

Act No. 46
Public Acts of 2009
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Senator Cropsey

ENROLLED SENATE BILL No. 387

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 1103, 1104, 1105, 1106, 1107, 1201, 1209, 1210, 1212, 1214, 1308, 1403, 1507, 2501, 2504, 2511, 2519, 2705, 2722, 2901, 2904, 2907, 3104, 3403, 3703, 3705, 3713, 3715, 3801, 3803, 3805, 3914, 3915, 5407, 5421, 6101, 7101, 7102, 7103, 7104, 7105, 7201, 7202, 7203, 7204, 7205, 7206, 7207, 7301, 7302, 7303, 7304, 7305, 7401, 7402, 7403, 7404, 7405, 7406, 7407, 7410, 7501, 7502, 7503, 7504, 7505, 7506, 7507, and 7508 (MCL 700.1103, 700.1104, 700.1105, 700.1106, 700.1107, 700.1201, 700.1209, 700.1210, 700.1212, 700.1214, 700.1308, 700.1403, 700.1507, 700.2501, 700.2504, 700.2511, 700.2519, 700.2705, 700.2722, 700.2901, 700.2904, 700.2907, 700.3104, 700.3403, 700.3703, 700.3705, 700.3713, 700.3715, 700.3801, 700.3803, 700.3805, 700.3914, 700.3915, 700.5407, 700.5421, 700.6101, 700.7101, 700.7102, 700.7103, 700.7104, 700.7105, 700.7201, 700.7202, 700.7203, 700.7204, 700.7205, 700.7206, 700.7207, 700.7301, 700.7302, 700.7303, 700.7304, 700.7305, 700.7401, 700.7402, 700.7403, 700.7404, 700.7405, 700.7406, 700.7407, 700.7410, 700.7501, 700.7502, 700.7503, 700.7504, 700.7505, 700.7506, 700.7507, and 700.7508), sections 1103 and 7503 as amended by 2000 PA 177, section 1104 as amended by 2006 PA 299, sections 1105, 3803, 7303, and 7406 as amended and section 7410 as added by 2004 PA 314, section 1106 as amended by 2004 PA 532, sections 1107, 1214, 2504, 7206, 7501, and 7507 as amended by 2000 PA 54, sections 2519, 3715, 7401, 7502, and 7508 as amended by 2005 PA 204, section 3705 as amended by 2004 PA 481, and section 3805 as amended by 2007 PA 73, by amending the heading of article VII and the headings of parts 1, 2, 3, 4, and 5 of article VII, by adding sections 7107, 7108, 7109, 7110, 7111, 7112, 7113, 7208, 7209, 7210, 7211, 7411, 7412, 7413, 7414, 7415, 7416, 7417, 8201, 8202, 8204, and 8206, and by adding parts 6, 7, 8, and 9 to article VII; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1103. As used in this act:

(a) “Agent” includes, but is not limited to, an attorney-in-fact under a durable or nondurable power of attorney and an individual authorized to make decisions as a patient advocate concerning another’s health care.

(b) “Application” means a written request to the probate register for an order of informal probate or informal appointment under part 3 of article III.

(c) “Attorney” means, if appointed to represent a child under the provisions referenced in section 5213, an attorney serving as the child’s legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(d) “Beneficiary” includes, but is not limited to, the following:

(i) In relation to a trust, a person that is a trust beneficiary as defined in section 7103.

(ii) In relation to a charitable trust, a person that is entitled to enforce the trust.

(iii) In relation to a beneficiary of a beneficiary designation, a person that is a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(iv) In relation to a beneficiary designated in a governing instrument, a person that is a grantee of a deed, devisee, trust beneficiary, beneficiary of a beneficiary designation, donee, appointee, taker in default of a power of appointment, or person in whose favor a power of attorney or power held in an individual, fiduciary, or representative capacity is exercised.

(e) “Beneficiary designation” means the naming in a governing instrument of a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(f) “Child” includes, but is not limited to, an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant.

(g) “Claim” includes, but is not limited to, in respect to a decedent’s or protected individual’s estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent’s death or after a conservator’s appointment, including funeral and burial expenses and costs and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent’s or protected individual’s title to specific property alleged to be included in the estate.

(h) “Conservator” means a person appointed by a court to manage a protected individual’s estate.

(i) “Cost-of-living adjustment factor” means a fraction, the numerator of which is the United States consumer price index for the prior calendar year and the denominator of which is the United States consumer price index for 1997. As used in this subdivision, “United States consumer price index” means the annual average of the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics, or its successor agency, and as certified by the state treasurer.

(j) “Court” means the probate court or, when applicable, the family division of circuit court.

(k) “Descendant” means, in relation to an individual, all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.

(l) “Devise” means, when used as a noun, a testamentary disposition of real or personal property and, when used as a verb, to dispose of real or personal property by will.

(m) “Devisee” means a person designated in a will to receive a devise. For the purposes of article II, for a devise to a trustee of an existing trust or to a trustee under a will, the trustee is a devisee and a beneficiary is not.

(n) “Disability” means cause for a protective order as described in section 5401.

(o) “Distributee” means a person that receives a decedent’s property from the decedent’s personal representative or trust property from the trustee other than as a creditor or purchaser. A trustee of a trust created by will is a distributee only to the extent that distributed property or an increment of the distributed property remains in the trustee’s hands. A beneficiary of a trust created by will to whom the trustee distributes property received from a personal representative is a distributee of the personal representative. For the purposes of this subdivision, “trustee of a trust created by will” includes a trustee to whom property is transferred by will to the extent of the devised property.

Sec. 1104. As used in this act:

(a) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.

(b) “Estate” includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

(c) “Exempt property” means property of a decedent’s estate that is described in section 2404.

(d) “Family allowance” means the allowance prescribed in section 2403.

(e) “Fiduciary” includes, but is not limited to, a personal representative, guardian, conservator, trustee, plenary guardian, partial guardian, and successor fiduciary.

(f) “Financial institution” means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association,

savings and loan company or association, credit union, insurance company, and entity that offers mutual fund, securities brokerage, money market, or retail investment accounts.

(g) “Foreign personal representative” means a personal representative appointed by another jurisdiction.

(h) “Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

(i) “Funeral establishment” means that term as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, and the owners, employees, and agents of the funeral establishment.

(j) “General personal representative” means a personal representative other than a special personal representative.

(k) “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(l) “Guardian” means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5205, 5206, and 5306. Guardian does not include a guardian ad litem.

(m) “Hazardous substance” means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(n) “Heir” means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent’s property.

(o) “Homestead allowance” means the allowance prescribed in section 2402.

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) “Issue” means an individual’s descendant.

(e) “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.

(f) “Jurisdiction”, with respect to a geographic area, includes a county, state, or country.

(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. 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 licensed master's social worker licensed 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.
- (vi) A licensed professional counselor licensed under part 181 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.
- (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, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; 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) "Partial guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.
- (k) "Patient advocate" means an individual designated to exercise powers concerning another individual's care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual, or both, as provided in section 5506.
- (l) "Patient advocate designation" means the written document executed and with the effect as described in sections 5506 to 5515.
- (m) "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.
- (n) "Person" means an individual or an organization.
- (o) "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII, who performs substantially the same function under the law governing that person's status.
- (p) "Petition" means a written request to the court for an order after notice.
- (q) "Plenary guardian" means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.
- (r) "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.
- (s) "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.
- (t) "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.
- (u) "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.
- (v) "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.
- (w) "Protective proceeding" means a proceeding under the provisions of part 4 of article V.

Sec. 1107. As used in this act:

- (a) "Register" or "probate register" means the official of the court designated to perform the functions of register as provided in section 1304.

(b) “Revised judicature act of 1961” means the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(c) “Security” includes, but is not limited to, a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or interest in a regulated investment company or other entity generally referred to as a mutual fund or, in general, an interest or instrument commonly known as a security, or a certificate of interest or participation for, a temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the items listed in this subdivision.

(d) “Settlement” means, in reference to a decedent’s estate, the full process of administration, distribution, and closing.

(e) “Special personal representative” means a personal representative as described by sections 3614 to 3618.

(f) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(g) “Successor” means a person, other than a creditor, who is entitled to property of a decedent under the decedent’s will or this act.

(h) “Successor personal representative” means a personal representative, other than a special personal representative, who is appointed to succeed a previously appointed personal representative.

(i) “Supervised administration” means the proceedings described in part 5 of article III.

(j) “Survive” means that an individual neither predeceases an event, including the death of another individual, nor is considered to predecease an event under section 2104 or 2702.

(k) “Terms of a trust” or “terms of the trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(l) “Testacy proceeding” means a proceeding to establish a will or determine intestacy.

(m) “Testator” includes an individual of either gender.

(n) “Trust” includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another.

(o) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

Sec. 1201. This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

(a) To simplify and clarify the law concerning the affairs of decedents, missing individuals, protected individuals, minors, and legally incapacitated individuals.

(b) To discover and make effective a decedent’s intent in distribution of the decedent’s property.

(c) To promote a speedy and efficient system for liquidating a decedent’s estate and making distribution to the decedent’s successors.

(d) To make the law uniform among the various jurisdictions, both within and outside of this state.

Sec. 1209. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable or testamentary general or special power of appointment, including 1 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as permissible appointees, takers in default, or otherwise, are subject to the power and to the extent there is no conflict of interest between the holder and the persons represented.

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) Before February 1, 2001, and annually after 2001, the department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amounts referred to in subsection (1) for decedents who die during that calendar year and in section 7414 for trusts the value of the property of which is insufficient to justify the cost of administration. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest \$1,000.00 amount.

Sec. 1212. (1) A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7803 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.

(2) Except in response to legal process, in cases expressly required by law, or in the necessary or proper administration of the estate, a fiduciary shall not disclose facts or knowledge pertaining to property in the fiduciary's possession or to the affairs of those for whom the fiduciary is acting in any manner without the consent of the heirs, devisees, beneficiaries, protected individuals, or wards. The fiduciary of a minor or an incapacitated individual may give this consent on behalf of that individual. This subsection's restriction on disclosure does not apply in an action or proceeding in which the fiduciary and the fiduciary's heir, devisee, beneficiary, protected individual, or ward are parties adverse to each other after the identity and relationship is determined and established.

