

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**  
Article III  
PROBATE OF WILLS AND ADMINISTRATION  
Part 1  
GENERAL PROVISIONS

**700.3101 Devolution of estate at death; restrictions.**

Sec. 3101.

An individual's power to leave property by will, and the rights of creditors, devisees, and heirs to his or her property, are subject to the restrictions and limitations contained in this act to facilitate the prompt settlement of estates. Upon an individual's death, the decedent's property devolves to the persons to whom the property is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, disclaimer, or other circumstances affecting devolution of a testate estate, or in the absence of testamentary disposition, to the decedent's heirs or to those indicated as substitutes for them in cases involving disclaimer or other circumstances affecting devolution of an intestate estate, subject to homestead allowance, family allowance, and exempt property, to rights of creditors, to the surviving spouse's elective share, and to administration.

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

**Popular Name:** EPIC

**700.3102 Validity of will by order of probate.**

Sec. 3102.

Except to collect assets under section 3983, to be effective to prove the transfer of property or to nominate a personal representative, a will must be declared valid by a register's order of informal probate or by a court's adjudication of probate.

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

**Popular Name:** EPIC

**700.3103 Necessity of appointment for administration.**

Sec. 3103.

Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a decedent's personal representative, a person must be appointed by the register or by court order, must qualify, and must be issued letters. The issuance of letters commences an estate's administration.

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

**Popular Name:** EPIC

**700.3104 Claim against decedent; necessity of administration.**

Sec. 3104.

(1) Except as otherwise provided in subsection (2), a proceeding to enforce a claim against a decedent's estate or

the decedent's successors shall not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, a proceeding or action to enforce a claim against the estate is governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 3955 or from a former personal representative individually liable as provided in section 3956.

(2) This act does not apply to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the creditor's security except as provided in part 8 of article III and part 6 of article VII.

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

**Popular Name:** EPIC

### **700.3105 Proceedings affecting devolution and administration.**

Sec. 3105.

A person interested in a decedent's estate may apply to the register for a determination in the informal proceedings provided in this article and may petition the court for orders in formal proceedings within the court's jurisdiction.

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

**Popular Name:** EPIC

### **700.3106 Proceedings within jurisdiction of court; service; jurisdiction over persons.**

Sec. 3106.

In a proceeding within the court's jurisdiction in which notice is required by this act or by court rule, and in a proceeding to construe a probated will or determine heirs that concerns an estate that has not been opened for administration, an interested person may be bound by court order with respect to property in, or subject to the laws of, this state by notice in conformity with section 1401. An order is binding on all who are given notice of the proceeding, even if fewer than all interested persons are notified.

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

**Popular Name:** EPIC

### **700.3107 Proceedings; scope; independence.**

Sec. 3107.

(1) Unless a proceeding involves supervised administration as described in part 5 of this article, the following apply:

(a) Each proceeding before the court or register is independent of any other proceeding involving the same estate.

(b) A petition for a formal court order may combine various requests for relief in a single proceeding if the order sought may be a final order and may be granted without delay.

(2) Except as required in this article for another proceeding, the following apply:

(a) A petition is not defective because it fails to embrace all matters that might then be the subject of a final order.

(b) A proceeding for probate of a will or an adjudication of no will may be combined with a proceeding for appointment of a personal representative.

(c) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

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

**Popular Name:** EPIC

**700.3108 Repealed. 2000, Act 54, Eff. Apr. 1, 2000.**

**Compiler's Notes:** The repealed section pertained to statutes of limitation on decedent's cause of action.

**Popular Name:** EPIC

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

### Part 3 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

#### **700.3301 Informal probate or appointment proceedings; application; contents.**

Sec. 3301.

(1) An application for informal probate or informal appointment shall be made by an interested person and directed to the register. If an application is not filed within 28 days after the decedent's death, a person that has a right or cause of action that cannot be enforced without administration or appointment may file an application. An applicant shall swear that the application is accurate and complete to the best of the applicant's knowledge and belief as to all of the following information:

(a) In an application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, all of the following:

(i) A statement of the applicant's interest.

(ii) The decedent's name, date of death, and age; the decedent's county and state of domicile at the time of death; and the names and addresses of the spouse, children, devisees, and heirs with the ages of those who are minors so far as known or ascertainable with reasonable diligence by the applicant.

(iii) If the decedent was not domiciled in the state at the time of the decedent's death, a statement showing venue.

(iv) A statement identifying and indicating the address of a personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated.

(b) In an application for informal probate of a will, in addition to the statements and information required by subdivision (a), all of the following:

(i) That the original of the decedent's last will is in the court's possession or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application.

(ii) That, to the best of the applicant's knowledge, the will was validly executed.

(iii) That, after the exercise of reasonable diligence, the applicant is unaware of an instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will.

(c) In an application for informal appointment of a personal representative to administer an estate under a will, all of the following:

(i) A description of the will by date of execution.

(ii) The time and place of probate or of the pending application for probate.

(iii) A statement adopting the statements in the application or petition for probate.

(iv) The name, address, and priority for appointment of the person whose appointment is sought.

(d) In an application for informal appointment of a personal representative in intestacy, in addition to the statements and information required by subdivision (a), all of the following:

(i) That, after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary

instrument relating to property located in this state under section 1301, or a statement why such an instrument of which the applicant is aware is not being probated.

(ii) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3203.

(e) In an application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status, all of the following:

(i) A reference to the order in the most recent testacy proceeding.

(ii) The name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted.

(iii) A description of the applicant's priority.

(f) In an application for appointment of a personal representative to succeed a personal representative who tenders a resignation as provided in section 3610 or whose appointment is terminated by death or removal, all of the following:

(i) A statement adopting the statements in the application or petition that led to the appointment of the person being succeeded, except as specifically changed or corrected.

(ii) The name and address of the person who seeks appointment as successor.

(iii) A description of the applicant's priority.

(2) By swearing to an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application or for perjury that may be instituted against the applicant.

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

**Popular Name:** EPIC

#### **700.3302 Informal probate; duty of register; effect of informal probate.**

Sec. 3302.

Upon receipt of an application requesting informal probate of a will and after making the findings required by section 3303, the register shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. A defect in an application or procedure relating to the application that leads to informal probate of a will does not render the probate void.

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

**Popular Name:** EPIC

#### **700.3303 Informal probate; proof and findings required.**

Sec. 3303.

(1) In an informal proceeding for original probate of a will, the register shall determine whether all of the following are true:

(a) The application is complete.

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief.

(c) The applicant appears from the application to be an interested person.

(d) On the basis of the statements in the application, venue is proper.

(e) An original, properly executed, and apparently unrevoked will is in the register's possession.

(f) That the application is not within section 3304.

(2) The register shall deny the application if the application indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under section 2502 or 2506 have been met shall be probated without further proof. In

other cases, the register may assume execution if the will appears to have been properly executed, or the register may accept a sworn statement of a person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will that was previously probated elsewhere may be granted at any time upon written application by an interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where the will was first probated.

(5) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under subsection (1) may be probated in this state upon receipt by the register of a properly authenticated copy of the will and a properly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

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

**Popular Name:** EPIC

#### **700.3304 Informal probate; unavailable in certain cases.**

Sec. 3304.

The register shall deny an application for informal probate if the probate relates to 1 or more of a known series of testamentary instruments, not including a will and 1 or more codicils to that will, the latest of which instruments does not expressly revoke the earlier.

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

**Popular Name:** EPIC

#### **700.3305 Informal probate; register not satisfied.**

Sec. 3305.

If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of section 3303 or 3304 or for another reason, the register may deny the application. A register's denial of informal probate is not an adjudication and does not preclude formal probate proceedings. If the application is denied, the register shall clearly state the reason for denial.

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

**Popular Name:** EPIC

#### **700.3306 Informal probate; notice requirements.**

Sec. 3306.

(1) Within 28 days after an informal probate is granted, the applicant shall give written information of the probate to the heirs, devisees, a person who demands it under section 3205, and other interested persons. The applicant also shall give information of the probate to the attorney general, public administration division, if the devisees under the will would not be entitled to share in the estate but for the terms of the will and the decedent died without leaving any known heirs.

(2) The information required by subsection (1) must include the applicant's name and address, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each person entitled to notice whose address is reasonably available to the applicant. There is no duty to give information as required by this section if a personal representative is appointed who is

required to give the written information required by section 3705. An applicant's failure to give information as required by this section is a breach of the applicant's duty to a person entitled to notice, but does not affect the validity of the probate.

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

#### **700.3307 Informal appointment proceedings; delay in order; duty of register; effect of appointment.**

Sec. 3307.

(1) Upon receipt of an application for informal appointment of a personal representative, other than a special personal representative as provided in section 3614, and after making the determinations required by section 3308, the register shall appoint the person whose appointment is sought subject to qualification and acceptance. If the decedent was a nonresident, the register shall delay the order of appointment until 28 days after the death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that the estate be subject to the laws of this state.

