

CHANGES TO THE MICHIGAN TRUST CODE REGARDING SEPARATE TRUSTEES

A significant change to the Michigan Trust Codeⁱ recently went into effect allowing a single Trust to provide for separate trustees. Most Couzens Lansky estate plan documents drafted prior to 2019 name an overall trustee or co-trustees who perform investment decisions, distribution decisions and all other trustee obligations. However, the new law permits separate trustees (also known as "divided trustees") which include: an investment trustee; a distributions trustee; and a resultant trustee. The duties of each separate trustee are outlined below.



Investment Trustee

A separate investment trustee performs the investment function for the benefit of the Trust beneficiaries.ⁱⁱ A trustee investment function may be broadly or narrowly defined by the language in the Trust regarding such function and may include any of the following:

- Determining the retention, purchase, sale, assignment, exchange, tender, or encumbrance of Trust property for Trust investment purposes; and the investment and reinvestment of undistributed income and principal of the aggregate Trust.
- Management, control, and exercise of voting powers related directly or indirectly to any Trust asset.
- Determining the methodology for valuing the property and the frequency of valuations for non-publicly traded investments or property for which there is no readily available market value.ⁱⁱⁱ

Distributions Trustee

A separate distributions trustee oversees and manages distributions for the benefit of the Trust beneficiaries under any Trust provision allowing discretionary distributions.^{iv}

Resultant Trustee

A separate resultant trustee performs all other trustee functions not allocated to the investment trustee or distributions trustee.^v

Treatment and Duties of Separate Trustees

The office of a separate trustee may be filled by one or more trustees. If there are co-trustees, each co-trustee has all of the duties and powers of such separate trustee office^{vi} and their authority to act individually, by majority or unanimously will be determined by the language in the Trust.

Each separate trustee acts independently with respect to such trustee's obligations and functions -- the approval of the other separate trustees is not required.^{vii} A separate trustee does not have a duty to monitor or review the actions of any other separate trustee of the aggregate Trust, nor notify or warn a settlor or beneficiary of a breach of trust or possible breach of trust on the part of any other separate trustee.^{viii} However, a separate trustee has the duty to inform and report on its separate trustee functions to the Trust beneficiaries and to each other separate trustee of the Trust, as is reasonably necessary for the other separate trustee to perform its separate trustee functions.^{ix}

Further, the separate trustee shall not participate in or provide advice regarding the performance of any other separate trustee's function, except as otherwise allowed by statute or if such acts are "ministerial acts" in nature, such as:

- Confirming that an investment or distribution directive of another separate trustee has been carried out; or
- Recording and reporting the actions of another separate trustee or conferring with another separate trustee for purposes of administrative coordination or efficiency.^x

Notwithstanding the foregoing, the separate trustees are treated as co-trustees with respect to:

- Taking, holding, transferring, and defending title to Trust property.^{xi}
- Determining venue and interested persons in proceedings concerning the aggregate Trust.^{xii}
- Liability, if any, for income, property, or other taxes attributable to Trust property.^{xiii}
- The privileges and immunities of co-trustees under general principles of law and equity to comment to a settlor or beneficiary of a Trust or others on one another's performance of fiduciary duties.^{xiv}

Similar to Trusts where there is only a general trustee of the Trust, each separate trustee is subject to control by both the settlor and a holder of a power to direct a trustee (now known as a "Trust Director" and formerly a "Trust Protector").

Benefits of Separate Trustees

The benefit of separate trustees includes: (1) allowing the settlor to delegate the functions outlined above to separate individuals or institutions with expertise in such specific area; (2) each separate trustee focuses on the specific functions of that separate trustee office; (3) the separate trustee performs its functions without the approval/consent of the other separate trustees; and (4) lightening the load of one overall trustee in administering the Trust.

If you have not reviewed or updated your estate plan and you desire separate trustees for investment and distribution functions, we recommend your documents be revised. Please contact attorney [Jennifer K. Johnson](#) or your [Couzens Lansky estate planning attorney](#) to discuss the changes or answer any questions you may have regarding your trustee or co-trustees.

ⁱ Act 368 of 1998; MCLA 700.7101 *et. seq.*

ⁱⁱ M.C.L.A. §700.7703b(2)(a)(i)

ⁱⁱⁱ M.C.L.A. §700.7703b(10)(j)

^{iv} M.C.L.A. §700.7703b(2)(a)(ii)

^v M.C.L.A. §700.7703b(2)(a)(iii)

^{vi} M.C.L.A. §700.7703b(5)

^{vii} M.C.L.A. §700.7703b(2)(b)

^{viii} M.C.L.A. §700.7703b(7)

^{ix} M.C.L.A. §700.7703b(6)

^x M.C.L.A. §700.7703b(2)(e)

^{xi} M.C.L.A. §700.7703b(2)(c)(i)

^{xii} M.C.L.A. §700.7703b(2)(c)(ii)

^{xiii} M.C.L.A. §700.7703b(2)(c)(iii)

^{xiv} M.C.L.A. §700.7703b(2)(c)(iv)