

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

Part 9

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

700.7901 Remedies for breach of trust.

Sec. 7901.

- (1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.
- (2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:
 - (a) Compel the trustee to perform the trustee's duties.
 - (b) Enjoin the trustee from committing a breach of trust.
 - (c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.
 - (d) Order a trustee to account.
 - (e) Appoint a special fiduciary to take possession of the trust property and administer the trust.
 - (f) Suspend the trustee.
 - (g) Remove the trustee as provided in section 7706.
 - (h) Reduce or deny compensation to the trustee.
 - (i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
 - (j) Order any other appropriate relief.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7902 Breach of trust; liability; damages.

Sec. 7902.

A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.
- (b) The profit the trustee made by reason of the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7903 Damages in absence of breach.

Sec. 7903.

- (1) A trustee is accountable to an affected trust beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.
- (2) Absent a breach of trust, a trustee is not liable to a trust beneficiary for a loss or depreciation in the value of trust property, for failure to generate income, or for not having made a profit.
- (3) This section does not do either of the following:
 - (a) Limit a trustee's right to compensation under section 7708 or payments allowed under section 7802(5).
 - (b) Make a trustee accountable to an affected beneficiary in connection with a matter to which section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7904 Attorney fees and costs; receipt of expenses and disbursements; reduction or denial of claim with respect to breach of trust.

Sec. 7904.

(1) In a proceeding involving the administration of a trust, the court, as justice and equity require, may award costs and expenses, including reasonable attorney fees, to any party who enhances, preserves, or protects trust property, to be paid from the trust that is the subject of the proceeding.

(2) Subject to subsection (3), if a trustee participates in a civil action or proceeding in good faith, whether successful or not, the trustee is entitled to receive from trust property all expenses and disbursements including reasonable attorney fees that the trustee incurs in connection with its participation.

(3) A court may reduce or deny a trustee's claim for compensation, expenses, or disbursements with respect to a breach of trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7905 Commencement of proceedings; limitations.

Sec. 7905.

(1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in which the alleged breach occurred.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

(3) If subsection (1) does not apply, a judicial proceeding by a trust beneficiary against a trustee for breach of trust shall be commenced within 5 years after the first of the following to occur:

- (a) The removal, resignation, or death of the trustee.
- (b) The termination of the trust beneficiary's interest in the trust.
- (c) The termination of the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7906 Reliance on trust instrument.

Sec. 7906.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a trust beneficiary for a breach of trust to the extent the breach resulted from the reliance.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7907 Event affecting administration or distribution.

Sec. 7907.

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specific age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7908 Exculpation of trustee.

Sec. 7908.

(1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that either of the following applies:

(a) The term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure to diversify investments are enforceable.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7909 Beneficiary's consent, release, or ratification of transaction.

Sec. 7909.

A trustee is not liable to a trust beneficiary for breach of trust if the trust beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless either of the following applies:

(a) The consent, release, or ratification of the trust beneficiary was induced by improper conduct of the trustee.

(b) At the time of the consent, release, or ratification, the trust beneficiary did not know of 1 or more of the material facts relating to the breach.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010
Popular Name: EPIC

700.7910 Personal liability of trustee; limitation.

Sec. 7910.

(1) Unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal the trustee's representative capacity.

(2) A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of the trust estate, or on a tort committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

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

700.7911 Interest as general partner.

Sec. 7911.

(1) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108, or was known by the other party to the contract.

(2) Except as otherwise provided in subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) The immunity provided by this section does not apply with respect to a general partnership interest held in any capacity other than as trustee.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7912 Protection of person dealing with trustee.

Sec. 7912.

(1) A person other than a trust beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a trust beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of the powers.

(3) A person who in good faith delivers assets to a trustee need not ensure the proper application of the assets.

(4) A person other than a trust beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities

by fiduciaries prevail over the protection provided by this section.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010

Popular Name: EPIC

700.7913 Certificate of trust.

Sec. 7913.

(1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust that must include all of the following information:

- (a) The name of the trust, the date of the trust, and the date of each operative trust instrument.
- (b) The name and address of each current trustee.
- (c) The powers of the trustee relating to the purposes for which the certificate of trust is being offered.
- (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(e) The authority of cotrustees to sign on behalf of the trust or otherwise authenticate on behalf of the trust and whether all or less than all of the cotrustees are required to exercise powers of the trustee.

(2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate must be in the form of an affidavit.

(3) A certificate of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations included in the certificate of trust to be incorrect.

(4) A certificate of trust need not include the dispositive terms of the trust instrument.

(5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from each trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.

(6) A person that acts in reliance on a certificate of trust without knowledge that the representations included in the certificate of trust are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the trust and other facts included in the certificate of trust.

(7) A person that in good faith enters into a transaction in reliance on a certificate of trust may enforce the transaction against the trust property as if the representations included in the certificate of trust were correct.

(8) A person that makes a demand for the trust instrument in addition to a certificate of trust or excerpts of the trust instrument is liable for damages, costs, expenses, and legal fees if the court determines that the person that made the demand did not act pursuant to a legal requirement to demand the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding that concerns the trust.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2018, Act 491, Imd. Eff. Dec. 27, 2018

Popular Name: EPIC