

**Public Policy Position**  
**A draft of bill to amend 1991 PA 133 and 1998 PA 386**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,455 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On March 24, 2018, the Section adopted its position after an electronic discussion and vote. 16 members voted in favor of the Section's position on a draft bill to amend 1991 PA 133 and 1998 PA 386, 0 members voted against this position, 0 members abstained, 7 members did not vote.

**Support**

**Explanation:**

The Probate and Estate Planning Section supports Draft 8 of a bill to amend 1991 PA 133, entitled "Recording Trust Agreement or Certificate of Trust Existence and Authority" and a bill to amend 1998 PA 386, entitled "Estates and protected individuals code" (with certain typographical changes); and empowers the Chair of the Section's Legislative Development & Drafting Committee to consent to non-substantive modifications to the Draft.

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**Draft 8 (3/16/2018): All recommended additions in caps and bold; all recommended deletions in strikethrough. This draft does not attempt to track version-to-version changes. Changes from prior version are red.**

A bill to amend 1991 PA 133, entitled "Recording Trust Agreement or Certificate of Trust Existence and Authority,"  
by amending section 1, section 2, section 3, section 4, and section 5.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sect. 1. An instrument conveying, encumbering, or otherwise affecting ~~an interest in~~ real property, executed pursuant to an express trust, may be accompanied either by a copy of ~~the trust agreement or by a certificate of trust existence and authority, as described in sections 2 and 3.~~ **THE OPERATIVE TRUST INSTRUMENT OR TRUST INSTRUMENTS, OR A CERTIFICATE OF TRUST THAT COMPLIES IN ALL RESPECTS WITH MCL 700.7913 AND CONTAINS THE LEGAL DESCRIPTION OF THE AFFECTED REAL PROPERTY.**

~~Sec. 2. A certificate of trust existence and authority shall contain all of the following information:~~

~~(a) The title of the trust.~~

~~(b) The date of the trust agreement and any amendments to the trust agreement.~~

~~(c) The name of the settlor or grantor and the settlor's or grantor's address.~~

~~(d) The names and addresses of all of the trustees and successor trustees.~~

~~(e) The legal description of the affected real property.~~

~~(f) Verbatim reproductions of provisions of the trust agreement, and any amendments to the trust agreement, regarding all of the following:~~

~~(i) The powers of the trustee or trustees relating to real property or any interest in real property and restrictions on the powers of the trustee or trustees relating to real property or any interest in real property.~~

~~(ii) The governing law.~~

~~(iii) Amendment of the trust relating to the trust provisions described in subdivision (a) to (f)(ii).~~

~~(g) Certification that the trust agreement remains in full force and effect.~~

Sec. 4. [Maintain with stylistic changes]

The trust agreement or certificate of trust ~~existence and authority~~, and any amendments to or revocations of the trust agreement or the certificate of trust ~~existence and authority~~, may be recorded in the office of the register of deeds of each county where the lands that are the subject of or affected by the trust agreement are located.

Sec. 5. [Maintain with stylistic changes]

A purchaser or other party relying upon the information contained in a recorded certificate of trust ~~existence and authority~~ shall be afforded the same protection as is provided to a subsequent purchaser in good faith under section 29 of chapter 65 of the Revised Statutes of 1846, being section 565.29 of the Michigan Compiled Laws, and shall not be required to further examine the trust agreement, unless an instrument amending or revoking the trust agreement or certificate of trust ~~existence and authority~~ is recorded in the same office in which the trust agreement or certificate of trust ~~existence and authority~~ was recorded.

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A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 7913 (MCL 700.7913), as amended by 2000 PA 177  
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7913. (1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary,

the trustee may furnish to the person a certificate of trust **WHICH SHALL CONTAIN** ~~containing~~ all of the following information:

(a) The name of the trust, ~~and the date of the trust,~~ **AND THE DATES OF ALL OPERATIVE TRUST INSTRUMENTS** ~~instrument and any amendments.~~

(b) The name and address of ~~the currently acting trustee~~ **OR ALL CURRENT TRUSTEES OF THE TRUST.**

(c) The powers of the trustee relating to the purposes for which the certificate **OF TRUST** is being offered.

(d) ~~The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.~~ **THE AUTHORITY OF THE SETTLOR TO REVOKE THE TRUST.**

(e) The authority of cotrustees to sign **ON BEHALF OF THE TRUST** or otherwise authenticate **ON BEHALF OF THE TRUST** and whether less than **ALL THE COTRUSTEES** are required in order to exercise power of the trustee.

(2) A certificate of trust may ~~s~~ be signed or otherwise authenticated by the settlor, any trustee, or any attorney for the settlor or the trustee. The certificate shall be in the form of an affidavit.

(3) A certificate of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certificate of trust to be incorrect.

(4) A certificate of trust need not contain the dispositive terms of the trust **INSTRUMENT.**

- (5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from the **TRUST INSTRUMENTS** ~~original trust instrument and later amendments~~ **TO THE TRUST INSTRUMENT** that designate the trustee and confer upon the trustee the power to act in the pending transaction.
- (6) A person who acts in reliance upon a certificate of trust without knowledge that representations contained in the certificate are incorrect is not liable to any person for so acting and may assume without inquiry the existence of **THE TRUST AND THE OTHER** ~~the~~ facts contained in the certificate **OF TRUST**.
- (7) A person who is good faith enters into a transaction in reliance upon a certificate **OF TRUST** may enforce the transaction against the trust property as if the representations contained in the certificate **OF TRUST** were correct.
- (8) A person **WHO MAKES** [making] a demand for the trust instrument in addition to a certificate of trust or excerpts **OF THE TRUST INSTRUMENT** is liable for damages, costs, expenses, and legal fees if the court determines that the person **WHO MADE THE DEMAND** did ~~was~~ not **ACT** acting pursuant to a legal requirement **TO** ~~in demand~~ ~~demanding~~ the trust instrument.
- (9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding **THAT CONCERNS** ~~concerning~~ the trust.