limits only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the personal representative of the estate.

Sec. 3917. (1) The county treasurer shall receive and safely keep money deposited under authority of this act in a separate fund and keep a separate account for each distributee or claim. The county treasurer shall deposit the money in a county depository at the current rate of interest, shall pay out from the fund upon the order of the court, and shall turn over any surplus left in the treasurer's hands at the termination of the treasurer's term of office to the treasurer's successor. The county treasurer shall, at the end of each year, render to the court, and to the county board of commissioners, a true account of that money.

(2) For the care of the money received under authority of this act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds \$1,000.00, in which case the county treasurer shall take \$10.00 plus 1/2 of 1% of the excess of the amount over \$1,000.00.

(3) A person entitled to the money may petition the court having jurisdiction for an order directing the county treasurer to pay over money that is deposited with the county treasurer. Upon receiving the petition, the court shall make an order as to notice of the hearing as the court considers proper. Upon satisfactory proof being made to the court of the claimant's right to the money, the court shall order the county treasurer to pay the money and interest earned on the money, less the fee of the county treasurer, to the claimant.

(4) If a person whose whereabouts are unknown or who declined to accept the money does not make a claim to money deposited by a fiduciary before the expiration of 3 years after the deposit date, the money and interest earned on the money that would be distributed under this section to the person, if alive, less expenses, shall be distributed by court order to each person who would be entitled to the money if the person had died before the date that he or she became entitled to the money, and the person is forever barred from all claim or right to the money.

Sec. 3920. (1) An estate, inheritance, or other death tax levied or assessed under the laws of this or another state, political subdivision, or country or under a United States revenue act concerning property included in the gross estate under the law, but excluding taxes for which sources of payment are provided within sections 2206, 2207, 2207A, 2207B, and 2603 of the internal revenue code, 26 USC 2206, 2207, 2207A, 2207B, and 2603, shall be apportioned in the following manner:

(a) If a part of the property concerning which the tax is levied or assessed passed under a will, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If any portion of that property passed under the will as a devise to be satisfied by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the residuary estate without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary estate is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of a tax attributable to the residuary estate shall be apportioned pro rata among the residuary beneficiaries based on the value of the residuary interests generating the tax. If a residuary interest is a temporary interest, the tax attributable to it shall be charged to principal and not apportioned between temporary and remainder interests.

(b) If a part of the property concerning which the tax is levied or assessed is held under the terms of an inter vivos trust, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If a portion of the trust is directed to pass or to be held in further trust by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the principal of the residuary share of the trust without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary share of the trust is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of tax attributable to the residuary share of the trust shall be charged as follows:

(A) The net amount of tax attributable to each residuary temporary interest shall be charged to that portion of residuary principal that supports the temporary interest without apportionment.

(B) The net amount of tax attributable to the balance of the residuary share shall be apportioned pro rata among the residuary beneficiaries by charge to the principal of their interest based on the value of the residuary interests.

(c) Except as otherwise directed by the governing instrument, tax liability remaining after the application of subdivisions (a) and (b), including, but not limited to, a tax imposed with respect to property passing by beneficiary designation, survivorship, or intestacy, or to an annuity not created under a will or an inter vivos trust, shall be apportioned pro rata among, and paid by, the recipients and beneficiaries of the properties or interests, based on the value of the properties and interests generating the tax. Except as otherwise directed by the governing instrument, with respect to a temporary interest not in trust, the amount charged to the recipients or beneficiaries shall not be apportioned between temporary and remainder interests, but shall be charged to and paid out of the principal of the property or fund.

(2) As used in this section and sections 3921 to 3923:

(a) "Governing instrument" means a will, trust agreement, or other document that controls the devolution of property at death with respect to which the tax is being levied.

(b) "Net estate" means the gross estate, as defined by the estate, inheritance, or death tax law of the particular state, country, or political subdivision whose tax is being apportioned, less the deductions allowed.

(c) "Temporary interest" means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events.

(d) "Value" means the pecuniary worth of the interest involved as finally determined for purposes of the tax then under consideration, without regard to a diminution of the interest by reason of the charge of a part of the tax.

Sec. 3923. (1) If the probate court finds that it is inequitable to apportion taxes, credits, interest, and penalties in the manner provided in sections 3920 to 3922 because of special circumstances, the court may direct apportionment in the manner it finds equitable.

(2) If the probate court finds that the assessment of penalties and interest assessed in relation to a tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(3) In an action or proceeding to recover from a person interested in the estate the amount of a tax apportioned to the person in accordance with this act, the court's determination in respect to the apportionment is *prima facie* correct.

Sec. 7303. (1) Subject to subsection (2), the trustee of a revocable trust shall keep the settlor reasonably informed of the trust and its administration. Unless otherwise provided in the trust instrument, the trustee of a revocable trust does not have a duty to inform a trust beneficiary of the trust and its administration, other than the settlor or, if the settlor is an incapacitated person, the settlor's designated agent.

(2) Unless otherwise provided in the trust instrument, if the trustee reasonably believes the settlor of a revocable trust is an incapacitated person and has no designated agent, the trustee shall keep each beneficiary, who, if the settlor were then deceased, would be a current trust beneficiary, reasonably informed of the trust and its administration. Notwithstanding the provisions of the trust instrument, upon good cause shown, the court may order the trustee to keep other beneficiaries reasonably informed of the trust and its administration.

