

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

Part 7

**RULES OF CONSTRUCTION APPLICABLE TO DONATIVE DISPOSITIONS IN WILLS AND OTHER
GOVERNING INSTRUMENTS**

700.2701 Scope.

Sec. 2701.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument unless the application of a particular section is limited by its terms to a specific type of provision or governing instrument.

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

Popular Name: EPIC

700.2702 Requirement of survival by 120 hours.

Sec. 2702.

(1) For the purposes of this act, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) Except as provided in subsection (4), if it is not established by clear and convincing evidence that 1 of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the co-owned property passes as if 1 had survived by 120 hours and 1/2 as if the other had survived by 120 hours. If there are more than 2 co-owners and it is not established by clear and convincing evidence that at least 1 of them survived the others by 120 hours, the property passes in the proportion that 1 bears to the whole number of co-owners. For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles 1 or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required under any of the following circumstances:

(a) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case. Language dealing explicitly with simultaneous deaths includes language in a governing instrument that creates a presumption that applies if the evidence is not sufficient to determine the order of deaths.

(b) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. Survival of the event or the specified period, however, must be established by clear and convincing evidence.

(c) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 2(1)(a), (2)(a), or (3)(a) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72, or to become invalid under section 2(1)(b), (2)(b), or (3)(b) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72.

(d) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. Survival, however, must be established by clear and convincing evidence.

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

Popular Name: EPIC

700.2703 Protection of payors and other third parties.

Sec. 2703.

(1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument who, under section 2702, is not entitled to the payment or item of property, or for having taken another action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed lack of entitlement under section 2702. A payor or other third party is not obligated to inquire as to whether the 120-hour survival provision of section 2702 applies to any individual or to seek evidence regarding whether that provision applies to any individual. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed lack of entitlement under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that the beneficiary designated in the governing instrument did not survive the decedent by 120 hours. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of a claimed lack of entitlement under section 2702, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if proceedings have not been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from all claims for the value of amounts paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2702, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

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

Popular Name: EPIC

700.2704 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2704.

(1) Section 2702 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit and does not make such a person liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who is entitled to it under section 2702.

(2) If section 2702 or any part of that section is preempted by federal law with respect to a payment, an item of property, or another benefit covered by section 2702, a person who, not for value, receives the payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who would have been entitled to it if section 2702 or part of that section were not preempted.

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

700.2705 Choice of law as to meaning and effect of governing instrument.

Sec. 2705.

The meaning and legal effect of a governing instrument other than a trust are determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or another public policy of this state otherwise applicable to the disposition.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.2706 Power of appointment; meaning of specific reference requirement.

Sec. 2706.

If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

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

700.2707 Class gifts construed to accord with intestate succession.

Sec. 2707.

(1) An adopted individual or an individual born out of wedlock, and his or her respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not a natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that natural parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not an adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

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

700.2708 Definitions regarding beneficiary designation.

Sec. 2708.

As used in this section and sections 2709 to 2712:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of 1 or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or another form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent. Beneficiary includes a class member if the beneficiary designation is in the form of a class gift; an individual or class member who was deceased at the time the beneficiary designation was executed; and an individual or class member who was then living but who failed to survive the decedent. Beneficiary excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent, but who would have taken under a beneficiary designation in the form of a class gift had he or she survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who did not predecease the decedent and is not considered to have predeceased the decedent under section 2702.

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

Popular Name: EPIC

700.2709 Substitute gift.

Sec. 2709.

If a beneficiary fails to survive the decedent and is a grandparent, a grandparent's descendant, or the decedent's stepchild, the following apply:

(a) Except as provided in subdivision (d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subdivision (d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of each deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

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

Popular Name: EPIC

700.2710 Multiple substitute gifts.

Sec. 2710.

(1) If, under section 2709, substitute gifts are created and not superseded with respect to more than 1 beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

(a) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(c) "Younger-generation beneficiary designation" means a beneficiary designation for which all of the following are true:

(i) Is to a descendant of a beneficiary of the primary beneficiary designation.

(ii) Is an alternative beneficiary designation with respect to the primary beneficiary designation.

(iii) Is a beneficiary designation for which a substitute gift is created.

(iv) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

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

Popular Name: EPIC

700.2711 Protection of payors.

Sec. 2711.

