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# Decedent Estate Proceedings: Supervised Administration

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## Summary of Decedent Estate Proceedings; Supervised Administration

This is a summary of major principles only, with cross-references to more detailed discussion in sections of the *Benchbook*.

### **Estate and Protected Individuals Code. §§2.1–2.2.**

Effective April 1, 2000, the Estates and Protected Individuals Code (EPIC) revised and replaced the Revised Probate Code. EPIC does not impair a right accrued or an action taken before April 1, 2000, but it does apply to determine whether an instrument signed by a decedent who died before April 1, 2000, is a testamentary instrument.

Supervised administration, a single in rem proceeding to secure the 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 any other order terminating the proceeding, is covered in EPIC at MCL 700.3501–.3505.

### **Jurisdiction and venue. §2.3.**

The probate court has exclusive jurisdiction of matters regarding the settlement of the estate of a deceased person who was at the time of death domiciled either in the county or out of state leaving an estate within the county to be administered. Venue for the first testacy or appointment proceeding after a decedent's death is in the county where the decedent was domiciled at the time of death. If the decedent was not domiciled in Michigan, venue is in the county where the decedent's property was located at the time of death.

### **Priority for appointment of personal representative. §2.4.**

A personal representative must be at least age 18, not a protected or legally incapacitated individual, and not found unsuitable by the court in a formal proceeding. An appointment as personal representative has the following order of priority:

1. the personal representative appointed by the court of the decedent's domicile or his or her nominee
2. the person nominated in the decedent's probated will

3. the surviving spouse of the decedent if a devisee or his or her nominee
4. other devisees of the decedent or their nominee
5. the surviving spouse of the decedent or his or her nominee
6. other heirs of the decedent or their nominee
7. a creditor's nominee, after 42 days of decedent's death, if the court finds the nominee suitable
8. the state or county public administrator (after 42 days, if there are no known heirs and there is no United States resident entitled to a distributive share in the estate).

### **Circumstances in which supervised administration can be granted. §2.5.**

An interested person or personal representative may file a petition for supervised administration at any time, in any of the following circumstances:

- If the decedent's will directs supervised administration, the court must order supervised administration unless the court finds that circumstances bearing on the need for supervision have changed since the execution of the will so that supervised administration is not necessary.
- If the decedent's will directs unsupervised administration, the court may order supervised administration only if it finds that it is necessary for the protection of interested persons.
- If the decedent's will is silent regarding the form of administration or in an intestate estate, the court may order supervised administration only if it finds that supervised administration is necessary under the circumstances.

### **Supervised administration proceedings. §§2.6–2.13.**

#### *Petition for probate and/or appointment of personal representative.*

An interested person or personal representative may file a petition for supervised administration at any time. If supervision is sought at the beginning of the estate administration, the petition is joined with a formal testacy and appointment proceeding, and the interested persons must receive notice before the will is admitted and before the personal representative is appointed.

The petition must include allegations and representations sufficient to justify the relief sought and must

- identify the petitioner and state his or her interest in the proceedings and qualification to file the petition;
- include allegations essential to establishing jurisdiction;
- identify and incorporate any documents to be admitted, construed, or interpreted;
- include additional allegations, as required; and

- include a current list of interested persons, indicating the existence and form of incapacity of any of them, their mailing addresses, the nature of their representation, if any, and the need for special representation.

The petition must also include a will, if any, and a sworn testimony form sufficient to establish the identity of interested persons.

*Notice of hearing, service of process, and waivers.*

The petitioner is responsible for serving notice of hearing and a copy of the petition, will, and testimony forms on all interested persons. Personal service must be made at least 7 days before the hearing date; service by mail must be made at least 14 days before the hearing date. Notice may be served on an interested person whose address or whereabouts is unknown by publication in a newspaper in the county where the court is located at least 14 days before the hearing date. If service cannot otherwise reasonably be made, the court may direct the manner of service.

The service requirements may be avoided if waiver/consent forms are signed by all interested persons and filed with the court. A waiver and consent may also be stated on the record at the hearing. If all interested persons have made waivers and consents, the order may be entered without a hearing.

*Hearing.*

The procedure and burdens of proof at a hearing in connection with a supervised administration are the same as for any formal testacy and appointment proceeding:

- A petitioner seeking to establish intestacy must establish prima facie proof of death, venue, and heirship.
- A proponent of a will must establish prima facie proof of due execution. If the proponent is also the petitioner, he or she must also establish prima facie proof of death and venue.
- A contestant of a will must prove lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.
- A party has the ultimate burden of persuasion as to a matter if that party has the initial burden of proof.

In addition, testimony about the need for court supervision is elicited in a supervised administration.

**Changing between supervised administration and unsupervised administration.**  
**§§2.14–2.15.**

Supervised administration may start at any time, including in the midst of an unsupervised administration, after an estate was opened by an informal proceeding or by a formal proceeding without an order for supervision. At any time during supervised administration, the personal representative or any interested person may petition the court to terminate court supervision. The court may terminate supervision unless it finds that supervised administration is necessary under the circumstances.

### Administration of the estate. §§2.16–2.29.

#### *Acceptance of appointment by personal representative.*

The personal representative must file an acceptance of appointment to accept the duties of the office. When the acceptance of appointment is filed, the court issues letters of authority that certify the personal representative's authority to act on behalf of the estate.

#### *Notices and other documents.*

The personal representative may pay attorney fees and costs on a periodic basis without prior court approval as long as the attorney and the personal representative entered into a written fee agreement before the time of payment, copies of the fee agreement and a notice regarding the attorney fees were sent to all who were affected by the payment, statements for services and costs were sent to the personal representative and any interested person who requested copies, and no written objection to the fees has been served on the attorney or the personal representative. In any other case, the court must approve attorney fees before payment. The notice regarding attorney fees must be filed with the court.

A supervised personal representative must prepare an inventory and send it to all presumptive distributees and all other interested persons requesting it within 91 days following appointment. The inventory must be filed with the court within 91 days of the letters of authority. Most courts require the use of SCAO form PC 577.

Until a beneficiary's share of the estate is fully distributed, a supervised personal representative must annually, and on completion of the estate settlement, account to each beneficiary by supplying a statement of the estate's and the personal representative's activities, specifying all receipts and disbursements and identifying property belonging to the estate. Accountings must be filed with the court within 56 days after the end of the accounting period.

If administration of the estate lasts more than one year, the personal representative has 28 days from the anniversary date of appointment to file with the court and serve on all interested persons a notice of continued administration.

A supervised personal representative must also file other documents with the court, including notice of appointment, notice to spouse of rights of election, and affidavit of any required publication.

#### *Distribution of estate assets and interim orders.*

A supervised personal representative has all the powers available to a personal representative in an unsupervised proceeding, except that a supervised personal representative cannot distribute estate property without a prior court order. However, the personal representative can pay claims, taxes, and administrative expenses without prior court approval. The personal representative, or any interested person, may seek interim orders for partial distribution at any time during the pendency of the supervised administration.

### *Elections and allowances.*

Within 28 days after appointment, the personal representative must notify the surviving spouse of the spouse's right to election and the election time period. In a testate estate, the surviving spouse may elect to do one of the following:

1. abide by the terms of the will
2. take half of his or her intestate share reduced by half the value of property derived by the spouse from the decedent by any means other than testate or intestate succession
3. if the surviving spouse is a widow, take her dower right

In an intestate estate, a surviving widow may elect to take either her intestate share or her dower right.

If the decedent was domiciled in Michigan, the surviving spouse is entitled to a homestead allowance of \$15,000 and household furniture, automobiles, furnishings, appliances, and personal effects with a date-of-death value of up to \$10,000. In addition, a reasonable family allowance may be paid to a surviving spouse, minor children the decedent was obligated to support, and children of the decedent or another who were in fact being supported by the decedent. The amounts of these allowances are indexed for inflation under MCL 700.1210. When adjusted for inflation for 2016, the homestead allowance is \$22,000 and the exempt property limit is \$15,000.

### **Closing the estate. §§2.30–2.31.**

#### *Final accounting.*

A supervised personal representative must prepare a final account and serve it on all interested persons, except those who previously received their full share of the estate, and file it with the court when the estate is ready for closing or upon the removal of the personal representative. The personal representative must also file a proof of service with the court.

#### *Complete estate settlement.*

In a supervised administration, the estate must be closed with a petition and order for complete estate settlement. The petition should request court approval of all proposed distributions. Supervised administration is terminated in accordance with the order issued by the court directing estate distribution and discharging the personal representative. Final distributions will generally be made after the order is entered. After final distribution, the personal representative should submit receipts or other evidence of the final distributions to the court along with an order of discharge.

## I. Estates and Protected Individuals Code

### A. Introduction

§2.1 The Estates and Protected Individuals Code (EPIC), effective April 1, 2000, completely revised and replaced the Revised Probate Code (RPC). It integrated most of the Uniform Probate Code into Michigan law while retaining some of the unique features of Michigan law in prior codes.

Supervised administration under EPIC is a single in rem proceeding to secure the 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 any other order terminating the proceeding. MCL 700.3501(1). Supervised administration is covered in EPIC at MCL 700.3501–.3505.

### B. Substantive Rights Under the Revised Probate Code in Estates of Decedents Who Died Before April 1, 2000

§2.2 EPIC applies to the following:

- a governing instrument executed by a decedent who dies after April 1, 2000
- any proceeding in court pending on or commenced after April 1, 2000, regardless of the time of the decedent's death, except to the extent that in the court's opinion, the former procedure should be made applicable in a particular case in the interest of justice or feasibility
- the definition of the powers and duties after April 1, 2000, of a fiduciary who was appointed before April 1, 2000
- the construction of a governing instrument executed before April 1, 2000, unless there is a clear indication of a contrary intent (with the exception of the construction of the phrase *by representation*—see MCL 700.2718(1)).

EPIC does not impair a right accrued or an action taken before April 1, 2000. MCL 700.8101(2). For example, the beneficial shares of heirs of a decedent who died intestate before April 1, 2000, are determined under the RPC.

EPIC does apply to determine whether an instrument signed by a decedent who died before April 1, 2000, is a testamentary instrument. *Korean New Hope Assembly of God v Haight (In re Estate of Smith)*, 252 Mich App 120, 651 NW2d 153 (2002). In that case, the day after the execution of her will, the deceased executed a dated, handwritten document that expressed her intent to donate \$150,000 to God in order to build a church. The petitioner-church offered the handwritten document as a holographic will to be probated as a codicil to the deceased's existing will. The trial court granted the respondent summary disposition because the handwritten document failed to reflect testamentary intent. The court of appeals reversed and remanded because, under EPIC, MCL 700.2502(3), the testamentary intent of a document may be established by extrinsic evidence. The EPIC provision applied even though the decedent died before its effective date, because a devise under a will is not an accrued right.

A will created before EPIC's effective date for a decedent who died on or after April 1, 2000, is governed by the provisions of EPIC unless there is a clear indication of contrary intent. *Leete v Sherman (In re Estate of Leete)*, 290 Mich App 647, 803 NW2d 889 (2010).

## II. Jurisdiction and Venue

§2.3 The probate court has exclusive jurisdiction of matters relating to the settlement of an estate of a deceased person who was at the time of death domiciled either in the county or out of state leaving an estate within the county to be administered. This includes, but is not limited to, the following types of proceedings:

- the internal affairs of the estate
- estate administration, settlement, and distribution
- declaration of rights that involve an estate, devisee, heir, or fiduciary
- construction of a will
- determination of heirs

MCL 700.1302(a).

Probate disputes, including the question of testamentary capacity, may be settled by binding common-law arbitration. *Petorovski v Nestorovski (In re Nestorovski)*, 283 Mich App 177, 769 NW2d 720 (2009).

Venue for the first formal testacy or appointment proceeding after a decedent's death is in the county where the decedent was domiciled at the time of death or, if the decedent was not domiciled in Michigan, in a county where the decedent's property was located at the time of death. Venue for subsequent proceedings is in the place where the initial proceeding occurred, unless the court transfers the proceeding. MCL 700.3201(1), (2).

Venue may be transferred to another county on motion by an interested person or on the court's own initiative, for the convenience of the parties and witnesses, for the convenience of the attorneys, or if an impartial trial cannot be had in the county where the action is pending. MCL 600.856, 700.3201(4); MCR 5.128(A).

If there are conflicting claims as to the decedent's domicile in formal proceedings commenced in Michigan and in another state, the determination of domicile in the proceeding that was commenced first is determinative. MCL 700.3202.

On August 17, 2011, the Michigan Supreme Court issued AO 2011-3, providing caseflow guidelines for probate proceedings. The guidelines suggest that 75 percent of all contested estate, trust, guardianship, and conservatorship proceedings be adjudicated within 182 days from the date of filing the objection and 100 percent be adjudicated within 364 days, except for individual cases with exceptional circumstances. *See* AO 2011-3.