

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

PART 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

700.3901 Successors' rights in absence of administration.

Sec. 3901. In the absence of administration, the decedent's heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. A devisee may establish title by the probated will to devised property. An individual entitled to property by homestead allowance, exemption, or intestacy may establish title to the property by proof of the decedent's ownership, the decedent's death, and the individual's relationship to the decedent. A successor takes subject to charges for administration, including the creditors' claims and the surviving spouse's and dependent children's allowances, and subject to the rights of others resulting from abatement, retainer, advancement, or ademption.

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

Popular name: EPIC

700.3902 Distribution; order in which assets appropriated; abatement.

Sec. 3902. (1) Subject to subsections (2) and (3) and except as provided in section 2301(3) or 2302(1)(b)(iv), distributees' shares abate, without a preference or priority between real and personal property, in the following order:

- (a) Property not disposed of by the will.
- (b) Residuary devisees.
- (c) General devisees.
- (d) Specific devisees.

(2) For purposes of abatement, a general devise charged on specific property is a specific devise to the extent of the value of that specific property and, upon the failure or insufficiency of the property on which the devise is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amount of property each beneficiary would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses a different order of abatement, the will controls. If the testamentary plan or the devise's express or implied purpose would be defeated by the order of abatement stated in subsection (1), the distributees' shares abate as found necessary to give effect to the testator's intention.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

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

Popular name: EPIC

700.3903 Indebtedness; set-off.

Sec. 3903. The amount of a successor's noncontingent indebtedness to the estate if due, or its present value if not due, shall be offset against the successor's interest. However, the successor has the benefit of a defense that would be available to the successor in a direct proceeding for recovery of the debt.

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

Popular name: EPIC

700.3904 Interest on general pecuniary devise.

Sec. 3904. Unless a contrary intent is indicated by the will, a general pecuniary devise bears interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment.

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

Popular name: EPIC

700.3905 Penalty clause for contest.

Sec. 3905. In accordance with section 2518, a provision in a will purporting to penalize an interested person for contesting the will or instituting another proceeding relating to the estate shall not be given effect if probable cause exists for instituting a proceeding contesting the will or another proceeding relating to the estate.

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

Popular name: EPIC

700.3906 Distribution in kind; valuation; method.

Sec. 3906. (1) Unless the will indicates a contrary intention, the distributable property of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the property devised to him or her, and a spouse or child who selects particular estate property as provided in section 2404 shall receive the property selected.

(b) A homestead or family allowance, or devise of a stated sum of money, may be satisfied in kind provided all of the following are true:

(i) The person entitled to the payment does not demand payment in cash.

(ii) The property distributed in kind is valued at fair market value as of its distribution date.

(iii) A residuary devisee does not request that the property in question remain a part of the estate residue.

(c) The residuary estate may be distributed in any equitable manner.

(2) Property described in subsection (1)(b) shall be valued in accordance with the following:

(a) A security regularly traded on recognized exchanges, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day before distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day.

(b) Property consisting of money owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the amount due with accrued interest or discounted to the distribution date.

(c) Property that does not have a readily ascertainable value is valued as of a date not more than 28 days before the distribution date, if otherwise reasonable.

(d) For purposes of facilitating distribution, the personal representative may ascertain property value as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the property may have been previously appraised.

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

Popular name: EPIC

700.3907 Pecuniary bequests and trust interests.

Sec. 3907. (1) This section governs a distribution in kind in satisfaction, wholly or partly, of a pecuniary bequest or transfer in trust of a pecuniary amount.

(2) Whether a devise or transfer in trust is pecuniary in character depends upon the testator's or settlor's intention.

(3) If the fiduciary elects to satisfy wholly or partly in kind a pecuniary devise or transfer in trust of a pecuniary amount, unless the governing instrument otherwise expressly provides, the property the fiduciary selects for that purpose shall be valued at its value on the distribution date.

(4) If a will or a trust agreement requires the personal representative or trustee to value the property the fiduciary selects for distribution as of a date other than the distribution date, unless the governing instrument otherwise expressly provides, the property selected to satisfy the pecuniary devise or transfer in trust, together with any cash distributed, shall have an aggregate value on the distribution date amounting to not less than, and to the extent practicable to not more than, the amount of the devise or transfer in trust as stated in, or determined by, the formula stated in the governing instrument.

(5) As used in this section, "pecuniary bequest" and "transfer in trust of a pecuniary amount" mean a devise in a will or a transfer under a trust agreement to, or for the benefit of, the testator's or settlor's spouse of a specific amount of money which amount is either expressly stated in the instrument or determinable by means of a formula that is stated in the instrument.

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

Popular name: EPIC

700.3908 Proposed distribution.

Sec. 3908. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of a distributee to object to the proposed distribution on the basis of the kind or value of property the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in a writing received by the personal representative within 28 days after mailing or delivery of the proposal.

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

Popular name: EPIC

700.3909 Distribution in kind; evidence.

Sec. 3909. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the property to the distributee as evidence of the distributee's title to the property.

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

Popular name: EPIC

700.3910 Distribution; right or title of distributee.

Sec. 3910. Proof that a distributee has received an instrument or deed of distribution of property in kind, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed property, as against all persons interested in the estate, except that the personal representative may recover the property or its value if the distribution was improper.

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

Popular name: EPIC

700.3911 Improper distribution; liability of distributee.

Sec. 3911. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property that is improperly distributed or paid, or a claimant that is improperly paid, is liable to return the property improperly received and its income since distribution if the recipient has the property. If the recipient does not have the property, then the recipient is liable to return the value as of the disposition date of the property improperly received and its income and gain received by the recipient.

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

Popular name: EPIC

700.3912 Purchasers from distributees protected.

Sec. 3912. (1) If property distributed in kind or a security interest in that property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such a distributee, the purchaser or lender takes title free of rights of an interested person in the estate and incurs no personal liability to the estate, or to an interested person, whether or not the distribution was proper or supported by court order or the personal representative's authority was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself or herself, as well as a purchaser from or lender to another distributee or his or her transferee. To be protected under this section, a purchaser or lender does not need to inquire whether a personal representative acted properly making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

(3) A recorded instrument described in this section on which an exemption listed in section 5 of 1966 PA 135, MCL 207.505, or section 6 of the state real estate transfer tax act, 1993 PA 330, MCL 207.526, is not noted is prima facie evidence that the transfer is made for value. Notwithstanding this section, a purchaser or lender takes title free of the lien for Michigan estate tax only to the extent provided by section 43 of the Michigan estate tax act, 1899 PA 188, MCL 205.243.

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

Popular name: EPIC

700.3913 Partition for purpose of distribution.

Sec. 3913. If 2 or more heirs or devisees are entitled to distribution of an undivided interest in estate property, the personal representative or 1 or more of the heirs or devisees may petition the court to make partition before the formal or informal closing of the estate. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by law for a civil action of partition. The court may direct the personal representative to sell property that cannot be partitioned without prejudice to the owners and that cannot conveniently be allotted to 1 party.

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

Popular name: EPIC

700.3914 Agreements among successors to decedent binding on personal representative.

Sec. 3914. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree

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

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

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

Popular name: EPIC

700.3915 Distribution to trustee.

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

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

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

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

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

Popular name: EPIC

700.3916 Disposition of unclaimed assets.

Sec. 3916. (1) In exchange for suitable receipts and following a court order if the administration is supervised, a fiduciary making final distribution shall deposit with the county treasurer the money or personal property the fiduciary has that belongs to any of the following:

(a) An heir, devisee, trust beneficiary, or claimant whose whereabouts the fiduciary cannot ascertain after diligent inquiry.

(b) An heir, devisee, trust beneficiary, or claimant who declines to accept the money awarded to the person.

(c) A person if the right of the person is the subject of appeal from an order of the court.

(2) As an alternative to deposit with the county treasurer under subsection (1), if the amount involved for a person described under subsection (1)(a) or (b) is \$1,000.00 or less, the fiduciary may distribute the amount as part of the residue of the decedent's estate or to those entitled to the trust fund balance. If the fiduciary has property other than money that belongs to a person described in subsection (1)(a) or (b), the fiduciary may sell the property for the purpose of reducing it to money to be deposited with the county treasurer.

(3) The fiduciary shall retain or file the county treasurer's receipt for property deposited under this section in the same fashion as though the fiduciary paid or delivered the money or property to, and received a receipt from, the heir, devisee, trust beneficiary, or claimant.

(4) The dollar amount described in this section must be adjusted as provided in section 1210.

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

Popular name: EPIC

700.3917 Duties of county treasurer.

Sec. 3917. (1) The county treasurer shall receive and safely keep money deposited under authority of this act in a separate fund and keep a separate account for each distributee or claim. The county treasurer shall

deposit the money in a county depository at the current rate of interest, shall pay out from the fund upon the order of the court, and shall turn over any surplus left in the treasurer's hands at the termination of the treasurer's term of office to the treasurer's successor. The county treasurer shall, at the end of each year, render to the court, and to the county board of commissioners, a true account of that money.

(2) For the care of the money received under authority of this act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds \$1,500.00, in which case the county treasurer shall take \$15.00 plus 1/2 of 1% of the excess of the amount over \$1,500.00.

(3) A person entitled to the money may petition the court having jurisdiction for an order directing the county treasurer to pay over money that is deposited with the county treasurer. On receiving the petition, the court shall make an order as to notice of the hearing as the court considers proper. On satisfactory proof being made to the court of the claimant's right to the money, the court shall order the county treasurer to pay the money and interest earned on the money, less the fee of the county treasurer, to the claimant.

(4) If a person whose whereabouts are unknown or who declined to accept the money does not make a claim to money deposited by a fiduciary before the expiration of 3 years after the deposit date, the money and interest earned on the money that would be distributed under this section to the person, if alive, less expenses, must be distributed by court order to each person who would be entitled to the money if the person had died before the date that he or she became entitled to the money, and the person is forever barred from all claim or right to the money.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.3918 Distribution to person under disability.

Sec. 3918. (1) A personal representative may discharge the personal representative's obligation to distribute to an individual under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to an individual under legal disability as authorized by section 5102 or another statute. If the personal representative knows that a conservator has been appointed for an individual or that a proceeding for appointment of a conservator for the individual is pending, the personal representative is authorized to distribute only to the conservator. If the personal representative knows that a guardian of the estate of an individual with a developmental disability has been appointed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a proceeding for appointment of a guardian of the estate for the individual with the developmental disability is pending, the personal representative is authorized to distribute only to the guardian of the estate.

(3) If the heir or devisee is under legal disability other than minority, the personal representative is authorized to distribute to any of the following:

(a) A trustee appointed by the court under section 3915(4).

(b) An attorney in fact who has authority under a power of attorney to receive property for that individual.

(c) The spouse, parent, or other close relative with whom the individual under legal disability resides if both of the following are true:

(i) A conservator has not been appointed for the individual.

(ii) The distribution is in amounts not exceeding \$25,000.00 a year or property not exceeding \$25,000.00 in value, unless the court authorizes a higher amount or value.

(4) A person receiving money or property for an individual under legal disability shall use the money or property only for that individual's support and for reimbursement of out-of-pocket expenses for goods and services necessary for that individual's support. Excess money and property must be preserved for the individual's future support. The personal representative is not responsible for the proper use of money or property by the recipient if distribution is made under the authority of this section.

(5) The dollar amounts described in this section must be adjusted as provided in section 1210.

