

Statute of Limitations or Laches?

Take-Away: While the Michigan Trust Code uses both a one-year statute of limitations in which to bring a breach of fiduciary duty claim against a trustee, and a five-year statute of repose if the one-year statute does not apply, both periods may be curtailed by the trustee's affirmative equitable defense of laches.

Background: When dealing with trusts, folks often get confused when it comes to when equitable claims against a trustee can be asserted. As has often been said, a trust relationship 'is an invention and ward of equity.' Equity is the probate court's arena, not the Michigan Legislature's. In the absence of a statute of limitations, the equitable affirmative defense of laches governs whether a dilatory trust beneficiary can bring a breach of trust claim against a trustee. In fact, a laches defense can be applied even if the strict statute of limitations has not yet expired. For example, the inherently equitable claims equitable restitution, breach of trust for self-dealing, trustee surcharge, trust accountings, or modifying trust distributions are all subject to a laches affirmative defense, not necessarily the Michigan Trust Code's statute of limitations.

Laches Defense: Laches is based on the equitable concepts of (i) fairness and (ii) the effects of delay. A court of equity has the discretion to look at whether the delay in bringing an action against the trustee makes it inequitable to enforce the claim, not just the passage of time. As such, the principal elements for the trustee's assertion of a laches affirmative defense are (i) unreasonable delay; and (ii) prejudice to the trustee. Even when there is an express statute of limitations imposed by a statutory code, laches is still an available affirmative defense to a fiduciary. MCL 600.5815 provides: "*The prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought. The equitable doctrine of **laches shall also apply in actions where equitable relief is sought.***" In the context of this missive, a trustee will have the burden of proof to show both an unreasonable delay in bringing the equitable claim against the trustee and that the trustee was prejudiced by that delay.

Common Law: As Scott on Trusts, Section 219.2 notes: "*A beneficiary...[however,]...is not barred by laches from holding a trustee liable for breach of trust if...[the beneficiary] ... did not know or have reason to know of the breach of trust.*" Restated, at common law, the laches 'clock' did not start to run against a beneficiary (if of full age and legal capacity) until

the beneficiary possessed a full subjective understanding of all facts and law that are relevant to the trustee's breach, however that information may have been acquired. The Michigan Trust Code (and the Uniform Trust Code) incorporate the requirement that informs the trust beneficiary of the need to act within a specified time or have their claim permanently barred.

Michigan Trust Code: The equitable defense of laches did not disappear with the adoption of the Estates and Protected Individual's Code (EPIC.) Unless it is displaced by a particular provision, the general principles of law **and equity** supplement EPIC. [MCL 700.1203.] That is also the case with the Michigan Trust Code (MTC.) The MTC provides that its one-year statute of limitations applies to claims filed by a trust beneficiary against a trustee for breach of trust "**in addition to other limitations provided by law..**" [MCL 700.7905(1).]

- **One-Year Limitation Period:** MCL 700.7905(1)(a) and (b) provides that 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.** If the trust beneficiary has waived the right to receive such reports from the trustee (MCL 700.7814(5)) he/she cannot 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, such that there is an extended limitations period if the beneficiary has waived the right to receive reports from the trustee. The trustee's report discloses the existence of the potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or his/her representative knows of the potential claim or should have inquired into the potential claim's existence. [MCL 700.7905(2).] Recall, too, that EPIC provides a definition of *knowledge* which includes 'has reason to know.' [MCL 700.1215(1).]
- **Five-Year Statute of Repose Period:** If the requirements of MCL 700.7905(1) are not met in the trustee's report, then the proceeding for a breach of trust must commence within five years of the *first* of the following to occur: (i) the removal, resignation or death of the trustee; (ii) the termination of the trust beneficiary's interest in the trust; or (iii) the termination of the trust. This provision is essentially a statute of repose, i.e., the outer limit in which the trust beneficiary can bring a breach of trust claim. In a recent Virginia Court of Appeals case, *Fulks v Fulks*, 2026

WL 1392609, which dealt with the same provision as MCL 700.7905, the Court found that the 1-year limitation provision did not apply since the trustee's report had failed to include the time disclosure text as identified in the statute. Accordingly, the beneficiary's claim fell within the 5-year statute of repose period. While allowing the breach of trust claim to continue, the Virginia appellate court did comment that if the trustee was "sufficiently prejudiced" by the beneficiary's "undue delay" the trustee "could plausibly assert laches as a bar to...[the beneficiary's] ..claim despite that the statute of limitations period had not yet expired."

Observation: The terms of MCL 700.7905 prevail over the terms of the trust. It is one of the sections of the Michigan Trust Code that is nonmodifiable as it relates to a trustee or trust director exercising powers to release a trustee, or trust director, or vice versa, from liability for breach of trust. Accordingly, MCL 700.7105(2)(m) prevents a settlor from adding trust terms in a manner that eliminates the safeguards and limitations on the ability of the trust directors to release trustees from liability.

Conclusion: The Michigan Trust Code (via the UTC) seems to intrude on the common law to the extent that it imposes a one-year statute of limitations, or a five-year statute of repose on breach of trust claims against a trustee. Yet sometimes overlooked is that the equitable defense of laches is still available to the trustee under the right circumstances to dismiss the litigation against it. A trustee can also protect itself from 'late' breach of trust claims with the use of beneficiary consents, releases, and other forms of communication.

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