

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998
Article VII
MICHIGAN TRUST CODE
Part 1
GENERAL PROVISIONS AND DEFINITIONS

700.7101 Short title of article.

Sec. 7101.

This article shall be known and may be cited as the "Michigan trust code".

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

Popular Name: EPIC

700.7102 Scope.

Sec. 7102.

This article applies to trusts as defined in section 1107.

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

Popular Name: EPIC

700.7103 Definitions.

Sec. 7103.

As used in this article:

- (a) "Action", with respect to a trustee, includes an act or a failure to act.
- (b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code of 1986, 26 USC 2041 and 2514.
- (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) if the charitable purpose is a material purpose of the trust.
- (d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:
 - (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.
 - (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.
 - (iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.
 - (iv) Whether the distribution of trust property is from income or principal or both of the trust.
 - (v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.
- (e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.
- (f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:
 - (i) Exercisable by a trustee and limited by an ascertainable standard.

- (ii) Exercisable by another person only on consent of the trustee or a person holding an adverse interest.
- (g) "Qualified trust beneficiary" means either of the following:
 - (i) A trust beneficiary whom the settlor intends to benefit as a material purpose of the trust and to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:
 - (A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
 - (B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.
 - (C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
 - (ii) If on the date a trust beneficiary's qualification is determined there is no trust beneficiary described in subparagraph (i), a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:
 - (A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
 - (B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.
 - (C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.
- (i) "Settlor" means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment does not cause the holder of a power of appointment to be treated as a settlor of the trust.
- (j) "Spendthrift provision" means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary's interest.
- (k) "Support provision" means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions under the trust provision is not a support provision, but rather is a discretionary trust provision.
- (l) "Trust beneficiary" means a person to whom 1 or both of the following apply:
 - (i) The person has a present or future beneficial interest in a trust, vested or contingent.
 - (ii) The person holds a power of appointment over trust property in a capacity other than that of trustee or trust director.
- (m) "Trust director" means that term as defined in section 7703a.
- (n) "Trust instrument" means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

History: 1998, Act 386, Imd. Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Imd. Eff. Apr. 1, 2010 ;-- Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012 ;-- Am. 2018, Act 664, Imd. Eff. Mar. 29, 2019 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7104 Repealed. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Compiler's Notes: The repealed section pertained to notice or knowledge of facts involving a trust.

Popular Name: EPIC

700.7105 Duties and powers of trustee; provisions of law prevailing over terms of trust.

Sec. 7105.

(1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

(a) The requirements under sections 7401 and 7402(1)(e) for creating a trust.

(b) Except as otherwise provided in sections 7703a and 7703b, the duty of a trustee to administer a trust in accordance with section 7801.

(c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(d) The duration limits specified in all of the following:

(i) Section 7408 for the care of animals.

(ii) Section 7409 for other noncharitable purpose trusts.

(iii) Section 7409a for nondisclosure periods.

(e) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

(f) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

(g) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

(h) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

(i) The obligations imposed on a trust director in section 7703a(4) and (5).

(j) Except as provided in section 7409a, the duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.

(k) The power of the court to order the trustee to provide statements of account and other information under section 7814(4).

(l) The effect of an exculpatory term under section 7703a(5)(b) or 7908.

(m) The effect of a release of a trustee or trust director from liability for breach of trust under section 7703a(8).

(n) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(o) Periods of limitation under this article for commencing a judicial proceeding.

(p) The power of the court to take action and exercise jurisdiction.

(q) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(r) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust must not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

(s) The requirement under section 7703b(2)(d) regarding the eligibility of a trust's sole beneficiary to be a separate trustee as that term is defined in section 7703b.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 664, Eff. Mar. 29, 2019 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

700.7107 Governing law.

Sec. 7107.

The meaning and effect of the terms of a trust are determined by the following:

(a) The law of the jurisdiction designated in the terms of the trust unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.

(b) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

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

Popular Name: EPIC

700.7108 Principal place of administration.

Sec. 7108.

(1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if any of the following apply:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

(b) A trust director's principal place of business is located in, or a trust director is a resident of, the designated jurisdiction.

(c) All or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer must include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under section 7704.

(7) The view of an adult beneficiary must be given weight in determining the suitability of the trustee and the place of administration.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 664, Eff. Mar. 29, 2019

Popular Name: EPIC

700.7109 Notice; methods; waiver.

Sec. 7109.

(1) Notice to a person under this article or the sending of a document to a person under this article shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed and identified facsimile or electronic message.

(2) Notice otherwise required under this article or a document otherwise required to be sent under this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this article or the sending of a document under this article may be waived in writing by the person to be notified or sent the document.

(4) Notice of a judicial proceeding shall be given as provided in sections 1401 to 1403 and as otherwise provided by court rule.

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

Popular Name: EPIC

700.7110 Others treated as qualified beneficiaries.

Sec. 7110.

(1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal under section 7408 or another noncharitable trust under section 7409 has the rights of a qualified trust beneficiary under this article.

(3) During the nondisclosure period of a trust described in section 7409a, a person granted a nondisclosure correlative right or protection power over the trust has the rights of a qualified trust beneficiary under this article.

(4) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.

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

Popular Name: EPIC

700.7111 Nonjudicial settlement agreement.

Sec. 7111.

(1) Except as otherwise provided in subsection (2), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(2) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement agreement shall not be used to accomplish the termination or modification of the trust.

(3) Matters that may be resolved by a nonjudicial settlement agreement include any of the following:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee's report or accounting.

(c) Direction to a trustee to perform or to refrain from performing a particular act or to grant to or to withhold from a trustee any power.

(d) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(e) Transfer of a trust's principal place of administration.

(f) Liability of a trustee for an action relating to the trust.

(4) Any interested person or trustee may request the court to approve or disapprove a nonjudicial settlement agreement. On a determination that the representation as provided in part 3 was adequate, that the agreement does not violate a material purpose of the trust, and that the agreement contains terms and conditions the court could have properly approved, the court shall enter an order approving the agreement.

(5) As used in this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

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

Popular Name: EPIC

700.7112 Rules of construction.

Sec. 7112.

The rules of construction in sections 2605 to 2608 that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

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

Popular Name: EPIC

700.7113 Penalty clause for contest of trust.

Sec. 7113.

A provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

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

Popular Name: EPIC

700.7114 Trustee having insurable interest under life insurance policy; conditions.

Sec. 7114.

A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued, both of the following are true:

(a) The insured is 1 of the following:

(i) A settlor of the trust.

(ii) An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(b) The life insurance proceeds are primarily for the benefit of 1 or more trust beneficiaries that have 1 of the following:

(i) An insurable interest in the life of the insured.

(ii) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (i), who are 1 of the following:

(A) Related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or affinity, to the insured.

(B) Stepchildren of the insured.

History: Add. 2014, Act 8, Imd. Eff. Feb. 11, 2014

Popular Name: EPIC

Part 2 JUDICIAL PROCEEDINGS

700.7201 Role of court in administration of trust.

Sec. 7201.

(1) A court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee's fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.

(3) A proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and a determination regarding the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do any of the following:

(a) Appoint or remove a trustee.

(b) Review the fees of a trustee.

(c) Require, hear, and settle interim or final accounts.

(d) Ascertain beneficiaries.

(e) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a trust.

(f) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

(g) Release registration of a trust.

(h) Determine an action or proceeding that involves settlement of an irrevocable trust.

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

Popular Name: EPIC

700.7202 Jurisdiction over trustee and beneficiaries.

Sec. 7202.

(1) By registering a trust or accepting the trusteeship of a registered trust or a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust. Notice of a proceeding shall be given to the trustee in accordance with section 1401 at the trustee's address as stated in the registration or as reported to the court and to the trustee's address then known to the petitioner.

(2) For purposes of a proceeding commenced by a trust beneficiary before registration, a trustee of a trust that is not registered in a proper place is subject to the personal jurisdiction of a court in which the trust could have been registered. In addition, a trustee who, within 28 days after receipt of a written demand by a trust settlor or beneficiary, fails to register a trust as required by the terms of the trust is subject to removal and denial of compensation or to surcharge as the court may direct.

(3) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration or having been properly registered in this state are subject to the jurisdiction of the courts of this

state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person who receives property from the trust.

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

Popular Name: EPIC

700.7203 Subject matter jurisdiction.

Sec. 7203.

(1) The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust as provided in section 1302(b) and (d).

(2) The court has concurrent jurisdiction with other courts of this state of other proceedings that involve a trust as provided in section 1303.

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

Popular Name: EPIC

700.7204 Venue.

Sec. 7204.

(1) Except as otherwise provided in subsection (2), venue for a proceeding involving a trust is as follows:

(a) For a proceeding under section 7203 involving a registered trust, in the place of registration.