(1) Except as otherwise provided in this section, a payor or other third party is not liable for making a payment under the terms of a beneficiary designation. Payment made before the actual receipt of a written notice of a claim to a substitute gift discharges the payor or other third party, but not the recipient, from a claim for the amount paid. A payor or other third party is liable for a payment made 3 or more business days after the payor or other third party actually receives written notice of the claim. A payor or other third party is not obligated to inquire as to whether a substitute gift exists under sections 2709 and 2710 or to seek evidence regarding such a gift. A recipient who incorrectly receives a payment is liable for the payment received, whether or not written notice of the claim is given.

(2) A written notice of a substitute claim must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a claim to a substitute gift is being made under sections 2709 and 2710. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of a written notice of the claim, a payor or other third party may pay any amount the payor or other third party owes to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer

discharges the payor or other third party from all claims for the amount paid.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under sections 2709 and 2710, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

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

Popular Name: EPIC

700.2712 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2712.

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated to return the payment, item of property, or benefit and is not liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under sections 2709 and 2710 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under sections 2709 and 2710.

(2) If this section and sections 2709 and 2710 are, or any part of these sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is entitled under those sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

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

Popular Name: EPIC

700.2713 Definitions for survivorship with respect to future interests under terms of trust.

Sec. 2713.

As used in this section and sections 2714 to 2716:

(a) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of 1 or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or another form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that a lapsed or failed devise is to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes, but is not limited to, an individual who failed to survive the distribution date but who would have taken under a future interest in the form of a class gift had he or she survived the distribution date.

(d) "Distribution date" means, with respect to a future interest, the time when the future interest takes effect in possession or enjoyment. The distribution date does not need to occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(e) "Future interest" includes, but is not limited to, an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that is created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who does not predecease the distribution date and who is not considered to have predeceased the distribution date under section 2702.

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

700.2714 Survivorship required for gift under trust; substitute gift; applicability of subsection (1).

Sec. 2714.

(1) Subject to subsection (2), a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in subdivision (d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subdivision (d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. As used in this subdivision, "deceased beneficiary" means a class member who fails to survive the distribution date and leaves 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or another form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(2) Subsection (1) does not apply to a future interest if the beneficiary of the interest died or irrevocably transferred the interest before April 1, 2000.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004
Popular Name: EPIC

700.2715 Multiple substitute gifts.

Sec. 2715.

(1) If, under section 2714, substitute gifts are created and not superseded with respect to more than 1 future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

- (a) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.
- (b) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.
- (c) "Younger-generation future interest" means a future interest for which all of the following are true:
 - (i) Is to a descendant of a beneficiary of the primary future interest.
 - (ii) Is an alternative future interest with respect to the primary future interest.
 - (iii) Is a future interest for which a substitute gift is created.
 - (iv) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.
- (d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

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

Popular Name: EPIC

700.2716 No substitute taker; lapse.

Sec. 2716.

(1) Except as provided in subsection (2), if, after the application of sections 2714 and 2715, there is no surviving taker, the property passes in the following order:

(a) If the trust is created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes to the transferor's heirs under section 2720.

(2) If, after the application of sections 2714 and 2715, there is no surviving taker and if the future interest was created by the exercise of a power of appointment, the following apply:

(a) The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes as provided in subsection (1). For purposes of subsection (1), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

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

Popular Name: EPIC

700.2717 Class gifts to "descendants," "issue," or "heirs of the body"; form of distribution if none specified.

Sec. 2717.

If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in the shares each class member would receive under the applicable law of intestate succession if the designated ancestor had died intestate at the time of distribution owning the subject matter of the class gift.

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

Popular Name: EPIC

700.2718 Representation; per capita at each generation; per stirpes.

Sec. 2718.

(1) If an applicable statute or a governing instrument calls for the property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor that contains 1 or more surviving descendants and 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 distribution date. This rule of construction applies to documents originally created on and after April 1, 2000, and to all instruments amended on and after April 1, 2000, that use the phrase "by representation" or "per capita at each generation". If an amendment uses either phrase, the rule of this section applies to the entire instrument.

