

OVERVIEW OF DECEASED ESTATES

What does it mean to Probate?	3
Exceptions to Probate Court	4
Court Order Distributing Small Estates	6
Choosing the Way to Begin	7
Informal Proceedings from Beginning to Registrar's Statement.....	9
Formal Proceedings from Beginning to Order of Formal Proceedings.....	11
Supervised Administrator.....	16
Duties of an Appointed Personal Representative Part 1.....	19
Duties of an Appointed Personal Representative Part 2.....	23
Powers of a Personal Representative.....	26
Contested Cases.....	31
Who is an Heir Part 1.....	33
Who is an Heir Part 2.....	36
Type of Wills	40
Inventory Decedent's Estates.....	43
Sale of Property.....	45
Rights of Surviving Spouse and Children Part 1.....	46
Rights of Surviving Spouse and Children Part 2.....	49
Claims against an Estate Part 1.....	53
Claims against an Estate Part 2.....	57
Accountings.....	60

Distribution.....	63
Tax Considerations.....	66
Continuing, Closing, Reopening an Estate Part 1.....	69
Continuing, Closing, Reopening an Estate Part 2.....	73

WHAT DOES IT MEAN TO PROBATE?

Probate can be simply described as a means of transferring title to property. Obviously, once a person dies, that person is no longer able to transfer title to property titled in their name. Probate is a procedure for transferring title to the decedent's property to the persons entitled to it.

It therefore follows that only property titled in the decedent's name alone is a part of the decedent's probate estate and subject to probate. For example, if real estate is owned jointly with rights of survivorship, the real estate does not have to be probated because it passes directly to the survivor because of the nature of the deed. Likewise, a jointly held bank account with the right of survivorship passes directly to the survivor according to the contract with the bank with no probate being necessary. The beneficiary of an insurance policy receives the proceeds without those proceeds being subject to probate because ownership is determined by the insurance contract. An automobile owned in the decedent's name alone is an exception to this rule because of a special statute which allows the Secretary of State to transfer title to the heirs if there is no probate proceedings started.

Many people believe that by having a Will they will avoid probate. While a Will may make a probate easier, there still must be probate of those items titled in the decedent's name alone. The Will tells the court which people should be entitled to the decedent's estate and probate passes title to those people. A living trust, on the other hand, can avoid probate if all of the decedent's assets are owned by the trust. Upon death, title to those assets passes according to the terms of the trust without need of probate.

EXCEPTIONS TO PROBATE COURT

There are several statutes that allow for assets owned by the decedent to pass to the decedent's heirs without the necessity of probate. These statutes are exceptions to the general rule as to when probate is required.

MCL 257.236 provides that the title to motor vehicles of a decedent whose total value does not exceed \$60,000 may be transferred to the heirs by the Michigan Department of State if there are no other assets requiring probate. The Secretary of State must be furnished with proof of death of the registered owner and a certificate setting forth the fact that the applicant is the surviving husband or wife or the applicants are the heirs of the decedent. This is accomplished by filing the papers at the Secretary of State Office.

MCL 324.80312 provides for the transfer of water craft without probate proceedings if there are no other assets requiring probate and the value of the water craft is less than \$100,000. This is accomplished by filing the proper papers at the Secretary of State Office. MCL 408.480 provides that wages or fringe benefits in any amount may be delivered to the heirs of the decedent in order of priority listed in this statute. The priority is as follows: surviving spouse, surviving children, surviving mother or father, and surviving sister or brother.

MCL 700.3981 provides that a hospital, convalescent or nursing home, morgue, or law enforcement agency holding cash not exceeding \$500 and wearing apparel of a decedent may deliver the cash and wearing apparel to a person furnishing identification and an affidavit that the person is the spouse, child, or parent of the decedent and that an estate of the decedent is not pending. These documents are given to the person holding the property and are not filed with the probate court.

MCL 700.3983 of the Estates and Protected Individuals Code provides that 28 days after a decedent's death, a person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the indebtedness or deliver the tangible personal property or the instrument to a person claiming to be the decedent's successor upon being presented with the decedent's death certificate and a sworn statement made by or on behalf of the successor. The court will provide a form which meets the requirements of this statute. The form is titled Affidavit of Decedent's Successor for Delivery of Certain Assets Owned by Decedent ([PC 598](#)). The sworn statement (affidavit) must state all of the following as true before the procedure can be used:

1. The estate does not include real property and the value of the entire estate wherever located, net of liens and encumbrances, does not exceed \$15,000. (This amount will be adjusted annually for inflation beginning January 1, 2001.

2. Twenty-eight days have elapsed since the decedent's death.
3. An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.
4. The claiming successor is entitled to payment or delivery of the property.
5. The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

Successor as used in MCL 700.3982 includes one who is eligible to take under the exempt property and allowances provisions of the Estates and Protected Individuals Code. It also includes those who are entitled to assets under the intestate succession provisions of that Code. A beneficiary under an unprobated will may be a successor under this provision.

MCL 700.3982 of the Estates and Protected Individuals Code contains a very similar provision that may be used to distribute estates of this size. It may be used when either personal or real property is involved. It cannot be used to distribute property to a beneficiary of a will. That provision is discussed in the next probate note entitled Court Order Distributing Small Estates.

COURT ORDER DISTRIBUTING SMALL ESTATES

Section 3982 of the Estates and Protected Individuals Code provides a simplified procedure for distributing small estates if the balance of the gross estate after the payment of decedent's funeral and burial expense consists of property of \$15,000 or less. The \$15,000 is figured by adding all assets of the decedent less any liens against any asset. Ordinary debts of the decedent are not subtracted in making the calculation. Therefore, the \$15,000 is a gross estate value. For example, an estate with a single assets consisting of real estate worth \$30,000 with a mortgage of \$16,000 would qualify while an estate with \$15,500 of assets and bills of \$2,000 owed by the decedent would not. The \$15,000 amount will be adjusted annually for inflation beginning January 1, 2001.

Upon a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial, the court may order that the property be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

Upon a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

Other than a surviving spouse who qualifies for allowances under this act or minor children of the decedent, an heir who receives property through an order under this section is responsible, for 60 days from the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order.

This procedure begins with the filing of a form titled [Petition and Order for Assignment \(PC 556\)](#). The filing fee is \$25 plus inventory fees. A receipt showing the status of the funeral bill must be attached to the Petition. This whole procedure can usually be completed as soon as the papers are filed with the probate court.

MCL 700.3983 of the Estates and Protected Individuals Code contains a very similar provision that may be used to distribute estates of this size when no real property is involved. That provision is discussed in the prior probate note entitled [Exceptions to Probate](#).

CHOOSING THE WAY TO BEGIN

Informal vs Formal Proceedings

The first decision which needs to be made when one is about to commence probate proceedings is whether to use informal proceedings or formal proceedings. Informal and formal proceedings are different ways of having a will admitted to probate and a personal representative appointed. Once a personal representative is appointed under either method, administration will proceed in an unsupervised manner. Additionally, you may choose to have the estate proceed by supervised administration by requesting supervised administration in a formal proceeding.

Informal proceedings are commenced by filing an Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate) ([PC 558](#)) with the court. This is a request that the probate register admit the will, if any, to probate and appoint a personal representative. If the application is granted, the register will sign a form called Register's Statement ([PC 568](#)) admitting a will and/or appointing a personal representative. Once this is accomplished and the personal representative qualifies by filing an Acceptance of Appointment ([PC 571](#)) and any required bond, the register will issue Letters of Authority for Personal Representative ([PC 572](#)). The personal representative will proceed with unsupervised administration until the estate is ready to be closed. A will informally admitted to probate may be challenged at any time in a formal testacy proceeding.

Formal proceedings are commenced by filing Petition for Probate and/or Appointment of Personal Representative (Testate/Intestate) ([PC 559](#)) with the court. A hearing date is given and interested persons must be served with notice of hearing. After hearing, the probate judge will enter an order called Order of Formal Proceedings ([PC 569](#)). This order will admit any will, determine who the heirs of the deceased may be and appoint a personal representative. Once this is accomplished and the personal representative qualifies by filing an Acceptance of Appointment ([PC 571](#)) and any required bond, the personal representative will proceed with unsupervised administration until the estate is ready to be closed.

As part of the formal proceeding, the petitioner may request supervised administration. Supervised administration may be requested at any time during estate administration. Supervised administration should not be granted automatically upon request. In cases of no will or where a will is silent on whether the estate should or should not be supervised, necessity must be shown before supervised administration is granted. Supervised administration is granted as part of the entry of the Order of Formal Proceedings ([PC 569](#)). In all requests for supervised administration, the court must decide (1) whether the decedent left a will and its validity, (2) the personal representative's priority and qualifications to serve, and (3) the heirs of the decedent. If supervised administration is granted, the personal representative unless otherwise ordered by the court will proceed with the same powers as a personal representative who is not supervised with the notable exception that a supervised personal

representative may not make any distributions without court order. The responsibilities of the personal representative are greater since they are required to file with the court and serve upon interested persons additional documents.

Informal and formal proceedings are two ways to accomplish the same things. By using either, you can have a will admitted to probate and a personal representative appointed. Informal proceedings are less complicated and generally take less time to complete. The results, however, can always be challenged in a formal proceeding. Thus, you do not have the finality gained by a court order obtained through formal proceedings. Formal proceedings require a court hearing. Notice of that hearing must be served upon interested persons. Formal proceedings are more complicated and generally take longer. They do give you a greater degree of finality for matters covered by the order. Supervised administration can be described as a series of formal proceedings from beginning to end.

Generally, if there is no dispute over the admission of the will and appointment of a personal representative I would begin with informal proceedings. If it is likely that the will may be contested at some point or the appointment of the personal representative contested, I would consider using formal proceedings. There would seem to be very little advantage for requesting supervised administration since you can obtain court orders when necessary by using formal proceedings for a particular issue.

An attorney should be consulted and retained to handle the probate proceedings. Estates are almost always complicated enough to justify such professional services. My experience as a judge has been that in most cases in which someone tried to probate an estate without legal assistance, it has been a disaster and the decision was regretted.

INFORMAL PROCEEDINGS FROM BEGINNING TO REGISTRAR'S STATEMENT

Informal proceedings are commenced by filing an application directed to the register. The application may be for informal probate (informal admission of a will) or appointment of a personal representative or both. Informal proceedings are defined in EPIC to mean proceedings for probate of a will or appointment of a personal representative conducted by the probate register without notice to interested persons. This material will deal only with informal proceedings. Formal proceedings or a request for supervised administration will be covered in subsequent notes. Only an "interested person" may file an application for informal probate or appointment or both. Interested person is defined very broadly by MCL 700.1105(a): "interested person" includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. There are two important terms that should probably be briefly defined now. Devisee is a person designated to receive property in a will. Heir is a person who is entitled under the statute of intestate succession to a decedent's property - this term will be more fully explained in subsequent notes. The forms and documents which must be filed with or presented to the register to commence an informal proceeding are: 1. Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate) ([PC 558](#)) and the filing fee of \$150. The application should be completely and carefully filled out. 2. Will and codicil, if any. 3. Testimony to Identify Heirs and Devisee Heirs ([PC 565](#)). 4. Supplemental Testimony to Identify Non-heirs Devisees (Testate Estate) ([PC 566](#)). This form is only filed if decedent left a will and some of the devisees named in the will and codicils are not heirs of the testator. 5. Register's Statement ([PC 568](#)). 6. Acceptance of Appointment ([PC 571](#)). A bond is not required unless the will requires a bond or bond is demanded under MCL 700.3605 (by person having an interest in the estate worth in excess of \$2,500 or a creditor having a claim against the estate in excess of \$2,500). 7. Letters of Authority for Personal Representative ([PC 572](#)). Persons who are not disqualified have priority for appointment in the following order pursuant to MCL 700.3203(1): 1. The person with priority as determined by a probated will include a person nominated by a power conferred in a will. 2. The surviving spouse if the spouse is a devisee under the will. 3. Other devisees. 4. The surviving spouse. 5. Other heirs. 6. after 42 days after the decedent's death, the nominee of a creditor if the court determines the nominee suitable. 7. State or county public administrator. 8. A person with priority under 2 through 5 above may nominate a qualified person to serve as personal representative and that nominee has the priority of the nominator pursuant to MCL 700.3203(3). Under MCL 700.3310 an applicant seeking appointment in an informal proceeding must give notice to each person having a prior or equal right to appointment who has not waived the right. Such a waiver may be accomplished by filing a Waiver and Consent ([PC 561](#)). The applicant must also serve a copy of the application on those persons pursuant to MCR 5.309(C). The notice and service of the application must be made at least 14 days by mail or publication or 7 days by personal

service prior to appointment. A proof of service must also be filed with the court pursuant to MCR 5.309(C)(3). In an informal proceeding for original probate of a will, MCL 700.3303(1) requires that the register shall determine whether all of the following are true: 1. the application is complete. 2. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief. 3. The applicant appears from the application to be an interested person. 4. On the basis of the statements in the application, venue is proper. 5. An original, properly executed, and apparently unrevoked will is in the register's possession. 6. That the application is not within section 3304. This section provides that the register shall deny an application for informal probate if the probate relates to 1 or more of a known series of testamentary instruments, not including a will and 1 or more codicils to that will, the latest of which instrument does not expressly revoke the earlier. In informal appointment proceedings, MCL 700.3308(1) requires that the register shall determine whether all of the following are true: 1. the application for the personal representative's informal appointment is complete. 2. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief. 3. The applicant appears from the application to be an interested person. 4. On the basis of the statements in the application, venue is proper. 5. A will to which the requested appointment relates has been formally or informally probated. This subdivision does not apply to the appointment of a special personal representative. 6. The person whose appointment is sought has priority to the appointment or the requirements of section 3310 (explained previously) have been satisfied. If all papers are in order and the register is able to make the required findings, the register will sign the Register's Statement and immediately issue Letters of Authority. If the register denies the application, the register shall state the reason for the denial. The denial is not an adjudication. There is no appeal from this denial. Essentially, a denial will require that you begin probate by formal proceedings.