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

Popular name: EPIC

700.3919 Final distribution to domiciliary representative.

Sec. 3919. (1) If there is a personal representative of the decedent's domicile willing to receive it, a nonresident decedent's estate being administered by a personal representative appointed in this state shall be distributed to the domiciliary personal representative for the benefit of the decedent's successors unless any of the following apply:

(a) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified under the law of this state without reference to the law of the decedent's domicile.

(b) After reasonable inquiry, this state's personal representative is unaware of the existence or identity of a domiciliary personal representative.

(c) The court orders otherwise in a proceeding for a closing order under section 3952 or incident to the closing of a supervised administration.

(2) If subsection (1) is not applicable to an estate, distribution of the decedent's estate shall be made in accordance with the other provisions of this article.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.3920 Apportionment of death taxes.

Sec. 3920. (1) An estate, inheritance, or other death tax levied or assessed under the laws of this or another state, political subdivision, or country or under a United States revenue act concerning property included in the gross estate under the law, but excluding taxes for which sources of payment are provided within sections 2206, 2207, 2207A, 2207B, and 2603 of the internal revenue code, 26 USC 2206, 2207, 2207A, 2207B, and 2603, shall be apportioned in the following manner:

(a) If a part of the property concerning which the tax is levied or assessed passed under a will, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If any portion of that property passed under the will as a devise to be satisfied by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the residuary estate without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary estate is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of a tax attributable to the residuary estate shall be apportioned pro rata among the residuary beneficiaries based on the value of the residuary interests generating the tax. If a residuary interest is a temporary interest, the tax attributable to it shall be charged to principal and not apportioned between temporary and remainder interests.

(b) If a part of the property concerning which the tax is levied or assessed is held under the terms of an inter vivos trust, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If a portion of the trust is directed to pass or to be held in further trust by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the principal of the residuary share of the trust without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary share of the trust is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of tax attributable to the residuary share of the trust shall be charged as follows:

(A) The net amount of tax attributable to each residuary temporary interest shall be charged to that portion of residuary principal that supports the temporary interest without apportionment.

(B) The net amount of tax attributable to the balance of the residuary share shall be apportioned pro rata among the residuary beneficiaries by charge to the principal of their interest based on the value of the residuary interests.

(c) Except as otherwise directed by the governing instrument, tax liability remaining after the application of subdivisions (a) and (b), including, but not limited to, a tax imposed with respect to property passing by beneficiary designation, survivorship, or intestacy, or to an annuity not created under a will or an inter vivos trust, shall be apportioned pro rata among, and paid by, the recipients and beneficiaries of the properties or interests, based on the value of the properties and interests generating the tax. Except as otherwise directed by the governing instrument, with respect to a temporary interest not in trust, the amount charged to the recipients or beneficiaries shall not be apportioned between temporary and remainder interests, but shall be charged to and paid out of the principal of the property or fund.

(2) As used in this section and sections 3921 to 3923:

(a) "Governing instrument" means a will, trust agreement, or other document that controls the devolution of property at death with respect to which the tax is being levied.

(b) "Net estate" means the gross estate, as defined by the estate, inheritance, or death tax law of the particular state, country, or political subdivision whose tax is being apportioned, less the deductions allowed.

(c) "Temporary interest" means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events.

(d) "Value" means the pecuniary worth of the interest involved as finally determined for purposes of the tax then under consideration, without regard to a diminution of the interest by reason of the charge of a part of the tax.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.3921 Tax on separate interests; governing instrument provisions.

Sec. 3921. (1) Unless specific directions to that effect are contained in the governing instrument under which the fiduciary is acting, section 3920 shall not be construed to require the personal representative or other concerned fiduciary to pay an estate, inheritance, or other death tax levied or assessed by a foreign country.

(2) The net amount of tax attributable to the interests encompassed by subdivision (a), subdivision (b), or subdivision (c) of section 3920(1) considered separately shall be the part of the net amount of tax as finally determined, with any interest and penalties on that amount, as the value of the interests generating the tax and included in the subdivision bears to the amount of the net estate. However, for an inheritance or similar tax, the tax that is imposed on each beneficiary's interest, as determined under the law of the state, country, or political subdivision then under consideration, shall be considered the tax attributable to the interest. In prorating taxes within each subdivision of section 3920(1) based on the value of those interests generating the tax, each separate tax that an interest may incur shall be prorated in the same manner. In determining the proportion that each interest bears to the total value of all interests generating each tax, only interests generating that particular tax are considered. Property or interests generating a tax do not include property or interests, whether passing under a will, trust, or otherwise, to the extent the property or interest is exempt or is initially deductible from the gross estate, without regard to any subsequent diminution of the deduction by reason of the charge of a part of the tax to the property or interest.

(3) A direction in a governing instrument for tax allocation and payment in a manner different from that provided in sections 3920 to 3923 is effective to allocate and pay tax only from property whose devolution is subject to that instrument's control and with respect to which the tax is being levied. If the governing instrument was signed on or after September 6, 1963 and before April 1, 2000 and directs apportionment of taxes by reference to the uniform estate tax apportionment act, which was former 1963 PA 144, or by reference to another law of this state that was in effect when the instrument was executed, the apportionment rules provided in the referenced law control the apportionment of taxes under that governing instrument.

(4) A direction to allocate and pay tax contained in a will is effective to allocate and pay tax even if the will does not control the devolution of property at death with respect to which the tax is being levied, including a direction in a will to allocate and pay tax from a trust of which the testator was the settlor and that was revocable by the settlor, or would have been revocable if the settlor was not incapacitated, until the settlor's death. If there is a conflict between directions in a will to allocate and pay tax and the terms of another governing instrument, the directions in the will control.

(5) A tax apportionment based on the net estate under sections 3920 to 3923 shall be determined without regard to a diminution in deductions resulting from the charge of a part of the tax to a deductible interest.

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

Popular name: EPIC

700.3922 Credit for foreign tax paid; payment and recovery of tax; delayed distribution; court determination of apportionment.

Sec. 3922. (1) Unless the governing instrument provides otherwise, if a credit is given under the United States estate tax laws for a tax paid to another country or a political subdivision, the credit shall be apportioned under sections 3920 to 3923 among the recipients or interests finally charged with the payment of the foreign tax in reduction of a United States estate tax chargeable to the recipients or interests, whether or not the United States estate tax is attributable to the foreign interests. An excess of the credit shall be applied in reduction of the part of United States estate tax chargeable to the residue, and an excess of the credit over the United States estate tax chargeable to the residue shall be apportioned pro rata among those persons or interests finally charged with the balance of the payment of United States estate tax.

(2) Unless otherwise directed by the governing instrument, the personal representative shall pay the tax out of the estate, or if a personal representative is not acting under appointment, a person receiving or holding an interest generating the tax shall pay the tax. In a case in which property required to be included in the gross estate does not come into the personal representative's possession, the personal representative shall recover

from the following persons the proportionate amount of tax chargeable to them under this act:

(a) From the fiduciary in possession of the trust principal or of property subject to the power of appointment in cases in which inter vivos trust property or property subject to a power of appointment is included in the gross estate.

(b) In all other cases, from the recipients or beneficiaries of property or interests with respect to which the tax is levied or assessed.

(3) Subsection (2) does not authorize the recovery of taxes from a company issuing insurance included in the gross estate, or from a bank, trust company, savings and loan association, or similar institution with respect to an account in the name of the decedent and another person that passed by operation of law on the decedent's death. If the fiduciary brings an action to recover a share of tax apportioned to an interest not within the fiduciary's control, the judgment that the fiduciary obtains may include costs and reasonable attorney fees.

