IS IT TIME TO
Review Your Estate Plan?
Michigan Trust Code Takes Effect April 1

With enactment of the Michigan Trust Code (MTC) this spring, our state becomes the 22nd to adopt some form of the Uniform Trust Code.

QUICK TAKE

- Michigan joins other states in enacting uniform trust code provisions
- The Michigan Tax Code protects the integrity of trusts and sets rules for their modification or termination
- Enactment of the new code should prompt a legal review of revocable trusts

Michigan's new legislation is a further step in updates made to both estate and trust laws that began with the adoption of the Estates and Protected Individuals Code (EPIC), continued with the revision of the Uniform Principal and Income Act (UPIA), and concluded with the repeal of the Rules Against Perpetuities in 2008.

While the MTC is a comprehensive codification of many existing statutory and common laws related to trusts, it does fill in a number of gaps.

Contained in the code are optional or default rules, and certain mandatory stipulations—among them a requirement that trusts be disclosed to their named beneficiaries, regulations governing trust reporting, and provisions that affect the appointed trust protector.

The MTC allows the trustee to transfer the principal place of administration without court involvement, but requires written notice of that change to qualified trust beneficiaries. As under prior law, trusts are not subject to continuing supervision by the courts; however, the courts do have power over the administration of trusts.

One significant change is that the MTC includes a clause penalizing a person for contesting a trust or instituting another proceeding relating to the trust unless probable cause exists for the contest or other proceeding. There is also a limitation imposed on action to contest provisions of a revocable trust.

The MTC allows trustees and beneficiaries to approve of modification or termination of a trust, but only by court order, and with proper notice. Modification or termination of uneconomic trusts is permitted and MTC sets a $50,000 threshold—adjusted for inflation—in such cases. The MTC also provides for modification or termination due to unanticipated circumstances.

Another major change under the MTC is the capacity to create, amend, revoke, or add property to a revocable trust, or to direct the actions of a trustee—the same standard as is required to make a will. This change was made in recognition of current widespread use of revocable trusts as a substitute for a will.

Trusts created by fraud or under duress are invalidated by the MTC. Other key features include giving settlors and named beneficiaries the right to initiate proceedings enforcing the provisions of a charitable trust; and permitting courts the right to assess trust assets to cover attorney fees and costs resulting from disputes involving the trust insofar as the relief preserves or protects the trust assets. The MTC also provides for reimbursement of a trustee who defends or prosecutes a trust matter in good faith.

Given the growing use of revocable trusts, and the comprehensive nature of this new trust code, it will be important to review matters with your attorney. Call us if you would like help.

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