

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 6
REVOCABLE TRUSTS

700.7601 Capacity of settlor of revocable trust.

Sec. 7601. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7602 Revocation or amendment of revocable trust.

Sec. 7602. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to any of the following:

- (a) A trust created under a trust instrument executed before April 1, 2010.
- (b) A trust created by the exercise of a power described in section 7820a.
- (c) A trust created by the exercise of a power of appointment held by a trustee in a fiduciary capacity.

(2) If a revocable trust is created or funded by more than 1 settlor, all of the following apply:

(a) To the extent that the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent that the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) Upon notification by the settlor of the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust in any of the following ways:

(a) By substantially complying with a method provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, in either of the following ways:

(i) If the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor's intent to revoke or amend the trust.

(ii) If the trust is an oral trust, by any method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a durable power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(6) A conservator or plenary guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by the terms of the trust and with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or the settlor's successors in interest, including the trust beneficiaries, for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7603 Powers of settlor; exceptions; settlor as incapacitated individual; powers of withdrawal; actions by predecessor trustee.

Sec. 7603. (1) Subject to subsection (2), while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. This subsection does not apply to either of the following:

(a) A trust created by the exercise of a power described in section 7820a.

(b) A trust created by the exercise of a power of appointment held by a trustee in a fiduciary capacity.

(2) If the trustee reasonably believes that the settlor of a revocable trust is an incapacitated individual, the trustee shall keep the settlor's designated agent or, if there is no designated agent or if the sole agent is a trustee, each beneficiary who, if the settlor were then deceased, would be a qualified trust beneficiary informed of the existence of the trust and reasonably informed of its administration.

(3) While a trust is not revocable and while a person has a currently exercisable power of withdrawal over

the entire principal of the trust, the duties of a trustee are owed exclusively to the person.

(4) A person who succeeds to the position of trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also the trust settlor is not liable for an action of the settlor while the settlor was serving as trustee.

(5) With respect to a predecessor trustee who was also the settlor, the successor trustee has no responsibility to investigate a transaction by the predecessor trustee, to review an account, to review an action of the predecessor trustee, or to take action for a breach of trust by the predecessor trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

700.7604 Proceeding to contest validity of revocable trust; limitation; distribution of property; liability.

Sec. 7604. (1) Except as provided in subsection (2), a person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

- (a) Two years after the settlor's death.
- (b) Six months after the trustee sent the person a notice informing the person of all of the following:
 - (i) The trust's existence.
 - (ii) The date of the trust instrument.
 - (iii) The date of any amendments known to the trustee.
 - (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.
 - (v) The settlor's name.
 - (vi) The trustee's name and address.
 - (vii) The time allowed for commencing a proceeding.

(2) If a trust that was revocable at the settlor's death becomes an undisclosed trust as that term is defined in section 7409a, a person from whom information described in section 7814(2)(a) to (c) is withheld under section 7409a(1)(a)(i) during the 2-year period following the settlor's death may commence a judicial proceeding to contest the validity of the trust within the earlier of the following:

(a) Two years after the trustee provided the person the information described in section 7814(2)(a) to (c) that was withheld under section 7409a(1)(a)(i) from the person during the 2-year period following the settlor's death.

(b) Six months after the trustee sent the person a notice described in subsection (1)(b).

(3) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless either of the following applies:

- (a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.
 - (b) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 63 days after the contestant sent the notification.
- (4) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.7605 Liability of trust for expenses, claims, and allowances.

Sec. 7605. (1) The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:

- (a) The administration expenses of the settlor's estate.
- (b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.
- (c) Homestead, family, and exempt property allowances.

(2) A trust established as part of, and all payments from, an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401, shall not be considered to be a trust described in subsection (1).

(3) This section does not impair a right that an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the internal revenue code, 26 USC 414.

(4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7606 Payment of expenses and obligations of settlor's estate; duty of trustee.

Sec. 7606. (1) A trustee of a trust described in section 7605(1) shall pay to the personal representative of the settlor's estate the amount that the personal representative certifies in writing to the trustee is required to pay the administration expenses of the settlor's estate; an enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; and homestead, family, and exempt property allowances. The trustee may rely on the certificate of the personal representative without liability to a trust beneficiary or another party. If a personal representative is not appointed for the settlor's estate, the trustee shall pay directly to the creditor an enforceable and timely served claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses. If a personal representative is not appointed for the settlor's estate within 4 months after the date of the publication of notice to creditors, a trust described in section 7605(1) is not liable for payment of homestead, family, or exempt property allowances. A payment made by a trustee is subject to this section, but the payment shall be made exclusively out of property, or the proceeds of property, that is includable in the settlor's gross estate for federal estate tax purposes, other than assets described in section 7605(2) to (4).

