

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.7103 Definitions.

Sec. 7103.

As used in this article:

- (a) "Action", with respect to a trustee, includes an act or a failure to act.
- (b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code of 1986, 26 USC 2041 and 2514.
- (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) if the charitable purpose is a material purpose of the trust.
- (d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:
 - (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.
 - (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.
 - (iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.
 - (iv) Whether the distribution of trust property is from income or principal or both of the trust.
 - (v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.
- (e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.
- (f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:
 - (i) Exercisable by a trustee and limited by an ascertainable standard.
 - (ii) Exercisable by another person only on consent of the trustee or a person holding an adverse interest.
- (g) "Qualified trust beneficiary" means either of the following:
 - (i) A trust beneficiary whom the settlor intends to benefit as a material purpose of the trust and to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:
 - (A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
 - (B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.
 - (C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
 - (ii) If on the date a trust beneficiary's qualification is determined there is no trust beneficiary described in subparagraph (i), a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:
 - (A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
 - (B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.
 - (C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.
- (i) "Settlor" means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment does not cause the holder of a power of appointment to be treated as a settlor of the trust.
- (j) "Spendthrift provision" means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary's interest.

(k) "Support provision" means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions under the trust provision is not a support provision, but rather is a discretionary trust provision.

(l) "Trust beneficiary" means a person to whom 1 or both of the following apply:

(i) The person has a present or future beneficial interest in a trust, vested or contingent.

(ii) The person holds a power of appointment over trust property in a capacity other than that of trustee or trust director.

(m) "Trust director" means that term as defined in section 7703a.

(n) "Trust instrument" means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010 ;-- Am. 2012, Act 483, Imd. Eff. Dec. 28, 2012 ;-- Am. 2018, Act 664, Eff. Mar. 29, 2019 ;-- Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024

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