

## CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

### **15-5-401. Methods of creating trust.** (a) A TRUST MAY BE CREATED BY:

(1) TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE SETTLOR'S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT UPON THE SETTLOR'S DEATH;

(2) DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS IDENTIFIABLE PROPERTY AS TRUSTEE;

(3) EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE; OR

(4) A STATUTE, JUDGMENT, OR DECREE AUTHORIZING THE CREATION OF A TRUST.

### **15-5-402. Requirements for creation.** (a) A TRUST IS CREATED ONLY IF:

(1) EITHER:

(A) THE SETTLOR HAS CAPACITY TO CREATE A TRUST AND INDICATES AN INTENTION TO CREATE A TRUST; OR

(B) A STATUTE, JUDGMENT, OR DECREE AUTHORIZES CREATION OF A TRUST;

(2) THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

(A) A CHARITABLE TRUST;

(B) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION 15-11-901;

OR

(C) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION 15-11-901;

(3) THE TRUSTEE HAS DUTIES TO PERFORM; AND

(4) THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

(b) A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

(c) A POWER IN A TRUSTEE TO SELECT A BENEFICIARY FROM AN INDEFINITE CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A REASONABLE TIME, THE POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS WHO WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN CONFERRED.

**15-5-403. Trusts created in other jurisdictions.** (a) A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED, OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION:

- (1) THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE, OR WAS A NATIONAL;
- (2) A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS; OR
- (3) ANY TRUST PROPERTY WAS LOCATED.

**15-5-404. Trust purposes.** A TRUST MAY BE CREATED ONLY TO THE EXTENT ITS PURPOSES ARE LAWFUL, NOT CONTRARY TO PUBLIC POLICY, AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

**15-5-405. Charitable purposes - enforcement.** (a) A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, GOVERNMENTAL OR MUNICIPAL PURPOSES, OR OTHER PURPOSES THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

(b) IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR CHARITABLE PURPOSE OR BENEFICIARY, THE TRUSTEE, IF AUTHORIZED BY THE TERMS OF

THE TRUST, OR, IF NOT, THE COURT, MAY SELECT ONE OR MORE CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH THE SETTLOR'S INTENTION TO THE EXTENT THAT SUCH INTENTION CAN BE ASCERTAINED.

(c) THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A PROCEEDING TO ENFORCE THE TRUST.

**15-5-406. Creation of trust induced by fraud, duress, or undue influence.** A TRUST IS VOID TO THE EXTENT ITS CREATION WAS INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE.

**15-5-407. Evidence of oral trust.** EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS ARTICLE, A TRUST NEED NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST AND ITS TERMS MAY BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE.

**15-5-408. Trust for care of animal.** SUBJECT TO THIS SECTION AND SECTION 15-5-409.5, C.R.S., A TRUST FOR THE CARE OF DESIGNATED DOMESTIC OR PET ANIMALS AND THE ANIMALS' OFFSPRING IN GESTATION IS VALID. FOR PURPOSES OF THIS SECTION, THE DETERMINATION OF THE "ANIMALS' OFFSPRING IN GESTATION" IS MADE AT THE TIME THE DESIGNATED DOMESTIC OR PET ANIMALS BECOME PRESENT BENEFICIARIES OF THE TRUST. UNLESS THE TRUST INSTRUMENT PROVIDES FOR AN EARLIER TERMINATION, THE TRUST TERMINATES WHEN NO LIVING ANIMAL IS COVERED BY THE TRUST. A TRUST INSTRUMENT SHALL BE LIBERALLY CONSTRUED TO BRING THE TRUST WITHIN THIS SECTION, TO PRESUME AGAINST THE MERELY PRECATORY OR HONORARY NATURE OF ITS DISPOSITION, AND TO CARRY OUT THE GENERAL INTENT OF THE SETTLOR. EXTRINSIC EVIDENCE IS

ADMISSIBLE IN DETERMINING THE SETTLOR'S INTENT. ANY TRUST UNDER THIS SECTION SHALL BE AN EXCEPTION TO ANY STATUTORY OR COMMON LAW RULE AGAINST PERPETUITIES.

**15-5-409. Noncharitable trust without ascertainable beneficiary.** SUBJECT TO SECTION 15-5-409.5, C.R.S., AND EXCEPT AS PROVIDED UNDER SECTIONS 38-30-110, 38-30-111, AND 38-30-112, C.R.S., IF (I) A TRUST IS FOR A SPECIFIC, LAWFUL, NONCHARITABLE PURPOSE OR FOR LAWFUL, NONCHARITABLE PURPOSES TO BE SELECTED BY THE TRUSTEE AND (II) THERE IS NO DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY DESIGNATED, THE TRUST MAY BE PERFORMED BY THE TRUSTEE FOR TWENTY-ONE YEARS BUT NO LONGER, WHETHER OR NOT THE TERMS OF THE TRUST CONTEMPLATE A LONGER DURATION.