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

Sec. 1308. (1) A violation by a fiduciary of a duty the fiduciary owes to an heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary is a breach of duty. To remedy a breach of duty that has occurred or may occur, the court may do any of the following:

- (a) Compel the fiduciary to perform the fiduciary's duties.
- (b) Enjoin the fiduciary from committing a breach of duty.
- (c) Compel the fiduciary to redress a breach of duty by paying money, restoring property, or other means.
- (d) Order a fiduciary to account.
- (e) Appoint a special fiduciary to take possession of the estate's, ward's, protected individual's, or trust property and administer the property.
- (f) Suspend the fiduciary.
- (g) Remove the fiduciary as provided in this act.
- (h) For a fiduciary otherwise entitled to compensation, reduce or deny compensation to the fiduciary.
- (i) Subject to other provisions of this act protecting persons dealing with a fiduciary, void an act of the fiduciary, impose a lien or a constructive trust on property, or trace property wrongfully disposed of and recover the property or its proceeds.

(2) In response to an interested person's petition or on its own motion, the court may at any time order a fiduciary of an estate under its jurisdiction to file an accounting. After due hearing on the accounting, the court shall enter an order that agrees with the law and the facts of the case.

Sec. 1403. In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

- (a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument that creates the interests, or in another appropriate manner.
- (b) A person is bound by an order binding others in each of the following cases:
 - (i) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(ii) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(iii) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

(i) Notice as prescribed by section 1401 shall be given to every interested person or to one who can bind an interested person as described in subdivision (b)(i) or (ii). Notice may be given both to a person and to another who may bind the person.

(ii) Notice is given to an unborn or unascertained person, who is not represented under subdivision (b)(i) or (ii), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained person.

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.

Sec. 1507. If a fiduciary estate has 2 or more beneficiaries, the fiduciary shall act impartially in investing, managing, and distributing the fiduciary assets, and shall take into account any differing interests of the beneficiaries.

Sec. 2501. (1) An individual 18 years of age or older who has sufficient mental capacity may make a will.

(2) An individual has sufficient mental capacity to make a will if all of the following requirements are met:

(a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.

(b) The individual has the ability to know the nature and extent of his or her property.

(c) The individual knows the natural objects of his or her bounty.

(d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will.

Sec. 2504. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; that I am 18 years of age or older and under no constraint or undue influence; and that I have sufficient mental capacity to make this will.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this will; each of us, in the testator's presence, signs this will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this will.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____ month/day, _____ year.

(SEAL) (Signed)

(official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

(Signature) Testator

(Signature) Witness

(Signature) Witness

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____ month/day, _____ year.

(SEAL) (Signed)

(official capacity of officer)

(3) A codicil to a will may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by

_____ and _____, witnesses, on _____, _____
month/day year

(SEAL) (Signed)

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that..."

Sec. 2511. (1) A will may validly devise property to the trustee of a trust established or to be established in any of the following manners:

(a) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts.

(b) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the trust corpus.

(2) A devise described in subsection (1) is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a trust created by the will of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including an amendment to the trust made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

Sec. 2519. (1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older who has sufficient mental capacity may make a will.

2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.

I live in _____ County, Michigan.

My spouse is _____ .
(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift (Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

If my first choice does not serve, I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine,

I nominate _____
(Insert name of individual)

of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.
(Insert address)

If my first choice cannot serve, I nominate

(Insert name of individual)
of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on

_____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

- (a) “Assets” means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.
- (b) “Descendants” means your children, grandchildren, and their descendants.
- (c) “Descendants” or “children” includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.
- (d) “Jointly held assets” means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.
- (e) “Spouse” means your husband or wife at the time you sign this will.
- (f) Whenever a distribution under a Michigan statutory will is to be made to an individual’s descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.
- (g) “Heirs” means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.
- (h) “Person” includes individuals and institutions.
- (i) Plural and singular words include each other, where appropriate.
- (j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person’s decision to do or not to do the act shall be made in good faith exercise of the person’s powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor’s conservator or, in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

Sec. 2705. The meaning and legal effect of a governing instrument other than a trust are determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or another public policy of this state otherwise applicable to the disposition.

Sec. 2722. (1) Except as provided by another statute and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or

definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) As directed in the terms of the trust.

(ii) To the settlor, if then living.

(iii) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(iv) If no taker is produced by the application of subparagraph (i), (ii), or (iii), to the transferor's heirs under section 2720.

(c) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the terms of the trust or, if none, by an individual appointed by a court upon petition to it by an individual. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or remove a person appointed.

(e) Except as ordered by the court or required by the terms of the trust, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the terms of the trust or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

Sec. 2901. (1) This part shall be known and may be cited as the "disclaimer of property interests law".

(2) As used in this part:

(a) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of his, her, or its authority.

(b) "Disclaimable interest" includes, but is not limited to, property, the right to receive or control property, and a power of appointment. Disclaimable interest does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property.

(c) "Effective date of a governing instrument other than a will or trust created by will" means the date on which a property right vests or a contract right arises, even though either right is subject to divestment.

(d) "Fiduciary" includes, but is not limited to, an agent, a conservator, a guardian if no conservator has been appointed, a guardian ad litem, a personal representative, a trustee, a probate court acting through a protective order under this act, and a temporary, successor, or foreign fiduciary.

(e) "Fiduciary power" means a management power relating to the administration or management of assets similar to those powers granted to a personal representative in section 3715 and a trustee in sections 7816 and 7817, and granted by law to a fiduciary or conferred upon a fiduciary in a governing instrument.

(f) “Governing instrument” means a deed, assignment, bill of sale, will, trust, beneficiary designation, contract, instrument creating or exercising a power of appointment or a power of attorney, or another instrument under which property devolves, a property right is created, or a contract right is created. Governing instrument includes the provable terms of an oral contract or arrangement under which property devolves or a property right is created.

(g) “Joint property” means property that is owned by 2 or more persons with rights of survivorship, and includes a tenancy by the entireties in real property, a tenancy in personal property as provided in section 1 of 1927 PA 212, MCL 557.151, a joint tenancy, a joint tenancy with rights of survivorship, and a joint life estate with contingent remainder in fee. For purposes of this part, joint property is considered to consist of a present interest and a future interest. The future interest is the right of survivorship.

(h) “Person” includes an entity and an individual, but does not include a fiduciary, an estate, or a trust.

(i) “Property” means anything that may be the subject of ownership. Property includes both real and personal property and an interest in property, including a present interest; a future interest; a legal interest; an equitable interest; an interest acquired by testate succession, by intestate or other statutory succession, by succession to a disclaimed interest, or by lapse or release of a power of appointment; or an interest that may be otherwise acquired under a governing instrument.

(j) “Trust” means a fiduciary relationship with respect to property that subjects the person who holds title to the property to equitable duties to deal with the property for the benefit of another person, which fiduciary relationship arises as a result of a manifestation of an intention to create it. Trust includes an express trust, private or charitable, with additions to the trust, whether created by will or other than by will, and includes a trust created by statute, judgment, or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust.

Sec. 2904. (1) Except as provided in section 2905, if a disclaimed interest arises under a will or trust created by will, or by the laws of intestacy, the disclaimer must be delivered after the death of the owner of the property and before any event described in section 2910. If a disclaimed interest arises under a will or by the laws of intestacy, the disclaimer must be delivered to the personal representative of the deceased owner’s estate. If a disclaimed interest arises under a trust created by will, the disclaimer must be delivered to the trustee of the trust created by will or, if a trustee has not been appointed, to the personal representative of the deceased owner’s estate.

(2) Except as provided in section 2905, if a disclaimed interest arises under a governing instrument other than a will or trust created by will, the disclaimer must be delivered after the effective date of the governing instrument and before any event described in section 2910. A disclaimer under this subsection must be delivered in 1 of the following manners:

(a) If the disclaimer is made by a beneficiary of a trust, the disclaimer must be delivered to the trustee.

(b) If the disclaimer is made by a donee with respect to a gift from a living donor, the disclaimer must be delivered to the donor of the gift.

(c) If the disclaimer is made by a beneficiary under a beneficiary designation, the disclaimer must be delivered to the payor.

(d) If the disclaimer is made by a trustee with respect to a separate trust that is or will be established under the governing instrument, the disclaimer must be delivered to another incumbent trustee of that trust who has not disclaimed or to all the beneficiaries of that trust who are then living and whose whereabouts are known or reasonably ascertainable.

Sec. 2907. (1) Except as otherwise provided in this section and section 2908, if a disclaimed interest arises under a will or a trust created by will, or by the laws of intestacy, and the decedent has not provided for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. However, if by law, or under the will or trust created by will, the descendants of the disclaimant would take the disclaimant’s share by representation if the disclaimant predeceased the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent.

(2) A future interest that takes effect in possession or enjoyment upon the termination of the disclaimed interest takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

(3) Except as otherwise provided in this section and section 2908, if the disclaimed interest arises under a governing instrument other than a will or trust created by will, and the governing instrument does not provide for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. However, if by law or under the governing instrument the descendants of the disclaimant would take the disclaimant’s share by representation if the disclaimant predeceased the effective date of the instrument,

then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument.

(4) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

Sec. 3104. (1) Except as otherwise provided in subsection (2), a proceeding to enforce a claim against a decedent's estate or the decedent's successors shall not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, a proceeding or action to enforce a claim against the estate is governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 3955 or from a former personal representative individually liable as provided in section 3956.

(2) This act does not apply to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the creditor's security except as provided in part 8 of article III and part 6 of article VII.

Sec. 3403. (1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. The petitioner shall give notice in the manner prescribed by section 1401 to each of the following persons:

(a) The decedent's heirs.

(b) The devisees and personal representatives named in a will that is being, or has been, probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere.

(c) A personal representative of the decedent whose appointment has not been terminated.

(d) A person who has filed a demand for notice under section 3205.

(e) The trustee of a trust described in section 7605(1) as to which the decedent was settlor.

(2) Notice may be given to other persons. In addition, the petitioner shall give notice by publication to each unknown person and to each known person whose address is unknown who has an interest in the matters being litigated. If the proceeding involves a request for appointment of a personal representative and it appears that the deceased died intestate without leaving a known heir, the petitioner shall give notice to the attorney general, public administration division.

