

5. EPIC

Who are Protected Individuals?

Highlights of the Estates and Protected Individual's Code - Act 386 of 1998

A Guide to EPIC

Designation of a Patient Advocate under EPIC

PROTECTED INDIVIDUALS

The Estates and Protected Individuals Code (EPIC) governs matters pertaining to the administration of estates of deceased and protected persons. The Probate Court has exclusive jurisdiction over these matters.

Protected individuals are persons who by reason of their age or physical impairment cannot manage their own affairs. A guardian may be required for an unmarried minor whose parents are deceased or whose parental rights to custody are terminated or suspended by circumstances or prior court order. A guardian may also be required for a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person. A guardian is a person who is given authority to exercise certain powers over a protected individual. Guardians are appointed by order of the court. A prospective guardian may be nominated by petition, by will, or other written document signed by the parent and at least two other witnesses.

If a protected individual has an estate that requires management, the protected individual may need a conservator. A conservator is a person appointed by the court to exercise powers over the assets of a protected individual. The same person may serve as both guardian and conservator, or two separate persons may be appointed.

A conservator may be appointed if the court finds that any of the following circumstances exist:

- ☞ A minor owns money or property that requires management or protection.
- ☞ A minor has or may have business affairs that may be jeopardized or prevented by the person's minority.
- ☞ Funds are needed for the person's support and education and that protection is necessary or desirable to obtain or provide funds.
- ☞ The court determines an individual is unable to manage his or her property and 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; the person has property which will be wasted or dissipated unless proper management is provided; funds are needed

for the support, care, and welfare of the person or those entitled to be supported by the person.

When a minor's estate is under \$5000, a conservator is **not needed**. The following persons may receive up to \$5000 per year for the support and education of the minor without being appointed conservator:

- ✔ The minor's parent;
- ✔ The person having care and custody of the minor under court order;
- ✔ The person with whom the minor resides; or
- ✔ The guardian of the minor

Any interested person can petition the court for a guardian or conservator of a protected individual, and:

- ✔ A minor 14 years of age or older may nominate his or her own guardian or petition for appointment of a conservator;
- ✔ An adult person may petition for appointment of a guardian or conservator for himself or herself;
- ✔ A person who is interested in the person's estate, affairs, or welfare including his or her parent, guardian or custodian may petition for appointment of a conservator;
- ✔ A person who may be adversely affected by lack of the effective management of the protected persons property or affairs may petition for appointment of a conservator.

A limited guardianship of a minor may be established only upon the consent of the custodial parent. A limited guardianship grants full custody of the child to the limited guardian, except the guardian may not consent to adoption or marriage. At any time the parent or limited guardian may withdraw their consent by filing the necessary documents with the court. The court must discharge the guardianship but may require a hearing prior to doing so. The court reviews limited guardianships annually for children under 6 years of age.

A guardian must file a written report annually showing the wards condition, the condition of the ward's estate subject to the guardians possession, any medical or psychiatric treatment or care to which the ward was subjected during the report period and what reason, if any exists, for continuation of the guardianship. There is a form provided by the Probate Court to satisfy this obligation.

A conservator must:

- ☞ Within 56 days of appointment file a complete inventory of the ward's assets;
- ☞ Provide a copy of the inventory to an adult ward; or
- ☞ Provide a copy of the inventory to a minor's parent or guardians.
- ☞ Annually file with the court an itemized accounting of all expenditures, disbursements, and property remaining in his/her hands and in what form.

Failure of the conservator to file an inventory or annual account will result in suspension of the conservator's powers.

Since these legal proceedings can substantially affect the protected person's rights as well as subject the fiduciary to personal liability, it is advisable to seek consultation with an attorney prior to instituting action.

A Guide to the Estates and Protected Individuals Code

Public Act 386 of 1998
Effective. April 1, 2000
With Comparisons to the Revised Probate Code

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Reporter, Estates and Protected Individuals Code
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INTRODUCTORY COMMENTS

The current Revised Probate Code (RPC) which was enacted in 1978, is an imperfect and partial attempt to update the 1939 Probate Code. The RPC added some features of the Uniform Probate Code (UPC) without smoothly integrating them. The Estates and Protected Individuals Code (EPIC) is a true integration of the UPC with unique and essential features of current Michigan law.

