

Liability of person as fiduciary

Section XXXXX Liability of person as fiduciary or representative for disabled person; responsibilities.

- (1) A ~~lender or other~~ person who has not participated in the management of a property as described in section *xxxxx (Liability-security interest)* before assuming ownership or control of the property as a fiduciary, as defined by section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104, or in a representative capacity for a disabled person under section 5501 of the estates and protected individuals code, 1998 PA 386, MCL 700.5501, and that is acting or has acted in a capacity permitted by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, is not personally liable as an owner or operator ~~of the property~~ under this part. This subsection does not do either of the following:
 - (a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, or negligence, gross negligence, or reckless, willful, or intentional misconduct.
 - (b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility, *hazardous substance or container*; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container* that is administered by the lender or other person; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container*. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.
- (2) A ~~personlender~~ that has not participated in the management of a property as described in section *xxxxx (Liability-security interest)* before assuming ownership or control of the property in a fiduciary capacity, and under a fiduciary agreement entered into on or before August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is not personally liable as an owner or operator ~~of the property~~ under this part. This subsection does not do either of the following:
 - (a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.
 - (b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility, *hazardous substance or container*; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container* that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container*. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.
- (3) A lender that has not participated in the management of a property as described in section *xxxxx (Liability-security interest)* before assuming ownership or control of the property in a fiduciary capacity, and under a fiduciary agreement entered into after August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, that has served only in an administrative, custodial, or financial capacity with respect to the property, and has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance, is not personally liable as an owner or operator ~~of the property~~ under this part. This subsection does not do either of the following:

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- (a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.
- (b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility, *hazardous substance or container*; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container* that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility, *hazardous substance or container*. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.