(3) If it appears by the petition or otherwise that the fact of the decedent's death may be in doubt, or on the written demand of an interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his or her last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including by any of the following methods:

(a) Inserting in 1 or more suitable periodicals a notice requesting information from anyone having knowledge of the alleged decedent's whereabouts.

(b) Notifying law enforcement officials and public welfare agencies in appropriate locations of the alleged decedent's disappearance.

(c) Engaging an investigator's services.

(4) The costs of a search conducted under subsection (3) shall be paid by the petitioner if there is no administration or by the decedent's estate if there is administration.

Sec. 3703. (1) A personal representative is a fiduciary who shall observe the standard of care applicable to a trustee as described by section 7803. A personal representative is under a duty to settle and distribute the decedent's estate in accordance with the terms of a probated and effective will and this act, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by this act, the terms of the will, if any, and an order in a proceeding to which the personal representative is party for the best interests of claimants whose claims have been allowed and of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to the will's terms. Whether issued in an informal or formal proceeding, an order of appointment of a personal representative is authority to distribute apparently intestate property to the decedent's heirs if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the personal representative's duty to administer and distribute the estate in accordance with the

rights of a claimant whose claim has been allowed, the surviving spouse, a minor or dependent child, or a pretermitted child of the decedent as described elsewhere in this act.

(3) Except as to a proceeding that does not survive the decedent's death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death.

(4) The personal representative shall keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate.

Sec. 3705. (1) Not later than 28 days after a personal representative's appointment or other time specified by court rule, the personal representative, except a special personal representative, shall give notice of the appointment to the decedent's heirs and devisees, except those who have executed a written waiver of notice, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative and to the trustee of a trust described in section 7605(1) as to which the decedent was settlor. The personal representative shall give the notice by personal service or by ordinary first-class mail to each person required to receive notice under this subsection whose address is reasonably available to the personal representative. However, the personal representative is not required to notify a person who was adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice required under this subsection must be in a form approved by the supreme court and must include all of the following information:

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

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

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

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

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

(ii) A copy of the inventory.

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

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

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

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

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

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

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

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

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

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

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

(4) If notice is required to be given to the attorney general under subsection (3), the attorney general, representing this state, has all the rights of an heir to be heard and to contest the validity of a claim, the appointment of a personal representative, an action of the personal representative, an order, an appointment, or an instrument purporting to be a decedent's contract or will, and has all the rights granted or accruing to an heir, representative, or creditor by a law relating to the settlement of a testate or intestate estate in court, or by way of rehearing or appeal.

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

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

Sec. 3713. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the personal representative has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the personal representative's fiduciary and personal interests is voidable by an interested person unless any of the following are true:

(a) The will or a contract entered into by the decedent expressly authorized the transaction.

(b) The transaction is approved by the court after notice to interested persons.

(c) The transaction involves a contract entered into or claim acquired by the personal representative before the person became or contemplated becoming personal representative.

(d) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the personal representative with any of the following:

(a) The personal representative's spouse.

(b) The personal representative's descendant, sibling, or parent or the spouse of the personal representative's descendant, sibling, or parent.

(c) An agent or attorney of the personal representative.

(d) A corporation or other person or enterprise in which the personal representative, or a person that owns a significant interest in the personal representative, has an interest that might affect the personal representative's best judgment.

(3) A transaction not concerning estate property in which the personal representative engages in the personal representative's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.

(4) An investment by a personal representative in securities of an investment company or investment trust to which the personal representative, or its affiliate, provides services in a capacity other than as personal representative is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as personal representative, the personal representative may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the personal representative receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the personal representative shall at least annually notify the interested persons of the rate and method by which that compensation was determined.

(5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the personal representative shall act in the best interests of the beneficiaries. If the estate is the sole owner of a corporation or other form of enterprise, the personal representative shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the beneficiaries.

(6) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between the personal representative and the interested persons relating to the compensation of the personal representative.

(b) Payment of reasonable compensation to the personal representative.

- (c) A transaction between the estate and another trust or conservatorship of which the personal representative is a fiduciary or in which a beneficiary has an interest.
- (d) A deposit of estate money in a financial institution operated by or affiliated with the personal representative.
- (e) An advance by the personal representative of money for the protection of the estate.

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 other 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 property 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, even if the attorney is associated with the personal representative, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her 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. 3801. (1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to

present their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7605(1) as to which the decedent is settlor. For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors.

(b) If the personal representative first knows of an estate creditor less than 28 days before the expiration of the time limit in subdivision (a), within 28 days after the personal representative first knows of the creditor.

(3) If the personal representative or the attorney for the estate in good faith believes that notice to a creditor of the estate is or may be required by this section, and if the personal representative gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for having given notice.

(4) If the personal representative or the attorney for the estate in good faith believes that notice to a person is not required by this section and if the personal representative fails to give notice to that person based on that belief, neither the personal representative nor the attorney is personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

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 7608, 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 7608 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. 3805. (1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

(a) Costs and expenses of administration.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(e) Exempt property.

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(2) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due.

(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7605(1) for payment by the trustee in accordance with section 7606. If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances, then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7605(1), bears a proportionate share or equitable share of the total burden.

Sec. 3914. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written agreement executed by all who are affected by its provisions. If there is, or may be, an interested person to the agreement who is a minor or incapacitated individual or if there is an inalienable estate or future contingent interest, after notice to the representative of the individual or interest as provided by supreme court rule, the court having jurisdiction of the matter may, if the agreement is made in good faith and appears just and reasonable for the individual or interest, direct the representative of the individual or interest to sign and enter into the agreement. The personal representative shall abide by the agreement's terms subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the fiduciary office's responsibilities for the benefit of a successor of the decedent who is not a party.

(2) A personal representative of a decedent's estate is not required to see to the performance of a trust if the trustee of the trust is another person who is willing to accept the trust. Accordingly, a trustee of a trust created by will is a successor for the purposes of this section. Nothing in this section relieves a trustee of a duty owed to a trust beneficiary.

Sec. 3915. (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 7814.

(2) If the terms of the trust do not excuse the trustee from giving bond, or if the trustee is not a financial institution qualified to do trust business in this state, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative reasonably believes that a bond is needed to protect the interests of the beneficiaries. A personal representative may withhold distribution until the court acts on the petition.

(3) An inference of negligence on the personal representative's part shall not be drawn from failure to exercise the authority conferred by subsections (1) and (2).

(4) If it becomes necessary or convenient in the settlement or distribution of a decedent's estate to appoint a trustee to take charge of or invest and distribute a portion of the estate, the court may appoint a trustee upon the request of the personal representative or another interested person.

Sec. 5407. (1) The court shall exercise the authority conferred in this part to encourage the development of maximum self-reliance and independence of a protected individual and shall make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure. Accordingly, the court may authorize a protected individual to function without the consent or supervision of the individual's conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

(2) The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

(a) While a petition for a conservator's appointment or another protective order is pending and after preliminary hearing and without notice to others, the court has the power to preserve and apply property of the individual to be protected as may be required for the support of the individual or the individual's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the minor's estate and business affairs that are or may be necessary for the best interests of the minor and members of the minor's immediate family.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:

(i) To make gifts.

(ii) To convey or release a contingent or expectant interest in property including marital property rights and a right of survivorship incident to joint tenancy or tenancy by the entirety.

(iii) To exercise or release a power held by the protected individual as personal representative, custodian for a minor, conservator, or donee of a power of appointment.

(iv) To enter into a contract.

(v) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the protected individual.

(vi) To exercise an option of the protected individual to purchase securities or other property.

(vii) To exercise a right to elect an option and change a beneficiary under an insurance or annuity policy and to surrender the policy for its cash value.

(viii) To exercise a right to an elective share in the estate of the individual's deceased spouse.

(ix) To renounce or disclaim an interest by testate or intestate succession or by inter vivos transfer.

(3) The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual either is incapable of consenting or has consented to the proposed exercise of the power:

(a) To exercise or release a power of appointment of which the protected individual is donee.

(b) To renounce or disclaim an interest.

(c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.

(d) To change a beneficiary under an insurance and annuity policy.

(4) A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity.

Sec. 5421. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the conservator has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the conservator's fiduciary and personal interests, is voidable unless any of the following are true:

(a) The transaction is approved by the court after notice as directed by the court.

(b) The transaction involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator.

(c) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the conservator with any of the following:

(a) The conservator's spouse.

(b) The conservator's descendant, sibling, or parent or the spouse of the conservator's descendant, sibling, or parent.

(c) An agent or attorney of the conservator.

(d) A corporation or other person or enterprise in which the conservator, or a person that owns a significant interest in the conservator, has an interest that might affect the conservator's best judgment.

(3) A transaction not concerning estate property in which the conservator engages in the conservator's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.

(4) An investment by a conservator in securities of an investment company or investment trust to which the conservator, or its affiliate, provides services in a capacity other than as conservator is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as conservator, the conservator may be compensated by the

investment company or investment trust for providing those services out of fees charged to the estate. If the conservator receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the conservator shall at least annually notify the court of the rate and method by which that compensation was determined.

(5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the conservator shall act in the best interests of the estate. If the estate is the sole owner of a corporation or other form of enterprise, the conservator shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the estate.

(6) This section does not preclude the following transactions, if fair to the estate:

- (a) An agreement relating to the compensation of the conservator.
- (b) Payment of reasonable compensation to the conservator.
- (c) A transaction between the estate and another trust or conservatorship of which the conservator is a fiduciary or in which the estate or protected individual has an interest.
- (d) A deposit of estate money in a financial institution operated by or affiliated with the conservator.
- (e) An advance by the conservator of money for the protection of the estate.

Sec. 6101. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of similar nature is nontestamentary. This subsection includes a written provision in the instrument that is intended to result in 1 or more of the following:

(a) Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person, including a trustee of a trust created by will, whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.

(c) Property the decedent controls or owns before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(2) This section does not limit creditors' rights under another law of this state or another state or under federal law.

ARTICLE VII

MICHIGAN TRUST CODE

PART 1

Sec. 7101. This article shall be known and may be cited as the "Michigan trust code".

Sec. 7102. This article applies to trusts as defined in section 1107.

Sec. 7103. As used in this article:

- (a) "Action", with respect to a trustee or a trust protector, includes an act or a failure to act.
- (b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.
- (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).
- (d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:
 - (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.
 - (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.
 - (iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.

