

By Hon. Phillip E. Harter

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 of Michigan, selected questions and answers regarding EPIC will be published in this column over the next several months. These items are taken from the more than 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

Can a personal representative make a partial distribution without court authority?

### Answer

Whether the personal representative is appointed informally or formally, probate administration will be unsupervised unless supervised administration has specifically been ordered by the court. Supervised administration does contain a prohibition against making a distribution without a prior court order. See MCL 700.3504. The Official Reporter's Comment to EPIC indicates that this provision applies to distributions to beneficiaries (i.e., heirs or devisees). MCL 700.3704 provides as follows:

*A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court. However, the personal representative may invoke the court's jurisdiction in a proceeding authorized by this act to resolve a question concerning the estate or its administration.*

Therefore, a personal representative for an estate in unsupervised administration is able to make a partial distribution, satisfy allowances, and otherwise administer the estate without court authority or order. Certainly,

the personal representative can ask for such an order, but it is not required or expected. If an estate is in supervised administration, a prior court order is required to make a distribution to heirs and/or devisees.

### Question

Does a surviving spouse have a right to live in the decedent's dwelling for one year?

### Answer

Section 288 of the Revised Probate Court (RPC) was not carried forward into EPIC. The concept of allowing the spouse to continue to occupy the decedent's dwelling may now be accomplished within EPIC's grant of the family allowance pursuant to MCL

700.2403. The Reporter's Comment to MCL 700.2403 states in part as follows:

*There is no provision parallel to RPC section 288, MCL 700.288, MSA 27.5288, which granted the surviving spouse the right to live in the decedent's dwelling for one year. It would seem that the value of continued possession of the home for a definite period could be established and be granted to the spouse as part of the family allowance. ♦*

*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.*