

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

Part 2

VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER, AND DEMAND FOR NOTICE

700.3201 Venue for first and subsequent estate proceedings; location of property.

Sec. 3201.

(1) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is 1 of the following:

(a) The county where the decedent was domiciled at the time of death.

(b) If the decedent was not domiciled in this state, in a county where property of the decedent was located at the time of death.

(2) Venue for a subsequent proceeding that is within the court's exclusive jurisdiction is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection (3), in section 856 of the revised judicature act of 1961, MCL 600.856, or by supreme court rule.

(3) If the first proceeding described in subsection (1) was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) On motion by a party or on the court's own initiative, a proceeding's venue may be changed to another county by court order for the convenience of the parties and witnesses, for the attorneys' convenience, or if an impartial trial cannot be had in the county where the action is pending.

(5) For the purpose of aiding determinations concerning location of property that may be relevant in cases involving nondomiciliaries, other than a debt evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, a debt is located where the debtor resides or, if the debtor is a person other than an individual, at the place where the debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

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

Popular Name: EPIC

700.3202 Appointment or testacy proceedings; conflicting claim of domicile in another state.

Sec. 3202.

If conflicting claims as to the decedent's domicile are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state shall stay, dismiss, or permit suitable amendment in the proceeding in this state unless it is determined that this state's proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced is determinative in this state's proceeding.

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

Popular Name: EPIC

700.3203 Priority among persons seeking appointment as a general personal representative.

Sec. 3203.

(1) For either formal or informal proceedings, subject to subsection (2), persons who are not disqualified have priority for appointment as a general personal representative in the following order:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.

(d) The decedent's surviving spouse.

(e) Other heirs of the decedent.

(f) After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.

(g) After 63 days after the decedent's death, or if the court determines exigent circumstances exist, the state or county public administrator if any of the following apply:

(i) No interested person applied or petitioned for appointment of a personal representative within 63 days or the number of days determined by the court under this subdivision after the decedent's death.

(ii) The decedent died apparently leaving no known heirs.

(iii) There is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate.

(2) An objection to the appointment of a personal representative may be made only in a formal proceeding. If an objection is made, the priorities prescribed by subsection (1) apply except in either of the following circumstances:

(a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, on petition of creditors, the court may appoint any qualified person.

(b) If a devisee or heir who appears to have a substantial interest in the estate objects to the appointment of a person whose priority is not determined by will, the court may appoint a person who is acceptable to the devisees and heirs whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value or, if no person is acceptable to these devisees and heirs, any suitable person.

(3) A person entitled to letters under subsection (1)(b) to (e) may nominate a qualified person to act as personal representative. A person may renounce his or her right to nominate or to an appointment by filing an appropriate writing with the court. If 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2018, Act 13, Eff. May 7, 2018 ;-- Am. 2020, Act 59, Imd. Eff. Mar. 10, 2020

Popular Name: EPIC

700.3204 Representation by conservator or guardian; appointment without priority; applicability of section and MCL 700.3203 to a general or successor personal representative.

Sec. 3204.

(1) A conservator of a protected individual's estate or, if there is no conservator, a guardian of a minor or legally incapacitated individual may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the devisees and heirs that the protected individual or ward would have if qualified for appointment.

(2) Except as provided in sections 3308(1)(f) and 3310, a person who does not have priority prescribed in section 3203(1)(a) to (f), including priority resulting from renunciation or nomination determined under this section or section 3203, shall be appointed only in a formal proceeding. The state or county public administrator must be appointed only in a formal proceeding. Before appointing the state or county public administrator or any other person without priority, the court shall determine that persons having priority have been notified of the proceedings and have failed to request appointment or to nominate another person for appointment, and that administration is necessary.

(3) A person is not qualified to serve as a personal representative if the person is either under the age of 18 or is a person whom the court finds unsuitable in formal proceedings.

(4) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except if the decedent's will nominates different persons to be personal representatives in this state and in the state of domicile. The domiciliary personal representative may nominate another person, who then has the same priority as the domiciliary personal representative.

(5) This section and section 3203 govern priority for appointment of a general personal representative or successor personal representative, but do not apply to the selection of a special personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2018, Act 13, Eff. May 7, 2018 ;-- Am. 2020, Act 59, Imd. Eff. Mar. 10, 2020
Popular Name: EPIC

700.3205 Demand for notice of order or filing concerning decedent's estate.

Sec. 3205.

A person who wants notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the decedent's death stating the decedent's name, the nature of the person's interest in the estate, and the address of the person or the person's attorney. If a proceeding is not pending at the time a demand is filed under this section, the person filing the demand must pay the fee required to commence a proceeding. The person filing a demand shall mail a copy of the demand to the decedent's attorney, if known, to the personal representative if one has been appointed, and to the personal representative's attorney. After filing the demand, the person is an interested person entitled to notice as provided in section 1401 and the other provisions of this act.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

700.3206 Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent's body; presumption; funeral representative designation; priority; "exercise their rights or powers under subsection (1)" defined; shared rights and powers; family member, personal representative, or nominated personal representative; guardian; special fiduciary or special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; person criminally charged with intentionally killing decedent; payment for costs; definitions.

Sec. 3206.

(1) Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (12), a funeral representative designated under subsection (2), a person with priority under subsections (3) to (5) or a person acting under subsection (6), (7), (8), or (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to retrieve from the funeral establishment and possess cremated remains of the decedent immediately after cremation. The handling, disposition, or disinterment of a body must be under the supervision of a person licensed to practice mortuary science in this state.

(2) Subject to section 1202, and except as otherwise provided in this subsection and subject to the priority in subsection (3), an individual 18 years of age or older who is of sound mind at the time a funeral representative designation is made may designate in writing another individual who is 18 years of age or older and who is of sound mind to have the rights and powers under subsection (1). All of the following apply to a funeral representative designation under this subsection:

(a) For purposes of this section and sections 3206a and 3206b, an individual who is named in a funeral representative designation to have the rights and powers described in subsection (1) is known as a funeral representative and an individual who makes a funeral representative designation is known as a declarant.

(b) A funeral representative designation under this subsection must be in writing, dated, and signed voluntarily by the declarant or signed by a notary public on the declarant's behalf under section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL 55.293. A funeral representative designation may be included in the declarant's will, patient advocate designation, or other writing. If a funeral representative designation is contained in an individual's will, the will is not required to be admitted to probate for the funeral representative designation to be valid. A funeral representative designation must be 1 or both of the following:

(i) Signed in the presence of and signed by 2 witnesses. A witness under this section may not be the funeral representative or an individual described in subdivision (c)(ii) to (iv). A witness shall not sign the funeral representative designation unless the declarant appears to be of sound mind and under no duress, fraud, or undue

influence.

(ii) Acknowledged by the declarant before a notary public, who endorses on the funeral representative designation a certificate of the acknowledgment and the true date of taking the acknowledgment.

(c) The following individuals may not act as a funeral representative for the declarant unless the individual is the surviving spouse or is a relative of the declarant:

(i) An officer, partner, member, shareholder, owner, representative, or employee of a funeral establishment that will provide services to the declarant.

(ii) A health professional, or an employee of or volunteer at a health facility or veterans facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the declarant's death, or a partner, member, shareholder, owner, or representative of the health facility where medical treatment or nursing care was provided.

(iii) An officer, partner, member, shareholder, owner, representative, or employee of a cemetery at which the declarant's body will be interred, entombed, or inurned.

(iv) An officer, partner, member, shareholder, owner, representative, or employee of a crematory that will provide the declarant's cremation services.

(3) The following have the rights and powers under subsection (1) in the following order of priority:

(a) If the decedent was a service member at the time of the decedent's death, a person designated to direct the disposition of the service member's remains according to a statute of the United States or regulation, policy, directive, or instruction of the Department of Defense.

(b) A funeral representative designated under subsection (2).

(c) The surviving spouse.

(d) The individual or individuals 18 years of age or older in the following order of priority:

(i) The decedent's children.

(ii) The decedent's grandchildren.

(iii) The decedent's parents.

(iv) The decedent's grandparents.

(v) The decedent's siblings.

(vi) A descendant of the decedent's parents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(vii) A descendant of the decedent's grandparents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(4) If the individual or individuals with the highest priority as determined under subsection (3) cannot be located after a reasonable effort to contact and inform them of the decedent's death within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, affirmatively decline to exercise their rights or powers under subsection (1), or fail to exercise their rights or powers under subsection (1) within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under subsection (3). If the individual or each of the individuals in an order of priority as determined under this subsection similarly affirmatively declines or fails to exercise his or her rights or powers within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, or cannot be located within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights or powers under subsection (1) pass to an individual or individuals in the next order of priority under subsection (3) who notify the funeral establishment in possession of the decedent's body of their decision to exercise their rights or powers under subsection (1). For purposes of this subsection only, "exercise their rights or powers under subsection (1)" means providing the person that holds a license under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, in possession of the decedent's body with authorization to bury or cremate the decedent's body.

(5) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (3) or (4), the rights and powers must be exercised as decided by a majority of the individuals who can be located after reasonable efforts. If a majority cannot agree, any of the individuals may file a petition under section 3207.

(6) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), and if subsection (7) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(7) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection

(1), or can be located after a sufficient attempt as described in subsection (10), if the decedent died intestate, and if subsection (7) does not apply, a special fiduciary appointed under section 1309 or a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(9) If there is no person under subsections (3) to (8) to exercise the rights and powers under subsection (1), or if there is a person under subsections (3) to (8) to exercise the rights and powers under subsection (1) and the person fails to exercise the rights and powers under subsection (1) within 14 days after the decedent's death, 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

(a) Unless subdivision (b) applies, the medical examiner for the county where the decedent was domiciled at the time of his or her death.

(b) If the decedent was incarcerated in a state correctional facility at the time of his or her death, the director of the department of corrections or the designee of the director.

(10) An attempt to locate a person described in subsection (3) or (4) is sufficient if a reasonable attempt is made in good faith by any of the following to contact the person at his or her last known address, telephone number, or email address:

(a) A family member, personal representative, or nominated personal representative of the decedent.

(b) A health facility or veteran's facility that provided medical treatment to the decedent during the final illness or immediately before the decedent's death.

(11) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(12) An individual who has been criminally charged with the intentional killing of the decedent shall not exercise a right under subsection (1) while the charges are pending.

(13) Except as otherwise provided in this subsection, a person who has the rights and powers under subsection (1) and who exercises the right over the disposition of the decedent's body must ensure payment for the costs of the disposition through a trust, insurance, a commitment by another person, a prepaid contract under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or other effective and binding means. To the extent payment is not ensured under this subsection, the person described in this subsection is liable for the costs of the disposition. This subsection does not apply to a person who exercises the rights and powers under subsection (1) as provided in subsection (8) or (9).

(14) As used in this section:

(a) "Armed forces" means the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as part of the Armed Forces of the United States.

(b) "Health facility" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(c) "Health professional" means that term as defined in section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

(d) "Medical treatment" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(e) "Michigan National Guard" means that term as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

(f) "Nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

(g) "Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan National Guard.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006 ;-- Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008 ;-- Am. 2012, Act 63, Imd. Eff. Mar. 22, 2012 ;-- Am. 2016, Act 57, Eff. June 27, 2016 ;-- Am. 2020, Act 246, Imd. Eff. Nov. 5, 2020 ;-- Am. 2022, Act 157, Imd. Eff. July 19, 2022

Popular Name: EPIC

700.3206a Designation of successor individual as funeral representative.

Sec. 3206a.

(1) A declarant may designate in the funeral representative designation a successor individual as a funeral representative who may exercise the rights and powers described in section 3206(1) if the first individual named as funeral representative does not accept, is incapacitated, resigns, or is removed.

(2) An individual designated a funeral representative accepts the designation as funeral representative by signing

an acceptance of funeral representative, or by acting as the funeral representative.

(3) The authority under a funeral representative designation is exercisable by a funeral representative only after the death of the declarant.

(4) Except as provided in the funeral representative designation, a funeral representative shall not delegate his or her powers to another individual.

(5) On request of the funeral establishment, the funeral representative shall provide a copy of the funeral representative designation to the funeral establishment.

History: Add. 2016, Act 57, Eff. June 27, 2016

Popular Name: EPIC

700.3206b Revocation of funeral representative designation.

Sec. 3206b.

