

**ESTATE PLANNING COUNCIL
OF GRAND TRAVERSE AREA
February 20, 2018**

Agenda

- 4:30 – 5:10 Registration and networking
5:10 – 5:15 Welcome
5:15 – 6:00 Nathan Piwoowarski Presentation
6:00 – 6:15 Adjourn and wrap-up



Maneuvering Through Legislative Issues That Impact Estate Planning – What’s Hot and What’s Not

- Will there be legislative fixes to the uncapping/transfer-of-ownership rules? Or the PRE rules for clients receiving nursing care?
- What are some of the enhanced planning opportunities that could come from directed and divided trusteeship, community property trusts, and entireties property trusts?
- What do recent bills tell us about trends in probate litigation?
- How is the Probate and Estate Planning Section serving our clients’ interests through lobbying and amicus briefs?

ABOUT THE SPEAKER - Nathan represents families, businesses, and fiduciaries in the areas of estate planning and administration; he particularly focuses on contested matters, special needs planning, and elder law. He has presented on various related topics for the Institute for Continuing Legal Education. Nathan is the author of the chapter, “Contesting Wills, Trusts, and Other Governing Instruments,” in ICLE’s newly-revised edition of *Michigan Probate Litigation*.

Nathan is a council member for the State Bar’s Probate and Estate Planning Section. He chairs the Section’s Legislation Development and Drafting Committee, which is tasked with crafting proactive improvements to Michigan’s probate, estate planning, and property statutes.

Nathan is a registered lobbyist. Before joining McCurdy, Wotila and Porteous, Nathan served as an aide to Senator Michelle A. McManus. Nathan is a Cadillac, Michigan native. He and his family love to camp and hike in Northern Michigan. Nathan gives back by serving on the boards of the Cadillac Area Community Foundation and the Munson Healthcare Cadillac Hospital.

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Watch our Website for Future Events – www.gtaepc.org

MANEUVERING THROUGH LEGISLATIVE ISSUES THAT IMPACT ESTATE PLANNING—WHAT'S HOT AND WHAT'S NOT

February 20, 2018

Nathan Piwowski

**MCCURDY
WOTILA &
PORTEOUS**

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While I am a member of the council of the State Bar's Probate and Estate Planning Section, this presentation reflects my opinions, rather than the official position of the Section or the State Bar.

Part 1. Recently-Enacted Laws

- 1.1 **Dower—it's finally, really done (HB 4532/2017 PA 54).** Michigan repealed dower (a wife's inchoate interest in her husband's real estate). But the Legislature didn't remove the requirement that a man's marital status be identified in a conveyance. Oops! This law removes that latter requirement, much to the joy of real estate attorneys and title companies everywhere.
- 1.2 **Public Administrator "Reform" (HB 4821 & 4822/2018 PA 13 & 14).** This is the legislative response to some abusive, collusive arrangements between one or two county public administrators and some realtors in metro Detroit. These laws make it harder and slower to open an estate where a county public administrator is the nominated PR. They increase the notice requirements to try to avoid family homes from being sold from underneath their feet. And they impose criminal penalties on PAs for knowing violation of these provisions. These go into effect in about two months.

Part 2. Moving Legislation

- 2.1 **Lien adjustments in probate inventories (HB 4752).** This will allow inventory fees to remain adjusted passed on liens against estate-owned realty. Status: Passed by House and Senate; presented to the Governor.
- 2.2 **Principal Residence Exemptions—after death and nursing care (HB 4905).** This bill would amend the General Property Tax Act to remove a requirement that a property must be unoccupied in order for an individual who resides in a nursing home or assisted living facility to continue to claim a principal residence exemption (PRE) on the property. It would also allow the exemption to continue for a situation in which the individual is residing in “any other location,” as long as the individual is residing there solely for purposes of convalescence. The should address the increasingly-common situation in which a property owner is residing in a nursing home or assisted living facility while at the same time an individual—often a family member—is occupying the original property, potentially for purposes of maintenance or convenience. Status: Passed house; passed Senate committee; likely to pass in Senate.
- 2.3 **Exempt Property/*Jajuga* fix (HB 4410).** In the *Jujuga* case, the Court of Appeals (correctly) ruled that, if there’s no surviving spouse, the decedent’s adult children are entitled to share in a \$15,000 “exempt property allowance” *even if disinherited in the will*. This legislation will allow a willmaker to exclude a child from receiving the exempt property allowance. This would include the ability to exclude minors (mainly for special needs planning reasons). This has passed in the House and is in committee in the Senate; we have had some difficulties educating some on the good reasons for excluding minors in some situations.
- 2.4 **Mandatory mediation in contested probate matters (HB 5073).** Probate matters will likely be treated very differently than other matters. The details are very uncertain.
- 2.5 **Adult access/visitation disputes (SB 713 and HB 4684).** This is going to be a really hot topic. These bills would allow interested persons to file probate petitions to force access to isolated adults. The House bill would only involve issues of contact with legally-incapacitated adults. The Senate bill would allow courts to enter orders requiring visitation for individuals who are not legally incapacitated. The proposals raise difficult questions regarding undue influence, incapacity, who should be determining visitation rights, and what the legal threshold should be for a probate court to insert itself into an adult’s life. Members of Casey Kasem’s family—and others who have been involved in difficult parental visitation disputes—offered heartfelt testimony in favor of this bill. The Probate Section, Elder Law Section, and the Michigan Probate Judges Association all oppose SB 713, but it is poised to pass in the Senate.
- 2.6 **Certificates of Trust Existence and Authority (HB 5362 and 5398).** Would unify the standard for non-real estate and real estate certificates. Would ease the disclosure requirements a bit. Would eliminate the need for a lawyer to sign a COT for a successor trustee. Legislation’s been introduced, but is not yet moving.

- 2.7 **Premarital Agreements/Allard fix. (HB 4959 and 4751).** HB 4751 is moving; HB 4959 is not. The former—HB 4751—is more comprehensive. It would adopt some of the desirable aspects of uniform laws governing prenups. This includes excusing enforcement based on a material change in circumstances that was not foreseeable at the time the prenup was signed.
- 2.8 **E-Filing (ADM File No. 2002-37).** This has been put on hold for probate matters.

Part 3. Longer Runway

- 3.1 **Principal Residence Exemptions/Breakey fix.** Breakey v Michigan Department of Treasury surprised many practitioners in regard to the rules for when a the personal residence exemption can be claimed on property where a surviving spouse inherits a life estate in real estate held in the other spouse's trust. Treasury had changed its established position, stating that the exemption should not apply. The Tax Tribunal upheld Treasury's position. The case currently on appeal to the Michigan Court of Appeals. *Status:* Legislation in development.
- 3.2 **Uncapping clarifications and fixes (SB 540).** This legislation would address various issues related to transfers in trusts and inside of LLCs. Not currently moving.
- 3.3 **End-of-Life/cessation of life-sustaining care (HB 5075 and HB 5076).** These bills would make it much easier to slow down or stop a patient advocate's efforts to withdraw life-sustaining treatment for the patient. Appears to be a project of Michigan Right to Life. Currently not moving.
- 3.4 **Michigan Community Property Trust Act.** Would provide for the creation of community property trusts in Michigan, thereby allowing for a full step up in basis upon the first spouse's death. Hedges on some of the nuances that come along with community property law. No known opposition. We have a sponsor, but the bill's not been introduced.
- 3.5 **Tenants by the Entireties Trusts.** Would allow for the creation of entireties trusts. Would significantly increase creditor protections for married couples. This protection—in the current version of the proposal—would extend after the first spouse's death. No opposition from Michigan Bankers, so this has good prospects. We have a potential sponsor, but the bill's not been introduced.
- 3.6 **Directed and Divided Trusts.** This legislation will make it easier for a settlor to divide the labor between the trustee (to make distributive decisions) and subject-matter specialists (directors or special-purpose trustees). See enclosed materials for more details. *Status:* Probate Section has taken public policy position; we have a sponsor; we are just waiting for the "blueback" to be returned to the sponsor.

3.7 EPIC/MTC Omnibus. The Probate Section’s wishlist for changes to our main statute, the Estates and Protected Individuals Code:

- (a) Clarify the grounds for making a “subsequent administration” filing (3959).
- (b) Standby guardians: provide for designation of standby guardians for legally-incapacitated individuals (5301, 5310, 5313, 5314, plus a new section)
- (c) Increased financial thresholds and COLA: 1210(2) (general COLA mechanism); 2519 (facility of payment in statutory wills); 3605 (demand for bond); 3916 (disposition of unclaimed assets); 3917 (handling of unclaimed assets by county treasurer); 3918 (distribution out of a decedent’s estate to a disabled person); 3981 (delivery of modest amounts of cash and wearing apparel); 3983 (collection of personal property by affidavit); 5102 (management of assets for a disabled person without a conservator). The “big ask” in this legislation is allowing up to \$25,000.00 to be distributed to a parent or guardian of a minor without the need for appointing a conservator.
- (d) MVC provision for administratively transferring vehicle titles (MCL 257.236)
- (e) NREPA provision for administratively transferring watercraft titles (324.80312)
- (f) UTMA threshold (MCL 554.530)
- (g) Pet and purpose trusts (technical; 2722, 7408, 7409, 7105, 7110, 7402)
- (h) MTC Notice fix (7103)
- (i) Conflicts of interest in powers of appointment and effect on ability to decant (1106(1)(r), 7302)
- (j) Post-*Obergefell* gender-neutral language (2806)
- (k) *Status*: Probate Section has taken public policy position; identifying a sponsor.

3.8 Assisted Reproductive Technology. This proposal would provide a robust framework to reflect the impact of ART on estate planning and administration issues. This is a complex, enormous proposal. The Section’s taken a public policy position, but no blueback has been delivered yet.

3.9 Tenants by the Entireties Property. Would expand the types of property that could be held by the entireties (thus increasing spousal protections against individual spouse’s creditors). This legislation seems unlikely to be passed.

Probate & Estate Planning Section
Plan of Work
10/1/2017 - 9/30/2018

	Statutory/Legislative	Court Rules, Procedures and Forms	Council Organization & Internal Procedures	Professional Responsibility
Action Pending	<ul style="list-style-type: none"> - Jajuga fix; HB 4410 -Assisted Reproductive Technology -Property Tax Uncapping Exemptions SB 540 -Michigan Community Property Trust Act -Tenants by Entirety Property in Trust bill -Certificates of Trust legislation 	<ul style="list-style-type: none"> -HB 4821 and HB 4822 (public administrators) 	<ul style="list-style-type: none"> -Streamline agenda of Council meeting 	
Priority Items	<ul style="list-style-type: none"> -Directed and Divided Trusts -EPIC/MTC Updates (with COLA) -MTC Notice Fix 	<ul style="list-style-type: none"> -e-filing in courts -SCAO Meetings* -New forms based on EPIC/MTC updates legislation 		<ul style="list-style-type: none"> - who does the attorney for the fiduciary represent? -Mardigan legislative fix
Secondary Priority	<ul style="list-style-type: none"> -Standby Guardians for minors and LILs -Premarital and Marital Agreements Act -Guardianship, Conservatorship, and Other protective Arrangements Act -Expand Personal Residence Exemption -attorney for the fiduciary (Perry v Cotton issue) -Agents to settle trusts -Breakey fix -- PRE 	<ul style="list-style-type: none"> -Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception) 		
Priority To Be Determined	<ul style="list-style-type: none"> -Brody fix needed? -Allard fixes, HB 4751, HB 4959 -Charitable Trust statute update -Undisclosed Trusts 		<ul style="list-style-type: none"> -State Bar of Michigan 21st Century Practice Task Force Report 	<ul style="list-style-type: none"> -payee accounts

	<p>-HB 4589 / SB 345?– financial exploitation; 65 y.o. vulnerable adults in financial transactions</p> <p>-HB 5037 implanting tracking device in wards</p> <p>-SB 49 compensation for professional guardian</p> <p>-??Dignified Death (Family Consent) Act</p> <p>(HB 4905PRE after death & nursing home</p> <p>-Passed in the 2015-16 Legislative Session but we want to review/suggest changes:</p> <p>-Probate court jurisdiction over G/C proceedings (SB 270 (PA 498 of 2016) which added Sections 5301b & 5402a to EPIC.</p> <p>-??Update to uniform voidable transactions act (SB 982 (PA 552 of 2016) which amended secs. 1-3 of MCL 566.31 and adds secs. 14-15.</p> <p>-Did not pass in the 2015-16 Session and will need to be reintroduced:</p> <ul style="list-style-type: none"> • (ILIT trustee exoneration bill (SB 1010) <p>-Pending/working with Bankers:</p> <ul style="list-style-type: none"> • (Tenants by Entirety Property bill 			
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*ongoing



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4821 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 4822 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative Jim Runestad (H.B. 4821)
Representative Jim Ellison (H.B. 4822)
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

House Bill 4821 (S-1) would amend the Estates and Protected Individuals Code to do the following:

- Extend the time an interested party has to petition for appointment as personal representative of a decedent's estate, before a State or county public administrator may be appointed as personal representative.
- Specify that a State or county public administrator could be appointed only in a formal proceeding.
- Require a State or county public administrator who was seeking appointment as personal representative and knew that the decedent's real property had delinquent property taxes or was subject to a mortgage foreclosure, to provide notice of hearing to the decedent's heirs, and require the notice to include certain information.
- Specify that a State or county public administrator who knowingly failed to provide a required notice would be guilty of a misdemeanor, and prescribe penalties for a violation.

House Bill 4822 (S-1) would amend the Estates and Protected Individual Code to:

- Require a State or county public administrator appointed as personal representative to submit a notice (similar to that required to inform a decedent's heirs of an appointment) to the treasurer of the county in which real property subject to tax foreclosure was located.
- Prohibit the sale of a decedent's real property without the approval of the court if the personal representative were the State or county public administrator.
- Provide that the court could approve the sale of the decedent's real property only if, after a hearing, the court considered evidence of the value of the property and information submitted by the county treasurer, and otherwise determined that the sale was in the estate's best interest.
- Prohibit a personal representative, who was the State or county public administrator, from paying to a person he or she employed real estate fees or other fees related to identifying real property subject to foreclosure in excess of 10% of the net proceeds payable to the estate.

MCL 700.3203 et al. (H.B. 4821)
700.3705 et al. (H.B. 4822)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4821 (S-1) would have no fiscal impact on the State and could have a small negative fiscal impact on local government. Any increase in misdemeanor arrests and

convictions could increase resource demands on law enforcement, court systems, and community supervision. Any associated increase in fine revenue would increase funding to public libraries.

House Bill 4822 (S-1) would have no fiscal impact on the State or local government.

Date Completed: 1-22-18

Fiscal Analyst: Ryan Bergan

floor\hb4821

Bill Analysis @ www.senate.michigan.gov/sfa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

**EXEMPT PROPERTY:
ALLOW TO EXCLUDE CHILD IN WILL**

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4410 (Substitute H-1) as reported from committee
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 10-13-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would allow a person to exclude, in a will or written instrument, 1 or more of his or her children from making a claim to receive property from the person's estate after death under the "exempt allowance" provision.

FISCAL IMPACT: The bill would have no fiscal impact on state or local units of government.

THE APPARENT PROBLEM:

The bill would address an issue highlighted by a recent lawsuit in which an adult child who had been specifically excluded from her mother's will sued to recover what is known as the exempt property allowance.

Under Michigan law, if a person (decedent) dies without a will (intestate), the person's estate is divided among heirs as provided in statute. Under Section 2101 of the Estates and Protected Individuals Code, if the decedent made a will, but some of the estate was not specifically disposed of, that which remains is divided among the heirs in the same manner as it would have had there not been a will. Section 2101 also allows a person "to expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession" (meaning that the excluded person or persons could not even inherit any assets not specifically provided for in the will).

Before an estate is divided among the heirs as described above, people or businesses to which the person owed money can make a claim against the estate. However, Section 2404 protects a certain amount of the estate from creditors; these protected assets go to the surviving spouse, or if there is no surviving spouse, the protected assets (referred to as "exempt property" or "exempt property allowance") are divided among any surviving children. The amount protected is established in statute and adjusted for inflation; currently, about \$15,000 of the decedent's assets are protected.

In the lawsuit mentioned earlier, the child bringing the action believed that even though her mother had specifically stated in the will that her children were to "inherit nothing" from her estate, that she still had a right to the exempt property allowance. Upon appeal, the state Court of Appeals ruled in the child's favor, stating that under the plain language of the statute, the "disinheriting language" in the will did not include an expression of intent regarding the child's right to exempt property under Section 2404. (*In re Estate of Shelby Jean Jajuga, Chelenyak v. Veith*, No. 322522, October 20, 2015)

Some feel that a parent has the right to exclude a child from *any* inheritance and would like to see the law clarified to have that right protected.

THE CONTENT OF THE BILL:

House Bill 4410 would amend Section 2404 of the Estates and Protected Individuals Code. Currently, a surviving spouse, or if no surviving spouse, the decedent's children, have a statutory right to exempt property. This is in addition to any property bequeathed in a will or that the heirs are entitled to under the state's intestate laws if the person did not leave a will. (Exempt property refers to property such as jewelry, cars, household furniture, or appliances that is protected from creditors; the amount that may be protected is established in statute and currently is about \$15,000.)

The bill would allow a decedent to exclude 1 or more of his or her children from receiving exempt property or assets to make up a deficiency of exempt property under Section 2404 by either of the following means:

- The decedent by will expressly states either of the following:
 - The child takes nothing.
 - The child takes an amount of \$10 or less from the estate.
- The decedent by will expressly states that the child is not to receive exempt property under Section 2404.

The bill takes effect 90 days after enactment.

MCL 700.2404

BACKGROUND INFORMATION:

The bill is similar to House Bill 5638 of the 2015-2016 Legislative session. The bill was reported from the Judiciary Committee in the closing days of session but failed to see action on the House floor.

ARGUMENTS:

For:

There may be reasons why a person chooses not to leave an inheritance to a child. Perhaps the parent provided for the child by other means while still living. For example, if the child were disabled, receiving even a small inheritance under the exempt property allowance could render the child ineligible to receive public assistance such as Medicaid or food assistance. Or perhaps the parent feels the child would not benefit from an inheritance; for instance, if the child has an untreated substance use or gambling addiction and the parent fears the inheritance will be squandered or used to further the addiction.

Thus, the bill would fix a problem highlighted by the Court of Appeals case. The amendment would ensure that not only could a parent disinherit a child in a will, but would

clarify that by including the language specified in the bill in a will, the parent could also make sure the child would not be able to make a claim for a share of the exempt property allowance. Enactment of the bill would provide clarity to the courts, and reassurance to the parent, that the parent's true wishes would be carried out after death.

Against:

No arguments were raised in opposition to the bill.

POSITIONS:

The Probate Section of the State Bar of Michigan indicated support for the bill. (10-3-17)

The Elder Law & Disability Section of the Michigan State Bar indicated support for the bill. (9-26-17)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

**SUBSTITUTE FOR
HOUSE BILL NO. 4410**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2404. (1) The decedent's surviving spouse is also
2 entitled to household furniture, automobiles, furnishings,
3 appliances, and personal effects from the estate up to a value not
4 to exceed \$10,000.00 more than the amount of any security interests
5 to which the property is subject. If there is no surviving spouse,
6 the decedent's children **WHO ARE NOT EXCLUDED UNDER SUBSECTION (4)**
7 are entitled jointly to the same value.
- 8 (2) If encumbered assets are selected and the value in excess
9 of security interests, plus that of other exempt property, is less
10 than \$10,000.00, or if there is not \$10,000.00 worth of exempt

property in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION (4)** are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000.00 value.

Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The \$10,000.00 amount ~~expressed~~ **DESCRIBED** in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

(4) THE DECEDENT MAY EXCLUDE 1 OR MORE OF THE DECEDENT'S CHILDREN FROM RECEIVING EXEMPT PROPERTY OR ASSETS TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY UNDER SUBSECTION (1) BY EITHER OF THE FOLLOWING MEANS:

(A) THE DECEDENT BY WILL EXPRESSLY STATES EITHER OF THE FOLLOWING:

(i) THE CHILD TAKES NOTHING.

(ii) THE CHILD TAKES AN AMOUNT OF \$10.00 OR LESS FROM THE ESTATE.

1 **(B) THE DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD IS**
2 **NOT TO RECEIVE EXEMPT PROPERTY UNDER THIS SECTION.**

3, Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.



Senate Fiscal Agency
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BILL



ANALYSIS

Telephone: (517) 373-5383
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House Bill 4905 (Substitute H-2 as reported without amendment)

Sponsor: Representative Peter J. Lucido

House Committee: Tax Policy

Senate Committee: Finance

CONTENT

The bill would amend the General Property Tax Act to do the following:

- Allow a property owner who previously occupied the property as his or her principal residence but now resided in any other location for the purposes of convalescence to retain a principal residence exemption (PRE) if the owner manifested an intent to return.
- Delete the requirement that property be unoccupied if the owner is to continue receiving the PRE while he or she resides in a nursing home or assisted living facility.

In addition, the Act allows an owner who owned and occupied a principal residence on June 1 or November 1 for which the exemption was not on the tax roll, or an owner of property who previously occupied that property as his or her principal residence but did not occupy that property on June 1 or November 1 while residing in a nursing home or assisted living facility under certain circumstances for which the exemption was not on the tax roll, to file an appeal with the July or December board of review in the year for which the exemption was claimed or the immediately succeeding three years.

The bill would include in this provision an owner of property who previously occupied the property as his or her principal residence but did not occupy it on June 1 or November 1 while residing in another location for the purpose of convalescence.

MCL 211.7cc

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would increase School Aid Fund expenditures by an unknown and likely minimal amount. By reducing the requirements for homeowners to retain an exemption from the 18-mill school operating levy, the bill would likely increase the number of the exempt properties (or decrease the number that otherwise would become ineligible for the exemption). Since the exemption would reduce local school operating revenue, expenditures from the School Aid Fund would need to be increased in order to maintain per-pupil funding guarantees. The magnitude of any changes would depend on the specific characteristics of any affected property.

Date Completed: 2-14-18

Fiscal Analyst: Ryan Bergan

Hollywood legends' children push elder visitation bill

Oralandar Brand-Williams, The Detroit News Published 2:03 p.m. ET Feb. 13, 2018



(Photo: Oralandar Brand-Williams / The Detroit News)

The adult children of entertainment legends Casey Kasem, Mickey Rooney and Glen Campbell tried Tuesday to convince Michigan legislators to pass a law they say would protect aging parents by ensuring visitation rights for their loved ones.

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Kerri Kasem, Kelly Rooney and Travis Campbell were joined by other supporters in speaking before the Michigan Senate Judiciary Committee, which backed the legislation.

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Kerri Kasem was involved in several contentious court battles against her stepmother, Jean Thompson Kasem, for the right to see her father, the American Top 40 host who died in 2014 of complications of Lewy body dementia at age 82.

Since the death of her father, a Detroit native who began his radio career at Wayne State University, Kerri Kasem has been on a mission to guarantee that family members can visit ill or incompetent relatives through measures such as the one being considered in Lansing.

"What it would allow the judge to do is to just rule on visitation. It would put the burden of proof on the caretaker," said Kerri Kasem. "If they're not allowing visitation, they have to prove why instead of hearsay."

Travis Campbell, the son of Glen Campbell, said he was limited in his ability to see his father when the country-western musician began to decline. Campbell, known for hits such as "Wichita Lineman" and "Southern Nights," died of Alzheimer's disease in August at age 81.

Travis Campbell said he was instrumental in getting lawmakers in Tennessee to pass an elder visitation bill two years ago. He said toward the end of his father's life, he was only allowed to see him for four hours twice a month.

"(The bill) is not just for us," Travis Campbell said. "It's for everybody."

Campbell said he was concerned about his father's health because the singer-guitarist was made to perform 151 shows over three years, even though the entertainer felt he could not perform that many concerts.

Kelly Rooney said her isolation from her father was "slow ... gradual" and that he had complained of emotional and other forms of abuse before his death in 2014 at the age of 93.

"They withheld medication and withheld food from him," Rooney said of her father's caretakers.

Rooney, a film legend whose career began in the 1920s, testified about elder abuse before Congress in 2013. Kelly Rooney became emotional speaking to The Detroit News Tuesday about not seeing her dad for nearly two years before he died. She said her brother found out about her father's death through the TV show "TMZ."

Kelly Rooney said her father was forced to continue to work and he was "demeaned" when he forgot lines or couldn't read cue cards. She said her father's caretakers would tell her he was not home when she called to come see him. She said she relied on impromptu visits to see her father.

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"They held him hostage and they stole time from us," she said.

Kathleen Wright-Brawn, the chairman of the Kasem Cares board, said elder abuse and visitation are becoming top issues for families across the country.

Wright-Brawn said her father's female friend became his caretaker and blocked her from seeing him.

Wright-Brawn's dad, millionaire Thomas C. Wright, died at age 82 in 2014 from the same form of dementia as Casey Kasem.

"I had 20 minutes to see my dad," said Wright-Brawn. She encouraged children and other family members to become "aware" of their loved ones' lives before they are put into a caretaker situation and it takes a court battle to be able to see them.

"Make a videotape of them holding a newspaper with the date on it (telling their wishes)," she said.

Concerns over visitation also arose after the death of former Motown singer Dennis Edwards, a member of the Temptations. Edwards died Feb. 1 at the age of 74 in Chicago.

A police investigation is underway into allegations of elder abuse in his death. Edwards' wife, Brenda Edwards, was the subject of a personal protection order filed on the singer's behalf last month.

Kerri Kasem said 11 states have passed visitation legislation.

Local broadcaster John Akouri is working with Kerri Kasem and the others to get the Michigan bill passed.

"Detroit is ground-zero in this march and God willing, one day all 50 states will pass this bill," said Akouri, president of the Lebanese-American Chamber of Commerce. "Our parents were there for us when we entered this world, and we, their children, should be there for them when they leave us."

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Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4751 (Substitute S-1 as reported)
Sponsor: Representative Klint Kesto
House Committee: Law and Justice
Senate Committee: Families, Seniors and Human Services

CONTENT

The bill would amend Public Act 216 of 1981, which provides for the rights and liabilities of married women, to regulate the enforceability of contracts relating to property made between individuals in contemplation of marriage, commonly called prenuptial agreements.

The Act specifies that a contract relating to property made between individuals in contemplation of marriage remains in full force after the marriage takes place.

Under the bill, a prenuptial agreement would be unenforceable if a party against whom enforcement was sought proved either of the following:

- The party's consent to the contract was the result of fraud, duress, or mistake.
- Before signing the contract, the party did not receive adequate financial disclosure, including disclosure of assets in a domestic asset protection trust.

The court could refuse to enforce a term of the contract or the entire contract if, in the context of the contract taken as a whole, either of the following applied:

- The term was unconscionable at the time the contract was signed.
- Enforcement of the term could be unconscionable for a party at the time of the enforcement because of a material change in circumstances arising after the contract was signed that was not reasonably foreseeable at the time it was signed.

The court would be required to decide the question of unconscionability as a matter of law.

The bill would apply to prenuptial agreements made both before and after its effective date.

MCL 557.28 & 551.204

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Date Completed: 12-5-17

Fiscal Analyst: Ryan Bergan



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BILL



ANALYSIS

Telephone: (517) 373-5383
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Senate Bill 713 (Substitute S-1 as reported)

Sponsor: Senator Jim Marleau

Committee: Judiciary

CONTENT

The bill would add Part 6 (Isolated Adults) to Article 5 of the Estates and Protected Individuals Code to do the following:

- Allow a qualified person (such as a spouse or child) to petition the court for a finding that an adult was being isolated from a qualified person by another individual.
- State a presumption that it was in the best interest of an allegedly isolated adult to visit with a qualified person; and allow the respondent (the person who allegedly denied visitation between the adult and the petitioner) to rebut the presumption with evidence that the petitioner had abused the allegedly isolated adult or that visitation would be harmful to him or her.
- Specify that if an allegedly isolated adult objected to a petitioner's visitation, the petitioner would have to demonstrate that the objection resulted from the respondent's undue influence over the allegedly isolated adult.
- Allow the court to enter an order establishing reasonable times for a petitioner to visit an isolated adult if the court found that the petitioner was a qualified person, the individual subject to a petition was an isolated adult, and visitation between the isolated adult and the petitioner was being denied.
- Allow the court to assess reasonable attorney fees and guardian ad litem costs if a petition were granted, or if the court found that the petitioner had filed the petition in bad faith.

The bill would amend Article 5 (Protection of an Individual under Disability and His or Her Property) to do the following:

- Require a guardian ad litem appointed for an incapacitated individual to make determinations as to with whom the incapacitated individual wished to communicate and visit, and whether it would be appropriate for the incapacitated individual to do so.
- Require a court to design a guardianship to continue the development of an incapacitated individual's existing relationships with qualified persons.
- Specify that an individual for whom a guardian was sought or had been appointed would have the right to visit and communicate with individuals of his or her choice.
- Allow a qualified person to petition the court for a finding that a ward was an isolated adult and for an order of visitation with the ward under proposed Part 6.
- Allow a patient advocate designation to include a statement of the patient's desires on communication and visitation with others.

MCL 700.5101 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Date Completed: 2-14-18

Fiscal Analyst: Michael Siracuse

floor\sb713

Bill Analysis @ www.senate.michigan.gov/sfa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

ENFORCEABILITY OF PRENUPTIAL AGREEMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4751 (H-1) reported from committee
Sponsor: Rep. Klint Kesto
Committee: Law and Justice
Complete to 10-24-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4751 would amend Section 8 of Public Act 216 of 1981, concerning a contract relating to property made between persons in contemplation of marriage. This contract is also known as a prenuptial agreement. Generally speaking, the bill would render a prenuptial agreement unenforceable if certain factors can be proven, such as duress or unconscionable terms.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

THE APPARENT PROBLEM:

The Michigan Court of Appeals decided in *Allard v. Allard* that a court could interfere with a valid prenuptial agreement if the outcome was inequitable upon divorce.¹ Stated differently, the court determined that upon divorce, if a court finds the distribution of assets according to a prenuptial agreement is not apportioned equally, then the prenuptial agreement could be considered inequitable and not applicable.

Drafters of the bill believe that a valid prenuptial agreement should be enforced, even if it is inequitable, and that an agreement should be unenforceable only if it is found to be unconscionable. As such, these bill would produce that result.

THE CONTENT OF THE BILL:

Section 8 of Public Act 216 of 1981 currently states that a contract relating to property made between persons in contemplation of marriage is enforceable after the marriage takes place. The bill would amend this section by adding specific circumstances when such a contract is unenforceable.

For a prenuptial agreement to be unenforceable, a party against whom enforcement is sought must prove either of the following:

- The parties' consent to the contract was the result of fraud, duress, or mistake;
OR
- Before signing the contract, the party did not receive adequate financial disclosure, including disclosure of assets in a domestic asset protection trust. A

¹ Unpublished opinion issued January 31, 2017 (No. 308194).

party has adequate financial disclosure under this subdivision if one of the following applies:

- The party receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party.
- The party expressly waives the right to financial disclosure beyond the disclosure provided.
- The party has adequate knowledge or a reasonable basis for having adequate knowledge of the estimate of value of the property, liabilities, and income of the other party.

The bill would also give deference to courts to refuse to enforce a term of the contract or the entire contract if either of the following applies:

- The term was unconscionable (or extremely unfair such that no reasonable party would agree) at the time the contract was signed.
- Enforcement of the term would be unconscionable for a party at the time of enforcement because of a material (meaning important; having influence or effect) change in circumstances arising after the contract was signed that was not reasonably foreseeable at the time the contract was signed.

The court's decision on whether a term or the entire contract is unconscionable would be decided as a matter of law. This means that the court would not investigate the facts of the case, but rather decide the issue through principles described in the applicable statutes.

The bill would be applicable to prenuptial agreements made before and after the effective date.

This amendatory act would take effect 90 days after the date of enactment.

MCL 557.28

ARGUMENTS:

For:

Supporters of the bill worry that without a specific statute to enforce valid prenuptial agreements, a court would be able to disregard the contract and apply a “standard of living” test to distribute marital property equally. However, proponents of the bill believe that a valid prenuptial agreement should always be enforced, no matter the outcome. The only time an agreement should not be enforced is if it is unconscionable.

Against:

Opponents of the bill argued that under principles of Michigan law, a marriage takes two properties and combines them into one. As such, a prenuptial agreement should be illegal, as it contracts around these principles.

Critics also worried that the bill could erode a court’s authority and ability to look at the totality of circumstances and decide what is fair. For instance, if one spouse owns rental property before the marriage and creates a prenuptial agreement to keep it separate, then a

court would be unable to apply any equitable relief if the other spouse helped to increase the property value over the marriage through upgrading or up keeping the property. If a spouse is not allowed to receive a share of the profits that were created through their own help, then it would create a disincentive to be helpful and supportive during marriage. Additionally, cases of domestic violence could produce a result where a victim would get nothing with which to start over. Under the bill, a court would be unable to divide property equally if there is a fair prenuptial agreement, but the abusive spouse would not let the victim work to earn money, assets, or skills outside of the marriage.

POSITIONS:

A representative from the Family Law Section of the Michigan State Bar opposes the bill. (9-12-17, 9-26-17, and 10-17-17)

Two attorneys from West Bloomfield testified in support of the bill. (9-26-17)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4751**

A bill to amend 1981 PA 216, entitled

"An act to provide for the rights and liabilities of married women with respect to certain real and personal property; to abrogate the common law disabilities of married women with respect to certain contracts; to prescribe the payment and satisfaction of judgments rendered upon certain written contracts; and to repeal certain acts and parts of acts,"

by amending section 8 (MCL 557.28).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) A contract relating to property made between
2 persons in contemplation of marriage shall remain in full force
3 after marriage takes place.

4 (2) A CONTRACT DESCRIBED IN SUBSECTION (1) IS UNENFORCEABLE IF
5 A PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT PROVES EITHER OF THE
6 FOLLOWING:

7 (A) THE PARTIES' CONSENT TO THE CONTRACT WAS THE RESULT OF

1 FRAUD, DURESS, OR MISTAKE.

2 (B) BEFORE SIGNING THE CONTRACT, THE PARTY DID NOT RECEIVE
3 REASONABLE FINANCIAL DISCLOSURE, INCLUDING DISCLOSURE OF ASSETS IN
4 A DOMESTIC ASSET PROTECTION TRUST. A PARTY HAS REASONABLE FINANCIAL
5 DISCLOSURE UNDER THIS SUBDIVISION IF 1 OF THE FOLLOWING APPLIES:

6 (i) THE PARTY RECEIVES A REASONABLY ACCURATE DESCRIPTION AND
7 GOOD-FAITH ESTIMATE OF VALUE OF THE PROPERTY, LIABILITIES, AND
8 INCOME OF THE OTHER PARTY.

9 (ii) THE PARTY EXPRESSLY WAIVES THE RIGHT TO FINANCIAL
10 DISCLOSURE BEYOND THE DISCLOSURE PROVIDED.

11 (iii) THE PARTY HAS REASONABLE KNOWLEDGE OF THE INFORMATION
12 DESCRIBED IN SUBPARAGRAPH (i) .

13 (3) A COURT MAY REFUSE TO ENFORCE A TERM OF THE CONTRACT OR
14 THE ENTIRE CONTRACT IF, IN THE CONTEXT OF THE CONTRACT TAKEN AS A
15 WHOLE, EITHER OF THE FOLLOWING APPLIES:

16 (A) THE TERM WAS UNCONSCIONABLE AT THE TIME THE CONTRACT WAS
17 SIGNED.

18 (B) ENFORCEMENT OF THE TERM MAY BE UNCONSCIONABLE FOR A PARTY
19 AT THE TIME OF ENFORCEMENT BECAUSE OF A MATERIAL CHANGE IN
20 CIRCUMSTANCES ARISING AFTER THE CONTRACT WAS SIGNED THAT WAS NOT
21 REASONABLY FORESEEABLE AT THE TIME THE CONTRACT WAS SIGNED.

22 (4) THE COURT SHALL DECIDE THE QUESTION OF UNCONSCIONABILITY
23 UNDER SUBSECTION (3) AS A MATTER OF LAW.

24 (5) THIS SECTION APPLIES TO CONTRACTS RELATING TO PROPERTY
25 MADE BETWEEN PERSONS IN CONTEMPLATION OF MARRIAGE MADE BEFORE AND
26 AFTER THE EFFECTIVE DATE OF THE 2017 AMENDATORY ACT THAT AMENDED
27 THIS SECTION.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.

