

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

PART 7  
OFFICE OF TRUSTEE

**700.7701 Acceptance or rejection of trusteeship.**

Sec. 7701. (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship by doing either of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do all of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified trust beneficiary.

(b) Exercise all powers set forth under section 7818(1)(a).

(c) Inspect or investigate trust property to determine potential liability under other law or for any other purpose.

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

**Popular name:** EPIC

**700.7702 Trustee's bond.**

Sec. 7702. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the trust beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A financial institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

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

**Popular name:** EPIC

**700.7703 Cotrustees; powers and duties; relief of liability.**

Sec. 7703. (1) Except as otherwise provided in this section, cotrustees shall act by majority decision.

(2) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(3) If prompt action is necessary to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust if either of the following applies:

(a) A cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity.

(b) A cotrustee who is available fails or refuses to participate in the administration of the trust following notice from the remaining cotrustee or cotrustees.

(4) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following:

(a) Any power that is permitted to be delegated under section 7817(v) to an agent who is not a trustee.

(b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days.

(5) Unless a delegation under subsection (4) was irrevocable, a trustee may revoke the delegation previously made. A revocation under this subsection must be in writing and must be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation must be given to the qualified trust beneficiaries within 28 days after the revocation.

(6) If 2 or more trustees own securities, their acts with respect to voting have 1 of the following effects:

- (a) If only 1 trustee votes, in person or by proxy, that trustee's act binds all of the trustees.
- (b) If more than 1 trustee votes, in person or by proxy, the act of the majority so voting binds all of the trustees.
- (c) If more than 1 trustee votes, in person or by proxy, but the vote is evenly split on a particular matter, each faction is entitled to vote the securities proportionately.
- (7) A trustee is not liable for the action or omission of a cotrustee if all of the following apply:
  - (a) The trustee is not unavailable to perform a trustee's function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee.
  - (b) The trustee is aware of but does not join in the action or omission of the cotrustee.
  - (c) The trustee dissents in writing to each cotrustee at or before the time of the action or omission.
- (8) A trustee that is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take action to prevent the action.
- (9) A dissenting trustee that joins in an action at the direction of the majority of the trustees and that notified any cotrustee in writing of the dissent at or before the time of the action is not liable for the action.
- (10) Notwithstanding any provision in this section, the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that a directed trustee described in section 7703a may be relieved from duty and liability with respect to a trust director's power of direction under section 7703a.

**History:** Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2018, Act 664, Eff. Mar. 29, 2019.

**Popular name:** EPIC

**700.7703a Rules of construction; nonfiduciary powers under a trust; power of direction to trust director; duties and limitations of trust director and trustee; liability; applicability of rules to trusteeship; definitions.**

Sec. 7703a. (1) Excepting the rules of construction in subsection (2), this section does not apply to:

- (a) A power of appointment that is intended to be held by the donee in a nonfiduciary capacity.
- (b) A power that is intended to be held in a nonfiduciary capacity that enables the holder to create a power of appointment, regardless of whether the created power is intended to be held by the donee of the created power in a fiduciary or a nonfiduciary capacity.
- (c) A power to appoint or remove a trustee or trust director.
- (d) A power of a settlor over a trust to the extent the settlor has a power to revoke the trust.
- (e) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects either of the following:
  - (i) The beneficial interest of the beneficiary.
  - (ii) The beneficial interest of another beneficiary represented by the beneficiary under part 3 of this article with respect to the exercise or nonexercise of the power.
- (f) A power over a trust if both of the following apply:
  - (i) The terms of the trust provide that the power is held in a nonfiduciary capacity.
  - (ii) The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the internal revenue code of 1986, 26 USC 1 to 9834.

(2) All of the following rules of construction apply to powers under a trust:

- (a) A power described in subsection (1) that is intended to be held in a nonfiduciary capacity is not subject to fiduciary constraint and may be exercised by the holder in any manner consistent with the scope of the power and any express requirements or limitations imposed by the terms of the trust. A trustee shall take action to comply with the exercise or nonexercise of a power described in this subdivision. A trustee is not liable for taking an action required under this subdivision. However, a trustee shall not comply with the exercise or nonexercise of a power described in this subdivision if the exercise or nonexercise was obtained with the trustee's collusion or by the trustee's fraud and compliance would be in pursuance of that collusion or fraud.
- (b) Except as provided in subdivision (c), all of the following powers are intended to be held in a nonfiduciary capacity if granted to a person other than a trustee of the trust:
  - (i) A power of appointment, including a power of appointment in the form of a power to do any of the following:
    - (A) Adjust between principal and income.
    - (B) Convert to or from a unitrust.