A funeral representative designation is revoked by 1 or more of the following:

(a) Unless a successor funeral representative has been designated, any of the following:

(i) The funeral representative's resignation.

(ii) The funeral representative cannot be located after reasonable efforts by the decedent's family or funeral establishment.

(iii) The funeral representative refuses to act within 48 hours after receiving notice of the decedent's death.

(b) The declarant's revocation of the funeral representative designation. The declarant's revocation of the funeral representative designation must be in writing and signed in the manner as provided in section 3206(2).

(c) A subsequent funeral representative designation that revokes the prior funeral representative designation either expressly or by inconsistency.

History: Add. 2016, Act 57, Eff. June 27, 2016

Popular Name: EPIC

700.3207 Petition; venue; hearing; date; notice; service; funeral establishment as petitioner; factors to be considered in court decision; embalming of decedent's body.

Sec. 3207.

(1) One or more of the following may petition the court to resolve a disagreement described in section 3206(5) or rebut the presumption under section 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(c) An individual other than a person with priority under section 3206(3) to (5) or acting under section 3206(6), (7), (8), or (9).

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date must be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing must be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(3) and (4), unless the court orders that service on every such individual is not required. Unless an individual cannot be located after a reasonable good-faith effort has been made to contact the individual, service must be made on the individual personally or in a manner reasonably designed to give the individual notice. Notice of the hearing must include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing may waive his or her rights. If written waivers from all persons entitled to notice are filed, the court may immediately hear the petition. The court may waive or modify the notice and hearing requirements of this subsection if the decedent's body must be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and

reasonable attorney fees in bringing the proceeding must be included in the reasonable funeral and burial expenses under section 3805(1)(b) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

(d) Whether the decedent executed a funeral representative designation under section 3206(2) or a designation described in section 3206(3)(a).

(e) If the decedent was married at the time of his or her death, whether the decedent's spouse was physically and emotionally separated from the decedent at the time of his or her death and had been separated for a period of time that clearly demonstrates an absence of due affection, trust, and regard between the spouse and the decedent.

(6) Before the court makes a decision under subsection (5), and if refrigeration is not reasonably available, the funeral establishment that has custody of the decedent's body may embalm the decedent's body.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006 ;-- Am. 2010, Act 325, Imd. Eff. Dec. 21, 2010 ;-- Am. 2016, Act 57, Eff. June 27, 2016

Compiler's Notes: 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

700.3208 Repealed. 2016, Act 57, Eff. June 27, 2016.

Compiler's Notes: The repealed section pertained to filing action to challenge presumption.

Popular Name: EPIC

700.3209 Funeral establishment not civilly liable; reliance on funeral representative designation.

Sec. 3209.

(1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not filing a petition under section 3207.

(2) A funeral establishment, cemetery, or crematory may rely on the designation of a funeral representative under section 3206(2), the designation of a person as described in section 3206(3)(a), the order of priority determined under section 3206(3) and (4), or a court order under section 3207 that determines who may exercise the rights and powers under section 3206(1). A funeral establishment, cemetery, or crematory is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to exercise those rights and powers. A cemetery or crematory may rely on a funeral establishment's representation as to who may exercise the rights and powers under section 3206(1). A funeral establishment, cemetery, or crematory does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased or by a person other than a family member that the funeral establishment, cemetery, or crematory reasonably believes knows the existence or location of the relatives of the deceased or the funeral representative. As used in this subsection, "information" includes, but is not limited to, an affirmation that reasonable efforts to contact the individual or individuals with the rights and powers under section 3601(1) and to inform the individual or individuals of the death have been made without success.

(3) A funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, or crematory, or an officer or employee of a funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, or crematory may rely on sections 3206 and 3207 and this section and the instructions of a person described in section 3206(2) to (9) or a person that the court determines under section

3207 has rights and powers under section 3206(1) regarding funeral arrangements and the handling, disposition, or disinterment of a body and is not civilly liable to any person for the reliance if the reliance was in good faith.

History: Add. 2006, Act 299, Imd. Eff. July 20, 2006 ;-- Am. 2012, Act 63, Imd. Eff. Mar. 22, 2012 ;-- Am. 2016, Act 57, Eff. June 27, 2016

Popular Name: EPIC