

## CHAPTER 7

### OFFICE OF TRUSTEE

#### §701. Accepting or declining trusteeship

**1. Acceptance.** Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship:

A. By substantially complying with a method of acceptance provided in the terms of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Rejection.** A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Action without acceptance.** A person designated as trustee, without accepting the trusteeship, may:

A. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

#### SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

#### §702. Trustee's bond

**1. Bond.** A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Amount.** The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Financial institution.** A financial institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**4. Cost charged to trust.** Unless otherwise directed by the court, the cost of a bond is charged to the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

**§703. Cotrustees**

**1. Unanimous decision; majority decision.** Cotrustees who are unable to reach a unanimous decision may act by majority decision.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Vacancy.** If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Participation by cotrustee.** Subject to the Maine Uniform Directed Trust Act, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

[PL 2019, c. 301, §5 (AMD).]

**4. Cotrustee unavailable.** If a cotrustee is unavailable to perform duties because of absence, illness, disqualification or other temporary incapacity, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**5. Delegation.** A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**6. Liability.** Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**7. Reasonable care.** Subject to the Maine Uniform Directed Trust Act, each trustee shall exercise reasonable care to:

A. Prevent a cotrustee from committing a serious breach of trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Compel a cotrustee to redress a serious breach of trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2019, c. 301, §6 (AMD); PL 2003, c. 618, Pt. A, §2 (AFF).]

**8. Dissenting trustee.** A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2019, c. 301, §§5, 6 (AMD).

**§704. Vacancy in trusteeship; appointment of successor**

**1. Vacancy.** A vacancy in a trusteeship occurs if:

A. A person designated as trustee rejects the trusteeship; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

- B. A person designated as trustee can not be identified or does not exist; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - C. A trustee resigns; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - D. A trustee is disqualified or removed; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - E. A trustee dies; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - F. A guardian or conservator is appointed for an individual serving as trustee. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Filling of vacancies.** If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.  
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Order of priority; noncharitable trust.** A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- A. By a person designated in the terms of the trust to act as successor trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - B. By a person appointed by unanimous agreement of the qualified beneficiaries; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - C. By a person appointed by the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**4. Order of priority; charitable trust.** A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- A. By a person designated in the terms of the trust to act as successor trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - B. By a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or [PL 2005, c. 184, §14 (AMD).]
  - C. By a person appointed by the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- [PL 2005, c. 184, §14 (AMD).]

**5. Appointment by court.** Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.  
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §14 (AMD).

### §705. Resignation of trustee

**1. Resignation.** A trustee may resign:

- A. Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
  - B. With the approval of the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Approval by court.** In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Liability.** Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

### §706. Removal of trustee

**1. Request to remove trustee.** The settlor, a cotrustee or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Removal by court.** The court may remove a trustee if:

A. The trustee has committed a serious breach of trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Lack of cooperation among cotrustees substantially impairs the administration of the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Appropriate relief.** Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 1001, subsection 2 as may be necessary to protect the trust property or the interests of the beneficiaries.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

### §707. Delivery of property by former trustee

**1. Duties of former trustee.** Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to the cotrustee, successor trustee or other person entitled to it, a trustee who has resigned or been removed or disqualified has the duties of a trustee and the powers necessary to protect the trust property.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Expeditious delivery.** A trustee who has resigned or been removed or disqualified shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

## SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

**§708. Compensation of trustee**

**1. Reasonable.** If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances. A percentage fee is allowable under this section only if the fee is reasonable. Among the factors a court may consider as guides in determining the reasonableness of fees under this section are the following:

- A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- B. The likelihood, if apparent to the trustee, that the acceptance of the particular employment will preclude the person employed from other employment; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- C. The fee customarily charged in the locality for similar services; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- D. The amounts involved and the results obtained; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- E. The time limitations imposed by the trustee or by the circumstances; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
- F. The experience, reputation and ability of the person performing the services. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

The order of the factors in this subsection does not imply their relative importance.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Terms of trust.** If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- A. The duties of the trustees are substantially different from those contemplated when the trust was created; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

- B. The compensation specified by the terms of the trust would be unreasonably low or high. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**3. Review; refunds if excessive.** On petition of a qualified beneficiary, after notice to all qualified beneficiaries, the court may review the reasonableness of the compensation determined by the trustee for the trustee's services. A trustee who has received excessive compensation from a trust may be ordered to make appropriate refunds.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**SECTION HISTORY**

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

**§709. Reimbursement of expenses**

**1. Reimbursement.** A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- A. Expenses that were properly incurred in the administration of the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

- B. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

**2. Advance by trustee.** An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

#### SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

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