

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

***** 700.1042.new THIS NEW SECTION IS EFFECTIVE MARCH 8, 2017 *****

700.1042.new Definitions.

Sec. 2. As used in this act:

(a) "Advisor" means a person who is given authority by the terms of a trust instrument to remove, appoint, or both, 1 or more trustees or to direct, consent to, approve, or veto a trustee's actual or proposed investment or distribution decisions. A person is considered an advisor even if the person is denominated by another title, such as trust protector. Any person may serve as an advisor.

(b) "Ascertainable standard" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(c) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(d) "Creditor" means, with respect to a transferor, a person who has a claim whether directly or indirectly.

(e) "Debt" means liability on a claim.

(f) "Discretionary trust provision" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(g) "Disposition" means a transfer of property that either creates a new fiduciary relation between at least 1 trustee and a trust beneficiary or newly subjects property to a preexisting fiduciary relation between at least 1 trustee and a trust beneficiary. The transfer may be by conveyance or assignment, by exercise of a power of appointment, including a power to substitute 1 trustee for another or to add 1 or more new trustees, or a power of revocation or amendment or, except as provided in this subdivision, by disclaimer, release, or relinquishment. A disposition, however, does not include a disclaimer, release, or relinquishment of property that was previously the subject of a qualified disposition. For purposes of this subdivision, as between a given trustee and a given beneficiary, a new fiduciary relation is created whenever the terms of the governing trust instrument are materially altered including alteration by an election described in section 5(6) with respect to the trust beneficiary in question.

(h) "Distribution decision" means a decision regarding the distribution of trust property to or for the benefit of a trust beneficiary. Distribution decision also includes a decision regarding whether to make or guaranty a loan to or for the benefit of a trust beneficiary.

(i) "Fiduciary disposition" means a disposition made by a trustee acting in a fiduciary capacity.

(j) "Fiduciary qualified disposition" means a qualified disposition made by a trustee acting in a fiduciary capacity.

(k) "General power of appointment" means a general power as that term is defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112. However, a power exercisable in favor of the donee, his or her estate, his or her creditors, or the creditors of his or her estate that is limited by an ascertainable standard is not a general power of appointment.

(l) "Investment decision" means a decision regarding whether or not to purchase, sell, exchange, tender, or pledge any trust property. Investment decision also includes decisions regarding other transactions affecting the ownership of or rights in any trust property, other than distribution decisions. Unless otherwise provided in the trust instrument, investment decision includes a decision regarding whether to make or guaranty a loan to or on behalf of an entity in which the trust owns an interest, directly or indirectly, in the entity's debt or equity.

(m) "Organization" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(n) "Person" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(o) "Property" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(p) "Qualified disposition" means, subject to subparagraphs (iii) and (iv), a disposition after which both subparagraphs (i) and (ii) apply to the subject property:

(i) The subject property is owned by 1 or more trustees at least 1 of whom is a qualified trustee.

(ii) The subject property is governed by a trust instrument including, but not limited to, a trust instrument as modified by an election described in section 5(6), under which the transferor only has rights, powers, and interests that are permitted by section 4(2).

(iii) A disposition is not a qualified disposition to the extent that, at the time of the disposition, the transferor is in arrears on a child support obligation by more than 30 days.

(iv) A disposition is not a qualified disposition if a transferor or any person that is related or subordinate to the transferor within the meaning of section 672(c) of the internal revenue code of 1986, 26 USC 672(c), may act as an advisor. For the purposes of this subparagraph, act as an advisor does not include the power to direct the investment decisions of the trust, the power to veto a distribution from the trust, or the right to remove a trustee or advisor and to appoint a new trustee or advisor.

(q) "Qualified trust beneficiary" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(r) "Qualified trustee" means a person, other than the transferor, who meets all of the following conditions:

(i) For an individual, the individual is a resident of this state or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the department of insurance and financial services, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision.

(ii) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition and administers all or part of the trust in this state.

(iii) The person's usual place of business where some of the records pertaining to the trust are kept is located in this state or, if the person does not have such a place of business, the person's residence is in this state. For a corporate trustee, the usual place of business is the business location of the primary trust officer.

(s) "Retirement benefit" means an interest in 1 of the following types of assets if payable to a trust as a beneficiary or owned by the trust: a qualified or nonqualified annuity; a benefit under a qualified or nonqualified plan of deferred compensation; any account in, or benefit payable under, any pension, profit-sharing, stock bonus, or other qualified retirement plan; any individual retirement account or trust; and all benefits under a plan or arrangement that is established under section 401, 403, 408, 408A, or 457 or a similar provision of the internal revenue code of 1986, 26 USC 401, 403, 408, 408A, and 457.

(t) "Settlor" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(u) "Special power of appointment" means a special power as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(v) "Spendthrift provision" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(w) "Spouse" and "former spouse" mean only an individual to whom the transferor was married at, or before, the time the qualified disposition is made.

(x) "Support provision" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(y) "Transferor" means any of the following, as applicable:

(i) A person and, for more than 1 owner of undivided interests, each of several persons, who, as a beneficial owner of certain property, or as the holder of a general power of appointment over certain property, directly or indirectly, makes a disposition of the property or causes a disposition to be made.

(ii) For a fiduciary disposition, the person or persons who, as of the time of the fiduciary disposition, most recently fit the description in subparagraph (i) with respect to the property subject to the fiduciary disposition.

(z) "Trust beneficiary" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(aa) "Trust instrument" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition to which all of the following apply:

(i) The instrument expressly incorporates the law of this state to govern the validity, construction, and administration of the trust.

(ii) The instrument is irrevocable.

(iii) The instrument provides that the interest of the transferor or other trust beneficiary in trust property may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute trust property to the trust beneficiary, and that provision of the trust instrument is considered a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of section 541(c)(2) of the bankruptcy code 11 USC 541(c)(2).

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