

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

**PART 4**

**PROTECTION OF PROPERTY OF AN INDIVIDUAL UNDER DISABILITY OR OF A MINOR**

**700.5401 Protective proceedings.**

Sec. 5401. (1) Upon petition and after notice and hearing in accordance with this part, the court may appoint a conservator or make another protective order for cause as provided in this section.

(2) The court may appoint a conservator or make another protective order in relation to a minor's estate and affairs if the court determines that the minor owns money or property that requires management or protection that cannot otherwise be provided, has or may have business affairs that may be jeopardized or prevented by minority, or needs money for support and education and that protection is necessary or desirable to obtain or provide money.

(3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

(4) The court may appoint a conservator in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 466, Eff. June 1, 2001.

**Popular name:** EPIC

**700.5402 Protective proceedings; jurisdiction.**

Sec. 5402. After the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court in which the petition is filed has the following jurisdiction:

(a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated.

(b) Exclusive jurisdiction to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected individual or any of the protected individual's dependents or other claimants.

(c) Concurrent jurisdiction to determine the validity of a claim against the protected individual or the protected individual's estate, and questions of title concerning estate property.

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

**Popular name:** EPIC

**700.5402a Appointment of conservator or issuance of protection order; conditions; connection of individual to state; factors.**

Sec. 5402a. (1) The court has jurisdiction over the appointment of a conservator or the issuance of a protective order in relation to an individual's estate and affairs under this part if any of the following apply:

(a) The individual for whom a conservator or protective order is sought resides in this state.

(b) The individual for whom a conservator or protective order is sought is present in this state and has a significant connection to this state.

(2) In determining if the individual for whom a conservator or protective order is sought has a significant connection to this state under subsection (1)(b), the court shall consider all of the following factors:

(a) The wishes of the individual.

(b) The location of the individual's family and other interested persons.

(c) The length and time the individual was present in this state and the duration of any absence.

(d) The location of the individual's property.

(e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services.

(f) Any other factor the court considers relevant.

**History:** Add. 2016, Act 498, Eff. Apr. 6, 2017.

**Popular name:** EPIC

#### **700.5403 Venue.**

Sec. 5403. Venue for a proceeding under this part is as follows:

(a) In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.

(b) If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located.

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

**Popular name:** EPIC

#### **700.5404 Original petition for appointment or protective order.**

Sec. 5404. (1) The individual to be protected, a person who is interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property and business affairs may petition for a conservator's appointment or for another appropriate protective order.

(2) The petition must set forth to the extent known the petitioner's interest; the name, age, residence, and address of the individual to be protected; the name and address of the guardian, if any; the name and address of the nearest relative known to the petitioner; a general statement of the individual's property with an estimate of the value of the property, including compensation, insurance, a pension, or an allowance to which the individual is entitled; and the reason why a conservator's appointment or another protective order is necessary. If a conservator's appointment is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of the claim to priority for appointment.

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

**Popular name:** EPIC

#### **700.5405 Notice.**

Sec. 5405. (1) On a petition for a conservator's appointment or another protective order, the requirements for notice described in section 5311 apply, subject to the following:

(a) If the individual to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the individual shall be given by mail or publication as provided in section 1401.

(b) If the individual to be protected is a minor, section 5213(1) also applies.

(2) Notice of a hearing on a petition for an order after a conservator's appointment or another protective order must be given to the protected individual, a conservator of the protected individual's estate, and any other person as ordered by the court or as provided by court rule.

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

**Popular name:** EPIC

#### **700.5406 Procedure concerning hearing and order on original petition.**

Sec. 5406. (1) Upon receipt of a petition for a conservator's appointment or another protective order because of minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the minor's choice if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court may send a visitor to interview the individual to be protected. The visitor may be a guardian ad litem or a court officer or employee.

(3) The court may utilize, as an additional visitor, the service of a public or charitable agency to evaluate the condition of the individual to be protected and make appropriate recommendations to the court.

(4) A guardian ad litem, physician, mental health professional, or visitor appointed under this section who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

(a) Consider whether there is an appropriate alternative to a conservatorship.

(b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.

(c) Report to the court based on the considerations required in subdivisions (a) and (b).

(5) The individual to be protected is entitled to be present at the hearing in person. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary, moving the site of the hearing. The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including a court-appointed physician or other qualified person and a visitor, and to trial by jury. The issue may be determined at a closed hearing or without a jury if the individual to be protected or counsel for the individual so requests.

(6) Any person may request for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served by granting the request. The court may attach appropriate conditions to the permission.

(7) After hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001.

**Popular name:** EPIC

#### **700.5407 Permissible court orders.**

Sec. 5407. (1) The court shall exercise the authority conferred in this part to encourage the development of maximum self-reliance and independence of a protected individual and shall make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure. Accordingly, the court may authorize a protected individual to function without the consent or supervision of the individual's conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

(2) The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

(a) While a petition for a conservator's appointment or another protective order is pending and after preliminary hearing and without notice to others, the court has the power to preserve and apply property of the individual to be protected as may be required for the support of the individual or the individual's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the minor's estate and business affairs that are or may be necessary for the best interests of the minor and members of the minor's immediate family.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:

(i) To make gifts.

(ii) To convey or release a contingent or expectant interest in property including marital property rights and a right of survivorship incident to joint tenancy or tenancy by the entirety.

(iii) To exercise or release a power held by the protected individual as personal representative, custodian for a minor, conservator, or donee of a power of appointment.

(iv) To enter into a contract.

(v) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the protected individual.

(vi) To exercise an option of the protected individual to purchase securities or other property.

(vii) To exercise a right to elect an option and change a beneficiary under an insurance or annuity policy and to surrender the policy for its cash value.

(viii) To exercise a right to an elective share in the estate of the individual's deceased spouse.

(ix) To renounce or disclaim an interest by testate or intestate succession or by inter vivos transfer.

(3) The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual either is incapable of consenting or has consented to the proposed exercise of the power:

(a) To exercise or release a power of appointment of which the protected individual is donee.

(b) To renounce or disclaim an interest.

(c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.

(d) To change a beneficiary under an insurance and annuity policy.

(4) A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity.

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

**Popular name:** EPIC

#### **700.5408 Protective arrangements and single transactions authorized.**

Sec. 5408. (1) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of money or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, contract for life care, deposit contract, or contract for training and education; or an addition to or establishment of a suitable trust.

(2) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the protected individual's best interests.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of the protected individual's creditors and dependents and, in view of the disability, whether the protected individual needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of a protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and serves until discharged by order after reporting to the court on all matters done under the appointment order.

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

**Popular name:** EPIC

#### **700.5409 Appointment of conservator.**

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

**Popular name:** EPIC

#### **700.5410 Bond.**

Sec. 5410. (1) The court may require a conservator to furnish a bond. If the court determines that the value of cash and property that is readily convertible into cash in the estate and in the conservator's control exceeds the limit for administering a decedent's estate under section 3982, adjusted in the manner provided under section 1210 for the year in which the conservator is appointed, the court shall require the conservator to furnish a bond, unless 1 or more of the following apply:

(a) The estate contains no property readily convertible to cash and the cash is in a restricted account with a financial institution.

(b) The conservator has been granted trust powers under section 4401 of the banking code of 1999, 1999 PA 276, MCL 487.14401.

(c) The court determines that requiring a bond would impose a financial hardship on the estate.

(d) The court states on the record the reasons why a bond is not necessary.

(2) A bond furnished under this section shall be conditioned upon faithful discharge of all duties of the conservator's trust according to law, with sureties as the court specifies. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the estate property in the conservator's control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring a court order for their removal and the value of land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. Instead of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

**Popular name:** EPIC

#### **700.5411 Terms and requirements of bonds.**

Sec. 5411. (1) The following requirements and provisions apply to a bond required under section 5410:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, a surety consents to the jurisdiction of the court that issued letters to the primary obligor in a proceeding pertaining to the conservator's fiduciary duties and naming the surety as a party respondent. Notice of a proceeding must be delivered to the surety or mailed by registered or certified mail to the address listed with the court where the bond is filed and to the address as then known to the petitioner.

(c) On petition of a successor conservator or an interested person, a proceeding may be initiated against a surety for breach of the obligation of the conservator's bond.

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

(2) A proceeding shall not be commenced against a 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

#### **700.5412 Qualification; limitation and procedure with regard to specified assets; consent to jurisdiction.**

Sec. 5412. (1) Before receiving letters, a conservator must qualify by filing with the appointing court a required bond and a statement of acceptance of the duties of the office.

(2) In filing the statement of acceptance, the conservator may exclude from the scope of the conservator's responsibility, for a period not exceeding 91 days, real estate or an ownership interest in a business entity if the conservator reasonably believes the real estate or property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used for an 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 conservator shall identify the real estate or ownership interest being excluded and specify the time period of exclusion.

(3) If the conservator identifies excluded property under subsection (2), the conservator's responsibilities extend to the excluded property at the end of the exclusion period or upon prior notice of acceptance of that property filed by the conservator with the court, unless, before the end of the exclusion period, the conservator requests the court to appoint a special conservator 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 conservator under subsection (3), the court may do either of the

following:

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

(b) Direct administration of the excluded property by judicial order without the appointment of a conservator with respect to the property.

(5) By accepting appointment, a conservator submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person. Notice of a proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address listed in the petition for appointment or as reported to the court after appointment and to the address as then known to the petitioner.

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

**Popular name:** EPIC

#### **700.5413 Compensation and expenses.**

Sec. 5413. If not otherwise compensated for services rendered, a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed in a protective proceeding, is entitled to reasonable compensation from the estate.

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

**Popular name:** EPIC

#### **700.5414 Death, resignation, or removal of conservator.**

Sec. 5414. The court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

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

**Popular name:** EPIC

#### **700.5415 Petitions for orders subsequent to appointment.**

Sec. 5415. (1) A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:

- (a) Require bond or security or additional bond or security, or reduce bond.
- (b) Require an accounting for the administration of the trust.
- (c) Direct distribution.
- (d) Remove the conservator and appoint a temporary or successor conservator.
- (e) Grant other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning fiduciary responsibility. Upon notice and hearing, the court may give appropriate instructions or make an appropriate order.

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

**Popular name:** EPIC

#### **700.5416 General duty of conservator.**

Sec. 5416. In relation to powers conferred by this part or implicit in the title acquired by virtue of the proceeding, a conservator shall act as a fiduciary and observe the standard of care applicable to a trustee.

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

**Popular name:** EPIC

#### **700.5417 Inventory and records.**

Sec. 5417. (1) Within 56 days after appointment or within another time period specified by court rule, a conservator shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits. The conservator shall provide a copy of the inventory to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

(2) The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

**Popular name:** EPIC

#### **700.5418 Accounts.**

Sec. 5418. (1) A conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(2) The conservator shall provide a copy of an account to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

**Popular name:** EPIC

#### **700.5419 Conservators; title by appointment.**

Sec. 5419. (1) Appointment of a conservator vests in the conservator title as trustee to all of the protected individual's property, or to the part of that property specified in the order, held at the time of or acquired after the order, including title to property held for the protected individual by a custodian or attorney-in-fact. An order specifying that only a part of the protected individual's property vests in the conservator creates a limited conservatorship.

(2) Except as otherwise provided in this act, the protected individual's interest in property vested in a conservator by this section is not transferable or assignable by the protected individual. Though ineffective to affect property rights, an attempted transfer or assignment by the protected individual may generate a claim for restitution or damages that, subject to presentation and allowance, may be satisfied as provided in section 5429.

(3) Property vested in a conservator by this section and the protected individual's interest in that property is not subject to levy, garnishment, or similar process other than an order issued in the protective proceeding made as provided in section 5429.

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

**Popular name:** EPIC

#### **700.5420 Recording of conservator's letters.**

Sec. 5420. (1) Letters of conservatorship are evidence of transfer of all of the protected individual's property, or the part of that property specified in the letters, to the conservator. An order terminating a conservatorship is evidence of transfer of the property subjected to the conservatorship from the conservator to the protected individual or that individual's successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship or an order terminating a conservatorship may be filed or recorded to give record notice of title as between the conservator and the protected individual.

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

**Popular name:** EPIC

#### **700.5421 Sale, encumbrance, or transaction involving conflict of interest; voidable; presumption; compliance with Michigan prudent investor rule; exceptions.**

Sec. 5421. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the conservator has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the conservator's fiduciary and personal interests, is voidable unless any of the following are true:

(a) The transaction is approved by the court after notice as directed by the court.

(b) The transaction involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator.

(c) 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 conservator with any of the following:

- (a) The conservator's spouse.
- (b) The conservator's descendant, sibling, or parent or the spouse of the conservator's descendant, sibling, or parent.
- (c) An agent or attorney of the conservator.
- (d) A corporation or other person or enterprise in which the conservator, or a person that owns a significant interest in the conservator, has an interest that might affect the conservator's best judgment.
- (3) A transaction not concerning estate property in which the conservator engages in the conservator'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 conservator in securities of an investment company or investment trust to which the conservator, or its affiliate, provides services in a capacity other than as conservator 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 conservator, the conservator may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the conservator receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the conservator shall at least annually notify the court 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 conservator shall act in the best interests of the estate. If the estate is the sole owner of a corporation or other form of enterprise, the conservator shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the estate.
- (6) This section does not preclude the following transactions, if fair to the estate:
  - (a) An agreement relating to the compensation of the conservator.
  - (b) Payment of reasonable compensation to the conservator.
  - (c) A transaction between the estate and another trust or conservatorship of which the conservator is a fiduciary or in which the estate or protected individual has an interest.
  - (d) A deposit of estate money in a financial institution operated by or affiliated with the conservator.
  - (e) An advance by the conservator 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

#### **700.5422 Persons dealing with conservators; protection.**

Sec. 5422. (1) A person who in good faith either assists or deals with a conservator for value in a transaction, other than a transaction that requires a court order as provided in section 5407 or 5423(3), is protected as if the conservator properly exercised the power. Except as provided in subsection (3), the fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but a restriction on a conservator's powers that is endorsed on letters as provided in section 5427 is effective as to third persons. A person is not bound to see to the proper application of estate property paid or delivered to a conservator.

(2) The protection expressed in this section extends to a procedural irregularity or jurisdictional defect that occurs in a proceeding leading to the issuance of letters and is not a substitution for protection provided by a comparable provision of the law relating to a commercial transaction or to simplifying a transfer of securities by a fiduciary.

(3) A conservator shall record an order allowing the sale, disposal, mortgage, or pledge of or placement of a lien on real property under section 5423 in the records of the register of deeds for the county in which the real estate is located. Unless the order has been recorded or a person to whom an interest in the real estate is transferred has been given a copy of the order, the person is not entitled to presume that the conservator has the power to sell or otherwise dispose of the real property, or to mortgage, pledge, or cause a lien to be placed on the protected individual's real property, as applicable.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

**Popular name:** EPIC

#### **700.5423 Powers of conservator in administration.**

Sec. 5423. (1) Subject to a limitation imposed under section 5427, a conservator has all of the powers conferred in this section and the additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the powers, responsibilities, and duties of a guardian described in section 5215 until the individual is no longer a minor or marries. The parental rights conferred on a conservator by this section do not preclude a guardian's

appointment as provided in part 2.

(2) Acting reasonably in an effort to accomplish the purpose of the appointment and without court authorization or confirmation, a conservator may do any of the following:

(a) Collect, hold, or retain estate property, including land in another state, until the conservator determines that disposition of the property should be made. Property may be retained even though it includes property in which the conservator is personally interested.

(b) Receive an addition to the estate.

(c) Continue or participate in the operation of a business or other enterprise.

(d) Acquire an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest.

(e) Invest or reinvest estate property. If the conservator exercises the power conferred by this subdivision, the conservator must invest or reinvest the property in accordance with the Michigan prudent investor rule.

(f) Deposit estate money in a state or federally insured financial institution including one operated by the conservator.

(g) Except as provided in subsection (3), acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or manage, develop, improve, exchange, partition, change the character of, or abandon estate property.

(h) 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.

(i) 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.

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.

(k) Enter into a lease or arrangement for exploration and removal of a mineral or other natural resource or enter into a pooling or unitization agreement.

(l) Grant an option involving disposition of estate property or take an option for the acquisition of property.

(m) Vote a security, in person or by general or limited proxy.

(n) Pay a call, assessment, or other amount chargeable or accruing against or on account of a security.

(o) Sell or exercise stock subscription or conversion rights.

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

(q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. However, the conservator is liable for an act of the nominee in connection with the stock so held.

(r) Insure the estate property against damage or loss or the conservator against liability with respect to third persons.

(s) Borrow money to be repaid from estate property or otherwise.

(t) Advance money for the protection of the estate or the protected individual, and for all expense, loss, or liability sustained in the estate's administration or because of the holding or ownership of estate property. The conservator has a lien on the estate as against the protected individual for such an advance.

(u) Pay or contest a claim; settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible.

(v) Pay a tax, assessment, conservator's compensation, or other expense incurred in the estate's collection, care, administration, and protection.

(w) Allocate an item of income or expense to either estate income or principal, as provided by law, including creation of a reserve out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber property.

(x) Pay money distributable to a protected individual or the protected individual's dependent by paying the money to the distributee or by paying the money for the use of the distributee to the distributee's guardian, or if none, to a relative or other person having custody of the distributee.

(y) Employ a person, including an auditor, investment advisor, or agent, even though the person is associated with the conservator, to advise or assist in the performance of an administrative duty; act upon the person's recommendation without independent investigation; and, instead of acting personally, employ an agent to perform an act of administration, whether or not discretionary.

(z) Employ an attorney to perform necessary legal services or to advise or assist the conservator in the performance of the conservator's administrative duties, even if the attorney is associated with the conservator,

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.

(aa) Prosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.

(bb) Execute and deliver an instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

(cc) Respond to an environmental concern or hazard affecting property as provided in section 5424.

(3) A conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the court. The court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property 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 otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

**Popular name:** EPIC

#### **700.5424 Powers regarding environmental matters.**

Sec. 5424. (1) To respond to an environmental concern or hazard affecting property, the conservator may do any of the following:

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

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

(c) Settle or compromise at any time a claim against the estate that is asserted by a governmental body or private party 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 conservator, may cause the conservator to incur personal liability under an environmental law.

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

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

(2) The powers listed in subsection (1) are by way of enumeration and not limitation on the conservator's power to respond to an environmental concern or hazard.

(3) A conservator is not personally liable to a beneficiary or other party for a decrease in the value of estate property by reason of the conservator's compliance with an environmental law, specifically including a reporting requirement under such a law. Neither the acceptance by the conservator of property nor a failure by the conservator to inspect property or a business operation creates 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 conservator than imposed by law absent these provisions.

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

**Popular name:** EPIC

#### **700.5425 Distributive duties and powers of conservator.**

Sec. 5425. A conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the protected individual or the protected individual's dependents in accordance with the following principles:

(a) The conservator shall consider a recommendation relating to the appropriate standard of support, education, and benefit for the protected individual or a dependent made by a parent or guardian, if any. The conservator shall not be surcharged for money paid to a person or organization furnishing support, education,

or care to the protected individual or a dependent in compliance with the recommendation of the protected individual's parent or guardian unless the conservator knows that the parent or guardian derives personal financial benefit from that payment, including a benefit by relief from a personal duty of support, or that the recommendation is clearly not in the protected individual's best interests.

(b) The conservator shall expend or distribute money reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent with due regard to all of the following:

(i) The estate size, the conservatorship's probable duration, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate.

(ii) The accustomed standard of living of the protected individual and the dependents.

(iii) Other money or sources used for the protected individual's support.

(c) The conservator may expend estate money for the support of an individual legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(d) The conservator may pay money to be expended under this section to any person, including the protected individual, to reimburse for an expenditure that the conservator might have made or in advance for a service to be rendered to the protected individual, if it is reasonable to expect the service will be performed and an advance payment is customary or reasonably necessary under the circumstances.

(e) In discharging a responsibility conferred by court order or this part, a conservator shall implement the principles described in section 5407(1) to the extent possible.

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

**Popular name:** EPIC

#### **700.5426 Gifts; distribution to formerly protected individual; death of protected individual.**

Sec. 5426. (1) If the estate is more than sufficient to provide for the purposes implicit in the distributions authorized by section 5425, a conservator for the protected individual, other than a minor, has the power to make a gift to charity or another object, as the protected individual might have been expected to make, in amounts that do not exceed an annual total of 20% of the estate income.

(2) If a minor who has not been adjudged disabled under section 5401(3) attains majority, after the conservator meets all claims and expenses of administration and accounts to the court if required to do so by the court or by court rule, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(3) If satisfied that a protected individual's disability, other than minority, has ceased, and after meeting all claims and expenses of administration, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(4) If a protected individual dies, the conservator shall deliver to the court for safekeeping a will of the deceased protected individual that has come into the conservator's possession, shall inform the personal representative or a beneficiary named in the will of the delivery, and shall retain the estate for delivery to a duly appointed personal representative of the decedent or another person entitled to the delivery. If within 42 days after the protected individual's death another person is not appointed personal representative and an application or petition for appointment is not before the court, the conservator may petition to exercise a personal representative's powers and duties in order to be able to proceed to administer and distribute the decedent's estate. Upon petition for an order granting a personal representative's powers to a conservator, after notice to a person nominated as personal representative by a will of which the petitioner is aware and after notice as described in section 1401, the court may grant the petition upon determining that there is no objection and may endorse the letters of the conservator to note that the formerly protected individual is deceased and that the conservator has all of the powers and duties of a personal representative. An order made and entered under this section has the effect of an order for a personal representative's appointment as provided in section 3307 and parts 6 to 10 of article III. However, after administration, the estate in the conservator's name may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

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

**Popular name:** EPIC

#### **700.5427 Expansion or limitation of powers of conservator.**

Sec. 5427. Subject to the restrictions in section 5407(3), at the time of appointment or later, the court may confer on a conservator, in addition to the powers conferred by sections 5423 to 5426, any power that the court itself could exercise under section 5407(2)(b) and (c). At the time of appointment or later, the court may

limit the powers of a conservator otherwise conferred by sections 5423 to 5426 or previously conferred by the court, and may at any time remove or modify a limitation. If the court limits a power conferred on the conservator by sections 5423 to 5426 or specifies, as provided in section 5419(1), that title to some, but not all, of the protected individual's property vests in the conservator, the limitation or specification of property subject to the conservatorship shall be endorsed upon the letters of appointment.

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

**Popular name:** EPIC

#### **700.5428 Preservation of estate plan; right to examine.**

Sec. 5428. (1) When doing any of the following, the conservator and the court shall take into account the protected individual's estate plan as known to them, including a will, a revocable trust of which the individual is settlor, and a contract, transfer, or joint ownership arrangement originated by the protected individual with provisions for payment or transfer of a benefit or interest at the individual's death to another or others:

- (a) Investing the estate.
  - (b) Selecting estate property for distribution under section 5425 or 5426(1).
  - (c) Utilizing a power of revocation or withdrawal available for the protected individual's support and exercisable by the conservator or the court.
- (2) The conservator may examine the protected individual's will.

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

**Popular name:** EPIC

#### **700.5429 Claims against protected individual; enforcement.**

Sec. 5429. (1) A conservator may pay or secure from the estate a claim against the estate or against the protected individual arising before or during the conservatorship upon the presentation of the claim and allowance in accordance with the priorities in subsection (4). A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and mailing address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim with the court in the form prescribed by court rule and may deliver or mail a copy of the statement to the conservator.

(2) The court shall consider a claim presented when the conservator receives the written statement of claim or when the claim is filed with the court, whichever happens first. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 63 days after the presentation of the claim. The presentation of a claim tolls a statute of limitations relating to the claim until 28 days after the claim's disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and, upon due proof, may procure an order for the claim's allowance, payment, or security from the estate. If a proceeding is pending against a protected individual at the time of the appointment of a conservator or is initiated against the protected individual after the appointment, the moving party shall give notice of the proceeding to the conservator if the proceeding could result in creating a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- (a) Costs and expenses of administration.
- (b) Claims of the federal or state government having priority under law.
- (c) Claims incurred by the conservator for care, maintenance, and education that were previously provided to the protected individual or the protected individual's dependents.
- (d) Claims arising before the conservatorship.
- (e) All other claims.

(5) 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. However, if it appears that the assets of the conservatorship are adequate to meet all existing claims, acting in the protected individual's best interest, the court may order the conservator to give a mortgage or other security on the conservatorship estate to secure payment at some future date of any or all claims listed in subsection (4)(e).

(6) If a protected individual dies while under conservatorship, upon petition of the conservator and with or without notice, the court may hear a claim for burial expense or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of

it and may provide in an order of allowance that the claim or a part of it shall be paid immediately if payment can be made without injury or serious inconvenience to the protected individual's estate.

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

**Popular name:** EPIC

#### **700.5430 Personal liability of conservator.**

Sec. 5430. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in a fiduciary capacity in the course of estate administration unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(2) A conservator is personally liable for an obligation arising from ownership or control of estate property or for torts committed in the course of estate administration only if personally at fault.

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

(4) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

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

**Popular name:** EPIC

#### **700.5431 Termination of proceeding.**

Sec. 5431. The protected individual, conservator, or another interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship. Upon termination, title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate instruments to evidence the transfer.

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

**Popular name:** EPIC

#### **700.5432 Payment of debt and delivery of property to foreign conservator without local proceedings.**

Sec. 5432. (1) A person indebted to a protected individual or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected individual may pay or deliver the money, property, or instrument to a conservator, guardian of the estate, or other similar fiduciary appointed by a court of the protected individual's state of residence upon being presented with proof of appointment and a sworn statement made by or on behalf of the fiduciary stating both of the following:

(a) That no protective proceeding that relates to the protected individual is pending in this state.

(b) That the foreign fiduciary is entitled to payment or to receive delivery.

(2) If the person to whom the sworn statement is presented is not aware of a protective proceeding pending in this state, payment or delivery in response to the demand and sworn statement discharges the debtor or possessor.

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

**Popular name:** EPIC

#### **700.5433 Appointment of conservator in another state as temporary conservator.**

Sec. 5433. (1) If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary conservator under subsection (1), the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly.

(3) If an objection is filed to a conservatorship under this section, the conservatorship continues unless a

court in this state enters an order removing the conservator.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

**Popular name:** EPIC