

700.7108 Principal place of administration

Sec. 7108. (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either of the following applies:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

(b) All or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 7704.

(7) The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration.

Added by 2009 PA 46 (eff. Apr 1, 2010).

Reporter's Comment

Section 7108 is based on UTC §108. Although EPIC previously had no completely analogous provision, several subsections of §7108 are consistent with or similar to former EPIC provisions, including former EPIC §§7101 and 7305, MCL 700.7101, .7305.

MCL 700.7209, defines the location from time to time of the principal place of administration. The section recognizes it may be the place designated in the trust instrument. Subsection 7108(1) is consistent with MCL 700.7209 by stating that the terms of a trust instrument are free to designate the principal place of administration if there is some connection to the place designated—either the trustee's principal place of business, the trustee's residence, or the place in which all or part of the administration occurs. Former EPIC §7101 is consistent with this subsection (1).

Subsection (2) requires the trustee to administer the trust at a place appropriate to its purposes, administration, and the interests of the qualified trust beneficiaries. This subsection is similar to former EPIC §7305. This duty may limit the flexibility of the trustee to change the principal place of administration.

Subsections (3) through (5) recognize the ability of the trustee to change the principal place of administration free of judicial oversight and establish a procedure for doing so. Before the enactment of §7108, trustees frequently moved the principal place of administration without court approval. This occurred even though there was no express authority permitting the trustee to do so and even though former EPIC §7305 recognized the authority of the court to approve a change in the place of administration, which some interpreted as *requiring* court approval to change the principal place of administration.

The procedures in subsections (3) through (5) for changing the place of administration are default rules that apply when the trust instrument is silent about changes in the principal place of administration; the settlor is free to establish different requirements.

The objection of a qualified trust beneficiary does not forever bar a change in the place of administration. If in the face of an objection the trustee abandons the plan to change the place of administration, or after being denied approval by the court to change the place of administration, the trustee would be free to later propose a transfer if the trustee again determines in the future that it is appropriate to do so.

Subsection (7) is derived from former EPIC §7305. Decisions about the suitability of trustees and the place of administration are not made in a vacuum. This section requires the views of an adult beneficiary of the trust be given weight in determining the suitability of these matters.

Annotation

The terms of a trust governed by Florida law conferred on the trustee “the power to transfer or relocate the Trust’s principal place of administration and the situs of

the property of any trust ... to another county or state [or country]. If necessary, the TRUSTEE may commence appropriate judicial proceedings to effectuate a transfer of situs." *Seneker v JP Morgan Chase Bank, NA (In re Stanley A Seneker Trust)*, Nos 317003, 317096, 2015 Mich App LEXIS 397, at *5-*6 (Feb 26, 2015) (unpublished). The corporate trustee transferred the principal place of administration from Florida to Michigan without complying with the notice requirements of the Florida equivalent of §7108. After disputes arose and a proceeding was initiated in Michigan, a beneficiary argued that the trustees had improperly changed situs. The court of appeals agreed and found that although the Florida equivalent to §7108 was a default rule, which can be modified by the settlor, the terms of the trust had not "explicitly" provided that the requirements of the Florida statute did not apply. Although decided with respect to a trust governed by Florida law, this is a questionable and potentially troublesome decision to the extent it reflects how the Michigan courts will treat trusts governed by Michigan law and containing provisions different from the MTC's default provisions. It was not the intent of the MTC drafting committee that trust scriveners include express statements that the settlor intended to override default statutory provisions every time the trust instrument addresses an issue differently than the MTC does.

In *In re Harriet C Sibley Trust*, No 293601, 2010 Mich App LEXIS 2133 (Nov 9, 2010) (unpublished), the Michigan Court of Appeals declined to reverse the probate court's refusal to remove a Michigan corporate trustee from office upon the petition of the principal beneficiary who resided in Colorado and who wished to have a Colorado trustee appointed. At issue was whether a beneficiary's preference for a Colorado-based trustee was sufficient to justify removal of a Michigan trustee where there was no assertion that the administration in Michigan was otherwise inappropriate and there was no evidence that the trustee had failed to provide sound and efficient management of the trust or was unresponsive to the needs of the beneficiary. The case was decided under former EPIC §7305, portions of which are now embodied in MTC §7108.

700.7109 Notice; methods; waiver

Sec. 7109. (1) Notice to a person under this article or the sending of a document to a person under this article shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed and identified facsimile or electronic message.

(2) Notice otherwise required under this article or a document otherwise required to be sent under this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this article or the sending of a document under this article may be waived in writing by the person to be notified or sent the document.

(4) Notice of a judicial proceeding shall be given as provided in sections 1401 to 1403 and as otherwise provided by court rule.

Added by 2009 PA 46 (eff. Apr 1, 2010).

Reporter's Comment

This section closely follows UTC §109.

This section addresses notice; it does not state requirements for consent. These rules are default provisions. Settlor are free to define what kinds of notice are permitted under the terms of a trust, to prohibit certain forms of notice, and to impose conditions before certain notice can be used. For example, a settlor might require a trustee to obtain prior consent or agreement by the beneficiaries before e-mail could be used. Alternatively, a settlor could impose the requirement that for e-mail or facsimile notices to be sufficient, receipt must be acknowledged.

These provisions apply to notice in nonjudicial matters. As is made clear in subsection (4), the notice provisions found in MCL 700.1401–.1403 and the applicable court rules continue to apply in judicial proceedings.

In subsection (1) notice can be accomplished in a variety of ways, so long as notice is suitable under the circumstances and is likely to result in receipt. The means described in subsection (1) are illustrative, not exhaustive.

Under this provision, notice may be given by telecopier or a “properly directed and identified” electronic message. The latter includes e-mail. What constitutes “properly identified” e-mail is not prescribed in the MTC. The duty to properly identify the notice rests with the sender. A statement in the subject line of the message will ordinarily suffice.

Subsection (2) dispenses only with the requirement of notice. It does not dispense with a requirement to obtain a person’s consent if a provision of the MTC otherwise requires that consent. However, the representation provisions may be helpful when the person’s consent is unavailable for some reason. For example, if the consent of a particular beneficiary is required, but the beneficiary cannot be found, the representation provisions of Part 3 may provide relief by enabling another to provide the requisite consent. *See* UTC §109 comment.

Subsection (3) recognizes waivers of notice. The MTC requires that these waivers be in writing unless the terms of the trust provide otherwise. There are several reasons for this requirement. Waivers can result in the loss of rights or remedies. Oral statements lack the permanence associated with writings. Oral statements also can be ambiguous, with the parties who gave and received them intending different consequences than the other party to the conversation intended. Although this latter consequence also can result from written statements, the risks are much greater from oral statements.

Court Rule Reference

See MCR 5.102. *Interested persons* are defined in MCR 5.125. Procedural requirements for giving notice are stated in MCR 5.106.

700.7110 Others treated as qualified beneficiaries

Sec. 7110. (1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 2722 has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.

Added by 2009 PA 46 (eff. Apr 1, 2010).

Reporter's Comment

This section determines circumstances under which a charity and certain others have the rights of a qualified trust beneficiary. It has no comparable EPIC counterpart. It is based on UTC §110 with several modifications.

The term *qualified trust beneficiary* is defined in MCL 700.7103(g). Qualified trust beneficiaries are accorded a number of rights that are not given to beneficiaries who are not considered qualified trust beneficiaries under the terms of the instrument and the MTC. Examples of the kinds of matters with respect to which a qualified trust beneficiary has unique rights include notice of the transfer of the principal place of administration, MCL 700.7108; notice of trust division or consolidation, MCL 700.7417; the right to consent or withhold consent to the termi-