

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