(2) The personal representative's status and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created by the appointment, is subject to termination as provided in sections 3608 to 3612, but is not subject to retroactive vacation.

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

#### **700.3308 Informal appointment proceedings; proof and required findings.**

Sec. 3308.

(1) In informal appointment proceedings, the register shall determine whether all of the following are true:

- (a) The application for the personal representative's informal appointment is complete.
- (b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief.
- (c) The applicant appears from the application to be an interested person.
- (d) On the basis of the statements in the application, venue is proper.
- (e) A will to which the requested appointment relates has been formally or informally probated. This subdivision does not apply to the appointment of a special personal representative.
- (f) From the statements in the application, the person whose appointment is sought has priority to the appointment or the requirements of section 3310 have been satisfied.

(2) Unless section 3612 controls, the register shall deny the application if it indicates any of the following:

- (a) That a personal representative who has not filed a written statement of resignation as provided in section 3610 has been appointed in this or another county of this state.
- (b) That, unless the applicant is the domiciliary personal representative or his or her nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile.
- (c) That the other requirements of this section are not met.

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

#### **700.3309 Informal appointment proceedings; register not satisfied.**

Sec. 3309.

If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of section 3307 or 3308, or for another reason, the register may deny the application. A register's denial of informal appointment is not an adjudication and does not preclude appointment in formal proceedings. If the application is denied, the register shall clearly state the reason for denial.

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

**Popular Name:** EPIC

#### **700.3310 Informal appointment proceedings; notice requirements.**

Sec. 3310.

The applicant shall give notice as described by section 1401 of the applicant's intention to seek an appointment informally to each person having a prior or equal right to an appointment not waived in writing and filed with the court.

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

**Popular Name:** EPIC

#### **700.3311 Informal appointment unavailable in certain cases.**

Sec. 3311.

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument that may relate to property subject to the laws of this state and that is not filed for probate in this court, the register shall deny the application.

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

**Popular Name:** EPIC

### **Part 4**

## **FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

#### **700.3401 Formal testacy proceedings; nature; commencement.**

Sec. 3401.

(1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. An interested person or a person that has a right or cause of action that cannot be enforced without administration may commence a formal testacy proceeding by filing 1 of the following:

(a) A petition described in section 3402(1) in which the petitioner requests that after notice and hearing, the court enter an order probating a will.

(b) A petition to set aside a will's informal probate or to prevent a will's informal probate that is the subject of a pending application.

(c) A petition in accordance with section 3402(2) for an order that the decedent died intestate.

(2) A petitioner may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the register shall not act upon an application for informal probate of a will of the decedent or an application for informal appointment of a personal representative of

the decedent.

(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, after receipt of notice of the commencement of a formal probate proceeding, a previously appointed personal representative shall refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding may also request an order restraining the acting personal representative from exercising that office's powers and may request the appointment of a special personal representative. In the absence of a request under this subsection or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

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

**Popular Name:** EPIC

#### **700.3402 Formal testacy or appointment; proceedings; petition; contents.**

Sec. 3402.

(1) A petition for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, must request a judicial order after notice and hearing, and must contain the statements required by this section. A petition for formal probate of a will must include all of the following:

(a) A request for an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and a request for an order determining the decedent's heirs.

(b) The statements required for an informal application prescribed by section 3301(1)(a) and (b)(ii) and (iii).

(c) A statement as to whether the original of the decedent's last will is in the court's possession or accompanies the petition. If the original will is not in the court's possession or neither the original will nor an authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition must also state the will's contents and shall indicate that the will is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of a personal representative in intestacy must include all of the following:

(a) A request for a judicial finding and order that the decedent left no will and determining the heirs.

(b) The statements required by section 3301(1)(a) and (d).

(c) A statement indicating whether supervised administration is sought. A petition under this subsection may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case, the statements required by section 3301(1)(d)(ii) may be omitted.

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

**Popular Name:** EPIC

#### **700.3403 Formal testacy proceedings; notice of hearing on petition.**

Sec. 3403.

(1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. The petitioner shall give notice in the manner prescribed by section 1401 to each of the following persons:

(a) The decedent's heirs.

(b) The devisees and personal representatives named in a will that is being, or has been, probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere.

(c) A personal representative of the decedent whose appointment has not been terminated.

(d) A person who has filed a demand for notice under section 3205.

(e) The trustee of a trust described in section 7605(1) as to which the decedent was settlor.

(2) Notice may be given to other persons. In addition, the petitioner shall give notice by publication to each



unknown person and to each known person whose address is unknown who has an interest in the matters being litigated. If the proceeding involves a request for appointment of a personal representative and it appears that the deceased died intestate without leaving a known heir, the petitioner shall give notice to the attorney general, public administration division.

(3) If it appears by the petition or otherwise that the fact of the decedent's death may be in doubt, or on the written demand of an interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his or her last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including by any of the following methods:

(a) Inserting in 1 or more suitable periodicals a notice requesting information from anyone having knowledge of the alleged decedent's whereabouts.

(b) Notifying law enforcement officials and public welfare agencies in appropriate locations of the alleged decedent's disappearance.

(c) Engaging an investigator's services.

(4) The costs of a search conducted under subsection (3) shall be paid by the petitioner if there is no administration or by the decedent's estate if there is administration.

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

**Popular Name:** EPIC

#### **700.3404 Formal testacy proceedings; written objections to probate.**

Sec. 3404.

A party to a formal proceeding who opposes the probate of a will for any reason shall state in his or her pleadings the party's objections to probate of the will.

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

**Popular Name:** EPIC

#### **700.3405 Formal testacy proceedings; uncontested cases; hearings and proof.**

Sec. 3405.

(1) If a petition in a testacy proceeding is unopposed, the court may either order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought.

(2) If evidence concerning execution of the will is necessary, the sworn statement or testimony of 1 of the attesting witnesses to the instrument is sufficient. If the sworn statement or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or sworn statement. If, after diligent search and effort and after the signature of the testator is identified, it appears that the whereabouts of the witnesses to a will cannot be ascertained and it appears on the face of the will that the requirements in this section for a valid will have been met, a presumption arises that the will was executed in all particulars as required by law.

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

**Popular Name:** EPIC

#### **700.3406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.**

Sec. 3406.

(1) If evidence concerning execution of an attested will that is not self-proved is necessary in a contested case, the testimony of at least 1 of the attesting witnesses, if within the state and if competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If a will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and sworn statements annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or a sworn statement.

(3) If a witness is competent at the time he or she signs the will, the witness's subsequent incompetency from whatever cause does not prevent admission of the will to probate, if it is otherwise satisfactorily proved.

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

**Popular Name:** EPIC

#### **700.3407 Formal testacy proceedings; burdens in contested cases.**

Sec. 3407.

(1) All of the following apply in a contested case:

(a) A petitioner who seeks to establish intestacy has the burden of establishing prima facie proof of death, venue, and heirship.

(b) A proponent of a will has the burden of establishing prima facie proof of due execution in all cases and, if the proponent is also a petitioner, prima facie proof of death and venue.

(c) A contestant of a will has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

(d) A party has the ultimate burden of persuasion as to a matter with respect to which the party has the initial burden of proof.

(2) If a will is opposed by a petition for probate of a later will revoking the former, the court shall first determine whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, the court shall first determine whether the will is entitled to probate.

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

**Popular Name:** EPIC

#### **700.3408 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.**

Sec. 3408.

This state's court shall accept as determinative a final order of a court of another state determining testacy, or the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons if the order includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.

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

**Popular Name:** EPIC

#### **700.3409 Formal testacy proceedings; order; foreign will.**

Sec. 3409.

(1) After the time expires for any required notice, upon proof of notice and after a hearing, if necessary, if the

court finds that the testator is dead and that venue is proper, the court shall determine the decedent's domicile at death, the decedent's heirs, and the decedent's state of testacy. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

(2) A will found to be valid and unrevoked shall be formally probated. Termination of a previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3612. A will from a place that does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will is effective under the law of the other place.

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

**Popular Name:** EPIC

#### **700.3410 Formal testacy proceedings; probate of more than one instrument.**

Sec. 3410.

If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than 1 instrument may be probated if neither expressly revokes the other and neither contains provisions that work a total revocation by implication. If more than 1 instrument is probated, the order shall indicate which provisions control in respect to the nomination of the personal representative, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by another instrument. After a final order in a testacy proceeding has been entered, a petition for probate of another instrument of the decedent shall not be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3412.

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

**Popular Name:** EPIC

#### **700.3411 Formal testacy proceedings; partial intestacy.**

Sec. 3411.

If it becomes evident in the course of a formal testacy proceeding that, though 1 or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

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

**Popular Name:** EPIC

#### **700.3412 Formal testacy proceedings; effect of order; vacation.**

Sec. 3412.

