

The 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 over 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. They will be answered by a panel of experts consisting of probate attorneys, judges, probate registers, and other court staff.

Question

Can assets be discovered before an estate is opened?

Answer

There is no method to ascertain assets or financial information of a decedent without

opening an estate and obtaining the appropriate court authority.

MCL 700.1303 defines the probate court's concurrent jurisdiction. It provides in part:

(1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:

(a) Determine a property right or interest. (Emphasis added.)

An estate must be opened in order for the discovery mechanism of MCL 700.1205 to be utilized. This statute declares in pertinent part:

(1) The court may order a person to appear before the court and be examined upon the matter of a complaint that is filed with the court under oath by a fiduciary, beneficiary, creditor, or another interested person of a decedent's or ward's trust or estate alleging any of the following:

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(b) The person has possession or knowledge of a deed, conveyance, bond, contract, or other writing that contains evidence of, or tends to disclose, the right, title, interest, or claim of the trustee, decedent, or ward to any of the trust or estate. (Emphasis added.)

After an estate is opened and the probate court thereby acquires jurisdiction over the matter, a complaint (i.e., civil action) could then be filed by the fiduciary. See MCR 5.101(C). If someone other than the personal representative wished to ascertain the nature of the decedent's assets, after the estate was opened they could file a Petition to Determine Title with the Court and then request the desired discovery.

Question

What is the applicable statute of limitations when a trustee submits an annual statement of accounting to a beneficiary that does not meet the requirements of EPIC?

Answer

EPIC sets up shorter statutes of limitations so that there can be finality. In order to have the shorter statute of limitations, the fiduciary must comply with the requirements that are set up in MCL 700.7307, which provides for the limitation of a trustee's liability. The limitations period is one year after the serving of a properly prepared annual account on interested persons. Failure to send the accounts to the interested persons would not start the running of the statute of limitations.

The three-year limitations period of MCL 600.5805(9) would then be applicable for bringing a cause of action against a trustee for a breach of a fiduciary duty. Therefore, if the trustee fails to comply with section 7307, there is a three-year period from the date that the account was due to be sent to the interested parties where an action could be brought for the breach of the trustee's fiduciary duty. ♦

Hon. Phillip E. Harter is a judge in the Calhoun County Probate Court and vice-chairperson of the Probate and Estate Planning Section of the State Bar of Michigan. Judge Harter is a frequent lecturer for ICLE on probate topics and the editor of ICLE's Michigan Guardianship and Conservatorship Handbook.