**COMMUNITY PROPERTY TRUSTS
AD HOC COMMITTEE**

Members:

October 29, 2017

Neal Nusholtz
Rebecca Wrock
Nicholas Reister
George Gregory
Lorraine New

M E M O R A N D U M

To: Probate Council
From: The Community Property Trusts
Ad Hoc Committee

By way of introduction for Probate and Estate Planning Section members who are unfamiliar with the proposed Optional Community Property Statute, the bill will allow married couples in Michigan to get the same income tax advantage as other married couples in Community Property Trust states.

There are two (2) kinds of state laws for marital property. Common law states like Michigan and Community Property states of which there are about a dozen. States that allow Community Property to take advantage of a Federal income tax savings provision which gives a higher tax deduction to the survivor of a trust upon the death of one of the spouses when the property is sold.

The tax benefits are obtained by titling marital property in a special Community Property Trust. If the surviving spouse sells that property their cost basis would be the amount equal to the fair market value of the property at the time of death and that saves income taxes for a surviving widow or widower..

In Michigan inherited assets after the death of a spouse are taxed at a higher level than Community Property Trust states.

This bill will allow married couples in Michigan to get the same I.R.S. tax advantage as other married couples in Community Property Trust states.

As of this writing, Senator Bieda is anticipating introducing the Probate Councils Optional Community Property Statute. Minor corrections were made to the original draft which did not change the substance of the proposed statute. Wherever the word divorce appeared in the draft, annulment and separate maintenance were added. The most significant change would be to Section 7506(1)(a), which provides the following:

COMMUNITY PROPERTY TRUSTS
AD HOC COMMITTEE

“(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

- (a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.”

The proposal for that section reads:

Sec. 7506. (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply: (a) During EXCEPT AS OTHERWISE PROVIDED IN SECTION 7510 IN RELATION TO A MICHIGAN COMMUNITY PROPERTY TRUST, DURING the lifetime of the settlor...

The change to §7506 was needed because the assets of a Community Property Trust are only accessible by creditors directly for joint debt. Otherwise, if the debt is the debt of a single spouse, a creditor would be able to attach only that spouse's rights as a beneficiary of the trust. Community property states have a concept called community debt, which is debt that benefits the community of the marriage. In community property states, creditors can attach community property for community debt. But “community debt” seems like a large expansion into an entirely new area of law, so, to avoid that, the Committee chose to use “joint debt” of both spouses instead of community debt. Since community property trusts are revocable, an amendment to section 7506 (which allows creditors to go after a revocable trust) was made to accommodate the issue of access to trust assets directly for joint debt only.

The Creditor's Committee had asked for a provision that stated existing creditor rights would not be affected by a community property trust. Since that statement seems unnecessary and could create more litigation than it would avoid, the Community Property Committee decided to put some language in the reporter's comments to the effect that the statute or the formation of a community property trust will not disturb existing creditor rights. The Senate version of the bill is attached.

**COMMUNITY PROPERTY TRUSTS
AD HOC COMMITTEE**

A version with marked changes from the last time Council voted on the statute is found at SBM Connect Library for Probate and Estate Planning Section.

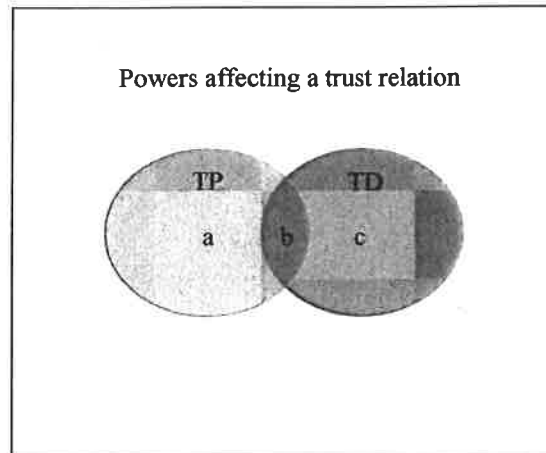
Very truly yours,

The Community Property
Trust Ad Hoc Committee

I. INTRODUCTION AND SET DIAGRAM

The Council of the Probate and Estate Planning Section of the Michigan State Bar is considering a legislative proposal lately developed by the Council’s Divided and Directed Trusteeships *ad Hoc* Committee. Among other things, the Committee’s proposal (CP) imports the Uniform Directed Trust Act (UDTA) into the Michigan trust code (MTC).¹ That importation is effected primarily by the addition of a new section to the MTC, CP section 7703a.²

Now, the MTC is a version of the Uniform Trust Code (UTC), and the UDTA displaces subsections (b) through (d) of UTC section 808,³ which have their local installation in Michigan in MTC section 7809.⁴ So, under the CP, the new section 7703a displaces MTC section 7809.⁵ The result is (among other things) a change in the scope of the statutory imposition of fiduciary constraint on persons having powers to direct the actions of trustees. That change can be described schematically as follows:



¹ **Appendix 1** hereto contains the portions of the CP pertaining to directed trusteeship and the importation of the UDTA into the MTC. In addition to those provisions, the CP contains provisions pertaining to a more innovative scheme of fiduciary coordination known as “divided trusteeship.” As to the difference between directed and divided trusteeships, see James P. Spica, *Onus Fiducia Est Omnis Divisa in Partes Tres: A Statutory Proposal for Partitioning Trusteeship*, 49 REAL PROP. TR. & EST. L.J. 349, *passim* (2014).

² **Appendix 2** hereto contains parallel tables mapping the UDTA onto CP section 7703a and *vice versa*. The Uniform Law Commission promulgated the UDTA as a separate, stand-alone statute. See UNIF. DIRECTED TRUST ACT § 1 (UNIF. LAW COMM’N 2017) (short title). Because the CP ensconces the UDTA within the MTC, it locates some of the UDTA’s structural provisions outside of the new section 7703a. Thus, for example, the UDTA provision extending the Act’s application to the relations of cotrustees *inter se* is located, under the CP, in the MTC provision on cotrusteeships. See CP § 7703(10) (UNIF. DIRECTED TRUST ACT § 12).

³ See UNIF. DIRECTED TRUST ACT § 9 legislative note. **Appendix 3** hereto contains an outline of the UDTA.

⁴ Compare MICH. COMP. LAWS § 700.7809 and UNIF. TRUST CODE § 808(b)-(d) (UNIF. LAW COMM’N 2010).

⁵ See CP § 7809 (deletion, numerical designation reserved).

All points in the interior of the rectangle enclosing this Venn diagram represent powers affecting possible trust relations. (The powers represented are fiduciary and nonfiduciary powers; some of them are held by trustees, some by beneficiaries, some by settlors, some by persons who fall into more than one of these functional categories, and some by persons who fall into none of them.) The region of the circle marked ‘TP,’⁶ for “trust protector,” (comprising subregions (a) and (b)) represents the proper subset of discrete powers possession of which (in some circumstances at least)⁷ will bring the power holder under fiduciary obligations imposed by MTC section 7809.⁸ The region of the circle tagged ‘TD,’ for “trust director,” (comprising subregions (b) and (c)) represents the proper subset of discrete powers⁹ possession of which (in some circumstances at least) will bring the power holder under fiduciary obligations imposed by CP section 7703a.¹⁰

Thus, subregions (a) and (c) map the changes recommended by the CP for the statutory imposition of fiduciary constraint on persons having powers to direct: subregion (a) represents powers currently triggering fiduciary obligations (in some circumstances) under MTC section 7809 that will *not* trigger such obligations (in those circumstances) under CP section 7703a; subregion (b) represents powers currently triggering fiduciary obligations (in some circumstances) under MTC section 7809 that will also trigger such obligations (in those circumstances) under CP section 7703a; subregion (c) represents powers that will trigger fiduciary obligations (in some circumstances) under CP section 7703a that do *not* trigger such obligations (in those circumstances) under MTC section 7809. So, If one likes the CP (as a proposed change from the *status quo* in Michigan re the statutory imposition of fiduciary constraint on powers to direct), it is because one prefers that powers lying in subregion (a) should *not* trigger statutory fiduciary obligations in the circumstances they currently do under the MTC and that powers lying in subregion (c) *should* trigger such obligations in the circumstances they *will* under CP section 7703a.

⁶ Here we adopt the convenient, technical convention (common among logicians) of using single quotation marks “to construct a name for the [marked] expression.” ALLAN GIBBARD, WISE CHOICES, APT FEELINGS: A THEORY OF NORMATIVE JUDGMENT 6 n.4 (1990). We shall use “[d]ouble quotes [sic] . . . in the many looser ways quotation marks can be used, often to mention a word and use it in the same breath.” *Id.*

⁷ As we shall see, the position of a given point in the set diagram depends, not only on the nature of the power the point represents, but also on the identity of the power holder. *See infra* note 11.

⁸ MTC section 7809 describes the duties and liabilities of what the MTC calls “trust protectors.” *See* MICH. COMP. LAWS §§ 700.7103(n), 700.7809. *See also id.* § 700.7105(2)(h) (minimum obligations imposed on trust protectors by section 7809 not liable to be subverted by terms of the trust).

⁹ The set diagram is not *scaled*—it does not represent the relative *extent* of the regions indicated.

¹⁰ CP section 7703a describes the duties and liabilities of what the CP (following the UDTA) calls “trust directors.” *See* CP §§ 7703a(1)(e) (UNIF. DIRECTED TRUST ACT § 2(9)), 7703a(6) (UNIF. DIRECTED TRUST ACT § 8(a)).

II. INTERPRETATION

Subregion (a) includes a power in a nonsettlor (of the trust in question):¹¹

1. To remove a trustee if exercise of the removal power will create either no vacancy or a vacancy that will have to be filled by the prospective action of someone other than the power holder.¹²
2. To remove a nontrustee who has a power to direct the trustee in the exercise of one or more of the trustee’s powers *qua* trustee (a character it will be convenient for us to refer to as a “nontrustee trust actor”)¹³ if either (a) the nontrustee trust actor’s power is nondispositive (because the trustee function subject to the power is nondispositive)¹⁴ or

¹¹ Subregions (a) and (b) do not include any power held by a settlor of the trust in question because for purposes of MTC section 7809, the term ‘trust protector’ excludes “[t]he settlor of a trust” (meaning, presumably, the settlor of *the trust in question*). MICH. COMP. LAWS § 700.7103(n)(i).

¹² Subregions (a) and (b) do not include any power that constitutes a power of appointment because for purposes of MTC section 7809, the term ‘trust protector’ excludes “[t]he holder of a power of appointment.” *Id.* § 700.7103(n)(ii). If someone wielding a power to remove a trustee can also *replace* a trustee whom she has removed, then the confluence of the removal and replacement powers constitutes a power of appointment—because it enables the power holder to transfer legal ownership of the *res* (from one trustee to another). *See id.* § 556.112(c) (“‘power of appointment’ means a power . . . to designate . . . the transferees of property”). *See also id.* § 556.115a(6) (power to transfer trust property from one trustee to another is a power of appointment). (The MTC does not define the term ‘power of appointment,’ but the provisions of the Michigan Powers of Appointment Act of 1967 (MPAA) just cited (*viz.*, *id.* §§ 556.112(c), 556.115a(6)) are no doubt *in pari materia* for purposes of interpreting the MTC. *See, e.g.*, RUPERT CROSS, STATUTORY INTERPRETATION 150-51 (John Bell & George Engle eds., 3rd ed. 2005). *See also* Robert S. Summers, *Statutory Interpretation in the United States*, in INTERPRETING STATUTES: A COMPARATIVE STUDY 407, 423 (D. Neil MacCormick & Robert S. Summers eds., 1991) (courts obliged to consider texts of closely related statutes).) Hence subregion (a) *item 1* contemplates a power to remove a trustee *without* a concomitant power to fill any resulting vacancy (or, indeed, to trigger the appointment of a known, predetermined successor). Otherwise, the MTC’s exclusion of holders of powers of appointment from the extension of the term ‘trust protector’ would take the case out of subregions (a) and (b) altogether.

¹³ A “nontrustee trust actor” may or may not be either a “trust protector” within the meaning of the current MTC or a “trust director” within the meaning of the CP (and the UDTA).

¹⁴ A power to direct the exercise of a power of appointment is a power of appointment. *See, e.g.*, MICH. COMP. LAWS § 556.112(c) (MPAA definition of ‘power of appointment’). And a power to *create* a power of appointment may also be a power of appointment. *See, e.g.*, RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 19.14 (2011) (unless instrument creating power manifests contrary intent, special power of appointment may be exercised to create powers of appointment in permissible appointees). *See also* UNIF. POWERS OF APPOINTMENT ACT § 102(13) (UNIF. LAW COMM’N 2013) (‘power of appointment’ circularly defined to include power to create “another power of appointment”). Thus, a power to remove *and replace* a nontrustee trust actor who can direct a trustee in the exercise of a fiduciary power of appointment is a power to *create* a power of appointment (in the removed nontrustee trust actor’s successor), which is itself *a power of appointment*; and that entails that the holder of the removal-and-replacement power is not a “trust protector” within the meaning of MTC section 7809. *See supra* note 12.

(b) exercise of the removal power will create either no vacancy or a vacancy that will have to be filled by the prospective action of someone other than the power holder.¹⁵

3. To ascertain the happening of an event that affects the administration of the trust if the power does not constitute a power of appointment¹⁶ and the power holder is a health professional who acts in that capacity in ascertaining the happening of the event in question.¹⁷
4. To determine the capacity of a trustee, settlor, nontrustee trust actor, or beneficiary of the trust¹⁸ if the power does not constitute a power of appointment and the power holder is a health professional who acts in that capacity in making the determination.¹⁹
5. That is described in Internal Revenue Code (IRC) section 675(4), *regardless* of what the trust instrument says about the power’s being exercisable in a nonfiduciary capacity, if the power does not constitute a power of appointment.²⁰

Hence—in order to prevent the MTC’s exclusion of holders of powers of appointment from the extension of the term ‘trust protector’ from taking the case out of subregions (a) and (b) altogether—subregion (a) *item 2(a)* contemplates a power to remove and replace a nontrustee trust actor whose power (to direct the trustee) is a *nondispositive* power, i.e., a power that does not amount to a power to create a power of appointment because the trustee function that the nontrustee trust actor is empowered to direct is a nondispositive function. (“Dispositive powers are powers which authorize [a] person to create or dispose of beneficial interests or proprietary rights in property. . . . Powers of appointment are the most important and most common dispositive powers.” GERAINT THOMAS, THOMAS ON POWERS 7 (2d ed. 2012).)

In that case (*viz.*, subregion (a) *item 2(a)*), the power to remove and replace the nontrustee trust actor will *not* constitute a power of appointment within the meaning of the MTC because (1) by hypothesis, the power is not a power to *create* a power of appointment, (2) a power of appointment is otherwise defined as a power “to designate the transferees of property” (MICH. COMP. LAWS § 556.112(c); *see supra* note 12) and (3) the *nontrustee* trust actor, as such, will not hold legal or equitable title to the *res*—legal ownership thereof is in the trustee(s), equitable ownership in the beneficiaries. *See, e.g., id.* § 700.2901(2)(j) (defining ‘trust’ in terms of the relation between legal and equitable *owners* of trust property). Thus, if a given nontrustee trust actor’s power is a power to direct the trustee in the exercise of a nondispositive trustee function, the confluence of the powers to remove that nontrustee trust actor *and replace* her will *not* constitute a power of appointment, and the holder of the removal-and-replacement power (given that she is not a settlor of the trust in question (*see supra* note 11)) *will be* a “trust protector” within the meaning of MTC section 7809. *See id.* § 700.7103(n).

¹⁵ Subregion (a) *item 2(b)* contemplates a power to remove a nontrustee trust actor whose power is a power to direct the trustee in the exercise of a *dispositive* trustee function, i.e., the nontrustee trust actor’s power is a power that *does* amount to a power of appointment for the reason explained *supra* note 14. In that case, for the reason explained *supra* note 12, the contemplated power’s inclusion in subregion (a) or (b) depends on the power holder’s *not* being able to replace a nontrustee trust actor whom she has removed.

¹⁶ *See supra* note 12.

¹⁷ *Cf.* CP § 7703a(7) (UNIF. DIRECTED TRUST ACT § 8(b)).

¹⁸ Subregion (a) *item 4* is just a special case of subregion (a) *item 3*.

¹⁹ *See supra* note 17.

Subregion (b) includes a power in a nonsettlor (of the trust in question):²¹

1. To acquire, dispose of, exchange, or retain any trust investment if the power does not constitute a power of appointment.
2. To vote proxies for securities held in trust.
3. To make or take loans if the power does not constitute a power of appointment.
4. To adopt a particular valuation of trust property or determine the frequency or methodology of valuations.
5. To manage, or select managers for, a trust-owned business.
6. To select a custodian for trust assets.
7. To direct the delegation of a trustee’s or a nontrustee trust actor’s powers to the extent the powers to be delegated are nondispositive.²²
8. To change the trust’s principal place of administration or tax situs or the law governing the meaning and effect of the trust’s terms.

²⁰ This power is included in subregion (a) because under the current MTC, it must be exercised, regardless of what the trust instrument says, “in accordance with . . . the interests of the trust beneficiaries.” See MICH. COMP. LAWS §§ 700.7809(1)(b) (trust protector must act “in accordance with . . . the interests of the trust beneficiaries”), 700.7809(2) (same even in exercise of IRC section 675(4) administrative power). See also *id.* § 700.7105(2)(h) (terms of MTC prevail over terms of the trust on this point). The Internal Revenue Service is unlikely to accept that such a power is “exercisable in a nonfiduciary capacity” within the meaning of IRC section 675(4), given that (1) the relevant inquiry for federal tax purposes is whether the power is in fact “exercisable primarily in the interests of the beneficiaries” (Treas. Reg. § 1.675-1(b)(4)(iii)) and (2) that the minimum standard of care thus applicable under the MTC to trust protectors is the same minimum standard applicable to *trustees*. See MICH. COMP. LAWS §§ 700.7105(2)(b), (k); 700.7801; 700.7908.

A trust protector’s inability under the MTC, to exercise an IRC section 675(4) administrative power in a nonfiduciary capacity is without practical effect to the extent a power to substitute assets (by far the most prevalent of the powers described in section 675(4)) is given to or reserved by a settlor (of the trust in question) or constitutes a power of appointment. See *supra* notes 11-12. But anyone who doubts either that a power to substitute assets *is* a power of appointment within the meaning of the MTC or that a power to substitute assets is the only IRC section 675(4) power worth giving a nonsettlor, nontrustee trust actor for tax-engineering purposes will be glad of a proposal that excludes IRC section 675(4) powers from the scope of a nontrustee trust actor’s fiduciary obligations. The CP (following the UDTA) does that. See CP §§ 7703a(2)(f) (UNIF. DIRECTED TRUST ACT § 5(b)(5)), 7703a(3)(a) (no UDTA counterpart).

²¹ See *supra* note 11.

²² As to the transitivity of the dispositive character of powers of appointment, see *supra* note 14.

9. To ascertain the happening of an event that affects the administration of the trust if the power holder is not a health professional who acts in that capacity in ascertaining the happening of the event in question.²³
10. To determine the capacity of a trustee, settlor, nontrustee trust actor, or beneficiary of the trust²⁴ if the power holder is not a health professional who acts in that capacity in making the determination.
11. To determine the compensation to be paid to a trustee or a nontrustee trust actor if the power to do so does not constitute a power of appointment.
12. To prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust.
13. To veto a trustee’s or a nontrustee trust actor’s exercise of a given power if the given power is nondispositive.²⁵
14. To release a trustee or nontrustee trust actor from liability for an action proposed or previously taken by the trustee or nontrustee trust actor if the power of release does not constitute a power of appointment.

Subregion (c) includes:

1. Each of the fourteen powers described above as lying in subregion (b) if the holder is a settlor (of the trust in question) and the settlor does not have the power to revoke the trust.²⁶
2. Any power of appointment if the power is expressly a fiduciary power.²⁷
3. A power to adjust between principal and income or convert to a unitrust if the trust has disparate income and remainder beneficiaries²⁸ and either (a) the donee of the power is

²³ See CP § 7703a(7) (UNIF. DIRECTED TRUST ACT § 8(b)).

²⁴ Subregion (b) *item 10* is just a special case of subregion (b) *item 9*.

²⁵ As to the transitivity of the dispositive character of powers of appointment, see *supra* note 14.

²⁶ Unlike the MTC’s ‘trust protector’ (see *supra* note 11), the CP’s (and UDTA’s) ‘trust director’ may include a settlor of the trust in question. See CP § 7703a(1)(e) (UNIF. DIRECTED TRUST ACT § 2(9)). But to be a “trust director” within the meaning of the CP (and UDTA), a person has to have a “power of direction,” which is defined to *exclude* any power of a settlor over a trust to the extent the settlor can revoke that trust. See *id.* §§ 7703a(1)(d) (UNIF. DIRECTED TRUST ACT § 2(5)), 7703a(2)(d) (UNIF. DIRECTED TRUST ACT § 5(b)(3)). So, in order for a settlor of a given trust to be a “trust director” with respect to that trust, she must *not* have a power of revocation.

²⁷ See *id.* §§ 7703a(1)(d) (UNIF. DIRECTED TRUST ACT § 2(5)) (‘power of direction’ defined), 7703a(2)(a) (UNIF. DIRECTED TRUST ACT § 5(b)(1)) (exclusion from extension of term ‘power of direction’ for powers of appointment intended to be held by donee in nonfiduciary capacity), 7703a(3)(b) (UNIF. DIRECTED TRUST ACT § 5(c)) (certain powers of appointment granted to a donee other than a trustee constructively presumed to be nonfiduciary powers).

not a beneficiary (of the trust in question) and the power is not expressly a nonfiduciary power²⁹ or (b) the donee is a beneficiary and the power is expressly a fiduciary power.³⁰

4. A power to modify, reform, terminate, or decant a trust if either (a) the power holder is not a beneficiary (of the trust in question) and the power is not expressly a nonfiduciary power³¹ or (b) the power holder is a beneficiary and the power is expressly a fiduciary power.³²
5. A power to veto a trustee’s or a nontrustee trust actor’s exercise of a given power if the given power is dispositive and the veto power is expressly fiduciary.
6. A power to release a trustee or nontrustee trust actor from liability for an action proposed or previously taken by the trustee or nontrustee trust actor if the power constitutes a power of appointment and is expressly fiduciary.

²⁸ If a trust has disparate income and remainder beneficiaries, a power over the trust to adjust between principal and income or convert to a unitrust is a power of appointment. *See, e.g.*, MICH. COMP. LAWS § 556.112(c) (MPAA definition of ‘power of appointment’).

²⁹ *See* CP § 7703a(3)(c)(i) (no UDTA counterpart) (power to adjust between principal and income or convert to unitrust granted to someone who otherwise has no beneficial interest in the trust constructively presumed to be a fiduciary power).

³⁰ *See supra* note 27.

³¹ *See* CP § 7703a(3)(c)(ii) (no UDTA counterpart) (power to modify, reform, terminate, or decant a trust granted to someone who otherwise has no beneficial interest in the trust constructively presumed to be a fiduciary power).

³² *See supra* note 27.

SENATE BILL No. 540

September 7, 2017, Introduced by Senator SCHUITMAKER and referred to the Committee on Local Government.

A bill to amend 1893 PA 206, entitled
"The general property tax act,"
by amending section 27a (MCL 211.27a), as amended by 2016 PA 375.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 27a. (1) Except as otherwise provided in this section,
2 property shall be assessed at 50% of its true cash value under
3 section 3 of article IX of the state constitution of 1963.

4 (2) Except as otherwise provided in subsection (3), for taxes
5 levied in 1995 and for each year after 1995, the taxable value of
6 each parcel of property is the lesser of the following:

7 (a) The property's taxable value in the immediately preceding
8 year minus any losses, multiplied by the lesser of 1.05 or the
9 inflation rate, plus all additions. For taxes levied in 1995, the
10 property's taxable value in the immediately preceding year is the
11 property's state equalized valuation in 1994.

1 (b) The property's current state equalized valuation.

2 (3) Upon a transfer of ownership of property after 1994, the
3 property's taxable value for the calendar year following the year
4 of the transfer is the property's state equalized valuation for the
5 calendar year following the transfer.

6 (4) If the taxable value of property is adjusted under
7 subsection (3), a subsequent increase in the property's taxable
8 value is subject to the limitation set forth in subsection (2)
9 until a subsequent transfer of ownership occurs. If the taxable
10 value of property is adjusted under subsection (3) and the assessor
11 determines that there had not been a transfer of ownership, the
12 taxable value of the property shall be adjusted at the July or
13 December board of review. Notwithstanding the limitation provided
14 in section 53b(1) on the number of years for which a correction may
15 be made, the July or December board of review may adjust the
16 taxable value of property under this subsection for the current
17 year and for the 3 immediately preceding calendar years. A
18 corrected tax bill shall be issued for each tax year for which the
19 taxable value is adjusted by the local tax collecting unit if the
20 local tax collecting unit has possession of the tax roll or by the
21 county treasurer if the county has possession of the tax roll. For
22 purposes of section 53b, an adjustment under this subsection shall
23 be considered the correction of a clerical error.

24 (5) Assessment of property, as required in this section and
25 section 27, is inapplicable to the assessment of property subject
26 to the levy of ad valorem taxes within voted tax limitation
27 increases to pay principal and interest on limited tax bonds issued

1 by any governmental unit, including a county, township, community
2 college district, or school district, before January 1, 1964, if
3 the assessment required to be made under this act would be less
4 than the assessment as state equalized prevailing on the property
5 at the time of the issuance of the bonds. This inapplicability
6 continues until levy of taxes to pay principal and interest on the
7 bonds is no longer required. The assessment of property required by
8 this act applies for all other purposes.

9 (6) As used in this act, "transfer of ownership" means the
10 conveyance of title to or a present interest in property, including
11 the beneficial use of the property, the value of which is
12 substantially equal to the value of the fee interest. Transfer of
13 ownership of property includes, but is not limited to, the
14 following:

15 (a) A conveyance by deed.

16 (b) A conveyance by land contract. The taxable value of
17 property conveyed by a land contract executed after December 31,
18 1994 shall be adjusted under subsection (3) for the calendar year
19 following the year in which the contract is entered into and shall
20 not be subsequently adjusted under subsection (3) when the deed
21 conveying title to the property is recorded in the office of the
22 register of deeds in the county in which the property is located.

23 (c) A conveyance to a trust after December 31, 1994, except
24 under any of the following conditions:

25 (i) If the ~~settler~~-TRANSFEROR or the ~~settler's~~-TRANSFEROR'S
26 spouse, or both, conveys the property to the trust and the sole
27 present beneficiary or beneficiaries are the ~~settler~~-TRANSFEROR or

1 the ~~settlor's~~**TRANSFEROR'S** spouse, or both.

2 (ii) Beginning December 31, 2014, for residential real
3 property, if the ~~settlor~~**TRANSFEROR** or the ~~settlor's~~**TRANSFEROR'S**
4 spouse, or both, conveys the residential real property to the trust
5 and the sole present beneficiary or beneficiaries are the ~~settlor's~~
6 **TRANSFEROR'S** or the ~~settlor's~~**TRANSFEROR'S** spouse's mother, father,
7 brother, sister, son, daughter, adopted son, adopted daughter,
8 grandson, or granddaughter, ~~and~~**OR ARE 1 OR MORE OF THESE**
9 **INDIVIDUALS, FOR SO LONG AS** the residential real property ~~is not~~
10 ~~used for any commercial purpose~~**CLASSIFICATION UNDER SECTION 34C**
11 **DOES NOT CHANGE** following the conveyance. Upon request by the
12 department of treasury or the assessor, ~~the sole present~~
13 ~~beneficiary or beneficiaries~~**A TRANSFEREE** shall furnish proof
14 within 30 days that the ~~sole present beneficiary or beneficiaries~~
15 ~~meet~~**TRANSFEREE MEETS** the requirements of this subparagraph. If a
16 ~~present beneficiary~~**TRANSFEREE** fails to comply with a request by
17 the department of treasury or assessor under this subparagraph,
18 that ~~present beneficiary~~**TRANSFEREE** is subject to a fine of
19 \$200.00.

20 (d) A conveyance by distribution from a trust, except under
21 any of the following conditions:

22 (i) If the distributee is the sole present beneficiary or the
23 spouse of the sole present beneficiary, or both, **OR IS A TRUST AND**
24 **THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE EITHER OR BOTH OF**
25 **THESE INDIVIDUALS.**

26 (ii) Beginning December 31, 2014, a distribution of
27 residential real property if the distributee is the ~~settlor's~~ or

1 ~~the settlor's spouse's~~ mother, father, brother, sister, son,
 2 daughter, adopted son, adopted daughter, grandson, or granddaughter
 3 ~~and OF A SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR OF THE~~
 4 ~~SPOUSE OF A SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR IS 1 OR~~
 5 ~~MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT~~
 6 ~~BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS,~~
 7 ~~FOR SO LONG AS the residential real property is not used for any~~
 8 ~~commercial purpose~~ **CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE**
 9 following the conveyance. Upon request by the department of
 10 treasury or the assessor, ~~the sole present beneficiary or~~
 11 ~~beneficiaries~~ **A DISTRIBUTE** shall furnish proof within 30 days that
 12 ~~the sole present beneficiary or beneficiaries meet~~ **DISTRIBUTE**
 13 **MEETS** the requirements of this subparagraph. If a ~~present~~
 14 ~~beneficiary~~ **DISTRIBUTE** fails to comply with a request by the
 15 department of treasury or assessor under this subparagraph, that
 16 ~~present beneficiary~~ **DISTRIBUTE** is subject to a fine of \$200.00.

17 (e) A change in the sole present beneficiary or beneficiaries
 18 of a trust, except under any of the following conditions:

19 (i) A change that adds or substitutes the spouse of the sole
 20 present beneficiary, **OR A TRUST AND THE SOLE PRESENT BENEFICIARY IS**
 21 **THE SPOUSE OF THE SOLE PRESENT BENEFICIARY.**

22 (ii) Beginning December 31, 2014, for residential real
 23 property, a change that adds or substitutes the ~~settlor's or the~~
 24 ~~settlor's spouse's~~ mother, father, brother, sister, son, daughter,
 25 adopted son, adopted daughter, grandson, or granddaughter ~~and OF A~~
 26 **SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR OF THE SPOUSE OF A**
 27 **SOLE PRESENT BENEFICIARY OR BENEFICIARIES, OR ADDS OR SUBSTITUTES 1**

1 OR MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT
 2 BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS,
 3 FOR SO LONG AS the residential real property ~~is not used for any~~
 4 ~~commercial purpose~~ CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE
 5 following the conveyance. Upon request by the department of
 6 treasury or the assessor, ~~the sole present beneficiary or~~
 7 ~~beneficiaries~~ A TRANSFEREE shall furnish proof within 30 days that
 8 ~~the sole present beneficiary or beneficiaries meet~~ TRANSFEREE MEETS
 9 the requirements of this subparagraph. If a ~~present beneficiary~~
 10 TRANSFEREE fails to comply with a request by the department of
 11 treasury or assessor under this subparagraph, that ~~present~~
 12 ~~beneficiary~~ TRANSFEREE is subject to a fine of \$200.00.

13 (f) A conveyance ~~by distribution under a will or by intestate~~
 14 ~~succession,~~ TO A TRANSFEREE AS THE RESULT OF THE DEATH OF A
 15 PROPERTY OWNER BECAUSE THE TRANSFEREE WAS A DISTRIBUTE UNDER A
 16 WILL OR INTESTATE SUCCESSION, GRANTEE OF A DEED, TRUST BENEFICIARY,
 17 BENEFICIARY OF A BENEFICIARY DESIGNATION, APPOINTEE, OR TAKER IN
 18 DEFAULT OF A POWER OF APPOINTMENT, except under any of the
 19 following conditions:

20 (i) If the ~~distributee~~ TRANSFEREE is the decedent's spouse, OR
 21 IS A TRUST AND THE SOLE PRESENT BENEFICIARY IS THE DECEDENT'S
 22 SPOUSE.

23 (ii) Beginning December 31, 2014, for residential real
 24 property, if the ~~distributee~~ TRANSFEREE is the decedent's or the
 25 decedent's spouse's mother, father, brother, sister, son, daughter,
 26 adopted son, adopted daughter, grandson, or granddaughter, ~~and OR~~
 27 IS 1 OR MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE

1 **PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE**
 2 **INDIVIDUALS, FOR SO LONG AS** the residential real property ~~is not~~
 3 ~~used for any commercial purpose~~ **CLASSIFICATION UNDER SECTION 34C**
 4 **DOES NOT CHANGE** following the conveyance. Upon request by the
 5 department of treasury or the assessor, ~~the sole present~~
 6 ~~beneficiary or beneficiaries~~ **A TRANSFEREE** shall furnish proof
 7 within 30 days that the ~~sole present beneficiary or beneficiaries~~
 8 ~~meet~~ **TRANSFEREE MEETS** the requirements of this subparagraph. If a
 9 ~~present beneficiary~~ **TRANSFEREE** fails to comply with a request by
 10 the department of treasury or assessor under this subparagraph,
 11 that ~~present beneficiary~~ **TRANSFEREE** is subject to a fine of
 12 \$200.00.

13 (g) A conveyance by lease if the total duration of the lease,
 14 including the initial term and all options for renewal, is more
 15 than 35 years or the lease grants the lessee a bargain purchase
 16 option. As used in this subdivision, "bargain purchase option"
 17 means the right to purchase the property at the termination of the
 18 lease for not more than 80% of the property's projected true cash
 19 value at the termination of the lease. After December 31, 1994, the
 20 taxable value of property conveyed by a lease with a total duration
 21 of more than 35 years or with a bargain purchase option shall be
 22 adjusted under subsection (3) for the calendar year following the
 23 year in which the lease is entered into. This subdivision does not
 24 apply to personal property except buildings described in section
 25 14(6) and personal property described in section 8(h), (i), and
 26 (j). This subdivision does not apply to that portion of the
 27 property not subject to the leasehold interest conveyed.

1 (h) Except as otherwise provided in this subdivision **AND**
 2 **SUBSECTION (7)**, a conveyance **OR SUCCESSIVE CONVEYANCES** of an
 3 ownership interest in a corporation, partnership, sole
 4 proprietorship, limited liability company, limited liability
 5 partnership, or other legal entity if the ownership interest
 6 conveyed **ON A CUMULATIVE BASIS SINCE THE DATE TAXABLE VALUE WAS**
 7 **FIRST ESTABLISHED FOR TAXES LEVIED IN 1995 UNDER SUBSECTION (2) OR**
 8 **THE DATE THAT TAXABLE VALUE WAS LAST ADJUSTED UNDER SUBSECTION (3),**
 9 **WHICHEVER DATE IS LATER**, is more than 50% of the **TOTAL OWNERSHIP**
 10 **INTEREST IN THE** corporation, partnership, sole proprietorship,
 11 limited liability company, limited liability partnership, or other
 12 legal entity. Unless notification is provided under subsection
 13 (10), the corporation, partnership, sole proprietorship, limited
 14 liability company, limited liability partnership, or other legal
 15 entity shall notify the assessing officer on a form provided by the
 16 state tax commission not more than 45 days after a conveyance of an
 17 ownership interest that constitutes a transfer of ownership under
 18 this subdivision. ~~Both of the following apply to~~ **THIS SUBDIVISION**
 19 **IS SUBJECT TO ALL OF THE FOLLOWING:**

20 (i) **FOR** a corporation subject to 1897 PA 230, MCL 455.1 to
 21 455.24, ÷

22 ~~—— (i) —~~ **BOTH OF THE FOLLOWING APPLY:**

23 (A) A transfer of stock of the corporation is a transfer of
 24 ownership only with respect to the real property that is assessed
 25 to the transferor lessee stockholder.

26 (B) ~~(ii)~~ A cumulative conveyance of more than 50% of the
 27 corporation's stock does not constitute a transfer of ownership of

1 the corporation's real property.

2 (ii) BEGINNING ON DECEMBER 31, 2016, A CONVEYANCE DURING THE
3 TRANSFEROR'S LIFETIME, OR BY INHERITANCE, OR BY DISTRIBUTION FROM A
4 TRUST, OR OTHERWISE OF AN OWNERSHIP INTEREST, OF ANY PERCENTAGE, IN
5 A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, LIMITED LIABILITY
6 COMPANY, LIMITED LIABILITY PARTNERSHIP, OR OTHER LEGAL ENTITY IS
7 NOT A TRANSFER OF OWNERSHIP IF THE TRANSFEREE IS THE TRANSFEROR'S
8 SPOUSE OR IS A TRUST AND THE SOLE PRESENT BENEFICIARY OR
9 BENEFICIARIES ARE THE TRANSFEROR, THE TRANSFEROR'S SPOUSE, OR BOTH.

10 (iii) BEGINNING ON DECEMBER 31, 2016, A CONVEYANCE DURING THE
11 TRANSFEROR'S LIFETIME, OR BY INHERITANCE, OR BY DISTRIBUTION FROM A
12 TRUST, OR OTHERWISE OF AN OWNERSHIP INTEREST, OF ANY PERCENTAGE, IN
13 A LIMITED LIABILITY COMPANY IS NOT A TRANSFER OF OWNERSHIP OF
14 RESIDENTIAL REAL PROPERTY OWNED BY THE LIMITED LIABILITY COMPANY IF
15 THE TRANSFEREE IS THE TRANSFEROR'S OR THE TRANSFEROR'S SPOUSE'S
16 MOTHER, FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON,
17 ADOPTED DAUGHTER, GRANDSON, GRANDDAUGHTER, AUNT, UNCLE, NIECE, OR
18 NEPHEW, OR IS A LINEAL DESCENDANT OF 1 OR MORE OF THESE
19 INDIVIDUALS. UPON REQUEST BY THE DEPARTMENT OF TREASURY OR THE
20 ASSESSOR, THE TRANSFEREE SHALL FURNISH PROOF WITHIN 30 DAYS THAT
21 THE TRANSFEREE MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH. IF A
22 TRANSFEREE FAILS TO COMPLY WITH A REQUEST BY THE DEPARTMENT OF
23 TREASURY OR ASSESSOR UNDER THIS SUBPARAGRAPH, THAT TRANSFEREE IS
24 SUBJECT TO A FINE OF \$200.00.

25 (i) A transfer of property held as a tenancy in common, except
26 that portion of the property not subject to the ownership interest
27 conveyed.

1 (j) A conveyance of an ownership interest in a cooperative
2 housing corporation, except that portion of the property not
3 subject to the ownership interest conveyed.

4 (k) Notwithstanding the provisions of section 7ee(5), at the
5 request of a property owner, an assessor's establishment of a
6 separate tax parcel for a portion of a parcel that ceases to be
7 qualified agricultural property but is not subject to a land
8 division under the land division act, 1967 PA 288, MCL 560.101 to
9 560.293, or any local ordinance. For purposes of this subdivision,
10 a transfer of ownership occurs only as to that portion of the
11 parcel established as a separate tax parcel and only that portion
12 shall have its taxable value adjusted under subsection (3) and
13 shall be subject to the recapture tax provided for under the
14 agricultural property recapture act, 2000 PA 261, MCL 211.1001 to
15 211.1007. The adjustment under subsection (3) shall be made as of
16 the December 31 in the year that the portion of the parcel
17 established as a separate tax parcel ceases to be qualified
18 agricultural property. A portion of a parcel subject to this
19 subdivision is considered a separate tax parcel only for those
20 purposes described in this subdivision.

21 (7) Transfer of ownership does not include the following:

22 (a) The transfer of property from 1 spouse to the other spouse
23 or from a decedent to a surviving spouse.

24 (b) A transfer from ~~a husband, a wife, or a married couple~~ 1
25 **OR BOTH SPOUSES** creating or disjoining a tenancy by the entireties
26 in the grantors or the grantor and his or her spouse.

27 (c) ~~Subject to subdivision (d), a~~ A transfer of ~~that portion~~

1 of property subject to a life estate or life lease retained by the
2 transferor, until expiration or termination of the life estate or
3 life lease. ~~That portion of property transferred that is not~~
4 ~~subject to a life lease shall be adjusted under subsection (3).~~

5 HOWEVER, BEGINNING DECEMBER 31, 2016, THE EXPIRATION OR TERMINATION
6 OF THE LIFE ESTATE OR LIFE LEASE IS ALSO NOT A TRANSFER OF
7 OWNERSHIP IF EITHER OF THE FOLLOWING IS TRUE:

8 (i) THE TRANSFEREE IS THE TRANSFEROR'S SPOUSE, OR IS A TRUST
9 AND THE SOLE PRESENT BENEFICIARY IS THE TRANSFEROR'S SPOUSE.

10 (ii) THE PROPERTY IS RESIDENTIAL REAL PROPERTY AND THE
11 TRANSFEREE IS THE TRANSFEROR'S OR TRANSFEROR'S SPOUSE'S MOTHER,
12 FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED
13 DAUGHTER, GRANDSON, OR GRANDDAUGHTER, OR IS 1 OR MORE OF THESE
14 INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT BENEFICIARY OR
15 BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS, FOR SO LONG AS
16 THE RESIDENTIAL REAL PROPERTY CLASSIFICATION UNDER SECTION 34C DOES
17 NOT CHANGE FOLLOWING THE CONVEYANCE. UPON REQUEST BY THE DEPARTMENT
18 OF TREASURY OR THE ASSESSOR, A TRANSFEREE SHALL FURNISH PROOF
19 WITHIN 30 DAYS THAT THE TRANSFEREE MEETS THE REQUIREMENTS OF THIS
20 SUBPARAGRAPH. IF A TRANSFEREE FAILS TO COMPLY WITH A REQUEST BY THE
21 DEPARTMENT OF TREASURY OR ASSESSOR UNDER THIS SUBPARAGRAPH, THAT
22 TRANSFEREE IS SUBJECT TO A FINE OF \$200.00.

23 ~~— (d) Beginning December 31, 2014, a transfer of that portion of~~
24 ~~residential real property that had been subject to a life estate or~~
25 ~~life lease retained by the transferor resulting from expiration or~~
26 ~~termination of that life estate or life lease, if the transferee is~~
27 ~~the transferor's or transferor's spouse's mother, father, brother,~~

~~sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the transfer. Upon request by the department of treasury or the assessor, the transferee shall furnish proof within 30 days that the transferee meets the requirements of this subdivision. If a transferee fails to comply with a request by the department of treasury or assessor under this subdivision, that transferee is subject to a fine of \$200.00.~~

(D) ~~(e)~~ A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within 1 year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).

(E) ~~(f)~~ A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(F) ~~(g)~~ A conveyance to a trust if the ~~settler~~ **TRANSFEROR** or the ~~settler's~~ **TRANSFEROR'S** spouse, or both, conveys the property to the trust and any of the following conditions are satisfied:

(i) If the sole present beneficiary of the trust is the ~~settler~~ **TRANSFEROR** or the ~~settler's~~ **TRANSFEROR'S** spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the ~~settler's~~ **TRANSFEROR'S** or the ~~settler's~~ **TRANSFEROR'S** spouse's

1 mother, father, brother, sister, son, daughter, adopted son,
2 adopted daughter, grandson, or granddaughter, ~~and OR IS 1 OR MORE~~
3 ~~OF THESE INDIVIDUALS, FOR SO LONG AS~~ the residential real property
4 ~~is not used for any commercial purpose~~ **CLASSIFICATION UNDER SECTION**
5 **34C DOES NOT CHANGE** following the conveyance. Upon request by the
6 department of treasury or the assessor, ~~the sole present~~
7 ~~beneficiary or beneficiaries~~ **A TRANSFEREE** shall furnish proof
8 within 30 days that the ~~sole present beneficiary or beneficiaries~~
9 ~~meet~~ **TRANSFEREE MEETS** the requirements of this subparagraph. If a
10 ~~present beneficiary~~ **TRANSFEREE** fails to comply with a request by
11 the department of treasury or assessor under this subparagraph,
12 that ~~present beneficiary~~ **TRANSFEREE** is subject to a fine of
13 \$200.00.

14 (G) ~~(h)~~ A transfer pursuant to a judgment or order of a court
15 of record making or ordering a transfer, unless a specific monetary
16 consideration is specified or ordered by the court for the
17 transfer.

18 (H) ~~(i)~~ A transfer creating or terminating a joint tenancy
19 between 2 or more persons if at least 1 of the persons was an
20 original owner of the property before the joint tenancy was
21 initially created and, if the property is held as a joint tenancy
22 at the time of conveyance, at least 1 of the persons was a joint
23 tenant when the joint tenancy was initially created and that person
24 has remained a joint tenant since the joint tenancy was initially
25 created. A joint owner at the time of the last transfer of
26 ownership of the property is an original owner of the property. For
27 purposes of this subdivision, a person is an original owner of

1 property owned by that person's spouse.

2 (I) ~~(j)~~—A transfer for security or an assignment or discharge
3 of a security interest.

4 (J) ~~(k)~~—A transfer of real property or other ownership
5 interests among members of an affiliated group. As used in this
6 subsection, "affiliated group" means 1 or more corporations
7 connected by stock ownership to a common parent corporation. Upon
8 request by the state tax commission, a corporation shall furnish
9 proof within 45 days that a transfer meets the requirements of this
10 subdivision. A corporation that fails to comply with a request by
11 the state tax commission under this subdivision is subject to a
12 fine of \$200.00.

13 (K) ~~(l)~~—Normal public trading of shares of stock or other
14 ownership interests that, over any period of time, cumulatively
15 represent more than 50% of the total ownership interest in a
16 corporation or other legal entity and are traded in multiple
17 transactions involving unrelated individuals, institutions, or
18 other legal entities.

19 (L) ~~(m)~~—A transfer of real property or other ownership
20 interests among corporations, partnerships, limited liability
21 companies, limited liability partnerships, or other legal entities
22 if the entities involved are commonly controlled. Upon request by
23 the state tax commission, a corporation, partnership, limited
24 liability company, limited liability partnership, or other legal
25 entity shall furnish proof within 45 days that a transfer meets the
26 requirements of this subdivision. A corporation, partnership,
27 limited liability company, limited liability partnership, or other

1 legal entity that fails to comply with a request by the state tax
2 commission under this subdivision is subject to a fine of \$200.00.

3 (M) ~~(n)~~—A direct or indirect transfer of real property or
4 other ownership interests resulting from a transaction that
5 qualifies as a tax-free reorganization under section 368 of the
6 internal revenue code, 26 USC 368. Upon request by the state tax
7 commission, a property owner shall furnish proof within 45 days
8 that a transfer meets the requirements of this subdivision. A
9 property owner who fails to comply with a request by the state tax
10 commission under this subdivision is subject to a fine of \$200.00.

11 (N) ~~(e)~~—Except as provided in subsection (6)(k), a transfer of
12 qualified agricultural property, if the person to whom the
13 qualified agricultural property is transferred files an affidavit
14 with the assessor of the local tax collecting unit in which the
15 qualified agricultural property is located and with the register of
16 deeds for the county in which the qualified agricultural property
17 is located attesting that the qualified agricultural property will
18 remain qualified agricultural property. The affidavit under this
19 subdivision shall be in a form prescribed by the department of
20 treasury. An owner of qualified agricultural property shall inform
21 a prospective buyer of that qualified agricultural property that
22 the qualified agricultural property is subject to the recapture tax
23 provided in the agricultural property recapture act, 2000 PA 261,
24 MCL 211.1001 to 211.1007, if the qualified agricultural property is
25 converted by a change in use, as that term is defined in section 2
26 of the agricultural property recapture act, 2000 PA 261, MCL
27 211.1002. If property ceases to be qualified agricultural property

1 at any time after a transfer subject to this subdivision, all of
2 the following shall occur:

3 (i) The taxable value of that property, or, if subsection
4 (6)(k) applies, a portion of it established as a separate tax
5 parcel, shall be adjusted under subsection (3) as of the December
6 31 in the year that the property, or, if subsection (6)(k) applies,
7 a portion of it established as a separate tax parcel, ceases to be
8 qualified agricultural property.

9 (ii) The property, or, if subsection (6)(k) applies, a portion
10 of it established as a separate tax parcel, is subject to the
11 recapture tax provided for under the agricultural property
12 recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

13 (O) ~~(P)~~ A transfer of qualified forest property, if the person
14 to whom the qualified forest property is transferred files a
15 qualified forest taxable value affidavit with the assessor of the
16 local tax collecting unit in which the qualified forest property is
17 located and with the register of deeds for the county in which the
18 qualified forest property is located attesting that the qualified
19 forest property will remain qualified forest property. The
20 qualified forest taxable value affidavit under this subdivision
21 shall be in a form prescribed by the department of agriculture and
22 rural development. The qualified forest taxable value affidavit
23 shall include a legal description of the qualified forest property,
24 the name of the new property owner, the year the transfer of the
25 property occurred, a statement indicating that the property owner
26 is attesting that the property for which the exemption is claimed
27 is qualified forest property and will be managed according to the

1 approved forest management plan, and any other information
2 pertinent to the parcel and the property owner. The property owner
3 shall provide a copy of the qualified forest taxable value
4 affidavit to the department. The department shall provide 1 copy of
5 the qualified forest taxable value affidavit to the local tax
6 collecting unit, 1 copy to the conservation district, and 1 copy to
7 the department of treasury. These copies may be sent
8 electronically. The exception to the recognition of a transfer of
9 ownership, as herein stated, extends to the land only of the
10 qualified forest property. If qualified forest property is improved
11 by buildings, structures, or land improvements, then those
12 improvements shall be recognized as a transfer of ownership, in
13 accordance with the provisions of section 7jj[1]. An owner of
14 qualified forest property shall inform a prospective buyer of that
15 qualified forest property that the qualified forest property is
16 subject to the recapture tax provided in the qualified forest
17 property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036,
18 if the qualified forest property is converted by a change in use,
19 as that term is defined in section 2 of the qualified forest
20 property recapture tax act, 2006 PA 379, MCL 211.1032. If property
21 ceases to be qualified forest property at any time after being
22 transferred, all of the following shall occur:

23 (i) The taxable value of that property shall be adjusted under
24 subsection (3) as of the December 31 in the year that the property
25 ceases to be qualified forest property, except to the extent that
26 the transfer of the qualified forest property would not have been
27 considered a transfer of ownership under this subsection.

1 (ii) Except as otherwise provided in subparagraph (iii), the
2 property is subject to the recapture tax provided for under the
3 qualified forest property recapture tax act, 2006 PA 379, MCL
4 211.1031 to 211.1036.

5 (iii) Beginning June 1, 2013 and ending November 30, 2013,
6 owners of property enrolled as qualified forest property before
7 January 1, 2013 may execute a new qualified forest taxable value
8 affidavit with the department of agriculture and rural development.
9 If a landowner elects to execute a qualified forest taxable value
10 affidavit, that owner is not required to pay the \$50.00 fee
11 required under section 7jj[1](2). If a landowner elects not to
12 execute a qualified forest taxable value affidavit, the existing
13 affidavit shall be rescinded, without subjecting the property to
14 the recapture tax provided for under the qualified forest property
15 recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the
16 taxable value of that property shall be adjusted under subsection
17 (3).

18 (P) ~~(q)~~ Beginning on December 8, 2006, a transfer of land, but
19 not buildings or structures located on the land, which meets 1 or
20 more of the following requirements:

21 (i) The land is subject to a conservation easement under
22 subpart 11 of part 21 of the natural resources and environmental
23 protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in
24 this subparagraph, "conservation easement" means that term as
25 defined in section 2140 of the natural resources and environmental
26 protection act, 1994 PA 451, MCL 324.2140.

27 (ii) A transfer of ownership of the land or a transfer of an

1 interest in the land is eligible for a deduction as a qualified
 2 conservation contribution under section 170(h) of the internal
 3 revenue code, 26 USC 170.

4 (Q) ~~(r)~~—A transfer of real property or other ownership
 5 interests resulting from a consolidation or merger of a domestic
 6 nonprofit corporation that is a boy or girl scout or camp fire
 7 girls organization, a 4-H club or foundation, a young men's
 8 Christian association, or a young women's Christian association and
 9 at least 50% of the members of that organization or association are
 10 residents of this state.

11 (R) ~~(s)~~—A change to the assessment roll or tax roll resulting
 12 from the application of section 16a of 1897 PA 230, MCL 455.16a.

13 (S) ~~(t)~~—Beginning December 31, 2013 through December 30, 2014;
 14 a transfer of residential real property if the transferee is
 15 related to the transferor by blood or affinity to the first degree
 16 ~~and the use of~~ **FOR SO LONG AS** the residential real property
 17 **CLASSIFICATION UNDER SECTION 34C** does not change following the
 18 transfer.

19 (T) ~~(u)~~—Beginning December 31, 2014, a transfer of residential
 20 real property if the transferee is the transferor's or the
 21 transferor's spouse's mother, father, brother, sister, son,
 22 daughter, adopted son, adopted daughter, grandson, or
 23 granddaughter, ~~and~~ **OR IS 1 OR MORE OF THESE INDIVIDUALS, OR IS A**
 24 **TRUST AND THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR**
 25 **MORE OF THESE INDIVIDUALS, FOR SO LONG AS** the residential real
 26 property ~~is not used for any commercial purpose~~ **CLASSIFICATION**
 27 **UNDER SECTION 34C DOES NOT CHANGE** following the conveyance. Upon

request by the department of treasury or the assessor, ~~the~~^A transferee shall furnish proof within 30 days that the transferee meets the requirements of this subdivision. If a transferee fails to comply with a request by the department of treasury or assessor under this subdivision, that transferee is subject to a fine of \$200.00.

(U) ~~(v)~~ Beginning December 31, 2014, for residential real property, a conveyance from a trust if the person to whom the residential real property is conveyed is the ~~settlor's or the settlor's spouse's~~ mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter ~~and OF A~~ **SOLE PRESENT BENEFICIARY OR OF THE SPOUSE OF A SOLE PRESENT BENEFICIARY, OR IS 1 OR MORE OF THESE INDIVIDUALS, OR IS A TRUST AND THE SOLE PRESENT BENEFICIARY OR BENEFICIARIES ARE 1 OR MORE OF THESE INDIVIDUALS, FOR SO LONG AS** the residential real property ~~is not used for any commercial purpose~~ **CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE** following the conveyance. Upon request by the department of treasury or the assessor, ~~the sole present beneficiary or beneficiaries~~ **A TRANSFEREE** shall furnish proof within 30 days that the ~~sole present beneficiary or beneficiaries~~ **TRANSFEREE MEETS** the requirements of this subdivision. If a ~~present beneficiary~~ **TRANSFEREE** fails to comply with a request by the department of treasury or assessor under this subdivision, that ~~present beneficiary~~ **TRANSFEREE** is subject to a fine of \$200.00.

(V) ~~(w)~~ Beginning on March 31, 2015, a conveyance of land by distribution under a will or trust or by intestate succession, but not buildings or structures located on the land, which meets 1 or

1 more of the following requirements:

2 (i) The land is made subject to a conservation easement under
3 subpart 11 of part 21 of the natural resources and environmental
4 protection act, 1994 PA 451, MCL 324.2140 to 324.2144, prior to the
5 conveyance by distribution under a will or trust or by intestate
6 succession. As used in this subparagraph, "conservation easement"
7 means that term as defined in section 2140 of the natural resources
8 and environmental protection act, 1994 PA 451, MCL 324.2140.

9 (ii) The land or an interest in the land is made eligible for
10 a deduction as a qualified conservation contribution under section
11 170(h) of the internal revenue code, 26 USC 170, prior to the
12 conveyance by distribution under a will or trust or by intestate
13 succession.

14 (W) ~~(*)~~—A conveyance of property under section 2120a(6) of the
15 natural resources and environmental protection act, 1994 PA 451,
16 MCL 324.2120a.

17 (X) BEGINNING DECEMBER 31, 2016, THE TRANSFER OF AN OWNERSHIP
18 INTEREST IN REAL PROPERTY TO OR FROM A CORPORATION, PARTNERSHIP,
19 SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY
20 PARTNERSHIP, OR OTHER LEGAL ENTITY IF THE OWNERSHIP OF THE ENTITY
21 AFTER THE TRANSFER IS IDENTICAL TO THE OWNERSHIP OF THE REAL
22 PROPERTY BEFORE THE TRANSFER OR IF THE OWNERSHIP OF THE REAL
23 PROPERTY AFTER THE TRANSFER IS IDENTICAL TO THE OWNERSHIP OF THE
24 ENTITY BEFORE THE TRANSFER. AS USED IN THIS SUBDIVISION,
25 "IDENTICAL" MEANS THE SAME BOTH IN THE IDENTITY OF THE OWNER OR
26 OWNERS AND THE PERCENTAGE OWNED IF OWNED BY MORE THAN 1 PERSON.

27 (8) If all of the following conditions are satisfied, the

1 local tax collecting unit shall revise the taxable value of
2 qualified agricultural property taxable on the tax roll in the
3 possession of that local tax collecting unit to the taxable value
4 that qualified agricultural property would have had if there had
5 been no transfer of ownership of that qualified agricultural
6 property since December 31, 1999 and there had been no adjustment
7 of that qualified agricultural property's taxable value under
8 subsection (3) since December 31, 1999:

9 (a) The qualified agricultural property was qualified
10 agricultural property for taxes levied in 1999 and each year after
11 1999.

12 (b) The owner of the qualified agricultural property files an
13 affidavit with the assessor of the local tax collecting unit under
14 subsection ~~(7)(e)~~ (7) (N) .

15 (9) If the taxable value of qualified agricultural property is
16 adjusted under subsection (8), the owner of that qualified
17 agricultural property is not entitled to a refund for any property
18 taxes collected under this act on that qualified agricultural
19 property before the adjustment under subsection (8) .

20 (10) The register of deeds of the county where deeds or other
21 title documents are recorded shall notify the assessing officer of
22 the appropriate local taxing unit not less than once each month of
23 any recorded transaction involving the ownership of property and
24 shall make any recorded deeds or other title documents available to
25 that county's tax or equalization department. Unless notification
26 is provided under subsection (6), the buyer, grantee, or other
27 transferee of the property shall notify the appropriate assessing

1 office in the local unit of government in which the property is
 2 located of the transfer of ownership of the property within 45 days
 3 of the transfer of ownership, on a form prescribed by the state tax
 4 commission that states the parties to the transfer, the date of the
 5 transfer, the actual consideration for the transfer, and the
 6 property's parcel identification number or legal description. Forms
 7 filed in the assessing office of a local unit of government under
 8 this subsection shall be made available to the county tax or
 9 equalization department for the county in which that local unit of
 10 government is located. This subsection does not apply to personal
 11 property except buildings described in section 14(6) and personal
 12 property described in section 8(h), (i), and (j).

13 (11) As used in this section:

14 (a) "Additions" means that term as defined in section 34d.

15 (b) "Beneficial use" means the right to possession, use, and
 16 enjoyment of property, limited only by encumbrances, easements, and
 17 restrictions of record.

18 ~~—— (c) "Commercial purpose" means used in connection with any~~
 19 ~~business or other undertaking intended for profit, but does not~~
 20 ~~include the rental of residential real property for a period of~~
 21 ~~less than 15 days in a calendar year.~~

22 (C) ~~(d)~~ "Inflation rate" means that term as defined in section
 23 34d.

24 (D) ~~(e)~~ "Losses" means that term as defined in section 34d.

25 (E) ~~(f)~~ "Qualified agricultural property" means that term as
 26 defined in section 7dd.

27 (F) ~~(g)~~ "Qualified forest property" means that term as defined

1 in section 7jj[1].

2 (G) ~~(h)~~—"Residential real property" means real property
3 classified as residential real property under section 34c.

4 (H) "TRANSFEROR" MEANS A PERSON THAT MAKES A TRANSFER AND
5 INCLUDES, BUT IS NOT LIMITED TO, THE SETTLOR OF A TRUST, OR AN
6 INDIVIDUAL OR ENTITY FOR WHOM A TRANSFER IS MADE BY A
7 REPRESENTATIVE.

8 Enacting section 1. Section 27a(6)(h)(ii) and (iii) and (7)(x)
9 of the general property tax act, 1893 PA 206, MCL 211.27a, as added
10 by this amendatory act, is retroactive and is effective for taxes
11 levied after December 31, 2016.

12 Enacting section 2. Section 27a(7)(c) of the general property
13 tax act, 1893 PA 206, MCL 211.27a, as amended by this amendatory
14 act, is retroactive and is effective for taxes levied after
15 December 31, 2016.

