

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 2
CONSTRUCTION AND GENERAL PROVISIONS

700.1201 Purposes; rules of construction.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1202 Execution of documents; signing or witnessing documents by 2-way real-time audiovisual technology; requirements; good faith; applies April 30, 2020 until July 1, 2021.

Sec. 1202. (1) Notwithstanding anything in this act to the contrary, the act of signing or witnessing the execution of a document or instrument under this act, including, but not limited to, a will under article II, a disclaimer under section 2903, a funeral representative designation, a parental appointment of a guardian of a minor under section 5202, an appointment of a guardian of a legally incapacitated individual under section 5301, a durable power of attorney under section 5501, or a patient advocate designation is satisfied by use of a 2-way real-time audiovisual technology if all of the following requirements are met:

(a) The 2-way real-time audiovisual technology must allow direct, contemporaneous interaction by sight and sound between the signatory and the witnesses.

(b) The interaction between the signatory and the witnesses must be recorded and preserved by the signatory or the signatory's designee for a period of at least 3 years.

(c) The signatory must affirmatively represent either that the signatory is physically situated in this state, or that the signatory is physically located outside the geographic boundaries of this state and that either of the following applies:

(i) The document or instrument is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of this state.

(ii) The document or instrument involves property located in the territorial jurisdiction of this state or a transaction substantially connected to this state.

(d) The signatory must affirmatively state during his or her interaction with the witnesses on the 2-way real-time audiovisual technology what document they are executing.

(e) Each title page and signature page of the document or instrument being witnessed must be shown to the witnesses on the 2-way real-time audiovisual technology in a manner clearly legible to the witnesses, and every page of the document or instrument must be numbered to reflect both the page number of the document or instrument and the total number of pages of the document or instrument.

(f) Each act of signing the document or instrument must be captured sufficiently up close on the 2-way real-time audiovisual technology for the witnesses to observe.

(g) The signatory or the signatory's designee must transmit by facsimile, mail, or electronic means a legible copy of the entire signed document or instrument directly to the witnesses within 72 hours after it is executed.

(h) Within 72 hours after receipt, the witnesses must sign the transmitted copy of the document or instrument as a witness and return the signed copy of the document or instrument to the signatory or the signatory's designee by facsimile, mail, or electronic means.

(i) The document or instrument is either of the following:

(i) In writing.

(ii) A record that is readable as text at the time of signing.

(2) The rights or interests of a person that relies in good faith and without actual notice that a document or instrument described in subsection (1) was executed on or after April 30, 2020 and before July 1, 2021, but was not executed in accordance with subsection (1) are not impaired, challenged, or terminated on that basis alone.

(3) Compliance with this section is presumed. A person challenging a document or instrument described in

and executed in accordance with subsection (1) may overcome the presumption by establishing, by clear and convincing evidence, that the signatory or a witness intentionally failed to comply with the requirements under subsection (1).

(4) This section applies to a document or instrument described in subsection (1) executed on or after April 30, 2020 and before July 1, 2021.

(5) As used in this section:

(a) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(b) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(c) "Sign" or "signing" means with present intent to authenticate or adopt a record to do either of the following:

(i) Execute or adopt a tangible symbol.

(ii) Affix to or logically associate with the record an electronic symbol or process.

History: Add. 2020, Act 246, Imd. Eff. Nov. 5, 2020;—Am. 2020, Act 338, Imd. Eff. Dec. 29, 2020.

Popular name: EPIC

700.1203 Supplementary general principles of law applicable; construction against implied repeal.

Sec. 1203. (1) Unless displaced by the particular provisions of this act, general principles of law and equity supplement this act's provisions.

(2) This act is a general act intended as a unified coverage of its subject matter and a part of it shall not be considered impliedly repealed by subsequent legislation if that result can reasonably be avoided.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1205 Discovery and remedies for fraud, embezzlement, conversion, or withholding of assets.

Sec. 1205. (1) The court may order a person to appear before the court and be examined upon the matter of a complaint that is filed with the court under oath by a fiduciary, beneficiary, creditor, or another interested person of a decedent's or ward's trust or estate alleging any of the following:

(a) The person is suspected of having, or has knowledge that another may have, concealed, embezzled, conveyed away, or disposed of the trustee's, decedent's, or ward's property.

(b) The person has possession or knowledge of a deed, conveyance, bond, contract, or other writing that contains evidence of, or tends to disclose, the right, title, interest, or claim of the trustee, decedent, or ward to any of the trust or estate.

(c) The person has possession or knowledge of a decedent's last will.

(2) If the person ordered under subsection (1) refuses to appear and be examined, or refuses to answer the interrogatories asked of the person that relate to the complaint, the judge may by warrant commit the person to the county jail to remain in custody until that person submits to the order of the court.