(2) Subject to section 7607, unless a settlor provides in his or her will or, in the absence of such a provision, designates in the trust the money or property passing under a trust to be used as described in section 7605(1), the administration expenses of the settlor's estate; an enforceable and timely filed claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses; or homestead, family, and exempt property allowances, to be paid in accordance with subsection (1), shall be paid from the property of the trust in the following order:

(a) Property of the trust residue remaining after all distributions that are to be satisfied by reference to a specific property or type of property, fund, money, or statutory amount.

(b) Property that is not to be distributed out of specified or identified property or a specified or identified item of property.

(c) Property that is to be distributed out of specified or identified property or a specified or identified item of property.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7607 Rules regarding payment of expenses and obligations; priority; decedent as settlor of more than 1 trust.

Sec. 7607. (1) The following rules apply to section 7606(2):

(a) Upon the failure or insufficiency of money or property out of which payment should be made, to the extent of the insufficiency, a distribution of property from the trust that is to be satisfied out of specified or identified property shall be classed as a distribution to be satisfied out of the general trust property not otherwise disposed of in the terms of the trust.

(b) A distribution of property from the trust given for valuable consideration abates with other distributions of the same class only to the extent of the excess over the amount of the value of the consideration until all others of the same class are exhausted.

(c) Except as otherwise provided in this section, distributions of property from the trust abate equally and ratably and without preference or priority as between real and personal property.

(d) If a specified or identified item of property that has been designated for distribution in the terms of the trust or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the trust beneficiary whose property is sold or taken, and, before distribution, the trustee shall determine the amounts of the respective contributions, which shall be paid or withheld before distribution is made.

(2) Costs and expenses of trust administration, including trustee compensation and attorney fees, shall be paid by the trustee before and in preference to the administration costs and expenses of the settlor's estate, an

enforceable and timely filed claim of a creditor of the settlor, and homestead, family, and exempt property allowances. If, after paying costs and expenses of trust administration, the trust property is insufficient to pay in full all charges for which the trust is liable under section 7605(1), the trustee shall make payment in the following order of priority:

- (a) Costs and expenses of administration of the decedent's estate.
 - (b) Reasonable funeral and burial expenses.
 - (c) Homestead allowance.
 - (d) Family allowance.
 - (e) Exempt property.
 - (f) Debts and taxes with priority under federal law.
 - (g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including compensation of a person attending the decedent.
 - (h) Debts and taxes with priority under other laws of this state.
 - (i) All other claims.
- (3) A preference shall not be given in the payment of a charge over another charge of the same class under subsection (2), and a charge due and payable is not entitled to a preference over a charge not due.
- (4) If the decedent was the settlor of more than 1 trust described in section 7605(1), the charges described in that section are payable pro rata from those trusts based on the gross values of the respective trusts on the date of the decedent's death. Each trustee is entitled to right of contribution as necessary to effect the pro rata liability. The allocation and contribution, however, are subject to provisions in the trusts regarding the allocation and burden of the charges. If there is conflict between the terms of the trusts regarding the allocation and burden of the charges, the decedent's will controls.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7608 Duty of trustee to give notice.

Sec. 7608. If there is no personal representative of the settlor's estate to whom letters of administration have been issued so that the publication and notice requirements of section 3801 have not been discharged, each trustee of a trust described in section 7605(1) shall publish and serve a notice to creditors in the same manner, with the same duties, and with the same protection for the trustee and the attorney for the trustee as described in section 3801 for a personal representative. The notice shall comply with applicable court rules and contain the name of the trust's deceased settlor; the trust's name or other designation, if any; the date the trust was established; the name and address of each trustee serving at the time of or as a result of the settlor's death; and the name and address of the trustee's attorney, if any. The notice shall state the date of publication.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7609 Presentation of claims against trust.

Sec. 7609. (1) Subject to section 7611, if notice to claimants is given by a trustee as provided in section 7608, a claimant shall present a claim against a trust described in section 7605(1) in either of the following ways:

(a) The claimant may mail or deliver to the trustee a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented on the trustee's receipt of the claim. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate a claim's presentation.

(b) The claimant may commence a proceeding to obtain payment of a claim against the trust in a court where the trustee is subject to jurisdiction. The commencement of the proceeding shall occur within the time limit for presenting the claim. Presentation of a claim is not required in regard to matters claimed in proceedings against the trust or settlor that were pending at the time of the settlor's death.

(2) If a personal representative is appointed for the settlor's estate, presentation of a claim against the settlor's estate shall be made in the manner described in section 3804, and such a presentation is sufficient to assert liability against a trust described in section 7605(1) without an additional presentation of the claim against the trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7610 Presentation of claims to assert liability; time limitation; exceptions.