(b) For a proceeding under section 7203 involving a trust not registered in this state, in any place where the trust properly could be registered and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) As otherwise specified by court rule.

(2) If a trust has no trustee and has not been registered, venue for a judicial proceeding for the appointment of a trustee is as follows:

(a) In a county in this state in which a trust beneficiary resides.

(b) In a county in which any trust property is located.

(c) If the trust is created by will, in the county in which the decedent's estate was or is being administered.

(d) As otherwise provided by court rule.

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

Popular Name: EPIC

700.7205 Trust proceedings; dismissal of matters relating to foreign trusts.

Sec. 7205.

(1) If a party objects, the court shall not entertain a proceeding under section 7203 that involves a trust that is registered or that has its principal place of administration in another state, unless either of the following applies:

(a) All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration.

(b) The interests of justice would otherwise be seriously impaired.

(2) The court may condition a stay or dismissal of a proceeding under this section on the consent of a party to

jurisdiction of the state in which the trust is registered or has its principal place of business, grant a continuance, or enter another appropriate order.

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

Popular Name: EPIC

700.7206 Court; concurrent jurisdiction of litigation involving trusts and third parties.

Sec. 7206.

The court where a trust is registered has concurrent jurisdiction with other courts of this state of an action or proceeding to determine the existence or nonexistence of the trust if created other than by will, of an action or proceeding against a creditor or debtor of the trust, and of another action or proceeding that involves a trustee and a third party.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7207 Proceedings; review of employment of agents and compensation of trustee and employees of trustee.

Sec. 7207.

On petition of an interested person, after notice to all other interested persons, the court may review the propriety of the employment of a person by a trustee including an attorney, auditor, investment advisor, or other specialized agent or assistant and the reasonableness of the compensation of the person so employed or the reasonableness of the compensation determined by the trustee for the trustee's own services. The court may order a person who receives excessive compensation from a trust to make an appropriate refund.

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

Popular Name: EPIC

700.7208 Trust proceedings; initiation by notice; interested persons.

Sec. 7208.

A proceeding under section 7203 is initiated by filing a petition in the court and giving notice to interested persons as provided in section 1401. The court may order notification of additional persons. A judgment or order binds each person who is given notice of the proceeding even if not all interested persons are notified.

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

Popular Name: EPIC

700.7209 Registration of trust.

Sec. 7209.

(1) The trustee of a trust that has its principal place of administration in this state may register the trust in the court at the place designated in the terms of the trust or, if none is designated, then at the principal place of administration. For purposes of this article, the principal place of the trust's administration is the trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee does not have such a place of business. For a corporate trustee, the usual place of business is the business location of the primary trust officer for the trust.

(2) For cotrustees, if not designated in the terms of the trust, the principal place of administration is 1 of the following:

(a) If there is only 1 corporate cotrustee, the corporate trustee's usual place of business.

(b) If there is only 1 professional fiduciary who is an individual and no corporate trustee, the professional fiduciary's usual place of business or residence.

(c) If neither subdivision (a) nor (b) applies, the usual place of business or residence of any of the cotrustees as agreed upon by them.

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

Popular Name: EPIC

700.7210 Registration procedures.

Sec. 7210.

(1) A trust is registered by the filing of a statement that states the trustee's name and address and in which the trustee acknowledges the trusteeship. The statement shall indicate if the trust has been registered elsewhere. The statement shall identify the trust in 1 of the following manners:

(a) For a trust created by will, by the name of the testator and the date and place of domiciliary probate.

(b) For a written inter-vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument and all amendments existing on the date of registration.

(c) For an oral trust, by information identifying the settlor or other source of property and describing the trust's time and manner of creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

(2) The trust instrument is not required to be filed with the court as part of the registration of a trust. If a trust is registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where that registration occurred or by an instrument executed by the trustee and all qualified trust beneficiaries. The order or instrument shall be filed with the registration in this state.

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

Popular Name: EPIC

700.7211 Registration; qualification of foreign trustee.

Sec. 7211.

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains a trust's principal place of administration in this state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required for the trustee to receive distribution from a local estate, to hold, invest in, manage, or acquire property located in this state, or to maintain litigation. This section does not affect a determination of what other acts require qualification as doing business in this state.

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

Popular Name: EPIC

Part 3
REPRESENTATION

700.7301 Representation; effect.

Sec. 7301.

(1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in section 7602, a person who under this part may represent a settlor who lacks capacity may receive notice and for purposes of section 7602 may give a binding consent on the settlor's behalf.

(4) A settlor may not represent or bind a trust beneficiary under this part with respect to the termination or modification of a trust under section 7411(1).

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

Popular Name: EPIC

700.7302 Representation; conflict of interest; holder of power of revocation or amendment or power of appointment.

Sec. 7302.

(1) To the extent there is no conflict of interest between the holder of a power of appointment and the person represented with respect to a particular question or dispute, the holder of a power of appointment, including a power of appointment in the form of a power of amendment or revocation, may represent and bind a person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

(2) For purposes of subsection (1), both of the following apply:

(a) There is no conflict of interest between the holder of a nonfiduciary power of appointment and a person whose interest is subject to the power to the extent the subject interest is liable to be extinguished by an exercise of the power.

(b) If a power of appointment is subject to a condition precedent other than the death of the holder in the case of a testamentary power, no interest is subject to the power until the condition precedent is satisfied.

(3) As used in this section, "nonfiduciary" means, with respect to a power of appointment, that the power is not held in a fiduciary capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7303 Representation by fiduciaries and parents.

Sec. 7303.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

- (a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.
- (b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.
- (c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.
- (d) A trustee may represent and bind the beneficiaries of the trust.
- (e) A personal representative of a decedent's estate may represent and bind persons interested in the estate.
- (f) A parent may represent and bind the parent's minor or unborn child if a conservator, plenary guardian, or partial guardian has not been appointed.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7304 Representation by person having substantially identical interest.

Sec. 7304.

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

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

Popular Name: EPIC

700.7305 Appointment of representative.

Sec. 7305.

(1) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(2) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this article, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a guardian ad litem may consider the general benefit accruing to the living members of the individual's family.

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

Popular Name: EPIC

700.7306-700.7308 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

Compiler's Notes: The repealed section pertained to personal liability of trustees, limitations on proceedings against trustees, and duties and liabilities of successor trustees.

Popular Name: EPIC

Part 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

700.7401 Creating trust; methods.

Sec. 7401.

- (1) A trust may be created by any of the following:
- (a) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death.
 - (b) Declaration by the owner of property that the owner holds identifiable property as trustee.
 - (c) Exercise of a power of appointment in favor of a trustee.
 - (d) Exercise of a power described in section 7820a.
 - (e) A promise by 1 person to another person, whose rights under the promise are to be held in trust for a third person.
- (2) The instrument establishing the terms of a trust is not rendered invalid because property or an interest in property is not transferred to the trustee or made subject to the terms of the trust concurrently with the signing of the instrument. Until property or an interest in property is transferred to the trustee or made subject to the terms of the trust, the person nominated as trustee has no fiduciary or other obligations under the instrument establishing the terms of the trust except as may have been specifically agreed by the settlor and the nominated trustee.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012

Popular Name: EPIC

700.7402 Creating trust; requirements.

Sec. 7402.

- (1) A trust is created only if all of the following apply:
- (a) The settlor has capacity to create a trust.
 - (b) The settlor indicates an intention to create the trust.
 - (c) The trust has a definite beneficiary or is either of the following:
 - (i) A charitable trust.
 - (ii) A trust for a noncharitable purpose under section 7409 or a trust for the care of an animal under section 7408.
 - (d) The trustee has duties to perform.
 - (e) The same person is not the sole trustee and sole beneficiary.
- (2) A trust beneficiary is definite if the trust beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (3) A power in a trustee to select a trust beneficiary from an indefinite class is valid only in a charitable trust.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7403 Trusts created in other jurisdictions.

Sec. 7403.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the

trust instrument was executed or the law of a jurisdiction to which, at the time of creation, any of the following applied:

- (a) The settlor was domiciled, had a place of abode, or was a national in the jurisdiction.
- (b) A trustee was domiciled or had a place of business in the jurisdiction.
- (c) Any trust property was located in the jurisdiction.

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

Popular Name: EPIC

700.7404 Trust purposes.

Sec. 7404.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

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

Popular Name: EPIC

700.7405 Charitable trusts; purposes; enforcement.

Sec. 7405.

(1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes, any purpose described in section 501(c)(3) of the internal revenue code, 26 USC 501, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not identify a particular charitable purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor, a named beneficiary, or the attorney general of this state, among others, may maintain a proceeding to enforce a charitable trust. The right of the settlor of a charitable trust to enforce the trust is personal to the settlor and may not be exercised by any of the following:

- (a) The settlor's heirs, assigns, or beneficiaries.
- (b) The settlor's fiduciary, other than the trustee of the charitable trust the enforcement of which is being sought.
- (c) An agent of the settlor acting pursuant to a durable power of attorney, unless the right to enforce the trust is expressly conferred on the agent by the power of attorney.

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

Popular Name: EPIC

700.7406 Creation of trust induced by fraud, duress, or undue influence.

Sec. 7406.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7407 Evidence of oral trust.

Sec. 7407.

Except as required by a statute other than this article, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

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

Popular Name: EPIC

700.7408 Trusts for pets.

Sec. 7408.

(1) A trust may be created to provide for the care of a designated domestic pet or animal alive during the settlor's lifetime. A trust created under this subsection terminates on the death of the animal or, if the trust was created to provide for the care of more than 1 domestic or pet animal alive during the settlor's lifetime, on the death of the last surviving animal.

(2) A trust authorized under this section may be enforced by a person appointed in the terms of the trust or, if there is not a person appointed in the terms of the trust, by a person appointed by the court. A person that has an interest in the welfare of an animal for which the trust is created may request the court to appoint a person to enforce the trust or to remove a person appointed in the terms of the trust.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Compiler's Notes: Former MCL 700.7408, which pertained to trustee authority regarding tax matters, was repealed by Act 46 of 2009, Eff. Apr. 1, 2010.

Popular Name: EPIC

700.7409 Honorary trusts.

Sec. 7409.

Except as otherwise provided in section 7408 or any other statute, the following rules apply:

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. A trust created under this section may be performed by the trustee according to the terms of the trust for not more than 25 years whether or not the terms of the trust contemplate a longer duration.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if there is not a person appointed in the terms of the trust, by a person appointed by the court.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Compiler's Notes: Former MCL 700.7409, which pertained to payment provisions, was repealed by Act 46 of 2009, Eff. Apr. 1, 2010.

Popular Name: EPIC

700.7409a Trusts with nondisclosure period.

Sec. 7409a.

(1) If the terms of a trust other than a charitable trust are embodied in a trust instrument that clearly express the settlor's intent that 1 or more items of prime disclosure information should be withheld, generally or in specified circumstances, from 1 or more of the trust beneficiaries, both of the following apply:

(a) During the nondisclosure period all of the following apply:

(i) To the extent necessary to effectuate the settlor's expressed intent, the trustee does not have the duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property and to notify qualified trust beneficiaries of the existence of the trust and the identity of the trustee.

(ii) The trustee may administer the trust in accordance with the settlor's expressed intent regarding nondisclosure of primary disclosure information to the extent made practicable by the terms of the trust given the circumstances of the beneficiaries and any reporting obligations imposed on the trustee by law other than this act.

(iii) If the trust instrument grants a nondisclosure correlative right, the trustee has a duty to administer the trust in accordance with the settlor's expressed intent regarding nondisclosure of primary disclosure information, but only to the extent made practicable by the terms of the trust given the circumstances of the beneficiaries and any reporting obligations imposed on the trustee by law other than this act.

(iv) Any purported appointment or distribution of assets of the instant trust to another undisclosed trust is ineffective to the extent it could cause the appointed or distributed assets to be administered continuously under the authority of this section for a period ending after the date on which the instant trust's maximum nondisclosure period ends.

(b) The trustee or any holder of either a nondisclosure correlative right or a protection power is not liable to any trust beneficiary because of the trustee's failure to follow the terms of the trust prescribing nondisclosure of prime disclosure information. The trustee's duty, if any, to follow the terms of the trust prescribing nondisclosure of prime disclosure information during the trust's nondisclosure period is owed solely to the holders, if any, of nondisclosure correlative rights, and the sole remedy of a nondisclosure correlative right holder for the trustee's breach of that duty is removal.

(2) If the trust instrument grants either a nondisclosure correlative right or a protection power, all of the following apply:

(a) On the reasonable request of a nondisclosure correlative right holder or protection power holder at any time during the trust's nondisclosure period, the trustee shall promptly furnish to the right or power holder a copy of the terms of the trust that describe or affect the holder's right or power.

(b) Within 63 days after accepting trusteeship of an undisclosed trust, the trustee shall notify all nondisclosure correlative right holders and protection power holders of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Within 63 days after the date the trustee acquires knowledge of the creation of an undisclosed trust of which the trustee is trustee or the date the trustee acquires knowledge that a formerly revocable trust of which the trustee is trustee has, by becoming irrevocable, whether by the death of the settlor or otherwise, become an undisclosed trust, the trustee shall notify all nondisclosure correlative right holders and protection power holders of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the power holders' rights or powers.

(3) On the date on which the nondisclosure period ends, the trust ceases to be an undisclosed trust and to the extent terms of the trust are inconsistent with the duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property and to notify qualified trust beneficiaries of the existence of the trust and the identity of the trustee, those terms cease to be effective.

(4) To the extent the trustee has not already provided the notice of the trust required under section 7814(2) by the end of the trust's nondisclosure period, the trustee is deemed for that purpose to have accepted the trust and to have acquired knowledge of the trust's creation on the date on which the nondisclosure period ends, and the identities of the qualified trust beneficiaries are determined for that purpose as of the time immediately preceding the end of the nondisclosure period.

(5) As used in this section:

(a) "Maximum nondisclosure period" means a period of 25 years from the later of the first date on which property becomes subject to the terms of the trust or the date on which the trust ceases to be revocable by the settlor.

(b) "Nondisclosure correlative right" means a right granted by the terms of a trust that allows the right holder to remove a trustee of the trust for the trustee's failure during the trust's nondisclosure period to follow, to the extent practicable, the terms of the trust prescribing nondisclosure of prime disclosure information.

(c) "Nondisclosure period" means the shorter of the trust's maximum nondisclosure period or the period from the beginning of the maximum nondisclosure period to the trust's termination.

(d) "Prime disclosure information" concerning a trust means the fact of the trust's existence, the identity of the trustee, the terms of the trust, or the nature or extent of the trust property.

(e) "Protection power" means a power granted by the terms of a trust that allows the power holder, acting in a fiduciary capacity, to direct the trustee of the trust for the benefit of the trust beneficiaries during the trust's nondisclosure period. A protection power may authorize the power holder to represent the trust beneficiaries in the sense described in section 7301(1) to (2) without regard to the application of sections 7302 to 7304.

(f) "Undisclosed trust" means a trust administered under this section during the nondisclosure period.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7410 Modification or termination of trust; procedures for approval or disapproval.

Sec. 7410.

(1) In addition to the methods of termination prescribed by sections 7411 to 7414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become impossible to achieve or are found by a court to be unlawful or contrary to public policy.

(2) A proceeding to confirm the termination of a trust under subsection (1) or to approve or disapprove a proposed modification or termination under sections 7411 to 7416 or trust combination or division under section 7417 may be commenced by a trustee or beneficiary. A proceeding to modify a charitable trust under section 7413 may be commenced by the persons with the power to enforce the terms of a charitable trust pursuant to section 7405.

History: Add. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7411 Modification or termination of noncharitable trust; consent; "settlor's representative" defined.

Sec. 7411.

(1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court on the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) On the consent of the qualified trust beneficiaries and a person or committee that is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or other person or committee that is given a power by the terms of the trust to direct the termination or modification of the trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010.

(3) Notice of any proceeding to terminate or modify a trust must be given to the settlor, the settlor's

representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust director, if any, a powerholder described in subsection (1)(b) or (c), if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) On termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the agent is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 664, Eff. Mar. 29, 2019

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

700.7412 Modification or termination of trust; unanticipated circumstances or inability to administer effectively.

Sec. 7412.

(1) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(2) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention.

(3) If a trust is terminated under this section, the trustee shall distribute the trust property as ordered by the court.

(4) Notice of any proceeding to terminate or modify a trust shall be given in the manner described in section 7411(3).

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

Popular Name: EPIC

700.7413 Cy pres.

Sec. 7413.

(1) Except as otherwise provided in subsections (2) or (3), if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, no alternative taker is named or provided for, and the court finds the settlor had a general, rather than a specific, charitable intent, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's general charitable intent.

(2) If the terms of a charitable trust confer a power on the trustee, or another person designated in the trust or gift, to modify or terminate either the charitable trust, a charitable gift to the trust, or the charitable purpose of the trust or gift in favor of another charitable trust, gift, or purpose, the terms of the trust prevail over the power of the court to apply cy pres to modify or terminate the trust.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court to apply cy pres to modify or terminate the trust only if, when the provision takes effect, either of the following applies:

- (a) The trust property is to revert to the settlor and the settlor is still living.
- (b) Less than 50 years have elapsed since the date of the trust's creation.

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

Popular Name: EPIC

700.7414 Termination or modification of noncharitable trust; section inapplicable to easement for conservation or preservation.

Sec. 7414.

(1) After 63 days after notice to the qualified trust beneficiaries and, if the trust is a charitable trust, to the attorney general of this state, the trustee of a trust consisting of trust property having a total value less than \$50,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The \$50,000.00 amount expressed in this section shall be adjusted each year as provided in section 1210.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a noncharitable trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court. Upon termination of a charitable trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) This section does not apply to an easement for conservation or preservation.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

700.7415 Reformation to correct mistakes.

Sec. 7415.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

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

Popular Name: EPIC

700.7416 Modification to achieve settlor's tax objectives; retroactive effect.

Sec. 7416.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary

to the settlor's probable intention. The court may provide that the modification has retroactive effect.

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

Popular Name: EPIC

700.7417 Division or consolidation of trusts.

Sec. 7417.

(1) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may divide trust property into 2 or more separate portions or trusts and allocate property between them if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(2) After notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may consolidate 2 or more trusts and administer them as 1 trust if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. If the rule against perpetuities speaks from different dates with reference to the trusts or if there are other variations in terms, consolidation may still take place, but the property of the trusts shall be maintained in separate accounts if necessary to recognize and give effect to the differences.

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

Popular Name: EPIC

Part 5

CREDITOR'S CLAIMS; SPENDTHRIFT, SUPPORT, AND DISCRETIONARY TRUSTS

700.7501 Application; purposes.

Sec. 7501.

This part applies to a creditor's or transferee's claims with respect to spendthrift, support, and discretionary trusts.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7502 Spendthrift provision.

Sec. 7502.

(1) A spendthrift provision is valid and enforceable.

(2) A term of a trust providing that the interest of a trust beneficiary is held subject to a "spendthrift trust," or words of similar import, restrains both voluntary and involuntary transfer of the trust beneficiary's interest.

(3) Except as provided in sections 7504, 7506, and 7507, the trust beneficiary's interest in a trust may not be transferred in violation of a valid spendthrift provision and trust property is not subject to enforcement of a judgment until distributed directly to the trust beneficiary.

(4) Notwithstanding the existence of a spendthrift provision in the terms of the trust, a trustee is not liable to the beneficiaries of the trust for making a distribution to which a trust beneficiary is otherwise entitled pursuant to the direction of the trust beneficiary.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7503 Trust for support.

Sec. 7503.

(1) The interest of a trust beneficiary that is subject to a support provision may not be transferred and the trust property is not subject to the enforcement of a judgment until income or principal, or both, is distributed directly to the trust beneficiary. After a distribution to a trust beneficiary whose interest is subject to a support provision, the income and principal distributed are subject to the enforcement of a judgment only to the extent that the income or principal, or both, is not necessary for the health, education, support, or maintenance of the trust beneficiary.

(2) The use or enjoyment of trust property by a trust beneficiary whose interest is subject to a support provision may not be transferred and is not subject to the enforcement of a judgment against the trust beneficiary.

(3) Subsections (1) and (2) do not apply under circumstances described in section 7504, 7506, or 7507.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7504 Spendthrift provision or support provision; exceptions; "child" defined.

Sec. 7504.

(1) The interest of a trust beneficiary that is subject to a spendthrift provision, a support provision, or both may be reached in satisfaction of an enforceable claim against the trust beneficiary by any of the following:

(a) A trust beneficiary's child or former spouse who has a judgment or court order against the trust beneficiary for support or maintenance.

(b) A judgment creditor who has provided services that enhance, preserve, or protect a trust beneficiary's interest in the trust.

(c) This state or the United States.

(2) The court shall order the trustee to satisfy all or part of a judgment described in subsection (1) only out of all or part of distributions of income or principal as they become due.

(3) Notwithstanding that the terms of the trust include a spendthrift provision, this section does not apply to the interest of a trust beneficiary that is subject to a discretionary trust provision.

(4) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

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

700.7505 Discretionary trust; effect of standard; right of transferee or creditor.

Sec. 7505.

The transferee or creditor of the beneficiary of a discretionary trust provision does not have a right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion, and trust property is not subject to the enforcement of a judgment until income or principal, or both, is distributed directly to the trust beneficiary.

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

Popular Name: EPIC

700.7506 Creditor's claim against settlor; "settlor" explained.

Sec. 7506.

- (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
 - (a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
 - (b) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.
 - (c) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:
 - (i) The claim of the creditor or assignee.
 - (ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the settlor's lifetime.
- (2) If a trust has more than 1 settlor, the amount a creditor or assignee of a particular settlor may reach under subsection (1)(c) must not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
- (3) A trust beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.
- (4) An individual who creates a trust is not considered a settlor with regard to the individual's retained beneficial interest in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:
 - (a) During the lifetime of the individual's spouse, the only distributees or permissible distributees of the trust income or principal are either of the following:
 - (i) The individual's spouse.
 - (ii) The individual's spouse and either of the following:
 - (A) The individual's issue.
 - (B) The issue of the individual's spouse.
 - (b) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.
- (5) An individual is not considered a settlor of a trust for the benefit of the individual:
 - (a) If the settlor is the individual's spouse, regardless of whether or when the individual was the settlor of a trust for the benefit of that spouse.
 - (b) To the extent that the property of trust was subject to a general power of appointment in another individual.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7507 Overdue distribution; "mandatory distribution" defined.

Sec. 7507.

- (1) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a trust beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the trust beneficiary within a reasonable time after the designated distribution date.
- (2) As used in this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a trust beneficiary under the terms of the trust, including a distribution upon termination of the trust. Mandatory distribution does not include a distribution subject to the exercise of the trustee's discretion even if either of the following applies:

- (a) The direction is expressed in the form of a standard of distribution.
- (b) The terms of the trust authorizing a distribution use language of discretion and language of direction.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 54, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7508 Personal obligations of trustee.

Sec. 7508.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 177, Imd. Eff. June 20, 2000 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7509-700.7511 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

Compiler's Notes: The repealed sections pertained to secured claims, claims not due, contingent claims, liquidated claims, and counterclaims.

Popular Name: EPIC

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

Part 7 OFFICE OF TRUSTEE

700.7701 Acceptance or rejection of trusteeship.

Sec. 7701.

(1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship by doing either of the following:

(a) Substantially complying with a method of acceptance 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, accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise

indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do all of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified trust beneficiary.

(b) Exercise all powers set forth under section 7818(1)(a).

(c) Inspect or investigate trust property to determine potential liability under other law or for any other purpose.

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

Popular Name: EPIC

700.7702 Trustee's bond.

Sec. 7702.

(1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the trust beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A financial institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

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

Popular Name: EPIC

700.7703 Cotrustees; powers and duties; relief of liability.

Sec. 7703.

(1) Except as otherwise provided in this section, cotrustees shall act by majority decision.

(2) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(3) If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

(4) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated under section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

(5) Unless a delegation under subsection (4) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection must be in writing and must be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation must be given to the qualified trust beneficiaries within 28 days after the revocation.

(6) If 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

(a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.

(b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.

(c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each

faction is entitled to vote the securities proportionately.

(7) A trustee is not liable for the action or omission of a cotrustee if all of the following apply:

(a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.

(b) The trustee is aware of but does not join in the action or omission of the cotrustee.

(c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.

(8) A trustee that is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.

(9) A dissenting trustee that joins in an action at the direction of the majority of the trustees and that notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.

(10) Notwithstanding any provision in this section, the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that a directed trustee described in section 7703a may be relieved from duty and liability with respect to a trust director's power of direction under section 7703a.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 664, Eff. Mar. 29, 2019

Popular Name: EPIC

700.7703a Rules of construction; nonfiduciary powers under a trust; power of direction to trust director; duties and limitations of trust director and trustee; liability; applicability of rules to trusteeship; definitions.

Sec. 7703a.

(1) Excepting the rules of construction in subsection (2), this section does not apply to:

(a) A power of appointment that is intended to be held by the donee in a nonfiduciary capacity.

(b) A power that is intended to be held in a nonfiduciary capacity that enables the holder to create a power of appointment, regardless of whether the created power is intended to be held by the donee of the created power in a fiduciary or a nonfiduciary capacity.

(c) A power to appoint or remove a trustee or trust director.

(d) A power of a settlor over a trust to the extent the settlor has a power to revoke the trust.

(e) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects either of the following:

(i) The beneficial interest of the beneficiary.

(ii) The beneficial interest of another beneficiary represented by the beneficiary under part 3 of this article with respect to the exercise or nonexercise of the power.

(f) A power over a trust if both of the following apply:

(i) The terms of the trust provide that the power is held in a nonfiduciary capacity.

(ii) The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the internal revenue code of 1986, 26 USC 1 to 9834.

(2) All of the following rules of construction apply to powers under a trust:

(a) A power described in subsection (1) that is intended to be held in a nonfiduciary capacity is not subject to fiduciary constraint and may be exercised by the holder in any manner consistent with the scope of the power and any express requirements or limitations imposed by the terms of the trust. A trustee shall take action to comply with the exercise or nonexercise of a power described in this subdivision. A trustee is not liable for taking an action required under this subdivision. However, a trustee shall not comply with the exercise or nonexercise of a power described in this subdivision if the exercise or nonexercise was obtained with the trustee's collusion or by the trustee's fraud and compliance would be in pursuance of that collusion or fraud.

(b) Except as provided in subdivision (c), all of the following powers are intended to be held in a nonfiduciary capacity if granted to a person other than a trustee of the trust:

(i) A power of appointment, including a power of appointment in the form of a power to do any of the following:

(A) Adjust between principal and income.

(B) Convert to or from a unitrust.

(C) Modify, reform, or terminate the trust.

(D) Distribute trust assets in further trust.

(ii) A power that enables the holder to create a power of appointment.

(c) A power to do any of the following is intended to be held in a fiduciary capacity even though the holder is not

a trustee of the trust if the holder otherwise does not have a beneficial interest in the trust:

- (i) Adjust between principal and income.
- (ii) Convert to or from a unitrust.
- (iii) Modify, reform, or terminate the trust.
- (iv) Distribute trust assets in further trust.

(3) Subject to subsection (4), the terms of a trust may grant a power of direction to a trust director. Both of the following rules of construction apply to powers of direction:

(a) A trust director may exercise any further power appropriate to the exercise or nonexercise of the director's power of direction.

(b) Trust directors with joint powers must act by majority decision.

(4) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or a further power under subsection (3)(a) regarding both of the following:

(a) A payback provision in the terms of the trust necessary for compliance with the reimbursement requirements of Medicaid law in section 1917 of the social security act, 42 USC 1396p(d)(4)(A).

(b) A charitable interest in the trust, including required notices regarding the interest to the attorney general.

(5) Subject to subsection (6), both of the following apply with respect to a power of direction or a further power under subsection (3)(a):

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power as a sole trustee in a like position and under similar circumstances if the power is held individually or, if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

(b) A term of a trust that relieves a trust director from liability for breach of fiduciary duty is unenforceable to the extent that either of the following applies:

(i) The term relieves the trust director of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(ii) The term was inserted as the result of an abuse by the trust director of a fiduciary or confidential relationship to the settlor.

(6) If a trust director is licensed, certified, or otherwise authorized or permitted by law other than this section to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this section.

(7) A directed trustee shall take action to comply with the exercise or nonexercise of a power of direction or further power of a trust director under subsection (3)(a). A directed trustee is not liable for taking an action required under this subsection. However, a directed trustee shall not comply with the exercise or nonexercise of a power described in this subsection if the exercise or nonexercise was obtained with the directed trustee's collusion or by the directed trustee's fraud and compliance would be in pursuance of that collusion or fraud.

(8) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if any of the following apply:

(a) The breach involved the trustee's or other director's bad faith or reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The release was induced by improper conduct of the trustee or other director in procuring the release.

(c) At the time of the release, the director did not know the material facts relating to the breach.

(9) Subject to subsection (11), a trustee shall provide information to a trust director to the extent the information is reasonably related to both of the following:

(a) The powers or duties of the trustee.

(b) The powers or duties of the director.

(10) Subject to subsection (13), a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to both of the following:

(a) The powers or duties of the director.

(b) The powers or duties of the trustee or other director.

(11) A trustee does not have a duty to do either of the following:

(a) Monitor a trust director.

(b) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director.

(12) By taking an action described in subsection (11), a trustee does not assume the duty excluded by subsection (11).

(13) A trust director does not have a duty to do either of the following:

(a) Monitor a trustee or another trust director.

(b) Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director.

(14) By taking an action described in subsection (13), a trust director does not assume the duty excluded by subsection (13).

(15) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance if the trustee's reliance is not in bad faith.

(16) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance if the trust director's reliance is not in bad faith.

(17) An action against a trust director for breach of trust must be commenced within the same limitation period as an action for breach of trust against a trustee in a like position and under similar circumstances under section 7905.

(18) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have in an action for breach of trust against a trustee in a like position and under similar circumstances under section 7905.

(19) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

(20) By accepting appointment as a trust director, the director submits personally to jurisdiction in this state regarding any matter related to a power or duty of the director. This section does not preclude use of another method to obtain jurisdiction over a trust director.

(21) The rules applicable to a trusteeship apply to a trust directorship regarding all of the following matters:

(a) Acceptance under section 7701(1).

(b) Giving of bond to secure performance under section 7702.

(c) Reasonable compensation under section 7708.

(d) Resignation under section 7705.

(e) Removal under section 7706.

(f) Vacancy and appointment of successors under section 7704, treating any instance in which 2 or more trust directors have the same power of direction as analogous to a cotrusteeship for purposes of section 7704(2).

(22) The application of this section with respect to a given trust is subject to both of the following:

(a) If the trust was created before the effective date of the amendatory act that added this section, this section applies only to decisions or actions taken on or after that date.

(b) If the trust's principal place of administration is changed to this state on or after the effective date of the amendatory act that added this section, this section applies only to decisions or actions taken on or after the date of the change.

(23) In applying and construing the provisions of this section that are based on the uniform directed trust act, weight should be given to the goal of promoting uniformity in the law on directed trusteeships among the states that have enacted the uniform directed trust act.

(24) As used in section:

(a) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust or by this article.

(b) "Directed trustee" means a trustee that is subject to a power of direction.

(c) "Donee" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(d) "Power of appointment" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(e) "Power of direction" means a power over a trust granted by the terms of the trust to the extent the power is exercisable while the person to whom it is granted is not serving as a trustee. Power of direction includes a power over the investment, management, or distribution of trust property or other matters of trust administration. Power of direction does not include the powers described in subsection (1).

(f) "Trust director" means an organization permitted to exercise trust powers in this state as described in section 1105(2) of the banking code of 1999, 1999 PA 276, MCL 487.11105, or an individual, if that person is granted a power of direction whether or not either of the following applies:

(i) The terms of the trust refer to the person as a trust director.

(ii) The person is a beneficiary or settlor of the trust.

History: Add. 2018, Act 663, Eff. Mar. 29, 2019

Popular Name: EPIC

700.7703b Separate trustees provision; trust instrument; duties and powers; liability; definitions.

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.

History: Add. 2018, Act 662, Eff. Mar. 29, 2019

Popular Name: EPIC

700.7704 Vacancy in trusteeship; manner of filling; priority; appointment by court of additional trustee or fiduciary; definitions.

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.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 662, Eff. Mar. 29, 2019

Popular Name: EPIC

700.7705 Resignation of trustee; circumstances; issuance of orders and conditions; liability.

Sec. 7705.

- (1) A trustee may resign in either of the following circumstances:
 - (a) Upon at least 28 days' notice to the qualified trust beneficiaries, the holders of powers of appointment, and all cotrustees.
 - (b) With the approval of the court.
- (2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
- (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

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

Popular Name: EPIC

700.7706 Removal of trustee.

Sec. 7706.

- (1) The settlor, a cotrustee, or a qualified trust beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
- (2) The court may remove a trustee if 1 or more of the following occur:
 - (a) The trustee commits a serious breach of trust.
 - (b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.
 - (c) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the purposes of the trust.
 - (d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
- (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, to the extent it is not inconsistent with a material purpose of the trust, the court may order any appropriate relief under section 7901(2) that is necessary to protect the trust property or the interests of the trust beneficiaries.

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

Popular Name: EPIC

700.7707 Delivery of property by former trustee.

Sec. 7707.

- (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
- (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property in the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

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

Popular Name: EPIC

700.7708 Compensation of trustee.

Sec. 7708.

(1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if either of the following apply:

- (a) The duties of the trustee are substantially different from those contemplated when the trust was created.
- (b) The compensation specified by the terms of the trust would be unreasonably low or high.

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

Popular Name: EPIC

700.7709 Reimbursement of expenses; advance of money as lien; advances and reimbursement not as self-dealing or breach of fiduciary duty.

Sec. 7709.

(1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for both of the following:

(a) Expenses that were properly incurred in the administration of the trust.

(b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(3) Advances and reimbursement under this section are not considered self-dealing by the trustee and are not a breach of the trustee's fiduciary duty.

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

Popular Name: EPIC

Part 8 DUTIES AND POWERS OF TRUSTEE

700.7801 Administration of trust; duties of trustee.

Sec. 7801.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

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

Popular Name: EPIC

700.7802 Duty of loyalty.

Sec. 7802.

- (1) A trustee shall administer the trust solely in the interests of the trust beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 7912, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a substantial conflict between the trustee's fiduciary and personal interests is voidable by a trust beneficiary affected by the transaction unless 1 or more of the following apply:
 - (a) The transaction was authorized by the terms of the trust.
 - (b) The transaction was approved by the court after notice to the interested persons.
 - (c) The trust beneficiary did not commence a judicial proceeding within the time allowed by section 7905.
 - (d) The trust beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7909.
 - (e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
 - (f) The transaction is otherwise permitted by statute.
- (3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with any of the following:
 - (a) The trustee's spouse.
 - (b) The trustee's descendant, sibling, or parent or the spouse of a descendant, sibling, or parent.
 - (c) An agent or attorney of the trustee.
 - (d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
- (4) A transaction that does not concern trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.
- (5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 7814 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.
- (6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the trust beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interests of the trust beneficiaries.
- (7) This section does not preclude the following transactions, if fair to the trust beneficiaries:
 - (a) An agreement between a trustee and a trust beneficiary relating to the appointment or compensation of the trustee.
 - (b) Payment of reasonable compensation to the trustee.
 - (c) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a trust beneficiary has an interest.
 - (d) A deposit of trust money in a financial institution operated by or affiliated with the trustee.
 - (e) An advance by the trustee of money for the protection of the trust.

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

Popular Name: EPIC

700.7803 Impartiality; use of standards of Michigan prudent investor rule.

Sec. 7803.

The trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.

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

700.7808 Settlor's power to direct contrary to trust terms.

Sec. 7808.

While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

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

700.7809 Repealed. 2018, Act 664, Eff. Mar. 29, 2019.

Compiler's Notes: The repealed section pertained to the exercise of powers by a trust protector.
Popular Name: EPIC

700.7810 Control and protection of trust property.

Sec. 7810.

A trustee shall take reasonable steps to take control of and protect the trust property.

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

700.7811 Recordkeeping and identification of trust property.

Sec. 7811.

- (1) A trustee shall keep adequate records of the administration of the trust.
- (2) A trustee shall keep trust property separate from the trustee's own property.
- (3) Except as otherwise provided in subsection (4), to the extent that property is held by someone other than the trustee, the trustee shall cause the trust's interest in the trust's property to appear in records maintained by the party holding the trust property.
- (4) A trustee may do any of the following:
 - (a) Invest as a whole the property of 2 or more separate trusts, provided the trustee maintains records clearly indicating the respective interests.
 - (b) Hold trust property in nominee form.
 - (c) If the trust is revocable by the settlor, cause the trust's interest in the trust's property to appear in records in the manner directed by the settlor.
 - (d) Not reflect the trust's interest in the trust's property when the nature of the property is such that it is not possible or practicable to do so.

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

700.7812 Enforcement and defense of claims.

Sec. 7812.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

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

700.7813 Duty to locate trust property and compel delivery; retention of reserve for payment of expenses; improper distribution or payment from trust; wrongful conversion.

Sec. 7813.

(1) A trustee shall take reasonable steps to locate trust property and to compel a former trustee or other person to deliver trust property to the trustee.

(2) A resigning trustee or a trustee being replaced by a successor may retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) Unless the distribution or payment can no longer be questioned because of adjudication, estoppel, or other limitation, a distributee or claimant that receives property that is improperly distributed or paid from a trust shall return the property and any income and gain from the property since distribution, if the recipient has the property. If the recipient does not have the property, the recipient shall pay the value of the property as of the date of distribution or payment and any income and gain from the property since distribution.

(4) If a person embezzles or wrongfully converts trust property, or refuses, without colorable claim of right, to transfer possession of trust property to the current trustee upon demand, the person is liable in an action brought by the current trustee, or the beneficiary of the trust for the benefit of the trust, for double the value of any property embezzled, converted, or wrongfully withheld from the current trustee.

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

700.7814 Duty to inform and report.

Sec. 7814.

(1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

(b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an

irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.

(d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified trust beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values, and, if applicable, any disclosure required under section 7802(5). In the trustee's discretion, the trustee may provide the report to any trust beneficiary. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified trust beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified trust beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.

(5) A trust beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A trust beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, an irrevocable trust created, or a revocable trust that becomes irrevocable on or after the effective date of the amendatory act that added this section.

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

Popular Name: EPIC

700.7815 Discretionary powers; abuse; liability to beneficiary; rules; effect of limited or prohibited powers; exceptions.

Sec. 7815.

(1) A beneficiary of a discretionary trust provision as described in section 7505 has no property right in a trust interest that is subject to a discretionary trust provision, and has no right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion. However, except as provided in subsection (2) and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee does any of the following:

(a) Acts dishonestly.

(b) Acts with an improper motive, even though not a dishonest motive.

(c) Fails to exercise the trustee's judgment in accordance with the terms and purposes of the trust.

(2) Unless the trust instrument expressly provides otherwise, a trustee is not liable to a beneficiary for failure to exercise the power described in section 7820a or the power described in section 5a of the powers of appointment act of 1967, 1967 PA 224, MCL 556.115a.

(3) Subject to subsection (5), the following rules apply to a trustee's exercise of a power unless the terms of the trust expressly indicate that the rule does not apply:

(a) A person other than a settlor who is a trust beneficiary and trustee of a trust that confers on the trustee a power to make distributions pursuant to a discretionary trust provision to or for the trustee's benefit may exercise the power only in accordance with an ascertainable standard.

(b) A trustee may not exercise a power to make distributions pursuant to a discretionary trust provision in a manner to satisfy a legal obligation of support that the trustee personally owes another person.

(4) A power whose exercise is limited or prohibited by subsection (3) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(5) Subsection (3) does not apply to any of the following:

(a) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the internal revenue code, 26 USC 2056 and 2523, was previously allowed.

- (b) Any trust during any period that the trust may be revoked or amended by its settlor.
- (c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the internal revenue code, 26 USC 2503.

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

Popular Name: EPIC

700.7816 General powers of trustee.

Sec. 7816.

- (1) A trustee, without authorization by the court, may exercise all of the following:
 - (a) Powers conferred by the terms of the trust.
 - (b) Except as limited by the terms of the trust, all of the following:
 - (i) All powers over the trust property that an unmarried competent owner has over individually owned property.
 - (ii) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.
 - (iii) Any other powers conferred by this article.
- (2) The exercise of a power is subject to the fiduciary duties prescribed by this article.

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

Popular Name: EPIC

700.7817 Specific powers of trustee.

Sec. 7817.

Without limiting the authority conferred by section 7816, a trustee has all of the following powers:

- (a) To take possession, custody, or control of property transferred to the trust and accept or reject additions to the trust.
- (b) To retain property that the trustee receives, including property in which the trustee is personally interested, in accordance with the Michigan prudent investor rule.
- (c) To receive property from a fiduciary or another source that is acceptable to the trustee.
- (d) To perform, compromise, or refuse to perform a contract of the settlor that is an obligation of the trust, as the trustee may determine under the circumstances. In performing an enforceable contract by the settlor to convey or lease land, if the contract for a conveyance requires the giving of a warranty, the deed or other instrument of conveyance to be given by the trustee shall contain the warranty required. The warranty is binding on the trust as though made by the settlor, but does not bind the trustee except in the trustee's fiduciary capacity. The trustee, among other possible courses of action, may do either of the following:
 - (i) Execute and deliver a deed of conveyance for cash payment of money remaining due on the purchaser's note for the money remaining due secured by a mortgage on the land.
 - (ii) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the trustee, as designated in the escrow agreement.
- (e) To satisfy a settlor's written charitable pledge irrespective of whether the pledge constitutes a binding obligation of the settlor or was properly presented as a claim, if in the trustee's judgment the settlor would have wanted the pledge completed under the circumstances.
- (f) To deposit trust property in a financial institution, including a financial institution operated by or affiliated with the trustee and to invest and reinvest trust property as would a prudent investor acting in accordance with the Michigan prudent investor rule and to deposit securities with a depository or other financial institution.
- (g) To acquire property, including property in this or another state or country, in any manner for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, or change the character of trust property.
- (h) To make an ordinary or extraordinary repair or alteration in a building or another structure, to demolish an improvement, or to raze an existing or erect a new party wall or building.

- (i) To subdivide, develop, or dedicate land to public use; to make or obtain the vacation of a plat or adjust a boundary; to adjust a difference in valuation on exchange or partition by giving or receiving consideration; or to dedicate an easement to public use without consideration.
- (j) To enter for any purpose into a lease as lessor or lessee, with or without an option to purchase or renew, for a period within or extending beyond the duration of the trust.
- (k) To enter into a lease or arrangement for exploration and removal of minerals or another natural resource or to enter into a pooling or unitization agreement for a period within or extending beyond the duration of the trust.
- (l) To abandon or decline to administer property if, in the trustee's opinion, the property is valueless, or is so encumbered or in such a condition that it is of no benefit to the trust.
- (m) To vote a stock or other security in person, by general or limited proxy, or in another manner provided by law, or enter into or continue a voting trust agreement.
- (n) To pay a call, assessment, or other amount chargeable or accruing against or on account of a security, and sell or exercise stock subscription or conversion rights.
- (o) To hold property in the name of a nominee or in another form without disclosure of the interest of the trust. However, the trustee is liable for an act of the nominee in connection with the property so held.
- (p) To insure the trust property against damage, loss, or liability and to insure the trustee, the trustee's agents, and the trust beneficiaries against liability arising from the administration of the trust.
- (q) To borrow property, with or without security, for any purpose from the trustee or others and to mortgage or pledge trust property for a period within or extending beyond the duration of the trust.
- (r) To effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the trust. If the trustee holds a mortgage, pledge, or another lien on property of another person, the trustee may, instead of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by a lien.
- (s) To pay a tax, an assessment, the trustee's compensation, or another expense incident to the administration of the trust.
- (t) To sell or exercise a subscription or conversion right or to consent, directly or through a committee or another agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a business enterprise.
- (u) To allocate an item of income or expense to either trust income or principal, as permitted or provided by law.
- (v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.
- (w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.
- (x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subdivision for the trustee's protection in the performance of the trustee's duties.
- (y) To sell, exchange, partition, or otherwise dispose of, or grant an option with respect to, trust property for any purpose upon any terms or conditions for a period within or extending beyond the duration of the trust.
- (z) To continue or participate in a business or enterprise in any manner, in any form, and for any length of time.
- (aa) To change the form, in any manner, of a business or enterprise in which the settlor was engaged at the time of death.
- (bb) To provide for exoneration of the trustee from personal liability in a contract entered into on behalf of the trust.
- (cc) To respond to environmental concerns and hazards affecting trust property as provided in section 7818.
- (dd) To collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust, including a claim against the trust by the trustee.
- (ee) To respond to a tax matter as provided in section 7819.
- (ff) To make a payment of money, or other property instead of money, to or for a minor or incapacitated trust beneficiary as provided in section 7820.
- (gg) To make a distribution or division of trust property in cash or in kind, or both; to allot a different kind or disproportionate portion of, or an undivided interest in, trust property among beneficiaries and determine the value of allotted trust property; or to distribute an unclaimed share in the same manner as described in section 3916.
- (hh) To transfer the property of a trust to another jurisdiction and appoint, compensate, or remove a successor trustee, individual or corporate, for trust property in another jurisdiction, with any trust powers set out in this part that the trustee delegates to the successor trustee.
- (ii) To execute and deliver an instrument that accomplishes or facilitates the exercise of a power vested in the trustee.

(jj) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(kk) To make loans out of trust property, including loans to a trust beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of loans made under this subdivision.

(ll) To pledge trust property to guarantee loans made by others to the trust beneficiary.

(mm) To resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(nn) On termination of the trust, to exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

700.7818 Environmental concerns or hazards; powers of trustee.

Sec. 7818.

(1) In connection with an environmental concern or hazard, a trustee may do any of the following:

(a) Inspect property or the operation of a business activity on property, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held or tendered to the trustee.

(b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the trustee, either before or after a governmental body initiates an enforcement action.

(c) Refuse to accept property in trust if the trustee determines that the property to be transferred to the trust either is or may be contaminated by a hazardous substance or has been or is being used for an activity directly or indirectly involving a hazardous substance that could result in liability to the trust or otherwise impair the value of the trust property.

(d) Settle or compromise at any time a claim against the trust that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust.

(e) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the trustee, may cause the trustee to incur personal liability under an environmental law.

(f) Decline to serve or resign as a trustee if the trustee reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the trustee on the trust's behalf because of the type or condition of property held in trust.

(g) Appoint an independent special trustee to hold title to, and take a reasonably required action, as provided in this section, relating to environmental law in regard to, property tendered to the trust, until the time that the trustee determines that no substantial risk exists if the tendered property becomes part of the trust property or abandons the tendered property.

(h) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the trust property.

(2) A trustee is not personally liable to a trust beneficiary or other party for a decrease in value of trust property by reason of the trustee's compliance with an environmental law, specifically including a reporting requirement under that law. The trustee's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of trust property and is not to impose greater responsibility or liability on the trustee than imposed by law absent this section.

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

Popular Name: EPIC

700.7819 Tax matters; powers of trustee.

Sec. 7819.

- (1) A trustee may do any of the following in connection with a tax matter:
- (a) Make, revise, or revoke an available allocation, consent, or election affecting a tax that is appropriate in order to carry out the settlor's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:
 - (i) Electing to take expenses as estate tax or income tax deductions.
 - (ii) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.
 - (iii) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.
 - (iv) Electing the date of death or an alternate valuation date for federal estate tax purposes.
 - (b) Exclude or include property from the gross estate for federal estate tax purposes.
 - (c) Value property for federal estate tax purposes.
 - (d) Join with the surviving spouse or the surviving spouse's personal representative in the execution and filing of a joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.
- (2) A trustee's decision on a matter described in subsection (1)(a) binds all beneficiaries.
- (3) After making a decision described in subsection (1)(a), a trustee may make compensating adjustments between principal and income in the manner provided by the uniform principal and income act, 2004 PA 159, MCL 555.501 to 555.1005.

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

Popular Name: EPIC

700.7820 Payment provisions; facility.

Sec. 7820.

- (1) A trustee may act under section 7817(ff) by paying money or other property to 1 or more of the following:
- (a) The minor or incapacitated individual directly.
 - (b) A person or institution providing support, maintenance, education, or medical, surgical, hospital, or other institutional care for the minor or incapacitated individual in direct payment for those services.
 - (c) The legal or natural guardian of the minor or incapacitated individual.
 - (d) A person, whether or not appointed guardian by a court, who shall in fact have the care and custody of the minor or incapacitated individual.
 - (e) A custodian for the minor or incapacitated individual under a uniform gifts or transfers to minors act.
- (2) A trustee also may manage an amount distributable to a trust beneficiary who is a minor or incapacitated individual as a separate fund on the trust beneficiary's behalf, subject to the trust beneficiary's continuing right to withdraw the distribution.
- (3) If the trustee exercises due care in the selection of the person to whom a payment is made under this section, including a minor or incapacitated individual, the trustee does not have a duty to see to the payment's application. The person's receipt for the payment completely discharges the trustee.

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

Popular Name: EPIC

700.7820a Irrevocable trust including discretionary trust provision; distribution; definitions.

Sec. 7820a.

(1) If an irrevocable trust includes a discretionary trust provision, the trustee of the trust may, unless the terms of the first trust expressly provide otherwise, distribute by written instrument all or part of the property subject to that provision to the trustee of a second trust, if both of the following conditions are satisfied:

(a) The terms of the second trust do not materially change the beneficial interests of the beneficiaries of the first trust.

(b) If the governing instrument of the first trust expressly indicates an intention that the first trust qualify for a tax benefit or the terms of the first trust are clearly designed to qualify the first trust for a tax benefit, and if the first trust would qualify for the intended tax benefit, the governing instrument of the second trust is not inconsistent with the tax planning that informed the first trust.

(2) A distribution of property to the trustee of a second trust under subsection (1) must not result in any of the following:

(a) An increase in or a change in the method of determining the compensation of a trustee, unless the increase or change has been consented to in writing by all beneficiaries entitled to receive reports regarding the first trust.

(b) A charge of a fee or commission on the transfer of assets from the first trust to the second trust, unless the fee or commission has been consented to in writing by all beneficiaries entitled to receive reports regarding the first trust.

(c) A reduction in the standard of care applicable to the trustee's actions or an expansion of exoneration of the trustee.

(d) A diminution in the authority of a person that has a power exercisable in a fiduciary capacity to direct or remove the trustee.

(3) For purposes of this section, all of the following apply:

(a) In determining whether a trust is irrevocable, a settlor's lack of capacity to exercise a power of revocation negates the power unless an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving and the agent, conservator, or guardian is authorized to exercise the power of revocation.

(b) If an increase in the maximum period during which the vesting of a future interest may be postponed is due solely to a change of applicable law governing remoteness of vesting, the increase does not constitute a material change in the interest of a beneficiary.

(c) An increase in compensation arising solely because a change of applicable law governing remoteness of vesting makes the duration of the second trust longer than the duration of the first trust does not constitute an increase in or a change in the method of determining the compensation of the trustee.

(4) The distribution power described in subsection (1) must not be exercised over any portion of the first trust as to which the exercising trustee is the settlor, unless the exercising trustee was acting in a fiduciary capacity when the trustee created the first trust.

(5) The trustee of the second trust may be the trustee of the first trust, the second trust may be a trust under the governing instrument of the first trust or another governing instrument, the governing instrument may be created by the trustee of the first trust, and the governing instrument may be the instrument that exercises the power described in subsection (1).

(6) The second trust instrument may provide 1 or both of the following:

(a) That assets of the first trust discovered after exercise of the power described in subsection (1) will be property of the first trust if that trust is to continue in existence after exercise of the power, or that assets of the first trust discovered after exercise of the power will be property of the second trust if the first trust terminates on exercise of the power.

(b) For indemnification of the trustee of the first trust, except as limited by section 7908.

(7) A trustee of the first trust may exercise the power described in subsection (1) without the consent of that trust's settlor, any beneficiary, or a court. However, the trustee shall give written notice of an intended exercise of the power to the settlors of the first trust, if living, and qualified trust beneficiaries not later than 63 days before exercise of the power. The notice required by this section must include a copy of the proposed instrument of exercise. If the living settlors and qualified trust beneficiaries waive the 63-day notice period in writing, a distribution under subsection (1) may be made before expiration of the notice period.

(8) The period during which the vesting of a future interest may be suspended or postponed by the exercise of the power described in subsection (1) is determined under the powers of appointment act of 1967, 1967 PA 224, MCL 556.111 to 556.133, treating the power under subsection (1) as a power of appointment for purposes of this subsection.

(9) This section does not abridge the right of a trustee that has a power to distribute trust property in further trust under the terms of a trust instrument, any other statute, or the common law. This section does not abridge any right of a trustee that has a power to amend or terminate a trust.

(10) As used in this section:

(a) "First trust" means an irrevocable trust that has a discretionary trust provision that is exercised as described in

subsection (1).

(b) "Tax benefit" means a federal or state tax deduction, exemption, exclusion, or other particular tax attribute. Tax benefit does not include grantor trust status. A trust has grantor trust status to the extent that the assets of the trust are treated, for federal income tax purposes, as owned by the grantor or another person under sections 671 to 679 of the internal revenue code of 1986, 26 USC 671 to 679.

History: Add. 2012, Act 483, Imd. Eff. Dec. 28, 2012 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

Popular Name: EPIC

700.7821 Distribution upon termination.

Sec. 7821.

(1) Upon termination or partial termination of a trust, the trustee may send to the trust beneficiaries a proposal for distribution. The right of any trust beneficiary to object to the proposed distribution terminates if the trust beneficiary does not notify the trustee of an objection within 28 days after the proposal was sent, but only if the proposal informed the trust beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) A release by a trust beneficiary of a trustee from liability for breach of trust is invalid to the extent either of the following applies:

- (a) The release was induced by improper conduct of the trustee.
- (b) The trust beneficiary, at the time of the release, did not know of the material facts relating to the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

Part 9

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

700.7901 Remedies for breach of trust.

Sec. 7901.

(1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:

- (a) Compel the trustee to perform the trustee's duties.
- (b) Enjoin the trustee from committing a breach of trust.
- (c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.
- (d) Order a trustee to account.
- (e) Appoint a special fiduciary to take possession of the trust property and administer the trust.
- (f) Suspend the trustee.
- (g) Remove the trustee as provided in section 7706.
- (h) Reduce or deny compensation to the trustee.
- (i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
- (j) Order any other appropriate relief.

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

700.7902 Breach of trust; liability; damages.

Sec. 7902.

A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.
- (b) The profit the trustee made by reason of the breach.

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

700.7903 Damages in absence of breach.

Sec. 7903.

- (1) A trustee is accountable to an affected trust beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.
- (2) Absent a breach of trust, a trustee is not liable to a trust beneficiary for a loss or depreciation in the value of trust property, for failure to generate income, or for not having made a profit.
- (3) This section does not do either of the following:
 - (a) Limit a trustee's right to compensation under section 7708 or payments allowed under section 7802(5).
 - (b) Make a trustee accountable to an affected beneficiary in connection with a matter to which section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied.

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

700.7904 Attorney fees and costs; receipt of expenses and disbursements; reduction or denial of claim with respect to breach of trust.

Sec. 7904.

- (1) In a proceeding involving the administration of a trust, the court, as justice and equity require, may award costs and expenses, including reasonable attorney fees, to any party who enhances, preserves, or protects trust property, to be paid from the trust that is the subject of the proceeding.
- (2) Subject to subsection (3), if a trustee participates in a civil action or proceeding in good faith, whether successful or not, the trustee is entitled to receive from trust property all expenses and disbursements including reasonable attorney fees that the trustee incurs in connection with its participation.
- (3) A court may reduce or deny a trustee's claim for compensation, expenses, or disbursements with respect to a breach of trust.

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

700.7905 Commencement of proceedings; limitations.

Sec. 7905.

(1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in which the alleged breach occurred.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

(3) If subsection (1) does not apply, a judicial proceeding by a trust beneficiary against a trustee for breach of trust shall be commenced within 5 years after the first of the following to occur:

- (a) The removal, resignation, or death of the trustee.
- (b) The termination of the trust beneficiary's interest in the trust.
- (c) The termination of the trust.

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

Popular Name: EPIC

700.7906 Reliance on trust instrument.

Sec. 7906.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a trust beneficiary for a breach of trust to the extent the breach resulted from the reliance.

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

Popular Name: EPIC

700.7907 Event affecting administration or distribution.

Sec. 7907.

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specific age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

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

Popular Name: EPIC

700.7908 Exculpation of trustee.

Sec. 7908.

(1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that either of the following applies:

(a) The term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure to diversify investments are enforceable.

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

Popular Name: EPIC

700.7909 Beneficiary's consent, release, or ratification of transaction.

Sec. 7909.

A trustee is not liable to a trust beneficiary for breach of trust if the trust beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless either of the following applies:

(a) The consent, release, or ratification of the trust beneficiary was induced by improper conduct of the trustee.

(b) At the time of the consent, release, or ratification, the trust beneficiary did not know of 1 or more of the material facts relating to the breach.

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

Popular Name: EPIC

700.7910 Personal liability of trustee; limitation.

Sec. 7910.

(1) Unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal the trustee's representative capacity.

(2) A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of the trust estate, or on a tort committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2010, Act 325, Eff. Apr. 1, 2010

Compiler's Notes: Enacting section 1 of Act 325 of 2010 provides: "Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010." (2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular Name: EPIC

700.7911 Interest as general partner.

Sec. 7911.

(1) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108, or was known by the other party to the contract.

(2) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) The immunity provided by this section does not apply with respect to a general partnership interest held in any capacity other than as trustee.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

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

Popular Name: EPIC

700.7912 Protection of person dealing with trustee.

Sec. 7912.

(1) A person other than a trust beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a trust beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of the powers.

(3) A person who in good faith delivers assets to a trustee need not ensure the proper application of the assets.

(4) A person other than a trust beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

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

Popular Name: EPIC

700.7913 Certificate of trust.

Sec. 7913.

(1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust that must include all of the following information:

(a) The name of the trust, the date of the trust, and the date of each operative trust instrument.

(b) The name and address of each current trustee.

(c) The powers of the trustee relating to the purposes for which the certificate of trust is being offered.

(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(e) The authority of cotrustees to sign on behalf of the trust or otherwise authenticate on behalf of the trust and whether all or less than all of the cotrustees are required to exercise powers of the trustee.

(2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate must be in the form of an affidavit.

(3) A certificate of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations included in the certificate of trust to be incorrect.

(4) A certificate of trust need not include the dispositive terms of the trust instrument.

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from each trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.

(6) A person that acts in reliance on a certificate of trust without knowledge that the representations included in the certificate of trust are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the trust and other facts included in the certificate of trust.

(7) A person that in good faith enters into a transaction in reliance on a certificate of trust may enforce the transaction against the trust property as if the representations included in the certificate of trust were correct.

(8) A person that makes a demand for the trust instrument in addition to a certificate of trust or excerpts of the trust instrument is liable for damages, costs, expenses, and legal fees if the court determines that the person that made the demand did not act pursuant to a legal requirement to demand the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding that concerns the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 491, Imd. Eff. Dec. 27, 2018

Popular Name: EPIC