

HOUSE BILL No. 5194

July 14, 2009, Introduced by Reps. Coulouris, Meadows, Byrnes, Scripps, Liss, Roberts, Haase, Womack, Kennedy, Slavens, Haugh, Kandrevas, Constan, Durhal, Polidori, Terry Brown, Leland, Valentine, Segal, Spade, Miller, Geiss, Roy Schmidt, Bauer, Tlaib, Lemmons, Dean, Ebli, Gregory, Robert Jones, Donigan, Gonzales, Mayes, Sheltroun, McDowell, Neumann, Lahti, Lisa Brown, Bettie Scott and Jackson and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5422 and 5423 (MCL 700.5422 and 700.5423),
section 5423 as amended by 2005 PA 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5422. (1) A person who in good faith either assists or
2 deals with a conservator for value in a transaction, other than
3 ~~those requiring~~ **A TRANSACTION THAT REQUIRES** a court order as
4 provided in section 5407 **OR 5423(3)**, is protected as if the
5 conservator properly exercised the power. ~~The~~ **EXCEPT AS PROVIDED IN**
6 **SUBSECTION (3), THE** fact that a person knowingly deals with a
7 conservator does not alone require the person to inquire into the
8 existence of a power or the propriety of its exercise, but a

1 restriction on a conservator's powers that is endorsed on letters
2 as provided in section 5427 is effective as to third persons. A
3 person is not bound to see to the proper application of estate
4 property paid or delivered to a conservator.

5 (2) The protection expressed in this section extends to a
6 procedural irregularity or jurisdictional defect that occurs in a
7 proceeding leading to the issuance of letters and is not a
8 substitution for protection provided by a comparable provision of
9 the law relating to a commercial transaction or to simplifying a
10 transfer of securities by a fiduciary.

11 (3) A CONSERVATOR SHALL RECORD AN ORDER ALLOWING THE SALE,
12 DISPOSAL, MORTGAGE, OR PLEDGE OF OR PLACEMENT OF A LIEN ON REAL
13 PROPERTY UNDER SECTION 5423 IN THE RECORDS OF THE REGISTER OF DEEDS
14 FOR THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED. UNLESS THE
15 ORDER HAS BEEN RECORDED OR A PERSON TO WHOM AN INTEREST IN THE REAL
16 ESTATE IS TRANSFERRED HAS BEEN GIVEN A COPY OF THE ORDER, THE
17 PERSON IS NOT ENTITLED TO PRESUME THAT THE CONSERVATOR HAS THE
18 POWER TO SELL OR OTHERWISE DISPOSE OF THE REAL PROPERTY, OR TO
19 MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED
20 INDIVIDUAL'S HOME, AS APPLICABLE.

21 Sec. 5423. (1) Subject to a limitation imposed under section
22 5427, a conservator has all of the powers conferred in this section
23 and the additional powers conferred by law on trustees in this
24 state. In addition, a conservator of the estate of an unmarried
25 minor, as to whom no one has parental rights, has the powers,
26 responsibilities, and duties of a guardian described in section
27 5215 until the individual is no longer a minor or marries. The

1 parental rights conferred on a conservator by this section do not
2 preclude a guardian's appointment as provided in part 2.

3 (2) Acting reasonably in an effort to accomplish the purpose
4 of the appointment and without court authorization or confirmation,
5 a conservator may do any of the following:

6 (a) Collect, hold, or retain estate property, including land
7 in another state, until the conservator determines that disposition
8 of the property should be made. Property may be retained even
9 though it includes property in which the conservator is personally
10 interested.

11 (b) Receive an addition to the estate.

12 (c) Continue or participate in the operation of a business or
13 other enterprise.

14 (d) Acquire an undivided interest in estate property in which
15 the conservator, in a fiduciary capacity, holds an undivided
16 interest.

17 (e) Invest or reinvest estate property. If the conservator
18 exercises the power conferred by this subdivision, the conservator
19 must invest or reinvest the property in accordance with the
20 Michigan prudent investor rule.

21 (f) Deposit estate money in a state or federally insured
22 financial institution including one operated by the conservator.

23 (g) Except as provided in subsection (3), acquire or dispose
24 of estate property, including land in another state, for cash or on
25 credit, at public or private sale, or manage, develop, improve,
26 exchange, partition, change the character of, or abandon estate
27 property.

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

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

9 (j) Enter for any purpose into a lease as lessor or lessee
10 with or without option to purchase or renew for a term within or
11 extending beyond the term of the conservatorship.

12 (k) Enter into a lease or arrangement for exploration and
13 removal of a mineral or other natural resource or enter into a
14 pooling or unitization agreement.

15 (l) Grant an option involving disposition of estate property or
16 take an option for the acquisition of property.

17 (m) Vote a security, in person or by general or limited proxy.

18 (n) Pay a call, assessment, or other amount chargeable or
19 accruing against or on account of a security.

20 (o) Sell or exercise stock subscription or conversion rights.

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

24 (q) Hold a security in the name of a nominee or in other form
25 without disclosure of the conservatorship so that title to the
26 security may pass by delivery. However, the conservator is liable
27 for an act of the nominee in connection with the stock so held.

1 (r) Insure the estate property against damage or loss or the
2 conservator against liability with respect to third persons.

3 (s) Borrow money to be repaid from estate property or
4 otherwise.

5 (t) Advance money for the protection of the estate or the
6 protected individual, and for all expense, loss, or liability
7 sustained in the estate's administration or because of the holding
8 or ownership of estate property. The conservator has a lien on the
9 estate as against the protected individual for such an advance.

10 (u) Pay or contest a claim; settle a claim by or against the
11 estate or the protected individual by compromise, arbitration, or
12 otherwise; and release, in whole or in part, a claim belonging to
13 the estate to the extent that the claim is uncollectible.

14 (v) Pay a tax, assessment, conservator's compensation, or
15 other expense incurred in the estate's collection, care,
16 administration, and protection.

17 (w) Allocate an item of income or expense to either estate
18 income or principal, as provided by law, including creation of a
19 reserve out of income for depreciation, obsolescence, or
20 amortization, or for depletion in ~~a~~-mineral or timber property.

21 (x) Pay money distributable to a protected individual or the
22 protected individual's dependent by paying the money to the
23 distributee or by paying the money for the use of the distributee
24 to the distributee's guardian, or if none, to a relative or other
25 person having custody of the distributee.

26 (y) Employ a person, including an auditor, investment advisor,
27 or agent, even though the person is associated with the

1 conservator, to advise or assist in the performance of an
2 administrative duty; act upon the person's recommendation without
3 independent investigation; and, instead of acting personally,
4 employ an agent to perform an act of administration, whether or not
5 discretionary.

6 (z) Employ an attorney to perform necessary legal services or
7 to advise or assist the conservator in the performance of the
8 conservator's administrative duties, even if the attorney is
9 associated with the conservator, and act without independent
10 investigation upon the attorney's recommendation. An attorney
11 employed under this subdivision shall receive reasonable
12 compensation for his or her employment.

13 (aa) Prosecute or defend an action, claim, or proceeding in
14 any jurisdiction for the protection of estate property and of the
15 conservator in the performance of a fiduciary duty.

16 (bb) Execute and deliver an instrument that will accomplish or
17 facilitate the exercise of a power vested in the conservator.

18 (cc) Respond to an environmental concern or hazard affecting
19 property as provided in section 5424.

20 (3) A conservator shall not sell or otherwise dispose of the
21 protected individual's real property or interest in real property
22 **OR MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED**
23 **INDIVIDUAL'S HOME** without approval of the court. The court shall
24 only approve the sale, ~~or other disposal,~~ **MORTGAGE, OR PLEDGE** of **OR**
25 **LIEN AGAINST** the real property or interest in real property if,
26 after a hearing with notice to interested persons as specified in
27 the Michigan court rules, the court considers evidence of the value

1 of the real property or interest in real property and otherwise
2 determines that the sale, ~~or other disposal~~, **MORTGAGE, PLEDGE, OR**
3 **LIEN** is in the protected individual's best interest.

4 Enacting section 1. This amendatory act does not take effect
5 unless all of the following bills of the 95th Legislature are
6 enacted into law:

7 (a) House Bill No. 4619.

8 (b) Senate Bill No. ____ or House Bill No. 5192 (request no.
9 02731'09).