**15-5-409.5. Additional provisions applicable to noncharitable trusts without ascertainable beneficiary and trusts for care of animal.** IN ADDITION TO THE

PROVISIONS OF SECTIONS 15-5-408 AND 15-5-409, C.R.S., A TRUST COVERED BY EITHER OF THOSE SECTIONS IS SUBJECT TO THE FOLLOWING PROVISIONS:

(A) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THE TRUST INSTRUMENT, NO PORTION OF THE PRINCIPAL OR INCOME MAY BE CONVERTED TO THE USE OF THE TRUSTEE, OTHER THAN REASONABLE TRUSTEE FEES AND EXPENSES OF ADMINISTRATION, OR TO ANY USE OTHER THAN FOR THE TRUST'S PURPOSES OR FOR THE BENEFIT OF A COVERED ANIMAL OR ANIMALS.

(B) UPON TERMINATION, THE TRUSTEE SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER:

(I) AS DIRECTED IN THE TRUST INSTRUMENT;

(II) IF THE TRUST WAS CREATED IN A NONRESIDUARY CLAUSE IN THE SETTLOR'S WILL OR IN A CODICIL TO THE SETTLOR'S WILL, UNDER THE RESIDUARY CLAUSE IN THE SETTLOR'S WILL; AND

(III) IF NO TAKER IS PRODUCED BY THE APPLICATION OF SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (B), TO THE SETTLOR'S HEIRS UNDER PART 5 OF ARTICLE 11.

(C) (RESERVED)

(D) THE INTENDED USE OF THE PRINCIPAL OR INCOME CAN BE ENFORCED BY AN INDIVIDUAL DESIGNATED FOR THAT PURPOSE IN THE TRUST INSTRUMENT, BY THE PERSON HAVING CUSTODY OF AN ANIMAL FOR WHICH CARE IS PROVIDED BY THE TRUST INSTRUMENT, BY A REMAINDER BENEFICIARY, OR, IF NONE, BY AN INDIVIDUAL APPOINTED BY A COURT UPON APPLICATION TO IT BY AN INDIVIDUAL.

(E) ALL TRUSTS CREATED UNDER THIS SECTION MAY BE REGISTERED AND ALL TRUSTEES SHALL BE SUBJECT TO THE LAWS OF THIS STATE APPLYING TO TRUSTS AND TRUSTEES.

(F) (RESERVED)

(G) IF NO TRUSTEE IS DESIGNATED OR NO DESIGNATED TRUSTEE IS WILLING OR ABLE TO SERVE, A COURT SHALL NAME A TRUSTEE. A COURT MAY ORDER THE TRANSFER OF THE PROPERTY TO ANOTHER TRUSTEE, IF REQUIRED TO ASSURE THAT THE INTENDED USE IS CARRIED OUT AND IF NO SUCCESSOR TRUSTEE IS DESIGNATED IN THE TRUST INSTRUMENT OR IF NO DESIGNATED SUCCESSOR TRUSTEE AGREES TO SERVE OR IS ABLE TO SERVE. A COURT MAY ALSO MAKE SUCH OTHER ORDERS AND DETERMINATIONS AS SHALL

BE ADVISABLE TO CARRY OUT THE INTENT OF THE SETTLOR AND THE PURPOSE OF SECTIONS 15-5-408 AND 15-5-409, C.R.S.

**15-5-410. Modification or termination of trust - proceedings for approval or disapproval.** (a) IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS 15-5-411 TO 15-5-414, A TRUST TERMINATES TO THE EXTENT THE TRUST IS REVOKED OR EXPIRES PURSUANT TO ITS TERMS, NO PURPOSE OF THE TRUST REMAINS TO BE ACHIEVED, OR THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, CONTRARY TO PUBLIC POLICY, OR IMPOSSIBLE TO ACHIEVE.

(b) A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTIONS 15-5-411 TO 15-5-416, OR TRUST COMBINATION OR DIVISION UNDER SECTION 15-5-417, MAY BE COMMENCED BY A TRUSTEE OR BENEFICIARY.

**15-5-411. Modification or termination of noncharitable irrevocable trust by consent.** (a) IF, UPON PETITION, THE COURT FINDS THAT THE SETTLOR AND ALL BENEFICIARIES CONSENT TO THE MODIFICATION OR TERMINATION OF A NONCHARITABLE IRREVOCABLE TRUST, THE COURT SHALL APPROVE THE MODIFICATION OR TERMINATION EVEN IF THE MODIFICATION OR TERMINATION IS INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST. A SETTLOR'S CONSENT TO A TRUST'S MODIFICATION OR TERMINATION MAY BE GIVEN BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE POWER OF ATTORNEY OR THE TERMS OF THE TRUST; BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP IF AN AGENT IS NOT SO AUTHORIZED; OR BY THE

SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT SUPERVISING THE  
GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A CONSERVATOR HAS NOT BEEN  
APPOINTED.