(iv) Whether the distribution of trust property is from income or principal or both of the trust.

(v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.

(e) “Interests of the trust beneficiaries” means the beneficial interests provided in the terms of the trust.

(f) “Power of withdrawal” means a presently exercisable general power of appointment other than a power that is either of the following:

(i) Exercisable by a trustee and limited by an ascertainable standard.

(ii) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(g) “Qualified trust beneficiary” means a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary’s qualification is determined:

(i) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.

(iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(h) “Revocable”, as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust’s characterization as revocable is not affected by the settlor’s lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

(i) “Settlor” means a person, including a testator, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of appointment to be treated as a settlor of the trust.

(j) “Spendthrift provision” means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary’s interest.

(k) “Support provision” means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a support provision, but rather is a discretionary trust provision.

(l) “Trust beneficiary” means a person to whom 1 or both of the following apply:

(i) The person has a present or future beneficial interest in a trust, vested or contingent.

(ii) The person holds a power of appointment over trust property in a capacity other than that of trustee.

(m) “Trust instrument” means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

(n) “Trust protector” means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

(i) The settlor of a trust.

(ii) The holder of a power of appointment.

Sec. 7104. (1) Subject to subsection (2), a person has knowledge of a fact if 1 or more of the following apply:

(a) The person has actual knowledge of it.

(b) The person has received a notice or notification of it.

(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or from the time the information would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

- (a) The requirements under section 7401 for creating a trust.
- (b) The duty of a trustee to administer a trust in accordance with section 7801.
- (c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- (d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.
- (e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.
- (f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.
- (g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
- (h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).
- (i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.
- (j) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).
- (k) The effect of an exculpatory term under section 7809(8) or 7908.
- (l) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.
- (m) Periods of limitation under this article for commencing a judicial proceeding.
- (n) The power of the court to take action and exercise jurisdiction.
- (o) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

Sec. 7107. The meaning and effect of the terms of a trust are determined by the following:

- (a) The law of the jurisdiction designated in the terms of the trust unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.
- (b) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

Sec. 7108. (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either of the following applies:

- (a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.
- (b) All or part of the administration occurs in the designated jurisdiction.
- (2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.
- (3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
- (4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:
 - (a) The name of the jurisdiction to which the principal place of administration is to be transferred.
 - (b) The address and telephone number at the new location at which the trustee can be contacted.
 - (c) An explanation of the reasons for the proposed transfer.
 - (d) The date on which the proposed transfer is anticipated to occur.
 - (e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 7704.

(7) The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration.

Sec. 7109. (1) Notice to a person under this article or the sending of a document to a person under this article shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed and identified facsimile or electronic message.

(2) Notice otherwise required under this article or a document otherwise required to be sent under this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this article or the sending of a document under this article may be waived in writing by the person to be notified or sent the document.

(4) Notice of a judicial proceeding shall be given as provided in sections 1401 to 1403 and as otherwise provided by court rule.

Sec. 7110. (1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 2722 has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.

Sec. 7111. (1) Except as otherwise provided in subsection (2), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(2) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement agreement shall not be used to accomplish the termination or modification of the trust.

(3) Matters that may be resolved by a nonjudicial settlement agreement include any of the following:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee's report or accounting.

(c) Direction to a trustee to perform or to refrain from performing a particular act or to grant to or to withhold from a trustee any power.

(d) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(e) Transfer of a trust's principal place of administration.

(f) Liability of a trustee for an action relating to the trust.

(4) Any interested person or trustee may request the court to approve or disapprove a nonjudicial settlement agreement. On a determination that the representation as provided in part 3 was adequate, that the agreement does not violate a material purpose of the trust, and that the agreement contains terms and conditions the court could have properly approved, the court shall enter an order approving the agreement.

(5) As used in this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

Sec. 7112. The rules of construction in sections 2605 to 2608 that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

Sec. 7113. A provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

PART 2

Sec. 7201. (1) A court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee’s fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.

(3) A proceeding involving a trust may relate to any matter involving the trust’s administration, including a request for instructions and a determination regarding the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do any of the following:

- (a) Appoint or remove a trustee.
- (b) Review the fees of a trustee.
- (c) Require, hear, and settle interim or final accounts.
- (d) Ascertain beneficiaries.
- (e) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a trust.
- (f) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
- (g) Release registration of a trust.
- (h) Determine an action or proceeding that involves settlement of an irrevocable trust.

Sec. 7202. (1) By registering a trust or accepting the trusteeship of a registered trust or a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust. Notice of a proceeding shall be given to the trustee in accordance with section 1401 at the trustee’s address as stated in the registration or as reported to the court and to the trustee’s address then known to the petitioner.

(2) For purposes of a proceeding commenced by a trust beneficiary before registration, a trustee of a trust that is not registered in a proper place is subject to the personal jurisdiction of a court in which the trust could have been registered. In addition, a trustee who, within 28 days after receipt of a written demand by a trust settlor or beneficiary, fails to register a trust as required by the terms of the trust is subject to removal and denial of compensation or to surcharge as the court may direct.

(3) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration or having been properly registered in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person who receives property from the trust.

Sec. 7203. (1) The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust as provided in section 1302(b) and (d).

(2) The court has concurrent jurisdiction with other courts of this state of other proceedings that involve a trust as provided in section 1303.

Sec. 7204. (1) Except as otherwise provided in subsection (2), venue for a proceeding involving a trust is as follows:

(a) For a proceeding under section 7203 involving a registered trust, in the place of registration.

(b) For a proceeding under section 7203 involving a trust not registered in this state, in any place where the trust properly could be registered and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) As otherwise specified by court rule.

(2) If a trust has no trustee and has not been registered, venue for a judicial proceeding for the appointment of a trustee is as follows:

(a) In a county in this state in which a trust beneficiary resides.

(b) In a county in which any trust property is located.

(c) If the trust is created by will, in the county in which the decedent's estate was or is being administered.

(d) As otherwise provided by court rule.

Sec. 7205. (1) If a party objects, the court shall not entertain a proceeding under section 7203 that involves a trust that is registered or that has its principal place of administration in another state, unless either of the following applies:

(a) All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration.

(b) The interests of justice would otherwise be seriously impaired.

(2) The court may condition a stay or dismissal of a proceeding under this section on the consent of a party to jurisdiction of the state in which the trust is registered or has its principal place of business, grant a continuance, or enter another appropriate order.

Sec. 7206. The court where a trust is registered has concurrent jurisdiction with other courts of this state of an action or proceeding to determine the existence or nonexistence of the trust if created other than by will, of an action or proceeding against a creditor or debtor of the trust, and of another action or proceeding that involves a trustee and a third party.

Sec. 7207. On petition of an interested person, after notice to all other interested persons, the court may review the propriety of the employment of a person by a trustee including an attorney, auditor, investment advisor, or other specialized agent or assistant and the reasonableness of the compensation of the person so employed or the reasonableness of the compensation determined by the trustee for the trustee's own services. The court may order a person who receives excessive compensation from a trust to make an appropriate refund.

Sec. 7208. A proceeding under section 7203 is initiated by filing a petition in the court and giving notice to interested persons as provided in section 1401. The court may order notification of additional persons. A judgment or order binds each person who is given notice of the proceeding even if not all interested persons are notified.

Sec. 7209. (1) The trustee of a trust that has its principal place of administration in this state may register the trust in the court at the place designated in the terms of the trust or, if none is designated, then at the principal place of administration. For purposes of this article, the principal place of the trust's administration is the trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee does not have such a place of business. For a corporate trustee, the usual place of business is the business location of the primary trust officer for the trust.

(2) For cotrustees, if not designated in the terms of the trust, the principal place of administration is 1 of the following:

(a) If there is only 1 corporate cotrustee, the corporate trustee's usual place of business.

(b) If there is only 1 professional fiduciary who is an individual and no corporate trustee, the professional fiduciary's usual place of business or residence.

(c) If neither subdivision (a) nor (b) applies, the usual place of business or residence of any of the cotrustees as agreed upon by them.

Sec. 7210. (1) A trust is registered by the filing of a statement that states the trustee's name and address and in which the trustee acknowledges the trusteeship. The statement shall indicate if the trust has been registered elsewhere. The statement shall identify the trust in 1 of the following manners:

(a) For a trust created by will, by the name of the testator and the date and place of domiciliary probate.

(b) For a written inter-vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument and all amendments existing on the date of registration.

(c) For an oral trust, by information identifying the settlor or other source of property and describing the trust's time and manner of creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

(2) The trust instrument is not required to be filed with the court as part of the registration of a trust. If a trust is registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where that registration occurred or by an instrument executed by the trustee and all qualified trust beneficiaries. The order or instrument shall be filed with the registration in this state.

Sec. 7211. A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains a trust's principal place of administration in this state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required for the trustee to receive distribution from a local estate, to hold, invest in, manage, or acquire property located in this state, or to maintain litigation. This section does not affect a determination of what other acts require qualification as doing business in this state.

PART 3

Sec. 7301. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in section 7602, a person who under this part may represent a settlor who lacks capacity may receive notice and for purposes of section 7602 may give a binding consent on the settlor's behalf.

(4) A settlor may not represent or bind a trust beneficiary under this part with respect to the termination or modification of a trust under section 7411(1).

Sec. 7302. The holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment may represent and bind a person whose interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

Sec. 7303. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.

(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.

(d) A trustee may represent and bind the beneficiaries of the trust.

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(f) A parent may represent and bind the parent's minor or unborn child if a conservator, plenary guardian, or partial guardian has not been appointed.

Sec. 7304. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Sec. 7305. (1) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent,

and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(2) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this article, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a guardian ad litem may consider the general benefit accruing to the living members of the individual's family.

PART 4

Sec. 7401. (1) A trust may be created by any of the following:

(a) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death.

(b) Declaration by the owner of property that the owner holds identifiable property as trustee.

(c) Exercise of a power of appointment in favor of a trustee.

(d) A promise by 1 person to another person, whose rights under the promise are to be held in trust for a third person.

(2) The instrument establishing the terms of a trust is not rendered invalid because property or an interest in property is not transferred to the trustee or made subject to the terms of the trust concurrently with the signing of the instrument. Until property or an interest in property is transferred to the trustee or made subject to the terms of the trust, the person nominated as trustee has no fiduciary or other obligations under the instrument establishing the terms of the trust except as may have been specifically agreed by the settlor and the nominated trustee.

