

## UTC Committee: February 16, 2017 Meeting Attendance

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### **In Person:**

Dennis Whitmer  
Mike Holder  
Carl Stevens  
Steve Brainerd  
Jonathan Haskell  
Gene Zuspann  
Jeff Kadavy  
William Carew

### **On Phone:**

Connie Eyster  
Joe Hodges  
  
John Buckley

UNIFORM TRUST CODE COMMITTEE  
MINUTES  
February 16, 2017

Minutes from January 19, 2017, meeting approved with changes. Gene was added to the “attendee” list.

1. Jeremy would like us to be done by the end of May so that people have time over the summer and in the fall to review before it is considered by the Commissioners in the late fall of 2017. Dennis thinks our work is pretty much done, we just need to get our notes ready for SRC. Now we have Kevin’s memos, which were reviewed by comparing our committee work with the 2010 version of the UTC. Gene thought we ought to go ahead and do the updating as needed.

2. Committee discussed that it would be worthwhile to try to get our summaries of the statute to be part of the legislative history, so that it could be retrievable later. Also discussed that putting together a Colorado lawyer article and/or CLE materials would be helpful as well.

3. Dennis getting push from Kelly and Jeremy to get UTC through SRC before the end of the year so that they can spend the summer presenting it to other sections.

4. Comments on Part 7 prepared by Dennis. The committee discussed a few small changes to the summary language to make the purpose of UTC revisions as clear as possible, while still keeping the summaries relatively succinct. Committee will try to keep references to “the Committee” out of the summaries. Call each a “summary” rather than “Colorado Comments.”

5. Discussion of Kevin’s comments on Part 7.

(a) Kevin’s comment 1.1 expresses a concern that when we use “sole,” or “exclusive” or “only” – that this is too limited. He suggests that we add the following language:

“A provision in a trust specifying a method to accept or decline trusteeship does not make the specified method exclusive unless the specified method is referred to as the “sole”, “exclusive”, or “only” method of accepting or declining trusteeship *or the provision includes similar language manifesting the settlor’s intent that the trusteeship may not be accepted or declined by any other method.*”

Generally the committee is in favor of making this change. If Dennis does not hear any push-back, we'll go ahead and make that change.

- (b) Kevin's comments 1.2(A) raises a change that is reflected in the 2010 UTC changes – Dennis recommends making that change. Kevin's comment 1.2(B) is a grammatical change that Dennis recommends changing. Kevin's comment 1.2(C) is another grammatical change that Dennis recommends making.
- (c) Kevin's comments 1.3, 1.4 and 1.5 are 2010 revisions that have already been made.

6. Discussion of Darla's summary of Part 8. Committee discussed whether we should specifically list where no change were made – committee agreed to follow Darla's format and include a list of the things where no changes were made. No changes to Darla's summary were made.

7. Kevin's comments to Part 8:

- (a) Kevin suggests in comment 2.1 that we move 808 of the UTC be moved to part 6. Committee agrees. Darla will talk to Kevin about where to move the section to in Part 6.
- (b) Other changes in Kevin's notes are grammatical or cross-reference issues that are ones the committee agrees can be made.
- (c) Kevin's note 2.3(C) – his point is that under the law, the court always has the power to direct a trustee to make an accounting and therefore 813(f) should say: "Nothing in this section 813 shall be construed to impose on the trustee a duty to inform or report to any person other than a qualified beneficiary *or as directed by the court.*" Darla will look back at minutes and if the committee comments at the time are consistent with this language, then we'll make this change.
- (d) The rest of Kevin's changes were deemed okay by the committee except the following: Darla will respond why "or" was used rather than "and" in 815(a)(1); we have already addressed the repeal of 1401; Darla will take another look at the deletion of 18-20 in 815 and respond to Kevin.

8. Jonathan will take a review Kevin's comments to Part 4 and bring that along with his summary to the next meeting.

9. Dennis will create a summary for Part 1 and bring to the next meeting.
10. Georgine is studying for the California Bar, but expects to have Part 10 ready for next or month after next meeting.
11. Steve B. and Marc will work on a summary for Part 2.

Meeting adjourned.

NEXT MEETING March 16, 2017

ARTICLE 8  
DUTIES AND POWERS OF TRUSTEE  
General Comment

This article states the fundamental duties of a trustee and lists the trustee's powers. The duties listed are not new, but how the particular duties are formulated and applied has changed over the years. Section 801 deals with the trustee's general duty to administer the trust in good faith; Sections 802, 803 and 804 cover duties of loyalty, impartiality, and prudent administration. Section 805 discusses costs of administration and Section 806 covers trustees' duties with respect to special skills or expertise. Sections 807 and 808 deal with delegation and powers to direct. Sections 809, 810, 811 and 812 discuss the trustee's duties to control and protect trust property, to keep records, to enforce claims of the trust and defend claims against the trust, and to collect trust property from a former trustee. Section 813 covers the trustee's duty to inform and report. Section 814 covers discretionary powers and tax savings. Sections 815 and 816 list general and specific trustee powers. Section 817 discusses distribution on termination. All of the provisions of this article may be overridden in the terms of the trust, except for certain aspects of the trustee's duty to keep the beneficiaries informed of administration (see Section 105(b)(8)), and the trustee's fundamental obligation to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries (see Section 105(b)(2)).

PART 8  
DUTIES AND POWERS OF TRUSTEE  
Colorado Comments

No changes were made to Sections 801, 809, 812, and 817.

Minor, non-substantive changes were made to Sections 802, 803, 804, 805, 806, 815, and 816 to maintain consistency with existing Colorado statutes (the Colorado Probate Code, Colorado Uniform Prudent Investor Act, Colorado Fiduciaries' Powers Act, and others).

807(c) - **Delegation by Trustee:** The underlined words were added for clarity: "A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions ~~an action~~ of the agent to whom the function was delegated."

808 - **Powers To Direct:** 808(a) was moved to C.R.S. § 15-16-703 (Settlor's powers – Revocable Trusts). The rest of 808 was deleted so as not to conflict with Colorado's existing directed trust statute, C.R.S. 15-16-801 *et seq.*

810 - **Record-keeping and identification of trust property:** Paragraph (c)(2) was added to authorize trustees to hold property in nominee name (consistent with existing C.R.S. §15-1-804(2)(o)); paragraph (c)(3) was added to clarify that 810 does not apply to tangible personal property that is not capable of being maintained in records held by a party other than a trustee or beneficiary.

811 - **Enforcement and defense of claims:** A knowledge requirement was added.

813 - **Duty to inform and report:** 813(a), (b)(1), and (d) were revised to refer to “Qualified” beneficiaries throughout. 813(b)(3) was revised pursuant to the 2005 CO UTC committee’s suggestions: “... of the right to request portions a copy of the trust instrument which describe or affect the beneficiary’s interest...”

813(f) was added.

814 - **Discretionary powers - tax savings:** The last phrase of (a)(1) was deleted, and clarifying language was added to the end of (a)(1) through (a)(2). **It is contemplated that existing C.R.S. § 15-1-1401 will be repealed.**

DUTIES AND POWERS OF TRUSTEE

**15-5-801. Duty to administer trust.** UPON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES, AND IN ACCORDANCE WITH THIS ARTICLE.

**15-5-802. Duty of loyalty.** (a) A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

(b) SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 15-5-1012, A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS:

(1) THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST;

(2) THE TRANSACTION WAS APPROVED BY THE COURT;

(3) THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 15-5-1005;

(4) THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED

THE TRANSACTION, OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 15-5-1009; OR

(5) THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

(c) A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

- (1) THE TRUSTEE'S SPOUSE;
- (2) THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS, OR THEIR SPOUSES;
- (3) AN AGENT OR ATTORNEY OF THE TRUSTEE; OR
- (4) A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

(d) A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

(e) A TRANSACTION NOT CONCERNING TRUST PROPERTY, AND IN WHICH



THE TRUSTEE ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY, INVOLVES A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE TRUST.

(f) AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY OR INVESTMENT TRUST TO WHICH THE TRUSTEE OR ITS AFFILIATE PROVIDES SERVICES IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE COMPLIES WITH THE COLORADO UNIFORM PRUDENT INVESTOR ACT. ~~PRUDENT INVESTOR RULE OF ARTICLE 1.1 OF THIS TITLE~~. IN ADDITION TO ITS COMPENSATION FOR ACTING AS TRUSTEE, THE TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST. IF THE TRUSTEE RECEIVES COMPENSATION FROM THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING INVESTMENT ADVISORY OR INVESTMENT MANAGEMENT SERVICES, THE TRUSTEE MUST AT LEAST ANNUALLY NOTIFY THE PERSONS ENTITLED UNDER SECTION 5-5-813 TO RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT OF THE RATE AND METHOD BY WHICH THAT COMPENSATION WAS DETERMINED.

(g) IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE BEST INTEREST OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A CORPORATION OR OTHER FORM OF ENTERPRISE, THE

TRUSTEE SHALL ELECT OR APPOINT DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN THE BEST INTEREST OF THE BENEFICIARIES.

(h) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR TO THE BENEFICIARIES:

(1) AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE APPOINTMENT OR COMPENSATION OF THE TRUSTEE;

(2) PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE;

(3) A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE, GUARDIANSHIP OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A BENEFICIARY HAS AN INTEREST;

(4) A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE INSTITUTION OPERATED BY THE TRUSTEE; OR

(5) AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

(i) THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH RESPECT TO ANY PROPOSED TRANSACTION THAT MIGHT VIOLATE THIS SECTION IF ENTERED INTO BY THE TRUSTEE.

**15-5-803. Impartiality.** IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT IMPARTIALLY IN INVESTING, MANAGING, AND DISTRIBUTING THE TRUST PROPERTY, TAKING INTO ACCOUNT ANY DIFFERING INTERESTS OF THE BENEFICIARIES. ~~GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.~~

**15-5-804. Prudent administration.** A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY CONSIDERING THE PURPOSES, TERMS, ~~DISTRIBUTIONAL~~ DISTRIBUTION REQUIREMENTS, AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION.

**15-5-805. Costs of administration.** IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST, AND THE SKILLS OF THE TRUSTEE.

**15-5-806. Trustee's skills.** A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR IS NAMED TRUSTEE IN RELIANCE UPON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE ~~SHALL USE~~ THOSE SPECIAL SKILLS OR EXPERTISE.

**15-5-807. Delegation by trustee.** (a) A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION IN:

- (1) SELECTING AN AGENT;
- (2) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST; AND
- (3) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR

THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

(b) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

(c) A TRUSTEE WHO COMPLIES WITH SUBSECTION (a) OF THIS SECTION IS NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS AN ACTION OF THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

(d) BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE.

**15-5-808. Powers to direct.** ~~(a) WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST. RESERVED.~~

~~(b) IF THE TERMS OF A TRUST CONFER UPON A PERSON OTHER THAN THE SETTLOR OF A REVOCABLE TRUST POWER TO DIRECT CERTAIN ACTIONS OF THE TRUSTEE, THE TRUSTEE SHALL ACT IN ACCORDANCE WITH AN EXERCISE OF THE POWER UNLESS THE ATTEMPTED EXERCISE IS MANIFESTLY CONTRARY TO THE TERMS OF THE TRUST OR THE TRUSTEE KNOWS THE ATTEMPTED EXERCISE WOULD CONSTITUTE A SERIOUS BREACH OF A FIDUCIARY DUTY THAT THE PERSON HOLDING THE POWER OWES TO THE BENEFICIARIES OF THE TRUST.~~

~~(c) THE TERMS OF A TRUST MAY CONFER UPON A TRUSTEE OR OTHER PERSON A POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.~~

~~(d) A PERSON, OTHER THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.~~

**15-5-809. Control and protection of trust property.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT THE TRUST PROPERTY.

**15-5-810. Record-keeping and identification of trust property.** (a) A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN PROPERTY.

(c)(1) ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS SECTION,~~ A TRUSTEE SHALL CAUSE THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A TRUSTEE OR BENEFICIARY.

(2) NOTHING IN PARAGRAPH (c) OF THIS SECTION 810 SHALL BE CONSTRUED AS PREVENTING A TRUSTEE FROM HOLDING A PROPERTY IN THE NAME OF A NOMINEE OR OTHER FORM, WITHOUT DISCLOSURE OF THE TRUST, AS AUTHORIZED IN SECTION 816(a)(7)(B) OF THIS CODE AND IN C.R.S. §15-1-804(2)(c), PROVIDED THE TRUSTEE MAINTAINS ADEQUATE RECORDS OF ALL TRUST PROPERTY SO HELD.

(3) THIS PARAGRAPH (c) DOES NOT APPLY TO TANGIBLE PERSONAL

PROPERTY OTHER THAN MOTOR VEHICLES, AIRPLANES, AND OTHER PROPERTY  
THE TITLE OF WHICH IS REGISTERED WITH A GOVERNMENTAL AUTHORITY.

(d) IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE SEPARATE TRUSTS.

**15-5-811. Enforcement and defense of claims.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST AND TO DEFEND CLAIMS AGAINST THE TRUST OF WHICH THE TRUSTEE HAS KNOWLEDGE.

**15-5-812. Collecting trust property.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE, AND TO REDRESS A BREACH OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

**15-5-813. Duty to inform and report.** (a) A TRUSTEE SHALL KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO PROTECT THEIR INTERESTS. UNLESS UNREASONABLE UNDER THE CIRCUMSTANCES, A TRUSTEE SHALL PROMPTLY RESPOND TO A QUALIFIED BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE:

(1) UPON REQUEST OF A QUALIFIED BENEFICIARY, SHALL PROMPTLY FURNISH TO THE QUALIFIED BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST;

(2) WITHIN 60 DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(3) WITHIN 60 DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF THE CREATION OF AN IRREVOCABLE TRUST, OR THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR SETTLORS, OF THE RIGHT TO REQUEST PORTIONS A COPY OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST, AND OF THE RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION (c) ~~OF THIS SECTION~~; AND

(4) SHALL NOTIFY THE QUALIFIED BENEFICIARIES IN ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

(c) A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL, AND TO OTHER QUALIFIED BENEFICIARIES WHO REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS, AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION, A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. UPON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL

REPRESENTATIVE, CONSERVATOR, OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

(d) A QUALIFIED BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER INFORMATION ~~OTHERWISE~~ REQUIRED TO BE FURNISHED UNDER THIS SECTION. A QUALIFIED BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY WITHDRAW A WAIVER PREVIOUSLY GIVEN.

(e) SUBPARAGRAPHS (2) AND (3) OF SUBSECTION (b) OF THIS SECTION DO NOT APPLY TO A TRUSTEE WHO ACCEPTS A TRUSTEESHIP BEFORE THE EFFECTIVE DATE OF THIS CODE ~~JANUARY 1, 2015~~, TO AN IRREVOCABLE TRUST CREATED BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR TO A REVOCABLE TRUST THAT BECOMES IRREVOCABLE BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE.

(f) NOTHING IN THIS SECTION 813 SHALL BE CONTRUED TO IMPOSE ON THE TRUSTEE A DUTY TO INFORM OR REPORT TO ANY PERSON OTHER THAN A QUALIFIED BENEFICIARY OR AS DIRECTED BY THE COURT.

**15-5-814. Discretionary powers - tax savings.** (a)(1)NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN THE TERMS OF THE TRUST, INCLUDING THE USE OF SUCH TERMS AS "ABSOLUTE", "SOLE", OR "UNCONTROLLED", THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH. AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE PARAMETERS FOR



THAT EXERCISE ARE ESTABLISHED BY THE TERMS AND PURPOSES OF THE TRUST, THE INTERESTS OF THE BENEFICIARIES, AND RELEVANT FIDUCIARY DUTIES. A TRUSTEE DOES NOT ABUSE HIS DISCRETION IN EXERCISING OR FAILING TO EXERCISE A DISCRETIONARY POWER IF THE TRUSTEE, FOLLOWING THE TERMS AND PURPOSES OF THE TRUST AND CONSIDERING THE INTERESTS OF ITS BENEFICIARIES, EXERCISES ITS JUDGMENT HONESTLY AND WITH A PROPER MOTIVE.

(2) WHERE A TRUST GIVES A TRUSTEE UNLIMITED DISCRETION, INCLUDING THE USE OF SUCH TERMS AS “ABSOLUTE”, “SOLE”, OR “UNCONTROLLED”, A COURT MAY NOT DETERMINE THAT A TRUSTEE ABUSED ITS DISCRETION MERELY BECAUSE THE COURT WOULD HAVE EXERCISED THE DISCRETION IN A DIFFERENT MANNER OR WOULD NOT HAVE EXERCISED THE DISCRETION.

(b) SUBJECT TO SUBSECTION (d) OF THIS SECTION, AND UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION (b) DOES NOT APPLY:

(1) A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN ACCORDANCE WITH AN ASCERTAINABLE STANDARD; AND

(2) A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE PERSONALLY OWES ANOTHER PERSON.

(c) A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION (b) OF THIS SECTION MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

(d) SUBSECTION (b) ~~OF THIS SECTION~~ DOES NOT APPLY TO:

(1) A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056 (b)(5) OR 2523(e) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED, WAS PREVIOUSLY ALLOWED;

(2) ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR AMENDED BY ITS SETTLOR; OR

(3) A TRUST, IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL EXCLUSION UNDER SECTION 2503(c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED.

**15-5-815. General powers of trustee.** (a) A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

(1) POWERS CONFERRED BY THE TERMS OF THE TRUST; ~~AND OR~~

(2) EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

(A) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY;

(B) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT, MANAGEMENT, AND DISTRIBUTION OF THE TRUST PROPERTY; AND

(C) ANY OTHER POWERS CONFERRED BY THIS ~~CODE ARTICLE~~ AND THE “COLORADO FIDUCIARIES’ POWERS ACT”.

(b) THE EXERCISE OF A POWER IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ~~ARTICLE~~ CODE.

**15-5-816. Specific powers of trustee.** (a) WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 15-5-815 AND IN ADDITION TO THE POWERS CONFERRED UNDER THE “COLORADO FIDUCIARIES’ POWERS ACT”, ~~PART 8 OF ARTICLE 4 OF THIS TITLE~~, A TRUSTEE MAY:

(1) COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST PROPERTY FROM A SETTLOR OR ANY OTHER PERSON;

(2) ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR PRIVATE SALE;

(3) EXCHANGE, PARTITION, OR OTHERWISE CHANGE THE CHARACTER OF TRUST PROPERTY;

(4) DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE INSTITUTION;

(5) BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(6) WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION, OR OTHER FORM OF BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS, OR PROPERTY OWNERS, INCLUDING MERGING, DISSOLVING, OR OTHERWISE CHANGING THE FORM OF BUSINESS ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL;

(7) WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

(A) VOTE OR GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION, OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT;

(B) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY;

(C) PAY CALLS, ASSESSMENTS, AND OTHER SUMS CHARGEABLE OR ACCRUING AGAINST THE SECURITIES, AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS; AND

(D) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED FINANCIAL SERVICE INSTITUTION;

(8) WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT, OR MAKE ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO, OR IMPROVEMENTS IN, BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS, AND MAKE OR VACATE PLATS AND ADJUST BOUNDARIES;

(9) ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES, WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(10) GRANT AN OPTION INVOLVING A SALE, LEASE, OR OTHER DISPOSITION OF TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY, INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND EXERCISE AN OPTION SO ACQUIRED;

(11) INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE THE TRUSTEE, THE TRUSTEE'S AGENTS, AND BENEFICIARIES AGAINST LIABILITY ARISING FROM THE ADMINISTRATION OF THE TRUST;

(12) ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION;

(13) WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF

ENVIRONMENTAL LAW:

(A) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY;

(B) TAKE ACTION TO PREVENT, ABATE, OR OTHERWISE REMEDY ANY ACTUAL OR POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT;

(C) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW;

(D) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN ALLEGED VIOLATION OF ENVIRONMENTAL LAW; AND

(E) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT, OR REMEDIAL ACTION TO COMPLY WITH ENVIRONMENTAL LAW;

(14) PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST, AND RELEASE, IN WHOLE OR IN PART, A CLAIM BELONGING TO THE TRUST;