(~~b~~) OTHER THAN A TRUST ESTABLISHED BY COURT ORDER UNDER TITLE XIX OF  
THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1396p (d) (4), A NONCHARITABLE

IRREVOCABLE TRUST MAY:

(1) BE TERMINATED UPON CONSENT OF ALL OF THE BENEFICIARIES IF:

~~(A) THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST IS NOT  
NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST; OR~~

~~(B) THE SETTLOR WAIVES ALL MATERIAL PURPOSES.~~

~~(2) A NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED UPON CONSENT OF  
ALL OF THE BENEFICIARIES IF:~~

~~(A) THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT WITH A  
MATERIAL PURPOSE OF THE TRUST; OR.~~

~~(B) THE SETTLOR WAIVES ALL MATERIAL PURPOSES.~~

~~(3) A SETTLOR'S POWER TO WAIVE MATERIAL PURPOSES MAY BE EXERCISED BY AN  
AGENT UNDER A POWER OF ATTORNEY ONLY:~~

~~(A) TO THE EXTENT EXPRESSLY AUTHORIZED BY THE POWER OF ATTORNEY OR  
THE TERMS OF THE TRUST;~~

~~(B) BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT  
SUPERVISING THE CONSERVATORSHIP IF AN AGENT IS NOT SO AUTHORIZED; OR~~

~~(C) BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT~~

~~SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A  
CONSERVATOR HAS NOT BEEN APPOINTED.~~

(~~bc~~) A SPENDTHRIFT PROVISION IN THE TERMS OF A TRUST IS NOT PRESUMED TO CONSTITUTE A MATERIAL PURPOSE OF THE TRUST.

(~~ed~~) UPON TERMINATION OF A TRUST UNDER SUBSECTION (a) OR (b) OF THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

(~~de~~) IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION OR TERMINATION OF A TRUST UNDER SUBSECTION (a) OR (b) OF THIS SECTION, THE MODIFICATION OR TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

(1) IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE BEEN MODIFIED OR TERMINATED UNDER THIS SECTION; AND

(2) THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE ADEQUATELY PROTECTED.

**15-5-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.** (a) THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE SETTLOR, MODIFICATION OR TERMINATION WILL FURTHER THE PURPOSES OF THE TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN ACCORDANCE WITH THE SETTLOR'S PROBABLE INTENTION.



(b) THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR WASTEFUL OR IMPAIR THE TRUST'S ADMINISTRATION.

(c) UPON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

**15-5-413. Cy pres.** (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (b) OF THIS SECTION, IF A PARTICULAR CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL:

(1) THE TRUST DOES NOT FAIL, IN WHOLE OR IN PART;

(2) THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR'S SUCCESSORS IN INTEREST; AND

(3) THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED, IN WHOLE OR IN PART, IN A MANNER CONSISTENT WITH THE SETTLOR'S CHARITABLE PURPOSES.

(b) A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT IN DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS OVER THE POWER OF THE COURT UNDER SUBSECTION (a) OF THIS SECTION TO APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

(1) THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS STILL LIVING; OR

(2) FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE TRUST'S CREATION.

**15-5-414. Modification or termination of uneconomic trust.** (a) AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST CONSISTING OF TRUST PROPERTY HAVING A TOTAL VALUE LESS THAN ONE HUNDRED THOUSAND DOLLARS MAY TERMINATE THE TRUST IF THE TRUSTEE CONCLUDES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

(b) THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

(c) UPON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

(d) THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR PRESERVATION.

**15-5-415. Reformation to correct mistakes.** ~~(Reserved)~~ THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO CONFORM THE TERMS TO THE SETTLOR'S INTENTION IF IT IS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT THE SETTLOR'S INTENT AND THE TERMS OF THE TRUST WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR INDUCEMENT.

**15-5-416. Modification to achieve settlor's tax objectives.** ~~(Reserved)~~ TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS OF A

TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR'S PROBABLE INTENTION.

THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE EFFECT.

**15-5-417. Combination and division of trusts.** AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO OR MORE TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE SEPARATE TRUSTS, IF THE RESULT DOES NOT IMPAIR THE RIGHTS OF ANY BENEFICIARY OR ADVERSELY AFFECT ACHIEVEMENT OF THE PURPOSES OF THE TRUST.