

Act No. 662  
Public Acts of 2018  
Approved by the Governor  
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**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Reps. Kesto, Iden and Calley

# **ENROLLED HOUSE BILL No. 6129**

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending section 7704 (MCL 700.7704), as added by 2009 PA 46, and by adding section 7703b.

*The People of the State of Michigan enact:*

Sec. 7703b. (1) A trust instrument may include a separate trustees provision.

(2) While a separate trustees provision applies, the whole trusteeship of the aggregate trust is divided, under the terms of the separate trustees provision, into discrete sets of separately accepted fiduciary responsibilities, with each discrete set separately allocated to 1 or another of the aggregate trust’s separate trustees. All of the following apply while a separate trustees provision applies:

(a) Except as provided in subdivision (c), the aggregate trust’s separate trustees are not treated as cotrustees in their relations to one another. With regard to the common title to the trust property described in subdivision (c)(i), all of the following apply:

(i) A separate investment trustee accepts the common title only for purposes of performing the trustee investment function described by the governing separate trustees provision for the benefit of the trust beneficiaries.

(ii) A separate distributions trustee accepts the common title only for purposes of administering a discretionary trust provision specified in the governing separate trustees provision for the benefit of the trust beneficiaries affected by the specified discretionary trust provisions.

(iii) A separate resultant trustee accepts the common title only for purposes of performing all trustee functions not allocated by the governing separate trustees provision to either of the following:

(A) A separate investment trustee, if any.

(B) A separate distributions trustee.

(b) A separate trustee shall act on its own authority with respect to each of its separate trustee functions. A separate trustee does not need approval from any other separate trustee to conduct its separate trustee functions.

(c) The aggregate trust's separate trustees are treated as cotrustees in their relations to one another only for the following purposes:

(i) Taking, holding, transferring, and defending title to trust property.

(ii) Determining venue and interested persons in proceedings concerning the aggregate trust.

(iii) Liability, if any, for income, property, or other taxes attributable to trust property.

(iv) The privileges and immunities of cotrustees under general principles of law and equity to comment to a settlor or beneficiary of a trust or others on one another's performance of fiduciary duties.

(d) The aggregate trust's separate trustees are not cotrustees for either of the following purposes:

(i) Joinder of necessary parties in a proceeding for breach of trust.

(ii) The requirement in section 7402 that the same person is not the sole trustee and sole beneficiary of a trust. If the aggregate trust has only 1 beneficiary, the beneficiary may not be a separate trustee of the trust unless both of the following apply:

(A) The separate trustee comprises a cotrusteeship of which the beneficiary is a cotrustee.

(B) The trust instrument prohibits the beneficiary from serving alone.

(e) A separate trustee shall not accept the separate trust associated with, or, except as otherwise provided in this subdivision, participate in or provide advice regarding the performance of, a separate trustee function of any other separate trustee of the aggregate trust. Ministerial acts performed by 1 separate trustee in connection with a separate trustee function of another separate trustee of the aggregate trust are not considered an acceptance of the separate trust associated with the separate trustee function of the other separate trustee. As used in this subdivision, "ministerial acts" includes any of the following:

(i) Confirming that an investment or distribution directive of another separate trustee has been carried out.

(ii) Recording and reporting the actions of another separate trustee or conferring with another separate trustee for purposes of administrative coordination or efficiency.

(f) A separate trustee does not have a duty to petition the court or to take other affirmative action to ensure that any vacancy in any separate trusteeship is filled. If a separate trustee petitions the court or takes other affirmative action to ensure that a vacancy in a separate trusteeship is filled, both of the following apply:

(i) The separate trustee is not considered to have accepted the separate trust associated with the vacant separate trusteeship.

(ii) The separate trustee does not have a duty to petition the court or take other affirmative action to ensure that any other vacancy in a separate trusteeship is filled.

(3) A separate trustees provision must determine all of the following:

(a) If there is a separate investment trustee, that the separate investment trustee shall perform the trustee investment function.

(b) That 1 or more separate distributions trustees, if any, shall exercise discretion under 1 or more specified discretionary trust provisions.

(c) Which of the aggregate trust's separate trustees shall perform, during any period in which the aggregate trust is not a unitrust, the function of allocating between principal and income, for fiduciary accounting purposes, receipts and disbursements or distributions affected by the separate trustees' separate trustee functions.

(d) Which of the aggregate trust's separate trustees is responsible for preparation and filing of tax and information returns for the aggregate trust and for responding on behalf of the aggregate trust to inquiries from governmental agencies.

(e) Which of the aggregate trust's separate trustees is responsible for responding to a proceeding challenging a purpose or the validity of the trust.

(f) Which of the aggregate trust's separate trustees is responsible for determining whether at any time cash or other property will be loaned by the trust to any of the following:

(i) One or more trust beneficiaries.

(ii) One or more business enterprises in which a trust beneficiary has an ownership interest.

(iii) One or more business enterprises in which the aggregate trust itself has an ownership interest.

