

## SUMMARY OF KEY POINTS CONCERNING THE MICHIGAN TRUST CODE

PREPARED BY THE MICHIGAN TRUST CODE COMMITTEE

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### Background

The MTC drafting effort was led by Probate & Estate Planning Section of the State Bar of Michigan and Michigan Bankers Association Trust Counsel Committee

The MTC is the end product of a painstaking, comprehensive 5 year drafting process with representation from diverse constituencies

### The Michigan Trust Code provides important benefits to Michigan's citizens

- ***Provides certainty***
  - Many questions currently are unanswered because of sparse case law and incomplete and antiquated statutes
  - The Michigan Trust Code will become part of the enacting legislation for EPIC, thereby providing a single source for answers to questions involving estates and trusts and the settlement of decedent's estates.
- ***Modernizes the law of trusts***
- ***Provides uniformity with the laws of other states***
  - Based on the Uniform Trust Code ("UTC")
  - Twenty states (including Ohio, Florida, and Arizona) and the District of Columbia have enacted the UTC or a variation of it.
  - Enacting legislation is currently pending in Connecticut, Massachusetts, and Oklahoma.
- ***Creates a level economic playing field for Michigan banks***
  - Michigan residents are free to appoint persons and institutions in UTC states such as Ohio, Florida, and Arizona as trustees of their trusts and to subject the trusts to the laws of the states where the trustees are located.
  - When they do so, however, they remove the administration and the management of these trusts to these other jurisdictions.
  - The MTC neutralizes the attraction of other states as places to domicile trusts, thereby retaining the management and administration of these trusts, and the jobs this work brings.

### The MTC preserves well established Michigan law

- 30 provisions are essentially consistent with either existing Michigan common law or current statutes.
- 48 sections involve modification of sections of the UTC or adding sections so the MTC more closely follows existing Michigan law

- 34 sections represent common sense “gap fillers” that are consistent with the law or practice in Michigan today
- Only 3 provisions represent significant departures from current law (see below).

### **The MTC makes important changes to the UTC to preserve longstanding Michigan law**

- Provisions for giving notice of the existence of trusts and accountings to beneficiaries follow current EPIC provisions, not the UTC.
- Preserves voluntary trust registration.
- Provisions dealing with the rights of creditors of trust beneficiaries follow current Michigan law and the Restatement (Second) of the Law of Trusts and rejects most of UTC Article 5.
- Preserves existing law permitting a decedent’s creditors to bring claims against the decedent’s revocable living trust when no probate proceeding exists or the probate estate is inadequate.
- EPIC provisions dealing with environmental matters, tax matters, and payment provisions have each been retained.
- Preserves longstanding Michigan law with respect to recovery of attorneys fees by trustees and beneficiaries

### **The MTC makes few significant changes to Michigan law**

- Settlers of charitable trusts will have standing to enforce the terms of the trusts.
- Standard of capacity to create revocable trusts will be that required to make a Will, thereby using a consistent standard for the two instruments most commonly used to pass property at death.
- Trusts established after the effective date of the Code will be presumed to be revocable unless they state they are irrevocable.

### **The MTC fills important gaps in current law**

- EPIC rules related to ademption, exoneration, and penalty or “no contest” provisions that are applicable to Wills will apply to trusts.
- Representation provisions found in EPIC sections 1209 and 1403 have been extended to nonjudicial settings.
- Provides a statutory basis to terminate small or uneconomic trusts.
- Provides a statute of limitations for challenges to the validity of revocable trusts used as Will substitutes.
- Fills numerous gaps in current law related to accepting or declining trusteeships, filling vacancies, resignation, and removal of trustees.
- Provides comprehensive rules related to the duty of loyalty of trustees.
- Provides rules to govern trust protectors.
- Authorizes and validates the use of certificates of trust beyond the area of real estate transactions.