

HOUSE BILL No. 4822

July 12, 2017, Introduced by Reps. Ellison, Wittenberg, Hammoud and Sneller and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3705, 3715, and 3721 (MCL 700.3705, 700.3715,
and 700.3721), sections 3705 and 3715 as amended by 2009 PA 46.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3705. (1) Not later than 28 days after a personal
2 representative's appointment or other time specified by court rule,
3 the personal representative, except a special personal
4 representative, shall give notice of the appointment to the
5 decedent's heirs and devisees, except those who have executed a
6 written waiver of notice, including, if there has been no formal
7 testacy proceeding and if the personal representative is appointed
8 on the assumption that the decedent died intestate, the devisees in
9 a will mentioned in the application for appointment of a personal

1 representative and to the trustee of a trust described in section
2 7605(1) as to which the decedent was settlor. The personal
3 representative shall give the notice by personal service or by
4 ordinary first-class mail to each person required to receive notice
5 under this subsection whose address is reasonably available to the
6 personal representative. However, the personal representative is
7 not required to notify a person who was adjudicated in a prior
8 formal testacy proceeding to have no interest in the estate. The
9 notice required under this subsection must be in a form approved by
10 the supreme court and must include all of the following
11 information:

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

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

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

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

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

3 (ii) A copy of the inventory.

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

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

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

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

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

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

26 (2) The personal representative's failure to give the
27 information required by subsection (1) is a breach of the personal

1 representative's duty to the persons concerned, but does not affect
2 the validity of the personal representative's appointment, powers,
3 or other duties. A personal representative may inform other persons
4 of the appointment by delivery or ordinary first-class mail.

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

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

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

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

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

27 (5) Within 28 days after the personal representative's

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

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

18 **(7) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY**
19 **PUBLIC ADMINISTRATOR, AND IF THE DECEDENT'S REAL PROPERTY IS**
20 **SUBJECT TO A TAX FORECLOSURE, THE PERSONAL REPRESENTATIVE SHALL**
21 **ALSO GIVE NOTICE THAT INCLUDES THE INFORMATION DESCRIBED IN**
22 **SUBSECTION (1) TO THE TREASURER OF THE COUNTY IN WHICH THE REAL**
23 **PROPERTY SUBJECT TO THE TAX FORECLOSURE IS LOCATED.**

24 Sec. 3715. (1) Except as restricted or otherwise provided by
25 the will or by an order in a formal proceeding, and subject to
26 **SUBSECTION (2) AND TO** the priorities stated in section 3902, a
27 personal representative, acting reasonably for the benefit of

1 interested persons, may properly do any of the following:

2 (a) Retain property owned by the decedent pending distribution
3 or liquidation, including property in which the personal
4 representative is personally interested or that is otherwise
5 improper for trust investment.

6 (b) Receive property from a fiduciary or another source.

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

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

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

26 (d) If, in the judgment of the personal representative, the
27 decedent would have wanted the pledge satisfied under the

1 circumstances, satisfy a written charitable pledge of the decedent
2 irrespective of whether the pledge constitutes a binding obligation
3 of the decedent or is properly presented as a claim.

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

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

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

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

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

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

27 (k) Abandon property when, in the opinion of the personal

1 representative, it is valueless, or is so encumbered or in such a
2 condition as to be of no benefit to the estate.

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

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

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

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

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

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

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

1 administration.

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

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

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

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

17 (w) Employ an attorney to perform necessary legal services or
18 to advise or assist the personal representative in the performance
19 of the personal representative's administrative duties, even if the
20 attorney is associated with the personal representative, and act
21 without independent investigation upon the attorney's
22 recommendation. An attorney employed under this subdivision shall
23 receive reasonable compensation for his or her employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (vi) Valuing property for federal estate tax purposes.

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

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

8 (2) IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
9 PUBLIC ADMINISTRATOR, ALL OF THE FOLLOWING APPLY:

10 (A) THE PERSONAL REPRESENTATIVE SHALL NOT SELL THE DECEDENT'S
11 REAL PROPERTY WITHOUT APPROVAL OF THE COURT. IF THE PERSONAL
12 REPRESENTATIVE IS THE COUNTY PUBLIC ADMINISTRATOR, AND IF THE
13 DECEDENT'S REAL PROPERTY IS OCCUPIED BY AN HEIR OF THE DECEDENT,
14 THE COURT SHALL NOT APPROVE A SALE UNDER THIS SUBDIVISION UNLESS
15 THE COURT RECEIVES WRITTEN APPROVAL OF THE SALE FROM THE STATE
16 PUBLIC ADMINISTRATOR.

17 (B) UNLESS WAIVED BY THE COURT, THE PERSONAL REPRESENTATIVE
18 SHALL ADVANCE ANY OF THE PERSONAL REPRESENTATIVE'S COURT FILING
19 FEES ASSOCIATED WITH THE ADMINISTRATION OF THE ESTATE.

20 Sec. 3721. (1) After notice to all interested persons, on
21 petition of an interested person, on appropriate motion if
22 administration is supervised, or on the court's own motion, the
23 court may review the propriety of employment of a person by a
24 personal representative, including, but not limited to, an
25 attorney, accountant, investment advisor, or other specialized
26 agent or assistant, the reasonableness of such a person's
27 compensation, or the reasonableness of the compensation determined

1 by the personal representative for the personal representative's
2 own services. IF THE PERSONAL REPRESENTATIVE IS THE STATE OR COUNTY
3 PUBLIC ADMINISTRATOR, ALL OF THE FOLLOWING APPLY:

4 (A) THE COURT SHALL REVIEW THE PROPRIETY OF THE EMPLOYMENT AS
5 DESCRIBED IN THIS SECTION.

6 (B) EXCEPT AS OTHERWISE PROVIDED BY THE COURT, IF THE
7 DECEDENT'S ESTATE INCLUDES REAL PROPERTY SUBJECT TO TAX OR MORTGAGE
8 FORECLOSURE, REAL ESTATE FEES OR FEES RELATED TO IDENTIFYING REAL
9 PROPERTY SUBJECT TO FORECLOSURE, OR BOTH, IN EXCESS OF 10% OF THE
10 NET PROCEEDS PAYABLE TO THE ESTATE ARE CONSIDERED EXCESSIVE
11 COMPENSATION UNDER THIS SECTION.

12 (2) If the court determines UNDER SUBSECTION (1) that a person
13 received excessive compensation from an estate for services
14 rendered, the court shall order the person to pay an appropriate
15 refund and may include in the refund amount interest and penalties
16 as the court considers just.

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

19 Enacting section 2. This amendatory act does not take effect
20 unless Senate Bill No. ____ or House Bill No. 4821 (request no.
21 02634'17 *) of the 99th Legislature is enacted into law.