FORMAL PROCEEDINGS FROM BEGINNING TO ORDER OF FORMAL PROCEEDINGS

Formal proceedings are commenced by filing a petition with the court requesting a court order. The initial petition may ask for the admission of a will to probate or the appointment of a personal representative or both. The initial petition may also request that there be supervised administration. Formal proceedings are defined in EPIC to mean proceedings conducted before a judge with notice to interested persons. Formal proceedings may also be used at any time during the estate administration to decide issues regarding the estate by court order. Even if the estate was commenced by informal proceedings, a formal proceeding can be filed requesting formal testacy or formal appointment or both. This note will deal with formal proceedings used to begin an estate. Informal proceedings were discussed in an earlier note. Formal proceedings when used after the initial appointment will be discussed in subsequent notes.

An "interested person" or a person that has a right or cause of action that cannot be enforced without administration may file a petition for formal probate or appointment or both. Interested person is defined very broadly by MCL 700.1105(a):

"interested person" includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. There are two important terms that should probably be briefly defined now. Devisee is a person designated to receive property in a will. Heir is a person who is entitled under the statute of intestate succession to a decedent's property (this term will be more fully explained in subsequent notes).

The forms and documents which must be filed with or presented to the court to commence formal proceedings are:

1. Petition for Probate and/or Appointment of Personal Representative (Testate/Intestate) ([PC 559](#)) and the filing fee of \$100. The Petition should be completely and carefully filled out.
2. Will and codicil, if any.
3. Testimony to Identify Heirs and Devisee Heirs ([PC 565](#)).
4. Supplemental Testimony to Identify Non-heir Devisees (Testate Estate) ([PC 566](#)). This form is only filed if decedent left a will and some of the devisees named in the will and codicils are not heirs of the testator.
5. Order of Formal Proceedings ([PC 569](#)).

6. Acceptance of Appointment ([PC 571](#)). A bond is not required unless the will requires a bond or bond is demanded under MCL 700.3605 (by person having an interest in the estate worth in excess of \$2,500 or a creditor having a claim against the estate in excess of \$2,500).

7. Letters of Authority for Personal Representative ([PC 572](#)).

Persons who are not disqualified have priority for appointment in the following order pursuant to MCL 700.3203(1):

1. The person with priority as determined by a probated will including a person nominated by a power conferred in a will.
2. The surviving spouse if the spouse is a devisee under the will.
3. Other devisees.
4. The surviving spouse.
5. Other heirs.
6. after 42 days after the decedent's death, the nominee of a creditor if the court determines the nominee suitable.
7. State or county public administrator.
8. A person with priority under 2 through 5 above may nominate a qualified person to serve as personal representative and that nominee has the priority of the nominator pursuant to MCL 700.3203(3).

Once a petition is filed the court will set a date and time for hearing. The petitioner must serve copies of the petition, will, testimony form (s) and Notice of Hearing ([PC 562](#)) on the interested persons. See MCR 5.102 and MCR 5.107(A). Personal service must be made at least 7 days before the hearing and service by mail must be made at least 14 days before the hearing.

Michigan Court Rule (MCR) 5.125(C)(1) provides that the persons interested in any application for probate of a will are:

1. The devisees;
2. The nominated trustee and the current trust beneficiaries of a testamentary trust (trust created by will);
3. The heirs;

4. The nominated personal representative; and
5. The trustee of a revocable trust described in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself).

MCR 5.125(C)(2) provides that the persons interested in an application for appointment of a personal representative of an intestate estate are:

1. The heirs;
2. The nominated personal representative; and
3. The trustee of a revocable trust described in MCL 700.7501(1).

There are additional persons that may have to be served depending on the circumstances of a specific proceeding. These are designated as special persons and are defined in part in MCR 5.125(A). They include the following:

1. When the decedent is not survived by any known heirs, the Michigan Attorney General.
2. When the heirs or devisees are residents of a foreign country, foreign consul for that country.
3. If a charitable trust is established in the will or if there is a gift to charity of the residue of the estate except for a church, governmental subdivision or United Way type charity, the Michigan Attorney General, Charitable Trust Division.
4. A guardian, conservator, or guardian ad litem of a person must be served with notice of proceedings as to which the represented person is an interested person.
5. An attorney who has filed an appearance must be served notice of proceedings concerning which the attorney's client is an interested person.
6. A special fiduciary appointed under MCL 700.1309.
7. A person who filed a demand for notice under MCL 700.3205 or a request for notice under MCL 700.5104 if the demand has not been withdrawn or terminated by court order.

Service of persons who are under legal disability or otherwise represented is accomplished by serving the notice of hearing on others pursuant to MCR 105(D) as follows:

1. The guardian of an adult, conservator, or guardian ad litem of a minor or other legally disabled person.
2. The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions, accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.
3. The guardian ad litem of any unascertained or unborn person.
4. A parent of a minor with whom the minor resides, provided the interest of the parent in the outcome of the hearing is not in conflict with the interest of the minor and provided the parent has filed an appearance on behalf of the minor.
5. The attorney for an interested person who has filed a written appearance in the proceeding.
6. The agent of an interested person under an unrevoked power of attorney filed with the court.

Sometimes the name of an interested person is known but the address for that interested person is unknown. The petitioner may serve that interested person by publication. The person who orders the publication must cause to be filed with the court a copy of the publication notice and the publisher's affidavit that it was published in a qualified newspaper and the date that the notice was published.

To serve an interested person notice of hearing by Publication of Notice of Hearing ([PC 563](#)) the following must be done:

1. Petitioner must include the name of the person to whom the notice is given and a statement that the result of the hearing may be to bar or affect that person's interest.
2. A copy of the notice must be mailed to an interested person at his or her last known address unless an address cannot be ascertained by diligent inquiry.
3. Petitioner must file an affidavit or declaration under penalty of contempt showing that the address or whereabouts of the person cannot be ascertained by diligent inquiry.
4. Petitioner must publish one time at least 14 days before the hearing.
5. The publication notice may include the publication for claims.
6. Pursuant to MCR 5.105(A)(3) after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

If all interested persons consent, the Order of Formal Proceedings may be entered immediately without a hearing pursuant to MCR 5.104(B). If a petition is unopposed, after the time expires for any required notice and after proof of service is filed, the court may either grant a hearing or grant the petition based on the recitations in the petition. However, an order determining heirs may only be entered based on sworn testimony or a sworn testimony form.

See MCR 5.104(C). If any matters are contested, a hearing will be held and the Order of Formal Proceedings will be issued based upon the results of the hearing. The Order of Formal Proceedings may admit a will or codicil(s), determine intestacy, determine heirs, appoint a personal representative, or determine if the estate administration shall be supervised.

SUPERVISED ADMINISTRATOR

Supervised administration is defined in the Estates and Protected Individuals Code (EPIC) at MCL 700.3501(1):

As a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the court's continuing authority that extends until entry of an order approving estate distribution and discharging the personal representative or other order terminating the proceedings.

There are two major parts which define supervised administration. The statutory requirements are found in Article III, Part 5 of EPIC. Michigan Court Rule 5.310 also controls how to proceed with supervised administration.

Anyone using supervised administration should be familiar with both the statute and the rule. In its simplest form, supervised administration is begun by a formal proceeding and ends with an order of complete estate settlement which approves estate distribution. Between beginning and end we have "unsupervised administration."

A supervised personal representative is responsible to the court and the court may direct the personal representative concerning the estate. However, except as otherwise ordered by the Court, a supervised personal representative has the same powers as a personal representative who is not supervised. The one notable exception to this is that a supervised personal representative shall not make a distribution of the estate without prior court order. This would include any partial distributions.

Supervised administration is commenced by filing a petition rather than an application. Such a petition may be joined with a petition in a formal testacy or formal appointment proceeding. Such a petition may be filed at any time during estate administration. When supervised administration is requested after adjudication, an interested person files a Petition for Supervised Administration after Previous Adjudication ([PC 560](#)). After a petition for supervised administration, even if denied, the court must decide:

1. Whether the decedent left a will and its validity.
2. The personal representative's priority and qualifications to serve.
3. A determination of heirs is required as a part of this process by MCL 700.3402.

Supervised administration is not a favored form of estate administration under EPIC. It may only be ordered under most circumstances upon a showing of necessity. Just because an interested person requests it should not be enough. MCL 700.3502(3) states the circumstance under which supervised administration may be ordered:

1. If the decedent's will directs supervised administration, the court shall order supervised administration unless the court finds that circumstances bearing on the need

for supervised administration have changed since the execution of the will and that supervised administration is not necessary.

2. If the decedent's will directs unsupervised administration, the court shall only order supervised administration on a finding that it is necessary for protection of persons interested in the estate.

3. In other cases, the court shall order supervised administration if the court finds that supervised administration is necessary under the circumstances.

The filing of a petition for supervised administration has the effect on other proceedings as described in MCL 700.3503:

1. The pendency of a proceeding for supervised administration of a decedent's estate stays action on a pending informal application or an informal application filed after commencement of the proceedings for supervised administration.

2. If a will has been previously probated in informal proceedings, the filing of a petition for supervised administration has the same effect as a formal testacy proceeding pursuant to MCL 700.3401.

3. After receipt of notice of the filing of a supervised administration petition, a personal representative who has been previously appointed shall not exercise the power to distribute the estate.

The filing of such a petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of those powers and duties pending full hearing on the petition. Pursuant to Michigan Court Rule 5.310 the personal representative must file the following additional papers with the court and serve copies on the interested persons:

1. Inventory - If supervised administration is ordered at the commencement of estate administration, the inventory must be filed within 91 days of the date of the letters of authority. If supervised administration is ordered after a personal representative has been appointed, the court must set time for filing.

2. Accounting - Must be filed within 56 days after the end of accounting period unless a shorter period is ordered by the court. The accounting period ends on the anniversary date of the issuance of letters of authority. The personal representative may elect that it end on a different date. The first accounting thereafter shall not be more than one year.

3. Notice of appointment.

4. Fee notice pursuant to MCR 5.313.

5. Notice to spouse.

6. Affidavit of any required publication.
7. Michigan estate or inheritance tax information.
8. Such other papers as are ordered by the court.

Pursuant to MCR 5.310(F) at any time during supervised administration, any interested person or the personal representative may petition the court to terminate supervised administration. If the personal representative does not complete estate administration within one year after the original appointment, a Notice of Continued Administration ([PC 587](#)) pursuant to MCL 700.3951 must be filed.

A supervised administration must be closed by an Order for Complete Estate Settlement ([PC 595](#)) pursuant to MCL 700.3952. Pursuant to MCR 5.312, if an estate was terminated in supervised administration, it may only be reopened by petition and order of the court.

By choosing supervised administration, personal representatives lose a lot of flexibility and subject themselves to additional filing and notice requirements.

It is unclear what advantage is to be gained since the same conclusiveness gained by court orders can be obtained by selectively using formal proceedings. Personal representatives can still file papers such as proof of service with the court even though not required to be filed since the court rules now allow such filing within the discretion of the court.

An estate can be closed by an order of complete estate settlement under MCL 700.3952 the same as for supervised administration. Supervised administration does force the personal representative to operate within a formal structure and it may give heirs and devisees some comfort to know that the personal representative is responsible to the court. The advantages and disadvantages should be discussed with an attorney and the choice should be made based upon the circumstances of each estate.

DUTIES OF AN APPOINTED PERSONAL REPRESENTATIVE PART 1

Once appointed and qualified the power and duties of a personal representative appointed by either informal proceedings or formal proceedings are virtually the same. Letters of Authority for Personal Representative ([PC 572](#)) will be issued by the court or register once the personal representative qualifies by filing an Acceptance of Appointment ([PC 571](#)) and a bond if bond is required.

MCR 5.202(A) provides that letters of authority shall be issued after appointment and qualification of a fiduciary and unless ordered by the court, letters of authority will not have an expiration date. MCR 5.202(B) states that the court may restrict the powers of a fiduciary. Any restrictions imposed must appear on the letters of authority. The court may modify or remove the restrictions with or without a hearing. A register may not impose restrictions in the letters of authority.

MCL 700.3601 contains special provisions to protect a personal representative when there may be estate property which is contaminated. When the personal representative files the statement of acceptance, the personal representative may exclude from the scope of the personal representative's responsibility, for a period of not to exceed 91 days, real estate or an ownership interest in a business if the personal representative reasonably believes the real estate or business is or may be contaminated.

