



Michigan Trust Code Takes Effect April 1, 2010

Douglas A. Mielock

Foster Swift Estate Planning Insights

Winter 2009

Governor Jennifer Granholm recently signed into law legislation enacting the Michigan Trust Code effective April 1, 2010. The Michigan Trust Code is based in large part on the Uniform Trust Code, a uniform act promulgated by the National Conference of Uniform State Laws in 2000 that has since been enacted in over 22 states.

The Michigan Trust Code provides a comprehensive codification of the law of trusts in a way similar to the codification of probate estates provided by Michigan's probate code, known as the Estates and Protected Individuals Code. The citizens of Michigan benefit in many ways from the enactment of the Michigan Trust Code. First, the Michigan Trust Code provides clear rules on trust law that did not previously exist under Michigan case law. Second, the Michigan Trust Code brings about reforms in Michigan law reflecting the modern use of trusts in estate planning. Finally, the Michigan Trust Code makes Michigan trust law more uniform with other states, which is helpful in an increasingly mobile society.

The Michigan Trust Code will apply to all trusts created before, on, or after April 1, 2010. Therefore, the Michigan Trust Code may have some effect on your existing revocable trust. For most clients, this will not require any changes to existing trust instruments. However, in some cases, a client may want to make changes to his or her revocable trust to avoid the application of certain provisions of the Michigan Trust Code or to take advantage of certain provisions of the Michigan Trust Code.

Most provisions of the Michigan Trust Code will be welcomed by settlers. For example, the Michigan Trust Code now provides a clear statute of limitations for challenging the validity of a trust that was revocable at the settler's death. Such a trust contest must be brought within the earlier of: (1) two years after the settler's death or (2) six months after the trustee sent the challenger a specified notice. Previously, there was no statute of limitations for challenging the validity of a trust that was revocable at the settler's death.

CONTACT

Douglas A. Mielock

P: 517.371.8203

E: dmielock@fosterswift.com

AUTHORS/ CONTRIBUTORS

Douglas A. Mielock

PRACTICE AREAS

Estate Planning

Trust & Estate Administration

Trust & Estate Litigation



The Michigan Trust Code provides that the capacity to create, amend, revoke, or add property to a revocable trust is the same as that required to make a will. Previously, there was some debate whether the required capacity to make a will was lower than the required capacity to make a trust. Article V of the Michigan Trust Code provides extensive clarification of a creditor's rights in a trust beneficiary's interest. Previously, the rights of a creditor in trust beneficiary's interest were not fully addressed under Michigan law. Article V of the Michigan Trust Code will be particularly helpful for a settler creating a "special needs" trust for a beneficiary who may otherwise qualify for need-based government benefits.

The Michigan Trust Code will provide clarification to a number of issues of trust law in Michigan. Consequently, clients will benefit from the ability of attorneys to more confidently effectuate their intent in trust instruments and to defend their intent against outside challenges. If you would like more information on the Michigan Trust Code and how it may affect your estate plan, please contact us.