- (C) Modify, reform, or terminate the trust.
- (D) Distribute trust assets in further trust.
- (ii) A power that enables the holder to create a power of appointment.
- (c) A power to do any of the following is intended to be held in a fiduciary capacity even though the holder is not a trustee of the trust if the holder otherwise does not have a beneficial interest in the trust:
  - (i) Adjust between principal and income.
  - (ii) Convert to or from a unitrust.
  - (iii) Modify, reform, or terminate the trust.
  - (iv) Distribute trust assets in further trust.
- (3) Subject to subsection (4), the terms of a trust may grant a power of direction to a trust director. Both of the following rules of construction apply to powers of direction:
  - (a) A trust director may exercise any further power appropriate to the exercise or nonexercise of the director's power of direction.
  - (b) Trust directors with joint powers must act by majority decision.
  - (4) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or a further power under subsection (3)(a) regarding both of the following:
    - (a) A payback provision in the terms of the trust necessary for compliance with the reimbursement requirements of Medicaid law in section 1917 of the social security act, 42 USC 1396p(d)(4)(A).
    - (b) A charitable interest in the trust, including required notices regarding the interest to the attorney general.
  - (5) Subject to subsection (6), both of the following apply with respect to a power of direction or a further power under subsection (3)(a):
    - (a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power as a sole trustee in a like position and under similar circumstances if the power is held individually or, if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.
    - (b) A term of a trust that relieves a trust director from liability for breach of fiduciary duty is unenforceable to the extent that either of the following applies:
      - (i) The term relieves the trust director of liability for acts committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.
      - (ii) The term was inserted as the result of an abuse by the trust director of a fiduciary or confidential relationship to the settlor.
  - (6) If a trust director is licensed, certified, or otherwise authorized or permitted by law other than this section to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this section.
  - (7) A directed trustee shall take action to comply with the exercise or nonexercise of a power of direction or further power of a trust director under subsection (3)(a). A directed trustee is not liable for taking an action required under this subsection. However, a directed trustee shall not comply with the exercise or nonexercise of a power described in this subsection if the exercise or nonexercise was obtained with the directed trustee's collusion or by the directed trustee's fraud and compliance would be in pursuance of that collusion or fraud.
  - (8) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if any of the following apply:
    - (a) The breach involved the trustee's or other director's bad faith or reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.
    - (b) The release was induced by improper conduct of the trustee or other director in procuring the release.
    - (c) At the time of the release, the director did not know the material facts relating to the breach.
  - (9) Subject to subsection (11), a trustee shall provide information to a trust director to the extent the information is reasonably related to both of the following:
    - (a) The powers or duties of the trustee.
    - (b) The powers or duties of the director.
  - (10) Subject to subsection (13), a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to both of the following:
    - (a) The powers or duties of the director.
    - (b) The powers or duties of the trustee or other director.
  - (11) A trustee does not have a duty to do either of the following:
    - (a) Monitor a trust director.
    - (b) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which

the trustee might have acted differently than the director.

(12) By taking an action described in subsection (11), a trustee does not assume the duty excluded by subsection (11).

(13) A trust director does not have a duty to do either of the following:

(a) Monitor a trustee or another trust director.

(b) Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director.

(14) By taking an action described in subsection (13), a trust director does not assume the duty excluded by subsection (13).

(15) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance if the trustee's reliance is not in bad faith.

(16) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance if the trust director's reliance is not in bad faith.

(17) An action against a trust director for breach of trust must be commenced within the same limitation period as an action for breach of trust against a trustee in a like position and under similar circumstances under section 7905.

(18) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have in an action for breach of trust against a trustee in a like position and under similar circumstances under section 7905.

(19) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

(20) By accepting appointment as a trust director, the director submits personally to jurisdiction in this state regarding any matter related to a power or duty of the director. This section does not preclude use of another method to obtain jurisdiction over a trust director.

(21) The rules applicable to a trusteeship apply to a trust directorship regarding all of the following matters:

(a) Acceptance under section 7701(1).

(b) Giving of bond to secure performance under section 7702.

(c) Reasonable compensation under section 7708.

(d) Resignation under section 7705.

(e) Removal under section 7706.

(f) Vacancy and appointment of successors under section 7704, treating any instance in which 2 or more trust directors have the same power of direction as analogous to a cotrusteeship for purposes of section 7704(2).

(22) The application of this section with respect to a given trust is subject to both of the following:

(a) If the trust was created before the effective date of the amendatory act that added this section, this section applies only to decisions or actions taken on or after that date.