Sec. 7402. (1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

(i) A charitable trust.

(ii) A trust for a noncharitable purpose or for the care of an animal, as provided in section 2722.

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A trust beneficiary is definite if the trust beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a trust beneficiary from an indefinite class is valid only in a charitable trust.

Sec. 7403. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of a jurisdiction to which, at the time of creation, any of the following applied:

(a) The settlor was domiciled, had a place of abode, or was a national in the jurisdiction.

(b) A trustee was domiciled or had a place of business in the jurisdiction.

(c) Any trust property was located in the jurisdiction.

Sec. 7404. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

Sec. 7405. (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes, any purpose described in section 501(c)(3) of the internal revenue code, 26 USC 501, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not identify a particular charitable purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor, a named beneficiary, or the attorney general of this state, among others, may maintain a proceeding to enforce a charitable trust. The right of the settlor of a charitable trust to enforce the trust is personal to the settlor and may not be exercised by any of the following:

(a) The settlor's heirs, assigns, or beneficiaries.

(b) The settlor's fiduciary, other than the trustee of the charitable trust the enforcement of which is being sought.

(c) An agent of the settlor acting pursuant to a durable power of attorney, unless the right to enforce the trust is expressly conferred on the agent by the power of attorney.

Sec. 7406. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

Sec. 7407. Except as required by a statute other than this article, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

Sec. 7410. (1) In addition to the methods of termination prescribed by sections 7411 to 7414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become impossible to achieve or are found by a court to be unlawful or contrary to public policy.

(2) A proceeding to confirm the termination of a trust under subsection (1) or to approve or disapprove a proposed modification or termination under sections 7411 to 7416 or trust combination or division under section 7417 may be commenced by a trustee or beneficiary. A proceeding to modify a charitable trust under section 7413 may be commenced by the persons with the power to enforce the terms of a charitable trust pursuant to section 7405.

Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court upon the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) Upon the consent of the qualified trust beneficiaries and a trust protector who is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or trust protector to whom a power to direct the termination or modification of the trust has been given by the terms of a trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before the effective date of the amendatory act that added this section.

(3) Notice of any proceeding to terminate or modify a trust shall be given to the settlor, or the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust protector, if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) Upon termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the attorney in fact is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian.

Sec. 7412. (1) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(2) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention.

(3) If a trust is terminated under this section, the trustee shall distribute the trust property as ordered by the court.

(4) Notice of any proceeding to terminate or modify a trust shall be given in the manner described in section 7411(3).

Sec. 7413. (1) Except as otherwise provided in subsections (2) or (3), if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, no alternative taker is named or provided for, and the court finds the settlor had a general, rather than a specific, charitable intent, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's general charitable intent.

(2) If the terms of a charitable trust confer a power on the trustee, or another person designated in the trust or gift, to modify or terminate either the charitable trust, a charitable gift to the trust, or the charitable purpose of the trust or gift in favor of another charitable trust, gift, or purpose, the terms of the trust prevail over the power of the court to apply cy pres to modify or terminate the trust.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court to apply cy pres to modify or terminate the trust only if, when the provision takes effect, either of the following applies:

(a) The trust property is to revert to the settlor and the settlor is still living.

(b) Less than 50 years have elapsed since the date of the trust's creation.

Sec. 7414. (1) After 63 days after notice to the qualified trust beneficiaries and, if the trust is a charitable trust, to the attorney general of this state, the trustee of a trust consisting of trust property having a total value less than \$50,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The \$50,000.00 amount expressed in this section shall be adjusted each year as provided in section 1210.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court.

(4) This section does not apply to an easement for conservation or preservation.

Sec. 7415. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Sec. 7416. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Sec. 7417. (1) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may divide trust property into 2 or more separate portions or trusts and allocate property between them if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(2) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may consolidate 2 or more trusts and administer them as 1 trust if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. If the rule against perpetuities speaks from different dates with reference to the trusts or if there are other variations in terms, consolidation may still take place, but the property of the trusts shall be maintained in separate accounts if necessary to recognize and give effect to the differences.

PART 5

Sec. 7501. This part applies to a creditor's or transferee's claims with respect to spendthrift, support, and discretionary trusts.

Sec. 7502. (1) A spendthrift provision is valid and enforceable.

(2) A term of a trust providing that the interest of a trust beneficiary is held subject to a "spendthrift trust," or words of similar import, restrains both voluntary and involuntary transfer of the trust beneficiary's interest.

(3) Except as provided in sections 7504, 7506, and 7507, the trust beneficiary's interest in a trust may not be transferred in violation of a valid spendthrift provision and trust property is not subject to enforcement of a judgment until distributed directly to the trust beneficiary.

(4) Notwithstanding the existence of a spendthrift provision in the terms of the trust, a trustee is not liable to the beneficiaries of the trust for making a distribution to which a trust beneficiary is otherwise entitled pursuant to the direction of the trust beneficiary.

Sec. 7503. (1) The interest of a trust beneficiary that is subject to a support provision may not be transferred and the trust property is not subject to the enforcement of a judgment until income or principal, or both, is distributed directly to the trust beneficiary. After a distribution to a trust beneficiary whose interest is subject to a support provision, the income and principal distributed are subject to the enforcement of a judgment only to the extent that the income or principal, or both, is not necessary for the health, education, support, or maintenance of the trust beneficiary.

(2) The use or enjoyment of trust property by a trust beneficiary whose interest is subject to a support provision may not be transferred and is not subject to the enforcement of a judgment against the trust beneficiary.

(3) Subsections (1) and (2) do not apply under circumstances described in section 7504, 7506, or 7507.

Sec. 7504. (1) The interest of a trust beneficiary that is subject to a spendthrift provision, a support provision, or both may be reached in satisfaction of an enforceable claim against the trust beneficiary by any of the following:

(a) A trust beneficiary's child or former spouse who has a judgment or court order against the trust beneficiary for support or maintenance.

(b) A judgment creditor who has provided services that enhance, preserve, or protect a trust beneficiary's interest in the trust.

(c) This state or the United States.

(2) The court shall order the trustee to satisfy all or part of a judgment described in subsection (1) only out of all or part of distributions of income or principal as they become due.

(3) Notwithstanding that the terms of the trust include a spendthrift provision, this section does not apply to the interest of a trust beneficiary that is subject to a discretionary trust provision.

(4) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

Sec. 7505. The transferee or creditor of the beneficiary of a discretionary trust provision does not have a right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion, and trust property is not subject to the enforcement of a judgment until income or principal, or both, is distributed directly to the trust beneficiary.

Sec. 7506. (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

(c) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:

(i) The claim of the creditor or assignee.

(ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the settlor's lifetime.

(2) If a trust has more than 1 settlor, the amount a creditor or assignee of a particular settlor may reach under subsection (1)(c) shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) A trust beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.

(4) An individual who creates a trust shall not be considered a settlor with regard to the individual's retained beneficial interest in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:

(a) The individual creates, or has created, the trust for the benefit of the individual's spouse.

(b) The trust is treated as qualified terminable interest property under section 2523(f) of the internal revenue code, 26 USC 2523.

(c) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.

Sec. 7507. (1) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a trust beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the trust beneficiary within a reasonable time after the designated distribution date.

(2) As used in this section, “mandatory distribution” means a distribution of income or principal that the trustee is required to make to a trust beneficiary under the terms of the trust, including a distribution upon termination of the trust. Mandatory distribution does not include a distribution subject to the exercise of the trustee’s discretion even if either of the following applies:

- (a) The direction is expressed in the form of a standard of distribution.
- (b) The terms of the trust authorizing a distribution use language of discretion and language of direction.

Sec. 7508. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

PART 6

Sec. 7601. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Sec. 7602. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under a trust instrument executed before the effective date of the amendatory act that added this section.

(2) If a revocable trust is created or funded by more than 1 settlor, all of the following apply:

(a) To the extent that the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent that the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor’s contribution.

(c) Upon notification by the settlor of the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust in any of the following ways:

(a) By substantially complying with a method provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, in either of the following ways:

(i) If the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor’s intent to revoke or amend the trust.

(ii) If the trust is an oral trust, by any method manifesting clear and convincing evidence of the settlor’s intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor’s powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a durable power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(6) A conservator or plenary guardian of the settlor may exercise a settlor’s powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by the terms of the trust and with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or the settlor’s successors in interest, including the trust beneficiaries, for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Sec. 7603. (1) Subject to subsection (2), while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(2) If the trustee reasonably believes that the settlor of a revocable trust is an incapacitated individual, the trustee shall keep the settlor’s designated agent or, if there is no designated agent or if the sole agent is a trustee, each beneficiary who, if the settlor were then deceased, would be a qualified trust beneficiary informed of the existence of the trust and reasonably informed of its administration.

(3) While a trust is not revocable and while a person has a currently exercisable power of withdrawal over the entire principal of the trust, the duties of a trustee are owed exclusively to the person.

(4) A person who succeeds to the position of trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also the trust settlor is not liable for an action of the settlor while the settlor was serving as trustee.

(5) With respect to a predecessor trustee who was also the settlor, the successor trustee has no responsibility to investigate a transaction by the predecessor trustee, to review an account, to review an action of the predecessor trustee, or to take action for a breach of trust by the predecessor trustee.

Sec. 7604. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

- (a) Two years after the settlor's death.
- (b) Six months after the trustee sent the person a notice informing the person of all of the following:
 - (i) The trust's existence.
 - (ii) The date of the trust instrument.
 - (iii) The date of any amendments known to the trustee.
 - (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.
 - (v) The settlor's name.
 - (vi) The trustee's name and address.
 - (vii) The time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless either of the following applies:

- (a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.
- (b) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 63 days after the contestant sent the notification.
- (3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Sec. 7605. (1) The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:

- (a) The administration expenses of the settlor's estate.
- (b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.
- (c) Homestead, family, and exempt property allowances.

(2) A trust established as part of, and all payments from, an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401, shall not be considered to be a trust described in subsection (1).

(3) This section does not impair a right that an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the internal revenue code, 26 USC 414.

(4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).

