

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

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.

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