

# Estate Planning Update

*understanding the new michigan trust code*

—Gerald M. Morello Jr.

In the past few months, I have received many telephone calls from clients and financial advisors regarding a new law that recently went into effect – the Michigan Trust Code. Many people have read or heard that the new law makes their estate plan obsolete, or may cause disastrous tax consequences to their beneficiaries upon their death. To keep you better informed, I have compiled a list of asset protection and estate planning issues that you should think about to help you protect your money.

## MICHIGAN TRUST CODE

The new Michigan Trust Code (“MTC”) is a variation of the Uniform Trust Code – a law that has been enacted in 24 of the states in the union. The MTC is part of Michigan’s Estates and Protected Individuals Code, which covers probate matters. The MTC became effective on April 1, 2010, although it governs estate plans and probate proceedings that began prior to its effective date. The MTC codifies much of Michigan trust law, but also changes and expands other aspects of such trust law.

## CHANGES TO BE MADE TO MICHIGAN TRUST CODE

The MTC makes a few significant changes to Michigan law; if you have a well designed, comprehensive estate plan, these changes should not be problematic. Those changes are as follows:

- Challenges to the validity of a trust used as a will substitute now must be brought within the earlier of two (2) years after the grantor’s death or six (6) months after the trustee sends notice of the trust, so long as the notice includes required information (*previous law – time period was unsettled under case law*)
- Standard of capacity to create a revocable trust is now the same

that is required to make a Will, thereby using a consistent standard for the two instruments; the requirements are now that that the grantor must:

(a) understand that he is providing for the disposition of his

property

(b) have the ability to know the nature and extent of his property

(c) know the natural objects of his bounty (*know who his children are*)

(d) understand in a reasonable manner the general nature and effect of his act in signing the trust (*previous – Grantor need only be of “sound mind”*)

- Trusts established after the effective date of the MTC are now presumed to be revocable unless they state they are irrevocable (*previous law – trusts are irrevocable unless otherwise stated*)
- Damages for breach of trust are expressly provided for under the MTC (*previous law – has rejected market damages*)
- Third parties liable may now be liable for damages if they do not act in good faith in demanding a copy of the trust; this was enacted to discourage third parties from insisting upon receipt of a full copy of the trust instrument (*previous law – no liability for third party*)
- Grantors of charitable trusts now can enforce the terms of the trusts that they created (*previous law – only the Attorney General can enforce charitable trusts*)

The MTC also fills important gaps in old Michigan law on trusts:

- 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
- Certain rules related to ademption, exoneration, and penalty or “no contest” provisions that were applicable to Wills are now expressly applicable to trusts
- 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 (*people granted authority to oversee the actions of a trustee*)
- Authorizes and validates the use of certificates of trust beyond the area of real estate transactions

## WHAT WASN'T CHANGED BY THE MICHIGAN TRUST CODE

Many people have asked me if their estate plan is revoked by the new law, especially if their estate plan was established prior to the new law’s enactment. Also, some people have been told that the new MTC adversely affects

their qualified tax-deferred retirement asset (e.g. IRAs) by causing them to immediately be taxed upon the death of the grantor. The answer to these questions, and many other concerns, is a resounding NO. At its root, the MTC is a codification of prior trust law. As such, there is little impact on the actual law that existed before, and your estate plan. Your estate plan may be impacted insofar as how your trust will be administered upon your incapacity or death, but such changes should not worry the majority of people.

## RECOMMENDED COURSE OF ACTION

I encourage you to speak with a qualified estate planning attorney, to fully understand the effects of the MTC on your estate plan. The MTC has not caused you estate plan to be revoked, but it is still may be a good reason to revisit your estate plan, especially if it has not been reviewed for a long period of time. Make sure you are fully informed of what is right for you and your family. ■

*For further information or to schedule an appointment, please contact Morello Law Group, P.C. and Gerald M. Morello, Jr., Esq. at (734) 281-6464 or visit them on the web at [morellolawgroup.com](http://morellolawgroup.com).*

*Mr. Morello would like to graciously thank Rob Emmitt, Esq. for his assistance in preparing this month’s article for the Downriver Profile.*

*Copies of prior articles written by Mr. Morello can be obtained by contacting their offices.*