

Act No. 325
Public Acts of 2010
Approved by the Governor
December 21, 2010
Filed with the Secretary of State
December 21, 2010
EFFECTIVE DATE: December 21, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senators Cropsey and Stamas

ENROLLED SENATE BILL No. 1376

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending sections 1209, 2519, 3207, 7105, 7411, 7414, 7817, 7821, and 7910 (MCL 700.1209, 700.2519, 700.3207, 700.7105, 700.7411, 700.7414, 700.7817, 700.7821, and 700.7910), sections 1209, 2519, and 7105 as amended and sections 7411, 7414, 7817, 7821, and 7910 as added by 2009 PA 46 and section 3207 as added by 2006 PA 299, by amending the headings of the parts of article VII, by amending the heading of article VIII, and by designating sections 8101 and 8102 as part 1 and sections 8201 to 8206 as part 2 of article VIII and adding headings for those parts.

The People of the State of Michigan enact:

Sec. 1209. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable or testamentary general or special power of appointment, including 1 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Sec. 2519. (1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older who has sufficient mental capacity may make a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.
3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.
4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.
5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.

I live in _____ County, Michigan.

My spouse is _____ .
(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift (Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

If my first choice does not serve, I nominate _____
(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.
(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine,

I nominate _____
(Insert name of individual)

of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.
(Insert address)

If my first choice cannot serve, I nominate

(Insert name of individual)

of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on

_____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) “Assets” means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) “Descendants” means your children, grandchildren, and their descendants.

(c) “Descendants” or “children” includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.

(d) “Jointly held assets” means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(e) “Spouse” means your husband or wife at the time you sign this will.

(f) Whenever a distribution under a Michigan statutory will is to be made to an individual’s descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g) “Heirs” means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.

(h) “Person” includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person’s decision to do or not to do the act shall be made in good faith exercise of the person’s powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor’s conservator or, in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4) or if 1 or more of the individuals described in section 3206(2) or (3) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent’s body.

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(2) and (3), unless the court orders that service on every such individual is not required. Unless an individual cannot be located after a reasonable good-faith effort has been made to contact the individual, service shall be made on the individual personally or in a manner reasonably designed to give the

individual notice. Notice of the hearing shall include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing may waive his or her rights. If written waivers from all persons entitled to notice are filed, the court may immediately hear the petition. The court may waive or modify the notice and hearing requirements of this subsection if the decedent's body must be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and reasonable attorney fees in bringing the proceeding shall be included in the reasonable funeral and burial expenses under section 3805(1)(b) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

Sec. 7105. (1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

(a) The requirements under section 7401 for creating a trust.

(b) The duty of a trustee to administer a trust in accordance with section 7801.

(c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(d) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

(e) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

(f) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

(g) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

(h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).

(i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.

(j) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

(k) The effect of an exculpatory term under section 7809(8) or 7908.

(l) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(m) Periods of limitation under this article for commencing a judicial proceeding.

(n) The power of the court to take action and exercise jurisdiction.

(o) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(p) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

PART 2

JUDICIAL PROCEEDINGS

PART 3

REPRESENTATION

PART 4

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways:

(a) By the court upon the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) Upon the consent of the qualified trust beneficiaries and a trust protector who is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or trust protector to whom a power to direct the termination or modification of the trust has been given by the terms of a trust.

(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010.

(3) Notice of any proceeding to terminate or modify a trust shall be given to the settlor, the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust protector, if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.

(4) Upon termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.

(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:

(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.

(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the agent is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian.

Sec. 7414. (1) After 63 days after notice to the qualified trust beneficiaries and, if the trust is a charitable trust, to the attorney general of this state, the trustee of a trust consisting of trust property having a total value less than \$50,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The \$50,000.00 amount expressed in this section shall be adjusted each year as provided in section 1210.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a noncharitable trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court. Upon termination of a charitable trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) This section does not apply to an easement for conservation or preservation.

PART 5

CREDITOR'S CLAIMS; SPENDTHRIFT, SUPPORT,
AND DISCRETIONARY TRUSTS

PART 6

REVOCABLE TRUSTS

PART 7
OFFICE OF TRUSTEE

PART 8
DUTIES AND POWERS OF TRUSTEE

Sec. 7817. Without limiting the authority conferred by section 7816, a trustee has all of the following powers:

(a) To take possession, custody, or control of property transferred to the trust and accept or reject additions to the trust.

(b) To retain property that the trustee receives, including property in which the trustee is personally interested, in accordance with the Michigan prudent investor rule.

(c) To receive property from a fiduciary or another source that is acceptable to the trustee.

(d) To perform, compromise, or refuse to perform a contract of the settlor that is an obligation of the trust, as the trustee may determine under the circumstances. In performing an enforceable contract by the settlor to convey or lease land, if the contract for a conveyance requires the giving of a warranty, the deed or other instrument of conveyance to be given by the trustee shall contain the warranty required. The warranty is binding on the trust as though made by the settlor, but does not bind the trustee except in the trustee's fiduciary capacity. The trustee, among other possible courses of action, may do either of the following:

(i) Execute and deliver a deed of conveyance for cash payment of money remaining due or the purchaser's note for the money remaining due secured by a mortgage on the land.

(ii) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the trustee, as designated in the escrow agreement.

(e) To satisfy a settlor's written charitable pledge irrespective of whether the pledge constitutes a binding obligation of the settlor or was properly presented as a claim, if in the trustee's judgment the settlor would have wanted the pledge completed under the circumstances.

(f) To deposit trust property in a financial institution, including a financial institution operated by or affiliated with the trustee and to invest and reinvest trust property as would a prudent investor acting in accordance with the Michigan prudent investor rule and to deposit securities with a depository or other financial institution.

(g) To acquire property, including property in this or another state or country, in any manner for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, or change the character of trust property.

(h) To make an ordinary or extraordinary repair or alteration in a building or another structure, to demolish an improvement, or to raze an existing or erect a new party wall or building.

(i) To subdivide, develop, or dedicate land to public use; to make or obtain the vacation of a plat or adjust a boundary; to adjust a difference in valuation on exchange or partition by giving or receiving consideration; or to dedicate an easement to public use without consideration.

(j) To enter for any purpose into a lease as lessor or lessee, with or without an option to purchase or renew, for a period within or extending beyond the duration of the trust.

(k) To enter into a lease or arrangement for exploration and removal of minerals or another natural resource or to enter into a pooling or unitization agreement for a period within or extending beyond the duration of the trust.

(l) To abandon or decline to administer property if, in the trustee's opinion, the property is valueless, or is so encumbered or in such a condition that it is of no benefit to the trust.

(m) To vote a stock or other security in person, by general or limited proxy, or in another manner provided by law, or enter into or continue a voting trust agreement.

(n) To pay a call, assessment, or other amount chargeable or accruing against or on account of a security, and sell or exercise stock subscription or conversion rights.

(o) To hold property in the name of a nominee or in another form without disclosure of the interest of the trust. However, the trustee is liable for an act of the nominee in connection with the property so held.

(p) To insure the trust property against damage, loss, or liability and to insure the trustee, the trustee's agents, and the trust beneficiaries against liability arising from the administration of the trust.

(q) To borrow property, with or without security, for any purpose from the trustee or others and to mortgage or pledge trust property for a period within or extending beyond the duration of the trust.

(r) To effect a fair and reasonable compromise with a debtor or obligor, or extend, renew, or in any manner modify the terms of an obligation owing to the trust. If the trustee holds a mortgage, pledge, or another lien on property of another person, the trustee may, instead of foreclosure, accept a conveyance or transfer of encumbered property from the property's owner in satisfaction of the indebtedness secured by a lien.

- (s) To pay a tax, an assessment, the trustee's compensation, or another expense incident to the administration of the trust.
- (t) To sell or exercise a subscription or conversion right or to consent, directly or through a committee or another agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a business enterprise.
- (u) To allocate an item of income or expense to either trust income or principal, as permitted or provided by law.
- (v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.
- (w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.
- (x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subdivision for the trustee's protection in the performance of the trustee's duties.
- (y) To sell, exchange, partition, or otherwise dispose of, or grant an option with respect to, trust property for any purpose upon any terms or conditions for a period within or extending beyond the duration of the trust.
- (z) To continue or participate in a business or enterprise in any manner, in any form, and for any length of time.
- (aa) To change the form, in any manner, of a business or enterprise in which the settlor was engaged at the time of death.
- (bb) To provide for exoneration of the trustee from personal liability in a contract entered into on behalf of the trust.
- (cc) To respond to environmental concerns and hazards affecting trust property as provided in section 7818.
- (dd) To collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust, including a claim against the trust by the trustee.
- (ee) To respond to a tax matter as provided in section 7819.
- (ff) To make a payment of money, or other property instead of money, to or for a minor or incapacitated trust beneficiary as provided in section 7820.
- (gg) To make a distribution or division of trust property in cash or in kind, or both; to allot a different kind or disproportionate portion of, or an undivided interest in, trust property among beneficiaries and determine the value of allotted trust property; or to distribute an unclaimed share in the same manner as described in section 3916.
- (hh) To transfer the property of a trust to another jurisdiction and appoint, compensate, or remove a successor trustee, individual or corporate, for trust property in another jurisdiction, with any trust powers set out in this part that the trustee delegates to the successor trustee.
- (ii) To execute and deliver an instrument that accomplishes or facilitates the exercise of a power vested in the trustee.
- (jj) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.
- (kk) To make loans out of trust property, including loans to a trust beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of loans made under this subdivision.
- (ll) To pledge trust property to guarantee loans made by others to the trust beneficiary.
- (mm) To resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.
- (nn) On termination of the trust, to exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Sec. 7821. (1) Upon termination or partial termination of a trust, the trustee may send to the trust beneficiaries a proposal for distribution. The right of any trust beneficiary to object to the proposed distribution terminates if the trust beneficiary does not notify the trustee of an objection within 28 days after the proposal was sent, but only if the proposal informed the trust beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) A release by a trust beneficiary of a trustee from liability for breach of trust is invalid to the extent either of the following applies:

- (a) The release was induced by improper conduct of the trustee.
- (b) The trust beneficiary, at the time of the release, did not know of the material facts relating to the breach.

PART 9
 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS
 DEALING WITH TRUSTEE

Sec. 7910. (1) Unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal the trustee's representative capacity.

(2) A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of the trust estate, or on a tort committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

ARTICLE VIII
 MISCELLANEOUS PROVISIONS

PART 1
 EFFECTIVE DATE AND REPEALER

PART 2
 MICHIGAN TRUST CODE MISCELLANEOUS PROVISIONS; EFFECTIVE DATE

Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

Governor