(4) A personal representative or other fiduciary is not required to transfer property until the amount of a tax due from the transferee is paid or, if apportionment of the tax has not been determined, until adequate security is furnished for the payment. The fiduciary is not required to distribute property that the fiduciary reasonably anticipates may be necessary to pay a state or federal tax and related interest or penalties.

(5) On petition of the person required to pay a tax, the probate court having jurisdiction over the administration of a decedent's estate may determine the apportionment of the tax. If there are no probate proceedings, on the petition of a person required to pay a tax, the probate court of the county where the decedent was domiciled at death shall determine the apportionment of the tax.

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

Popular name: EPIC

700.3923 Allocation of penalty and interest.

Sec. 3923. (1) If the probate court finds that it is inequitable to apportion taxes, credits, interest, and penalties in the manner provided in sections 3920 to 3922 because of special circumstances, the court may direct apportionment in the manner it finds equitable.

(2) If the probate court finds that the assessment of penalties and interest assessed in relation to a tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(3) In an action or proceeding to recover from a person interested in the estate the amount of a tax apportioned to the person in accordance with this act, the court's determination in respect to the apportionment is prima facie correct.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.3924 Survival and wrongful death actions; court approval of settlement and distribution.

Sec. 3924. (1) For the purpose of settling a claim as to which an action is not pending in another court for damages for wrongful death or for a claim existing under this state's laws relating to the survival of actions, if a personal representative petitions the court in writing asking leave to settle the claim and after notice to all persons who may be entitled to damages as provided in section 2922 of the revised judicature act of 1961, being section 600.2922 of the Michigan Compiled Laws, the court may conduct a hearing and approve or reject the settlement.

(2) The proceeds of a court settlement of a cause of action for wrongful death shall be distributed in accordance with all of the following:

(a) The personal representative shall file with the court a petition for authority to distribute the proceeds. Upon the filing of the petition, the court shall order a hearing.

(b) Unless waived, notice of hearing must be given to all persons who may be entitled to damages as provided in section 2922 of the revised judicature act of 1961. A notice under this subdivision must contain both of the following:

(i) The name and address of the personal representative and of the personal representative's attorney.

(ii) A statement that, to recover damages under this section, the person who may be entitled to damages must present a claim for damages to the personal representative on or before the date set for hearing on the petition for distribution of the proceeds, and that failure to present a claim for damages within the time provided bars the person from making a claim to any of the proceeds.

(c) If an interested person is a minor, disappeared person, or incapacitated individual for whom a fiduciary is not appointed, the court shall first appoint a fiduciary or guardian ad litem, and the notice as provided in subdivision (b) shall be given to the fiduciary or guardian ad litem.

(d) After a hearing on the personal representative's petition, the court shall order payment from the proceeds of the decedent's reasonable medical, hospital, funeral, and burial expenses for which the estate is liable. The proceeds shall not be applied to the payment of any other charges against the decedent's estate. The court shall then enter an order distributing the proceeds to those persons designated in section 2922 of the revised judicature act of 1961 who suffered damages and to the decedent's estate for compensation for conscious pain and suffering, if any, in the amount the court considers fair and equitable considering the relative damages sustained by each of the persons and the decedent's estate.

(e) If none of the persons entitled to the proceeds is a minor, disappeared person, or legally incapacitated individual and all of the persons entitled to the proceeds execute a sworn stipulation or agreement in writing in which each person's portion of the proceeds is specified, the court order shall be entered in accordance with the stipulation or agreement.

(f) A person who may be entitled to damages under this section must present a claim for damages to the personal representative on or before the date set for hearing on the petition for distribution of the proceeds. Failure to present a claim for damages within the time provided by this section bars the person from making a claim to any of the proceeds.

(g) If a claim for wrongful death is pending in another court, the procedures prescribed in section 2922 of the revised judicature act of 1961 are applicable to the distribution of proceeds of a settlement or judgment.

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

Popular name: EPIC