

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

Mark K. Harder

E-mail:

mharder@wnj.com

Regarding:

Proposed Technical Amendments to the Michigan Trust Code

Date position was adopted:

December 12, 2009

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

15 Voted for position

5 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

The Council approved and recommended a technical amendment to add a subsection (p) to MTC 7105.

MICHIGAN TRUST CODE

Proposed Technical Amendments

As Approved December 12, 2009

§7105

Proposed change:

Add (p) to section 7105 stating:

(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.

Reason:

Because the MTC is a default statute, provisions that are not described separately in §7105(2) can be overridden in the terms of the trust. Section 7113 parallels the provisions of §2518, but §7113 was not listed in §7105(2), although it was generally understood to be a so-called “nonmodifiable provision”. The addition of §7105(p) as proposed will ensure that §7113 is not subject to modification by drafting of the terms of the trust.