The EPIC is a product of seven years of drafting, consideration, debate, and redrafting by the Probate and Estate Planning Council augmented by many section members.

A. Participants in the debates and policy making decisions included: sole practitioners, lawyers from small to large law firms, attorneys from the UAW legal services staff, Judges of Probate, Probate Registers, and bank trust officers.

B. EPIC endorsed by the Michigan Probate Judges Association, the Council of the Probate and Estate Planning Section of the State Bar of Michigan (the largest section of the State Bar), and the Michigan Bankers Association.

There will be a substantial benefit to Michigan citizens and Michigan courts to be part of a consistent national pattern of estate laws and procedures. The courts will benefit from having a body of law interpretations from other jurisdictions. There are at least ten other important benefits of the EPIC for the average Michigan resident. The EPIC:

C. Will reduce litigation because it eliminates ambiguities and inconsistencies in current law.

D. Simplifies probate procedure. Because attorney fees in probate often are based on hourly rates, fees should be reduced.

E. Revises and updates law of intestacy (rules governing distribution of property when the decedent fails to leave a Will) to more closely parallel the preferences of the general population (as evidenced by numerous empirical studies).

F. Updates dollar amounts for allowances and exemptions to give greater protection to family members. In addition, the dollar amounts will be indexed for inflation to maintain their protective value.

G. States new rules governing the investment standards for fiduciaries.

H. Enacts provisions that address responsibilities and obligations of fiduciaries who encounter environmental problems with estate assets.

I. Permits parents to name a guardian for a minor child without the need to prepare an entire solely for that purpose.

- J. Encourages and facilitates non-probate transfers at death.
- K. Gives more complete statutory guidance and protections to settling an estate that avoids probate.
- L. Offers a non-probate method for collecting up to \$15,000 in assets.

ARTICLE I

DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

PART ONE - SHORT TITLE AND DEFINITIONS

The definitions articulate substantially the same concepts as now in the Revised Probate Code.

PART TWO - CONSTRUCTION AND GENERAL PROVISIONS

M. The EPIC moves some general provisions that are scattered throughout the RPC and places them into Article I so that it is clear they apply to all types of proceedings. The EPIC also articulates and strengthens the rights of beneficiaries.

1. Section 1205 provides methods for discovering asset e and strengthens remedies for fraud.
2. Section 1207 brings together and expands the procedures for determining the fact of death
3. Section 1209 expands the present prohibition on court staff giving legal advice from application solely to independent probate to application to all probate court proceedings.
4. Section 1212 defines the concept of a fiduciary relationship.

N. A cost of living adjustment in Section 1210 will maintain the economic value of exemptions allowances, and spousal share of an intestate estate.

PART THREE - SCOPE, JURISDICTION AND COURTS

O. The jurisdiction of the Probate Court will remain as it is under the RPC.

P. Additional authority is granted to courts to enable them to respond to improper behavior by I fiduciaries or others.

1. Section 1308 states that a fiduciary is liable for certain actions or inactions.
2. Section 1309 authorizes the court to enjoin a party, on a ex- parte basis, when there is evidence of immediate risk of harm. A prompt hearing will be available to the enjoined person.

PART FOUR - NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

Q. The EPIC contains general notice requirements but, as in the RPC, indicates that notice may governed by Supreme Court Rules.

R. The EPIC expands the description of the effect of notice on interested parties. It also gives more definite rules regarding those who are bound by notice and bound by in court proceedings.

PART FIVE - PRUDENT INVESTOR RULE

This is entirely new to Michigan. In the last several years; approximately 20 States have updated the principles governing the investment of funds by trustees and other fiduciaries to take account of changing concepts of prudence and new financial products. This part in general, follows the modern Prudent Investor Rule adopted by the American Law Institute and follows the Uniform Prudent Investor Act of the National Conference of Commissioners on Uniform State Laws.

S. Under the Prudent Investor Rule, the fiduciary must invest by:

1. Taking into account the purposes, terms, and distribution requirements expressed in the governing instrument and the other circumstances of the particular estate.
2. Looking to the investment portfolio as a whole, asking whether and how a particular asset fits in overall investment strategy rather than asking whether a particular asset meets an abstract test of prudence.
3. Setting an investment strategy that has risk and return objectives that are reasonably suited to the estate being managed.
4. Diversifying investments unless special circumstances indicate that the estate's objectives are better served by not diversifying.

T. The Prudent Investor Rule retains and emphasizes the fiduciary's duties of loyalty and impartiality and the obligation to exercise reasonable care, skill, and caution.

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

PART ONE - INTESTATE SUCCESSION

In general, the approach of the Estates and Protected Individuals Code is to adjust dollar amount values to bring them into line with the economic value of the dollar amounts adopted in the Revised Probate Code in 1978, taking into account the inflation over the twenty year period. Additionally, the EPIC reflects more variables to adjust to the increasingly complex features of modern society and marriage.

U. Spouse's share. The following rules will apply under the Estates and Protected Individuals Code to describe the share taken by a surviving spouse when the decedent leaves no Will (i.e. intestate succession):

1. The spouse takes the entire estate if the decedent left no descendant and no parent.
2. The spouse takes the first \$150,000 plus $\frac{1}{2}$ of the balance of the estate if the decedent left descendants all of whom are descendants of the surviving spouse and the surviving spouse left no other descendant who survived the decedent.
3. The spouse takes the first \$150,000 in value plus $\frac{3}{4}$ of the excess if the decedent left no descendants but did leave a parent.
4. The spouse takes the first \$150,000 plus $\frac{1}{2}$ of the excess if the decedent left descendants all of whom are descendants of the spouse and the spouse does have a descendant who is not a descendant of the decedent.
5. The spouse takes the first \$150,000 plus $\frac{1}{2}$ of the excess if the decedent left descendants, one or more of whom are not descendants of the spouse.

6. The spouse takes the first \$100,000 plus $\frac{1}{2}$ of the excess if none of the decedent's descendants are descendants of the spouse.

V. Comparison to Revised Probate Code. Under the Revised Probate Code the spouse's share is:

1. The entire estate if the decedent left no issue and no parent.
2. The first \$60,000 in value plus $\frac{1}{2}$ of the excess if the decedent left no issue but did leave a parent surviving
3. The first \$60,000 plus $\frac{1}{2}$ of the excess if the decedent left issue all of whom also are issue of the surviving spouse.
4. One-half of the estate if there are surviving issue, but not all are issue of the surviving spouse.

W. Share of Others Than Spouse under the Estates and Protected Individuals Code. The share of the state not taken by the surviving spouse will be distributed to:

1. The decedent's surviving descendants by right of representation.
2. If there are no descendants, to the surviving parent or parents.
3. If there are no descendants and no parent, then to the surviving descendants of the decedent's parents by representation.
4. If there are no descendants, no parent, and no descendants of the decedent's parents, then $\frac{1}{2}$ to the paternal grandparents or grandparent or, if none, to their surviving descendants, by representation; and $\frac{1}{2}$ to the maternal grandparents or grandparent, or if none, to their surviving descendants by representation.

X. Comparison to the Revised Probate Code. Under the Revised Probate Code, the share of the estate not taken by a surviving spouse is distributed:

1. To the decedent's surviving issue, by representation.
2. If there are no issue, to the surviving parents or parent
3. If there is no issue, no parent, then to the surviving brothers and sisters of the decedent and children of deceased brothers and sisters. Note that issue of nephews and nieces are excluded.
4. If there is no issue, no parent, no brother or sister or children of brothers and sisters, then $\frac{1}{2}$ to the paternal grandparents or, grandparent, or if none, to their surviving issue, by representation; and $\frac{1}{2}$ to the maternal grandparents or grandparent or their surviving issue, by representation.

Y. Representation, under the Estates and Protected Individuals Code.

1. Representation under the EPIC can be described as "per capita at each generation". Under the Revised Probate Code, representation is a traditional, per stirpital allocation.
2. The difference between the EPIC and the RPC really is quite slight. The divergence can be illustrated by the following case:

A single mother dies survived by one son, one grandchild of a deceased son, and five grandchildren of a deceased daughter. Under the Revised Probate Code (current law) the son takes $\frac{1}{3}$, the one grandchild of the deceased son takes $\frac{1}{3}$, and the five grandchildren of the deceased daughter each take $\frac{1}{15}$. Under the EPIC, the surviving son will take $\frac{1}{3}$, and the six grandchildren will take $\frac{1}{9}$ each. The change is based on over-whelming empirical evidence that shows that a grandparent would treat all grandchildren equally in these circumstances.

PART TWO - ELECTIVE SHARE OF SURVIVING SPOUSE

An elective share is intended to provide a minimum share of an estate for the surviving spouse. In other words, it is basic protection against disinheritance.

- A. Under the Revised Probate Code a surviving spouse is entitled to elect against the decedent's Will and obtain from the probate estate an amount which is equal to ^{1/2} of the intestate share of a surviving spouse. This amount, is also reduced by benefits received from other sources. If there is no probate estate, the surviving spouse has no right to elect to take any share, even if the decedent left considerable wealth in other forms.

- B. Under the EPIC, the elective share of the surviving spouse will be the same as under current law.

PART THREE - SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

Z. The provisions in the EPIC are substantially the same as in the Revised Probate Code, but the EPIC provides the spouse with an intestate share in that portion of the estate not left by a pre-marital Will to a descendant who is not the descendant of the spouse. A spouse, of course, would still have elective rights under Part Two.

AA. The EPIC also contains more detailed provisions than does the RPC regarding a share for a child who is omitted from the Will. The essential concept, however, that a Testator may intentionally omit a child is continued.

PART FOUR - EXEMPT PROPERTY AND ALLOWANCES

BB. The homestead allowance is increased from \$10,000 under RPC to \$15,000 for the surviving spouse. If there is no surviving spouse, then all minor and dependent children collectively share the homestead exemption.

CC. The family allowance under the EPIC will be a reasonable allowance for the spouse and minor and dependent children. The payment is limited to one year if the estate is insolvent. The personal representative may set the amount of the family allowance, up to \$18,000, without a court order, but subject to review by the court on request from an interested party.

DD. Under the RPC, the family allowance is set by the court in an amount that is reasonably necessary for the support of the spouse and minor children.

EE. The exempt property allowance is increased from \$3,500 under current law to \$10,000. This is payable to the spouse, or if there is no surviving spouse, to the children, collectively. Note, that all children, not just minor children, are eligible for this exemption.

PART FIVE - WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

FF. This material is a restatement of current law with substantially the same intended effect.

GG. A new provision is the self-proved Will. This permits addition of an affidavit to a Will (or an affidavit separate from the document) that will constitute admissible evidence of proper execution. Numerous other States have this feature, which in an applicable case will reduce the expense of commencing probate proceedings.

PART SIX - RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

The EPIC contains more detail, more definition, and greater coverage than does the RPC.

PART SEVEN - RULES OF CONSTRUCTION APPLICABLE TO DONATIVE DISPOSITIONS IN WILLS AND OTHER GOVERNING INSTRUMENTS

This part expands many concepts from the Law of Wills to other documents that often control passage of assets at death. The expansion is necessary and desirable because of the continued movement to non-probate transfers.

PART EIGHT - GENERAL PROVISIONS CONCERNING PROBATE AND NON-PROBATE TRANSFERS

This material covers the effect of divorce and the effect of homicide on the right to take benefits. Essentially, the provisions of current law are carried forward.

PART NINE-DISCLAIMERS

This restates MCL §§ 554.871 - 554.890 in order to place these provisions into their logical position as part of the Estates and Protected Individuals Code.

PART TEN-INTERNATIONAL WILLS

This part provides procedures for executing a Will in a manner that will result in recognition of the Will in foreign countries.

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

INTRODUCTORY NOTE

HH. Under the Revised Probate Code, there are two basic forms of processing an estate through Probate.

1. Supervised Proceedings. Supervised proceedings are court action taken after a party petitions, notice is given to affected persons, and the court holds a hearing. Under supervised proceedings:

1. There is a hearing to determine the validity of the Will, if there is one.
2. There is a hearing on the ^{ap}pointment of the personal representative.
3. The inventory must be filed with the court.
4. The personal representative must prepare and file an accounting for court approval.

2. Independent Probate. When independent probate is used, the Will is admitted and the personal representative is appointed without the necessity of a hearing.

1. The interested parties then are given notice and an opportunity to object.
2. The personal representative must give an inventory to the interested parties and may but need not, file the inventory with the court.
3. The accounting may be informal, but a beneficiary is entitled to an account if he or she desires one.

Independent probate was adopted from the Uniform Probate Code, it was an add-on, and not well integrated.

II. The Estates and Protected Individuals Code builds on the Uniform Probate Code and offers alternative procedures ranging from significant court involvement to informal proceedings. The proceeding used in a given case will reflect a judgment by the personal representative and the attorney as to the degree of protection needed under the circumstances. The object of the EPIC is to offer efficient and inexpensive procedures for estates that do not involve controversy or have a need for court rulings while providing for more protective proceedings with hearings and court decisions when there are disputes or uncertainties to resolve. The basic options under the EPIC are:

1. Informal proceeding, see Part Three, below.
2. Formal proceedings see Part Four, below.
3. Supervised administration, see Part Five, below.

PART ONE - GENERAL PROVISIONS

JJ. This part contains broader more detailed statements of general principles than does the RPC. All statements, however, are consistent with existing law.

KK. The statute of limitations on a cause of action belonging to the decedent before death is extended to a minimum of twelve months after death.

PART TWO - VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER, AND DEMAND FOR NOTICE

LL. The venue provisions are compatible with existing law.

MM. The EPIC adopts provisions for resolving conflicting claims of domicile.

NN. The priorities for appointment as personal representative are generally familiar concepts.

OO. The EPIC contains a new provision permitting a party who has an economic interest in an estate to file a demand for notice with the court. The consequence of filing the demand is that all papers filed with the court in the particular matter must then be sent to him or her.

PART THREE INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

This part is substantially equivalent to the current independent probate under the RPC.

PART FOUR - FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

PP. The EPIC characterizes as formal proceedings the procedure for obtaining court review and a decision on (1) whether the decedent left a Will or died intestate; (2) the validity of an

alleged Will; or (3) a disagreement over the appointment of the personal representative.

QQ. Formal proceedings are desirable when there is a need for immediate certainty or when there is a conflict among interested parties.

RR. Formal proceedings are similar to the RPC supervised probate, but the statutory provisions are stated with greater clarity and contain more flexibility than does the RPC.

PART FIVE - SUPERVISED ADMINISTRATION

This provides a single, comprehensive settlement process under which the court must, in a formal proceeding, pass on each of:

SS. The question whether the decedent left a Will and the validity of a Will, if any.

TT. The personal representative's priority and qualification to serve.

UU. All distributions of assets to beneficiaries.

PART SIX - PERSONAL REPRESENTATIVE AND APPOINTMENT, CONTROL AND DETERMINATION OF AUTHORITY

VV. The provisions of this part are compatible with current law.

WW. There is a new provision, Section 3601, permitting the personal representative to accept appointment and to begin administration while excluding specified assets for up to three months in order to have time to complete an environmental assessment. At the end of the three months, the excluded assets must come under the personal representative's responsibility; come under the authority of a special personal representative appointed to handle that property; or be handled directly under court authority during the estate settlement process.

XX. Section 3607 provides additional protection for interested parties. It authorizes a restraining order against a personal representative to prevent jeopardy to a party's interest.

YY. Sections 3614 through 3618 permit appointment of a special personal representative. This is similar to a temporary personal representative under the Revised Probate Code.

PART SEVEN - DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

ZZ. These, provisions are similar to current law but are in an expanded and updated form.

AAA. The current Revised Probate Code states the authority of an independent personal representative, but it fails to list in a comprehensive manner the authority of a personal representative appointed in supervised proceedings. The EPIC contains a statement of powers for all personal representatives. This is badly needed.

BBB. Section 3703(4) contains an affirmative statement of the duty of a personal representative to account annually to the beneficiaries. There is no similar statement in current law.

CCC. The EPIC continues the provisions of the RPC obligating the personal representative to give notice of his or her appointment and to inform the beneficiaries of the process of settlement and their rights to information.

DDD. Section 3721 provides mechanisms for court review of the compensation of the personal representative and those employed by the personal representative, including the attorney for the estate.

EEE. Section 3722 authorizes the personal representative to respond to environmental problems with estate assets.

PART EIGHT - CREDITORS' CLAIMS

Creditors' claims and the procedures for addressing them are essentially the same as under the Revised Probate Code.

PART NINE - SPECIAL PROVISIONS RELATING TO DISTRIBUTION

FFF. These provisions are substantially similar to current law.

GGG. Under the Estates and Protected Individuals Code, there is a preference for distributing assets themselves rather than liquidating all assets and distributing cash.

PART TEN - CLOSING ESTATES

HHH. Prompt settlement is encouraged and monitored by the requirement in Section 3951 that the personal representative file notice at the end of each twelve-month period indicating that the estate remains' under administration and specifying the reasons for continuation of administration. The similar provision in the RPC provides for notice of continuation after fourteen months in independent probate. There is no parallel provision for supervised proceedings.

III. There are alternative procedures provided for closing an estate.

1. A formal court review of the account and distribution schedule can be requested following notice to all parties and a hearing. See Section 3952.
2. Closing can be accomplished by filing a sworn statement by the personal representative that administration is complete. This is equivalent to filing a Closing Statement under independent probate in the RPC.

PART ELEVEN - COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

JJJ. The EPIC approves delivery of up to \$500 in cash and the wearing apparel to the spouse, child, or parent on proper affidavit, without court proceedings.

KKK. The EPIC permits collection of up to \$15,000 in personal property by an affidavit. Under the RPC, a small estate proceeding in probate court would be required. The RPC small estate proceeding is also retained.

LLL. The EPIC also provides for immediate distribution of a small estate without notice to creditors when the net value of the estate does not exceed the total of allowances, exemptions, and funeral, medical, and administrative expenses.

ARTICLE IV

FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

MMM. This article removes inconsistencies and conflicts now existing in the RPC. The RPC § 231

through 240 hopelessly confuse the difference between a foreign personal representative acting in Michigan after filing evidence of his or her authority in the local court with appointment of a personal representative for a foreign decedent for purposes of local administration.

NNN. Under the EPIC, after 60-days from a non-resident's death, residents of Michigan may pay debts, or turn over personal property belonging to a non-resident, directly to the foreign personal representative. Notice by a local creditor, however, prevents the payment or transfer. This is continuation of RPC § 232.

000. If there is no Michigan proceeding, a foreign personal representative may exercise all powers of a local Personal representative by filing authenticated copies of the foreign appointment and bond, if any, in the county where the decedent's property is located.

PPP. Local jurisdiction over the foreign personal representative is acquired by the foreign representative filing the appointment with the local court or by the act of collecting assets in this State.

QQQ. If local administration is necessary, the provisions of Article III govern the procedures.

ARTICLE V

PROTECTION OF AN INDIVIDUAL UNDER DISABILITY AND HIS OR HER PROPERTY

RRR. Provisions in the EPIC on guardians and conservators in large measure replicate current RPC provisions on these topics. Much work has been done in recent years to update these statutory provisions. The drafters of the EPIC saw no reason to disturb or replace that work.

SSS. There are some provisions with changes from current law:

1. Under Sections 5202 and 5301, a signed written document witnessed by two persons, not just a Will, may be used by a parent to appoint a guardian of a minor or by a parent or spouse if serving as guardian, to appoint a guardian of an incapacitated person.
2. The financial affairs of a disappeared person will be managed as a conservatorship until death is established or the time period to raise the presumption of death has elapsed.
3. After 45-days from death, a conservator may apply to become personal representative if there is no application pending by another for appointment as personal representative.

TTT. The provisions describing durable power of attorney and designations of patient advocate are virtually unchanged from current law.

ARTICLE VI

UNIFORM TOD SECURITY REGISTRATION PROVISIONS

This article reenacts MCL §§ 451.471 - 451.481 in order to make those provisions part of the Estates and Protected Individuals Code.

ARTICLE VII

TRUST ADMINISTRATION

PART ONE - TRUST REGISTRATION

The registration provisions of current law are continued.

PART TWO - COURT JURISDICTION CONCERNING TRUSTS

UUU. The jurisdiction and venue provisions from the RPC are brought forward into the EPIC.

VVV. Under Section 7207, the court may approve agreements among all interested parties regarding an interpretation, construction, or modification of a trust in order to settle a dispute or controversy.

PART THREE - DUTIES AND LIABILITIES OF TRUSTEES

WWW. Section 7303 explicitly states the duty of a trustee to keep beneficiaries informed of the trust administration.

XXX. Sections 7307 revises the rules concerning finality of trust accountings given to beneficiaries.

1. The Section states standards for the format and content of accountings. An accounting must meet the standards in order to bind a beneficiary.
2. The beneficiary is given twelve months from the receipt of an accounting within which to begin proceedings for breach of trust.
3. Under the RPC, there is a three year period for asserting a claim, but there are no standards for content of an accounting. The RPC provision applies only to final accounts, not to annual accountings.

PART FOUR - POWERS OF TRUSTEES

The RPC provisions are updated and expanded.

PART FIVE - CLAIMS AGAINST A DECEDENT'S REVOCABLE TRUST

YYY. This part provides a procedure to identify and pay claims against a revocable trust when the decedent dies with part or all of his or her assets held in a revocable trust. This procedure will give certainty to the settlement of estates which avoid probate through use of revocable trusts.

ZZZ. The exposure of trust assets to claims is secondary to the exposure of probate assets.

AAAA. If the trustee gives notice and follows the procedures of this part, the statute of limitations on claims can be shortened to four months. This is extremely advantageous because without the new procedure, the normal statute of limitation would prevail. The normal statute could keep assets in the beneficiaries' hands exposed to claims for up to six *years*.

pah 3/12/99

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HIGHLIGHTS of the ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC)

Act 386 of 1998 (700.1101 —700.8.102)

ACT to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts.

1098, At 386 Eff. Apr. 1, 2000 .

CONTENTS

ARTICLE I: DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

Sec.11105(a) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use , of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions. [LIP]

Developmentally disabled person [DDP] and guardianship provisions covered under Chapter 6 of the MHC

ARTICLE II: INTESTACY, WILLS, AND DONATIVE TRANSFERS

ARTICLE III: PROBATE OF WILLS AND ADMINISTRATION

ARTICLE IV: FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

ARTICLE V: PROTECTION OF INDIVIDUAL UNDER DISABILITY AND HIS OR HER PROPERTY

Part 3 → Guardians of Incapacitated Individuals

History → Probate Code - Full Guardian if LIP

Guardianship Reform Act - Full or limited guardianship of LIP

EPIC - Looks at alternatives to guardian

Sec.5302

Venue for guardianship proceeding is in the place where the incapacitated individual resides or is present. If admitted to institution by court order, venue is in the county in which that court is located.

Sec 5303 [as amended by SB1389]

(2) Person who intends to file petition for guardianship shall be provided by the court written information on alternatives to appointment of a full guardian, e.g. limited guardian, conservator, DPA, DNR declaration, or DPOA and an explanation of each.

Sec 5304 (4)

Alleged IP entitled to be present at the hearing in person, to see and hear all evidence. All practical steps need to be taken to ensure presence, including moving hearing site.

Sec. 5306 [as amended by 2000 PA 312/HB 5919]

(2)...If court aware of DPA, shall not grant same authorities to guardian

(3)... Court may appoint limited guardian if person has capacity to do some of the tasks necessary to care for him/herself, but shall not appoint a full guardian. (5) If person has executed a patient advocate designation under 5506 before person is determined legally incapacitated, guardian does not have and shall not exercise the power or duty of making medical treatment decisions that the patient advocate is designated to make....

Sec: 5313 [As amended by HB 5919]

(1)...Court shall not appoint as guardian a public or private agency that financially benefits from directly providing housing, medical, mental health, or social services to the LIP.

Sec: 5520 A legally incapacitated individual who has a guardian with responsibility for making medical treatment decisions cannot then designate another individual to make medical treatment decisions for the LIP.

Conversely and logically, if guardian does not have authority to make medical treatment decisions, LIP can do a DPA.

Part 5 -DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

Sec. 5506 -18 years of age or older

- Of sound mind
- Must be in writing and signed
- Witnessed as to person being of sound mind
- Must be dated
- Must be voluntary.

Sec. 5507 - Patient advocate must sign acceptance of designation

(4) 4. Decision to withhold or withdraw treatment

6. Known desires of patient expressed while person was able to participate in medical treatment decisions presumed to be in person's best interest.

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

700.5506 Designation of patient advocate; "community mental health services program or hospital" defined.

Sec. 5506.

(1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2) For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3) A patient advocate designation under this section must be in writing, signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4) A patient advocate designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2003, Act 63, Imd. Eff. July 22, 2003 ;-- Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005 ;-- Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008

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