(3) For a revocable trust, within 28 days after acceptance of trust or the death of the settlor, whichever is later, and for all other trusts, within 28 days after acceptance of the trust, the trustee shall inform in writing each interested trust beneficiary of the trust's existence, of the court in which the trust is registered, if it is registered, of the trustee's name and address, and of the interested trust beneficiary's right to request and receive both a copy of the trust's terms that describe or affect the interested trust beneficiary's interest and relevant information about the trust property. In addition, all of the following apply:

(a) Upon reasonable request, the trustee shall provide a beneficiary with a copy of the trust's terms that describe or affect the beneficiary's interest and with relevant information about the trust property.

(b) Unless the settlor directs or requests in the trust instrument that the trustee provide accounts to less than all interested trust beneficiaries, all of the following apply:

(i) At least annually and on termination of the trust or a change of the trustee, the trustee shall provide a statement of account to each current trust beneficiary and shall keep each current trust beneficiary informed of the trust and its administration.

(ii) Upon reasonable request, the trustee shall provide a statement of account to each interested trust beneficiary who is not also a current trust beneficiary and shall keep each of those persons reasonably informed of the trust and its administration.

(iii) The trustee shall provide a statement of account and other information to a beneficiary as the court directs.

(iv) In the trustee's discretion, the trustee may provide a statement of account and other information to any beneficiary.

(c) If the settlor requests or directs the trustee in the trust instrument to provide accounts and information to less than all interested trust beneficiaries, the trustee shall provide statements of account and information as provided in the trust instrument. At the court's direction, the trustee shall provide statements of account and other information to persons excluded by the settlor's request or direction to the extent and in the manner the court directs.

(d) A statement of account under this section is a report by the trustee that shall, at a minimum, list the trust assets, if feasible giving their market values, the trust liabilities, receipts, and disbursements, and state the source and amount of the trustee's compensation. A particular format or formality is not required for a report or statement of account under this section unless a court specifies its content and manner of presentation.

Sec. 7307. (1) A beneficiary is barred from commencing a proceeding against a trustee for breach of trust if the proceeding is not commenced within 1 year after the date the beneficiary or a representative of the beneficiary is sent a report that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding. A beneficiary may also be barred from commencing a proceeding against a trustee for breach of trust by adjudication, consent, ratification, estoppel, or other limitation.

(2) Persons barred under subsection (1) include all of the following:

(a) A beneficiary when an interested trust beneficiary possessing the same interest preceding that of the beneficiary receives the report.

(b) An object, taker in default, or another who may receive property by virtue of the exercise of or failure to exercise a presently exercisable or testamentary general or special power of appointment if the person possessing the power of appointment receives the report.

(c) A person described in section 1403(b) as bound by another if that other receives the report.

(3) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(4) If subsection (1) does not apply, a proceeding by a beneficiary against a trustee for breach of trust shall be commenced within 5 years of the first of the following to occur:

- (a) The removal, resignation, or death of the trustee.
- (b) The termination of the beneficiary's interest in the trust.
- (c) The termination of the trust.

Sec. 7406. (1) If there are 2 or more trustees and the trust instrument expressly makes provision for the execution of any of the trustees' powers by both or all of them or by any 1 or more of them, the provisions of the trust instrument govern.

(2) If there is no governing provision in the trust instrument, cotrustees may provide, by written agreement signed by all of them and filed with and approved by the court where the trust would be registered, as determined in accordance with section 7101, that any 1 or more of the powers designated in section 7401 may be exercised by any designated 1 or more of the trustees.

(3) Subject to subsection (1), if 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

- (a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.
- (b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.
- (c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each faction is entitled to vote the securities proportionately.

(4) Subject to subsections (1) to (3), all other acts and duties shall be performed by both of the trustees if there are 2 or by a majority of the trustees if there are more than 2. A trustee who has not joined in exercising a power is not liable to a beneficiary or another person for the consequences of the exercise of that power. A dissenting trustee is not liable for the consequences of an act in which the dissenting trustee joins at the direction of the other trustees, if the dissenting trustee expressed dissent in writing to a cotrustee at or before the time of joinder.

(5) A trustee is not relieved of liability by entering into an agreement under this section.

Sec. 7408. (1) A trustee may do any of the following in connection with a tax matter:

(a) Make, revise, or revoke an available allocation, consent, or election affecting a tax that is appropriate in order to carry out the settlor's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:

- (i) Electing to take expenses as estate tax or income tax deductions.
- (ii) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.
- (iii) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.
- (iv) Electing the date of death or an alternate valuation date for federal estate tax purposes.
- (b) Exclude or include property from the gross estate for federal estate tax purposes.
- (c) Value property for federal estate tax purposes.

(d) Join with the surviving spouse or the surviving spouse's personal representative in the execution and filing of joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.

(2) A trustee's decision on a matter described in subsection (1)(a) binds all beneficiaries.

(3) After making a decision described in subsection (1)(a), a trustee may make compensating adjustments between principal and income in the manner provided by the uniform principal and income act.

Sec. 7410. Unless the distribution or payment can no longer be questioned because of adjudication, estoppel, or other limitation, a distributee or claimant that receives property that is improperly distributed or paid from a trust shall return the property and any income and gain from the property since distribution, if the recipient has the property. If the recipient does not have the property, the recipient shall pay the value of the property as of the date of distribution or payment and any income and gain from the property since distribution.

Enacting section 1. This amendatory act takes effect September 1, 2004.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved _____

Governor