(2) If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child, if any, is allocated 1 share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) For the purposes of subsections (1) and (2), a deceased individual who left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

(4) As used in this section:

(a) "Deceased child" or "deceased descendant" means a child or descendant who either predeceases the distribution date or is considered to predecease the distribution date under section 2702.

(b) "Distribution date" means, with respect to an interest, the time when the interest is to take effect in possession or enjoyment. The distribution date does not need to occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who does not predecease the distribution date and is not considered to have predeceased the distribution date under section 2702.

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

Popular Name: EPIC

700.2719 Worthier-title doctrine abolished.

Sec. 2719.

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family", or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

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

Popular Name: EPIC

700.2720 Interests in "heirs".

Sec. 2720.

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state, in the shares that would

succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living, but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

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

Popular Name: EPIC

700.2721 Construction as to age of majority.

Sec. 2721.

A provision contained in a governing instrument that makes reference to a "minor", "age of majority", or a similar phrase differentiating between an individual's majority and minority status shall be construed to refer to the legal age of majority in effect at the time the governing instrument was executed.

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

Popular Name: EPIC

700.2722 Repealed. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Compiler's Notes: The repealed section pertained to honorary trusts and trusts for pets.

Popular Name: EPIC

700.2723 Will, trust, or beneficiary designation of decedent who dies after December 31, 2009 and before January 1, 2011; presumption; retroactive effective date; "2010 federal tax relief act" defined.

Sec. 2723.

(1) Except as provided in subsection (3), for purposes of interpreting a will, trust, or beneficiary designation of or by a decedent who dies after December 31, 2009 and before January 1, 2011, a will, trust, or beneficiary designation is presumed to refer to the federal estate tax and federal generation-skipping transfer tax laws as they apply to estates of decedents who die on January 1, 2010, in accordance with section 302(c) of the 2010 federal tax relief act without regard to the election permitted by section 301(c) of that act, if either of the following applies to the will, trust, or beneficiary designation:

(a) The will, trust, or beneficiary designation contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, taxable estate, gross estate, estate tax value, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the internal revenue code of 1986, 26 USC 1 to 9834, relating to the federal estate tax or generation-skipping transfer tax.

(b) The will, trust, or beneficiary designation measures a share of an estate, trust, or contractual benefit subject to a beneficiary designation based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax or based on a similar provision of federal estate tax or federal generation-skipping transfer tax law.

(2) A presumption that arises under subsection (1) is a rebuttable presumption that the decedent intended that the formula be construed as provided in subsection (1). A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption is applicable shall give notice to each beneficiary whose interest is affected by the presumption. A presumption that arises under subsection (1) does not preclude a fiduciary from making any available election, including an election under section 301(c) of the 2010 federal tax relief act. A

fiduciary who has made an election under section 301(c) of the 2010 federal tax relief act may commence a proceeding to determine whether the decedent would not have intended the formula to be construed as provided in subsection (1). All interested persons affected by a presumption that arises under subsection (1) may enter into a nonjudicial settlement under section 7111 that the decedent intended the formula to be construed in a different manner from the presumption under subsection (1). A beneficiary whose interest is affected by the presumption or a fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation may commence a proceeding to determine whether the decedent intended that the formula be construed as provided under subsection (1). Solely for the purpose of determining the intent of the decedent regarding the formula under this section, the court may consider the surrounding circumstances and the rules of construction. A person who commences a proceeding under this section has the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in subsection (1). A proceeding under this subsection shall be commenced or a nonjudicial settlement under this subsection shall be executed within whichever of the following is earlier:

(a) Two years after the decedent's death.

(b) Six months after the fiduciary sent the beneficiary a notice of the presumption under this subsection or the due date for filing the federal estate tax return of the decedent, if later.

(3) A presumption under subsection (1) does not apply with respect to a will, trust, or beneficiary designation that is executed or amended after December 31, 2010, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date when no federal estate or generation-skipping transfer tax would apply.

(4) This section is a remedial response to changes in the federal estate tax and generation-skipping transfer tax and takes effect retroactively on January 1, 2010.

(5) As used in this section, "2010 federal tax relief act" means the tax relief, unemployment insurance reauthorization, and job creation act of 2010, Public Law 111-312.

History: Add. 2010, Act 224, Eff. Jan. 1, 2010 ;-- Am. 2012, Act 303, Imd. Eff. Sept. 25, 2012

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