

CERTIFICATE OF TRUST

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House Bills 5362 and 5398 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 9-20-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5362 would, among other things, revise the information required to be included in a certificate of trust and allow a certificate of trust to be provided to others instead of a copy of the trust instrument.

House Bill 5398 would require the use of a certificate of trust as described in House Bill 5362 rather than a certificate of trust existence and authority in transactions involving real property.

Specifically, the bills would do the following:

House Bill 5362 would amend the Estates and Protected Individuals Code (EPIC). Under EPIC, a trustee of a trust may furnish a person, such as a bank employee, a *certificate of trust* rather than a copy of the trust instrument. “Trust instrument” is defined under EPIC to mean a governing instrument that contains the terms of the trust, including any amendment to a term of the trust. Unlike a trust instrument, a *certificate of trust* does not identify beneficiaries of the trust or contain other confidential information. A certificate of trust, however, is required under EPIC to include certain information such as the name of the trust and date of the trust instrument. The bill would make several revisions to the information required to be included in a certificate of trust.

First, in addition to the name and date of the trust, the bill would require the date of each operative trust instrument to be included. As the definition of “trust instrument” includes any amendments to terms of the trust, the bill would strike a reference to amendments contained in two provisions. Next, the bill would eliminate a requirement that the certificate of trust contain a statement as to the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust. Lastly, the bill would make numerous revisions of an editorial, rather than substantive, nature for clarity or to update the language in EPIC.

MCL 700.7913

House Bill 5398 would amend Public Act 133 of 1991, which pertains to the use and recording of documents regarding trusts involving real property that is conveyed or affected by a trust. The bill would repeal much of the act and revise language in the act’s title and two remaining sections.

Under the bill, the term “trust agreement” would be changed to “trust instrument” and defined to have the meaning as defined in Section 7913 of EPIC (see above). A “certificate of trust existence and authority” would be changed to a “certificate of trust”.

As revised, Section 1 would allow an instrument that conveys, encumbers, or otherwise affects real property, executed pursuant to an express trust, to be accompanied by either a copy of each operative trust instrument or by a certificate of trust under Section 7913 of EPIC that includes the legal description of the affected real property.

The title of the act would be amended to reflect the changes made by repealing Sections 2, 3, 4, and 6; for example, a reference to recording certain documents regarding trusts in the case of real property would be deleted. The bill would also make revisions to Section 1 and to Section 5 that are editorial in nature.

A description of the repealed provisions follows:

Section 2: Describes the information required to be in a certificate of trust existence and authority. (Section 7913 of EPIC contains the information required to be included in a certificate of trust.)

Section 3: Lists who may execute a certificate of trust existence and authority and requires the certificate to be in the form of an affidavit. (Section 7913 of EPIC contains similar requirements for a certificate of trust.)

Section 4: As amended by Public Act 194 of 2018, Section 4 allows the trust agreement or certificate of trust existence and authority that accompanies an instrument described in Section 1, and any amendments to or revocations of, the trust agreement or certificate of trust existence and authority, to be recorded in the office of register of deeds of each county where the lands that are the subject of or affected by the trust agreement are located. If a trust agreement accompanies an instrument, Section 4 requires the trust agreement to be recorded as a separate document.

Section 6: Requires the certificate of trust existence and authority to be indexed in the records of the office of register of deeds under the title of trust, in addition to any other manner required by law.

MCL 565.431 and 565.435; MCL 565.432, 565.433, 565.434, and 565.436 (repealed)

FISCAL IMPACT:

As introduced, House Bills 5362 and 5398 would have no fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.