

## **PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN**

Position Statement Regarding HB 5362 and 5398.

Testimony provided by: Nathan Piwowski, Chair, Legislative Development and Drafting Committee of the Probate and Estate Planning Section of the State Bar of Michigan

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### **1. Introduction**

Good afternoon. My name is Nathan Piwowski. I am a member of the council of the Probate and Estate Planning Section of the State Bar of Michigan, and chair of the Section's Legislative Development and Drafting Committee. I am here today to share my Section of the State Bar's position on House Bills 5362 and 5398.

The Probate and Estate Planning Section is not the State Bar of Michigan itself, but rather a Section whose members choose voluntarily to join, based on common professional interest. The Section's formal position statement accompanies the written testimony that I have filed with your committee.

### **2. Public Policy Position**

Our Section and Committee have worked closely with these bills' sponsor, to simplify and modernize Michigan's certificate of trust rules.

A certificate of trust is a sworn document that provides key information about a trust. Certificates of trust make it easier for banks, title companies, and other parties to rely on a trustee's representation that it has the legal authority to act on behalf of the trust. Without certificates of trust, trustees often have to provide full copies of the trust instrument, which contain private information that is usually irrelevant to the financial transaction that the trustee wants to complete.

Michigan currently has two different sets of rules for certificates of trust. One applies to real estate transactions. The other applies to non-real estate assets, and can be found in the Michigan Trust Code. HB 5362 and 5398 would harmonize these two systems. Importantly, this would mean that a successor trustee would not necessarily have to hire a lawyer to sign a certificate for a real estate transaction, as is currently the case. We believe that the proposal offers the following advantages:

- By allowing a trustee to simply summarize a trust's terms, rather than requiring a

verbatim recitation of various key provisions, these proposals may reduce the costs and delays that are currently associated with preparing a real estate certificate.

- By allowing a trustee to sign real estate certificates, these proposals may reduce the legal costs associated with real estate certificates.
- By harmonizing real estate and Trust Code certificates, these proposals should reduce mistakes and confusion.
- It will eliminate the requirement that the certificate name nominated successor trustees. This requirement can cause confusion, since these nominated successors may not ever serve. And the identity of nominated successors can sometimes be a sensitive, controversial decision that a trust's settlor may not want to disclose during his or her lifetime.

While preparing drafting this proposal, the Section sought feedback from the Michigan Land Title Association and Michigan Bankers Association. In response to their feedback, we have agreed to a variety of changes that are included in the substitute S-1 to each of these bills.

Therefore, on behalf of the Probate and Estate Planning Council of the State Bar of Michigan, we support the Substitutes House Bills 5362 and 5398.

Thank you for your consideration.