

# TOP CHANGES TO MICHIGAN LAW IN THE MTC

## 1. Presumption of Revocability

Trusts established after April 1, 2010 are presumed to be revocable. MCL 700.7602. This provision reverses the widely understood presumption that a trust is irrevocable unless stated otherwise.

## 2. Standard of Capacity to Make a Trust

The standard of capacity to create a revocable trust is the same as that required to make a will. MCL 700.7601. The MTC committee felt it was important to have a common standard because the trend across the country is in favor of applying the will standard to revocable trusts, if they do not share a standard, odd results would occur (a court could find a person lacked capacity to create a revocable trust but had the capacity to make a will, but that same will could be valid if the trust was created under the will.)

## 3. Nonjudicial Settlement Agreements

Nonjudicial settlement agreements are recognized. MCL 700.7111. Under this provision, on a determination that the representation as provided in Part 3 was adequate, the court shall approve the settlement if the agreement is not in violation of a material purpose of the trust and includes terms a court could approve. A nonjudicial settlement agreement cannot be used to terminate or modify the trust.

## 4. Trust Protectors

Trust protectors are authorized under the MTC. MCL 700.7809. A trust protector is anyone with a power to direct the trustee, subject to exceptions for the settlor, the beneficiaries, and holders of powers of appointment. With certain exceptions (MCL 700.7809(2)), trust protectors are fiduciaries, must act in good faith, in accordance with the terms of the trust, and be liable for their actions.

## 5. New Statute of Limitations

Under MCL 700.7604, challenges to the validity of the a trust used as a will substitute must be brought within six months of the notice if the trustee provides the date of the trust instrument, the date of any known amendments, information from the trust relevant to the person's interest, the settlor's name, the trustee's name and address and the time allowed for commencing a proceeding. Otherwise, challenges must be brought within two years of the settlor's death.

## 6. Settlers of Charitable Trusts Have Standing to Enforce the Terms of the Trust

MCL 700.7405 changes Michigan law and legislatively overrides *Prentis Family Found, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 698 NW2d 900 (2005).

## 7. Termination of Small Trusts

Trusts with total assets valued at less than \$50,000 may be terminated and distributed by the trustee after proper notice. MCL 700.7414. A trustee may terminate a small trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The amount will be adjusted for inflation.

## 8. Rights of Creditors of Trust Beneficiaries

Part 5 of the MTC codifies the common law in Michigan regarding creditor's rights which in turn closely follows the traditional restatement of the law as found in Restatement (Second) of Trusts. This codification preserved the very favorable common law in the area of special needs trusts.

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