

QUALIFIED DISPOSITIONS IN TRUST ACT (EXCERPT)
Act 330 of 2016

700.1045 Rights, actions, and claims of creditor.

Sec. 5. (1) Notwithstanding any other provision of this act, with respect to any qualified disposition, a creditor has only the rights provided in this section and section 7.

(2) For an action brought by a creditor for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition, all of the following apply:

(a) Except for the limitation period provided under subsection (3), the action may only be brought under sections 4 and 5 of the uniform fraudulent transfer act, 1998 PA 434, MCL 566.34 and 566.35.

(b) For a creditor whose claim arose after a qualified disposition, the action must involve a qualified disposition that was made with actual intent to defraud the creditor.

(c) The allegations in the action must be proved by clear and convincing evidence.

(3) A person shall not bring or maintain an action under subsection (2) unless the action is commenced within either of the following periods:

(a) If the claim arose before the qualified disposition was made, on the later of the following:

(i) Two years after the qualified disposition was made or the obligation was incurred.

(ii) One year after the qualified disposition or obligation was or could reasonably have been discovered by the claimant, if the person who is or may be liable for any claim fraudulently concealed the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim.

(b) If the claim arose concurrent with or after the qualified disposition, 2 years after the qualified disposition was made.

(4) If a trust beneficiary who has an interest in a qualified disposition or in property that is subject to a qualified disposition is a party to an action for annulment of a marriage, divorce, or separate maintenance, all of the following apply:

(a) If the trust beneficiary is not the transferor of the qualified disposition, the trust beneficiary's interest in the qualified disposition or in property that is the subject of the qualified disposition is not considered marital property, is not considered, directly or indirectly, part of the trust beneficiary's real or personal estate, and shall not be awarded to the trust beneficiary's spouse in a judgment for annulment of a marriage, divorce, or separate maintenance.

(b) If the trust beneficiary is the transferor of the qualified disposition, the trust beneficiary's interest in the qualified disposition or in property that is the subject of the qualified disposition is not considered marital property, is not considered, directly or indirectly, part of the trust beneficiary's real or personal estate, and shall not be awarded to the trust beneficiary's spouse in a judgment for annulment of a marriage, divorce, or separate maintenance if either of the following apply:

(i) The trust beneficiary transferred the property that is the subject of the qualified disposition more than 30 days before the trust beneficiary's marriage that is the subject of the action.

(ii) The parties to the marriage agree that this subdivision applies to the qualified disposition.

(c) If subdivisions (a) and (b) do not apply, subsections (2) and (3) do not limit the transferor's spouse's property division claims.

(5) Except as otherwise provided in subdivision (a), a fiduciary qualified disposition is considered made as of the time the property that is subject to the disposition was first transferred to the trustee who is making the fiduciary qualified disposition, or any predecessor of that trustee in an unbroken succession of fiduciary ownership of the property, in a form that meets either of the following requirements:

(a) The requirements of a qualified disposition. If the property that is subject to the qualified disposition was first transferred to the trustee making the disposition or the predecessor trustee before the effective date of this act in a form that would otherwise meet the requirements of a qualified disposition, the qualified disposition is considered to have been made as of the effective date of this act.

(b) Both of the following requirements:

(i) The requirements of section 2(p)(ii).

(ii) The requirements to be considered a qualified disposition or its equivalent under the laws of another state.

(6) If a trustee of an existing trust proposes to make a disposition that, but for the exercise of authority granted in this subsection, would not be a qualified disposition because of a nonconforming power of appointment of the transferor, the trustee may modify the trust instrument by delivering to the qualified trustee an irrevocable written election to modify the nonconforming power of appointment to conform to the requirements of section 4(2)(c) or section 4(2)(k). An irrevocable written election described in this section

must include both of the following:

- (a) A description of the modified power of appointment.
- (b) The transferor's written consent to the modification. The transferor's consent is not a disposition.

(7) With respect to a qualified disposition, a creditor does not have a claim or cause of action against any of the following:

- (a) The trustee of a trust that is the subject of a qualified disposition.
- (b) An advisor of a trust that is the subject of a qualified disposition.
- (c) A person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition.

(8) If more than 1 qualified disposition is made by means of the same trust instrument, all of the following apply:

- (a) With respect to a prior qualified disposition, both of the following apply:

- (i) The making of a subsequent qualified disposition is disregarded in determining whether a creditor's claim is extinguished as provided in subsection (3).

- (ii) The making of a subsequent qualified disposition is disregarded in determining, as provided in subsection (4), whether a trust beneficiary's interest in a qualified disposition or in property that is the subject of a qualified disposition is considered marital property, is considered part of a trust beneficiary's real or personal estate, or may be awarded to the trust beneficiary's spouse in a judgment for annulment of a marriage, divorce, or separate maintenance.

- (b) A distribution to a trust beneficiary is considered to have been made from the most recent qualified disposition.

(9) In an action against a trustee that received property in a qualified disposition, if a court takes any action declining to apply the law of this state in determining the validity, construction, or administration of the trust, or the effect of a spendthrift provision in the trust instrument, the trustee shall immediately on the court's action, and without the further order of any court, cease in all respects to be trustee of the trust. The former trustee does not have any power described in section 4(2) except to convey the trust property to the successor trustee and, at the former trustee's election, to petition the court for appointment of a successor trustee and collect its attorney fees, costs, and expenses. If the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, all of the following apply:

- (a) The probate court, on the request of a qualified trust beneficiary of the trust, shall appoint a successor trustee on the terms and conditions it determines to be consistent with the purposes of the trust and this act.

- (b) A former trustee may, but has no duty to, petition the probate court to appoint a successor trustee if a petition for appointment of a successor trustee is not brought by a qualified trust beneficiary within 30 days after the date on which the former trustee ceases to be a trustee of the trust. If the former trustee elects to petition for the appointment of a successor trustee, the former trustee is entitled to reimbursement for all attorney fees, costs, and expenses associated with the petition, and the amount of the attorney fees, costs, and expenses is a lien against the trust's property.

(10) A valid lien attaching to property before a qualified disposition of the property survives the disposition, and the trustee takes title to the property subject to the valid lien and the trustee is subject to any agreements that created or perfected the valid lien.

(11) A written agreement between a transferor and a creditor may provide for any of the following:

- (a) The transferor will have a continuing or periodic obligation to disclose any qualified dispositions to the creditor.

- (b) A qualified disposition will require the prior written approval of the creditor.

- (c) That the transferor is under those other obligations as the creditor may require with respect to qualified dispositions.

(12) If a transfer that would otherwise be a qualified disposition violates an agreement with a creditor described in subsection (11), with respect to the creditor only, the transfer is not a qualified disposition and this act does not affect the rights of the creditor.

History: 2016, Act 330, Eff. Mar. 8, 2017.