

Act No. 14  
Public Acts of 2018  
Approved by the Governor  
February 6, 2018  
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February 6, 2018  
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**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Reps. Ellison, Wittenberg, Hammoud and Sneller

# **ENROLLED HOUSE BILL No. 4822**

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 3705 and 3715 (MCL 700.3705 and 700.3715), as amended by 2009 PA 46.

*The People of the State of Michigan enact:*

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 must 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 must 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.

(v) If the personal representative is the state or county public administrator, a copy of any settlement statements from the sale of real property.

(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.

(7) If the personal representative is the state or county public administrator, and if the decedent's real property has delinquent property taxes, the personal representative shall also give written notice that includes the information described in subsection (1) to the treasurer of the county in which the real property subject to the tax foreclosure is located. The county treasurer may submit an affidavit to the court regarding the status of the real property for the court to consider in making its determination under section 3715(2)(a).

Sec. 3715. (1) Except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to subsection (2) and 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 the 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.

(2) If the personal representative is the state or county public administrator, all of the following apply:

(a) The personal representative shall not sell the decedent's real property without approval of the court. The court shall only approve the sale if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property and considers any information submitted by the county treasurer under section 3705(7) and otherwise determines that the sale is in the estate's best interest. In determining whether to approve the sale of real property under this subdivision, the court shall consider any information submitted by the county treasurer under section 3705(7).

(b) If the personal representative is the county public administrator, and if the decedent's real property is occupied by an heir of the decedent, the county public administrator shall provide the state public administrator with all pleadings filed in the case.

(c) Unless waived by the court, the personal representative shall advance any of the personal representative's court filing fees associated with the administration of the estate.

(d) If the decedent's estate includes real property subject to tax or mortgage foreclosure, for real estate fees or fees related to identifying real property subject to foreclosure, or both, payable to persons employed by the personal representative, including an attorney, real estate agent, or asset recovery agent, both of the following apply:

(i) Except as otherwise provided by the court, if the net proceeds from the sale of the real property payable to the estate exceed \$30,000.00, the total fees described in this subsection must not exceed 10% of the net proceeds from the sale of the real property payable to the estate.

(ii) If the net proceeds from the sale of real property payable to the estate are less than \$30,000.00, the court shall determine the reasonableness of the fees described in this subsection.

(3) As used in subsection (2), "net proceeds from the sale of the real property" means the sale price of the real property less the amount paid to satisfy the tax or mortgage, or both.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4821 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved.....

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Governor

**Compiler's note:** House Bill No. 4821, referred to in enacting section 2, was filed with the Secretary of State February 6, 2018, and became 2018 PA 13, Eff. May 7, 2018.