

Nonjudicial Settlement Agreements- The Material Purpose Hurdle

Take-Away: There seems to be some ambiguity as to the effective utility of a nonjudicial settlement agreement that is authorized in the Michigan Trust Code. Perhaps the confusion stems, in part, from attempting to discern what the trust's *material purpose* is, which in turn requires a probate court's determination.

Background: The 2010 Michigan Trust Code (MTC) added a new provision (derived, in most part, from the Uniform Trust Code) called a *nonjudicial settlement agreement*. [MCL 700.7111.] A nonjudicial settlement agreement allows interested persons to enter into a binding agreement with respect to any matter that involves a trust. However, such an agreement must meet the conditions that (i) it is valid only to the extent that the agreement does not violate a *material purpose* of the trust, and (ii) the agreement includes terms and conditions that could be properly approved by the court under the MTC or any other applicable law.

No Trust Modification or Termination: This statute further expressly states that a nonjudicial agreement *shall not be used to terminate or modify the trust instrument*. An example of this limitation to the use of a nonjudicial settlement agreement was a recent Michigan Court of Appeals decision. There, the trust beneficiaries entered into an agreement after the settlor's death to modify the trust's pattern of distribution. The Court held that the nonjudicial settlement agreement was invalid because its provisions were contrary to the *material purposes* of the trust, and thus that agreement could not be enforced as a binding nonjudicial settlement agreement. [*In re Herbert Irrevocable Family Trust*, No.367338, April 30, 2025.]

Limited to Trust Administration Matters: As a result of the conditions and limitations contained in MCL 700.7111, a nonjudicial settlement agreement usually deals with a trust's administration. According to one court it is used "*to allow beneficiaries to resolve routine administrative issues free from court supervision.*" [*In re Draves*, 298 Mich App 745 (2012).] That limited utility of a nonjudicial settlement agreement is further confirmed when this same statute provides examples of the 'matters' that can be resolved with a nonjudicial settlement agreement, including: (i) the *interpretation or construction* of the terms of the trust; (ii) the *approval of a trustee's report* or accounting; (iii) *directions to a trustee* to perform or refrain from performing a particular act or to grant to or to withhold from a trustee any power; (iv) the *resignation or appointment* of a trustee; (v) the determination of a trustee's compensation; (vi) the transfer of a trust's *principal place of trust administration*; and (vii) *liability of a trustee* for an action that relates to the trust. [MCL 700.7111(3).]

Judicial Approval: Judicial approval is *not* required so long as the nonjudicial settlement agreement does not violate a *material purpose* of the trust and the agreement contains terms and conditions that the court could have properly approved. The interested parties or the trustee can, if they wish, request the court to approve, or disapprove, the agreement. [MCL 700.7111(4).] Reasons when judicial approval of a nonjudicial settlement agreement might be warranted is if there is some debate over the *material purpose* of the trust, or a question regarding the sufficiency of representation of an interested party to the agreement, e.g., a minor beneficiary who is represented via virtual representation under the MTC.

A recent decision from the Michigan Court of Appeals found that a nonjudicial settlement agreement was consistent with a trust's *material purpose* and consequently enforced, after the cotrustee's sought probate court approval of the agreement.

In re Walter Sparling Revocable Trust, Michigan Court of Appeals No. 370971 (May 14, 2026)

[This was the *third* visit this family had to the appellate court.]

Facts: Walter and Mary were married for 66 years. There were 8 children, some of whom opposed each other in this litigation. Walter created a revocable trust that provided that on his death his trust was to pay all income to Mary for her lifetime. If the trust income was insufficient for Mary's needs, the cotrustees could invade trust principal to support and maintain Mary in the manner to which she was accustomed. Mary was also given the use of a personal residence for her lifetime. After Mary's death, the income from this trust was to be paid to Walter's children. Thirty years after Walter created this trust, he executed a separate irrevocable trust, and he funded it with significant income-producing assets from his revocable trust. Mary then sued, claiming that Walter's irrevocable trust was invalid. A jury found that Walter lacked sufficient mental capacity to execute the irrevocable trust. The trial court dissolved the irrevocable trust and ordered the return of its assets to Walter's revocable trust.

