

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

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