If a personal representative believes that the estate may have a problem with contaminated property, he or she should consult an attorney and follow the advice of the attorney as to how to proceed.

The personal representative is under a duty to settle and distribute the estate "as expeditiously and efficiently as is consistent with the best interests of the estate" and "except as otherwise specified or ordered in regard to a supervised personal representative, without adjudication, order or direction of the court." Essentially, the personal representative engages in unsupervised administration until the estate is completed or until an interested person including a personal representative files a petition in a formal proceeding asking that the court to enter an order to resolve some issue involving the estate. Such independent petitions to the court are authorized by MCL 700.3415. The default method of administration is unsupervised.

Notice of Appointment

The personal representative is required to give notice of appointment by MCL 700.3705. This is accomplished by serving interested persons with Notice of Appointment and Duties of Personal Representative ([PC 573](#)). MCR 5.304 additionally requires that the agreement and Notice Regarding Attorney Fees ([PC 576](#)) required by MCR 5.313(D) be served upon the same persons. The rule requires the personal representative to make

service not later than 14 days after appointment. The notices must be served on the following:

1. Decedent's heirs
2. Decedent's devisees, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative.
3. Trustee of a trust described in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself).
4. Michigan Attorney General, Public Administration Division if no known heirs.

If the estate is commenced by an informal proceeding, additionally copies of the Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate) ([PC 558](#)), a copy of the will, if any, and Testimony to Identify Heirs and Devisee Heirs ([PC 565](#)) and Supplemental Testimony to Identify Non-heir Devisees (Testate Estate) ([PC 566](#)) must also be served on the above persons. See MCL 700.3705(1)(d)(i) and MCR 5.107(A). No time is set for service of these documents. It is suggested that they be served at the same time as the Notice of Appointment and Duties of Personal Representative.

If the address or identity of a person to receive notice is unknown, service by publication will be necessary. MCR 5.304(B) prescribes how such publication is accomplished. It provides that the published notice of appointment is sufficient if it includes:

1. Statements that the estate proceedings have been commenced, giving the name and address of the court, and, if applicable, that a will has been admitted to probate.
2. The name of any interested person whose name is known but whose address cannot be ascertained after diligent inquiry and a statement that the result of the administration may be to bar or affect that person's interest in the estate.
3. The name and address of the person appointed personal representative, and the name and address of the court. MCR 5.304(C) and MCR 5.105(A)(3) limit the requirement to serve an interested person by publication to the first such notice.

MCR 5.304(C) provides that after an interested person has once been served by publication, notice of appointment is only required if that person's address is known or becomes known during the proceedings. MCR 5.105(A)(3) is a general statement of this limitation which applies in other situations where service by publication may be required.

MCL 700.3306 deals with the rare situation where a will is informally admitted but there is no appointment of a personal representative. It requires that written notice of informal probate be given to the heirs, devisees, and a person who demands it under MCL 700.3205 and other interested persons. The requirements of this section can be satisfied by using Notice of Informal Probate ([PC 575](#)).

There are two important terms that should probably be briefly defined now. Devisee is a person designated to receive property in a will. Heir is a person who is entitled under the statute of intestate succession to a decedent's property (this term will be more fully explained in subsequent notes).

Notice to Creditors

The personal representative must publish, in a newspaper defined in MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a non-resident was initiated, a notice to creditors. The notice need only be published once. If the creditor's address is unknown and cannot be ascertained after diligent inquiry, the notice must include the name of the creditor. Publication of notice to creditors may be accomplished by using Notice to Creditors Decedent's Estate ([PC 574](#)). MCR 5.306(A) requires that the notice include:

1. The name and, if known, last known address, date of death, and date of birth of the decedent.
2. The name and address of the personal representative.
3. The name and address of the court where proceedings are filed.
4. A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative, within 4 months after publication of the notice.

MCR 5.306(B) requires the personal representative must also serve notice personally or by mail on each known creditor of the estate and the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself). A creditor is known to the personal representative if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable based on an investigation of the decedent's available records for the 2 years immediately preceding death and the decedent's mail following death. The personal representative must give notice within the 4-month period following publication. However, if the personal representative first learns of the creditor within 28 days of the end of the 4-month period, the personal representative has 28 days from the time the personal representative first knows in which to give notice. Notice to known creditors may be accomplished by using Notice to Known Creditors ([PC 578](#)).

MCR 5.306(C) provides that no notice need be given to creditors in the following situations:

1. The estate has no assets.
2. The estate qualifies and is administered under MCL 700.3982 or MCL 700.3987 (these are sections dealing with summary distribution of small estates).
3. The decedent has been dead for more than 3 years.
4. Notice has been previously been given under MCL 700.7504 in the county where the decedent was domiciled in Michigan (this section deals with the duty of a trustee of a trust described in MCL 700.7501(1) to give notice to creditor of a settlor's estate).
5. Creditors whose claims have been presented and paid. Additional information concerning the claims process will be discussed in subsequent notes.

DUTIES OF AN APPOINTED PERSONAL REPRESENTATIVE PART 2

This is a continuation of the previous note dealing with the duties of an appointed personal representative.

The previous note covered the specific duties to give notice of appointment and to give notice to creditors.

Notice to Surviving Spouse

In the estate of a decedent who was domiciled in this state at the time of death, the personal representative must serve on the surviving spouse, if any, notice of the rights of election under part 2 of article II of the Estates and Protected Individuals Code and the rights to exempt property and allowances under part 4 of article II of the Estates and Protected Individuals Code.

The notice must be served within 28 days after the personal representative's appointment. The notice may be accomplished by serving the surviving spouse with Notice to Spouse of Rights of Election and Election and Allowances, Proof of Service, and Election ([PC 581](#)). Spousal and minor rights such as allowance will be explained more fully in subsequent notes.

No notice need be given the surviving spouse pursuant to MCR 5.305(A) if:

1. The right of election is made before the notice is given.
2. The spouse is the personal representative or one of the personal representatives.
3. There is a waiver of rights and allowances under MCL 700.2202(3).

Inventory

Pursuant to MCL 700.3706 the personal representative is responsible for the preparation of the inventory and service on all presumptive distributees and interested persons who request a copy within 91 days after the personal representative's appointment.

The property must be listed with reasonable detail along with its fair market value as of the date of death and the type and amount of any lien, mortgage or security interest. The personal representative may employ qualified and disinterested appraisers. The name and address of each appraiser and the item the appraiser valued must be indicated on the inventory. This may be accomplished by using the form entitled Inventory ([PC 577](#)).

There is no requirement that the personal representative file the inventory with the court unless in supervised administration. However, pursuant to MCR 5.307(A) the personal representative must submit to the court information sufficient to compute the inventory fee within 91 days of appointment. The inventory fee must be paid before closing the estate or within one year after appointment, whichever is earlier. More information about the inventory is contained in a subsequent note.

Change of Address

The personal representative must keep the court and all interested persons informed in writing within 7 days of any change in the personal representative's address.

Estate (or Inheritance) Tax Information

The personal representative is required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid. More information about taxes is contained in a subsequent note.

Notice of Continued Administration

If the personal representative is unable to complete the administration of the estate within one year of the personal representative's original appointment, the personal representative must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of administration. This may be accomplished by using Notice of Continued Administration ([PC 587](#)).

The personal representative must give this notice within 28 days of the first anniversary of his or her appointment and all subsequent anniversaries during which the administration remains uncompleted.

Accounts under Supervised Administration

A personal representative under supervised administration is required to file with the court once a year, either on the anniversary date of the date his or her letters of authority were issued or on another date the personal representative chooses (personal representative must notify the court of this date) or more often if the court directs, a complete itemized accounting of his or her administration of the estate.

The itemized accounting must show in detail all income and disbursements and the remaining property, together with the form of the property. This may be accomplished by using Account of Fiduciary, Short Form ([PC 583](#)) or Account of Fiduciary, Long Form which shows gains and losses ([PC 584](#)). Subsequent annual and final accountings must be filed within 56 days following the close of the accounting period.

When the estate is ready for closing, the personal representative is also required to file a final accounting with a description of property remaining in the estate. All accounts must be served on the required persons at the same time they are filed with the court, along with proof of service. More information about accountings will be contained in a subsequent note.

The personal representative will, unless supervised administration has been granted, proceed to closing in an unsupervised manner. The broad powers given to the personal representative to accomplish administration of an estate will be discussed in the next note. Subsequent notes will discuss the manner by which an estate may be closed.

POWERS OF A PERSONAL REPRESENTATIVE

The personal representative is under a duty to settle and distribute the estate "as expeditiously and efficiently as is consistent with the best interests of the estate" and "except as otherwise specified or ordered in regard to a supervised personal representative, without adjudication, order or direction of the court."

Essentially, the personal representative engages in unsupervised administration until the estate is completed or until an interested person including a personal representative files a petition in a formal proceeding asking that the court enter an order to resolve some issue involving the estate.

The Estates and Protected Individuals Code provides the personal representative with broad powers with which to accomplish settlement of estates without court involvement. MCL 700.3715 provides that except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to the priorities stated in section 3902, a personal representative, acting reasonably for the benefit of interested persons, may properly do any of the following:

1. Retain property owned by the decedent pending distribution or liquidation including property in which the personal representative is personally interested or that is otherwise improper for trust investment.
2. Receive property from a fiduciary or another source.
3. Perform, compromise, or refuse performance of a contract of the decedent that continues as an estate obligation, as the personal representative determines under the circumstances. If the contract is for a conveyance of land and requires the giving of warranties, the personal representative shall include in the deed or other instrument of conveyance the required warranties.

The warranties are binding on the estate as though the decedent made them but do not bind the personal representative except in a fiduciary capacity. In performing an enforceable contract by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do any of the following:

- a. Execute and deliver a deed of conveyance for cash payment of the amount remaining due or for the purchaser's note for the amount remaining due secured by a mortgage on the land.
- b. Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the decedent's successors, as designated in the escrow agreement.

4. If, in the judgment of the personal representative, the decedent would have wanted the pledge satisfied under the circumstances, satisfy a written charitable pledge of the decedent irrespective of whether the pledge constitutes a binding obligation of the decedent or is properly presented as a claim.
5. If funds are not needed to meet a debt or expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including funds received from the sale of other property in accordance with the Michigan prudent investor rule.
6. Acquire or dispose of property, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon estate property.
7. Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.
8. Subdivide, develop, or dedicate land to public use, make or obtain the vacation of a plat or adjust a boundary, adjust a difference in valuation on exchange or partition by giving or receiving consideration, or dedicate an easement to public use without consideration.
9. Enter into a lease as lessor or lessee for any purpose, with or without an option to purchase or renew, for a term within or extending beyond the period of administration.
10. Enter into a lease or arrangement for exploration and removal of minerals or another natural resource, or enter into a pooling or unitization agreement.
11. Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered or in such a condition as to be of no benefit to the estate.
12. Vote stocks or another security in person or by general or limited proxy.
13. Pay a call, assessment, or another amount chargeable or accruing against or on account of a security, unless barred by a provision relating to claims.
14. Hold a security in the name of a nominee or in other form without disclosure of the estate's interest. However, the personal representative is liable for an act of the nominee in connection with the security so held.
15. Insure the estate property against damage, loss, and liability and insure the personal representative against liability as to third persons.
16. Borrow money with or without security to be repaid from the estate property or otherwise and advance money for the estate's protection.

17. Effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon another person's property, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by lien.

18. Pay a tax, an assessment, the personal representative's compensation, or another expense incident to the estate's administration.

19. Sell or exercise a stock subscription or conversion right.

20. Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

21. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

22. Employ, and pay reasonable compensation for reasonably necessary services performed by, a person, including, but not limited to, an auditor, investment advisor, or agent, even if the person is associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act on such a person's recommendations without independent investigation; and instead of acting personally, employ one or more agents to perform an act of administration, whether or not discretionary.

23. Employ an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative's administrative duties. An attorney employed under this subdivision shall receive reasonable compensation for that employment.

24. Prosecute or defend a claim or proceeding in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties.

25. Sell, mortgage, or lease estate property or an interest in estate property for cash, credit, or part cash and part credit, and with or without security for unpaid balances.

26. Continue a business or venture in which the decedent was engaged at the time of death as a sole proprietor or a general partner, including continuation as a general partner by a personal representative that is a corporation in any of the following manners: a. In the same business form for a period of not more than four months after the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including goodwill. b. In the same business form for an additional period of time that may be approved by court

order in a formal proceeding to which the persons interested in the estate are parties. c. Throughout the period of administration if the personal representative incorporates the business or converts the business to a limited liability company and if none of the probable distributees of the business who are competent adults object to its incorporation or conversion and its retention in the estate.

27. Change the form of a business or venture in which the decedent was engaged at the time of death through incorporation or formation as a limited liability company, or other entity offering protection against or limiting exposure to liabilities.

28. Provide for the personal representative's exoneration from personal liability in a contract entered into on the estate's behalf.

29. Respond to an environmental concern or hazard affecting estate property as provided in section 3722.

30. Satisfy and settle claims and distribute the estate as provided in this act.

31. Make tax elections that are appropriate in order to carry out the decedent's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:

a. Electing to take expenses as estate tax or income tax deductions.

b. Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.

c. Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.