(b) If the trust's principal place of administration is changed to this state on or after the effective date of the amendatory act that added this section, this section applies only to decisions or actions taken on or after the date of the change.

(23) In applying and construing the provisions of this section that are based on the uniform directed trust act, weight should be given to the goal of promoting uniformity in the law on directed trusteeships among the states that have enacted the uniform directed trust act.

(24) As used in section:

(a) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust or by this article.

(b) "Directed trustee" means a trustee that is subject to a power of direction.

(c) "Donee" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(d) "Power of appointment" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(e) "Power of direction" means a power over a trust granted by the terms of the trust to the extent the power is exercisable while the person to whom it is granted is not serving as a trustee. Power of direction includes a power over the investment, management, or distribution of trust property or other matters of trust administration. Power of direction does not include the powers described in subsection (1).

(f) "Trust director" means an organization permitted to exercise trust powers in this state as described in

section 1105(2) of the banking code of 1999, 1999 PA 276, MCL 487.11105, or an individual, if that person is granted a power of direction whether or not either of the following applies:

- (i) The terms of the trust refer to the person as a trust director.
- (ii) The person is a beneficiary or settlor of the trust.

**History:** Add. 2018, Act 663, Eff. Mar. 29, 2019.

**Popular name:** EPIC

### **700.7703b Separate trustees provision; trust instrument; duties and powers; liability; definitions.**

Sec. 7703b. (1) A trust instrument may include a separate trustees provision.

(2) While a separate trustees provision applies, the whole trusteeship of the aggregate trust is divided, under the terms of the separate trustees provision, into discrete sets of separately accepted fiduciary responsibilities, with each discrete set separately allocated to 1 or another of the aggregate trust's separate trustees. All of the following apply while a separate trustees provision applies:

(a) Except as provided in subdivision (c), the aggregate trust's separate trustees are not treated as cotrustees in their relations to one another. With regard to the common title to the trust property described in subdivision (c)(i), all of the following apply:

(i) A separate investment trustee accepts the common title only for purposes of performing the trustee investment function described by the governing separate trustees provision for the benefit of the trust beneficiaries.

(ii) A separate distributions trustee accepts the common title only for purposes of administering a discretionary trust provision specified in the governing separate trustees provision for the benefit of the trust beneficiaries affected by the specified discretionary trust provisions.

(iii) A separate resultant trustee accepts the common title only for purposes of performing all trustee functions not allocated by the governing separate trustees provision to either of the following:

(A) A separate investment trustee, if any.

(B) A separate distributions trustee.

(b) A separate trustee shall act on its own authority with respect to each of its separate trustee functions. A separate trustee does not need approval from any other separate trustee to conduct its separate trustee functions.

(c) The aggregate trust's separate trustees are treated as cotrustees in their relations to one another only for the following purposes:

(i) Taking, holding, transferring, and defending title to trust property.

(ii) Determining venue and interested persons in proceedings concerning the aggregate trust.

(iii) Liability, if any, for income, property, or other taxes attributable to trust property.

(iv) The privileges and immunities of cotrustees under general principles of law and equity to comment to a settlor or beneficiary of a trust or others on one another's performance of fiduciary duties.

(d) The aggregate trust's separate trustees are not cotrustees for either of the following purposes:

(i) Joinder of necessary parties in a proceeding for breach of trust.

(ii) The requirement in section 7402 that the same person is not the sole trustee and sole beneficiary of a trust. If the aggregate trust has only 1 beneficiary, the beneficiary may not be a separate trustee of the trust unless both of the following apply:

(A) The separate trustee comprises a cotrusteeship of which the beneficiary is a cotrustee.

(B) The trust instrument prohibits the beneficiary from serving alone.

(e) A separate trustee shall not accept the separate trust associated with, or, except as otherwise provided in this subdivision, participate in or provide advice regarding the performance of, a separate trustee function of any other separate trustee of the aggregate trust. Ministerial acts performed by 1 separate trustee in connection with a separate trustee function of another separate trustee of the aggregate trust are not considered an acceptance of the separate trust associated with the separate trustee function of the other separate trustee. As used in this subdivision, "ministerial acts" includes any of the following:

(i) Confirming that an investment or distribution directive of another separate trustee has been carried out.

(ii) Recording and reporting the actions of another separate trustee or conferring with another separate trustee for purposes of administrative coordination or efficiency.

(f) A separate trustee does not have a duty to petition the court or to take other affirmative action to ensure that any vacancy in any separate trusteeship is filled. If a separate trustee petitions the court or takes other affirmative action to ensure that a vacancy in a separate trusteeship is filled, both of the following apply:

(i) The separate trustee is not considered to have accepted the separate trust associated with the vacant separate trusteeship.

(ii) The separate trustee does not have a duty to petition the court or take other affirmative action to ensure that any other vacancy in a separate trusteeship is filled.

(3) A separate trustee's provision must determine all of the following:

(a) If there is a separate investment trustee, that the separate investment trustee shall perform the trustee investment function.

(b) That 1 or more separate distributions trustees, if any, shall exercise discretion under 1 or more specified discretionary trust provisions.

(c) Which of the aggregate trust's separate trustees shall perform, during any period in which the aggregate trust is not a unitrust, the function of allocating between principal and income, for fiduciary accounting purposes, receipts and disbursements or distributions affected by the separate trustees' separate trustee functions.

(d) Which of the aggregate trust's separate trustees is responsible for preparation and filing of tax and information returns for the aggregate trust and for responding on behalf of the aggregate trust to inquiries from governmental agencies.

(e) Which of the aggregate trust's separate trustees is responsible for responding to a proceeding challenging a purpose or the validity of the trust.

(f) Which of the aggregate trust's separate trustees is responsible for determining whether at any time cash or other property will be loaned by the trust to any of the following:

(i) One or more trust beneficiaries.

(ii) One or more business enterprises in which a trust beneficiary has an ownership interest.

(iii) One or more business enterprises in which the aggregate trust itself has an ownership interest.

(g) For a separate investment trustee, whether the separate investment trustee or the separate resultant trustee shall determine the aggregate trust's asset allocation for investment purposes.

(h) That the separate resultant trustee is responsible for the custody of the aggregate trust's property.

(4) With regard to a separate trustee function of a separate trustee, all of the following apply:

(a) The separate trustee has all of the duties and powers of a trustee described in this part and part 8 of this article.

(b) The separate trustee is subject to control by both of the following in the same circumstances as would be a trustee or cotrusteeship that is not a separate trustee:

(i) Each settlor of a revocable trust.

(ii) A holder of a power to direct a trustee, if any.

(c) The separate trustee is required to seek or consider the advice of a designated trust advisor, if any, in the same circumstances as would a trustee or cotrusteeship that is not a separate trustee.

(5) If a separate trustee comprises a cotrusteeship, with regard to a separate trustee function of the separate trustee, the cotrustees have all of the duties and powers of cotrustees described in this part.

(6) A separate trustee has the duty to inform and report on each of its separate trustee functions to both of the following:

(a) Trust beneficiaries as described in section 7814. However, a separate trustee is not required to provide a beneficiary a report that the separate trustee knows will duplicate a report that another separate trustee of the aggregate trust provided or will provide to the beneficiary.

(b) Each other separate trustee of the aggregate trust as is reasonably necessary for the other separate trustee to perform a separate trustee function of the other separate trustee.

(7) A separate trustee does not have a duty to do any of the following:

(a) Monitor or review the actions of any other separate trustee of the aggregate trust.

(b) Notify or warn a settlor or beneficiary of the aggregate trust of a breach of trust or possible breach of trust on the part of any other separate trustee.

(8) If a separate trustee notifies or warns a settlor or beneficiary as described in subsection (7)(b), both of the following apply:

(a) The separate trustee is not considered to have accepted the separate trust associated with the separate trustee function of the other separate trustee.

(b) The separate trustee does not have a duty to notify or warn a settlor or beneficiary of any other breach or possible breach of trust on the part of any other separate trustee.

(9) Absent clear and convincing evidence of collusion in a breach of trust, all of the following apply:

(a) A separate trustee is not liable for the act or omission of any other separate trustee of the aggregate trust.

(b) A separate trustee in breach of a trustee duty of a separate trustee function of the separate trustee is the only separate trustee of the aggregate trust obliged to defend or otherwise respond to any proceeding brought by a trust beneficiary regarding that breach.

(c) Except as provided in subdivision (d), a separate trustee is liable to trust beneficiaries for breach of a trustee duty of a separate trustee function of the separate trustee as if the other separate trustees of the aggregate trust were not in office and the separate trustee were the sole trustee of the aggregate trust.

(d) A separate trustee may be liable concerning a trustee function of another separate trustee of the aggregate trust only for the separate trustee's own actions in the performance of ministerial acts pursuant to the other separate trustee's instruction and only to the extent the separate trustee acts in bad faith.

(10) As used in this section:

(a) "Affirmative action" by a separate trustee does not include a failure to act.

(b) "Aggregate trust" means the inclusive set of separate relations of trust to be separately accepted by the separate trustees under a given separate trustees provision.

(c) "Cotrusteeship" means a set of 1 or more cotrustees whose relations to one another in respect of trust property is governed by section 7703.

(d) "Separate distributions trustee" means a person or a cotrusteeship that is designated by a separate trustees provision to exercise discretion as a trustee or trustees under a discretionary trust provision.

(e) "Separate investment trustee" means a person or a cotrusteeship that is designated by a separate trustees provision to perform the trustee investment function as a trustee or trustees.

(f) "Separate resultant trustee" means a person or a cotrusteeship that is designated as a trustee or trustees to perform all trustee functions not allocated by the separate trustees provision to a separate investment trustee or to any separate distributions trustee.

(g) "Separate trustee" means a separate resultant trustee, separate investment trustee, or separate distributions trustee.

(h) "Separate trustees provision" means a trust provision that designates or provides a method of designating both of the following:

(i) A separate resultant trustee.

(ii) A separate investment trustee or 1 or more separate distributions trustees.

(i) "Separate trusteeship" means the office of a separate trustee.

(j) "Trustee investment function" means a trustee function expressly allocated by the separate trustees provision to a separate investment trustee. A trustee investment function may be broadly or narrowly defined by the separate trustees provision and may include any of the following:

(i) Determining for trust investment purposes the retention, purchase, sale, assignment, exchange, tender, or encumbrance of trust property and the investment and reinvestment of undistributed income and principal of the aggregate trust.

(ii) Management, control, and exercise of voting powers related directly or indirectly to any trust asset.

(iii) For nonpublicly traded investments or property for which there is no readily available market value, determining the methodology for valuing the property and the frequency of valuations.

**History:** Add. 2018, Act 662, Eff. Mar. 29, 2019.

**Popular name:** EPIC

#### **700.7704 Vacancy in trusteeship; manner of filling; priority; appointment by court of additional trustee or fiduciary; definitions.**

Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

(a) A person designated as trustee rejects the trusteeship.

(b) A person designated as trustee cannot be identified or does not exist.

(c) A trustee resigns.

(d) A trustee is disqualified or removed.

(e) A trustee dies.

(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. Though any separate trustee may comprise a cotrusteeship, the relation between respective separate trustees serving under a given separate trustees provision is not itself a cotrusteeship. A vacancy in a trusteeship must be filled if the vacancy leaves either of the following:

(a) A trust that is not subject to a separate trustees provision as of the time of the vacancy without any remaining trustee.

(b) Any of the several separate trusteeships governed by an operative separate trustees provision without any remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy must be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy must be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection.

(c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.

(6) As used in this section, "cotrusteeship", "separate trustee", "separate trustees provision", and "separate trusteeship" mean those terms as defined in section 7703b.

**History:** Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2018, Act 662, Eff. Mar. 29, 2019.

**Popular name:** EPIC

#### **700.7705 Resignation of trustee; circumstances; issuance of orders and conditions; liability.**

Sec. 7705. (1) A trustee may resign in either of the following circumstances:

(a) Upon at least 28 days' notice to the qualified trust beneficiaries, the holders of powers of appointment, and all cotrustees.

(b) With the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

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

**Popular name:** EPIC

#### **700.7706 Removal of trustee.**

Sec. 7706. (1) The settlor, a cotrustee, or a qualified trust beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if 1 or more of the following occur:

(a) The trustee commits a serious breach of trust.

(b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.

(c) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the purposes of the trust.

(d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, to the extent it is not inconsistent with a material purpose of the trust, the court may order any appropriate relief under section 7901(2) that is necessary to protect the trust property or the interests of the trust beneficiaries.

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

**Popular name:** EPIC

#### **700.7707 Delivery of property by former trustee.**

Sec. 7707. (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property in the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

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

**Popular name:** EPIC

#### **700.7708 Compensation of trustee.**

Sec. 7708. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if either of the following apply:



- (a) The duties of the trustee are substantially different from those contemplated when the trust was created.
- (b) The compensation specified by the terms of the trust would be unreasonably low or high.

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

**Popular name:** EPIC

**700.7709 Reimbursement of expenses; advance of money as lien; advances and reimbursement not as self-dealing or breach of fiduciary duty.**

Sec. 7709. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for both of the following:

- (a) Expenses that were properly incurred in the administration of the trust.
  - (b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
- (2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.
- (3) Advances and reimbursement under this section are not considered self-dealing by the trustee and are not a breach of the trustee's fiduciary duty.

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

**Popular name:** EPIC