Sons Greg and Wayne were cotrustees of Walter's revocable trust. The cotrustees provided an accounting of Mary's income and expenses for the three years prior to Walter's death. The cotrustees determined that Mary was accustomed to \$17,000 a month in income that the revocable trust had not been paying to her, and based on those years of underpayment, Walter's revocable trust owed Mary about \$580,000. The cotrustees also determined that if the irrevocable trust was invalid the shortfall in *all* income payments due Mary as a result of the 'improperly diverted assets' would be \$1.8 million. Mary and the cotrustees then entered into a nonjudicial settlement agreement while the irrevocable trust litigation was

pending. That agreement provided for a direct payment to Mary of \$746,000 (this was before the dissolution of the irrevocable trust and the return of its assets.) The cotrustees sold stock to meet the payment obligation to Mary. Later, Mary and the cotrustees entered into an addendum to their agreement to provide that Mary would receive title to a Florida condominium in lieu of some of the monthly payments that were to be made to her under the agreement.

Dispute: After the irrevocable trust was dissolved, one daughter, Vicki, filed a petition with the probate court challenging the cotrustee's actions. The cotrustees were ordered to file an accounting of the transfer of assets from the irrevocable trust to Walter's revocable trust. A copy of the accounting was filed with the probate court, along with the nonjudicial settlement agreement. One year later, some of the cotrustee's siblings including Vicki then filed a petition for an accounting, the return of excess assets paid to Mary, the removal of Greg and Wayne as cotrustees, the return of cotrustee fees that were paid, and the appointment of an independent trustee. The siblings alleged that the cotrustees had made a concerted effort to deplete the revocable trust assets for their own benefit and that they had failed to properly consider when negotiating with Mary her need or her other sources of income. The cotrustees and Mary then filed a petition with the probate court to approve their nonjudicial settlement agreement as valid and binding under MCL 700.7111, as an agreement to resolve a liability that was owed to Mary and which was consistent with Walter's intent, e.g., his *material purpose* under his revocable trust.

Probate Court: After a two-day hearing, the probate court dismissed the sibling's petition. It approved the nonjudicial settlement agreement. In doing so it found that Mary's demand for reimbursement created a dispute that had a possibility of resulting in liability for Walter's revocable trust, and thus the cotrustees were in their statutory and trust authority to enter into the settlement agreement to address the debt created under the revocable trust. Nor did the probate court find that the cotrustees breached any fiduciary duty in their settlement with Mary..

Court of Appeals: This Court found in favor of the cotrustees and Mary.

Material Purpose: The Court noted that the cotrustees and the probate court were clear in the determination that the purpose of Walter's revocable trust was to give Mary the income from the trust during her lifetime, and that purpose was thwarted when income-producing assets were removed from the revocable trust and placed in the irrevocable trust that was later determined to be invalid due to Walter's diminished capacity. "*The settlement attempted to restore Mary to the position that she would have been in had the trust's purpose been respected throughout the years.*"

Liability for Lost Income: The Court also dismissed siblings' arguments that there was no liability to Mary for any lost income. The Court observed that cotrustees were authorized, both by law and by Walter's trust instrument to settle and compromise valid potential claims against the trust, not just present liabilities. Mary had a valid claim against Walter's trust that the cotrustees were permitted to settle, regardless of whether Mary reduced her claim to judgment against Walter's trust. As a result, the probate judge did not abuse his discretion in finding that the nonjudicial settlement agreement was in furtherance of the *material purpose* of the trust, given that the nonjudicial settlement agreement returned to Mary what she would have received but for Walter's invalid irrevocable trust.

Breach of Fiduciary Duty: The siblings also argued that the cotrustees breached their fiduciary duties by settling Mary's claim and by decreasing the principal of Walter's trust without a proper investigation. The Court noted that the settlement the cotrustees negotiated with Mary was with the advice of legal counsel and after they had conducted an independent investigation. Moreover, the nonjudicial settlement agreement was favorable to Walter's revocable trust in that Mary accepted less than what she was likely entitled to receive had her claim been litigated in court.

Conclusion: A nonjudicial settlement agreement cannot be used to modify the terms of a trust, or to terminate the trust. That is clear. What is not always clear is what the *material purpose* of a trust is, especially if the settlor does not expressly identify and state in the trust instrument his/her intended *material purpose*. Could the 'interested parties' agree in writing to construe what the settlor's *material purpose* of the trust is, and thus bind the probate court? Doubtful. However, tying the ability to enter into a binding nonjudicial settlement agreement to a vague or subjective determination of the trust's *material purpose* seems to limit the effectiveness of such an agreement.