Sec. 7606. (1) A trustee of a trust described in section 7605(1) shall pay to the personal representative of the settlor's estate the amount that the personal representative certifies in writing to the trustee is required to pay the administration expenses of the settlor's estate; an enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; and homestead, family, and exempt property allowances. The trustee may rely on the certificate of the personal representative without liability to a trust beneficiary or another party. If a personal representative is not appointed for the settlor's estate, the trustee shall pay directly to the creditor an enforceable and timely served claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses. If a personal representative is not appointed for the settlor's estate within 4 months after the date of the publication of notice to creditors, a trust described in section 7605(1) is not liable for payment of homestead, family, or exempt property allowances. A payment made by a trustee is subject to this section, but the payment shall be made exclusively out of property, or the proceeds of property, that is includable in the settlor's gross estate for federal estate tax purposes, other than assets described in section 7605(2) to (4).

(2) Subject to section 7607, unless a settlor provides in his or her will or, in the absence of such a provision, designates in the trust the money or property passing under a trust to be used as described in section 7605(1), the administration expenses of the settlor's estate; an enforceable and timely filed claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; or homestead, family, and exempt property allowances, to be paid in accordance with subsection (1), shall be paid from the property of the trust in the following order:

(a) Property of the trust residue remaining after all distributions that are to be satisfied by reference to a specific property or type of property, fund, money, or statutory amount.

(b) Property that is not to be distributed out of specified or identified property or a specified or identified item of property.

(c) Property that is to be distributed out of specified or identified property or a specified or identified item of property.

Sec. 7607. (1) The following rules apply to section 7606(2):

(a) Upon the failure or insufficiency of money or property out of which payment should be made, to the extent of the insufficiency, a distribution of property from the trust that is to be satisfied out of specified or identified property shall be classed as a distribution to be satisfied out of the general trust property not otherwise disposed of in the terms of the trust.

(b) A distribution of property from the trust given for valuable consideration abates with other distributions of the same class only to the extent of the excess over the amount of the value of the consideration until all others of the same class are exhausted.

(c) Except as otherwise provided in this section, distributions of property from the trust abate equally and ratably and without preference or priority as between real and personal property.

(d) If a specified or identified item of property that has been designated for distribution in the terms of the trust or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the trust beneficiary whose property is sold or taken, and, before distribution, the trustee shall determine the amounts of the respective contributions, which shall be paid or withheld before distribution is made.

(2) Costs and expenses of trust administration, including trustee compensation and attorney fees, shall be paid by the trustee before and in preference to the administration costs and expenses of the settlor's estate, an enforceable and timely filed claim of a creditor of the settlor, and homestead, family, and exempt property allowances. If, after paying costs and expenses of trust administration, the trust property is insufficient to pay in full all charges for which the trust is liable under section 7605(1), the trustee shall make payment in the following order of priority:

(a) Costs and expenses of administration of the decedent's estate.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(e) Exempt property.

(f) Debts and taxes with priority under federal law.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including compensation of a person attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(3) A preference shall not be given in the payment of a charge over another charge of the same class under subsection (2), and a charge due and payable is not entitled to a preference over a charge not due.

(4) If the decedent was the settlor of more than 1 trust described in section 7605(1), the charges described in that section are payable pro rata from those trusts based on the gross values of the respective trusts on the date of the decedent's death. Each trustee is entitled to right of contribution as necessary to effect the pro rata liability. The allocation and contribution, however, are subject to provisions in the trusts regarding the allocation and burden of the charges. If there is conflict between the terms of the trusts regarding the allocation and burden of the charges, the decedent's will controls.

Sec. 7608. If there is no personal representative of the settlor's estate to whom letters of administration have been issued so that the publication and notice requirements of section 3801 have not been discharged, each trustee of a trust described in section 7605(1) shall publish and serve a notice to creditors in the same manner, with the same duties, and with the same protection for the trustee and the attorney for the trustee as described in section 3801 for a personal representative. The notice shall comply with applicable court rules and contain the name of the trust's deceased settlor; the trust's name or other designation, if any; the date the trust was established; the name and address of each trustee

serving at the time of or as a result of the settlor's death; and the name and address of the trustee's attorney, if any. The notice shall state the date of publication.

Sec. 7609. (1) Subject to section 7611, if notice to claimants is given by a trustee as provided in section 7608, a claimant shall present a claim against a trust described in section 7605(1) in either of the following ways:

(a) The claimant may mail or deliver to the trustee a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented on the trustee's receipt of the claim. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate a claim's presentation.

(b) The claimant may commence a proceeding to obtain payment of a claim against the trust in a court where the trustee is subject to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. Presentation of a claim is not required in regard to matters claimed in proceedings against the trust or settlor that were pending at the time of the settlor's death.

(2) If a personal representative is appointed for the settlor's estate, presentation of a claim against the settlor's estate shall be made in the manner described in section 3804, and such a presentation is sufficient to assert liability against a trust described in section 7605(1) without an additional presentation of the claim against the trustee.

Sec. 7610. (1) Subject to section 7611, if not barred earlier by another statute of limitations, a claim against the settlor of a trust described in section 7606(1) that arose at or before the settlor's death that a person seeks to recover from the trust is barred against the trust, each trustee of the trust, and a trust beneficiary, unless presented within 1 of the following times:

(a) If notice is given in compliance either with section 3801 or section 7608, within 4 months after the date of publication of notice to creditors.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, or known to the trustee at or during such a time if publication occurred under section 7608, within 28 days after the subsequent sending of notice or 4 months after the date of publication of notice to creditors, whichever is later.

(c) If the notice requirements of either section 3801 or section 7608 are not met, within 3 years after the settlor's death.

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

(a) A proceeding to enforce a mortgage, pledge, or other lien upon property held in the trust.

(b) A proceeding to establish the settlor's or the trustee's liability for which the settlor or the trustee is protected by liability insurance to the limits of the insurance protection only.

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

Sec. 7611. If there is no personal representative appointed for the settlor's estate and notice is given in accordance with section 7608, the allowance or disallowance of a claim presented in the manner described in section 7609(1) and within a time period described in section 7610 is governed by the following provisions:

(a) The trustee may deliver or mail a notice to the claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the trustee changes a decision concerning the claim, the trustee shall notify the claimant. The trustee shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim has been barred. A claim that is disallowed in whole or in part by the trustee is barred to the extent not allowed unless the claimant commences a proceeding against the trustee not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure by the trustee to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation has expired constitutes a notice of allowance.

(b) After allowing or disallowing a claim, the trustee may change the allowance or disallowance as provided in this subdivision. Before payment, the trustee may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment, or an order directing payment of the claim. The trustee shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subdivision (a). The trustee may change a disallowance to an allowance, in whole or in part, until it is barred under subdivision (a). After a claim is barred, it may be allowed and paid only if the trust is solvent and all whose interests would be affected consent.

(c) Upon the trustee's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subdivision (a).

(d) A judgment in a proceeding in another court against a trustee to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(e) Unless otherwise provided in a judgment in another court entered against the trustee, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for original presentation of the claim has expired, unless based on a contract that provides for interest, in which case the claim bears interest in accordance with the contract.

Sec. 7612. (1) Upon the expiration of 4 months after the date of the publication of the notice to creditors, the trustee shall proceed to pay the claims allowed against the trust in the order of priority prescribed in section 7607(2)(f) to (i), after making provision for costs and expenses of trust administration, for reasonable funeral and burial expenses, for each claim already presented that is not yet allowed or whose allowance is appealed, and for each unbarred claim that may yet be presented. A claimant whose claim is allowed, but not paid as provided in this section, may petition the court to secure an order directing the trustee to pay the claim to the extent that money of the trust is available for the payment.

(2) At any time, the trustee may pay a claim that is not barred, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the trustee fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the trustee, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed but the whereabouts of the claimant is unknown at the time the trustee attempts to pay the claim, upon petition by the trustee and after notice the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

Sec. 7613. Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders the security. Otherwise, payment shall be upon the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the claim amount allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or does not do so, upon the claim amount allowed less the value of the security as determined by converting it into money according to the terms of the agreement under which the security is delivered to the creditor, or as determined by the creditor and trustee by agreement, arbitration, compromise, or litigation.

Sec. 7614. A claim that will become due at a future time, a contingent claim, or an unliquidated claim is governed by the following:

(a) If a claim becomes due or certain before the distribution of the trust, and if the claim is allowed or established by a proceeding, the claim shall be paid in the same manner as presently due and absolute claims of the same class.

(b) For a claim not covered by subdivision (a), the trustee or, on petition of the trustee or the claimant in a proceeding for the purpose, the court may provide for payment as follows:

(i) If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account.

(ii) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

Sec. 7615. In allowing a claim, the trustee may deduct a counterclaim that the trustee has against the claimant. In determining a claim against a trust, the court shall reduce the amount allowed by the amount of a counterclaim and, if the total counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

PART 7

Sec. 7701. (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship by doing either of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do all of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified trust beneficiary.

(b) Exercise all powers set forth under section 7818(1)(a).

(c) Inspect or investigate trust property to determine potential liability under other law or for any other purpose.

Sec. 7702. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the trust beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A financial institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

Sec. 7703. (1) Cotrustees shall act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

(5) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated pursuant to section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

(6) Unless a delegation under subsection (5) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection shall be in writing and shall be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation shall be given to the qualified trust beneficiaries within 28 days after the revocation.

(7) 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.

(8) A trustee is not liable for the action or omission of a cotrustee if all of the following apply:

(a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.

(b) The trustee is aware of but does not join in the action or omission of the cotrustee.

(c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.

(9) A trustee who is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.

(10) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

- (a) A person designated as trustee rejects the trusteeship.
- (b) A person designated as trustee cannot be identified or does not exist.
- (c) A trustee resigns.
- (d) A trustee is disqualified or removed.
- (e) A trustee dies.
- (f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy shall be filled in the following order of priority:

- (a) In the manner designated by the terms of the trust.
- (b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy shall be filled in the following order of priority:

- (a) In the manner designated by the terms of the trust.
- (b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection.

- (c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

Sec. 7705. (1) A trustee may resign in either of the following circumstances:

(a) Upon at least 28 days' notice to the qualified trust beneficiaries, the holders of powers of appointment, and all cotrustees.

