

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

700.7411 Modification or termination of noncharitable trust; consent; "settlor's representative" defined.

Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court on the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) On the consent of the qualified trust beneficiaries and a person or committee that is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or other person or committee that is given a power by the terms of the trust to direct the termination or modification of the trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010.

(3) Notice of any proceeding to terminate or modify a trust must be given to the settlor, the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust director, if any, a powerholder described in subsection (1)(b) or (c), if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) On termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the agent is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010;—Am. 2018, Act 664, Eff. Mar. 29, 2019.

Compiler's note: 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."

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