(1) Subject to appeal and subject to vacation as provided in this section and section 3413, a formal testacy order under sections 3409 to 3411, including an order that the decedent did not leave a valid will and that determines heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of that will's existence at the time

of the earlier proceeding, or were unaware of the earlier proceeding and were given no notice of it, except by publication.

(b) If intestacy of all or part of the estate has been ordered, the determination of the decedent's heirs may be reconsidered if it is shown that an individual was omitted from the determination and that the omitted individual was unaware of his or her relationship to the decedent, was unaware of the decedent's death, or was not given notice of any proceeding concerning the decedent's estate, except by publication.

(2) A petition for vacation filed under subsection (1) shall be filed before the earlier of the following time limits:

(a) If a personal representative is appointed for the estate, the time of entry of an order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement.

(b) One year after the entry of the order sought to be vacated.

(3) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(4) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his or her last known address and the court finds that a search was made as required by section 3403.

(5) If the alleged decedent is not dead, even if notice was sent and the search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

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

**Popular Name:** EPIC

#### **700.3413 Formal testacy proceedings; vacation of order for other cause.**

Sec. 3413.

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

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

**Popular Name:** EPIC

#### **700.3414 Formal proceeding concerning appointment of personal representative.**

Sec. 3414.

(1) An interested person or a person that has a right or cause of action that cannot be enforced without appointment may file a petition for a formal proceeding regarding the priority or qualification of a prospective or appointed personal representative.

(2) If an issue concerning the decedent's testacy is or may be involved, a formal proceeding for adjudication regarding the priority or qualification of an individual who is seeking appointment as personal representative or who was previously appointed personal representative in informal proceedings is governed by this section and section 3402. In other cases, the petition must include or adopt the statements required by section 3301(1)(a) and must describe the question relating to the personal representative's priority or qualification that is to be resolved.

(3) If a formal proceeding precedes the appointment of a personal representative, the formal proceeding stays an informal appointment proceeding that is pending or that is commenced after the formal proceeding's commencement. If the formal proceeding is commenced after the appointment of a personal representative and after the personal representative receives notice of the commencement, the personal representative shall not exercise a power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(4) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, a previously appointed personal representative, a person having or claiming priority for appointment as personal representative, and any other person described in

section 3403(1) or (2), the court shall determine who is entitled to appointment under section 3203, make a proper appointment, and, if appropriate, terminate a prior appointment found to be improper as provided in cases of removal under section 3611.

(5) If the state or county public administrator is seeking appointment as personal representative and the state or county public administrator has knowledge that the decedent's real property has delinquent property taxes on it or is subject to a mortgage foreclosure, all of the following apply:

(a) In addition to any other notice required under this act, the petitioner shall give notice of hearing to the decedent's heirs in the manner prescribed by section 1401. The petitioner shall also post the notice of hearing and the state court administrative office form to challenge the petition on the decedent's real property. A notice required under this subdivision must be in a form approved by the supreme court and must include all of the following information:

(i) A statement describing why the heir is receiving the notice.

(ii) That the heir may object to the petitioner's appointment.

(iii) That the heir may petition the court for a court hearing on any matter, including, but not limited to, any of the following:

(A) A petition for removal of a personal representative for cause under section 3611, at any time during the estate's administration.

(B) A petition for the heir to be appointed personal representative.

(b) The petition must include a statement that details the petitioner's reasonable search for the decedent's heirs, including, but not limited to, an internet search.

(6) A state or county public administrator who intentionally fails to provide the notices required under subsection (5) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2018, Act 13, Eff. May 7, 2018

**Popular Name:** EPIC

## **700.3415 Independent applications to court.**

Sec. 3415.

Unless supervised administration is sought and ordered, each person interested in an estate, including a personal representative, whether appointed informally or after notice, may make 1 or more independent requests to the court so that a question or assumption relating to the estate, including the status of an estate as testate or intestate, a matter relating to 1 or more claims, a disputed title, an account of a personal representative, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of a judicial order in regard to other or further questions or assumptions.

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

**Popular Name:** EPIC

## **Part 5 SUPERVISED ADMINISTRATION**

## **700.3501 Supervised administration; nature of proceeding.**

Sec. 3501.

(1) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the court's continuing authority that extends until entry of an order approving estate distribution and discharging the personal representative or other order terminating the proceeding.

(2) A supervised personal representative is responsible to the court, as well as to the interested persons, and is subject to directions concerning the estate made by the court on its own motion or on the motion of an interested person.

(3) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal

representative has the same duties and powers as a personal representative who is not supervised.

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

**Popular Name:** EPIC

#### **700.3502 Supervised administration; petition; order.**

Sec. 3502.

(1) Any interested person or a personal representative may file a petition for supervised administration at any time, or a petition for supervised administration may be joined with a petition in a formal testacy or appointment proceeding.

(2) If a decedent's testacy or a personal representative's priority and qualification have not been previously adjudicated, a petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding, and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the decedent's testacy and questions relating to the personal representative's priority and qualifications in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(3) After notice to interested persons, the court shall order supervised administration of a decedent's estate in any of the following circumstances:

(a) If the decedent's will directs supervised administration, the court shall order supervised administration unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that supervised administration is not necessary.

(b) If the decedent's will directs unsupervised administration, the court shall only order supervised administration on a finding that it is necessary for protection of persons interested in the estate.

(c) In other cases, the court shall order supervised administration if the court finds that supervised administration is necessary under the circumstances.

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

**Popular Name:** EPIC

#### **700.3503 Supervised administration; effect on other proceedings.**

Sec. 3503.

(1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on a pending informal application or an informal application filed after commencement of the proceeding for supervised administration.

(2) If a will has been previously probated in informal proceedings, the filing of a petition for supervised administration has the same effect as a formal testacy proceeding under section 3401.

(3) After receipt of notice of the filing of a supervised administration petition, a personal representative who has been previously appointed shall not exercise the power to distribute the estate. The filing of such a petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of those powers and duties pending full hearing on the petition.

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

**Popular Name:** EPIC

#### **700.3504 Supervised administration; powers of personal representative.**

Sec. 3504.

Unless restricted by the court, a supervised personal representative has, without an interim order approving exercise of a power, all the powers of a personal representative under this act, but shall not exercise the power to make a distribution of the estate without prior court order. Any other restriction on a supervised personal representative's power that the court orders must be endorsed on the letters of appointment. Unless a restriction is endorsed as provided in this section, the restriction is ineffective as to persons dealing in good faith with the personal representative.

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

**Popular Name:** EPIC

#### **700.3505 Supervised administration; interim orders; partial distribution or other relief.**

Sec. 3505.

Unless otherwise ordered by the court, supervised administration is terminated by an order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under section 3952. The court may issue an interim order approving or directing a partial distribution or granting other relief at any time during the pendency of a supervised administration on the petition of the personal representative or an interested person.

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

**Popular Name:** EPIC

### **Part 6**

## **PERSONAL REPRESENTATIVE AND APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY**

#### **700.3601 Qualification; limitation and procedure with regard to specified assets.**

Sec. 3601.

(1) Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

(2) In filing the statement of acceptance, the personal representative may exclude from the scope of the personal representative's responsibility, for a period not to exceed 91 days, real estate or an ownership interest in a business entity if the personal representative reasonably believes the real estate or other property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used for any activity directly or indirectly involving a hazardous substance, that could result in liability to the estate or otherwise impair the value of property held in the estate. The personal representative must identify the real estate or ownership interest being excluded and shall specify the time period of exclusion.

(3) If the personal representative identifies excluded property under subsection (2), the personal representative's responsibilities extend to the excluded property at the end of the exclusion period or upon the personal representative's notice to the court of acceptance of that property, unless, before the end of the exclusion period, the personal representative requests the court to appoint a special personal representative with respect to the excluded property or to exercise administrative authority over the excluded property by direct judicial order.

(4) In response to a request by the general personal representative under subsection (3), the court may do either of the following:

(a) Appoint a special personal representative with the duty and authority to collect and manage the excluded property, but only to the extent necessary for proper settlement of the estate and to preserve, account with respect to, and distribute or otherwise dispose of the excluded property as directed by the general personal representative or other court order.

(b) Directly administer the excluded property by judicial orders without the appointment of a personal representative with respect to the property.



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

#### **700.3602 Acceptance of appointment; consent to jurisdiction.**

Sec. 3602.

By accepting appointment, a personal representative submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person. The interested person instituting the proceeding must give notice of the proceeding to the personal representative by personal service or by ordinary first-class mail mailed to the personal representative's address as stated in the application or petition for appointment, or as otherwise reported to the court, and if different, to the personal representative's address as then known to the interested person.

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

#### **700.3603 Bond not required without court order; exceptions.**

Sec. 3603.

(1) A bond is not required of a personal representative appointed in informal proceedings, except in any of the following circumstances:

(a) A special personal representative is appointed.

