

By Hon. Phillip E. Harter

**T**he Estates and Protected Individuals Code (EPIC), Michigan's new probate code, took effect April 1, 2000. As a service to members of the State Bar, selected questions and answers regarding EPIC will be published in this column over the next several months. These items are taken from the almost 400 inquiries and responses contained on the EPIC Question and Answer website at <http://courts.co.calhoun.mi.us>.

You can submit questions regarding EPIC via e-mail to [pharter@internet1.net](mailto:pharter@internet1.net). They will be answered by a panel of experts consisting of probate attorneys, judges, probate registers, and other court staff.

#### Question

When is a revocable trust responsible for paying homestead, family, or exempt property allowances?

#### Answer

Certain revocable trusts are responsible for making certain payments when probate assets are insufficient, pursuant to MCL 700.7501(1), as follows:

- a) Administration expenses of the probate estate;
- b) Enforceable and timely creditor's claims;
- c) Homestead, family, and exempt property allowances.

Trusts affected are those over which the settlor had the right, at his or her death, alone or in conjunction with another person, to revoke and reinvest the principal in himself or herself.

However, the trust is not liable for homestead, family, and exempt property allowances if there is no personal representative appointed. MCL 700.7502(1). EPIC does not provide rights to exempt property, homestead, and/or family allowances for the beneficiaries of a trust. When a personal representative is appointed, those rights arise and EPIC provides that they may be enforced against trust assets.

#### Question

Could the following language be used to avoid the antilapse provisions of EPIC?

"Words of survivorship as used in this document mean that a beneficial interest of a beneficiary shall lapse if the beneficiary does not survive me notwithstanding the rule of construction contained in MCL 700.2603 of the Estates and Protected Individuals Code of Michigan."

#### Answer

The above language would arguably appear to avoid the antilapse provisions of MCL 700.2603.

If a will is involved, consider using the term "devisee" instead of beneficiary. See MCL 700.1103(i). MCL 700.2603 contains the antilapse rule for wills. If the document

is another type of governing instrument [i.e., trust, deed, etc.—see MCL 700.1104(j) for a complete listing], use of the term beneficiary is more appropriate. See MCL 700.1103(c) for EPIC's definition of beneficiary. The antilapse rule for governing instruments that are not wills is enunciated in MCL 700.2709.

For additional information on this subject, including sample language for overcoming the antilapse rule in wills, see EPIC's *Antilapse Provisions: An Analysis Michigan Prob & Est Plan J.*, 19 at 17 (Winter-Spring 2000) ♦

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