
Take-Away: Michigan has a new *purpose trust* statute.

Background: The Michigan Trust Code (MTC) provides that a trust may be created only to the extent its *purposes* are lawful, not contrary to public policy, and possible to achieve. [MCL 700.7404.] This is one of the few mandatory provisions of the MTC that must prevail over other, or conflicting, trust terms. [MCL 700.7105(2)(c).]

However, a trust's *purpose* should not be confused with the more commonplace reference to the adoption of a *purpose trust*. A *purpose trust* is where the asset or property held in the trust is to be protected or maintained, with or without necessarily a beneficiary being named for the trust. At common law, a *purpose trust* was invalid because it did not have a beneficiary who was able to enforce the terms of the trust.

Michigan Purpose Trusts: The most common form of *purpose trust* in Michigan is the classic *pet trust* which uses the trust mechanism to maintain the pet [which is, by law, tangible personal property in Michigan], while alive, but with no person named as the beneficiary of the *pet trust*. This EPIC provision was **repealed** in March of 2024. Interestingly, this original *pet trust* provision was not in the Michigan Trust Code but was found in the EPIC provisions that dealt with Wills. Former MCL 700.2722 provided, in part:

1. *Except as provided by another state and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplates a longer duration.*

2. *Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent."*
3. *[Extensively deals with the administration of the pet trust and who is entitled to receive the 'excess' assets transferred to the pet trust.]*

MCL 700.2722 was **replaced** with MCL 700.7408 which is now part of the MTC. In the new pet trust provision, there is no time limit, just the 'death of the last surviving animal' to control the *pet trust's* duration. Otherwise, the same limitations apply, e.g., a judge can reduce the amount set aside to carry out the *pet trust*.

In addition, **MCL 700.7409 was added to the MTC**, effective March 1, 2024. This new MTC provision addresses a trust that is created for noncharitable purposes without a definite or definitely ascertainable beneficiary, meaning a *purpose trust* that is not a *pet trust*:

*"(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. A trust created under this section may be performed by the trustee according to the terms of the trust for not more than **25 years** whether or not the terms of the trust contemplate a longer duration.*

*(b) A trust authorized by this section may be **enforced by a person appointed** in the terms of the trust, or if there is not a person appointed in the terms of the trust, by a person appointed by the court.*

*(c) Property of a trust authorized by this section may be applied only to its intended use, **except to the extent the court determines that the value of the trust property exceeds** the amount required for the intended use.*

Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successor in interest."

A trust beneficiary is *definite* if the trust beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. If a trustee is given the power to select a trust beneficiary from an indefinite class, that is valid and permissible but only if a *charitable* trust is involved, not a noncharitable trust.

[MCL 700.7402(2).]

The upshot from MCL 700.7409 is that a true *purpose trust* can be established in Michigan for only up to 25 years without an identifiable trust beneficiary, and that the probate court holds the power to monitor and reduce the amount or value of assets held in the *purpose trust* and remove those assets not required to achieve the trust's intended purpose, arguably despite the settlor's wishes and intent to the contrary. There is no mention in the new statute of giving a probate judge the authority to add assets to the *purpose trust* to carry out its purpose.

Judicial Discretion: This limitation of a judge's ability to say too much will be locked away in the trust to meet its perceived purpose reminds me of the infamous Leona Helmsley case from New York. Leona [known in New York circles as "The Queen of Mean"] set aside in a testamentary trust the amount of \$12 million to care for her dog "Trouble." The New York 'probate' judge exercised his authority to reduce the amount Leona allocated to her pet trust corpus to \$2.0 million to care for "Trouble" when the dog was about 11 years old. I suspect "Trouble" ate well for the balance of his life. From the articles that were written about this exercise of judicial discretion to reduce the amount passing to her *purpose trust* despite Leona's specific dollar bequest, apparently no one, including the judge, like either Leona or her dog 'Trouble' while both were alive. Take some time to Google Leona and her estate- it's a fun read!

Purpose Trusts Today: Some of the 'Trust Haven' states that regularly adopt

laws to attract ‘trust business’ to their state have far more favorable *purpose trust* statutes compared to Michigan’s, e.g., South Dakota, New Hampshire, Wyoming, and Tennessee, for longer durations or less judicial control over the amount set aside in trust. Oregon expressly passed a *purpose trust* statute to hold operating businesses. One well publicized example is the owner of Patagonia who transferred all his voting shares of stock in Patagonia to a *purpose trust* with stakeholders in the corporation serving on committees as ‘advisors’ to the trustee.

Recent examples culled from reading estate planning journals and articles that tout the use of a *purpose trust* to hold and preserve family heirloom assets without named individual beneficiaries include, going beyond the conventional pet trust: (i) artwork trusts; (ii) cottage trusts; (iii) gun trusts; (iv) stamp trusts; (v) jewelry trusts; (vi) wine collection trusts; and (vii) a baseball card or rare comic book and toy collections. And, as noted, some *purpose trusts* are now encouraged by the handful of aggressive *purpose trust* states as a key component to implement a business’s succession plan, with the obvious intent to retain the business, its assets, and its employees within the state.

Conclusion: There may be a place in an individual’s estate plan for a *purpose trust* depending on the settlor’s intent, his/her assets, heirlooms, or collections held by the settlor, possibly to be used or enjoyed by family members without any one individual being formally named as the trust beneficiary (or its owner, for creditor protection or estate tax mitigation purposes.) If a *purpose trust* is adopted in Michigan, such a trust can continue for up to 25 years, but with the corresponding risk that a probate judge could reduce the amount of assets set-aside for the *purpose trust* to preserve, protect, or to promote the trust’s assets as ‘excessive’ without that discretion having any statutory ‘guidelines’ or limitations.

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