- (g) For a separate investment trustee, whether the separate investment trustee or the separate resultant trustee shall determine the aggregate trust's asset allocation for investment purposes.
- (h) That the separate resultant trustee is responsible for the custody of the aggregate trust's property.
- (4) With regard to a separate trustee function of a separate trustee, all of the following apply:
- (a) The separate trustee has all of the duties and powers of a trustee described in this part and part 8 of this article.
- (b) The separate trustee is subject to control by both of the following in the same circumstances as would be a trustee or cotrusteeship that is not a separate trustee:
- (i) Each settlor of a revocable trust.
- (ii) A holder of a power to direct a trustee, if any.
- (c) The separate trustee is required to seek or consider the advice of a designated trust advisor, if any, in the same circumstances as would a trustee or cotrusteeship that is not a separate trustee.
- (5) If a separate trustee comprises a cotrusteeship, with regard to a separate trustee function of the separate trustee, the cotrustees have all of the duties and powers of cotrustees described in this part.
- (6) A separate trustee has the duty to inform and report on each of its separate trustee functions to both of the following:
- (a) Trust beneficiaries as described in section 7814. However, a separate trustee is not required to provide a beneficiary a report that the separate trustee knows will duplicate a report that another separate trustee of the aggregate trust provided or will provide to the beneficiary.
- (b) Each other separate trustee of the aggregate trust as is reasonably necessary for the other separate trustee to perform a separate trustee function of the other separate trustee.
- (7) A separate trustee does not have a duty to do any of the following:
- (a) Monitor or review the actions of any other separate trustee of the aggregate trust.
- (b) Notify or warn a settlor or beneficiary of the aggregate trust of a breach of trust or possible breach of trust on the part of any other separate trustee.
- (8) If a separate trustee notifies or warns a settlor or beneficiary as described in subsection (7)(b), both of the following apply:
- (a) The separate trustee is not considered to have accepted the separate trust associated with the separate trustee function of the other separate trustee.
- (b) The separate trustee does not have a duty to notify or warn a settlor or beneficiary of any other breach or possible breach of trust on the part of any other separate trustee.
- (9) Absent clear and convincing evidence of collusion in a breach of trust, all of the following apply:
- (a) A separate trustee is not liable for the act or omission of any other separate trustee of the aggregate trust.
- (b) A separate trustee in breach of a trustee duty of a separate trustee function of the separate trustee is the only separate trustee of the aggregate trust obliged to defend or otherwise respond to any proceeding brought by a trust beneficiary regarding that breach.
- (c) Except as provided in subdivision (d), a separate trustee is liable to trust beneficiaries for breach of a trustee duty of a separate trustee function of the separate trustee as if the other separate trustees of the aggregate trust were not in office and the separate trustee were the sole trustee of the aggregate trust.
- (d) A separate trustee may be liable concerning a trustee function of another separate trustee of the aggregate trust only for the separate trustee's own actions in the performance of ministerial acts pursuant to the other separate trustee's instruction and only to the extent the separate trustee acts in bad faith.
- (10) As used in this section:
- (a) "Affirmative action" by a separate trustee does not include a failure to act.
- (b) "Aggregate trust" means the inclusive set of separate relations of trust to be separately accepted by the separate trustees under a given separate trustees provision.
- (c) "Cotrusteeship" means a set of 1 or more cotrustees whose relations to one another in respect of trust property is governed by section 7703.
- (d) "Separate distributions trustee" means a person or a cotrusteeship that is designated by a separate trustees provision to exercise discretion as a trustee or trustees under a discretionary trust provision.
- (e) "Separate investment trustee" means a person or a cotrusteeship that is designated by a separate trustees provision to perform the trustee investment function as a trustee or trustees.

(f) “Separate resultant trustee” means a person or a cotrusteeship that is designated as a trustee or trustees to perform all trustee functions not allocated by the separate trustees provision to a separate investment trustee or to any separate distributions trustee.

(g) “Separate trustee” means a separate resultant trustee, separate investment trustee, or separate distributions trustee.

(h) “Separate trustees provision” means a trust provision that designates or provides a method of designating both of the following:

(i) A separate resultant trustee.

(ii) A separate investment trustee or 1 or more separate distributions trustees.

(i) “Separate trusteeship” means the office of a separate trustee.

(j) “Trustee investment function” means a trustee function expressly allocated by the separate trustees provision to a separate investment trustee. A trustee investment function may be broadly or narrowly defined by the separate trustees provision and may include any of the following:

(i) Determining for trust investment purposes the retention, purchase, sale, assignment, exchange, tender, or encumbrance of trust property and the investment and reinvestment of undistributed income and principal of the aggregate trust.

(ii) Management, control, and exercise of voting powers related directly or indirectly to any trust asset.

(iii) For nonpublicly traded investments or property for which there is no readily available market value, determining the methodology for valuing the property and the frequency of valuations.

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

(a) A person designated as trustee rejects the trusteeship.

(b) A person designated as trustee cannot be identified or does not exist.

(c) A trustee resigns.

(d) A trustee is disqualified or removed.

(e) A trustee dies.

(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. Though any separate trustee may comprise a cotrusteeship, the relation between respective separate trustees serving under a given separate trustees provision is not itself a cotrusteeship. A vacancy in a trusteeship must be filled if the vacancy leaves either of the following:

(a) A trust that is not subject to a separate trustees provision as of the time of the vacancy without any remaining trustee.

(b) Any of the several separate trusteeships governed by an operative separate trustees provision without any remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy must be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy must be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection.

(c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

(6) As used in this section, “cotrusteeship”, “separate trustee”, “separate trustees provision”, and “separate trusteeship” mean those terms as defined in section 7703b.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

(a) House Bill No. 6130.

(b) House Bill No. 6131.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor