

KDC Notes on Changes to Directed Trust Act

Section 2(8) (§15-16-802(8)) - revise “terms of trust” definition to include ADR to match CUTC. I believe Stan has already done this and sent in his revisions.

Section 6 (§15-16-806) – add cross reference to other applicable law to pick up CUTC and Fiduciaries Powers Act*

Section 11 (§15-16-811) – add exclusion for trust directors from §15-5-1012

Section 10 (§15-16-810):

- add a provision so that trust directors are entitled to a full copy of the trust instrument

- add a cross reference to: § 15-5-813 or “other applicable law” to incorporate §15-5-813’s specifics into §15-16-810

Section 16 (§15-16-816):

- add a cross reference to §15-5-1004 for clarity

- add sub (7) to add trust director’s right to petition the Court for instructions

*I told Kevin I would draft language for Section 6 so here it is:

15-16-806. POWERS OF TRUST DIRECTOR.

(1) Subject to ~~Section 7~~ §15-16-807, the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of the trust provide otherwise:

- (a) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection ~~(a)~~

- (1) OR BY COLORADO LAW; and

- (b) trust directors with joint powers must act by majority decision.

UNIFORM DIRECTED TRUST ACT - CONFORMING CHANGES

Plain text = current statutory language; SMALL CAPS = ADDITION; ~~Strikethrough~~ = deletion of current statutory language

Changes to the Colorado Probate Code

§ 15-10-201(27) – "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, TRUST DIRECTORS, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person, which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

§ 15-10-501(3) – Application. The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, TRUST DIRECTOR, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

§ 15-10-601(2)(a) – A personal representative, guardian, conservator, TRUST DIRECTOR, or trustee;

Changes to the Colorado Uniform Trust Code

§ 15-5-105(2)(b) – SUBJECT TO SECTIONS §§ 15-16-809, 15-16-810, AND 15-16-811, the terms of a trust prevail over any provision of this code except:

§ 15-5-201(3)(a) – The appointment or removal of a trustee OR TRUST DIRECTOR;

§ 15-5-201(3)(b) – Review of a trustee's fees OR TRUST DIRECTOR'S FEES and review and settling of interim or final accountings;

§ 15-5-203 – The district court or, in the city and county of Denver, the probate court, has exclusive jurisdiction of proceedings in this state brought by a trustee, TRUST DIRECTOR, or beneficiary concerning the administration of a trust.

§ 15-5-204(2)(b) – ~~Either~~ ANY OF THE FOLLOWING: (I) A county in which a beneficiary resides; ~~or~~ (II) a county in which the trust property, or some portion of the trust property, is located; (III) A COUNTY IN WHICH A TRUST DIRECTOR RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS.

§ 15-5-417 – After notice to the qualified beneficiaries AND TRUST DIRECTORS, 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.

§ 15-5-603 – Unless the terms of the trust expressly provide otherwise, while a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

§ 15-5-703(3) – SUBJECT TO § 15-16-812, ~~A~~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.

§ 15-5-703(7) - SUBJECT TO § 15-16-812, ~~E~~each trustee shall exercise reasonable care to:

Changes to Directed Trustees Act

§§ 15-16-801, et seq. – repeal and replace with new Directed Trust Act

Directed Trust Act Subcommittee of the Statutory Revisions Committee		
CBA Trust & Estate Section		
Section Assignments		
Act §	§ title	Subcommittee member
None	Prefatory Note	Kevin Millard
1	Short Title	Kevin Millard
2	Definitions	Stan Kent
3	Application; Principal Place of Administration	Stan Kent
4	Law and Principles of Equity	Stan Kent
5	Exclusions	Dan Rich
6	Powers of Trust Director	Dan Rich
7	Limitations on Powers of Trust Director	Susan Boothby
8	Duty and Liability of Trust Director	Hudson Mead
9	Duty and Liability of Directed Trustee	Hudson Mead
10	Duty to Provide Information to Trust Director or Trustee	Dylan Metzner
11	No Duty to Monitor, Inform, or Advise	Dylan Metzner
12	Application to Cotrustee	Susan Boothby
13	Limitation of Action against Trust Director	Herb Tucker
14	Defenses in Action Against Trust Director	Herb Tucker
15	Jurisdiction Over Trust Director	Dylan Metzner
16	Office of Trust Director	Dylan Metzner
17	Uniformity of Application and Construction	Kevin Millard
18	Relation to Electronic signatures in Global and	
	National Commerce Act	Kevin Millard
19	Repeals; Conforming Amendments (including	
	consideration of how the Directed Trust Act	
	coordinates with UTC § 808 and the Colorado Fiduciary	
	Oversight provisions and Compensation and Cost	
	Recovery provisions)	Kelly Dickson Cooper
20	Effective Date	Kevin Millard