

PART 10

LIABILITY OF TRUSTEES AND RIGHTS
OF PERSONS DEALING WITH TRUSTEES

15-5-1005. Limitation of actions against trustee. (a) A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR BREACH OF TRUST MORE THAN SIX MONTHS AFTER THE DATE THAT THE BENEFICIARY OR A PERSON WHO MAY REPRESENT AND BIND THE BENEFICIARY, AS PROVIDED IN PART 3 OF THIS ARTICLE, WAS SENT A REPORT THAT ADEQUATELY DISCLOSED THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST AND INFORMED THE BENEFICIARY OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

(b) A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS OR SHOULD HAVE KNOWN OF THE POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS EXISTENCE.

(c) IF SUBSECTION (a) OF THIS SECTION DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN THREE YEARS AFTER THE FIRST TO OCCUR OF:

- (1) THE REMOVAL, OR RESIGNATION, ~~OR DEATH~~ OF THE TRUSTEE;
 - (2) THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST; OR
 - (3) THE TERMINATION OF THE TRUST.
- (d) FOR PURPOSES OF SUBSECTION (a) OF THIS SECTION, A BENEFICIARY IS

~~DEEMED TO HAVE BEEN SENT A REPORT~~ RECEIVED A FINAL ACCOUNT OR STATEMENT IF BEING AN ADULT, IT IS RECEIVED BY HIM OR HER PERSONALLY OR IF, BEING A MINOR OR AN INDIVIDUAL WITH A DISABILITY, IT IS RECEIVED BY HIS OR HER REPRESENTATIVE AS DESCRIBED IN SECTION 15-10-403.:

~~(1) IN THE CASE OF A BENEFICIARY HAVING CAPACITY, IT IS SENT TO THE BENEFICIARY; OR~~

~~————(2) IN THE CASE OF A BENEFICIARY WHO, UNDER PART 3 OF THIS ARTICLE, MAY BE REPRESENTED AND BOUND BY ANOTHER PERSON, IT IS SENT TO THE OTHER PERSON.~~

~~————(c) THIS SECTION DOES NOT PRECLUDE AN ACTION TO RECOVER FOR FRAUD OR MISREPRESENTATION RELATED TO THE REPORT.~~

Additional Considerations

1. Should we simply substitute (a) with the first two sentences of 15-16-307:

“Unless previously barred by adjudication, consent, or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure, an action for breach of trust against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his or her examination must be brought within the time period prescribed in section 13-80-101, C.R.S.”

2. Should we substitute the word, "report," with, "statement," in paragraph (b)?
3. Paragraphs (d) and (e) above were replaced with the final sentence of C.R.S. § 15-16-307.