Sec. 7610. (1) Subject to section 7611, if not barred earlier by another statute of limitations, a claim against the settlor of a trust described in section 7606(1) that arose at or before the settlor's death that a person seeks to recover from the trust is barred against the trust, each trustee of the trust, and a trust beneficiary, unless presented within 1 of the following times:

(a) If notice is given in compliance either with section 3801 or section 7608, within 4 months after the date of publication of notice to creditors.

(b) For a creditor known to the personal representative at the time of publication or during the 4 months following publication, or known to the trustee at or during such a time if publication occurred under section 7608, within 28 days after the subsequent sending of notice or 4 months after the date of publication of notice to creditors, whichever is later.

(c) If the notice requirements of either section 3801 or section 7608 are not met, within 3 years after the settlor's death.

(2) This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien upon property held in the trust.

(b) A proceeding to establish the settlor's or the trustee's liability for which the settlor or the trustee is protected by liability insurance to the limits of the insurance protection only.

(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the trustee or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7611 Allowance or disallowance of claims against revocable trust.

Sec. 7611. If there is no personal representative appointed for the settlor's estate and notice is given in accordance with section 7608, the allowance or disallowance of a claim presented in the manner described in section 7609(1) and within a time period described in section 7610 is governed by the following provisions:

(a) The trustee may deliver or mail a notice to the claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the trustee changes a decision concerning the claim, the trustee shall notify the claimant. The trustee shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim has been barred. A claim that is disallowed in whole or in part by the trustee is barred to the extent not allowed unless the claimant commences a proceeding against the trustee not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure by the trustee to deliver or mail to a claimant notice of action on the claim within 63 days after the time for the claim's presentation has expired constitutes a notice of allowance.

(b) After allowing or disallowing a claim, the trustee may change the allowance or disallowance as provided in this subdivision. Before payment, the trustee may change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment, or an order directing payment of the claim. The trustee shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subdivision (a). The trustee may change a disallowance to an allowance, in whole or in part, until it is barred under subdivision (a). After a claim is barred, it may be allowed and paid only if the trust is solvent and all whose interests would be affected consent.

(c) Upon the trustee's or a claimant's commencement of a proceeding, the court may allow in whole or in part a claim properly presented in due time and not barred by subdivision (a).

(d) A judgment in a proceeding in another court against a trustee to enforce a claim against a decedent's estate constitutes an allowance of the claim.

(e) Unless otherwise provided in a judgment in another court entered against the trustee, an allowed claim bears interest at a rate determined under section 6013 of the revised judicature act of 1961, MCL 600.6013, for the period commencing 63 days after the time for original presentation of the claim has expired, unless based on a contract that provides for interest, in which case the claim bears interest in accordance with the contract.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7612 Payment of claims by trustee.

Sec. 7612. (1) Upon the expiration of 4 months after the date of the publication of the notice to creditors, the trustee shall proceed to pay the claims allowed against the trust in the order of priority prescribed in

section 7607(2)(f) to (i), after making provision for costs and expenses of trust administration, for reasonable funeral and burial expenses, for each claim already presented that is not yet allowed or whose allowance is appealed, and for each unbarred claim that may yet be presented. A claimant whose claim is allowed, but not paid as provided in this section, may petition the court to secure an order directing the trustee to pay the claim to the extent that money of the trust is available for the payment.

(2) At any time, the trustee may pay a claim that is not barred, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the trustee fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the trustee, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed but the whereabouts of the claimant is unknown at the time the trustee attempts to pay the claim, upon petition by the trustee and after notice the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7613 Secured claims; payment; basis.

Sec. 7613. Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders the security. Otherwise, payment shall be upon the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the claim amount allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or does not do so, upon the claim amount allowed less the value of the security as determined by converting it into money according to the terms of the agreement under which the security is delivered to the creditor, or as determined by the creditor and trustee by agreement, arbitration, compromise, or litigation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7614 Claims due at future time, contingent claim, or unliquidated claim.

Sec. 7614. A claim that will become due at a future time, a contingent claim, or an unliquidated claim is governed by the following:

(a) If a claim becomes due or certain before the distribution of the trust, and if the claim is allowed or established by a proceeding, the claim shall be paid in the same manner as presently due and absolute claims of the same class.

(b) For a claim not covered by subdivision (a), the trustee or, on petition of the trustee or the claimant in a proceeding for the purpose, the court may provide for payment as follows:

(i) If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account.

(ii) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7615 Counterclaims of trustee.

Sec. 7615. In allowing a claim, the trustee may deduct a counterclaim that the trustee has against the claimant. In determining a claim against a trust, the court shall reduce the amount allowed by the amount of a counterclaim and, if the total counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC