



Passing Ships: Some Reasons Why Trust & Estate Planners, Administrators, and Litigators Should Talk to Each Other

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Introduction

Some attorneys who have a focus in trusts and estates just plan; others might handle straightforward incapacity and post-death administrations; and fewer still litigate the messes that arise from planning and administration. I consider myself fortunate because even though my overall practice centers primarily on less-than-straightforward trust and estate administration and litigation, I still have the opportunity to prepare estate plans and continue to learn about the theories that make up the foundation of a good, tailored estate plan. So, as I get further along in my own trusts and estates practice, I spend more time thinking and emphasizing how the different aspects of planning, administration, and litigation should integrate more to be of better overall service to our clients – all to help minimize disputes. Too often, attorneys work in silos rarely thinking about how they can learn from others who emphasize different aspects of the practice area. Yet, in order to be really good at what we do, even if we do not broadly cover the trust and estate practice, we need to understand what happens before and after a particular estate plan or estate planning client walks through our doors.

In short, from my perspective we have to continue to learn and evolve:

- Estate planners need to be familiar with the procedures and necessities of administration and the issues that arise in litigation so their estate plans can be drafted more tightly and adhere more purely to the grantor's intent.
- Administrators need to understand what causes a drafting attorney to use the particular language and why it is important in the context of the particular estate plan's administration; then how to interpret and apply such language and the applicable law to be efficient, expeditious, and true to the grantor's intent.
- Litigators need to understand how the language of an estate plan and the grantor's intent impact the estate plan's administration, while appreciating and explaining to their clients that fulfilling the grantor's intent and complying with applicable law does not require perfection in performance.

Below are some areas that all attorneys with a trusts and estates practice should keep in mind during all phases and in all areas of representing their clients. These areas are by no means exclusive or exhaustive, but they are meant to get us thinking more thoroughly about how to achieve the best results for our clients.

Considerations for Estate Planners

1. Failing to understand the governing instruments or effectively explaining it to the clients (at all stages);
2. Using boilerplate without considering the particular client's situation:
 - a. Limiting fiduciary duties [MCL 700.7105(2)(b) and MCL 700.7801];
 - b. Incapacity standards:
 - i. How is incapacity determined and are named successor trustees or beneficiaries hamstrung in protecting a trust from an incapacitated grantor?
 - ii. Interaction with MTC reporting requirements:
 1. MCL 700.7814;
 2. MCL 700.7603(2), MCL 700.7814(4), and MCL 700.7105(2)(j);
 - iii. Limitations on distributions to or for the grantor (e.g., monetary distributions for gifts to others);
 - iv. Do the residuary beneficiaries gain any rights upon the grantor's incapacity (e.g., "dependents" and the applicable definition)? Or is the beneficial "right" only vested at the grantor's death?
 - c. Successor trustee provisions:
 - i. Differences in powers allowed when grantor is acting as trustee;
 - ii. Unanimity versus majority where multiple trustees exist;
 - iii. Should a successor trustee be excused from reviewing the actions of a predecessor trustee?
 - iv. Principal place of administration provisions and the effect on the beneficiaries;
 - d. Prudent Investor Rule [MCL 700.1501, et seq]:

- i. Existing assets at the grantor's death;
 - ii. Future investments;
 - e. Exculpation provisions [MCL 700.7105(2)(k), MCL 700.7809(8), and MCL 700.7908]:
 - i. Are they necessary?
 - ii. How broad is broad enough?
 - iii. Should they be targeted?
 - f. Inclusion of permissible distributees (sprinkle provisions) where spouse is the only beneficiary that the settlor really cares about until the spouse dies, and the impact on standing;
 - g. Effective no contest clauses [MCL 700.7105(2)(p)];
 - h. Early-termination provisions;
 - i. Limitations periods [MCL 700.7105(2)(m) and MCL 700.7905];
 - j. Mandatory arbitration provisions [MCL 700.7105(2)(n) and (o), MCL 700.1302(b), MCL 700.7203, MCL 700.7204];
- 3. Titling/coordination of assets, as they relate to funding and distributions;
- 4. Statements of intent or side letters:
 - a. May provide some guidance to the successor trustee;
 - b. May provide some contextual understanding to the beneficiary;
 - c. May be used to establish a latent ambiguity in a governing instrument, so care is needed when drafting;
- 5. Not vetting or challenging a client's choice of fiduciary:
 - a. Identifying the right person or entity to act (family vs. friend vs. third party);
 - b. Understanding duties to beneficiaries; and
 - c. Understanding boundaries and the impact of being a fiduciary.

Trust and Estate Administrators

1. Failing to understand the governing instruments or effectively explaining it to the clients (at all stages);
2. Making an effort to allow the fiduciary to understand the goals, needs, tendencies, and personalities of beneficiaries to make the administration and distribution process more effective and rewarding:
 - a. Discretionary distributions;
 - b. Spendthrift provisions;
 - c. Impact of the Prudent Investor Rule if not waived entirely;
3. Accounting disputes:
 - a. Form and detail;
 - b. Principal and income allocations (e.g., when traditional notions of income are not enough) [MCL 555.501 through MCL 555.1006];
4. Distributions in cash or in kind, especially where tangible personal property is involved;
5. Timing of distributions:
 - a. Making partial distributions before statute of limitations on challenges runs;
 - b. Withholding to punish noisy beneficiaries; and
6. Forgetting those whom the fiduciary serves (and the attorney's role in the process).

Trust and Estate Litigators

1. Failing to understand the governing instruments or effectively explaining it to the clients (at all stages);
2. Forgetting those whom the fiduciary serves (and the attorney's role in the process); and
3. The role of the governing instrument in litigation and settlement:

- a. Rules governing interpretation;
 - b. Resolving ambiguities and relation-back to grantor's intent;
 - c. The governing instrument and applicable law suggest that we can, but should we? Or trying to develop and manage trusting and cooperative relationships between fiduciaries and beneficiaries;
 - d. Modification and termination of trusts;
4. Understanding when a fiduciary has acted inappropriately and then trying to rectify the problem – or damage control; and
 5. Unrealistic expectations of perfect performance by a fiduciary or perfect behavior by a beneficiary.

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

700.1302 Exclusive subject matter jurisdiction.

Sec. 1302. The court has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

- (i) The internal affairs of the estate.
- (ii) Estate administration, settlement, and distribution.
- (iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
- (iv) Construction of a will.
- (v) Determination of heirs.
- (vi) Determination of death of an accident or disaster victim under section 1208.

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

- (i) Appoint or remove a trustee.
- (ii) Review the fees of a trustee.
- (iii) Require, hear, and settle interim or final accounts.
- (iv) Ascertain beneficiaries.
- (v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.
- (vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
- (vii) Release registration of a trust.
- (viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

(d) A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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

700.1502 Prudent investor rule.

Sec. 1502. (1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.

(2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

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

700.7105 Duties and powers of trustee; provisions of law prevailing over terms of trust.

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

- (a) The requirements under section 7401 for creating a trust.
- (b) The duty of a trustee to administer a trust in accordance with section 7801.
- (c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- (d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.
- (e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.
- (f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.
- (g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
- (h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).
- (i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.
- (j) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).
- (k) The effect of an exculpatory term under section 7809(8) or 7908.
- (l) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.
- (m) Periods of limitation under this article for commencing a judicial proceeding.
- (n) The power of the court to take action and exercise jurisdiction.
- (o) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.
- (p) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

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."

Popular name: EPIC

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

700.7203 Subject matter jurisdiction.

Sec. 7203. (1) The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust as provided in section 1302(b) and (d).

(2) The court has concurrent jurisdiction with other courts of this state of other proceedings that involve a trust as provided in section 1303.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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

700.7204 Venue.

Sec. 7204. (1) Except as otherwise provided in subsection (2), venue for a proceeding involving a trust is as follows:

(a) For a proceeding under section 7203 involving a registered trust, in the place of registration.

(b) For a proceeding under section 7203 involving a trust not registered in this state, in any place where the trust properly could be registered and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) As otherwise specified by court rule.

(2) If a trust has no trustee and has not been registered, venue for a judicial proceeding for the appointment of a trustee is as follows:

(a) In a county in this state in which a trust beneficiary resides.

(b) In a county in which any trust property is located.

(c) If the trust is created by will, in the county in which the decedent's estate was or is being administered.

(d) As otherwise provided by court rule.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

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

700.7603 Powers of settlor; exceptions; settlor as incapacitated individual; powers of withdrawal; actions by predecessor trustee.

Sec. 7603. (1) Subject to subsection (2), while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. This subsection does not apply to either of the following:

(a) A trust created by the exercise of a power described in section 7820a.

(b) A trust created by the exercise of a power of appointment held by a trustee in a fiduciary capacity.

(2) If the trustee reasonably believes that the settlor of a revocable trust is an incapacitated individual, the trustee shall keep the settlor's designated agent or, if there is no designated agent or if the sole agent is a trustee, each beneficiary who, if the settlor were then deceased, would be a qualified trust beneficiary informed of the existence of the trust and reasonably informed of its administration.

(3) While a trust is not revocable and while a person has a currently exercisable power of withdrawal over the entire principal of the trust, the duties of a trustee are owed exclusively to the person.

(4) A person who succeeds to the position of trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also the trust settlor is not liable for an action of the settlor while the settlor was serving as trustee.

(5) With respect to a predecessor trustee who was also the settlor, the successor trustee has no responsibility to investigate a transaction by the predecessor trustee, to review an account, to review an action of the predecessor trustee, or to take action for a breach of trust by the predecessor trustee.

History: Add. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012.

Popular name: EPIC

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

700.7801 Administration of trust; duties of trustee.

Sec. 7801. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

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

Popular name: EPIC

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

700.7802 Duty of loyalty.

Sec. 7802. (1) A trustee shall administer the trust solely in the interests of the trust beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 7912, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a substantial conflict between the trustee's fiduciary and personal interests is voidable by a trust beneficiary affected by the transaction unless 1 or more of the following apply:

- (a) The transaction was authorized by the terms of the trust.
- (b) The transaction was approved by the court after notice to the interested persons.
- (c) The trust beneficiary did not commence a judicial proceeding within the time allowed by section 7905.
- (d) The trust beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7909.
- (e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
- (f) The transaction is otherwise permitted by statute.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with any of the following:

- (a) The trustee's spouse.
- (b) The trustee's descendant, sibling, or parent or the spouse of a descendant, sibling, or parent.
- (c) An agent or attorney of the trustee.
- (d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction that does not concern trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 7814 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the trust beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interests of the trust beneficiaries.

(7) This section does not preclude the following transactions, if fair to the trust beneficiaries:

- (a) An agreement between a trustee and a trust beneficiary relating to the appointment or compensation of the trustee.
- (b) Payment of reasonable compensation to the trustee.
- (c) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a trust beneficiary has an interest.
- (d) A deposit of trust money in a financial institution operated by or affiliated with the trustee.
- (e) An advance by the trustee of money for the protection of the trust.

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

Popular name: EPIC

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

700.7809 Trust protector; exercise of powers.

Sec. 7809. (1) A trust protector, other than a trust protector who is a beneficiary of the trust, is subject to all of the following:

(a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.

(b) In exercising or refraining from exercising any power, duty, or discretion, the trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(c) The trust protector is liable for any loss that results from the breach of his or her fiduciary duties.

(2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(3) Except as otherwise provided in subsection (4), the trustee shall act in accordance with a trust protector's exercise of the trust protector's specified powers and is not liable for so acting.

(4) If either of the following applies to a trust protector's attempted exercise of a specified power, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives prior direction from the court:

(a) The exercise is contrary to the terms of the trust.

(b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.

(5) A trustee is not liable for any loss that results from any of the following:

(a) The trustee's compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (4).

(b) The trustee's failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization.

(c) Seeking a determination from the court regarding the trust protector's actions or directions.

(d) The trustee's refraining from action pursuant to subsection (4).

(6) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(7) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.

(8) A term of a trust that relieves a trust protector from liability for breach of his or her fiduciary duties is unenforceable to the extent that either of the following applies:

(a) The term relieves the trust protector 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.

(b) The term was inserted as the result of an abuse by the trust protector of a fiduciary or confidential relationship to the settlor.

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

Popular name: EPIC

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

700.7814 Duty to inform and report.

Sec. 7814. (1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

(b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.

(d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified trust beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values, and, if applicable, any disclosure required under section 7802(5). In the trustee's discretion, the trustee may provide the report to any trust beneficiary. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified trust beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified trust beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.

(5) A trust beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A trust beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, an irrevocable trust created, or a revocable trust that becomes irrevocable on or after the effective date of the amendatory act that added this section.

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

Popular name: EPIC

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

700.7905 Commencement of proceedings; limitations.

Sec. 7905. (1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in which the alleged breach occurred.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

(3) If subsection (1) does not apply, a judicial proceeding by a trust beneficiary against a trustee for breach of trust shall be commenced within 5 years after the first of the following to occur:

- (a) The removal, resignation, or death of the trustee.
- (b) The termination of the trust beneficiary's interest in the trust.
- (c) The termination of the trust.

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

Popular name: EPIC

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

700.7908 Exculpation of trustee.

Sec. 7908. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that either of the following applies:

(a) The term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.

(b) The term was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure to diversify investments are enforceable.

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

Popular name: EPIC