

QUALIFIED DISPOSITIONS IN TRUST ACT (EXCERPT)
Act 330 of 2016

***** 700.1046.new THIS NEW SECTION IS EFFECTIVE MARCH 8, 2017 *****

700.1046.new Qualified affidavit; requirements.

Sec. 6. (1) Except as provided in subsection (6), for purposes of this section, a "qualified affidavit" means an affidavit in which the transferor states that at the time of the transfer of the property to the trust all of the following apply:

- (a) The transferor has full right, title, and authority to transfer the property to the trust.
 - (b) The transfer of the property to the trust will not render the transferor insolvent.
 - (c) The transferor does not intend to defraud a creditor by transferring the property to the trust.
 - (d) The transferor does not know of or have reason to know of any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit.
 - (e) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit.
 - (f) The transferor is not currently in arrears on a child support obligation by more than 30 days.
 - (g) The transferor does not contemplate filing for relief under the bankruptcy code, 11 USC 101 to 1532.
 - (h) The property being transferred to the trust was not derived from unlawful activities.
- (2) The transferor shall sign a qualified affidavit before a qualified disposition is made.
- (3) A qualified affidavit is defective if it materially fails to meet the criteria set forth in subsection (1), except that a qualified affidavit is not defective because of any of the following:
- (a) Nonsubstantive variances from the language set forth in subsection (1).
 - (b) Statements or representations in addition to those set forth in subsection (1) if the statements or representations do not contradict those required by subsection (1).
 - (c) Technical errors in administering an oath if the errors were not the fault of the transferor and the transferor reasonably relied on another person to prepare or administer the oath.
- (4) A qualified affidavit is not required in any of the following circumstances:
- (a) From the settlor for a fiduciary qualified disposition.
 - (b) From a transferor who is not the settlor of the qualified disposition, except to the extent the transferor is a beneficiary of the qualified disposition and the property subject to the qualified disposition was not previously subject to a qualified disposition with respect to which the transferor signed a qualified affidavit.
- (c) In connection with dispositions that are part of, required by, or the direct result of a prior qualified disposition supported by a qualified affidavit that otherwise complies with the requirements of subsection (1).
- (5) If a qualified affidavit is required by this section, and a transferor fails to timely sign a qualified affidavit or signs a defective affidavit, the failure or defect may be considered as evidence in an action described in section 5(2) to the extent permitted by the Michigan rules of evidence, but the validity of the qualified disposition is not affected in any other way because of the failure or defect.
- (6) If subsection (4)(b) applies, the required affidavit must omit the statements described subsection (1)(a) and (c), and include a statement that the qualified disposition is not intended to defraud any creditor.

History: 2016, Act 330, Eff. Mar. 8, 2017.