

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

***** 700.1047.new THIS NEW SECTION IS EFFECTIVE MARCH 8, 2017 *****

700.1047.new Avoidance of qualified disposition.

Sec. 7. (1) A qualified disposition may be avoided only to the extent necessary to satisfy or provide for the present value, taking into consideration any uncertainty of the transferor's debt to the creditor at whose instance the disposition had been avoided.

(2) If all or any portion of a qualified disposition is avoided as provided in subsection (1), all of the following apply:

(a) If the court is satisfied that a trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition, both of the following apply:

(i) The trustee has a lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney fees, incurred by the trustee in the defense of an action to avoid the qualified disposition. The lien has priority over all other liens against the property, whether or not the other liens accrued or were recorded before the accrual of the lien created by this act.

(ii) The qualified disposition is avoided subject to the fees, costs, preexisting rights, claims, and interests of the trustee and of any predecessor trustee that has not acted in bad faith.

(b) If the court is satisfied that a trust beneficiary has not acted in bad faith, the avoidance of the qualified disposition is subject to the right of the trust beneficiary to retain any distribution received before the creditor's commencement of an action to avoid the qualified disposition. It is presumed that the trust beneficiary, including a trust beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made under the terms of the trust.

(c) For purposes of this subsection, it is presumed that a trustee did not act in bad faith merely by accepting the property, with or without a qualified affidavit, or by making any distribution under the terms of the trust.

(3) A creditor has the burden of proving by clear and convincing evidence that a trustee or trust beneficiary acted in bad faith as required under subsection (2), except that, for a trust beneficiary who is also the transferor, the burden on the creditor is to prove that the transferor-beneficiary acted in bad faith by a preponderance of the evidence. This subsection provides substantive not procedural rights.

(4) With respect to a qualified disposition, a levy, attachment, garnishment, notice of lien, sequestration, or other legal or equitable process is permitted only in those circumstances permitted by this act.

(5) Notwithstanding any other provision of this act or section 13 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.123, a creditor does not have a right against the interest of a trust beneficiary in a trust or portion of a trust that was a qualified disposition solely because the trust beneficiary has the right to authorize or direct the trustee to pay all or part of the trust property in satisfaction of estate or inheritance taxes imposed on or with respect to the trust beneficiary's postdeath estate, or the debts of the trust beneficiary's postdeath estate, or the expenses of administering the trust beneficiary's postdeath estate, unless the trust beneficiary actually directs the payment of the taxes, debts, or expenses, and then only to the extent of the direction.

(6) Except as otherwise provided in the trust instrument, if a married couple make a qualified disposition of property and, immediately before the qualified disposition, the property, any part of the property, or any accumulation to the property was, under applicable law, owned by the married couple as tenants by the entireties, then notwithstanding the qualified disposition, the property, any part of the property, or any accumulation to the property is, while held in trust during the lifetime of both spouses, treated as though it were tenancy by the entireties property. In an action concerning whether a creditor of either or both spouses may recover the debt from the trust, on avoidance of the qualified disposition, the sole remedy available to the creditor with respect to trust property treated as though it were tenancy by the entireties property is an order directing the trustee to transfer the property to both spouses as tenants by the entireties.

(7) Except as otherwise provided in subsection (6), on avoidance of a qualified disposition to the extent permitted under subsection (1), the sole remedy available to the creditor is an order directing the trustee to transfer to the transferor the amount necessary to satisfy the transferor's debt to the creditor at whose instance the disposition has been avoided.

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