(b) The personal representative is appointed to administer an estate under a will containing an express requirement of bond.

(c) Bond is required under section 3605.

(2) Except as otherwise provided in this subsection, in a formal proceeding, the court may order bond at the time of the personal representative's appointment. The court shall not order bond of the personal representative in the formal proceeding if the will relieves the personal representative of bond, unless an interested person requests bond and the court is satisfied that bond is desirable. If a will in a formal proceeding requires bond, bond may be dispensed with if the court determines it is unnecessary.

(3) Bond is not required of a personal representative who deposits, as determined by the court, cash or collateral with the county treasurer to secure performance of the fiduciary duties.

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

#### **700.3604 Bond amount; security; procedure; reduction.**

Sec. 3604.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in the person's application or petition, a person qualifying shall file a statement under oath with the register indicating the person's best estimate of the value of the decedent's personal estate and of the income expected from the personal and real estate during the next year, and shall execute and file a bond with the register, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or 1 or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The register may permit the amount of the bond to be reduced by the value of estate property deposited in this state with a financial institution in a manner that prevents the property's unauthorized disposition. On petition of the personal representative or another interested person or on the court's

own motion, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

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

**Popular Name:** EPIC

#### **700.3605 Demand for bond by interested person.**

Sec. 3605.

(1) A person apparently having an interest in the estate worth in excess of \$30,000.00 or a creditor having a claim against the estate in excess of \$30,000.00 may make a written demand that a personal representative give bond. The demand must be filed with the register, and if appointment and qualification have occurred, a copy must be mailed to the personal representative. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3603 or 3604. After receipt of notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall not exercise any powers of the fiduciary office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 28 days after receipt of notice is cause for removal and appointment of a successor personal representative.

(2) 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

#### **700.3606 Requirements and provisions of bonds.**

Sec. 3606.

The following requirements and provisions apply to a bond required by this part:

(a) A bond shall name the state of Michigan as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court that issues letters to the primary obligor in a proceeding pertaining to the personal representative's fiduciary duties and naming the surety as a party. The petitioner shall notify a surety of a proceeding by personal service or by registered or certified mail to the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

(d) On petition of a successor personal representative, another personal representative of the same decedent, or an interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the personal representative's bond. If a fiduciary fails to perform a duty or perform a duty properly, the court may order a surety to perform an act the fiduciary should have performed or to correct an act the fiduciary performed improperly.

(e) The personal representative's bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) An action or proceeding shall not be commenced against the surety on a matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

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

**Popular Name:** EPIC

#### **700.3607 Order restraining personal representative.**

Sec. 3607.

(1) On petition of a person who appears to be an interested person or acting on the court's own motion, the court, by temporary order, may restrain a personal representative from performing a specified act of administration, disbursement, or distribution, or from exercising a power or discharging a duty of the personal representative's office, or may make another order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner or of some other interested person. A person with whom the personal representative may transact business may be made a party.

(2) The court shall set a hearing date for a matter described in subsection (1), which hearing date shall be not more than 14 days after the date of the issuance of the temporary order, unless the parties agree otherwise. Notice shall be given as the court directs to the personal representative, to the personal representative's attorney of record, if any, and to any parties named defendant in the petition.

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

**Popular Name:** EPIC

#### **700.3608 Termination of appointment generally.**

Sec. 3608.

Termination of appointment of a personal representative occurs as provided in sections 3609 to 3612. Termination ends the right and power pertaining to the office of personal representative as conferred by this act or a will, except that a personal representative, at any time before distribution or until restrained or enjoined by court order, may perform an act necessary to protect the estate and may deliver property to a successor personal representative. Termination does not discharge a personal representative from liability for a transaction or omission occurring before termination, or relieve the personal representative of the duty to preserve property subject to the personal representative's control, and to account for and deliver that property. Termination does not affect the court's jurisdiction over the personal representative, but does terminate the personal representative's authority to represent the estate in a pending or future proceeding.

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

**Popular Name:** EPIC

#### **700.3609 Termination of appointment; death or disability.**

Sec. 3609.

The personal representative's death or a conservator's appointment for the personal representative's estate terminates the appointment of that individual. Until appointment and qualification of a successor or special personal representative to replace the deceased or protected personal representative, the personal representative of the estate of the deceased or conservator of the protected personal representative has the duty to protect the estate possessed and being administered by the decedent or ward at the time the appointment terminates, has the power to perform acts necessary for that protection, and shall account for and deliver the estate property to a successor or special personal representative upon the successor's appointment and qualification.

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

**Popular Name:** EPIC

#### **700.3610 Termination of appointment; voluntary.**

Sec. 3610.

(1) A personal representative's appointment terminates 1 year after the filing of a closing statement as provided in section 3954.

(2) A personal representative's appointment terminates when the court enters an order closing an estate as provided in section 3952 or 3953.

(3) After giving at least 14 days' written notice to known interested persons, a personal representative may resign by filing a written statement of resignation with the register. If no one applies or petitions for appointment of a successor personal representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and is effective only upon the appointment and qualification of a successor personal representative and delivery of the estate property to the successor personal representative.

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

**Popular Name:** EPIC

#### **700.3611 Termination of appointment by removal; cause; procedure.**

Sec. 3611.

(1) An interested person may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. The petitioner shall give notice to the personal representative and to other persons as the court orders. Except as otherwise ordered under section 3607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court shall also direct by order the disposition of the property remaining in the name of, or under the control of, the personal representative being removed.

(2) The court may remove a personal representative under any of the following circumstances:

(a) Removal is in the best interests of the estate.

(b) It is shown that the personal representative or the person who sought the personal representative's appointment intentionally misrepresented material facts in a proceeding leading to the appointment.

(c) The personal representative did any of the following:

(i) Disregarded a court order.

(ii) Became incapable of discharging the duties of office.

(iii) Mismanaged the estate.

(iv) Failed to perform a duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of an ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer in state assets.

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

**Popular Name:** EPIC

#### **700.3612 Termination of appointment; change of testacy status.**

Sec. 3612.

Except as otherwise ordered in formal proceedings, the probate of a will after the appointment of a personal representative in intestacy or under a will that is superseded by formal probate of another will, or the vacation of an informal probate of a will after the appointment of the personal representative under that will, does not terminate

the personal representative's appointment, although the personal representative's powers may be reduced as provided in section 3401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 28 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

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

**Popular Name:** EPIC

### **700.3613 Successor personal representative.**

Sec. 3613.

The appointment of a personal representative to succeed a personal representative whose appointment is terminated is governed by parts 3 and 4 of this article. After appointment and qualification, a successor personal representative must be substituted in all actions and proceedings in which the former personal representative was a party. A notice, process, or claim that was given or served upon the terminated personal representative need not be given to or served upon the successor personal representative in order to preserve a position or right the person that gave the notice or filed the claim may have obtained or preserved with reference to the former personal representative. Except as the court otherwise orders, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the appointment had not been terminated.

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

**Popular Name:** EPIC

### **700.3614 Special personal representative; appointment.**

Sec. 3614.

A special personal representative may be appointed in any of the following circumstances:

(a) Informally by the register on the application of an interested person if necessary to protect the estate of a decedent before the appointment of a general personal representative or if a prior appointment is terminated as provided in section 3609.

(b) By the court on its own motion or in a formal proceeding by court order on the petition of an interested person if in either case, after notice and hearing, the court finds that the appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, the court may order the appointment without notice.

(c) By the court on its own motion or on petition by an interested person to supervise the disposition of the body of a decedent if section 3206(8) applies. The duties of a special personal representative appointed under this subdivision must be specified in the order of appointment and may include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding if appropriate, and determining the disposition of the body by burial or cremation. The court may waive the bond requirement under section 3603(1) (a). The court may appoint the county public administrator if the county public administrator is willing to serve. If the court determines that it will not be necessary to open an estate, the court may appoint a special fiduciary under section 1309 instead of a special personal representative to perform duties under this section.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 343, Imd. Eff. Sept. 29, 2004 ;-- Am. 2006, Act 299, Imd. Eff. July 20, 2006 ;-- Am. 2016, Act 57, Eff. June 27, 2016

**Popular Name:** EPIC

#### **700.3615 Special personal representative; who may be appointed.**

Sec. 3615.

(1) If a special personal representative is to be appointed pending the probate of a will that is the subject of a pending application or petition for probate, the person named personal representative in the will shall be appointed as the special personal representative, if available and qualified, unless the court finds the appointment is not in the best interest of the estate or the estate's beneficiaries.

(2) In any other case, the court may appoint any proper person as special personal representative.

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

**Popular Name:** EPIC

#### **700.3616 Special personal representative; appointed informally; powers and duties.**

Sec. 3616.

A special personal representative appointed by the register in informal proceedings as provided in section 3614 has the duty to collect and manage the estate property, to preserve and account for the property, and to deliver the property to the general personal representative upon qualification. This special personal representative has the power of a personal representative under this act necessary to perform his or her duties.

