

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

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 or for the care of an animal, as provided in section 2722.

(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.

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, 700.7409 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

History: The repealed sections pertained to trustee authority regarding tax matters and payment provisions..

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 upon 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) Upon the consent of the qualified trust beneficiaries and a trust protector who 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 trust protector to whom a power to direct the termination or modification of the trust has been given by the terms of a 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 shall 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 protector, if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) Upon 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.

Compiler's note: 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 note: 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