



Probate and Estate Planning

Theme Introduction

By Amy N. Morrissey

The Probate and Estate Planning Section is pleased to sponsor this issue of the *Michigan Bar Journal*. Several significant pieces of legislation have been enacted since the section's theme issue on the Michigan Trust Code in 2010.

At the federal level, Congress passed the American Taxpayer Relief Act of 2012, which was enacted January 2, 2013, and signed into law by President Obama the following day. In addition to its many income-tax provisions, the act set the top federal estate tax rate at 40 percent and extended the federal estate, gift, and generation-skipping transfer tax exemption amount of \$5 million, indexed for inflation after 2011. The concept of "portability," which, in general terms, permits a surviving spouse to use the unused federal estate tax exemption of a deceased spouse, was also made permanent. While fewer clients may be concerned about federal estate taxes, the article by Jeffrey D. Moss discusses the many non-tax motives for estate planning.

At the state level, some important pieces of legislation were enacted:

- The Powers of Appointment Act, the Personal Property Trust Perpetuities Act, and portions of the Estates and Protected Individuals Code (EPIC) were revised to allow for decanting of trusts. See MCL 554.92, 554.93, and 556.112 *et seq.*
- A new acknowledgment requirement was established for an agent acting under a power of attorney. See MCL 700.5501.
- Provisions of EPIC were modified to facilitate transfers of foreign guardianships. See revised MCL 700.5313, 700.5314, and new Sections 5202a and 5301a.
- The Do-Not-Resuscitate Procedure Act and EPIC were amended to expand both the authority of a guardian to execute a do-not-resuscitate order for a patient and the settings in which such an order is applicable, among other amendments.
- Provisions of EPIC and the Mental Health Code were modified to allow probate judges to schedule certain hearings

on guardian and conservator matters for minors younger than 18. See MCL 330.1609, 700.5303, and 700.5306.

- Section 7114 was added to Article 9 of EPIC to define the conditions under which a trustee would have an insurable interest in the life of the individual who created the trust (the settlor) or the life of an individual in whom the settlor had an insurable interest.
- Despite opposition from the section, provisions of EPIC were amended to allow the state of Michigan to collect from a probate estate under Medicaid estate recovery. The article prepared by Angela M. Swanberg and James B. Steward provides an explanation of some of the relevant statutes and suggested analysis under their provisions.

Constance L. Brigman's article addresses end-of-life decisions and the gaps in Michigan's current law concerning who is authorized to make these decisions for an individual who is unable to make them. Finally, David Skidmore offers an interesting perspective on the unique aspects of discovery in probate litigation.

The Probate and Estate Planning Section would like to thank the contributing authors and the readers of this issue for your interest in the section's work. Please feel free to join us at our monthly section meetings. To view our meeting schedule and learn more about the section, visit <http://www.michbar.org/probate>. ■



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