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

**Popular Name:** EPIC

#### **700.3617 Special personal representative; formal proceedings; power and duties.**

Sec. 3617.

A special personal representative appointed by order of the court in a formal proceeding has a general personal representative's power except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court directs.

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

**Popular Name:** EPIC

#### **700.3618 Termination of appointment; special personal representative.**

Sec. 3618.

A special personal representative's appointment terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In any other case, a special personal representative's appointment is subject to termination as provided in sections 3608 to 3612.

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

**Popular Name:** EPIC

Part 7  
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

**700.3701 Powers and duties of personal representative; commencement; accrual.**

Sec. 3701.

A personal representative's duties and powers commence on appointment. A personal representative's powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment. Subject to sections 3206 to 3207, before or after appointment, a person named as personal representative in a will may carry out the decedent's written instructions relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2006, Act 299, Imd. Eff. July 20, 2006 ;-- Am. 2016, Act 57, Eff. June 27, 2016  
**Popular Name:** EPIC

**700.3702 Priority among different letters.**

Sec. 3702.

A person to whom general letters are issued first has exclusive authority under the letters until the appointment is terminated or modified. If, through error, general letters are afterwards issued to another person, the first appointed representative may recover estate property in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

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

**700.3703 General duties; relation and liability to persons interested in estate; standing to sue; accounting.**

Sec. 3703.

(1) A personal representative is a fiduciary who shall observe the standard of care applicable to a trustee as described by section 7803. A personal representative is under a duty to settle and distribute the decedent's estate in accordance with the terms of a probated and effective will and this act, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by this act, the terms of the will, if any, and an order in a proceeding to which the personal representative is party for the best interests of claimants whose claims have been allowed and of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to the will's terms. Whether issued in an informal or formal proceeding, an order of appointment of a personal representative is authority to distribute apparently intestate property to the decedent's heirs if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the personal representative's duty to administer and distribute the estate in accordance with the rights of a claimant whose claim has been allowed, the surviving spouse, a minor or dependent child, or a pretermitted child of the decedent as described elsewhere in this act.

(3) Except as to a proceeding that does not survive the decedent's death, a personal representative of a decedent



domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death.

(4) The personal representative shall keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate.

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

**Popular Name:** EPIC

#### **700.3704 Personal representative to proceed without court order; exception.**

Sec. 3704.

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court. However, the personal representative may invoke the court's jurisdiction in a proceeding authorized by this act to resolve a question concerning the estate or its administration.

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

**Popular Name:** EPIC

#### **700.3705 Appointment of personal representative; notice requirements.**

Sec. 3705.

(1) Not later than 28 days after a personal representative's appointment or other time specified by court rule, the personal representative, except a special personal representative, shall give notice of the appointment to the decedent's heirs and devisees, except those who have executed a written waiver of notice, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative and to the trustee of a trust described in section 7605(1) as to which the decedent was settlor. The personal representative shall give the notice by personal service or by ordinary first-class mail to each person required to receive notice under this subsection whose address is reasonably available to the personal representative. However, the personal representative is not required to notify a person who was adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice required under this subsection must be in a form approved by the supreme court and must include all of the following information:

(a) That the court will not supervise the personal representative. This statement must not be included if the appointment is made in a supervised proceeding under part 5 of this article.

(b) That, unless a person files a written objection to the appointment of the person named as personal representative in the notice or files a demand that bond or higher bond be posted, the person named in the notice is the personal representative without bond or with bond in the amount shown in the notice. This statement must not be included if the personal representative is appointed in a formal appointment proceeding.

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

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

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

(ii) A copy of the inventory.

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

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

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

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

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

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

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

(2) The personal representative's failure to give the information required by subsection (1) is a breach of the personal representative's duty to the persons concerned, but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary first-class mail.

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

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

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

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

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

(5) Within 28 days after the personal representative's appointment or another time specified by court rule, the personal representative, except a special personal representative, shall notify the decedent's surviving spouse, if any, of the spouse's right to election under part 2 of article II and of the time within which the election must be exercised.

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

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 481, Eff. Oct. 1, 2005 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 14, Eff. May 7, 2018

**Popular Name:** EPIC

## **700.3706 Duty of personal representative; inventory and appraisalment.**

Sec. 3706.

(1) Within 91 days after appointment or other time specified by court rule, a personal representative, who is not a special personal representative or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of an encumbrance that may exist with reference to each listed item.

(2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal

representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee.

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

**Popular Name:** EPIC

#### **700.3707 Employment of appraiser.**

Sec. 3707.

The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of property, the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property included in the estate. Each appraiser's name and address shall be indicated on the inventory with the item or items he or she appraised.

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

**Popular Name:** EPIC

#### **700.3708 Duty of personal representative; supplemental inventory.**

Sec. 3708.

If property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for an item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or description, and showing the appraiser or other data relied upon, if any. The personal representative shall furnish copies or information of the supplementary inventory to persons interested in the new information, and shall file it with the court if the original inventory was filed or submit the information contained in the supplemental inventory to the court for recalculation of the probate inventory fee.

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

**Popular Name:** EPIC

#### **700.3709 Duty of personal representative; possession of estate.**

Sec. 3709.

Except as otherwise provided by a decedent's will or by this section, a personal representative has a right to, and if necessary for purposes of administration, shall take possession or control of, the decedent's property, except that real property or tangible personal property may be left with or surrendered to the person presumptively entitled to that property unless or until, in the personal representative's judgment, possession of the property will be necessary for purposes of administration. A personal representative's request for delivery of property possessed by an heir or devisee is conclusive evidence, in an action against the heir or devisee for possession of that property, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of, or to determine the title to, property.

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

**Popular Name:** EPIC

**700.3710 Power to avoid transfers.**

Sec. 3710.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means that is in law void or voidable as against the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of the decedent's unsecured debts, is exclusively in the personal representative.

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

**Popular Name:** EPIC

**700.3711 Powers of personal representatives generally.**

Sec. 3711.

Until termination of the appointment, a personal representative has the same power over the title to estate property that an absolute owner would have, in trust, however, for the benefit of creditors or others interested in the estate. This power may be exercised without notice, hearing, or court order.

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

**Popular Name:** EPIC

**700.3712 Improper exercise of power; breach of fiduciary duty.**

Sec. 3712.

If the exercise or failure to exercise a power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust. The right of purchasers and others dealing with a personal representative shall be determined as provided in sections 3713 and 3714.

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

**Popular Name:** EPIC

**700.3713 Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions; presumption; compliance with Michigan prudent investor rule; exceptions.**

Sec. 3713.

(1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the personal representative has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the personal representative's fiduciary and personal interests is voidable by an interested person unless any of the following are true:

(a) The will or a contract entered into by the decedent expressly authorized the transaction.

- (b) The transaction is approved by the court after notice to interested persons.
- (c) The transaction involves a contract entered into or claim acquired by the personal representative before the person became or contemplated becoming personal representative.
- (d) The transaction is otherwise permitted by statute.
- (2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the personal representative with any of the following:
  - (a) The personal representative's spouse.
  - (b) The personal representative's descendant, sibling, or parent or the spouse of the personal representative's descendant, sibling, or parent.
  - (c) An agent or attorney of the personal representative.
  - (d) A corporation or other person or enterprise in which the personal representative, or a person that owns a significant interest in the personal representative, has an interest that might affect the personal representative's best judgment.
- (3) A transaction not concerning estate property in which the personal representative engages in the personal representative's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.
- (4) An investment by a personal representative in securities of an investment company or investment trust to which the personal representative, or its affiliate, provides services in a capacity other than as personal representative is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as personal representative, the personal representative may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the personal representative receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the personal representative shall at least annually notify the interested persons of the rate and method by which that compensation was determined.
- (5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the personal representative shall act in the best interests of the beneficiaries. If the estate is the sole owner of a corporation or other form of enterprise, the personal representative shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the beneficiaries.
- (6) This section does not preclude the following transactions, if fair to the beneficiaries:
  - (a) An agreement between the personal representative and the interested persons relating to the compensation of the personal representative.
  - (b) Payment of reasonable compensation to the personal representative.
  - (c) A transaction between the estate and another trust or conservatorship of which the personal representative is a fiduciary or in which a beneficiary has an interest.
  - (d) A deposit of estate money in a financial institution operated by or affiliated with the personal representative.
  - (e) An advance by the personal representative of money for the protection of the estate.

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

**Popular Name:** EPIC

#### **700.3714 Persons dealing with personal representative; protection.**

Sec. 3714.

- (1) A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised a power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise.
- (2) Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in section 3504, a provision in a will or court order purporting to limit a personal representative's power is not effective except as to a person with actual knowledge of the limit.
- (3) A person is not bound to see to the proper application of estate property paid or delivered to a personal representative.
- (4) The protection under this section extends to instances in which a procedural irregularity or jurisdictional defect occurs in a proceeding leading to the issuance of letters, including a case in which the alleged decedent is

found to be alive. The protection under this section does not substitute for the protection provided by a comparable provision of law relating to a commercial transaction or a law simplifying a transfer of securities by a fiduciary. Nothing in this section discharges a lien for transfer taxes that may affect title to estate property.

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

## **700.3715 Transactions authorized for personal representatives.**

### **Sec. 3715.**

(1) Except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to subsection (2) and to the priorities stated in section 3902, a personal representative, acting reasonably for the benefit of interested persons, may properly do any of the following:

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

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

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

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

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

(d) If, in the judgment of the personal representative, the decedent would have wanted the pledge satisfied under the circumstances, satisfy a written charitable pledge of the decedent irrespective of whether the pledge constitutes a binding obligation of the decedent or is properly presented as a claim.

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

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

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

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

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

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

(k) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered or in such a condition as to be of no benefit to the estate.

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

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

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

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

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

(q) Effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify



the terms of an obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon another person's property, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by lien.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Valuing property for federal estate tax purposes.

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

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

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

(a) The personal representative shall not sell the decedent's real property without approval of the court. The court shall only approve the sale if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property and considers any information submitted by



the county treasurer under section 3705(7) and otherwise determines that the sale is in the estate's best interest. In determining whether to approve the sale of real property under this subdivision, the court shall consider any information submitted by the county treasurer under section 3705(7).

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

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

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

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

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

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 14, Eff. May 7, 2018

**Popular Name:** EPIC

#### **700.3716 Powers and duties of successor personal representative.**

Sec. 3716.

A successor personal representative has the same powers and duties as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor personal representative shall not exercise a power expressly made personal to the personal representative named in the will.

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

**Popular Name:** EPIC

#### **700.3717 Corepresentatives; concurrence.**

Sec. 3717.

If 2 or more persons are appointed personal corepresentatives and unless the will provides otherwise, the concurrence of all is required on an act connected with the estate's administration or distribution. This restriction does not apply if a personal corepresentative receives and gives a receipt for property due the estate, if the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or if a personal corepresentative has been delegated to act for the other. If actually unaware that another also has been appointed to serve or if advised by the personal representative with whom the person deals that 1 personal representative alone has authority to act for a reason mentioned in this section, a person dealing with a personal corepresentative is as fully protected as if the personal corepresentative with whom the person deals is the sole personal representative.

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

**Popular Name:** EPIC

#### **700.3718 Powers of surviving personal representative.**

Sec. 3718.

Unless the will provides otherwise, each power exercisable by personal corepresentatives may be exercised by the 1 or more remaining personal corepresentatives after the appointment of 1 or more is terminated. Unless the will provides otherwise, if 1 of 2 or more persons nominated as personal corepresentatives is not appointed, those or the 1 appointed may exercise all the powers incident to the office.

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

**Popular Name:** EPIC

#### **700.3719 Compensation of personal representative.**

Sec. 3719.

(1) A personal representative is entitled to reasonable compensation for services performed. A personal representative may pay the personal representative's own compensation periodically as earned without prior court approval.

(2) If an attorney serves as personal representative, the attorney shall maintain time records that state the identity of the person performing personal representative services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services. Upon request of an interested person affected by payment of personal representative fees, the attorney shall send the time records to the interested person.

(3) If a will provides for the personal representative's compensation and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A written contract between the decedent and the personal representative regarding compensation for estate settlement services is binding on the personal representative.

(4) A personal representative also may renounce the right to all or a part of the compensation. A written renunciation of fee may be filed with the court and shall be served on all affected interested persons.

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

**Popular Name:** EPIC

#### **700.3720 Expenses in estate litigation.**

Sec. 3720.

If a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.

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

**Popular Name:** EPIC

#### **700.3721 Employment of agents and compensation of personal representatives and employees of estate; proceedings for review.**

Sec. 3721.

After notice to all interested persons, on petition of an interested person, on appropriate motion if administration is supervised, or on the court's own motion, the court may review the propriety of employment of a person by a personal representative, including, but not limited to, an attorney, accountant, investment advisor, or other specialized agent or assistant, the reasonableness of such a person's compensation, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services. If the court determines that a person received excessive compensation from an estate for services rendered, the court shall order the person to pay an appropriate refund and may include in the refund amount interest and penalties as the court considers just.

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

**Popular Name:** EPIC

### **700.3722 Authority regarding environmental matters.**

Sec. 3722.

(1) In response to an environmental concern or hazard, a personal representative may do any of the following:

(a) Inspect property or the operation of a business activity on property held by the personal representative, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held by the personal representative.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the personal representative, either before or after a governmental body initiates an enforcement action.

(c) Settle or compromise at any time a claim against the estate that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust or estate.

(d) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the personal representative, may cause the personal representative to incur personal liability under an environmental law.

(e) Decline to serve or resign as a personal representative if the personal representative reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the personal representative on the estate's behalf because of the type or condition of property held in the estate.

(f) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the income or principal of the estate.

(2) A personal representative is not personally liable to a beneficiary or other party for a decrease in value of estate property by reason of the personal representative's compliance with an environmental law, specifically including a reporting requirement under that law. The personal representative's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of estate property and is not to impose greater responsibility or liability on the personal representative than imposed by law absent this section.

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

**Popular Name:** EPIC

## **Part 8 CREDITORS' CLAIMS**

### **700.3801 Notice of creditors.**

Sec. 3801.

(1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to present

their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7605(1) as to which the decedent is settlor. For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors.

(b) If the personal representative first knows of an estate creditor less than 28 days before the expiration of the time limit in subdivision (a), within 28 days after the personal representative first knows of the creditor.

(3) If the personal representative or the attorney for the estate in good faith believes that notice to a creditor of the estate is or may be required by this section, and if the personal representative gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for having given notice.

(4) If the personal representative or the attorney for the estate in good faith believes that notice to a person is not required by this section and if the personal representative fails to give notice to that person based on that belief, neither the personal representative nor the attorney is personally liable to any person for the failure to give notice. Liability, if any, for failure to give notice is on the estate.

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

**Popular Name:** EPIC

#### **700.3802 Statute of limitations.**

Sec. 3802.

(1) Unless an estate is insolvent, the personal representative, with the consent of all interested persons whose interests would be affected, may waive a statute of limitations defense available to the estate. If a statute of limitations defense is not waived, a claim that was barred by a statute of limitations at the time of the decedent's death shall not be allowed or paid.

(2) The running of a statute of limitations measured from an event other than death or publication for a claim against a decedent is suspended during the 4 months following the decedent's death but resumes after that time as to a claim not barred under this part.

(3) For purposes of a statute of limitations, the proper presentation of a claim under section 3804 is equivalent to commencement of a proceeding on the claim.

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

**Popular Name:** EPIC

#### **700.3803 Limitations on time for presentation of claims.**

Sec. 3803.

(1) A claim against a decedent's estate that arose before the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, if not barred earlier by another statute of limitations or nonclaim statute, is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent unless presented within 1 of the following time limits:

(a) If notice is given in compliance with section 3801 or 7608, within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, within 1 month after the subsequent sending of notice or 4 months after the date of the

publication of notice to creditors, whichever is later.

(c) If the notice requirements of section 3801 or 7608 have not been met, within 3 years after the decedent's death.

(2) A claim against a decedent's estate that arises at or after the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, is barred against the estate, the personal representative, and the decedent's heirs and devisees, unless presented within 1 of the following time limits:

(a) For a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due.

(b) For a claim to which subdivision (a) does not apply, within 4 months after the claim arises or the time specified in subsection (1)(a), whichever is later.

(3) This section does not affect or prevent any of the following:

(A) A proceeding to enforce a mortgage, pledge, or other lien on estate property.

(B) A proceeding to establish the decedent's or the personal representative's liability for which the decedent or the personal representative is protected by liability insurance to the insurance protection limits only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the personal representative of the estate.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

**Popular Name:** EPIC

#### **700.3804 Manner of presentation of claims; commencement; claims by personal representative.**

Sec. 3804.

(1) A claimant must present a claim against a decedent's estate in either of the following ways:

(a) By delivering or mailing a written statement to the personal representative indicating the claim's basis, the claimant's name and address, and the amount claimed, or by filing with the court a written statement of the claim in the form prescribed by supreme court rule and delivering or mailing a copy of the statement to the personal representative. The claim shall be considered presented on receipt of the claim statement by the personal representative or the filing of the claim statement with the court, whichever occurs first. If a claim is not yet due, the statement shall state the date when it will become due. If the claim is contingent or unliquidated, the statement shall state the nature of the uncertainty. If the claim is secured, the statement shall describe the security. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the claim's presentation.

(b) By commencing a proceeding to obtain payment of a claim against the estate in a court in which the personal representative may be subjected to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. The presentation of a claim is not required in regard to a matter claimed in a proceeding against the decedent that is pending at the time of death.

(2) Except as otherwise provided in this subsection, if a claim is presented under subsection (1)(a), a proceeding on the claim shall not be commenced more than 63 days after the personal representative delivers or mails a notice of disallowance to the claimant. For a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 63-day period or, to avoid injustice, the court, on petition, may order an extension of the 63-day period, but an extension shall not be consented to or ordered if the extension would run beyond the applicable statute of limitations.

(3) A claim by the personal representative against the estate shall be in the form prescribed by supreme court rule. The personal representative must give a copy of the claim to all interested persons not later than 7 days after the time for the claim's original presentation expires. The claim must contain a warning that the personal representative's claim will be allowed unless a notice of objection is delivered or mailed to the personal representative within 63 days after the time for the claim's original presentation expires. This subsection does not apply to a claim for compensation for services rendered or for reimbursement of expenses advanced by the personal representative.

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

**Popular Name:** EPIC

### **700.3805 Priority of claim payments; insufficient assets.**

Sec. 3805.

(1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(2) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due.

(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7605(1) for payment by the trustee in accordance with section 7606. If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances, then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7605(1), bears a proportionate share or equitable share of the total burden.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2007, Act 73, Imd. Eff. Sept. 30, 2007 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

**Popular Name:** EPIC

### **700.3806 Allowance and disallowance of claims.**

Sec. 3806.

(1) If a claim is presented in the manner described in section 3804 and within the time limit prescribed in section 3803, the personal representative may deliver or mail a notice to a claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim is barred. A claim that the personal representative disallows in whole or in part is barred to the extent disallowed unless the claimant commences a proceeding against the personal representative not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

(2) The personal representative's failure to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation expires or within 63 days after the personal representative's appointment, whichever is later, constitutes a notice of allowance. An interested person's failure to deliver or mail to the personal representative notice of an objection to a personal representative's claim within 63 days after the time the claim's original presentation expires constitutes a notice of allowance.

(3) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this subsection. Before payment of a claim, the personal representative may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing the claim's payment. The personal representative shall notify the claimant of the change to disallowance, and the

disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After a claim is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(4) Upon the personal representative's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subsection (1). Upon an interested person's petition concerning a personal representative's claim, the court may allow in whole or in part the personal representative's claim properly presented in due time and not previously allowed under subsection (1).

(5) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(6) Unless otherwise provided in a judgment in another court entered against the personal representative, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for the claim's original presentation expires unless based on a contract providing for interest, in which case the claim bears interest in accordance with the contract.

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

**Popular Name:** EPIC

### **700.3807 Payment of claims.**

Sec. 3807.

(1) Upon the expiration of 4 months after the publication date of the notice to creditors, and after providing for administration costs and expenses, for reasonable funeral and burial expenses, for the homestead, family, and exempt property allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration, the personal representative shall pay the claims allowed against the estate in the order of priority as provided in this act. A claimant whose claim has been allowed, but not paid as provided in this section, may petition the court to secure an order directing the personal representative to pay the claim to the extent that property of the estate is available for the payment.

(2) The personal representative may pay a claim that is not barred at any time, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the personal representative fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed, but the claimant's whereabouts are unknown at the time the personal representative attempts to pay the claim, upon petition by the personal representative and after notice that the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2016, Act 490, Eff. Apr. 6, 2017

**Popular Name:** EPIC

### **700.3808 Individual liability of personal representative.**

Sec. 3808.

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal his or her representative capacity and to identify the estate in the contract.

(2) A personal representative is individually liable for an obligation arising from ownership or control of the



estate or for a tort committed in the course of estate administration only if the personal representative is personally at fault.

(3) A claim based on a contract entered into by a personal representative in the personal representative's fiduciary capacity, on an obligation arising from ownership or control of the estate, or on a tort committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable.

(4) An issue of liability between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

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

**Popular Name:** EPIC

### **700.3809 Secured claims.**

Sec. 3809.

A personal representative shall pay a secured claim on the basis of the amount allowed if the creditor surrenders the security. Otherwise, the personal representative shall pay on the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the amount of the claim allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement under which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

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

**Popular Name:** EPIC

### **700.3810 Claims not due and contingent or unliquidated claims.**

Sec. 3810.

(1) This section applies to a claim that will become due at a future time, a contingent claim, and an unliquidated claim.

(2) If a claim becomes due or certain before distribution of the estate and if the claim has been allowed or established by a proceeding, the claim shall be paid in the same manner as a presently due and absolute claim of the same class.

(3) For a claim not covered by subsection (2), the personal representative or, on the personal representative's or claimant's petition in a proceeding for the purpose, the court may provide for payment in 1 of the following manners:

(a) If the claimant consents, the claimant may be paid the claim's present or agreed value, taking any uncertainty into account.

(b) Arrangement for future payment, or possible payment, on the happening of a contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

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

**Popular Name:** EPIC

### **700.3811 Counterclaims.**

Sec. 3811.

In allowing a claim, the personal representative may deduct a counterclaim that the estate has against the claimant. In determining a claim against an estate, the court shall reduce the amount allowed by the amount of a counterclaim and, if counterclaims exceed the claim, render a judgment against the claimant in the excess amount. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

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

**Popular Name:** EPIC

#### **700.3812 Limitation on execution or levy against property of estate.**

Sec. 3812.

An execution shall not issue upon nor shall a levy be made against estate property under a judgment against a decedent or personal representative. This section shall not be construed to prevent the enforcement of a mortgage, pledge, or lien upon property in an appropriate proceeding.

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

**Popular Name:** EPIC

#### **700.3813 Settlement of claims.**

Sec. 3813.

If a claim against the estate is presented in the manner provided in section 3804 and it appears to be in the estate's best interest, the personal representative may settle the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

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

**Popular Name:** EPIC

#### **700.3814 Encumbered assets.**

Sec. 3814.

If property of the estate is encumbered by mortgage, pledge, lien, or other security interest and it appears to be in the estate's best interest, the personal representative may pay the encumbrance or a part of the encumbrance, renew or extend an obligation secured by the encumbrance, or convey or transfer the property to the creditor in satisfaction of the lien, in whole or in part, whether or not the encumbrance holder has presented a claim. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered property unless the distributee is entitled to exoneration.

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

**Popular Name:** EPIC

### **700.3815 Effect of administration in more than one state.**

Sec. 3815.

(1) Estate property being administered in this state is subject to a claim, allowance, or charge existing or established against the personal representative wherever appointed.

(2) If the estate, either in this state or as a whole, is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges, and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed, either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of the claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the benefited creditor shall receive dividends from property located in this state only upon the balance of the claim after deducting the amount of the benefit.

(3) If the family exemptions, allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered in separate states and if this state is not the state of the decedent's last domicile, a claim allowed in this state shall be paid from property located in this state if that property is adequate for the purpose, and after that payment, the balance of that property shall be transferred to the domiciliary personal representative. If local property located in this state is not sufficient to pay all claims allowed in this state, that property shall be marshaled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from property in other jurisdictions.

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

**Popular Name:** EPIC

## **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 devises.
- (c) General devises.
- (d) Specific devises.

(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

Part 10  
CLOSING ESTATES

**700.3951 Notice of continued administration.**

Sec. 3951.

(1) If the personal representative does not complete estate administration within 1 year after the original appointment by petitioning for a settlement order under section 3952 or 3953 or by filing a sworn statement under section 3954, the personal representative shall file with the court and send to all interested persons a notice that the estate remains under administration and specifying the reason for continuation of administration. This notice of continued administration must be filed not later than 28 days after the anniversary of the personal representative's appointment and, if administration remains incomplete, not later than 28 days after each subsequent anniversary of the appointment.

(2) If the notice described in subsection (1) is not filed, an interested person may petition the court for a hearing on the necessity for continued administration or petition for a settlement order under either section 3952 or 3953. In response to such a petition, the court may issue appropriate orders to assure prompt estate settlement.

(3) If the notice described in subsection (1) is not filed and an interested person's petition is not pending, the court may notify the personal representative and all interested persons that the court will close the estate administration and terminate the personal representative's authority within 63 days unless within that time period any of the following occur:

(a) The personal representative files a notice under subsection (1), a petition for settlement under either section 3952 or 3953, or a sworn statement under section 3954.

(b) An interested person files a petition requesting a hearing on the necessity for continued administration or a petition for an order of settlement under either section 3952 or 3953.

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

**700.3952 Formal proceedings terminating administration testate or intestate; order of general protection.**

Sec. 3952.

(1) A personal representative or an interested person may petition for an order of complete estate settlement. The personal representative may petition at any time, and an interested person may petition after 1 year from the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

(2) A petition under this section may request the court to determine testacy, if not previously determined, to consider the final account, to compel or approve an accounting and distribution, to construe a will or determine heirs, and to adjudicate the estate's final settlement and distribution. After notice to all interested persons and a hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of an interested person.

(3) If 1 or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, on proper petition for an order of complete estate settlement under this section and after notice to the omitted or unnotified persons and other interested persons determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, the court may determine testacy as it affects the omitted persons, and confirm or alter the previous testacy order as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior



proceeding determined this fact.

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

**Popular Name:** EPIC

**700.3953 Formal proceedings terminating testate administration; order construing will without adjudicating testacy.**

Sec. 3953.

(1) A personal representative administering an estate under an informally probated will or a devisee under an informally probated will may petition for a settlement order for the estate that does not adjudicate the decedent's testacy status. The personal representative may petition at any time, and a devisee may petition after 1 year after the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

(2) A petition under this section may request the court to consider the final account, to compel or approve an accounting and distribution, to construe the will, or to adjudicate the estate's final settlement and distribution. After notice to all devisees and the personal representative and a hearing, the court may enter appropriate orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of a devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 3952.

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

**Popular Name:** EPIC

**700.3954 Closing estate by sworn statement of personal representative.**

Sec. 3954.

(1) Unless prohibited by court order and except for an estate being administered in a supervised administration proceeding, a personal representative may close an estate by filing with the court, no earlier than 5 months after the date of a general personal representative's original appointment, a sworn statement stating that the personal representative or a previous personal representative has done all of the following:

(a) Determined that notice was published and the time limited for presentation of creditors claims has expired.

(b) Fully administered the decedent's estate by making payment, settlement, or other disposition of all claims that were presented, of administration and estate expenses, and of estate, inheritance, and other death taxes, except as specified in the statement, including distribution of the estate property to the persons entitled. If a claim remains undischarged, the statement shall state whether the personal representative distributed the estate subject to possible liability with the distributee's agreement or shall state in detail other arrangements that have been made to accommodate outstanding liabilities.

(c) Sent a copy of the statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

(d) Furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected by the administration. The account shall clearly state the amount paid out of the estate in fiduciary fees, attorney fees, and other professional fees.

(2) If a proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed, the personal representative's appointment terminates.

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

**Popular Name:** EPIC

#### **700.3955 Liability of distributees to claimants.**

Sec. 3955.

After estate property is distributed and subject to section 3957, an undischarged claim not barred may be prosecuted in a proceeding against 1 or more distributees. A distributee is not liable to a claimant for an amount received as exempt property or as a homestead or family allowance, or for an amount in excess of the value of the distributee's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of an unbarred claim as if the claim had been satisfied in the course of administration. If a distributee fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in a proceeding in which the claim is asserted, the distributee loses the right of contribution against other distributees.

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

**Popular Name:** EPIC

#### **700.3956 Limitations on proceedings against personal representative.**

Sec. 3956.

Unless previously barred by adjudication and except as provided in the closing statement, the right of a successor or creditor whose right is not otherwise barred against the personal representative for breach of fiduciary duty is barred unless a proceeding to assert the right is commenced within 6 months after the filing of the closing statement. The right barred under this section does not include the right to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

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

**Popular Name:** EPIC

#### **700.3957 Limitations on actions and proceedings against distributees.**

Sec. 3957.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling a personal representative's accounts, or otherwise barred, a claimant's claim to recover from a distributee who is liable to pay the claim and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from a distributee are forever barred at the later of 3 years after the decedent's death or 1 year after the time of the property's distribution. However, all claims of the decedent's creditors are barred in accordance with the time periods specified in section 3803. This section does not bar an action to recover property or value received as a result of fraud.

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

**Popular Name:** EPIC

#### **700.3958 Certificate of completion.**

Sec. 3958.

If an objection to the closing statement is not filed within 28 days after the filing date, the personal representative, the personal representative's sureties, or a successor of either is entitled to receive a certificate from the register that the personal representative appears to have fully administered the estate in question. The certificate is evidence of discharge of a lien on property given to secure the personal representative's obligation in lieu of bond or a surety. The certificate does not preclude action against the personal representative or the surety.

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

**Popular Name:** EPIC

#### **700.3959 Subsequent administration.**

Sec. 3959.

(1) The court may reopen an estate if either of the following applies:

(a) Estate property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed.

(b) There is other good cause to reopen a previously administered estate, including an estate administratively closed, on petition of an interested person and notice as the court directs.

(2) The court may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this act apply as appropriate. A claim previously barred must not be asserted in the subsequent administration.

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

**Popular Name:** EPIC

### **Part 11**

## **COLLECTION OF PERSONAL PROPERTY BY SWORN STATEMENT, SMALL ESTATES, AND SUMMARY ADMINISTRATIVE PROCEEDINGS**

#### **700.3981 Delivery of cash not exceeding \$1,500 and decedent's wearing apparel.**

Sec. 3981.

(1) A hospital, convalescent or nursing home, morgue, or law enforcement agency holding \$1,500.00 or less and wearing apparel of a decedent may deliver the money and wearing apparel to an individual furnishing identification and a sworn statement that the individual is the decedent's spouse, child, or parent and that there is no application or petition pending for administration of the decedent's estate. The hospital, home, morgue, or law enforcement agency making the delivery is released to the same extent as if delivery were made to a legally qualified personal representative of the decedent's estate and is not required to see to the property's disposition. The individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

(2) 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

#### **700.3982 Court order distributing small estates.**

Sec. 3982.

(1) On a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial and if the balance of a decedent's gross estate consists of property of the value of \$50,000.00 or less, the court may order that the property be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(2) On a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of \$50,000.00 or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(3) Other than a surviving spouse who qualifies for allowances under this act or the decedent's minor children, an heir who receives property through an order under this section is responsible, for 63 days after the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order. The court shall state in the order the condition on the distribution of property provided by this subsection.

(4) If a decedent's estate meets the criteria for using the procedure under either this section or section 3983 and if a person is authorized by this act to use either procedure, a person, other than the court, shall not require the authorized person to use 1 procedure rather than the other.

(5) Beginning January 1, 2024, when calculating the value of the decedent's gross estate under subsection (1), if real property included in the estate is encumbered by or used as security for an indebtedness, the amount of the indebtedness, not to exceed \$250,000.00, must be deducted from the value of the real property.

(6) A dollar amount prescribed by 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

### **700.3983 Collection of personal property by sworn statement.**

Sec. 3983.

(1) After 28 days after a decedent's death, a person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the indebtedness or deliver the tangible personal property or the instrument to a person claiming to be the decedent's successor on being presented with the decedent's death certificate and a sworn statement made by or on behalf of the successor stating all of the following:

(a) The estate does not include real property and the value of the entire estate, wherever located, net of liens and encumbrances, does not exceed \$50,000.00, adjusted as provided in section 1210.

(b) Twenty-eight days have elapsed since the decedent's death.

(c) An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.

(d) The claiming successor is entitled to payment or delivery of the property.

(e) The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

(2) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of a sworn statement as provided in subsection (1).

(3) The state court administrative office shall develop and make available a standardized form for use as a sworn statement that can be used for the procedure authorized under subsection (1). The form must include a notice that a false statement may subject the person swearing to the statement to prosecution for perjury.

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

**Popular Name:** EPIC

#### **700.3984 Effect of sworn statement.**

Sec. 3984.

(1) A person paying, delivering, transferring, or issuing personal property or the evidence of personal property under a sworn statement as provided in section 3983 is discharged and released to the same extent as if the person dealt with the decedent's personal representative. The person is not required to see to the application of the personal property or evidence of the application, or to inquire into the truth of a statement in the sworn statement.

(2) If a person to whom a sworn statement is delivered under section 3983 refuses to pay, deliver, transfer, or issue personal property or evidence of personal property, the property may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of a person's right to the property in a proceeding brought for the purpose by or on behalf of the persons entitled to the property. A person to whom payment, delivery, transfer, or issuance is made is answerable and accountable for the property to a personal representative of the estate or to another person having a superior right.

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

**Popular Name:** EPIC

#### **700.3987 Summary administrative proceedings.**

Sec. 3987.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in section 3988.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000

**Popular Name:** EPIC

#### **700.3988 Closing by sworn statement of personal representative.**

Sec. 3988.

(1) Unless prohibited by court order and except for an estate being administered by a supervised personal representative, a personal representative may close an estate administered under the summary procedures of section 3987 by filing with the court, at any time after disbursement and distribution of the estate, a sworn statement stating all of the following:

(a) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness.

(b) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled to the estate.

(c) The personal representative has sent a copy of the closing statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, and has furnished a full account in writing of the estate administration to the distributees whose interests are affected.

(2) The sworn statement filed under this section has the same effect as a sworn statement filed under section 3954. If an objection to the sworn statement is not filed within 28 days after the filing date, the register shall issue a

certificate described in section 3958.

(3) If an action or proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed under this section, the personal representative's appointment terminates.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000

**Popular Name:** EPIC