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. An action under this subsection shall be commenced within 2 years after the discovery of the fraud, but an action shall not be brought against a person that is not a perpetrator of the fraud later than 5 years after the time of the fraud's commission. This section does not affect a remedy relating to fraud perpetrated against a decedent during his or her lifetime that affects the succession of the decedent's estate.

(4) If a person embezzles or wrongfully converts a decedent's property before letters of authority are granted, or refuses, without colorable claim of right, to transfer possession of the decedent's property to the personal representative upon demand, that person is liable in an action brought by the personal representative for the benefit of the estate for double the value of the property embezzled, converted, or withheld.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1207 Evidence of death or status.

Sec. 1207. In addition to the rules of evidence in courts of general jurisdiction, the court shall determine death or status in accordance with the following:

(a) Death occurs when an individual is determined to be dead under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034.

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the decedent's identity and of the fact, place, date, and time of the decedent's death.

(c) A certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the individual's status and of the dates, circumstances, and places disclosed by the record or report.

(d) In the absence of prima facie evidence of death under subdivision (b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(e) The fact of death may be established under the procedure prescribed in section 1208 to establish the death of an individual described in that section.

(f) At the hearing upon the petition, the court upon its own motion may, or upon motion of an interested person shall, impanel a jury as provided by law. If it is established by a preponderance of the evidence presented at the hearing that an accident or disaster occurred in which the individual named in the petition was killed or may be presumed to have died, the court shall enter an order that establishes the location of the accident or disaster, the date of death, and, if possible, the time of death and that states that the individual is dead.

(g) A certified copy of an order issued under this section is sufficient when presented to the medical examiner for the preparation of a certificate of death. The medical examiner shall forward the completed certificate of death to the state registrar. The state registrar shall register the death as provided in section 2845 of the public health code, 1978 PA 368, MCL 333.2845. The state registrar shall forward a copy of the registered death record to the local registrar of the place where the death occurred as established under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1208 Procedure to establish death of accident or disaster victim.

Sec. 1208. (1) The procedure to establish the death of an individual who is an accident or disaster victim and whose remains have disappeared or are unidentifiable is as follows:

(a) If an accident or disaster occurs that apparently causes the death of the individual described in this section, any of the following individuals may petition the court for a determination of the cause and date of the presumed decedent's death:

(i) The medical examiner, sheriff, or prosecutor of a county described in subdivision (b).

(ii) The spouse or a next of kin, heir at law, devisee, personal representative named in a will, or creditor or debtor of the presumed decedent.

(b) Venue for a proceeding under this section is in 1 of the following:

(i) The court in a county in which the accident or disaster or any part of the accident or disaster occurs.

(ii) If the accident or disaster occurs upon or within the Great Lakes or their connecting waters, the court in a county adjacent to the scene of the accident or disaster.

(iii) If the accident or disaster did not occur in Michigan or adjoining waters, the court in the county of the presumed decedent's domicile.

(c) A petition to determine the cause and date of death as provided in this section shall not be filed less than 63 days or more than 7 years after the occurrence of the accident or disaster.

(d) A petition under this section shall set forth the facts and circumstances concerning the accident or disaster, the reasons for the belief that the presumed decedent died in the accident or disaster, that the presumed decedent has disappeared or is unidentifiable, and the names and addresses of all individuals known or believed to be heirs at law of the presumed decedent.

(e) Upon the filing of a petition under this section, the court shall fix the time and place for a hearing. The petitioner shall give or cause to be given notice of the hearing as provided by supreme court rule.

(2) An individual whose death is not otherwise established under this section or section 1207, who is absent for a continuous period of 5 years during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence to determine that death occurred earlier.

(3) In the absence of evidence disputing the time of death stated on a document described in section 1207(b), (c), or (g), a document described in section 1207(b), (c), or (g) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is

determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1209 Acts by holder of power of appointment.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.1210 Cost-of-living adjustment.

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, and 2405, and the specific dollar amounts stated in sections 3982 and 3983 before those sections were amended by the amendatory act that added section 1215, apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts must be multiplied by the 1997 cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) Before January 1, 2024, the specific amounts stated in sections 2519, 3605, 3916, 3918, 3981, and 5102, and the specific amounts stated in sections 3982 and 3983 as amended by the amendatory act that added section 1215, apply to those sections. Beginning January 1, 2024, those specific dollar amounts must be multiplied by the 2023 cost-of-living adjustment factor for the calendar year in which the decedent dies.

(3) 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 subsections (1) and (2) 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 must be rounded to the nearest \$1,000.00 amount.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.1211 Court personnel prohibited from providing legal advice.