32. Divide portions of the estate, including portions to be allocated into trust, into two or more separate portions or trusts with substantially identical terms and conditions, and allocate property between them, in order to simplify administration for generation skipping transfer tax purposes, to segregate property for management purposes, or to meet another estate or trust objective. Generally, pursuant to MCL 700.3717 if 2 or more persons are appointed personal co-representatives and unless the will provides otherwise, the concurrence of all is required on an act connected with the estate's administration or distribution. The section contemplates the ability of one personal representative to delegate tasks to a personal co-representative though this should only be done in limited circumstances.

Pursuant to MCL 700.3718, unless the will provides otherwise, each power exercisable by personal co-representatives may be exercised by the 1 or more remaining personal co-representatives after the appointment of 1 or more is terminated. Unless the will provides otherwise, if 1 of 2 or more persons nominated as personal co-representatives

is not appointed, those or the 1 appointed may exercise all the powers incident to the office.

The personal representative's authority terminates by death or appointment of a conservator for the personal representative's estate pursuant to MCL 700.3609. The personal representative's authority terminates when the court enters an order closing the estate under MCL 700.3952 or 700.3953 or 1 year after the filing of a sworn statement as provided in MCL 700.3954 pursuant to MCL 700.3610.

The personal representative's authority terminates by removal pursuant to MCL 700.3611. The personal representative's authority may terminate by voluntary resignation pursuant to MCL 700.3610. A personal representative may resign by giving the interested persons 14 days notice and filing a written statement of resignation with the register. If no one applies or petitions for appointment of a successor, the resignation is ineffective. It is only effective upon the appointment and qualification of a successor. A personal representative's authority may terminate due to a change in testacy status pursuant to MCL 700.3612.

CONTESTED CASES

The personal representative is under a duty to settle and distribute the estate "as expeditiously and efficiently as is consistent with the best interests of the estate" and "except as otherwise specified or ordered in regard to a supervised personal representative, without adjudication, order or direction of the court." Essentially, the personal representative engages in unsupervised administration until the estate is completed. If everything goes smoothly, the estate will proceed to closing with little or no court involvement. The default administration under the Estates and Protected Individuals Code (EPIC) is unsupervised administration.

Unfortunately things sometimes do not go smoothly during estate administration. Also, there may be times when a party wants the added conclusiveness of a court order. At such times EPIC provides for the court to settle issues of estate administration through formal proceedings. Formal proceedings are defined as proceedings conducted before a judge with notice to interested parties. Formal proceedings were discussed in an earlier note as one of the methods which can be used to start an estate by formal testacy or formal appointment. Pursuant to MCL 700.3415 EPIC also provides for independent requests to the court. This provision provides that any interested person at any time may petition the court for an answer to any question that arises in the administration of an estate. The petition is independent in that it does not result in continued court involvement in any other matter.

Such a formal proceeding is initiated by filing a petition. A filing fee of \$15 would be required. There is not a specific form for such formal proceedings since each proceeding will be different depending on the question raised. The general form Petition and Order ([PC 586](#)) may be used in many cases. If it is insufficient to adequately state all of the facts, an original petition may need to be drafted. Once the petition is filed, the court will set a hearing date. It is then the responsibility of the petitioner to serve a copy of the petition and notice of hearing upon the interested persons pursuant to MCR 5.102. A proof of service must also be filed with the court pursuant to MCR 5.104(A)(1). The interested persons will differ slightly depending upon the question raised or the requested relief. MCR 5.125(C) lists the interested persons for many specific proceedings. It should be consulted. At a minimum, the devisees of a testate estate and the heirs in an intestate estate would be interested persons. If all interested persons consent, an order may be entered immediately without a hearing pursuant to MCR 5.104(B). If a petition is unopposed, after the time expires for any required notice and after proof of service is filed, the court may either grant a hearing or grant the petition based on the recitations in the petition. If any matters are contested, a hearing will be held and an order will be issued based upon the results of the hearing. Pursuant to MCR 5.107(A) the person who obtains an order from the court must serve a copy of the order on interested persons.

Once an order is entered and the issue is resolved, the personal representative would proceed to administer the estate as before. In other words, the personal representative would continue unsupervised administration until the estate is closed or another independent petition is filed.

WHO IS AN HEIR PART 1

An heir is defined under the Estates and Protected Individuals Code (EPIC). "Heir" means, except as controlled by MCL 700.2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent's property. MCL 700.2720 which will be discussed later is a rule of construction used to determine those who take under a gift to "heirs" or a similar term. A person who dies without a will is a person who dies intestate. A person who dies intestate has their estate distributed according to the scheme set up by the state called intestate succession. It can be said that everyone dies with a will. You either make your own will or the state makes one for you (intestate succession). Intestate succession proceeds as follows under EPIC upon the death of the decedent.

Intestate Succession

The dollar amount of the intestate share of the surviving spouse shall be adjusted annually for inflation beginning January 1, 2001.

Pursuant to MCL 700.2102, the present intestate share of the surviving spouse is as follows:

1. Spouse takes the entire share if there are no surviving descendants or parent. "Descendant" means, in relationship to an individual, all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in EPIC.
2. Spouse takes the first \$150,000 plus 3/4 of the balance, if there are no surviving descendants, but there is a surviving parent.
3. Spouse takes the first \$150,000, plus 1/2 of the balance, if any of the decedent's descendants are also descendants of the spouse.
4. Spouse takes the first \$100,000, plus 1/2 of the balance, if none of the decedent's surviving descendants are descendants of the spouse.

Pursuant to MCL 700.2103, any part of the intestate estate that does not pass to the decedent's surviving spouse under MCL 700.2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

1. The decedent's descendants by representation. The term "representation" will be explained later in this note.
2. If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.

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

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

5. If there is no taker under the above provisions, the intestate estate passes to the state of Michigan.

Representation

The term "representation" is fully defined by MCL 700.2106. This definition is very different from the way "representation" is currently used in the Revised Probate Code. Under the Revised Probate Code representation was used to mean a per stirpes distribution. Under EPIC, representation is used to mean distribution per capita at each generation. Since the term is extremely important in understanding intestate succession and has been given a different meaning, it will be discussed at some length.

Pursuant to MCL 700.2106(1) if a decedent's intestate estate or a part of the estate passes by representation to the descendants, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

The following will try to explain the above statutory language by way of an example. Assume that the decedent dies leaving no surviving spouse. Decedent does leave two surviving sons, A and B; a deceased son, C, who left no descendants; a deceased daughter, D, who left one child surviving her, V; and a deceased son, E, who left four children surviving him, W, X, Y and Z. We look to the generation nearest to the decedent with surviving descendants. That generation contains two surviving children, A and B, and three deceased children, C, D, and E. C is disregarded since he left no descendants. Therefore, the estate is divided into 4 shares. A and B each one share with each share constitutes 1/4 of the estate. The rest of the estate (1/2) is combined

and divided equally among the five grandchildren. V, W, X, Y, and Z each would receive one share with each share constituting 1/10 of the estate.

Pursuant to MCL 700.2106(2) if a decedent's intestate estate or a part of the estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

The following will try to explain the above statutory language by way of an example. Assume that the decedent dies leaving no surviving spouse, no descendants and no surviving parents. Decedent does have a surviving brother, A; a deceased brother, B, with two surviving children, T and U; a deceased brother, C, with one surviving child, V; and a deceased sister, D, with one surviving child, W, and a deceased child, X. X has two surviving children, Y and Z. We look to the generation nearest to the deceased parent, in this case, which will be the generation containing A. That generation contains one surviving child, a, and three deceased children, B, C, and D. Therefore the estate is divided into 4 shares. A would get one share constituting 1/4 of the estate. Next, the remaining estate (3/4) is combined and divided into 5 shares representing the four surviving grandchildren of the deceased parent, T, U, V, W and a deceased grandchild X. T, U, V, and W will each receive one share constituting 3/20 of the total estate. Next, the remaining estate (3/20) is divided into 2 shares representing the two surviving great grandchildren of the deceased parent, Y and Z. Y and Z will each receive one share constituting 3/40 of the total estate.

This should give you a general idea as to how intestate succession works in Michigan. This discussion will continue in the next note. There are other provisions of EPIC which qualify the way intestate succession operates. Those provisions will also be discussed in the following note. (See; Who is an Heir, Part 2)

WHO IS AN HEIR PART 2

The prior note gave a general explanation of how Michigan intestate succession operates. This note will build upon that explanation. It will also explain some of the statutory provisions which qualify how intestate succession operates in Michigan.

As you could see, situations dealing with the descendants of a decedent's parent (brothers, sisters, nieces, nephews, grand nieces and grand nephews) can be confusing. When you get to situations where the heirs are determined by tracing the descendants of grandparents (uncles, aunts, first cousins, first cousins once removed, etc.) things can get very complicated. Under the present statutory scheme, first cousins may inherit but second cousins may not.

People often confuse the distinction between first cousins, first cousins once removed and second cousins. Your first cousin is the child of your aunt or uncle. A child of a first cousin is your first cousin once removed. A grandchild of your first cousin is your first cousin twice removed and so on. Second cousins are related to each other by descending from the same great grandfather or great grandmother. Full cousins must be of the same generation. The children of first cousins are second cousins to each other. The grandchildren of first cousins are third cousins to each other.

The parent of your second cousin is your first cousin once removed in the ascendancy and may not inherit because he or she is the descendant of great grandparents rather than grandparents. This person is not a second cousin even though the child of a great aunt or uncle because you must remember that cousins must be of the same generation. We could continue to discuss this complicated subject almost indefinitely, but since we are only concerned with who is an heir and not who will be the next English king, we will end it at this point.

Requirement that heir survive decedent for 120 hours

Pursuant to MCL 700.2104, an individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section does not apply if its application would result in a taking of the intestate estate by the state under section 2105.

Kindred of the half blood

Pursuant to MCL 700.2107, a relative of the half blood inherits the same share he or she would inherit if he or she were of the whole blood.

After born heirs

Pursuant to MCL 700.2108, an individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Advancements

Pursuant to MCL 700.2109, if an individual dies fully or partially intestate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as advancement against the heir's intestate share only under the following circumstances:

1. The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is advancement.
2. The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

Debts to decedent

Pursuant to MCL 700.2110, a debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Alienage

Pursuant to MCL 700.2111, an individual is not disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

Individuals related to decedent through two lines

Pursuant to MCL 700.2113, an individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Parent and child relationship

Pursuant to MCL 700.2114(1), an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

1. If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession.
 - a. A child conceived by a woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate

succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence.

b. If a man and woman participate in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage is void, the child is presumed to be their child for the purpose of intestate succession.

2. Only the individual presumed to be the natural parent of a child may disprove a presumption that is relevant to the relationship, and this exclusive right to do so terminates upon the death of the presumed parent.

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

a. The man joins with the mother of the child and acknowledges that the child is his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act.

b. The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth of the child.

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

d. The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act.

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

Pursuant to MCL 700.2114(2), an adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents. This general statement is further clarified as follows:

1. An individual is considered to be adopted when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

2. A child adopted by a stepparent remains an heir of the natural parent who is married to the stepparent.

3. An adopted child retains the ability to inherit from or through the other natural parents. However, the permanent termination of parental rights of a minor ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

Pursuant to MCL 700.2114(4), inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

TYPE OF WILLS

An individual 18 years of age or older who is of sound mind may make a will. A will is a written document, which after your death, gives instructions for how you want your individual property to be distributed. A will may also appoint a personal representative who will be in charge of the property until it is distributed. Additionally, the parent of an unmarried minor may appoint a guardian for a minor by will or by another writing signed by the parent and attested by at least 2 witnesses. If serving as a guardian, the parent of an unmarried incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian for the incapacitated individual. If a person dies without having a will, the property will be distributed according to intestate succession law of Michigan. In Michigan there are several types of wills which may be used.

Formal will

This document is the one most often admitted to probate. Its formal requirements are mandated by MCL 700.2502. It must be in writing and signed by the testator (person making the will) or in the testator's name by some other person in the testator's conscious presence and by his or her direction. It shall be signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

Holographic will

This document is valid as a holographic will whether or not witnessed, if it is dated, and if the testator's signature and the document's material provisions are in the handwriting of the testator.

Self-proved will

Pursuant to MCL 700.2504(1) a will may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator's and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which the execution occurs and evidenced by the officer's certificate, under official seal, in substantially the form set forth in the statute. Pursuant to MCL 700.2504(2) an attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the form set forth in the statute. Pursuant to MCL 700.2504(5) instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed above, a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or

incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed above. The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law or the state of Michigan that ...". The significance of a self-proved will is that such a will precludes the necessity for the testimony of a witness when the will is offered for probate. Otherwise, the will may be contested for all other reasons (except signature requirements) like any other will. Wills which are not self-proved may still be admitted to probate, but they may require additional proof if they are contested.

Statutory will

MCL 700.2519 prescribes a form of will and sets forth its terms. It is essentially a fill-in-the-blanks type of document. A will which is executed in the form prescribed and which is otherwise in compliance with the terms of the statute is a valid will. The requirements of the statute are contained in the printed document which may be obtained from your state legislator or at a stationery store.

Writings intended as wills

Pursuant to MCL 700.2503, although a document or writing added upon a document was not executed in compliance with section 2502 (formal will), the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:

1. The decedent's will.
2. A partial or complete revocation of the decedent's will.
3. An addition to or an alteration of the decedent's will.
4. A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

Separate writing identifying devise of certain types of tangible personal property

Pursuant to MCL 700.2513 whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator at the end and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the

will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the disposition made by the will.

Observation

While the holographic will and statutory will appear to recommend themselves because they are do-it-yourself documents, it is this writer's experience that the dangers outweigh the benefits. The money which may be saved in drafting the documents is often spent many times over in probate proceeding to interpret the writing. Many times a testator's true intent may not be carried out. I would highly recommend the assistance of an attorney in drafting this important document.

INVENTORY DECEDANT'S ESTATES

Pursuant to MCL 700.3706 the personal representative is responsible for the preparation of the inventory and service on all presumptive distributees and interested persons who request a copy within 91 days after the personal representative's appointment. The property must be listed with reasonable detail along with its fair market value as of the date of death and the type and amount of any lien, mortgage or security interest. The personal representative may employ qualified and disinterested appraisers. The name and address of each appraiser and the item the appraiser valued must be indicated on the inventory. This may be accomplished by using the form entitled Inventory ([PC 577](#)). There is no requirement that the personal representative file the inventory with the court unless in supervised administration. However, pursuant to MCR 5.307(A) the personal representative must submit to the court information sufficient to compute the inventory fee within 91 days of appointment. The inventory fee must be paid before closing the estate or within one year after appointment, whichever is earlier.

The purpose of the inventory is to let all distributees and interested persons requesting a copy know the assets of the estate and their approximate fair market value. The Inventory ([PC 577](#)) allows the personal representative to list both the personal property and real estate and their corresponding fair market value. It also allows for a listing of property which may have been appraised by an appraiser. If the value of property cannot be determined at the time the inventory is due, the value should be listed as "unknown." When the value becomes known, the inventory should be amended to reflect the fair market value. If property is discovered after the inventory has been filed, an amended inventory reflecting the newly discovered property must be filed and served upon the persons initially entitled to a copy.

When listing personal property it is often lumped together with an estimated value. This is permissible except when there are unique valuable items, individual valuable items or where it is anticipated that the interested persons will contest the inclusion or value of items. Thus, the entry may appear as "household goods-\$5,000." If the estate has a unique valuable item, it should be listed separately with its fair market value. Thus, the entry may appear as "antique desk-\$2,000." Valuable items should also be listed separately with their fair market value. Items such as automobiles, valuable jewelry, boats, collections, and valuable works of art would fall within this category. Whenever the estate consists of many item of valuable personal property or where it is anticipated that a contest may develop over the inclusion or value of items, it may be prudent for the personal representative to have all personal property appraised by a disinterested appraiser. Pursuant to MCL 700.3707 the personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of property, the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property included in the estate.

Each appraiser's name and address shall be indicated on the inventory with the item or items he or she appraised. When listing real estate, the personal representative should include the complete legal description. The fair market value is often arrived at by doubling the state equalized value for the property. If the personal representative wishes to use another value, he or she may have the real estate appraised. Out-of-state real estate need not be included on the inventory. However, if the personal representative wishes to make interested persons aware of out-of-state property, the personal representative may list and value such property, but not include its value as part of the Michigan estate. This would be accomplished when using Inventory (PC 577) by describing and valuing the property to the left of the vertical line used on the form. Many attorneys simply do not list out-of-state property so as to make it clear that it is not a part of the Michigan estate. However, if proceeds from such property are paid into the estate, the proceeds must be accounted for latter as a part of the Michigan estate.

If an interested person disagrees with the items listed or the values given in the inventory, he or she may file a formal proceeding with the court challenging such aspect of the inventory. The ability to challenge the inventory may be lost after an order is entered allowing the personal representative's first accounting.

SALE OF PROPERTY

It is often necessary in the administration of an estate for the personal representative to sell both real estate and personal property. The personal representative has the power to do so without permission or other action of the court in all probate administration, including supervised administration. The only exception to this would be where the court has restricted the ability of the personal representative to sell real estate or personal property. Such a restriction would appear upon the letters of authority.

If the personal representative's ability to sell real estate has been restricted or if an interested person is objecting to the proposed sale of real estate, the personal representative may ask the court to confirm such a sale of real estate in a formal proceeding. This may be accomplished by using Petition for Approval of Sale of Real Estate ([PC 646](#)) and Order Regarding Sale of Real Estate ([PC 647](#)). Any petition must comply with the court rule covering such sales. MCR 5.207 controls the procedure for such a formal proceeding. This rule provides as follows:

Rule 5.207 Sale of Real Estate

A. Petition. Any petition to approve the sale of real estate must contain the following: (1) the terms and purpose of the sale, (2) the legal description of the property, and (3) the financial condition of the estate before the sale.

B. Bond. The court may require a bond before approving a sale of real estate in an amount sufficient to protect the estate.

It would appear that pursuant to MCR 5.125(C)(12) the interested persons who should receive notice of such a formal proceeding would be:

1. Personal representative, and
2. Other persons who will be affected by the adjudication (such persons among others could be estate beneficiaries whose share would be affected or unpaid creditors in an insolvent estate).

If the personal representative is restricted as to the sale of personal property or if there is a challenge by an interested person to a proposed sale of personal property, the issues regarding the sale would need to be resolved in a formal proceeding asking that the court enter an order approving the sale. The interested persons who would need to receive notice of such a formal proceeding would be the same interested persons as for a proceeding to confirm the sale of real estate.

RIGHTS OF SURVIVING SPOUSE AND CHILDREN PART 1

When administering an estate, the personal representative must be aware of a number of spousal and minor rights belonging to the surviving spouse and minor children of the decedent. This note will deal with priority allowances to which the surviving spouse, minor children and dependent children are entitled. The amounts which are specified are effective for individuals who died after March 31, 2000 which is the effective date of the Estates and Protected Individuals Code. For individuals who died before this time, reference needs to be made to the smaller amounts set by the Revised Probate Code which was in effect at such time. The allowances and exempt property are available for a decedent who dies domiciled in Michigan. For a decedent who dies domiciled outside of Michigan, rights to homestead allowance, family allowance, and exempt property are governed by the law of the decedent's domicile at death. A subsequent note will deal with elections which the surviving spouse may make.

Homestead allowance

Pursuant to MCL 700.2402 the surviving spouse of a decedent who was domiciled in this state is entitled to receive a homestead allowance of \$15,000. This amount shall be adjusted annually for inflation beginning January 1, 2001. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to \$15,000, as adjusted annually for inflation, divided by the number of the decedent's minor and dependent children. It should be noted that a dependent child means an adult child who was dependent upon the decedent. The homestead allowance is exempt from and has priority over all claims against the estate, except administrative costs and expenses and reasonable funeral and burial expense. A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share. How the determination of what assets are to be used to make this disbursement will be discussed later in this note.

Family Allowance

Pursuant to MCL 700.2403 a reasonable family allowance is payable to the decedent's surviving spouse and minor children whom the decedent was obligated to support, and children of the decedent or another who were in fact being supported by the decedent. The purpose of this family allowance is to provide support for such persons during administration of the estate. The allowance shall not continue for a period longer than 1 year if the estate is inadequate to discharge allowed claims. It should be noted that the family allowance may be payable to adult children if supported by the decedent or to other persons who were being supported by the decedent at the time of death. There is no set amount established for a family allowance. The only requirement is that it be "reasonable".

The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children. If a minor child or dependent child is not living with the surviving spouse, the family allowance may be paid partially to the child or to a fiduciary or other person having the child's care and custody, and partially to the spouse, as their needs may appear. A person having the care and custody of a child could be custodial parents, guardians or those granted custody through a court custody order. If the spouse is not living, the family allowance is payable to the children or persons having their care and custody.

The family allowance may be paid in a lump sum or in periodic instalments. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000 or periodic instalments not exceeding 1/12 of that amount per month for 1 year. The \$18,000 amount will be adjusted annually for inflation beginning on January 1, 2001. The personal representative may disburse the funds of the estate to pay the family allowance in that amount or lesser amount without court order. The death of an individual entitled to family allowance terminates the right to allowances not yet paid. The spouse and minor children may receive a family allowance greater than \$18,000, but the amount must be approved by the court.

The family allowance is exempt from and has priority over all claims except administrative costs and expenses, reasonable funeral and burial expenses and the homestead allowance. The family allowance is not chargeable against a benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.

Exempt property

Pursuant to MCL 700.2404 the decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed \$10,000 more than the amount of any security interests to which the property is subject. The \$10,000 amount will be adjusted annually for inflation beginning January 1, 2001. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. It should be noted that all children are allowed to receive this allowance and not just minor children.

If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than \$10,000, or if there is not \$10,000 worth of exempt assets in the estate, the spouse or children are entitled to other assets of the estate, if any necessary to make up the \$10,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property abates as necessary to permit payment of homestead allowances and family allowance..

The rights to exempt property 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. A specific devise of personal property to the

spouse or children without a further indication that it replaces this exemption should not be interpreted as within the phrase "unless otherwise provided."

Source and determination of assets used to satisfy

If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, fiduciaries or others that have the care and custody of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. Selection can be made using Selection of Homestead Allowance and Exempt Property, and Petition and Order for Family Allowance ([PC 582](#)). The personal representative may make those selections if the surviving spouse, the adult children, or those acting for the minor children are unable or fail to do so within a reasonable time. The personal representative may execute a deed of distribution or other instrument to establish the ownership of property taken as homestead allowance or exempt property.

Objections to determination or selection

The personal representative or an interested person aggrieved by a selection, determination, payment, proposed payment, or failure to act may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined. This would be done in a formal proceeding. It would appear that pursuant to MCR 5.125(C)(12) the interested persons who should receive notice of such a formal proceeding would be:

1. Personal representative, and
2. Other persons who will be affected by the adjudication. The next note will discuss additional rights which the surviving spouse and children may have such as a spouse's right to make certain elections, the rights of a spouse who was omitted in a premarital will and the rights of children omitted in a parent's will. (Continued, see Part 2)

RIGHTS OF SURVIVING SPOUSE AND CHILDREN PART 2

The previous note dealt with certain allowances to which spouses and children were entitled. This note will deal with the right of a spouse to make certain elections, the rights of a spouse who was omitted in a premarital will and the rights of children omitted in the parent's will.

Spousal Elections

Pursuant to MCL 700.2202 the surviving spouse of a decedent who was domiciled in Michigan and who dies testate (with a will) may file with the court an election in writing that the spouse elects 1 of the following:

1. That the spouse will abide by the terms of the will.
2. That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the decedent died intestate (without a will), reduced by 1/2 of the value of all property derived from decedent by any other means other than testate or intestate succession upon decedent's death. The property derived by the surviving spouse includes the following:
 - a. A transfer made within 2 years before the decedent's death to the extent that the transfer is subject to federal gift or estate tax.
 - b. A transfer made before the date of death subject to a power retained by the decedent that would make the property, or a portion of the property, subject to federal estate tax.
 - c. A transfer effectuated by the decedent's death through joint ownership, tenancy by the entireties, insurance beneficiary, or similar means.
3. If a widow, that she will take her dower right as provided by law. Dower entitles the widow to the use during her natural life, of 1/3 part of all the lands in which her husband was seized of an estate of inheritance at any time during the marriage. It would be rare for this election to be made.

In an intestate estate (without a will) if the surviving spouse is a widow, she may elect to take her intestate share or her dower rights. It should be noted that this election only applies to a widow and not a widower.

Within 28 days after the personal representative's appointment, the personal representative must give notice of the rights of election, allowances and exempt property to the surviving spouse. This may be accomplished by using Notice to Spouse of Rights of Election and Allowances, Proof of Service, and Election ([PC 581](#)). MCR

5.305(B) provides the proof of service of the notice does not need to be filed with the court. MCR 5.305(A) provides that no notice need be given in the following situations:

1. The right of election is made before notice is given.
2. The spouse is the personal representative or one of the personal representatives.
3. There is a waiver of the rights and allowances.

Pursuant to MCR 5.305(C) if the spouse exercises the right of election, the spouse must serve a copy of the election on the personal representative personally or by mail. The election may be made on the same form used to notify the spouse of her rights of election, (PC 581). The election must be made within 63 days after the date for presentment of claims or within 63 days after the service of the inventory upon the surviving spouse, whichever is later. The election may be filed with the court but such filing is not required unless there is supervised administration. The election must be made during the surviving spouse's lifetime. Pursuant to MCL 700.2202(4) if the surviving spouse is an incapacitated individual, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the incapacitated individual during that person's life expectancy. If the surviving spouse fails to make an election within the time specified, it is conclusively presumed that the surviving spouse elects to abide by the terms of the will or to accept his or her intestate share, except:

1. After the estate has been closed, there are after discovered assets.
2. During the administration of the estate and upon petition of the spouse, the court determines to permit the spouse to make an election because of estate litigation, allowance of additional claims against the estate, or for other good cause.

In rare situations where there may be an election of dower, MCR 5.305(D) provides that that if there is a minor or other person other than the widow under legal disability having no legal guardian or conservator, there may not be a hearing on the petition until after the appointment of a guardian ad litem for such person. A petition for the assignment of dower must include:

1. A full and accurate description of the land in Michigan owned by a deceased husband and of which he died seized, from which the petitioner asks to have the dower assigned.
2. The name, age, and address of the widow and the name and addresses of the other heirs.
3. The date on which the husband died and his domicile on the date of his death.

4. The fact that the widow's right to dower has not been barred and that she or some other person interested in the land wishes it set apart.

Premarital will

Pursuant to MCL 700.2301 if a surviving spouse marries the testator (individual making a will) after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate. The surviving spouse does not have a right to receive such a share if:

1. From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.
2. The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.
3. The testator provided for the spouse by transfer outside the will, and the intent that the transfers be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

In calculating the intestate share that the surviving spouse may receive, the value of the decedent's estate is reduced by any portion that is devised to a child or other descendent of the decedent, born prior to the marriage, and who is also not a child of the surviving spouse. This would significantly limit this provision since most testators would presumably leave most of their estate to descendants. However, the surviving spouse can elect to take an elective share which was described in the first part of this note. If the intestate share is less than the spouse's elective share, it is part of (counts against) the elective share. If this intestate share is greater than the elective share, the spouse will receive this intestate share if the spouse elects to abide by the terms of the will.

Omitted Children

Pursuant to MCL 700.2302 if a testator (individual making a will) fails to provide in his or her will for a child of the testator born or adopted after the execution of the will, the omitted after-born or after-adopted child is entitled to a share of the estate unless:

1. The omission was intentional.
2. The parent provided for the omitted child by a transfer outside of the will and the parent's intent for a substitute transfer can be established.
3. The will devised substantially all of the estate to the other parent of the omitted child.

The share of an omitted child will be either:

1. An intestate share, if the parent had no other living children
2. A share equal to that devised to other children. If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

CLAIMS AGAINST AN ESTATE PART 1

One of the major purposes of probate is to see that the just debts of the decedent are paid from his or her estate. To accomplish this purpose the Estates and Protected Individuals Code (EPIC) sets forth a claims procedure to be followed by the personal representative of the estate and creditors of the estate. The procedure is the same for all estate whether they began with an informal or formal proceeding. The procedure is the same for supervised or unsupervised administration. Estates commenced under the small estate provisions of EPIC are exempt from these procedures. Pursuant to MCL 700.1103(f):

"Claim" includes, but is not limited to, in respect to a decedent's or protected individual's estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent's death or after a conservator's appointment, including funeral expenses and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent's or protected individual's title to specific property alleged to be included in the estate.

Notice to Creditors

The personal representative must publish, in a newspaper defined in MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a non-resident was initiated, a notice to creditors. The notice need only be published once. If the creditor's address is unknown and cannot be ascertained after diligent inquiry, the notice must include the name of the creditor. Publication of notice to creditors may be accomplished by using Notice to Creditors Decedent's Estate ([PC 574](#)). MCR 5.306(A) requires that the notice include:

1. The name, and, if known, last known address, date of death, and date of birth of the decedent.
2. The name and address of the personal representative.
3. The name and address of the court where proceedings are filed.
4. A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative, within 4 months after publication of the notice.

MCR 5.306(B) requires the personal representative to also serve notice personally or by mail on each known creditor of the estate and the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself). A creditor is known to the personal representative if the personal representative has actual notice of the creditor or the

creditor's existence is reasonably ascertainable based on an investigation of the decedent's available records for the 2 years immediately preceding death and the decedent's mail following death. The personal representative must give notice within the 4-month period following publication. However, if the personal representative first learns of the creditor within 28 days of the end of the 4-month period, the personal representative has 28 days from the time the personal representative first knows in which to give notice. Notice to known creditors may be accomplished by using Notice to Known Creditors ([PC 578](#)).

MCR 5.306(C) provides that no notice need to be given to creditors in the following situations:

1. The estate has no assets.
2. The estate qualifies and is administered under MCL 700.3982 or MCL 700.3987 (these are sections dealing with summary distribution of small estates).
3. The decedent has been dead for more than 3 years.
4. Notice has been previously given under MCL 700.7504 in the county where the decedent was domiciled in Michigan (this section deals with the duty of a trustee of a trust described in MCL 700.7501(1) to give notice to creditor of a settlor's estate).
5. Creditors whose claims have been presented and paid.

Pursuant to MCL 700.3801(3) and (4) the personal representative and the attorney for the personal representative are exonerated from liability if they give notice based on a belief, in good faith, that a person is believed to be a creditor. Similarly, they are exonerated from liability if they believe, in good faith, that notice to a person is not required. However, the estate remains liable.

Presentment of Claims

A creditor has 4 months from the date of publication or 1 month from the date they receive actual notice, whichever is later, to present their written claim or it will be barred. The written statement must indicate the basis of the claim, the claimant's name and address and the amount of the claim. This can be accomplished by using Statement and Proof of Claim ([PC 579](#)). The Statement of Claim form must be used if the claim is filed with the court but is otherwise optional. If a claim is not yet due, the statement must include the date that the claim becomes due; however, failure to include the latter does not invalidate the presentation of the claim. If the claim is secured, the statement must describe the security; however, failure to describe the security does not invalidate the presentation. A claim (other than a claim of the personal representative) is presented by one of the following methods:

1. The claimant may deliver or mail to the personal representative or the proposed personal representative, a written statement of claim.
2. The claimant may file the Statement and Proof of Claim ([PC 579](#)) with the court and mail or deliver a copy to the personal representative.
3. The claimant may commence a civil action against the personal representative in a court that has jurisdiction.

Pursuant to MCL 700.3804(1)(b) if a claim is already the subject of a proceeding against the decedent at the time of the decedent's death, the claimant need not present the claim. Pursuant to MCL 700.3801(3)(a) a creditor with a security interest in estate property may pursue the collateral without presenting a claim. Pursuant to MCL 700.3801(3)(b) a creditor may commence a proceeding to establish the decedent's liability or the personal representative's liability for which there is liability insurance coverage without presenting a claim, but only to the limits of the coverage.

A claim by the personal representative of the estate is presented and handled in a different manner than other claims. A claim of the personal representative which arose before the death of the decedent must be served on all interested persons within 7 days after the claims period expires. MCR 5.307(C) provides that a claim by a personal representative against the estate for an obligation that arose before the death of the decedent shall only be allowed in a formal proceeding by order of the court. This will require notice to all interested persons. Such interested persons would be pursuant to MCR 5.125(12) the personal representative and other persons who will be affected by the adjudication. A post death claim by the personal representative such as a claim for services need not be presented and need not be in writing pursuant to MCL 700.3803(3)(c) and 700.3802(1).

Limitation of Action

Pursuant to MCL 700.3803 a claim, including a claim of the state or a subdivision of the state, that arose before the death of the decedent is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent as follows:

1. A claim is barred if the statute of limitations had run at the time of the decedent's death.
 - a. However, if the statute of limitations had not run at the time of the decedent's death, the running of the statute is suspended for a period of 4 months following the decedent's death. It should be noted that this 4-month period starts with the date of death, not the date of publication of the notice to creditors.
 - b. For purposes of the statute of limitations, proper presentation of a claim is equivalent to commencing an action on the claim.

c. If an estate is solvent, the personal representative, with the consent of all interested persons who would be affected (this may include other creditors), may waive a statute of limitations defense available to the estate.

2. A claim is barred if proper notice is given and the claim is not presented in a timely fashion.

3. If the notice requirements have not been met, a claim is barred 3 years after the decedent's death.

4. A claim that arises at or after the death of the decedent is barred unless it is presented within the following time limits:

a. For a claim based on a contract with the personal representative, within 4 months after the performance by the personal representative is due.

b. For all other claims, within 4 months after the claim arises or 4 months after the date of publication, whichever is later.

c. There is no time limit for the presentation of claims of the personal representative, the attorney for the personal representative, and other specialized agents retained by the personal representative. The following probate note will discuss the allowance and disallowance of claims, how contested claims are handled, the priority of claims and the rights of a creditor under EPIC.

CLAIMS AGAINST AN ESTATE PART 2

The prior note discussed the procedure for notice to creditors, the presentment of claims to the estate and the statute of limitations for bringing an action against an estate for a claim. This note will discuss the allowance and disallowance of claims, how contested claims are handled, the priority of claims and the rights of a creditor under EPIC.

Allowance or Disallowance of Claims

Once a personal representative receives a claim, he or she may allow or disallow the claim. If the personal representative takes no action on a presented claim, it is considered to be automatically allowed 63 days after the time for original presentation of the claim has expired or after 63 days of the appointment of the personal representative, whichever is later. However, the personal representative can later change his or her position regarding the claim. However, a decision disallowing a claim may not be changed after the claim is barred. A judgment of another court constitutes an allowance of the claim. Pursuant to MCL 700.3807(3) an allowed claim may be disallowed later by the court in a formal proceeding if the whereabouts of the claimant is unknown when the personal representative attempts to pay the claim. Since there is no time limit for the presentation of claims for fees and expenses of the personal representative, attorney and other specialized agents under MCL 700.3803(3)(c), these claims are never "allowed" because the 63-day period never begins to run. The personal representative is permitted to pay these claims pursuant to MCL 700.3807(2). A claim by the personal representative for a claim that arose before the death of the decedent may only be allowed or disallowed by an order of the court in a formal proceeding pursuant to MCR 5.307(C).

The personal representative may also disallow the claim in whole or in part by sending a notice to the claimant. The form used is Notice of Disallowance of Claim, ([PC 580](#)). The notice of disallowance must warn the claimant that the portion of the claim that was disallowed will be barred unless the claimant starts a civil action by filing a complaint against the personal representative within 63 days. It is extremely important to use [PC 580](#) since it contains the proper language which will result in barring the claim if the proper action is not taken by the claimant within the proper time. It should be noted that the only proper way to have a disallowed claim allowed is by a civil action pursuant to MCR 5.101(C). After notice of disallowance the claimant must start a civil action by filing a complaint against the personal representative within 63 days after the mailing of the notice. If the claimant fails to do so, the claim will be barred.

Contested Claims

MCR 5.101(C) provides that a complaint filed by a claimant after notice that the claim has been disallowed must be titled civil action and must be commenced by filing a complaint and governed by the rules which are applicable to civil actions in circuit court. The intent of the rule is to require any action to allow a disallowed claim filed in a

decedent's estate to be the same as any civil lawsuit. The matter is heard in the probate court. It must be commenced by filing a complaint and then an Answer must be filed by the personal representative. The case will proceed as any other civil lawsuit until a determination is made by the probate court. Pursuant to MCR 5.120 the personal representative must give notice to all interested persons that a contested matter has been commenced and must keep such interested persons reasonably informed of his or her actions. The personal representative must inform interested persons that they may file a petition to intervene in the matter and that failure to do so shall result in their being bound by the actions of the personal representative. Unless someone intervenes, interested persons are bound by determination made in the lawsuit.

Priority of Allowances of Claims

In an estate the allowances and claims must be satisfied before the payment of any devise. The Estates and Protected Individuals Code establishes the order in which each charge against an estate must be paid. This becomes very important when there are insufficient assets to pay all such charges. A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due. The charges against an estate must be paid in the following order of priority:

1. Expenses of administration.
2. Funeral and burial expense.
3. Homestead allowance.
4. Family allowance.
5. Exempt property allowance.
6. Debts and taxes with priority under federal law.
7. Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.
8. Debts and taxes with priority under laws of Michigan
9. All other claims

Payment of Claims

After the expiration of the 4 months following publication of the notice to creditors, and after providing for homestead, family and exempt property allowances, for claims that have been disallowed and appealed, and costs of administration, the personal representative must pay the claims allowed in the order of the priority as provided

above. No order allowing claims is necessary. If a claim is presented and if it appears to be in the estate's best interest, the personal representative may settle the claim. Pursuant to MCL 700.3807(2) the personal representative may pay claims sooner, but the personal representative may be liable to another claimant whose claim is allowed and who is injured by the payment if (1) the claim is paid early and there is no or inadequate security for repayment, or (2) payment is made due to the negligence or wilful fault of the personal representative in a manner that deprives the claimant of priority.

Rights of Claimants

Creditors have the right to take several actions under the Estates and Protected Individuals Code. A creditor may do any or all of the following:

1. Pursuant to MCL 700.3205 file a demand for notice.
2. Pursuant to MCL 700.3605 make a written demand that the personal representative file a bond if the amount of the claim is in excess of \$2,500.
3. Pursuant to MCL 700.3401 commence a formal proceeding to determine testacy or commence a formal proceeding to determine the priority or qualification of the personal representative.
4. Pursuant to MCL 700.3502 file a petition for supervised administration.
5. Pursuant to MCL 700.3607 file a petition for a temporary restraining order to restrain the personal representative from performing some act.
6. Pursuant to MCL 700.3911 commence a proceeding against a distributee to recover property improperly distributed.

ACCOUNTINGS

Accountings are a way to keep interested persons in an estate informed as to the activity of the estate. Accountings must be done even if the estate is not in supervised administration. Pursuant to MCL 700.3703(4) the personal representative must keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate. This may be accomplished by using Account of Fiduciary (PC 583) which can be used for most simple estates or Account of Fiduciary (PC 584) which should be used when you need to report gains or losses for assets. However, it is not required that either form be used since the accounting does not have to be filed with the court unless the estate is in supervised administration. Failure of a personal representative to file the required accountings could result in an interested person filing a petition with the court in a formal proceeding for the removal of the personal representative or other relief. If the personal representative wishes an account to be allowed, the personal representative will file the Account of Fiduciary (PC 583 or PC 584) and the Petition to Allow Account (PC 585a). The petition will be heard by the court in a formal proceeding after notice to interested persons. An interested person can also question an accounting or a part of the accounting by filing a petition in a formal proceeding objecting to all or a part of the accounting which they have received. After notice to interested persons, the court will decide any questions raised about the accounting. Pursuant to Michigan Court Rule (MCR) 5.125(C)(6) the persons interested in a proceeding for examination of an account of a personal representative are as follows:

1. Devisees of a testate (will) estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3)
2. Heirs of an intestate (no will) estate.
3. Claimants (but only if the claim remains unpaid).

Pursuant to MCR 5.125(B)(3) if a trust or trustee is a devisee under the will, the trustee of the trust if qualified. If a trustee is not qualified, then the current trust beneficiaries and nominated trustee, if any.

Supervised Administration

Accountings in supervised administration are controlled by MCR 5.310(C)(2). A personal representative in supervised administration is required to file an annual account with the court within 56 days after the end of the accounting period. The accounting period ends on the anniversary date of the issuance of the letters of authority. Failure to file such an annual account may result in an interested person filing a petition or the court acting on its own motion to suspend the personal representative's

powers and ultimately remove the personal representative unless the omission is corrected. This is accomplished with Order Appointing Special Fiduciary and/or Suspending Powers of Fiduciary (PC 602). The personal representative is also required to file a final account with the court at the conclusion of administration of the estate. The court may require accountings on a more frequent basis. The personal representative may elect to change the accounting period so that it ends on a date other than the anniversary date of the issuance of letters. If the personal representative elects to make such a change, the first accounting period thereafter shall not be more than a year. A notice of the change must be filed with the court. The late filing of an accounting does not affect the end of the next accounting period.

Pursuant to MCR 5.310(C)(2)(c) the accounting must be itemized, showing in detail receipts and disbursements during the accounting period as well as the form and extent of the property on hand at the end of the accounting period, unless itemization is waived by all interested parties. Approval of compensation of an attorney may be sought in any of the accountings and must be sought in at least the final account. Approval of compensation of an attorney must be sought pursuant to MCR 5.313. A written description of services performed must be included or appended regarding compensation sought by a personal representative. The accounting must be filed on Account of Fiduciary, Short Form (PC 583) which can be used for most simple estates or Account of Fiduciary, Long Form (PC 584) which should be used when showing gains or losses to assets.

Pursuant to MCR 5.310(C)(2)(d) after filing and before the allowance of an accounting, the personal representative must make proofs of income and disbursements reasonably available for examination by any interested person who requests to see them or as required by the court. An interested person, with or without examination of the proofs of income and disbursements, may file an objection to an accounting with the court. If an interested person files an objection without examining the proofs and the court concludes that such an examination would help resolve the objection, the court may order the interested person to examine the proofs before the court hears the objection. It should be noted that it is up to an interested person to raise any objections to an accounting. The court does not normally review accountings unless an objection is filed.

Pursuant to MCR 5.310(C)(2)(e) hearings on each accounting may be deferred in the discretion of the court. The court at any time may require a hearing on an accounting with or without a request by an interested person. If an interested person objects to an accounting, the matter is set for hearing to determine whether the account should be allowed. The court allows an account by entering Order Allowing Account(s) (PC 585b). Pursuant to Michigan Court Rule (MCR) 5.125(C)(6) the persons interested in a proceeding for examination of an account of a fiduciary in a decedent's estate are as follows:

1. Devisees of a testate (will) estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3).

2. Heirs of an intestate (no will) estate.

3. Claimants (but only if the claim remains unpaid). Pursuant to MCR 5.125(B)(3) if a trust or trustee is a devisee under the will, the trustee of the trust if qualified. If a trustee is not qualified, then the current trust beneficiaries and nominated trustee, if any.

DISTRIBUTION

An important part of any estate administration is distribution of assets. The Estate and Protected Individuals Code (EPIC) places the rules dealing with distribution in Article III, Part 9. The major exception to this is the rules governing distribution in supervised administration. This note will discuss the special rules concerning distributions during supervised administration and then the rules concerning distribution in the administration of all other estates.

Supervised administration

Pursuant to MCL 700.3504 unless restricted by the court, a supervised personal representative has, without an interim order approving exercise of a power, all the powers of a personal representative, but shall not exercise the power to make distribution of the estate without prior court order. This restriction would even prevent a partial distribution to beneficiaries without court order. Pursuant to MCL 700.3505 the court may issue an interim order approving or directing a partial distribution or granting other relief at any time during the pendency of a supervised administration on the petition of the personal representative or an interested person. This would allow for partial distributions to beneficiaries upon petition, notice to the personal representative and other persons who will be affected by the adjudication, and court order approving the distribution. Any final distribution would be made by a petition for an order of complete settlement pursuant to MCL 700.3952 which is the only method for closing an estate in supervised administration. The order of complete estate settlement would authorize the final distributions of the estate. This procedure and the forms used are explained in greater detail in a subsequent note on closing estates.

General rules for distribution

The following rules apply to all estate administration. The only distinction is that the property can be distributed by the personal representative according to these rules in all but supervised administration. In supervised administration, distribution must follow the rules but it must be done by court order. All rules concerning distribution found in Article III, Part 9 will not be discussed. The focus will be on those which are most important and most used.

Order in which assets appropriated - abatement

MCL 700.3902 describes the order in which assets are appropriated or abate. This essentially gives the order in which assets may be used to satisfy charges against the estate. This becomes important in estates where the estate is insufficient to pay all charges and devisees. Except as provided in connection with the share of the surviving spouse who elects to take an elective share, distributees' shares abate, without a preference or priority between real and personal property, in the following order

1. Property not disposed of by the will.

2. Residuary devises.

3. General devises.

4. Specific devises for the purposes of abatement, a general devise charged on specific property is a specific devise to the extent of the value of that specific property and, upon the failure or insufficiency of the property on which the devise is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amount of property each beneficiary would have received if full distribution of the property had been made in accordance with the terms of the will. Abatement within each classification is in proportion to the amount of property each beneficiary would have received if full distribution of the property had been made in accordance with the terms of the will.

Pursuant to MCL 700.3902(3) if the will expresses a different order of abatement, the will controls. If the testamentary plan or the devise's express or implied purpose would be defeated by the order of abatement, the distributees' share abate as found necessary to give effect to the testator's intention. Thus, the court is authorized to direct a different scheme of abatement to avoid frustration of the decedent's intent.

Retainer or setoff

Pursuant to MCL 700.3903 the amount of a successor's non contingent indebtedness to the estate if due, or its present value if not due, shall be offset against the successor's interest. However, the successor has the benefit of a defense that would be available to the successor in a direct proceeding for recovery of the debt.

Interest on general pecuniary devise

Pursuant to MCL 700.3904 unless a contrary intent is indicated by the will, a general pecuniary devise bears interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment.

Distribution in kind

EPIC favors distribution in kind. However, this preference should give way to an exercise of fiduciary discretion to make sales of assets during the course of administration that are reasonable and prudent under the circumstances. The personal representative is given authority in MCL 700.3906(1)(c) to allocate assets in the residuary estate on a non-pro rata basis so long as the allocation is fair and equitable. Distributions in kind, in other than supervised administration, will normally be accomplished without a court order with an appropriate transfer document such as a deed or assignment.

Pursuant to MCL 700.3906 and subject to the above paragraph unless the will indicates a contrary intention, the distributable property of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:

1. A specific devisee is entitled to the property devised to him or her.
2. A spouse or child who selects particular estate property as part of exempt property is entitled to that property.
3. A homestead or family allowance, or devise of a stated sum of money, may be satisfied in kind if all of the following are true:
 - a. The person entitled to payment does not demand cash.
 - b. The property distributed in kind is valued at its fair market value as of its distribution date.
 - (1) Publicly traded securities are valued at the last sale on the business day preceding distribution, or if there was no sale, at the median between the amounts bid and offered at the close of that day.
 - (2) An account receivable (assuming a solvent debtor and no defense or dispute) is valued at the amount due with accrued interest or discounted to the distribution date.
 - (3) Property that does not have a readily ascertainable value (e.g., real estate) is valued as of a date not more than 28 days before the distribution date.
 - c. A residuary devisee does not request that the property remain a part of the estate residue.

Pursuant to MCL 700.3908 after the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of a distributee to object to the proposed distribution on the basis of the kind or value of property the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in a writing received by the personal representative within 28 days after mailing or delivery of the proposal.

Pursuant to MCL 700.3914(1), subject to the rights of creditors and taxing authorities, competent successors (a person, other than a creditor, who is entitled to property of a decedent under the decedent's will or this act) may agree to alter the interests, shares, or amounts to which they are entitled under the will or under intestate laws, in any manner that they provide in a written agreement executed by all who are affected by its provisions. No order approving the agreement is necessary, but one may be requested.

TAX CONSIDERATIONS

The personal representative of a decedent's estate is responsible for filing various tax returns. This may include the filing of final tax returns for the decedent as well as tax returns for the estate which is a separate taxpayer.

Decedent's Tax Returns

When a person dies, that person ceases to be a taxpayer. However, there may be final tax returns that need to be filed for that decedent. The personal representative is responsible for filing the decedent's tax returns such as federal, state and local income tax returns and federal gift tax returns. Those tax returns are due on the normal filing date, for example, April 15 of the year following the tax year. For the year of death, the tax return covers the period from January 1 to the date of death (assuming that the decedent filed his or her tax returns on a calendar year basis).

There may be more than one set of tax returns that need to be filed. If the decedent died on March 15, 2006, there may be tax returns due for 2005 and tax returns due for the short year from January 1, 2006 to March 15, 2006.

The tax forms to use for income tax purposes for the decedent are those in the form 1040 series. The tax forms to use for income tax purposes for the estate are those in form 1041 series. Federal gift tax returns cover the calendar year and are due on April 15 of the following year, the same as federal and state income tax returns.

The federal gift tax return is form 709. Michigan does not have any gift tax.

In order to be aware of any correspondence from the Internal Revenue Service to the decedent, the personal representative may file a form 56 with the Internal Revenue Service advising the Service of the decedent's death and the name and address of the personal representative.

Tax Returns for the Estate

When a person dies, his or her estate becomes a new taxpayer for income tax purposes. The personal representative applies for a new taxpayer identification number on a form SS-4. The number that is assigned is used on any accounts in the name of the estate such as bank, credit union and brokerage accounts.

The personal representative is also responsible for filing tax returns for the estate. These may include a federal estate tax return and federal and state income tax returns. Michigan no longer has an inheritance tax or an estate tax.

If a person dies during 2006, 2007 or 2008 and his or her gross estate is valued at more than \$2,000,000, the personal representative is required to file a federal estate tax

return, form 706. The dollar amount for filing a return will be increasing over the next several years as follows:

YEAR OF DEATH DOLLAR AMOUNT

2006 - 2008 \$2,000,000 2009 \$3,500,000

In 2010, the federal estate tax is scheduled to be repealed. However, it is repealed only for 2010 and comes back in 2011.

The “gross estate” for federal estate tax purposes consists of everything that the decedent owned at the time of his or her death including property that is not part of the probate estate such as jointly owned property and property that passes by beneficiary designation such as life insurance and retirement benefits.

The federal estate tax rate is 46% for 2006 and 45% for 2007, 2008 and 2009.

As mentioned above, the estate is a new income taxpayer and it must file income tax returns and pay tax if any is due. For federal income tax purposes, an estate must file an income tax return if the estate has gross income of \$600 or more for the tax year. The estate income tax return is form 1041.

Unlike most individuals, an estate may select a fiscal year that ends at the end of any month so long as the first year does not exceed 12 months. For example, the personal representative of the estate of a person who died on November 15, 2005 can select as the first tax year the period from November 15 to the end of any month during the period ending October 31, 2006. Thereafter the estate must file its tax returns for the year ending on the month selected. If the personal representative in the above example selected March 31, 2006 as the end of the first fiscal year of the estate, then the estate would continue to file tax returns for the year ending March 31. The estate income tax returns are due by the 15th day of 4th month after the end of the estate’s fiscal year. If the estate’s fiscal year ended on March 31, the tax returns would be due by July 15 of the same year.

Estates do not have favorable income tax rates. For an estate with a tax year starting in 2005, the estate is at the highest income tax bracket, 35%, when it has taxable income of \$9,750. For an estate with a tax year starting in 2006, the estate is at the highest income tax rate when it has taxable income of \$10,050.

A personal representative also has many tax elections to consider and exercise or not exercise. Many of these may be beneficial to the estate or to the beneficiaries of the estate. These include such things as electing a fiscal year (discussed above), determining whether to file a joint return with the surviving spouse for the decedent’s final income tax returns, and determining whether to take medical expenses as an income tax deduction on the decedent’s final tax returns or claiming those deductions as estate tax deductions.

An estate must report its income on its income tax returns. If the income is accumulated during the estate's tax year and is not distributed to the beneficiaries, the estate pays the income tax. On the other hand, if the personal representative makes a distribution of property to the beneficiaries during the tax year, the income may be carried out to the beneficiaries who receive the distribution. In that case, the estate gets a deduction and the income is attributed to the beneficiaries. They report it on their personal income tax returns. Each beneficiary will receive a form K-1 informing the beneficiary of the amount and character of the income.

The rules relating to death taxes and income taxes for estates are complicated. A personal representative would be well served by hiring the services of someone who is experienced in preparing tax returns of the type discussed above. [go to top]

CONTINUING, CLOSING, REOPENING AN ESTATE PART 1

The prior notes have dealt with beginning a probate estate and ongoing administration of a probate estate. This note will deal with the various options available for continuing and closing such an estate.

Notice of Continued Administration

Pursuant to MCL 700.3951 if the personal representative is unable to complete the administration of the estate within one year of the personal representative's original appointment, the personal representative must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of administration. This may be accomplished by using Notice of Continued Administration ([PC 587](#)). The personal representative must give this notice within 28 days of the first anniversary of his or her appointment and all subsequent anniversaries during which the administration remains uncompleted.

If the notice of continued administration is not filed, an interested person may petition the court for a hearing on the necessity for continued administration or petition for a settlement order under either MCL 700.3952 or MCL 700.3953 (discussed in a subsequent note). If a petition is filed the court hears such petition and grants appropriate relief to ensure prompt estate settlement. If the notice of continued administration is not filed the court will notify the personal representative and all interested persons that the court will close the estate administration and terminate the personal representative's authority within 63 days unless within that time period any of the following occur:

1. The personal representative files the notice of continued administration, a petition for settlement under MCL 700.3952 or MCL 700.3953, or a sworn statement under MCL 700.3954 (discussed later in this note).
2. An interested person files a petition requesting a hearing on the necessity for continued administration or a petition for settlement under either MCL 700.3952 or MCL 700.3953.

The notice by the court to interested persons that the personal representative has failed to file a notice with the court will be accomplished by the court sending the interested persons Notice of Intent to Close Estate Administration and Terminate Personal Representative's Authority ([PC 589](#)). It should be noted that the court is limited to either responding to the petition of an interested person or to closing its file and terminating the authority of the personal representative. If the required action is not taken by the personal representative or an interested person, the court will close its file and terminate the authority of the personal representative. This will be accomplished by the court signing a Memorandum of Administrative Closing ([PC 599](#)).

Summary administration procedure for small estates

Pursuant to MCL 700.3987 if it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, family allowance, exempt property, administration costs and expenses, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided by MCL 700.3988. The form which would be filed in this case would be Sworn Closing Statement, Summary Proceeding Small Estates ([PC 590](#)). This closing statement must be sent to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred. A full written accounting of the estate administration must be furnished to each estate distributee whose interests are affected. If no objection to the sworn statement is filed within 28 days after the filing date, the register shall issue a certificate of completion. This would be accomplished by using Certificate of Completion / / Supplemental ([PC 592](#)). If an action or proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed, the personal representative's appointment terminates. This procedure is not available to an estate that is in supervised administration.

This summary procedure should always be considered and used when possible. The allowances, cost of administration, funeral bill and costs of last illness would probably now add up to over \$50,000 for many estates. Also, dependent children who are not minors may be entitled to homestead and family allowance, and adult children may claim the exempt property allowances. The statements on Form [PC 590](#) should be read carefully. If all of those statements are true, this summary procedure can be used to close estate administration.

Closing estate by sworn statement of the personal representative

Pursuant to MCL 700.3954 unless prohibited by court order and except for an estate being administered in supervised administration, a personal representative may close an estate by filing with the court, no earlier than 5 months after the date of a general personal representative's original appointment, a sworn statement stating that the personal representative has done all of the following:

1. Determined that notice was published and the time limited for presentation of creditor's claims has expired.
2. Fully administered the decedent's estate by making payments, settlement, or other disposition of all claims that were presented, of administration and estate expenses, and of estate, inheritance, and other death taxes, except as specified in the statement, including distribution of the estate property to the persons entitled. If a claim remains un-discharged, the statement shall state whether the personal representative distributed

the estate subject to possible liability with the distributees agreement or shall detail other arrangements that have been made to accommodate outstanding liabilities.

3. Sent a copy of the statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

4. Furnished a full accounting in writing of the personal representative's administration to the distributees whose interests are affected by the administration. The account shall clearly state the amount paid out of the estate in fiduciary fees, attorney fees and other professional fees.

The form which would be filed would be Sworn Statement to Close Unsupervised Administration // Supplemental (PC 591). Pursuant to MCL 700.3958 if an objection to the closing statement is not filed within 28 days after the filing date, the personal representative, the personal representative's sureties, or a successor of either is entitled to receive a certificate from the register that the personal representative appears to have fully administered the estate in question. Since the statute does not require the register to issue the certificate it may be necessary to request it. The Certificate of Completion // Supplemental (PC 592) will be used to meet this requirement. If a proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed, the personal representative's appointment terminates. The certificate does not preclude action against the personal representative or the surety.

It should be noted that this procedure is not available for an estate in supervised administration. It also should be noted that the personal representative is required to give the distributees a full accounting of estate administration. Since such an accounting need not be filed with the court, no particular accounting form is required. However, a personal representative can use Account of Fiduciary, Short Form (PC 583) or Account of Fiduciary, Long Form (PC 584) to accomplish this.

Limitation of Actions

Pursuant to MCL 700.3956 unless previously barred by adjudication and except as provided in the closing statement, the right of a successor or creditor whose claim is not otherwise barred against the personal representative for breach of fiduciary duty is barred unless a proceeding to assert the claim is commenced within 6 months after the filing of the closing statement. The right barred under this section does not include the right to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Pursuant to MCL 700.3957 unless previously adjudicated in a formal testacy proceeding or in a proceeding settling a personal representative's accounts, or otherwise barred, a claimant's claim to recover property improperly distributed or its value from a distributee are forever barred at the later of 3 years after the decedent's death or 1 year after the time of the property's distribution. However, all claims of the decedent's creditors are

barred in accordance with the time periods specified in MCL 700.3803 (claims provisions discussed in a prior note). This section does not bar an action to recover property or value received as a result of fraud.

CONTINUING, CLOSING, REOPENING AN ESTATE PART 2

In the previous note we discussed how an estate could be continued, closing a small estate by sworn statement of the personal representative and closing a regular estate by sworn statement of the personal representative. This note will discuss how an estate may be closed through formal proceedings and the procedure for reopening a closed estate.

Order of complete estate settlement

Pursuant to MCL 700.3952 a personal representative or an interested person may petition for an order of complete estate settlement. This is a formal proceeding which offers a procedure to settle all issues in closing an estate. It gives the personal representative the protection of the conclusiveness of a court order. This procedure is available for all estate proceedings whether or not they were begun by informal or formal proceedings. If formal testacy has not been determined, such a determination can be asked for if it is desired before final distribution. An estate proceeding in supervised administration must be closed in this manner. The personal representative may petition at any time, and an interested person may petition after 1 year from the original personal representative's appointment. However, the court shall not accept a petition under this section until the time expires for presenting a claim that arises before the decedent's death.

A petition for an order of complete estate settlement may request the court to determine testacy, if not previously determined, to consider the final account, to compel or approve an accounting and distribution, to construe a will or determine heirs, and to adjudicate the estate's final settlement and distribution. There are two court forms that may be used depending upon whether testacy was or was not previously adjudicated. The forms are Petition for Complete Estate Settlement, Testacy Previously Adjudicated ([PC 593](#)) and Petition for Adjudication of Testacy and Complete Estate Settlement ([PC 594](#)). Schedule of Distribution and Payment of Claims ([PC 596](#)) may be used as an attachment for either petition. If there is a request for an adjudication of testacy, there must also be a determination of heirs. It is contemplated that as a part of this procedure the personal representative will request to be discharged. Pursuant to Michigan Court Rule (MCR) 5.311(B)(3) a personal representative filing a discharge request must also file additional papers with the court so the court can make a determination that the estate has been properly administered. Those papers and proof of service for them are as follows:

1. Inventory.
2. Accountings.
3. Notice of Appointment.

4. Fees notice pursuant to MCR 5.313
5. Notice to spouse.
6. Notice of continued administration.
7. Affidavit of any required publication.
8. Tax information concerning inheritance or estate tax.
9. Any other papers which the court may require.

Pursuant to MCR 5.125(C)(8) the persons interested in a petition for an order of complete estate settlement under MCL 700.3952 or a petition for discharge under MCR 5.311(B)(3) are the:

1. Devisees of a testate estate.
2. Heirs unless there has been an adjudication that decedent died testate.
3. Claimants.
4. Such other persons whose interests are affected by the relief requested. Pursuant to MCL 700.3952(3) a method is provided for curing any prior oversight as to notice of an interested person during estate administration. Such an interested person may now be given notice and such notice in the absence of objection will fully adjudicate the interested person's interest.

After notice to all interested persons and a hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of an interested person. To accomplish this, the court will use Order for Complete Estate Settlement ([PC 595](#)). After the personal representative files evidence of payment of claims and distributions as set forth in the Order for Complete Estate Settlement and the court is satisfied that estate administration is complete, the court will issue Order of Discharge ([PC 597](#)). This order will terminate the personal representative's authority and close estate administration.

Order construing will without adjudication of testacy

Pursuant to MCL 700.3953, a personal representative administering an estate under an informally probated will or a devisee under an informally probated will may petition for a settlement order for the estate that does not adjudicate the decedent's testacy status. This provision is very similar to a petition for a complete settlement order. However, such a petition may be filed only in an estate being administered under a will admitted to

probate in an informal proceeding. The petition may not contain a request for a determination of the decedent testacy status in a formal proceeding. This procedure is not available if the estate is in supervised administration or if it appears that a part of the estate is intestate. The personal representative may petition at any time, and a devisee may petition after one year after the original personal representative's appointment. However, the court shall not accept a petition under this procedure until the time expires for presenting a claim that arises before the decedent's death.

A petition under this procedure may request the court to consider the final account, to compel or approve an accounting and distribution, to construe the will, or to adjudicate the estate's final settlement and distribution. Since it is not contemplated that this procedure will be often used, there are no approved forms for the procedure and any such petition and order would have to be individually drafted. The personal representative may request to be discharged as a part of this procedure. Pursuant to Michigan Court Rule (MCR) 5.311(B)(3) a personal representative filing such a request must also file additional papers with the court so the court can make a determination that the estate has been properly administered. Those papers were previously described above.

Pursuant to MCR 5.125(C)(9) the persons interested in a petition for an estate settlement order under MCL700.3953 are the:

1. Personal representative.
2. Devisees.
3. Claimants.
4. Such other persons whose interests are affected by the relief requested.

After notice to all interested persons and a hearing, the court may enter appropriate orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement, directing or approving estate distribution, and discharging the personal representative from further claim or demand of a devisee who is a party to the proceeding and those the devisee represents. After the personal representative files evidence of payment of claims and distributions as set forth in any Order and the court is satisfied that estate administration is complete, the court will issue Order of Discharge ([PC 597](#)). This order will terminate the personal representative's authority and close estate administration.

Reopening a closed estate

Pursuant to MCR 5.312(A) if there is good cause to reopen a previously administered estate, other than an estate that was terminated in supervised administration, any interested person may apply to the register to reopen the estate and appoint the former personal representative or another person who has priority. For good cause and without

notice, the register may reopen the estate, appoint the former personal representative or a person who has priority, and issue letters of authority with a specified termination date. Pursuant to MCR 5.312(B) the previously appointed personal representative or an interested person may file a petition with the court to reopen the estate and appoint a personal representative under MCL 700.3959.

Pursuant to MCL 700.3959 if estate property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed, or if there is other good cause to reopen a previously administered estate, including an estate administratively closed, upon petition of an interested person and notice as the court directs, the court may appoint the same personal representative to administer the subsequently discovered estate. A claim previously barred shall not be asserted in the subsequent administration.

The two above mentioned provisions give interested persons two choices as how to reopen an estate unless the estate was closed while in supervised administration. If closed while in supervised administration, the estate can only be reopened by a petition in a formal proceeding. The court rule allows the register to issue the order reopening an estate without notice in all other cases and the statute allows for reopening the estate by petition in all cases. A request to reopen the estate may be filed on / /Application / /Petition to Reopen Estate (PC 607). It should be noted that in estates closed by a sworn statement pursuant to MCL 700.3954, the personal representative would have authority to act during the one year period following the filing of the sworn statement without being reappointed.

Pursuant to MCR 5.144(B) an estate that has been administratively close before administration was completed must be reopened by petition

Closing a reopened estate

Pursuant to MCR 5.311(C) after the completion of the reopened estate administration, the personal representative shall proceed to close the estate by filing a petition under MCL 700.3952, MCL 700.3953 or a supplemental closing statement under MCL 700.3954. If a supplement closing statement is filed, the personal representative must serve a copy on each interested person. The Sworn Statement to Close Unsupervised Administration / / Supplemental (PC 591) is used with the supplemental box checked. If an objection is not filed within 28 days, the personal representative is entitled to receive a supplemental certificate of completion. The Certificate of Completion / / Supplemental (PC 592) is used with the supplemental box checked.