

Senate Bill 39

Last year, the legislature modernized and updated Michigan's law that establishes authority for making a deceased person's funeral arrangement and final disposition decisions, by enacting Public Act 57 of 2016. Included among these reforms were certain circumstances under which a surviving spouse might forfeit right of disposition authority. In one instance, however, the forfeiture of a surviving spouse's rights goes too far, especially in light of a Michigan Court of Appeals decision issued after P.A. 57 was enacted, but prior to its taking effect.

Before P.A. 57, a surviving spouse's right to make funeral arrangement and final disposition decisions was paramount, and could only be abrogated by a final divorce judgment or circuit court order. This rule proved to be too rigid in application. So, Public Act 57 allowed for certain circumstances where the surviving spouse would not necessarily have priority. For example, it extinguished the surviving spouse's authority if a divorce action is pending—not just when the divorce judgment is final. Additionally, the measure applied EPIC's spousal forfeiture provisions (those circumstances that would prevent a spouse from electing against an estate) to funeral arrangement and final disposition decisions, as well.

While generally these spousal forfeiture categories are applicable in a right of disposition context, one category is not. That category forfeits spousal rights for those who have been "separated" from the decedent for one year or more prior to death in one of the following ways:

- Being willfully absent from the decedent spouse
- Deserted the decedent spouse
- Willfully neglected or refused to provide support.

While these may appear clear on the surface, last May the Michigan Court of Appeals demonstrated how unworkable these categories are in establishing priority for funeral arrangement and final disposition decisions. In *In re Estate of Lyle Seth Peterson*, the Court found that despite the fact the decedent and surviving spouse had not lived together for over four years, the surviving spouse was **not** willfully absent within the meaning of this section of EPIC because the surviving spouse did not willfully cause the separation.

Applying this legal standard to funeral arrangements is completely unreasonable. Must a funeral director inquire after a death whether a separated spouse "willfully" caused the separation? The funeral arrangements conference is not the place to discuss such sensitive matters. Senate Bill 39 would remove application of this standard to right of disposition decision-making.

Enacting Senate Bill 39 would not, however, automatically result in separated surviving spouses ultimately possessing right of disposition authority. Public Act 57 includes spousal separation as a factor that a Probate Court may consider if another relative challenges the priority of the surviving spouse. The matter could be adjudicated in court—not in the funeral arrangements conference room.