- (b) With the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Sec. 7706. (1) The settlor, a cotrustee, or a qualified trust beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if 1 or more of the following occur:

- (a) The trustee commits a serious breach of trust.
- (b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.
- (c) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the purposes of the trust.
- (d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, to the extent it is not inconsistent with a material purpose of the trust, the court may order any appropriate relief under section 7901(2) that is necessary to protect the trust property or the interests of the trust beneficiaries.

Sec. 7707. (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property in the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

Sec. 7708. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if either of the following apply:

- (a) The duties of the trustee are substantially different from those contemplated when the trust was created.
- (b) The compensation specified by the terms of the trust would be unreasonably low or high.

Sec. 7709. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for both of the following:

- (a) Expenses that were properly incurred in the administration of the trust.
 - (b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
- (2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.
- (3) Advances and reimbursement under this section are not considered self-dealing by the trustee and are not a breach of the trustee's fiduciary duty.

PART 8

Sec. 7801. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

Sec. 7802. (1) A trustee shall administer the trust solely in the interests of the trust beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 7912, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a substantial conflict between the trustee's fiduciary and personal interests is voidable by a trust beneficiary affected by the transaction unless 1 or more of the following apply:

- (a) The transaction was authorized by the terms of the trust.
 - (b) The transaction was approved by the court after notice to the interested persons.
 - (c) The trust beneficiary did not commence a judicial proceeding within the time allowed by section 7905.
 - (d) The trust beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7909.
 - (e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
 - (f) The transaction is otherwise permitted by statute.
- (3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with any of the following:
- (a) The trustee's spouse.
 - (b) The trustee's descendant, sibling, or parent or the spouse of a descendant, sibling, or parent.
 - (c) An agent or attorney of the trustee.
 - (d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
- (4) A transaction that does not concern trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 7814 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the trust beneficiaries. If the trust is the sole owner of a corporation or

other form of enterprise, the trustee shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interests of the trust beneficiaries.

(7) This section does not preclude the following transactions, if fair to the trust beneficiaries:

(a) An agreement between a trustee and a trust beneficiary relating to the appointment or compensation of the trustee.

(b) Payment of reasonable compensation to the trustee.

(c) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a trust beneficiary has an interest.

(d) A deposit of trust money in a financial institution operated by or affiliated with the trustee.

(e) An advance by the trustee of money for the protection of the trust.

Sec. 7803. The trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.

Sec. 7808. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

Sec. 7809. (1) A trust protector, other than a trust protector who is a beneficiary of the trust, is subject to all of the following:

(a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.

(b) In exercising or refraining from exercising any power, duty, or discretion, the trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(c) The trust protector is liable for any loss that results from the breach of his or her fiduciary duties.

(2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(3) Except as otherwise provided in subsection (4), the trustee shall act in accordance with a trust protector's exercise of the trust protector's specified powers and is not liable for so acting.

(4) If either of the following applies to a trust protector's attempted exercise of a specified power, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives prior direction from the court:

(a) The exercise is contrary to the terms of the trust.

(b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.

(5) A trustee is not liable for any loss that results from any of the following:

(a) The trustee's compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (4).

(b) The trustee's failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization.

(c) Seeking a determination from the court regarding the trust protector's actions or directions.

(d) The trustee's refraining from action pursuant to subsection (4).

(6) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(7) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.

(8) A term of a trust that relieves a trust protector from liability for breach of his or her fiduciary duties is unenforceable to the extent that either of the following applies:

(a) The term relieves the trust protector of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trust protector of a fiduciary or confidential relationship to the settlor.

Sec. 7810. A trustee shall take reasonable steps to take control of and protect the trust property.

Sec. 7811. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4), to the extent that property is held by someone other than the trustee, the trustee shall cause the trust's interest in the trust's property to appear in records maintained by the party holding the trust property.

(4) A trustee may do any of the following:

(a) Invest as a whole the property of 2 or more separate trusts, provided the trustee maintains records clearly indicating the respective interests.

(b) Hold trust property in nominee form.

(c) If the trust is revocable by the settlor, cause the trust's interest in the trust's property to appear in records in the manner directed by the settlor.

(d) Not reflect the trust's interest in the trust's property when the nature of the property is such that it is not possible or practicable to do so.

Sec. 7812. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Sec. 7813. (1) A trustee shall take reasonable steps to locate trust property and to compel a former trustee or other person to deliver trust property to the trustee.

(2) A resigning trustee or a trustee being replaced by a successor may retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) 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.

(4) If a person embezzles or wrongfully converts trust property, or refuses, without colorable claim of right, to transfer possession of trust property to the current trustee upon demand, the person is liable in an action brought by the current trustee, or the beneficiary of the trust for the benefit of the trust, for double the value of any property embezzled, converted, or wrongfully withheld from the current trustee.

Sec. 7814. (1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

(b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.

(d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified trust beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation,

a listing of the trust property and, if feasible, their respective market values, and, if applicable, any disclosure required under section 7802(5). In the trustee's discretion, the trustee may provide the report to any trust beneficiary. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified trust beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified trust beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.

(5) A trust beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A trust beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, an irrevocable trust created, or a revocable trust that becomes irrevocable on or after the effective date of the amendatory act that added this section.

Sec. 7815. (1) A beneficiary of a discretionary trust provision as described in section 7505 has no property right in a trust interest that is subject to a discretionary trust provision, and has no right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion. However, and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee does any of the following:

(a) Acts dishonestly.

(b) Acts with an improper motive, even though not a dishonest motive.

(c) Fails to exercise the trustee's judgment in accordance with the terms and purposes of the trust.

(2) Subject to subsection (4), the following rules apply to a trustee's exercise of a power unless the terms of the trust expressly indicate that the rule does not apply:

(a) A person other than a settlor who is a trust beneficiary and trustee of a trust that confers on the trustee a power to make distributions pursuant to a discretionary trust provision to or for the trustee's benefit may exercise the power only in accordance with an ascertainable standard.

(b) A trustee may not exercise a power to make distributions pursuant to a discretionary trust provision in a manner to satisfy a legal obligation of support that the trustee personally owes another person.

(3) A power whose exercise is limited or prohibited by subsection (2) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(4) Subsection (2) does not apply to any of the following:

(a) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the internal revenue code, 26 USC 2056 and 2523, was previously allowed.

(b) Any trust during any period that the trust may be revoked or amended by its settlor.

(c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the internal revenue code, 26 USC 2503.

Sec. 7816. (1) A trustee, without authorization by the court, may exercise all of the following:

(a) Powers conferred by the terms of the trust.

(b) Except as limited by the terms of the trust, all of the following:

(i) All powers over the trust property that an unmarried competent owner has over individually owned property.

(ii) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.

(iii) Any other powers conferred by this article.

(2) The exercise of a power is subject to the fiduciary duties prescribed by this article.

Sec. 7817. Without limiting the authority conferred by section 7816, a trustee has all of the following powers:

(a) To take possession, custody, or control of property transferred to the trust and accept or reject additions to the trust.

(b) To retain property that the trustee receives, including property in which the trustee is personally interested, in accordance with the Michigan prudent investor rule.

(c) To receive property from a fiduciary or another source that is acceptable to the trustee.

(d) To perform, compromise, or refuse to perform a contract of the settlor that is an obligation of the trust, as the trustee may determine under the circumstances. In performing an enforceable contract by the settlor to convey or lease land, if the contract for a conveyance requires the giving of a warranty, the deed or other instrument of conveyance to be given by the trustee shall contain the warranty required. The warranty is binding on the trust as though made by the settlor, but does not bind the trustee except in the trustee's fiduciary capacity. The trustee, among other possible courses of action, may do either of the following:

(i) Execute and deliver a deed of conveyance for cash payment of money remaining due or the purchaser's note for the money 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 trustee, as designated in the escrow agreement.

(e) To satisfy a settlor's written charitable pledge irrespective of whether the pledge constitutes a binding obligation of the settlor or was properly presented as a claim, if in the trustee's judgment the settlor would have wanted the pledge completed under the circumstances.

(f) To deposit trust property in a financial institution, including a financial institution operated by or affiliated with the trustee and to invest and reinvest trust property as would a prudent investor acting in accordance with the Michigan prudent investor rule and to deposit securities with a depository or other financial institution.

(g) To acquire property, including property in this or another state or country, in any manner for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, or change the character of trust property.

(h) To make an ordinary or extraordinary repair or alteration in a building or another structure, to demolish an improvement, or to raze an existing or erect a new party wall or building.

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

(j) To enter for any purpose into a lease as lessor or lessee, with or without an option to purchase or renew, for a period within or extending beyond the duration of the trust.

(k) To enter into a lease or arrangement for exploration and removal of minerals or another natural resource or to enter into a pooling or unitization agreement for a period within or extending beyond the duration of the trust.

(l) To abandon or decline to administer property if, in the trustee's opinion, the property is valueless, or is so encumbered or in such a condition that it is of no benefit to the trust.

(m) To vote a stock or other security in person, by general or limited proxy, or in another manner provided by law, or enter into or continue a voting trust agreement.

(n) To pay a call, assessment, or other amount chargeable or accruing against or on account of a security, and sell or exercise stock subscription or conversion rights.

(o) To hold property in the name of a nominee or in another form without disclosure of the interest of the trust. However, the trustee is liable for an act of the nominee in connection with the property so held.

(p) To insure the trust property against damage, loss, or liability and to insure the trustee, the trustee's agents, and the trust beneficiaries against liability arising from the administration of the trust.

(q) To borrow property, with or without security, for any purpose from the trustee or others and to mortgage or pledge trust property for a period within or extending beyond the duration of the trust.

(r) To 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 trust. If the trustee holds a mortgage, pledge, or another lien on property of another person, the trustee may, instead of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by a lien.

(s) To pay a tax, an assessment, the trustee's compensation, or another expense incident to the administration of the trust.

(t) To sell or exercise a subscription or conversion right or to consent, directly or through a committee or another agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a business enterprise.

(u) To allocate an item of income or expense to either trust income or principal, as permitted or provided by law.

(v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.

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

(x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subdivision for the trustee's protection in the performance of the trustee's duties.

(y) To sell, exchange, partition, or otherwise dispose of, or grant an option with respect to, trust property for any purpose upon any terms or conditions for a period within or extending beyond the duration of the trust.

(z) To continue or participate in a business or enterprise in any manner, in any form, and for any length of time.