Sec. 1211. Court personnel shall not provide or offer to provide legal advice or legal counsel to a fiduciary or an interested person and shall not complete a form, petition, or document for a fiduciary or interested person. This section does not prohibit the court from providing general information, blank forms, and information concerning the preparation of a form provided by the court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1212 Fiduciary relationship.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1213 Reference to unified credits, exemption, or deductions.

Sec. 1213. If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero or the lowest possible amount payable by describing a portion or amount measured by reference to the unified credit, the exemption equivalent, other credits, or other deductions, then unless specifically stated otherwise, the reference to the credits, exemption, or deductions shall be considered to include a reference to the family-owned business deduction available under section 2057 of the internal revenue code of 1986, 26 USC 2057, if that deduction is elected. Unless specifically stated otherwise, and subject to section 2723, the reference to the unified credit or exemption equivalent, or to the family-owned business deduction, shall be considered to refer to the credit, exemption, or deduction as it exists at the time of death of the individual.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2010, Act 224, Imd. Eff. Dec. 10, 2010.

Popular name: EPIC

700.1214 Fiduciary; prohibited conduct.

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.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1215 Notice or knowledge of facts.

Sec. 1215. (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 only from the time the information was received by an employee having responsibility to act 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 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 that would be materially affected by the information.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.1216 Governing instrument; substantial gift to drafting attorney; void; exceptions; definitions.

Sec. 1216. (1) Any part of a governing instrument that directly or indirectly makes a substantial gift to an attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument is void unless the attorney who drafted the governing instrument or the person related to the attorney who drafted the governing instrument is related to the individual making the substantial gift.

(2) This section does not apply to a provision in a governing instrument appointing the attorney who drafted the governing instrument, or a person related to the attorney who drafted the governing instrument, as a fiduciary.

(3) A provision in a governing instrument purporting to waive or otherwise avoid the application of this section is unenforceable.

(4) If a purchaser or lender for value acquires property distributed in kind or a security interest in property from a person that has received a substantial gift pursuant to a part of a governing instrument that is void under subsection (1), the purchaser or lender takes title free of any claims arising under, and incurs no personal liability by reason of, this section. This section does not directly or indirectly impose liability on a person that honors or relies on a part of a governing instrument that is void under subsection (1) and that contains or effectuates a substantial gift, unless the person has knowledge that the part of the governing instrument is void.

(5) If a part of a governing instrument is void under subsection (1), the part that is void is severable and does not affect any other part of the governing instrument that can be given effect, including a term that makes an alternate or substitute gift. If the part of the governing instrument that is void under subsection (1) cannot be severed, the entire governing instrument is void. For a power of appointment, this section does not affect the power to appoint in favor of persons other than the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument.

(6) If the court determines that an attorney who drafted the governing instrument disguised or attempted to disguise a substantial gift, to the attorney who drafted the governing instrument or a person related to the attorney who drafted the governing instrument, as a conveyance for consideration for less than fair market value, the court may find the conveyance void under subsection (1).

(7) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law. A part of a governing instrument that is not void under subsection (1) may be challenged under other legal grounds.

(8) This section applies only to a governing instrument executed after the effective date of the amendatory act that added this section.

(9) For purposes of this section, a person is related to an individual if, at the time the attorney who drafted the governing instrument prepared or supervised the preparation or execution of the governing instrument, the person is any of the following:

- (a) A spouse of the individual.
- (b) A lineal ascendant or descendant of the individual or the individual's spouse.
- (c) A sibling of the individual.
- (d) A spouse of the individual described in subdivision (b) or (c).

(10) For purposes of this section, an organization is related to an attorney if the attorney owns a 50% or greater interest in the organization or otherwise controls the organization.

(11) As used in this section:

(a) "Attorney who drafted the governing instrument" means an individual to whom both of the following apply:

(i) The individual is or was licensed to practice law in this state or any other state, before or at the time the governing instrument was prepared or executed, or both.

(ii) The individual directly or indirectly prepared or supervised the preparation, execution, or both, of the governing instrument. For purposes of this subparagraph, among other ways, the individual is considered to have prepared, or supervised the execution of, the governing instrument if the preparation, or supervision of the execution, of the governing instrument was performed by an employee, subordinate, partner, co-owner, or other person or lawyer employed by the same firm or company as the individual as of the time of preparation or execution, or both.

(b) "Gift" includes an inter vivos gift, a testamentary transfer of property, and the power to make the testamentary transfer regardless of any of the following:

- (i) Whether the gift or testamentary transfer is outright or in trust.
- (ii) When the gift or testamentary transfer is to take effect.
- (iii) Whether the power is held in a fiduciary or nonfiduciary capacity.

(c) "Substantial gift" means a gift, the value of which exceeds \$5,000.00 as a result of a single governing instrument or 2 or more related governing instruments.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC