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Lisboa, 04 de Maio de 2017

A Adjunta,

Sandra Cristina Sousa Gomes dos Reis

(colaboradora devidamente autorizada para a prática deste ato pela Notária Patrícia Rizzo Fernandes, conforme registo e autorização número 255/4 publicada no site da Ordem dos Notários em 18 de Fevereiro de 2013, nos termos do artigo 8.º do Decreto-lei 26/2004 de 04 de Fevereiro, conjugado com o disposto na Portaria 55/2011 de 28 de Janeiro)



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LV. 34-A	FLS. 38
Doc. nº 46	FLS. 217/262
6/5/2009	

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01967 101/DM1032156v1

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700.3952 Processo legal para extinguir a administração testada ou intestada; ordem de protecção geral

Sec. 3952 (1) Um representante pessoal ou uma pessoa interessada pode requerer uma ordem de liquidação completa da herança. O representante pessoal poderá requerê-lo em qualquer altura e uma pessoa interessada poderá requerê-lo no prazo de um ano após a nomeação de representante pessoal inicial. No entanto, o tribunal não aceitará um requerimento ao abrigo desta secção antes da expiração do prazo para apresentação de uma reivindicação que ocorra antes da morte da pessoa falecida.

(2) Uma petição ao abrigo desta secção pode requerer que o tribunal determine a sucessão, se não determinada anteriormente, que considere a conta final, que obrigue ou aprove uma contabilidade e distribuição, que interprete um testamento ou determine herdeiros e que decida a partilha e distribuição final da herança. Após notificação enviada a todas as pessoas interessadas e uma audiência, o tribunal poderá emitir uma ordem ou ordens, em condições adequadas, determinando as pessoas com direito à distribuição da herança, e conforme as circunstâncias o requeiram, aprovar a resolução, orientando ou aprovando a distribuição da herança, e exonerando o representante pessoal de outras reclamações ou exigências de uma pessoa interessada.

(3) Se um ou mais herdeiros ou legatários foram omitidos como partes, ou não foram notificados de um processo de sucessão prévio, mediante pedido adequado de ordem de liquidação completa da herança ao abrigo desta secção e após notificação das pessoas omitidas ou não notificadas ou outras pessoas interessadas, no pressuposto de que a ordem anterior relativa à liquidação da herança é conclusiva para aqueles que foram notificados do processo anterior, o tribunal pode determinar a liquidação da herança caso afecte as pessoas omitidas, e confirmar ou alterar a ordem de liquidação da herança anterior caso afecte todas as pessoas interessadas à luz das novas provas. Na ausência de objecção por parte da pessoa omitida ou não notificada, a prova recebida na acção inicial de liquidação da herança constitui prova *prima facie* da execução efectiva de um testamento anteriormente admitido para legitimação ou do facto de que a pessoa falecida não deixou testamento válido caso o processo anterior tenha determinado este facto.

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700.2114 Relação pai filho

Sec. 2114. (1) Salvo as excepções consignadas nas subsecções (2), (3) e (4), para efeitos de sucessão intestada, um indivíduo é filho dos seus pais naturais, independentemente do estado civil destes. Uma relação progenitor filho pode ser estabelecida através de uma das seguintes formas:

(a) Se a criança nascer ou for concebida durante o casamento, ambos os cônjuges serão considerados como sendo os pais naturais da criança para efeitos de sucessão intestada. Uma criança concebida por uma mulher casada com o consentimento do seu marido mediante utilização de tecnologia de reprodução assistida é considerada como sendo filha de ambos para efeitos de sucessão intestada. O consentimento do marido é presumido excepto se o contrário for demonstrado mediante prova clara e convincente. Se um homem e uma mulher participaram numa cerimónia de casamento em conformidade aparente com a lei antes do nascimento da criança, mesmo que o casamento tentado seja nulo, a criança é considerada como sendo filha de ambos para efeitos de sucessão intestada.

(b) Se a criança nasceu fora do casamento ou se a criança nasceu ou foi concebida durante o casamento mas não seja fruto desse casamento, o homem é considerado como sendo o pai natural da criança para efeitos de sucessão intestada nos seguintes casos:

(i) O homem se junta à mãe da criança e reconhece essa criança como sendo sua, assinando um reconhecimento de paternidade tal como previsto na lei relativa a reconhecimento de paternidade 1996, PA 305 MLC 722.1001 a 722.1013.

(ii) O homem se junta à mãe num requerimento por escrito para correcção de uma certidão de nascimento referente à criança que resulte na emissão de uma nova certidão de nascimento que registre o nascimento da criança.

(iii) O homem e a criança tenham estabelecido uma relação pai filho mutuamente reconhecida que se inicie antes da criança ter 18 anos e continue até à morte de um deles.

(iv) O homem seja determinado como sendo o pai da criança e uma decisão de filiação estabelecendo essa paternidade tenha sido proferida ao abrigo da lei da paternidade 1956 PA 205 MCL 722.711 a 722.730.

(v) Independentemente da idade da criança ou quer ou não o alegado pai tenha morrido, o tribunal das sucessões competente relativamente à herança da pessoa falecida, determine que o homem é o pai da criança, utilizando as normas e procedimentos previstos na lei da paternidade 1956 PA 205 MCL 722.711 a 722.730.

(c) Uma criança que não foi concebida ou não tenha nascido durante um casamento é uma pessoa nascida do matrimónio se os pais da criança casarem após a concepção ou nascimento da criança.

(2) Uma pessoa adoptada é filha do seu ou seus pais adoptivos e não dos seus pais naturais, mas a adopção de uma criança pelo cônjuge de qualquer dos progenitores naturais não tem qualquer efeito quer na relação entre a criança e o progenitor natural ou o direito da criança ou de um descendente da criança de herdar de ou através de outro progenitor natural. Uma pessoa é considerada como sendo adoptada para efeitos desta subsecção quando um tribunal competente profere uma decisão interlocutória de adopção que não é anulada ou revogada.

(3) A expiração dos direitos parentais de uma criança menor mediante decisão de um tribunal competente, por uma libertação (*release*) para efeitos de adopção dada pelo progenitor, mas não por um tutor, à agência de adopção (*family independence agency* ou *licensed child placement agency*), ou perante um tribunal de sucessões ou juvenil; ou por qualquer outro processo reconhecido pela lei que rege o estado progenitor-filho no momento da expiração, à excepção da expiração por emancipação ou morte, finda o parentesco entre o progenitor, cujos direitos são assim terminados, e a criança, para efeitos de sucessão intestada por esse progenitor de ou através dessa criança.

(4) A herança por qualquer dos progenitores naturais ou pelos seus parentes através da criança é excluída a não ser que esse progenitor natural tenha tratado abertamente essa criança como sua e não se tenha recusado a sustentar a criança.

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(5) Só a pessoa presumida ser o progenitor natural da criança ao abrigo da subsecção (1)(a) pode contestar uma presunção que é relevante para essa relação progenitor filho, e este direito exclusivo de contestar a presunção terminará com a morte do progenitor presumido.

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700.2101 Herança intestada

Sec. 2101 (1) Qualquer parte da herança de uma pessoa falecida quando não disposta efectivamente em testamento é transmitida por sucessão intestada para os herdeiros da pessoa falecida da forma prevista nesta lei, excepto quando alterado por testamento da pessoa falecida.

(2) Um testamento pode excluir ou limitar expressamente o direito de um indivíduo ou classe a suceder na herança da pessoa falecida que seja transmitida por sucessão intestada. Se esse indivíduo ou o membro dessa classe sobreviver à pessoa falecida, a parte da herança intestada da pessoa falecida que esse indivíduo ou classe teria herdado é transmitida como se esse indivíduo ou cada membro dessa classe tivesse renunciado à sua parte intestada.

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PARTE 1

SUCESSÃO INTESTADA

700.2101 Herança intestada

Sec. 2101 (1) Qualquer parte da herança de uma pessoa falecida quando não disposta efectivamente em testamento é transmitida por sucessão intestada para os herdeiros da pessoa falecida da forma prevista nesta lei, excepto quando alterado por testamento da pessoa falecida.

(2) Um testamento pode excluir ou limitar expressamente o direito de um indivíduo ou classe a suceder na herança da pessoa falecida que seja transmitida por sucessão intestada. Se esse indivíduo ou o membro dessa classe sobreviver à pessoa falecida, a parte da herança intestada da pessoa falecida que esse indivíduo ou classe teria herdado é transmitida como se esse indivíduo ou cada membro dessa classe tivesse renunciado à sua parte intestada.

700.2102 Quinhão do cônjuge

Sec. 2102 (1) O quinhão/parte intestado do cônjuge sobrevivente é um dos seguintes:

(a) Toda a herança intestada se nenhum descendente ou parente da pessoa falecida sobrevive à pessoa falecida.

(b) Os primeiros \$150.000,00, e ainda 1/2 de qualquer saldo da herança intestada, se todos os descendentes sobreviventes da pessoa falecida forem também descendentes do cônjuge sobrevivente e não existir mais nenhum descendente do cônjuge sobrevivente que sobreviva à pessoa falecida.

(c) Os primeiros \$150.000,00, e ainda 1/4 de qualquer saldo da herança intestada, se nenhum descendente da pessoa falecida sobrevive ao falecido, mas um progenitor da pessoa falecida sobrevive à pessoa falecida.

(d) Os primeiros \$150.000,00, e ainda 1/2 de qualquer saldo da herança intestada, se todos os descendentes sobreviventes da pessoa falecida forem também descendentes do cônjuge sobrevivente e o cônjuge sobrevivente tiver um ou mais descendentes que não são descendentes da pessoa falecida.

(e) Os primeiros \$150.000,00, e ainda 1/2 de qualquer saldo da herança intestada, se um ou mais, mas não todos, dos descendentes sobreviventes da pessoa falecida não forem descendentes do cônjuge sobrevivente.

(f) Os primeiros \$150.000,00, e ainda 1/2 de qualquer saldo da herança intestada, se nenhum dos descendentes sobreviventes da pessoa falecida for descendente do cônjuge sobrevivente.

(2) Cada montante em dólares referido na subsecção (1) será ajustado como disposto na secção 1210.

700.2103 Quinhão dos herdeiros que não o cônjuge sobrevivente

Sec. 2103 Qualquer parte da herança intestada que não seja transmitida para o cônjuge sobrevivente nos termos da secção 2102 ou a totalidade da herança intestada caso não exista cônjuge sobrevivente, é transmitida, na ordem seguinte, para os seguintes indivíduos que sobrevivam à pessoa falecida:

(a) Os descendentes por representação;

(b) Caso não exista descendente sobrevivente, os pais da pessoa falecida em partes iguais se ambos sobrevivem ao parente sobrevivente.

(c) Caso não exista descendente ou progenitor sobrevivente, aos descendentes dos progenitores da pessoa falecida ou qualquer deles por representação.

(d) Caso não exista descendente, progenitor, ou descendente de progenitor sobrevivente, mas a pessoa falecida é sobrevivida por um ou mais avós ou descendentes de avós, 1/2 da herança é transmitida em partes iguais para os avós paternos da pessoa falecida se ambos sobrevivem, ou para o avô/avó paterno sobrevivente, ou para os descendentes dos avós paternos da pessoa falecida ou de qualquer deles se ambos tiverem falecido, os descendentes agindo por representação, e a outra 1/2 é transmitida para os avós maternos e seus descendentes da mesma forma. Caso não exista avô/avó ou descendentes de avós sobreviventes quer do lado

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materno quer do lado paterno, a totalidade da herança é transmitida para os parentes de ambos os lados da pessoa falecida da mesma forma que a 1/2.

700.2104 Exigência de o herdeiro sobreviver à pessoa falecida durante 120 horas

Sec. 2104 Um indivíduo que não sobreviva à pessoa falecida 120 horas, é considerado como antecedendo a pessoa falecida na morte para efeitos de subsídio de propriedade, propriedade isenta e sucessão intestada e os herdeiros da pessoa falecida são determinados em conformidade. No caso de não ser estabelecido mediante prova clara e evidente que o indivíduo que seria herdeiro sobreviveu à pessoa falecida 120 horas, será considerado que o indivíduo não sobreviveu pelo período exigido. Esta secção não é aplicável se da sua aplicação resultasse a tomada de posse pelo estado da herança intestada ao abrigo da secção 2105.

700.2105 Inexistência de legatário (*taker*)

sec. 2105 Caso não exista legatário nos termos do disposto neste artigo, a herança intestada é transmitida para este Estado.

700.2106 Representação

sec. 2106 (1) Se, ao abrigo da secção 2103 a herança intestada ou parte da herança intestada de uma pessoa falecida for transmitida por representação para os descendentes da pessoa falecida, a herança ou parte da herança será dividida num número de partes igual ao total dos descendentes sobreviventes da geração mais próxima da pessoa falecida que incluía um ou mais descendentes sobreviventes e dos descendentes falecidos da mesma geração que tenham deixado descendentes sobreviventes, caso existam. A cada descendente sobrevivente da geração mais próxima é atribuída uma parte. As restantes partes, caso existam, são juntas e depois divididas da mesma forma entre os descendentes sobreviventes dos descendentes falecidos como se os descendentes sobreviventes a quem tenha sido atribuída uma parte e os seus descendentes sobreviventes tivessem antecedido na morte a pessoa falecida.

(2) Se, ao abrigo da secção 2103 (c) ou (d), a herança intestada ou parte da herança intestada da pessoa falecida for transmitida por representação para os descendentes dos pais falecidos da pessoa falecida ou de qualquer deles ou para os descendentes dos avós paternos ou maternos já falecidos da pessoa falecida ou de qualquer deles, a herança ou parte da herança é dividida num número de partes iguais ao total dos descendentes sobreviventes da geração mais próxima dos pais falecidos ou de qualquer deles e dos descendentes falecidos da mesma geração que tenham deixado descendentes sobreviventes, caso existam. A cada descendente sobrevivente da geração mais próxima é atribuída uma parte. As restantes partes, caso existam, serão juntas e depois divididas da mesma forma entre os descendentes sobreviventes dos descendentes falecidos como se os descendentes sobreviventes a quem tenha sido atribuída uma parte e os seus descendentes sobreviventes tivessem antecedido na morte a pessoa falecida.

(3) Nos termos desta secção:

(a) "descendente falecido", "pais falecidos" ou "avós falecidos" significa um descendente, pai/mãe, avô/avó que tenham antecedido na morte a pessoa falecida ou sejam considerados como tendo antecedido na morte a pessoa falecida ao abrigo da secção 2104.

700.2107 Parente unilateral (*consanguineo/uterino/half blood*)

Sec. 2107 Um parente unilateral herda a mesma parte que herdaria caso fosse bilateral (*germano*).

700.2108 Herdeiros nascidos posteriormente ao testamento (*afterborn*)

Sec. 2108 Um indivíduo em gestação num determinado momento é tratado como vivo nesse momento se o indivíduo viver 120 horas ou mais após o nascimento.

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PARTE 2
QUINHÃO ELECTIVO DO CONJUGE SOBREVIVO

700.2201 Direito do cônjuge sobrevivente a quinhão electivo

Sec. 2201 Ao abrigo das secções 2203 a 2205, após a morte de um indivíduo, o cônjuge sobrevivente tem o direito descrito na secção 2202.

700.2202 Eleição (*direito de escolha*) do cônjuge sobrevivente

sec. 2202 (1) O viúvo sobrevivente de uma pessoa falecida que tinha residência neste Estado e que morre intestado pode solicitar ao tribunal por escrito o direito de dispor de uma das seguintes situações:

(a) O seu quinhão intestado ao abrigo da secção 2102
(b) Os seus direitos sucessórios ao abrigo das secções 1 a 29 da lei 1846 RS 66, MCL 558.1 a 558.29.

(2) O cônjuge sobrevivente de uma pessoa falecida que tinha residência neste Estado e que morre testado pode solicitar ao tribunal por escrito o direito de dispor de uma das seguintes situações:

(a) o cônjuge submete-se aos termos do testamento.
(b) o cônjuge gozará e disporá de $\frac{1}{2}$ da soma do quinhão que seria transmitido para o cônjuge caso o testador tivesse morrido intestado, reduzido de $\frac{1}{2}$ do valor de todos os bens obtidos da pessoa falecida pelo cônjuge por quaisquer outros meios que não sucessão testada ou intestada após a morte da pessoa falecida.

(c) se viúva, disporá dos seus direitos sucessórios ao abrigo das secções 1 a 29 da lei 1846 RS 66, MCL 558.1 a 558.29.

(3) O cônjuge sobrevivente que exerça o direito de escolha nos termos da subsecção (1), estará limitado a 1 (uma) das opções. A não ser que o testamento demonstre claramente uma intenção contrária, o cônjuge sobrevivente que exerça o direito de escolha nos termos da subsecção (2) está limitado a 1 opção. O direito de escolha do cônjuge sobrevivente deverá ser exercido durante a vida do cônjuge sobrevivente. Este direito de escolha ou eleição deverá ser requerido no prazo de 63 dias após a data para apresentação de reivindicações ou 63 dias após o serviço do inventário, dos dois o que ocorrer mais tarde.

(4) O cônjuge da pessoa falecida será notificado do seu direito de escolha, caso exista, nos termos previstos na secção 3705(5) e prova dessa notificação deverá ser entregue ao tribunal. A eleição, nos termos previstos nesta secção, poderá ser requerida em vez da notificação e entrega de prova.

(5) No caso de pessoa legalmente incapacitada, o direito de escolha pode ser exercido unicamente por ordem do tribunal onde corra uma acção referente à herança dessa pessoa, após se verificar ser isso necessário para providenciar o sustento adequado da pessoa legalmente incapacitada durante o tempo de vida esperado dessa pessoa.

(6) O cônjuge sobrevivente de uma pessoa falecida que não tinha residência neste Estado tem direito de escolha contra a herança intestada ou o testamento unicamente nos termos previstos na lei do local onde a pessoa falecida tinha domicílio antes da sua morte.

(7) No disposto na subsecção (2) a expressão "herança obtida da pessoa falecida pelo cônjuge" inclui todas as transmissões seguintes:

(a) Uma transmissão efectuada 2 anos antes da morte da pessoa falecida na medida em que a transmissão está sujeita a imposto sobre sucessões e doações.

(b) Uma transmissão efectuada antes da morte sujeita a um poder retido pela pessoa falecida que herdaria os bens ou parte dos bens sujeitos a imposto de transmissão federal.

(c) Uma transmissão efectuada por morte da pessoa falecida através de propriedade conjunta, comunhão total de bens, beneficiário de seguro ou formas semelhantes.

700.2203 Não eleição em tempo oportuno; excepções

Sec. 2203 Se um cônjuge sobrevivente não exercer a eleição no período especificado na secção 2202, será presumido de forma conclusiva que o viúvo de uma pessoa falecida intestada elege

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- (c) Bens que, ao abrigo da secção 2603 ou 2604 são transmitidos para o filho descrito na subdivisão (a) ou para um descendente desse filho.
- (2) A Subsecção (1) não se aplica se o contido em qualquer das alíneas seguintes for verdadeiro:
- (a) Do testamento ou de qualquer outra prova, pareça que o testamento foi feito contemplando o casamento do testador com o cônjuge sobrevivivo.
- (b) O testamento expressa uma vontade que deverá ser efectiva não obstante um casamento posterior.
- (c) O testador providenciou para o cônjuge mediante transmissão fora do testamento, e a intenção de que a transmissão substitui uma disposição testamentária é demonstrada em declaração do testador ou é razoavelmente inferida do montante da transmissão ou de qualquer outra prova.
- (3) Ao satisfazer a parte/quinhão prevista nesta secção, os legados feitos no testamento ao cônjuge sobrevivivo do testador, caso exista, são aplicados em primeiro lugar, e os restantes legados, excepto o legado em trust constituído em benefício do filho do testador nascido antes do testador ter casado com o cônjuge sobrevivivo e que não é filho do cônjuge sobrevivivo, ou um legado ou doação efectuada nos termos da secção 2603 ou 2604 a um descendente desse filho, são deduzidos como previsto na secção 3902.
- (4) Um cônjuge que recebe uma parte intestada ao abrigo desta secção pode igualmente exercer o direito de eleição ao abrigo da secção 2202, mas a parte intestada recebida pelo cônjuge ao abrigo desta secção reduz o montante disponível para o cônjuge ao abrigo da secção 2202(2)(b).

700.2302 Filhos omitidos

Sec. 2302 (1) Excepto nos casos previstos na secção (2), quando um testador não dispõe no seu testamento para um filho do testador nascido ou adoptado após a execução do testamento, o filho nascido ou adoptado após a execução do testamento recebe uma parte da herança nos termos de uma das seguintes alíneas:

- (a) Se o testador não tem filhos vivos quando executou o testamento, um filho nascido ou adoptado após a execução do testamento recebe uma parte/quinhão da herança de montante igual ao que receberia se o testador tivesse morrido intestado, excepto se o testamento dispuser toda ou parte substancial da herança ao outro progenitor da criança omitida e esse outro progenitor sobrevive ao testador e tem direito a dispor da herança.
- (b) Se o testador tinha um ou mais filhos quando executou o testamento, e o testamento lega bens ou uma participação dos bens a um ou mais dos filhos então vivos, o filho omitido nascido ou adoptado após a execução do testamento tem direito a partilhar a herança do testador sujeito às seguintes condições:
- (i) A porção da herança do testador que o filho omitido nascido ou adoptado após a execução do testamento tem direito a partilhar está limitada aos legados feitos aos filhos do testador vivos quando da execução do testamento.
- (ii) O filho omitido nascido ou adoptado após a execução do testamento tem direito a receber a parte da herança do testador, como limitado no sub-parágrafo (i) acima, que o filho teria direito a receber caso o testador tivesse incluído todos os filhos omitidos nascidos ou adoptados após a execução do testamento juntamente com os filhos contemplados no testamento e tivesse dado a cada filho uma parte igual da herança.
- (iii) Na medida viável, uma participação dada a um filho omitido nascido ou adoptado após a execução do testamento ao abrigo desta secção deverá ter o mesmo carácter, quer equitativo quer legal, presente ou futuro, que as legadas aos filhos do testador vivos quando da execução do testamento.
- (iv) Ao satisfazer a parte prevista nesta subsecção, os legados aos filhos do testador vivos quando da execução do testamento serão reduzidos proporcionalmente. Ao reduzir os legados dos filhos então vivos, o tribunal deverá preservar na medida possível, o carácter do plano testamentário adoptado pelo testador.
- (2) A subsecção (1) não se aplica em qualquer dos seguintes casos:
- (a) Decorre do testamento que a omissão foi intencional.

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(b) O testador dispôs para o filho omitido nascido ou adoptado após a execução do testamento por transmissão fora do testamento e a intenção de que a transmissão substitua a disposição testamentária seja demonstrada através de declarações do testador ou tal seja razoavelmente inferido em virtude montante da transmissão ou outra prova.

(3) Se no momento da execução do testamento, o testador não dispõe no seu testamento a favor de um filho vivo unicamente porque julga que o filho está morto, o filho tem direito a partilhar da herança como se fosse um filho omitido nascido ou adoptado após a execução do testamento.

(4) Ao satisfazer a parte/quinhão previsto na subsecção (1)(a) os legados feitos pelo testamento serão reduzidos nos termos do previsto na secção 3902.

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700.2511 Aditamentos testamentários relativos a *trusts*

Sec. 2511 (1) Um testamento poderá legar validamente bens a um *trustee* de um *trust* constituído ou a constituir de uma das seguintes formas:

(a) Durante a vida do testador, pelo testador, por este e outra pessoa, ou por outra pessoa, incluindo um *trust* de seguro de vida capitalizado ou não capitalizado (*funded ou unfunded life insurance trust*), apesar de o doador ter reservado algum ou todos os direitos de propriedade dos contratos de seguro.

(b) Após a morte do testador, mediante legado do testador ao *trustee*, se o *trust* estiver identificado no testamento do testador e os seus termos se encontrarem previstos em documento escrito, que não seja um testamento, executado antes, simultaneamente ou após a execução do testamento do testador ou do testamento de outro indivíduo se esse outro indivíduo tiver antecedido o testador na morte, independentemente da existência, dimensão ou carácter do *trust corpus*.

(2) O legado descrito na subsecção (1) não é inválido porque o *trust* é alterável ou revogável, ou porque o *trust* foi alterado após a execução do testamento ou da morte do testador. Excepto se previsto em contrário no testamento do testador, os bens legados a um *trust* nos termos da subsecção (1) não serão detidos ao abrigo de um *trust* testamentário do testador, mas tornar-se-ão parte do *trust* a que foram legados, e serão administradores e dispostos em conformidade com as disposições do instrumento que rege os termos do *trust*, incluindo uma alteração ao *trust* efectuada antes ou depois da morte do testador.

(3) Excepto se previsto em contrário no testamento do testador, a revogação ou rescisão do *trust* antes da morte do testador resulta na anulação do legado.

TESTAMENTOS, CONTRATOS TESTAMENTÁRIOS E CUSTÓDIA E DEPÓSITO DE TESTAMENTOS

700.2501 Testamento; Capacidade testamentária
Podem testar todos os indivíduos capazes, com 18 anos ou mais.

700.2502 Execução. Testamentos testemunhados; Testamentos holográficos

Sec. 2502

(1) Excepto o previsto na subsecção (2) e nas secções 2503, 2506 e 2513, um testamento só é válido se reunir todas as seguintes condições:

(a) for por escrito;

(b) for assinado pelo testador ou em nome do testador por outra pessoa na presença consciente do testador e como ordenado pelo testador;

(c) for assinado por pelo menos dois indivíduos, cada um dos quais assinou num período de tempo razoável após ter testemunhado a assinatura do testamento nos termos previstos na subdivisão (b) anterior ou o reconhecimento do testador desta assinatura ou o reconhecimento do testamento.

(2) Um testamento que não esteja em conformidade com o disposto na subsecção (1) é válido como testamento holográfico, quer tenha sido ou não testemunhado, se estiver datado e se a assinatura do testador e as partes materiais do documento estejam escritas na caligrafia do testador.

(3) Pode ser estabelecida a intenção de que o documento constitui o testamento do testador através de prova extrínseca, incluindo no caso do testamento holográfico, partes do documento que não esteja escritas na caligrafia do testador.

700.2511 Aditamentos testamentários relativos a *trusts*

Sec. 2511 (1) Um testamento poderá legar validamente bens a um *trustee* de um *trust* constituído ou a constituir de uma das seguintes formas:

(a) Durante a vida do testador, pelo testador, por este e outra pessoa, ou por outra pessoa, incluindo um *trust* de seguro de vida capitalizado ou não capitalizado (*funded ou unfunded life insurance trust*), apesar de o doador ter reservado algum ou todos os direitos de propriedade dos contratos de seguro.

(b) Após a morte do testador mediante legado do testador ao *trustee*, se o *trust* estiver identificado no testamento do testador e os seus termos se encontrarem previstos em documento escrito, que não seja um testamento, executado antes, simultaneamente ou após a execução do testamento do testador ou do testamento de outro indivíduo se esse outro indivíduo tiver antecedido o testador na morte, independentemente da existência, dimensão ou carácter do *trust corpus*.

(2) O legado descrito na subsecção (1) não é inválido porque o *trust* é alterável ou revogável, ou porque o *trust* foi alterado após a execução do testamento ou da morte do testador. Excepto se previsto em contrário no testamento do testador, os bens legados a um *trust* nos termos da subsecção (1) não serão detidos ao abrigo de um *trust* testamentário do testador, mas tornar-se-ão parte do *trust* a que foram legados, e serão administradores e dispostos em conformidade com as disposições do instrumento que rege os termos do *trust*, incluindo uma alteração ao *trust* efectuada antes ou depois da morte do testador.

(3) Excepto se previsto em contrário no testamento do testador, a revogação ou rescisão do *trust* antes da morte do testador resulta na anulação do legado.

700.2512 Acontecimentos de Importância Independente

Sec. 2512

Um testamento poderá dispor de bens por referência a actos e acontecimentos que têm importância independente do seu efeito sobre as disposições do testamento, quer ocorram antes ou depois da execução do testamento ou antes ou depois da morte do testador. A execução ou revogação do testamento de outro indivíduo é um desses acontecimentos.

700.2513 Documento escrito separado identificando o legado de determinados tipos de bens móveis tangíveis

Sec. 2513

Quer ou não as disposições relativas a um testamento holográfico sejam aplicáveis, um testamento poderá fazer referência a uma declaração escrita ou lista a fim de dispor de bens móveis tangíveis não especificamente contemplados no testamento, excepto dinheiro. Para ser admissível ao abrigo desta secção como prova da disposição pretendida, o documento escrito deverá estar escrito na caligrafia do testador ou assinado no fim pelo testador, e deverá descrever os itens e os legatários com uma certeza razoável. O documento escrito pode ser referido como existente no momento da morte do testador; poderá ser elaborado antes ou depois da execução do testamento; poderá ser alterado pelo testador após a sua elaboração; e poderá ser um documento escrito que não tenha importância para além do seu efeito sobre as disposições do testamento.

700.2516 Entrega de testamento ou codicilo por depositário

O depositário de um testamento ou codicilo ou pessoa que tenha a posse ou tenha a seu cargo o testamento ou codicilo deverá remetê-lo ao tribunal competente com a prontidão razoável após a morte do testador, quer entregando-o pessoalmente quer enviando-o por correio registado para a morada correcta. Uma pessoa que não cumprir este dever sem justa causa será responsável pelos danos que possam decorrer desta negligência. Uma pessoa que propositadamente se recuse ou não entregue o testamento ou codicilo após ter sido ordenada a fazê-lo pelo tribunal em acção instituída para o efeito será culpado de desrespeito ao tribunal e sujeita a pena por desrespeito.

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700.2519 Testamento legal (estatutário)

Sec. 2519

(1) Um testamento executado na forma prevista na subsecção (2) e em conformidade com os termos do testamento legal do Estado de Michigan será um testamento válido. Uma pessoa que imprima e distribua o testamento legal do Michigan deverá imprimi-lo e distribuí-lo na forma integral tal como aparece na subsecção (2). As normas serão impressas em caracteres tipo de tamanho 10 negrito.

(2) A forma do testamento legal do Michigan é a seguinte:

NORMAS DO TESTAMENTO LEGAL DO ESTADO DE MICHIGAN

1. Podem testar todos os indivíduos capazes, com 18 anos ou mais.
2. Existem vários tipos de testamentos. Se optar por preencher este impresso, terá um testamento legal do Estado de Michigan. Se este testamento não satisfizer de alguma forma a sua vontade, deverá falar com um advogado antes de escolher o testamento legal do Michigan.
3. Atenção! Recomenda-se vivamente que não acrescente ou risque quaisquer palavras deste impresso excepto para preencher os espaços em branco, pois se o fizer, todo ou parte do testamento poderá ficar sem efeito.
4. Este testamento não terá efeito relativamente a bens detidos em conjunto, ou planos de reforma, ou seguros de vida sobre a sua vida caso tenha nomeado um beneficiário que lhe sobreviva.
5. Este testamento não se destina a reduzir impostos sobre sucessões.
6. Este testamento trata filhos adoptados e filhos nascido fora do casamento que herdariam caso os seus pais morressem intestados da mesma forma que filhos nascidos ou concebidos durante o casamento.
7. Deverá manter este testamento no seu cofre ou em outro lugar seguro. Poderá, mediante uma pequena taxa, arquivar o testamento no tribunal das sucessões do seu condado. Deverá informar a sua família sobre onde está guardado o testamento.
8. Poderá fazer e assinar um novo testamento em qualquer altura. No caso de se casar ou divorciar depois de ter assinado este testamento, deverá fazer e assinar um novo testamento.

A madame
Ch. M. S. e m.

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ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
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700.3952 Formal proceedings terminating administration testate or intestate; order of general protection.

Sec. 3952. (1) A personal representative or an interested person may petition for an order of complete estate settlement. The personal representative may petition at any time, and an interested person may petition after 1 year from the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

(2) A petition under this section may request the court to determine testacy, if not previously determined, to consider the final account, to compel or approve an accounting and distribution, to construe a will or determine heirs, and to adjudicate the estate's final settlement and distribution. After notice to all interested persons and a hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of an interested person.

(3) If 1 or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, on proper petition for an order of complete estate settlement under this section and after notice to the omitted or unnotified persons and other interested persons determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, the court may determine testacy as it affects the omitted persons, and confirm or alter the previous testacy order as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceeding determined this fact.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

700.2114 Parent and child relationship.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's parents marry after the conception or birth of the child.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

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700.2101 Intestate estate.

Sec. 2101. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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Act 386 of 1998

700.2103 Share of heirs other than surviving spouse.

Sec. 2103. Any part of the intestate estate that does not pass to the decedent's surviving spouse under section 2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

- (a) The decedent's descendants by representation.
- (b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.
- (c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.
- (d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by 1 or more grandparents or descendants of grandparents, 1/2 of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other 1/2 passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the 1/2.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular name: EPIC

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PART I

INTESTATE SUCCESSION

700.2101 Intestate estate.

Sec. 2101. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2102 Share of spouse.

Sec. 2102. (1) The intestate share of a decedent's surviving spouse is 1 of the following:

(a) The entire intestate estate if no descendant or parent of the decedent survives the decedent.

(b) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

(c) The first \$150,000.00, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.

(d) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has 1 or more surviving descendants who are not descendants of the decedent.

(e) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if 1 or more, but not all, of the decedent's surviving descendants are not descendants of the surviving spouse.

(f) The first \$100,000.00, plus 1/2 of any balance of the intestate estate, if none of the decedent's surviving descendants are descendants of the surviving spouse.

(2) Each dollar amount listed in subsection (1) shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular name: EPIC

700.2103 Share of heirs other than surviving spouse.

Sec. 2103. Any part of the intestate estate that does not pass to the decedent's surviving spouse under section 2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

(a) The decedent's descendants by representation

(b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.

(c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by 1 or more grandparents or descendants of grandparents, 1/2 of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other 1/2 passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the 1/2.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2104 Requirement that heir survive decedent for 120 hours.

Sec. 2104. An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an

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individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section does not apply if its application would result in a taking of the intestate estate by the state under section 2105.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2105 No taker; effect.

Sec. 2105. If there is no taker under the provisions of this article, the intestate estate passes to this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2106 Representation.

Sec. 2106. (1) If, under section 2103(a), a decedent's intestate estate or a part of the estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(2) If, under section 2103(c) or (d), a decedent's intestate estate or a part of the estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(3) As used in this section:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under section 2104.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under section 2104.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2107 Relative of half blood.

Sec. 2107. A relative of the half blood inherits the same share he or she would inherit if he or she were of the whole blood.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2108 Afterborn heirs.

Sec. 2108. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2109 Advancements.

Sec. 2109. (1) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only under either of the following circumstances:

(a) The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement;

(b) The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that

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the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of property advanced fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2110 Debts to decedent.

Sec. 2110. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2111 Alienage.

Sec. 2111. An individual is not disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2113 Individuals related to decedent through two lines.

Sec. 2113. An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2114 Parent and child relationship.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's parents marry after the conception or birth of the child.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship

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between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

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ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

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PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

700.2201 Surviving spouse's right to elective share.

Sec. 2201. Subject to sections 2203 to 2205, upon an individual's death, the individual's surviving spouse has the right described by section 2202.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2202 Election of surviving spouse.

Sec. 2202. (1) The surviving widow of a decedent who was domiciled in this state and who dies intestate may file with the court an election in writing that she elects to take 1 of the following:

(a) Her intestate share under section 2102.

(b) Her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(2) The surviving spouse of a decedent who was domiciled in this state and who dies testate may file with the court an election in writing that the spouse elects 1 of the following:

(a) That the spouse will abide by the terms of the will.

(b) That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the testator died intestate, reduced by 1/2 of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.

(c) If a widow, that she will take her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(3) The surviving spouse electing under subsection (1) is limited to 1 choice. Unless the testator's will plainly shows a contrary intent, the surviving spouse electing under subsection (2) is limited to 1 choice. The right of election of the surviving spouse must be exercised during the lifetime of the surviving spouse. The election must be made within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the surviving spouse, whichever is later.

(4) Notice of right of election shall be served upon the decedent's spouse, if any, as provided in section 3705(5), and proof of that notice shall be filed with the court. An election as provided by this section may be filed instead of service of notice and filing of proof.

(5) In the case of a legally incapacitated person, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the legally incapacitated person during that person's life expectancy.

(6) The surviving spouse of a decedent who was not domiciled in this state is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which the decedent was domiciled at the time of death.

(7) As used in subsection (2), "property derived by the spouse from the decedent" includes all of the following transfers:

(a) A transfer made within 2 years before the decedent's death to the extent that the transfer is subject to federal gift or estate taxes.

(b) A transfer made before the date of death subject to a power retained by the decedent that would make the property, or a portion of the property, subject to federal estate tax.

(c) A transfer effectuated by the decedent's death through joint ownership, tenancy by the entireties, insurance beneficiary, or similar means.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2203 Failure to timely elect; exceptions.

Sec. 2203. If a surviving spouse fails to make an election within the time specified in section 2202, it is conclusively presumed that an intestate decedent's widow elects her intestate share or that a testate decedent's spouse elects to abide by the terms of the will, except in either of the following instances:

(a) If an election is not made and the principal administration is closed, and if after that administration is closed it appears to the court that assets belonging to the estate are discovered and administration is granted, the election may be made out of the newly discovered assets only upon good cause shown at any time before that administration is closed.

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(b) Before the estate is closed, upon petition of the spouse and after notice to all interested persons, the court may permit the spouse to make an election to which the spouse was entitled as though the spouse had done so within the time specified in section 2202, if the court considers it proper on account of litigation connected with the estate or the establishment of further claims against the deceased, or for other cause. The court shall limit the time within which the spouse may make an election under this subdivision.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2204 Actions not preventing election.

Sec. 2204. Filing of a petition to admit the will of a deceased spouse, failing to object or consenting to admission of the will to probate, or accepting appointment as a personal representative does not prevent a surviving spouse's election to take against the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular names: EPIC

700.2205 Waiver of rights by surviving spouse.

Sec. 2205. The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, dower, exempt property, or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, dower, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2206 Pre-existing right not created.

Sec. 2206. Sections 2201 to 2205 shall not be construed as creating an inchoate or choate right to the rights described in those sections in the property of a spouse before the death of a spouse.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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PART 3

SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

700.2301 Entitlement of spouse; premarital will.

Sec. 2301 (1) Except as provided in subsection (2), if a testator's surviving spouse marries the testator after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

(4) A spouse who receives an intestate share under this section may also exercise the right of election under section 2202, but the intestate share received by the spouse under this section reduces the sum available to the spouse under section 2202(2)(b).

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.2302 Omitted children.

Sec. 2302. (1) Except as provided in subsection (2), if a testator fails to provide in his or her will for a child of the testator born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as provided in 1 of the following:

(a) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had 1 or more children living when he or she executed the will, and the will devised property or an interest in property to 1 or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate subject to all of the following:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsection (1) does not apply if either of the following applies:

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- (a) It appears from the will that the omission was intentional.
- (b) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
- (3) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.
- (4) In satisfying a share provided by subsection (1)(a), devises made by the will abate under section 3902.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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700.2511 Testamentary additions to trusts.

Sec. 2511. (1) A will may validly devise property to the trustee of a trust established or to be established in any of the following manners:

(a) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts.

(b) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the trust corpus.

(2) A devise described in subsection (1) is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including an amendment to the trust made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

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Part 5

WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

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700.2501 Will; maker.

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Sec. 2501.

An individual 18 years of age or older who is of sound mind may make a will.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

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700.2502 Execution; witnessed wills; holographic wills.

Sec. 2502.

(1) Except as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(a) In writing.

(b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

(c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting.

(3) Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

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700.2503 Writings intended as wills.

Sec. 2503.

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Although a document or writing added upon a document was not executed in compliance with section 2502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:

- (a) The decedent's will.
- (b) A partial or complete revocation of the decedent's will.
- (c) An addition to or an alteration of the decedent's will.
- (d) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

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700.2504 Self-proved will.

Sec. 2504.

(1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this will; each of us, in the testator's presence, signs this will as witness to the testator's signing; and,

to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Signature (Witness)

(Signature) Witness

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The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on

_____,
month/day

_____,
year

(SEAL) Signed

(official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

(Signature) Witness

(Signature) Witness

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on

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month/day

(SEAL) (Signed)

(official capacity of officer)

(3) A codicil to a will may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on

month/day

year

(SEAL) Signed

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that..."

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000
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700.2505 Witnesses.

Sec. 2505.

- (1) An individual generally competent to be a witness may act as a witness to a will.
- (2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2506 Choice of law as to execution.

Sec. 2506.

A written will is valid if executed in compliance with section 2502 or 2503, with the law at the time of execution of the place where the will is executed, or with the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2507 Revocation by writing or by act.

Sec. 2507.

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(1) A will or a part of a will is revoked by either of the following acts:

(a) Execution of a subsequent will that revokes the previous will or a part of the will expressly or by inconsistency.

(b) Performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked, and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2508 Revocation by change of circumstances.

Sec. 2508.

Except as provided in sections 2802 to 2809, a change of circumstances does not revoke a will or a part of a will.

History: 1998, Act 386, Eff. Apr. 1, 2000
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700.2509 Revival of revoked will.

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Sec. 2509.

(1) If a subsequent will that wholly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is later revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

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700.2510 Incorporation by reference.

Sec. 2510.

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: 1998, Act 386, Eff. Apr. 1, 2000

Popular Name: EPIC

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700.2511 Testamentary additions to trusts.

Sec. 2511.

(1) A will may validly devise property to the trustee of a trust established or to be established in any of the following manners:

(a) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts.

(b) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the trust corpus.

(2) A devise described in subsection (1) is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including an amendment to the trust made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2512 Events of independent significance.

Sec. 2512.

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2513 Separate writing identifying devise of certain types of tangible personal property.

Sec. 2513.

Whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be either in the testator's handwriting or signed by the testator at the end, and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

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History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2514 Contracts concerning succession.

Sec. 2514.

(1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:

- (a) Provisions of a will stating material provisions of the contract.
- (b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
- (c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2515 Deposit of will with court in testator's lifetime.

Sec. 2515.

(1) A will in writing that is enclosed in a sealed wrapper, on which is endorsed the testator's name, place of residence, and social security number or state of Michigan driver's license number, if any, and the day on which and the name of the person by whom it is delivered, may be deposited by the individual making the will, or by a person for him or her, with the court in the county where the testator resides. The court shall receive and safely keep the will and give a certificate of the deposit of the will. For this service, the court shall charge and collect a fee as provided by supreme court rule or the revised judicature act of 1961.

(2) During the lifetime of the testator, the will shall be delivered only to the testator, or to some person authorized by the testator in writing that is duly proved by the oath of a subscribing witness. After the death of the testator and at the first session of the court after the court receives notice of the testator's death, the will shall be publicly opened and retained by the court.

(3) After the death of the testator, if jurisdiction of the will for probate belongs to a court in another county, upon request of the personal representative named in the will or another person interested in its

provisions, the will shall be forwarded by registered mail to the other court or delivered to the personal representative, or to some other person interested in the provisions of the will, to be presented for probate in the other court.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2516 Delivery of will or codicil by custodian.

Sec. 2516.

A custodian of a will or codicil or person having possession or care of a will or codicil shall forward it to the court having jurisdiction with reasonable promptness after the death of the testator either by delivering it personally or by sending it properly addressed by registered mail. A person who neglects to perform this duty without reasonable cause is liable for damages that are sustained by the neglect. A person who willfully refuses or fails to deliver a will or codicil after being ordered by the court in a proceeding brought for the purpose of compelling delivery is guilty of contempt of court and subject to the penalty for contempt.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2517 Opening of safe deposit box.

Sec. 2517.

(1) In the estate of a decedent who died before October 1, 1993, the following apply to the opening of a safe deposit box:

(a) A safe deposit box of which the decedent was an individual or joint lessee may be opened following the decedent's death only upon compliance with the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256.

(b) A safe deposit box of the decedent who was an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary in a like manner as provided by the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256, as it relates to deceased individuals.

(2) In the estate of a decedent who dies after September 30, 1993, the following apply to the opening of a safe deposit box:

(a) Whenever it appears to the court by petition of an interested person that a safe and collateral deposit

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company, trust company, corporation, bank, or other institution has leased to a decedent, either as an individual or joint lessee, a safe deposit box in the county in which the probate court has jurisdiction and that the safe deposit box may contain a will of the decedent or a deed to a burial plot in which the decedent is to be interred, the court may issue an order directing the institution to permit the person named in the order to examine the safe deposit box in the presence of an officer or other authorized employee of the institution. If a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, the person named in the order shall deliver the will or deed to the probate register or his or her deputy. The probate register or his or her deputy shall furnish a receipt to the person named in the order. An item contained in the safe deposit box other than the will or deed shall not be removed from the safe deposit box. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying whether a will or deed to a burial plot is found and that no other items are removed, which statement shall be delivered within 7 days after execution to the probate register or his or her deputy. Before the court enters the order, there shall be paid to the probate register a fee of \$10.00, which shall be credited to the general fund of the county. If the decedent's estate is administered in a probate court in the state, the party making payment of the fee may file a claim in the estate for that amount, which shall be charged as a cost of administration.

(b) The safe deposit box of an individual who is an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary and its contents removed. If the safe deposit box is jointly leased, then the fiduciary may examine the safe deposit box only in the presence of an officer or other authorized employee of the safe deposit and collateral company, trust company, corporation, bank, or other institution. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying as to what is removed from the box by the fiduciary. The fiduciary shall serve a copy of that statement on the other joint lessees within 7 days after removing the items.

(c) Notwithstanding another provision of this section, a surviving joint lessee of a joint safe deposit box has full access to the safe deposit box.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;— Am. 2000, Act 177, Imd. Eff. June 20, 2000
Popular Name: EPIC

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700.2518 Penalty clause for contest.

Sec. 2518.

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: 1998, Act 386, Eff. Apr. 1, 2000
Popular Name: EPIC

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700.2519 Statutory will.

Sec. 2519.

(1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older and of sound mind may sign a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.
3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.
4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.
5. This will is not designed to reduce estate taxes.
6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.
7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.
8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.
2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

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ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.

I live in _____ County, Michigan.

My spouse is _____

(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift

(Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

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I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

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2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____

(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.

(Insert address)

If my first choice does not serve, I nominate _____

(Insert name of person or eligible financial institution)

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of _____ to serve as personal representative.

(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of

mine, I nominate _____

(Insert name of individual)

of _____ as guardian and

(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.

(Insert address)

If my first choice cannot serve, I nominate

(Insert name of individual)

of _____ as guardian and

(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.

(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on _____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to be of sound mind and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

- (a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.
- (b) "Descendants" means your children, grandchildren, and their descendants.
- (c) "Descendants" or "children" includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.
- (d) "Jointly held assets" means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.
- (e) "Spouse" means your husband or wife at the time you sign this will.
- (f) Whenever a distribution under a Michigan statutory will is to be made to an individual's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.
- (g) "Heirs" means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.
- (h) "Person" includes individuals and institutions.
- (i) Plural and singular words include each other, where appropriate.
- (j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in good faith exercise of the person's powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.
2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor's conservator or, in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or

control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

History: 1998, Act 386, Eff. Apr. 1, 2000; -- 2000, Act 54, Eff. Apr. 1, 2000; -- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005
Compiler's Notes: As to actions taken with respect to a clerical error detected in Enrolled Senate Bill No. 1045 filed with the Secretary of State on March 30, 2000, see the following correspondence: "September 14, 2000" Secretary of State Candice Miller "Department of State" Treasury Building "430 W. Allegan" Lansing, MI 48918-9900 "Dear Secretary Miller: "The purpose of this letter is to document the action I am taking in order to correct a clerical error recently detected in Enrolled Senate Bill 1045. I signed this bill on March 29, 2000. It was filed with the Secretary of State on March 30, 2000, and assigned Public Act Number 54 of 2000. This legislation made various, largely technical amendments to the Estates and Protected Individuals Code that, having been given immediate effect, took effect on April 1, 2000. "The Secretary of the Senate and the Clerk of the House re-presented a corrected version of Enrolled Senate Bill 1045 to me on September 11, 2000, along with the accompanying letter. Apparently, a clerical error was made during the enrollment process. Specifically, Section 2519, which updated the year '19 __' to '20 __' on the Michigan statutory will form was inadvertently omitted from the bill. During the 6 months this error remained undetected, an unknown and unknowable number of persons may have relied on its provisions, all but one of which are unaffected by this correction which, in effect, makes a century date change. "The Secretary of the Senate and the Clerk of the House have recommended that I now re-sign a corrected version to be assigned the same date and public act number of the originally signed bill. Michigan case law supports this recommended procedure due to the fact that the omission was a 'clerical mistake' that dealt with a non-substantive provision of the bill. "As the court held in Board of Control v Auditor General, 149 Mich 386, 388 (1907), '(an) omission in the enrolled bill of words not essential to its substance or effect will not render the act invalid.' Similar decisions can be found in more recent court opinions. Beacon Club v Kalamazoo Sheriff, 332 Mich 412 (1952). "Therefore, I have affixed the revised enrolled bill with the same date as the date of my original signature. In addition, it is my expectation that the corrected enrolled bill will receive Public Act Number 54 of 2000. "Sincerely, "John Engler" Governor "cc: Michigan State Senate" Michigan House of Representatives "September 10, 2000" The Honorable John Engler "Capitol Building" Lansing, Michigan 48913 "Subject: PA 54 of 2000" "Dear Governor Engler: "A clerical error has been detected in Enrolled Senate Bill 1045, which was filed with the Secretary of State on March 30, 2000, and assigned Public Act No. 54 of 2000. The bill presented to you on March 29, 2000, did not accurately reflect what was agreed to by both houses of the Legislature. Specifically, Section 2519, which updated the year from '19 __' to '20 __' on the Michigan statutory will form was inadvertently omitted from the bill. "Therefore, we are presenting a correct Enrolled Senate Bill for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 1045 will be replaced with the correct Enrolled Senate Bill 1045 and assigned the same public act number. The inaccurate enrolled bill was signed by you on March 29, 2000, and filed with the Secretary of State on March 30, 2000. The effective date of Public Act No. 54 of 2000 will remain April 1, 2000. "This procedure ensures that the bill as passed by both houses of the Legislature is accurately filed and effective, while this document will provide notification to the public. We apologize for any inconvenience this may have caused you and the citizens of the state of Michigan. If you have any questions, please feel free to contact us. "Sincerely, "Carol Morey Vimenti" Secretary of the Senate "Gary L. Randall" Clerk of the House of Representatives "cc: Candice S. Miller, Secretary of State"

Popular Name: Statutory Will

Popular Name: EPIC

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Michigan Compiled Laws Complete Through PA 331, 332, 334-339, 341-348, 350-356, 358, 360, 361, 364-367, 371-376, 378, 382, 384-386, 390, 391, and 396 of 2008



REGISTO ONLINE DOS ACTOS DOS ADVOGADOS

Artigo 38.º do Decreto-Lei n.º 76-A/2006, de 29-03
Portaria n.º 657-B/2006, de 29-06

824

Dr.(a) Filipa R Peixoto

CÉDULA PROFISSIONAL: 20362L

IDENTIFICAÇÃO DA NATUREZA E ESPÉCIE DO ACTO

Tradução e certificação de tradução de documentos

IDENTIFICAÇÃO DOS INTERESSADOS

Edith Margarida Roqur Jorge de Martini
Passaporte n.º. R220975

OBSERVAÇÕES

Documento de inglês para português

EXECUTADO A: 2009-05-05 17:02

REGISTADO A: 2009-05-05 17:03
COM O Nº: 20362L/1289

Poderá consultar este registo em <https://oa.pt/validar.php?id=8027691+121508>.