(aa) To change the form, in any manner, of a business or enterprise in which the settlor was engaged at the time of death.

(bb) To provide for exoneration of the trustee from personal liability in a contract entered into on behalf of the trust.

(cc) To respond to environmental concerns and hazards affecting trust property as provided in section 7818.

(dd) To collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust, including a claim against the trust by the trustee.

(ee) To respond to a tax matter as provided in section 7819.

(ff) To make a payment of money, or other property instead of money, to or for a minor or incapacitated trust beneficiary as provided in section 7820.

(gg) To make a distribution or division of trust property in cash or in kind, or both; to allot a different kind or disproportionate portion of, or an undivided interest in, trust property among beneficiaries and determine the value of allotted trust property; or to distribute an unclaimed share in the same manner as described in section 3916.

(hh) To transfer the property of a trust to another jurisdiction and appoint, compensate, or remove a successor trustee, individual or corporate, for trust property in another jurisdiction, with any trust powers set out in this part that the trustee delegates to the successor trustee.

(ii) To execute and deliver an instrument that accomplishes or facilitates the exercise of a power vested in the trustee.

(jj) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(kk) To make loans out of trust property, including loans to a trust beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of loans made under this subdivision.

(ll) To pledge trust property to guarantee loans made by others to the trust beneficiary.

(mm) To resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(nn) On termination of the trust, to exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Sec. 7818. (1) In connection with an environmental concern or hazard, a trustee may do any of the following:

(a) Inspect property or the operation of a business activity on property, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held or tendered to the trustee.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the trustee, either before or after a governmental body initiates an enforcement action.

(c) Refuse to accept property in trust if the trustee determines that the property to be transferred to the trust either is or may be contaminated by a hazardous substance or has been or is being used for an activity directly or indirectly involving a hazardous substance that could result in liability to the trust or otherwise impair the value of the trust property.

(d) Settle or compromise at any time a claim against the trust that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust.

(e) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the trustee, may cause the trustee to incur personal liability under an environmental law.

(f) Decline to serve or resign as a trustee if the trustee reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the trustee on the trust's behalf because of the type or condition of property held in trust.

(g) Appoint an independent special trustee to hold title to, and take a reasonably required action, as provided in this section, relating to environmental law in regard to, property tendered to the trust, until the time that the trustee determines that no substantial risk exists if the tendered property becomes part of the trust property or abandons the tendered property.

(h) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the trust property.

(2) A trustee is not personally liable to a trust beneficiary or other party for a decrease in value of trust property by reason of the trustee's compliance with an environmental law, specifically including a reporting requirement under that law. The trustee's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of trust property and is not to impose greater responsibility or liability on the trustee than imposed by law absent this section.

Sec. 7819. (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 a 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, 2004 PA 159, MCL 555.501 to 555.1005.

Sec. 7820. (1) A trustee may act under section 7817(ff) by paying money or other property to 1 or more of the following:

(a) The minor or incapacitated individual directly.

(b) A person or institution providing support, maintenance, education, or medical, surgical, hospital, or other institutional care for the minor or incapacitated individual in direct payment for those services.

(c) The legal or natural guardian of the minor or incapacitated individual.

(d) A person, whether or not appointed guardian by a court, who shall in fact have the care and custody of the minor or incapacitated individual.

(e) A custodian for the minor or incapacitated individual under a uniform gifts or transfers to minors act.

(2) A trustee also may manage an amount distributable to a trust beneficiary who is a minor or incapacitated individual as a separate fund on the trust beneficiary's behalf, subject to the trust beneficiary's continuing right to withdraw the distribution.

(3) If the trustee exercises due care in the selection of the person to whom a payment is made under this section, including a minor or incapacitated individual, the trustee does not have a duty to see to the payment's application. The person's receipt for the payment completely discharges the trustee.

Sec. 7821. (1) Upon termination or partial termination of a trust, the trustee may send to the trust beneficiaries a proposal for distribution. The right of any trust beneficiary to object to the proposed distribution terminates if the trust beneficiary does not notify the trustee of an objection within 28 days after the proposal was sent, but only if the proposal informed the trust beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) A release by a trust beneficiary of a trustee from liability for breach of trust is invalid to the extent either of the following applies:

(a) The release was induced by improper conduct of the trustee.

(b) The trust beneficiary, at the time of the release, did not know of the trust beneficiary's rights or of the material facts relating to the breach.

PART 9

Sec. 7901. (1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:

(a) Compel the trustee to perform the trustee's duties.

(b) Enjoin the trustee from committing a breach of trust.

(c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.

(d) Order a trustee to account.

(e) Appoint a special fiduciary to take possession of the trust property and administer the trust.

(f) Suspend the trustee.

(g) Remove the trustee as provided in section 7706.

(h) Reduce or deny compensation to the trustee.

(i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.

(j) Order any other appropriate relief.

Sec. 7902. A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.

(b) The profit the trustee made by reason of the breach.

Sec. 7903. (1) A trustee is accountable to an affected trust beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a trust beneficiary for a loss or depreciation in the value of trust property, for failure to generate income, or for not having made a profit.

(3) This section does not do either of the following:

(a) Limit a trustee's right to compensation under section 7708 or payments allowed under section 7802(5).

(b) Make a trustee accountable to an affected beneficiary in connection with a matter to which section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied.

Sec. 7904. (1) In a proceeding involving the administration of a trust, the court, as justice and equity require, may award costs and expenses, including reasonable attorney fees, to any party who enhances, preserves, or protects trust property, to be paid from the trust that is the subject of the proceeding.

(2) Subject to subsection (3), if a trustee participates in a civil action or proceeding in good faith, whether successful or not, the trustee is entitled to receive from trust property all expenses and disbursements including reasonable attorney fees that the trustee incurs in connection with its participation.

(3) A court may reduce or deny a trustee's claim for compensation, expenses, or disbursements with respect to a breach of trust.

Sec. 7905. (1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed

the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in which the alleged breach occurred.

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

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

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

Sec. 7906. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a trust beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Sec. 7907. If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specific age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

Sec. 7908. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that either of the following applies:

- (a) The term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.
- (b) The term was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.
- (2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure to diversify investments are enforceable.

Sec. 7909. A trustee is not liable to a trust beneficiary for breach of trust if the trust beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless either of the following applies:

- (a) The consent, release, or ratification of the trust beneficiary was induced by improper conduct of the trustee.
- (b) At the time of the consent, release, or ratification, the trust beneficiary did not know of 1 or more of the material facts relating to the breach.

Sec. 7910. (1) Unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal the trustee's representative capacity and identify the trust estate in the contract.

(2) A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of the trust estate, or on a tort committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

Sec. 7911. (1) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108, or was known by the other party to the contract.

(2) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) The immunity provided by this section does not apply with respect to a general partnership interest held in any capacity other than as trustee.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Sec. 7912. (1) A person other than a trust beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a trust beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of the powers.

(3) A person who in good faith delivers assets to a trustee need not ensure the proper application of the assets.

(4) A person other than a trust beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Sec. 7913. (1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust containing all of the following information:

(a) The name of the trust and the date of the trust instrument and any amendments.

(b) The name and address of the currently acting trustee.

(c) The powers of the trustee relating to the purposes for which the certificate is being offered.

(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(e) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.

(2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate shall be in the form of an affidavit.

(3) A certificate of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certificate of trust to be incorrect.

(4) A certificate of trust need not contain the dispositive terms of the trust.

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(6) A person who acts in reliance upon a certificate of trust without knowledge that the representations contained in the certificate are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certificate.

(7) A person who in good faith enters into a transaction in reliance upon a certificate of trust may enforce the transaction against the trust property as if the representations contained in the certificate were correct.

(8) A person making a demand for the trust instrument in addition to a certificate of trust or excerpts is liable for damages, costs, expenses, and legal fees if the court determines that the person was not acting pursuant to a legal requirement in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Sec. 8201. (1) Article VII shall be construed and applied to promote its underlying purposes and policies.

(2) The following are the underlying purposes and policies of article VII:

(a) To make more comprehensive and to clarify the law governing trusts in this state.

(b) To permit the continued expansion and development of trust practices through custom, usage, and agreement of the parties.

(c) To foster certainty in the law so that settlors of trusts will have confidence that their instructions will be carried out as expressed in the terms of the trust.

Sec. 8202. The provisions of article VII governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of electronic records or signatures, conform to the requirements of section 102 of the electronic signatures in global and national commerce act, 15 USC 7002, and supersede, modify, and limit the requirements of the electronic signatures in global and national commerce act, 15 USC 7001 to 7031.

Sec. 8204. The amendments and additions to article VII enacted by the amendatory act that added this section take effect on April 1, 2010.

Sec. 8206. (1) Except as otherwise provided in article VII, all of the following apply on the effective date of the amendatory act that added this section:

(a) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all trusts created before, on, or after that effective date.

(b) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all judicial proceedings concerning trusts commenced on or after that effective date.

(c) The amendments and additions to article VII enacted by the amendatory act that added this section apply to judicial proceedings concerning trusts commenced before that effective date unless the court finds that application of a particular provision of the amendments and additions would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the amendments and additions does not apply and the superseded provisions apply.

(d) Any rule of construction or presumption provided in the amendments and additions to article VII enacted by the amendatory act that added this section applies to trust instruments executed before that effective date unless there is a clear indication of a contrary intent in the terms of the trust.

(2) The amendments and additions to article VII enacted by the amendatory act that added this section do not impair an accrued right or affect an act done before that effective date. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before that effective date, that statute continues to apply to the right even if it has been repealed or superseded.

(3) If any provision of the amendments and additions to article VII enacted by the amendatory act that added this section conflicts with any provision of 1846 RS 63, MCL 555.1 to 555.27, the provision of article VII prevails.

Enacting section 1. Sections 7306 to 7308, 7408, 7409, and 7509 to 7511 of the estates and protected individuals code, 1998 PA 386, MCL 700.7306 to 700.7308, 700.7408, 700.7409, and 700.7509 to 700.7511, are repealed.

Enacting section 2. This amendatory act takes effect April 1, 2010.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

- (a) Senate Bill No. 383.
- (b) Senate Bill No. 384.
- (c) Senate Bill No. 385.
- (d) Senate Bill No. 386.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

.....
Governor