TRUSTEE IN WAR SERVICE

Act 195 of 1943

AN ACT to provide for the suspension of the powers of a trustee engaged in war service, as herein defined; to provide for the exercise of his powers and duties by co-trustees, or the appointment of a substitute trustee while so engaged and the exercise of such powers and duties by such substitute trustee; for the service of notice of hearing before the court on the trustee engaged in war service in certain instances; and to provide for the restoration of his powers and the removal from office of any substitute trustee appointed hereunder when he shall cease to be so engaged.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943

The People of the State of Michigan enact:

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35.511 Trustee engaged in war service; suspension of powers, appointment of co-trustee or substitute trustee.

Sec. 1.

Whenever a trustee of an express trust is, or hereafter shall be engaged in war service, as herein defined, the circuit court in chancery may, upon the petition of such trustee, or any co-trustee, or upon petition of any person having a beneficial interest in the trust administered by such trustee, whether singly or jointly with others, or any person interested in the subject matter thereof by way of remainder, issue an order suspending the powers of such trustee while he is engaged in war service and until further order of said court.

(a) Where there are 2 or more trustees serving jointly, the trustee or trustees not engaged in war service may, after the issuance of said order, and until otherwise ordered by said court, exercise all powers which he or they might have exercised as surviving trustee or trustees under any instrument creating a trust, or by virtue of their office, in the same manner and to the same extent as if the trustee whose powers have been suspended as aforesaid had died: Provided, however, That no such powers may be exercised by one who is a beneficiary under a trust of which he is sole acting trustee, unless the instrument creating the trust so provides.

(b) Where there are 2 or more trustees, 1 or more of whom is or shall be engaged in war service, the court may, notwithstanding the provisions of subsection (a) of section 1 hereof, upon petition of any of such trustees, or any person beneficially interested in the trust administered by them, or any person having an interest in the subject matter thereof by way of remainder, appoint a co-trustee to serve in the place and stead of the trustee whose powers have been suspended as aforesaid. Such appointment may be made simultaneously with and by the terms of the order suspending such powers or at any time thereafter; and when such substitute trustee shall have been appointed and shall have lawfully entered upon the execution of his trust, all trustees not engaged in war service shall, until otherwise ordered by the court, serve with the same powers and with like effect as if the trustee whose powers have been suspended as aforesaid had died and a successor had been appointed in his place and stead.

(c) Where a sole trustee is or shall be engaged in war service, the court may, upon petition of such sole trustee, or any person beneficially interested in the trust administered by him, or any person having an interest in the subject matter thereof by way of remainder, appoint a substitute trustee or substitute trustees who shall have the sole authority, until otherwise

ordered by said court, to exercise all powers previously possessed by the trustee whose powers have been suspended as herein provided.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.511

35.512 Trustee; restoration of powers.

Sec. 2.

When the trustee whose powers have been suspended as aforesaid shall cease to be engaged in war service, as determined by the court, and any of the duties of his office shall not have been fully performed, the court shall, on petition of such trustee or any person beneficially interested in the trust of which he was a trustee prior to such disability, or any person having an interest in the subject matter thereof by way of remainder, issue an order terminating the suspension of his powers, restoring all of the powers possessed by him prior thereto, and removing from office any trustee who may have been appointed to serve in his place and stead.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.512

35.513 Trustee; delivery of property to co-trustee or substitute trustee.

Sec. 3.

It shall be the duty of the trustee whose powers have been suspended as provided in this act, to deliver all property in his possession belonging to the trust administered by him to the co-trustees or substitute trustee, and to make and file an accounting within 30 days after the issuance of the order suspending his powers, or within such time as the court may direct: Provided, however, That his failure so to do shall not in any manner affect the validity of any power exercised or act performed by such co-trustees or substitute trustee in the course of the performance of the duties of their office. Such accounting may be lawfully made and filed in behalf of said trustee engaged in war service by his agent thereunto duly authorized in writing.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.513

35.514 Trustee; order for appearance, publication and mailing, proof.

Sec. 4.

Whenever a petition filed under the provisions of section 1 hereof by a person other than the trustee engaged in war service, shall be duly sworn to and shall state that the trustee engaged in war service cannot be personally served by reason of his absence from the state of Michigan, the court shall, on the filing thereof, issue an order for the appearance of such trustee within 35 days from the date of said order. Said order shall be published within 10 days from the date of this issuance in a newspaper printed and circulating in the county in which said petition is pending, or such other newspaper as the court may direct, once each week for 3 successive weeks. A copy of said order shall be sent by registered mail to the trustee engaged in war service at his last known post office address not later than 10 days prior to the time of the hearing on said petition, and a return receipt shall be demanded. Due proof of such publication and of the sending by registered mail of a copy of said order shall be made and filed in such proceeding. In all cases where such order shall have been issued on the basis of such sworn petition and service thereof shall have been made as herein provided, a return that

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process has not been personally served on such trustee shall be unnecessary. If the trustee engaged in war service shall be duly represented by an attorney of record in the proceeding in which said petition is pending, service of such order on such trustee by publication or otherwise shall not be required, provided notice be given in the manner provided for service of pleadings in suits pending in the circuit court.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.514

35.515 Instances in which trustee deemed in war service.

Sec. 5.

For the purposes of this act a trustee shall be deemed to be engaged in war service in any of the following instances:

(a) If he is a member of the military, naval or air forces of the United States of America or any of its allies;

(b) If he is engaged in any work beyond the borders of the state of Michigan in connection with a governmental agency of the United States of America, or in connection with the American Red Cross or any other body with similar objects;

(c) If he is interned in any enemy country or is in a foreign country or a possession or dependency of the United States of America and is unable to return to the state of Michigan;

(d) If it shall appear to the court that he is engaged in any occupation which is in direct aid of the war effort of the United States of America, or any of its allies, and which necessitates his continuous and extended absence from the state of Michigan.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.515

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35.516 Governing law.

Sec. 6.

This act shall take immediate effect, and its provisions shall be controlling notwithstanding the provisions of any other statute of this state.

History: 1943, Act 195, Imd. Eff. Apr. 17, 1943 ;-- CL 1948, 35.516