(15) PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF EMPLOYEES AND AGENTS OF THE TRUST, AND OTHER EXPENSES INCURRED IN

THE ADMINISTRATION OF THE TRUST;

(16) EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE, AND LOCAL TAXES;

(17) SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT PLAN, ANNUITY, OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS;

~~(18) MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES, AND ASSERT THE TRUSTEE'S LIEN ON FUTURE DISTRIBUTIONS FOR REPAYMENT OF THOSE LOANS;~~

~~(19) PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE BENEFICIARY;~~

(20) APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER UPON THE APPOINTED TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT THE APPOINTED TRUSTEE FURNISH SECURITY, AND REMOVE ANY TRUSTEE SO APPOINTED;

(21) PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT, OR BY:

(A) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN;

(B) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S., OR CUSTODIAL TRUSTEE UNDER THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL TRUST;

(C) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN, OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY, TO BE EXPENDED ON THE BENEFICIARY'S BEHALF; OR

(D) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF, SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION;

(22) ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE PARTICULAR ASSETS IN PROPORTIONATE OR DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES, AND ADJUST FOR RESULTING DIFFERENCES IN VALUATION;

(23) RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION, OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION;



(24) PROSECUTE OR DEFEND AN ACTION, CLAIM, OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES;

(25) SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS;  
AND

(26) ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

**15-5-817. Distribution upon termination.** (a) UPON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

(b) UPON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE SHALL PROCEED EXPEDITIOUSLY TO DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT, SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES, AND TAXES.

(c) A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:

- (1) IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR
- (2) THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

## Memorandum

To: Dennis Whitmer  
From: Kevin D. Millard  
Date: January 18, 2017  
Re: Uniform Trust Code

---

Thanks to you and your committee for all of the time and hard work that you have put into preparing the Uniform Trust Code for introduction in the Colorado legislature. I understand that, in the near future, the proposed Colorado UTC will be presented to the Statutory Revisions Committee. I am in the process of reviewing the UTC provisions posted on the T&E section website and am writing this memo to provide my input on Part One of the UTC. I will cover the other parts in subsequent memos. My intent is to alert you to comments (many of which are nonsubstantive) and questions before the discussion at an SRC meeting or meetings.

### 1. Section 15-5-103—Definitions

#### 1.1 Section 15-5-103(2), definition of “Alternative Dispute Resolution”:

- (A) There is an extraneous semi-colon between “Alternative Dispute Resolution” and “means.”
- (B) Should the reference to “governing instrument” be to “governing instrument for a trust”? As you know, “governing instrument” is defined much more broadly for purposes of the probate code, in CRS § 15-10-201(22). I know that the UTC will be a separate, new article under title 15, and not part of the probate code, so this is not technically a conflict, but it might avoid confusion to be more specific in the UTC definition. On the other hand, if we are going to enact a statute that allows for mandatory ADR provisions, should it be limited to trusts or should it also apply to wills? The latter would argue for putting this definition, and the operative provision now in § 15-5-113, somewhere else in the statutes.

#### 1.2 Section 15-5-103(2), definition of “Ascertainable Standard.” I assume that the reference to the Internal Revenue Code as in effect on January 1, 2015 will be changed to a later date.

#### 1.3 Section 15-5-103(15), definition of “Qualified Beneficiary.”

- (A) This term is already defined in the Principal and Income Act, CRS § 15-1-402(10.5), the Directed Trustees Act, CRS § 15-16-801(6) (by cross-

reference to the definition in § 15-1-402(10.5), and the Decanting Act, CRS § 15-16-902(2), and is used in CRS § 15-16-601(2)(a)(I) (relating to an insurable interest held by a trustee) (again by cross-referencing the definition in § 15-1-402(10.5)). Will here be conforming amendments? I am not questioning the definition as you have it in the UTC provision; I just worry that having the same term defined, slightly differently, in so many different places may lead to confusion.

(B) In the second line of § 15-5-103(15)(B), I think that “THE DISTRIBUTEEES IN SUBPARAGRAPH (A)” should read “THE DISTRIBUTEEES DESCRIBED IN SUBPARAGRAPH (A).”

(C) In § 15-5-103(15)(B), the reference to “THIS SUBPARAGRAPH (13)” needs to be updated. It is now subparagraph (15).

1.4 Section 15-5-103(17), definition of “Settlor.” What is the reason for the addition of the words “has the power of withdrawal over” near the end of this section? If we are going to treat the holder of a withdrawal power as a settlor of the trust for all purposes, does that mean we look to the intent of the powerholder (e.g., the holder of a Crummey power in an insurance trust) in interpreting the trust? And if the powerholder’s intent conflicts with the intent of the “true” settlor, which controls?

1.5 Section 15-5-103(18), definition of “spendthrift provision.” My understanding is that part 5 of the UTC will not be included in the UTC to be proposed in Colorado. If that’s correct, is this definition necessary? (The answer to this question may become obvious to me as I read the other provisions of the proposed Colorado UTC.)

1.6 Section 15-5-103(20), definition of “terms of a trust.” What is the reason for striking “by other evidence that would be admissible”? The UTC concept of the terms of a trust is already the law in Colorado in other contexts, specifically the Principal and Income Act, CRS § 15-1-402(12), the Powers of Appointment Act, CRS § 15-2.5-102(19) (defining “terms of the instrument”), and the Decanting Act, CRS § 15-16-902(28).

2. Section 15-5-105, Default and mandatory rules.

2.1 In the second line of subsection (a), there is a comma missing between “DUTIES” and “RIGHTS.”

2.2 In § 15-5-105(b)(13), should “consistent with settlor’s intent” be “not inconsistent with settlor’s intent”? My thought is that there might be something about which we

don't really know, explicitly, what the settlor's intent was, but where a court should be able to take action so long as the action does not conflict with what we do know about the settlor's intent.

3. Section 15-5-106, Common law of trusts—principles of equity. It seems to me that other statutory law (for example, the principal and income tax, the decanting act, etc.), not just common law, should supplement the trust code.
4. Section 15-5-108, Principal place of administration. Paragraph (a)(3) doesn't work grammatically as a part of subsection (a). Perhaps it should be a separate subsection?
5. Section 15-5-109, Methods and waiver of notice in matters other than judicial proceedings. In the last line of subsection (a), I think the word "of" is missing between "location" and "such a person."
6. Section 15-5-112, Rules of construction. In the penultimate line, there is an extraneous hyphen between "the" and "interpretation."
7. Section 15-5-113, Alternative Dispute Resolution. Would a mandatory arbitration provision apply if the issue is the validity of the trust itself? Is that somehow covered by the "except on a ground that exists at law or in equity for the revocation of a contract" language? I don't object to authorizing mandatory ADR provisions, other than on the issue of the validity of the trust, but I don't think this section is clear.

**PART 10**  
**GENERAL PROVISIONS AND DEFINITIONS**  
**General Comment**

The Uniform Trust Code is primarily a default statute. Most of the Code's provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

The remainder of the article specifies the scope of the Code (Section 102), provides definitions (Section 103), and collects provisions of importance not amenable to codification elsewhere in the Uniform Trust Code. Sections 106 and 107 focus on the sources of law that will govern a trust. Section 106 clarifies that despite the Code's comprehensive scope, not all aspects of the law of trusts have been codified. The Uniform Trust Code is supplemented by the common law of trusts and principles of equity. Section 107 addresses selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust's terms.

Changing a trust's principal place of administration is sometimes desirable, particularly to lower a trust's state income tax. Such transfers are authorized in Section 108. The trustee, following notice to the "qualified beneficiaries," defined in Section 103(13), may without approval of court transfer the principal place of administration to another State or country if a qualified beneficiary does not object and if the transfer is consistent with the trustee's duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. The settlor, if minimum contacts are present, may also designate the trust's principal place of administration.

Sections 104 and 109 through 111 address procedural issues. Section 104 specifies when persons, particularly persons who work in organizations, are deemed to have acquired knowledge of a fact. Section 109 specifies the methods for giving notice and excludes from the Code's notice requirements persons whose identity or location is unknown and not reasonably ascertainable. Section 110 allows beneficiaries with remote interests to request notice of actions, such as notice of a trustee resignation, which are normally given only to the qualified beneficiaries.

Section 111 ratifies the use of nonjudicial settlement agreements. While the judicial settlement procedures may be used in all court proceedings relating to the trust, the nonjudicial settlement procedures will not always be available. The terms of the trust may direct that the procedures not be used, or settlors may negate or modify them by specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve.

The Uniform Trust Code does not prescribe the rules of construction to be applied to trusts created under the Code. The Code instead recognizes that enacting jurisdictions are likely

to take a diversity of approaches, just as they have with respect to the rules of construction applicable to wills. Section 112 accommodates this variation by providing that the State's specific rules on construction of wills, whatever they may be, also apply to the construction of trusts.

**PART 10**  
**GENERAL PROVISIONS AND DEFINITIONS**  
**Colorado Comments**

The following changes have been made to the Uniform Trust Code as presented to the Colorado Legislature on 11/13/2013:

**103 Definitions.**

103 (2) A definition of “**Alternative Dispute Resolution**” was added to provide clarity for an enabling provision for alternative dispute resolution that was added at 113.

103 (4) Grammatical change.

103 (9) A definition for “**Interested Person**” was added for this Article 5 to avoid confusion with the interested person definition appearing in the Colorado Probate Code.

103 (17) Grammatical change.

103 (20) “**Terms of a Trust**” Language was deleted that was considered to be limiting and confusing and language was added to include the application of a nonjudicial settlement agreement. (Minutes December 17 and January 21, 2015)

**105 Default and mandatory rules.** (a) Language was changed to include the universe of rights, powers and duties that the UTC might govern. (Minutes January 21 and March 17, 2016)

(b) (1) Language was added to ensure that these are clearly minimum requirements and they do not prohibit the settlor by the terms of the trust going beyond these requirements. (Minutes January 21, 2016)

(b) (5) Language was deleted since part 5 will not be included in this legislation.

(b) (8) Language was changed to require notice to all current distributees or permissible distributees of any age. (Minutes January 21, February 18 and April 21, 2016)

(b)(13). Language was added to insure in cases of judicial review the power of the court to construe the terms of the trust is constrained by settlor's intent so that settlors have more certainty as to the results of such judicial review. (Minutes March 2016).

(b) (14) Language was added to recognize that the settlor may require alternative dispute resolution in the trust instrument which can limit court review. (Minutes March 17, 2016)

106 **Common law of trusts – principles of equity.** Language was changed to mirror the language in Colorado Uniform Probate Code. (Minutes Jan 21, 2016)

108 **Principal place of administration.** (3) Language was moved from 205. (Minutes 7-16-2015)

108 (d) (2) Email address was added.

108 (e) Language was changed to provide clarity. (Minutes June 16, 2016)

109 **Methods and waiver of notice in matters other than judicial proceedings.** Language in heading was added to clarify that matters of notice covered in this section does not apply to judicial proceedings. Language was added to provide direction on nonjudicial methods of notice and waver of notice. (Minutes 9-15-16)

111 **Nonjudicial settlement agreement.** The language was changed to eliminate the term interested person to avoid confusion with other “interested persons” definitions in Colorado Statutes. Additional language was changed to more accurately identify the parties that may enter into and be subject to a nonjudicial settlement agreement. (Minutes September 17, 2015)

112 **Rules of construction.** Language was added to recognize that the settlor may provide rules of construction in the trust governing instrument.

113 **Alternative Dispute Resolution.** A provision was added to recognize that the settlor may provide a required form of alternative dispute resolution in the trust governing instrument. (minutes July and August 2015)



## Memorandum

To: Dennis Whitmer  
From: Kevin D. Millard  
Date: February 6, 2017  
Re: Uniform Trust Code Articles 7, 8, and 9

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This is the fourth installment of my comments and questions about the proposed Colorado Uniform Trust Code. This memo addresses Articles 7, 8, and 9 of the UTC. There is nothing yet posted on your committee's webpage for Articles 10 and 11. I will look at those Articles when they are available.

### 1. Article 7, Office of Trustee.

- 1.1 Section 15-5-701, Accepting or Declining Trusteeship. I agree with the addition of the language at the end of subsection (a)(2) about what makes a method exclusive, but I don't think it goes quite far enough. As written, some judges might read the statute to mean that unless the trust document uses one of the magic words "sole," "exclusive," and "only," the specific method is not exclusive. *Cf. In re Estate of McCreath*, 240 P.3d 413, 421 (Colo. App. 2009). I suggest that the language be expanded along the line of the language in C.R.S. § 15-16-702(3)(b), regarding methods for revoking or amending a trust, which was added for the purpose of overturning that aspect of *McCreath*. Thus, the added sentence at the end of § 15-5-701(a)(2) could be revised to read:

A provision in a trust specifying a method to accept or decline trusteeship does not make the specified method exclusive unless the specified method is referred to as the "sole", "exclusive", or "only" method of accepting or declining trusteeship *or the provision includes similar language manifesting the settlor's intent that the trusteeship may not be accepted or declined by any other method.*

### 1.2 Section 15-5-703, Cotrustees.

- (A) What was the reasoning behind deleting the words "under other law" after "disqualification" in subsections (c) and (d)?
- (B) In subsection (g)(2), the word "to" at the beginning of paragraph (2) is superfluous because the introductory clause of (g) already ends with the word "to."

(C) I don't have a problem with what I think was the intent behind the revised language of subsection (g)(2), but I think the language "at trust expense," which is now at the end of the clause, is misplaced. Read literally, it seems to say that the cotrustee's serious breach of trust must have been at trust expense. I assume you mean that the other cotrustee is to pursue a remedy at trust expense. I suggest re-wording paragraph (2) to read either: "at trust expense, pursue a remedy for a cotrustee's serious breach of trust," or "pursue a remedy, at trust expense, for a cotrustee's serious breach of trust."

1.3 Section 15-5-704, Vacancy in trusteeship—appointment of successor. There is a typo in subsection (e): "additional trustee of special fiduciary" should be "additional trustee *or* special fiduciary."

1.4 Section 15-5-706, Removal of trustee. In subsection (c), the cross reference to section 1001(b) needs to be changed to work with the numbering of the Colorado statutes. I assume this will be section 15-5-1001(b).

1.5 Section 15-5-709, Reimbursement of expenses. There is a typo in subsection (a)(2): the word "expenses" is doubled.

## 2. Article 8, Duties and Powers of Trustee.

2.1 Section 15-5-808, Powers to direct. At the Uniform Law Commission level, section 808 of the UTC, other than subsection (a) (which will be moved to article 6 of the UTC), is very likely going to be deleted in connection with the finalization of the Uniform Directed Trust Act, which is scheduled for its final reading this summer. I suggest that Colorado do the same: move § 15-5-808(a) to part 6 and delete the rest of § 808, including subsection (c).

2.2 Section 15-5-810, Record-keeping and identification of trust property. In subsection (c)(2), the cross-reference to section 816(7)(b) needs to be changed to work with the numbering of the Colorado statutes.

2.3 Section 15-5-813, Duty to inform and report.

(A) In subsection (b)(1), "portions of the trust instrument which describe or affect the beneficiary's interest" should be changed back to the uniform language, "portions of the trust instrument *that* describe or affect the beneficiary's interest." The word "that" should be used in a restrictive clause; "which" is nonrestrictive. Bryan A. Garner, *Garner's Modern American Usage* 806–07 (3d ed. 2009). "That" is correctly used,

instead of “which,” in subsection (b)(3).

- (B) In subsection (e), the references to January 1, 2015, need to be changed to whatever the effective date of the Colorado Uniform Trust Code will be.
- (C) I can live with the trustee’s duty to inform and report being limited to qualified beneficiaries, but you cannot take away the court’s right to require a trustee to account. *Ferguson v. Mueller*, 169 P.2d 610, 612 (Colo. 1946) (“a provision in the instrument creating the trust that the trustee shall not be required to report his doings to a court does not oust an equity court of jurisdiction to require accounting.”); see C.R.S. § 15-10-502(1)(a). Consequently, subsection (f) should be modified, for example: “Nothing in this section 813 shall be construed to impose on the trustee a duty to inform or report to any person other than a qualified beneficiary *or as directed by the court.*”

2.4 Section 15-5-814, Discretionary powers—tax savings.

- (A) Will C.R.S. § 15-1-1401 be repealed in light of subsection (b)? (That would be my preference.)
- (B) In subsection (d)(1), the reference to January 1, 2015, needs to be changed to whatever the effective date of the Colorado Uniform Trust Code will be.

2.5 Section 15-5-815, General powers of trustee.

- (A) Why was the word “or” used at the end of subsection (a)(1) rather than “and” as in the uniform language?
- (B) There are references in subsections (b) and (c) to “this code.” In the previous provisions, you have been referring to this “article.” In the UTC, “article” means something different from the meaning of an “article” of the Colorado statutes. See C.R.S. § 2-5-101(2). Maybe you should do something like what we now have in C.R.S. § 15-10-101 with regard to the probate code (“Articles 10 to 17 of this title shall be known and may be cited as the ‘Colorado Probate Code’ and is referred to in said articles as ‘this code’ or ‘code.’”). That is, your proposed § 15-5-101 could be revised to read: “This article 5 of title 15 shall be known and may be cited as the ‘Colorado Uniform Trust Code’ and is referred to in this article as ‘this code’ or ‘code.’” Then you could use “code”

when you are referring to all of the trust code.

(C) What was the reasoning behind deleting paragraphs (18) through (20)?

3. Article 9, Uniform Prudent Investor Act. Article 9 of the UTC is a holding spot for the Uniform Prudent Investor Act. I assume that the intent is for Colorado to leave its version of the prudent investor act in place, at C.R.S. §§ 15-1.1-101 et seq., and not try to incorporate it into the trust code. That makes sense in light of Colorado's expansion of the UPIA to other fiduciary relationships in addition to trusts. C.R.S. § 15-1.1-115(2).

**Re: UTC Part 10**

gkryda gkryda.com [gkryda@gkryda.com]

**Sent:** Friday, March 03, 2017 12:57 PM  
**To:** Connie T. Eyster [Eyster@hbcboulder.com]  
**Cc:** Darla L Daniel [darla@balsonfaix.com]; DennisN Whitmer; mldarling@comcast.net  
**Attachments:** Marc Revised Summary 1 31 17.pdf (15 KB)

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Hello.

Many thanks for your assistance as I get back in the groove. Just so I'm headed in the proper direction, do I have the correct game plan?

1. Elizabeth is going to publish UTC Part 10 on the Web site. That version is from 10/13/2016.
2. I need to double-check and update UTC Part 10 Sections 1005, 1010, 1011, and 1013 with subsequent revisions. (I think, ultimately, only 1005 was modified.)
3. Kevin Millard will be reviewing UTC Part 10 and sending the subcommittee his comments, which we are to address explicitly.
4. Darla is going to send me her summary of UTC Part 8 to use as a template for items I will need to submit for UTC Part 10. We are not doing Santa Fe style summaries.
5. On Jan. 31, 2017, Marc sent me his revision of our one page summary of UTC Part 10 (attached). I will compare Marc's attached version with whatever Darla sends me for UTC Part 8.

**Dennis and Connie:** Are you expecting anything for UTC Part 10 for review at the March 16 meeting?

Thank you.

Georgine

On March 2, 2017 at 4:00 PM "Connie T. Eyster" <Eyster@hbcboulder.com> wrote:

Elizabeth –

Could you please post this Part 10 of the UTC to the UTC webpage (Trust and Estate Section)?

Thanks,

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**Georgine M. Kryda, Ph.D., Esq., LLC**

**Georgine M. Kryda, C.P.A., LLC**

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**Re: Additional Materials for Tomorrows meeting**

Joseph G. Hodges Jr. [jghodges@jghlaw.com]

**Sent:** Thursday, February 16, 2017 11:37 AM**To:** DennisN Whitmer

---

Dennis: I am not sure I heard the end of the meeting today correctly, but it sounded as if Part 4 was declared done and yet Kevin's 1/30/17 comments regarding it were not discussed. There is one item there I am concerned about, and that is his 1.4 re whether CRS 15-5-417 re Combinations and Divisions of Trusts should or will repeal existing CRS 15-16-401 re the same subject matter. I question if this should be done vs. putting 15-16-401 in the UTC in place of 15-5-417 depending on which provision is the better one to have and, if not, what parts of 15-16-401, if anything, ought to be incorporated into 15-5-417.

My reason for asking this is i have a vested interest in 15-16-401 in that I was a committee of one that proposed that statute to SRC and saw it through to its approval and enactment, albeit a year later that planned due to a snafu at the Council level under then Chairman Michael Dice. That Act was modeled after an ABA model Act that had a lot of vetting and revisions made to it by the time we look at it for Colorado in light of the GST, and I would hate to see all of that work go to waste.

I could not compare 401 to 417 in preparation for today's UTC meeting as I did not have time this AM to dig it out of my 2 foot plus stack of UTC documents and I can not for the life of me find the UTC stuff on the CBA website (what is the URL anyway?), but I will before the March meeting and be prepared to address this issue then if you will put this on the agenda.

FYI, I will be unable to make the April meeting, as the ABA RPTE Section is having its Spring Symposium and Leadership meetings here in Denver April 19-22 and I am one of the Co-Chairs of the Host Committee, so I will be tied up at those meetings at the Four Seasons in downtown Denver all day those four days.

Joe Hodges

On 1/18/2017 8:52 PM, DennisN Whitmer wrote:

Committee members attached please find additional materials for tomorrows meeting. A memo from Kevin Millard on Part 1. Darla's comments and UTC Conforming amendments and an updated Part 11.

Dennis N. Whitmer, Special Counsel

Hamilton Faatz, PC

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## **UTC ARTICLE 10 SUMMARY**

Article 10, Liability of Trustees and Rights of Persons Dealing with Trustees, addresses three areas of concern: (1) what may occur when a trustee is found to have breached a duty of trust, (2) procedural requirements for bringing an action against a trustee for breach of trust, and (3) expectations of third parties interacting with trustees.

Article 10 proceeds logically from the available remedies after a court finds a breach of trust, to damages, to compensation of those who undertook to bring the wrong-doing to light. Procedurally, the requirements to bring an action against the trustee are limited by time, the reasonableness of actions taken during trust administration (particularly with regard to notice of beneficiaries), protections given by the settlor to the trustee, and approval by beneficiaries. Finally, the expectations of third parties when interacting with trustees are considered with respect to when a trustee is actually, or appears to be, acting on behalf of the trust or as an individual.

## **UTC ARTICLE 10 COLORADO VERSION SUMMARY**

- 1001(b)(8) and 1002(a)(2) permit a court to order a trustee, who is found to have breached the duty of trust, to disgorge previously paid compensation.
- 1001(c) incorporates the provisions of C.R.S. §§ 15-10-501, *et seq.*, which already hold fiduciaries accountable under Colorado law.
- 1004 substitutes the provisions of C.R.S. §§ 15-10-601, *et seq.*, for determining an award of cost and compensation to trustees, their attorneys and third persons.
- 1005 imposes time restrictions on the ability to bring an action against a trustee.
- 1007(b) and 1010(e) protect a trustee who has not received actual notice of a child born of genetic material whose existence may alter trust distributions. 1007(c) and 1010(f) require the trustee to examine public records for beneficiary deeds only in those counties in which a decedent is known to have resided during life.
- 1010(d) requires a court proceeding to determine how to apportion liability between the trust and the individual trustee.

**RE: UTC definition of Qualified Beneficiary**

Kevin D. Millard [kmillard@wadeash.com]

**Sent:** Saturday, January 21, 2017 1:42 PM**To:** Eugene Zuspann [ezuspann@zuspann.com]**Cc:** DennisN Whitmer

---

Gene and Dennis:

I agree that the Colorado definition should be conformed to the revised UTC definition. My preference would be for the “main” definition of qualified beneficiary to be in the Colorado version of the UTC, and for the other statutes that use that term to be modified to cross-reference that definition.

**Please note my new contact information, below.**

Regards,

Kevin D. Millard  
Wade Ash Woods Hill & Farley, P.C.  
Cherry Creek Corporate Center  
4500 Cherry Creek Dr. S., Suite 600  
Denver, CO 80246-1500  
Telephone: 303-322-8943  
kmillard@wadeash.com

---

**From:** Eugene Zuspann [mailto:ezuspann@zuspann.com]

**Sent:** Friday, January 20, 2017 1:31 PM

**To:** Kevin D. Millard

**Cc:** DennisN Whitmer

**Subject:** UTC definition of Qualified Beneficiary

AND, because I started at the wrong place, the explanation is in the 2005 report. See the last paragraph of the official comments.

Now I believe we need to conform 15-1-402(10.5).

Gene

Kevin,

After researching the definition of a qualified beneficiary, I find the following.

1. The language in 15-1-402(10.5)(b) reads

“(b) Would be a distributee or permissible distributee of trust income or principal if the interest of the

distributees described in paragraph (a) of this subsection (10.5) terminated on that date; or”

We took this language from the 2001 final act. This is also the language in the 2006 final act.

2. In the 2004 revision to the UTC, the language changed to

“(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or”

The underline is not mine – it is in the revision. There are no comments in my copy of the amendments explaining why this was done. This is apparently the version that the Colo committee used to do the 2005 version. This is also the version that Tom Morris used to draft the bill in 2013. This is also the language in the current version through 2010.

I do not know why the ULC changed the definition in the 2004 amendments, but did not incorporate them in the 2006 version, then put them back in the 2010 version.

I have two proposals:

- A. I believe that the definition in the UTC should reference 15-1-402(10.5). This makes sure our definition used for trust law is consistent.
- B. I would like to amend 10.5(b) to the language in the current version of the UTC with the highlighted language.

The problem with this is whether it would affect any of the other acts. I do not see any problem with the unitrust statute. I do not believe that the addition of the clause changes the meaning of the subsection – just clarifies it to be clear that the fact the distributee’s interest terminates is not to be construed that this is a trust termination.

Comments appreciated.

Gene

Changes to Part 8 in response to Kevin Millard's comments

March 10, 2017

## **2.1 Section 808**

**A-** 808(a): Kevin suggested moving this sentence to the end of 15-16-703, and deleting the rest of 808 including subsection (c).

**B-** I reviewed 15-16-703 against UTC 603. I noticed that 15-16-703 does not include the text of UTC 603(b). I am not sure why this was left out of the Colorado statute.

603(b) reads:

603(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

I asked Kevin, and here is his comment:

"Although I was on that subcommittee, I don't specifically recall why we did not enact UTC 603(b) when we enacted 15-16-703. Maybe there was some concern that §603(b) would undermine the Rhoadarmer case. If your committee is OK with 603(b), I would be in favor of adding it now."

**C-** Kevin also suggested we reserve section 808 so that in following sections the last three digits of the Colorado section number will correspond to the UTC section number.

If we make both changes in A and B above, new 15-16-703 would then read as follows:

15-16-703. Settlor's Powers. (a) UNLESS THE TERMS OF THE TRUST EXPRESSLY PROVIDE OTHERWISE, WHILE A TRUST IS REVOCABLE:

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(B) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER OF WITHDRAWAL HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER THIS SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

**We need to discuss and vote on the above changes.**

**2.2 Section 810(c)(2).** I fixed the reference to 816(a)(7)(B).

**2.3 Section 813.** (a) I changed 'which' to 'that' in subsection (b)(1) and (3).

(b) I changed date references throughout Part 8 from January 1, 2015 to "as of the effective date of this code."

(c) Kevin's suggestion to add a phrase at the end of 813(f) so it reads:

"(F) NOTHING IN THIS SECTION 813 SHALL BE CONSTRUED TO IMPOSE ON THE TRUSTEE A DUTY TO INFORM OR REPORT TO ANY PERSON OTHER THAN A QUALIFIED BENEFICIARY OR AS DIRECTED BY THE COURT."

**We need to vote on this additional language.**

**2.4 Section 814.** Kevin asked whether C.R.S. 15-1-1401 would be repealed in light of 814(b)?

*My comments:*

See current 15-1-1401 (reprinted below) and comments below. In general, 814(b) covers the same concepts and in a clearer manner than 1401 does. Two thoughts:

- 1401(2) allows 'parties in interest' to make an affirmative election (even after the trust is irrevocable) if they do not want 1401(1) to apply. 814(b) instead relies on the settlor/drafter to elect in the trust document whether or not 814(b) will apply: "UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION (b) DOES NOT APPLY..."

- 1401(1)(a)(III) and 1401(5).

1401(1)(a)(III) prohibits a trustee from making discretionary distributions of principal or income to/for the direct or indirect benefit of any person *who has the right to remove or replace a trustee*, unless limited to HEMS. I don't see similar language in 814(b); 814(b)(1) just refers to distributions to/for the trustee's "personal benefit." Not sure how important this is.

1401(5) appears to be a savings clause. There is nothing like it in 814. Is this important enough to keep?

*Kevin's comments:*

UTC § 814 and CRS § 15-1-1401. I agree that the UTC provision is clearer than our current Colorado statute. My overall view is that it was a mistake to draft a statute to protect people from themselves, and I would even be okay with deleting UTC § 814(b)-(d). As you know, only 0.2% of the population will have to pay estate tax, even if the Republicans are successful in repealing the estate tax. Those people can afford to hire qualified trust & estate lawyers who will deal with these issues in their documents. This kind of statute just complicates things for the other 99.8%. I never agreed with the concept that this kind of statute had to address

discretionary distributions to or for the benefit of a person who has the right to remove or replace a trustee. I think that was a Colorado “innovation” or an example of over-thinking the problem. For example, the California statute (copy attached) does not address that issue, and I would bet that a number of very smart T&E lawyers worked on that statute. If we are going to keep a statute on this issue, I would prefer the UTC version because it is so much simpler and cleaner.

I have also attached the CA statute he references.

**We need to discuss and vote on this.**

## **2.5 Section 815.**

(A) 815(a)(1): We did not change the language; the 11-13-13 version of the UTC as introduced by Tom Morris, which we used as our starting point, contains OR, not AND. NCCUSL apparently later changed this to “and.”

*Kevin’s comments:*

The use of “and” or “or” at the end of UTC § 815(a)(1). This was a mistake made by the ULC in the original version of the UTC and then corrected in 2003. See the amendment note at the end of the official comment to UTC § 815:

**2003 Amendment.** The amendment, which changes an “or” to an “and” between subsections (a)(1) and (a)(2), corrects an inadvertent style glitch. As the comments to Section 815 make clear, the drafters intended that the trustee have both the powers stated in the terms of the trust and the powers specified in this Act, not that they be alternatives.

**We need to vote to change the language to AND.**

(B) We agreed with Kevin’s suggestion and will include language in 15-5-101 to refer to this “code” throughout the UTC.

(C) Paragraphs (18) and (19) were deleted for two reasons: 1) to be consistent with C.R.S. 15-1-804, which does not authorize making loans to beneficiaries out of trust property or pledging trust property to guarantee beneficiary loans; and 2) to address concerns raised by some in the UTC subcommittee about these provisions causing problems for special needs trust beneficiaries and qualification for Medicaid.

The strikeout of Paragraph (20) was a mistake on my part (typo). The UTC subcommittee did NOT vote to delete this. I will put fix this and clarify this our March meeting.

## ATTACHMENTS

Current C.R.S. § 15-1-1401

### § 15-1-1401. Restrictions on exercise of certain fiduciary powers

- (1)
  - (a) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary of a trust and other beneficiaries of the trust, any of the following powers conferred upon a trustee shall not be exercised by such trustee:
    - (I) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for that trustee's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended;
    - (II) To make discretionary distributions of either principal or income to satisfy any legal obligations of such trustee; or
    - (III) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of any person who has the right to remove or replace such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for such person's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended.
  - (b) Any of the powers prescribed in paragraph (a) of this subsection (1) that are conferred upon two or more trustees may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise such powers, any party in interest, as described in subsection (3) of this section, may apply to a court of competent jurisdiction to appoint an independent trustee, and such powers may be exercised by the independent trustee appointed by the court. Subparagraph (I) of paragraph (a) of this subsection (1) shall not prohibit a trustee from making payments, including reimbursement of and compensation of such trustee, for the protection of the trust, or the assets thereof, and for all expenses, losses, and liabilities incurred in or by the collection, care, administration, or protection of the trust or the assets thereof.
- (2) This section applies to every trust unless the terms of the trust as it may be amended in accordance with its terms provide expressly to the contrary and either specifically refer to this section or otherwise clearly demonstrate the intent that this rule not apply or unless, if the trust is irrevocable, all parties in interest, as described in subsection (3) of this section, elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this section. Such election shall be made on or before July 1, 1999, or three years after the date on which the trust becomes irrevocable, whichever occurs later.
- (3) For the purpose of subsection (1) or subsection (2) of this section:

- (a) If the trust is revocable or amendable and the settlor is not incapacitated, the party in interest is the settlor.
  - (b) If the trust is revocable or amendable and the settlor is incapacitated, the party in interest is the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney that is sufficient to grant such authority.
  - (c) If the trust is not revocable or amendable, the parties in interest are:
    - (I) Each trustee then serving;
    - (II) Each income beneficiary then in existence or, if any such beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority; and
    - (III) Each remainder beneficiary then in existence or, if any such remainder beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority.
- (4) The affirmative election required under subsection (2) of this section shall be made:
- (a) If the settlor is not incapacitated and the trust is revocable or amendable, through a revocation of or an amendment to the trust;
  - (b) If the settlor is incapacitated and the trust is revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee; or
  - (c) If the trust is not revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee.
- (5) A person who has the right to remove or to replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers proscribed in subparagraphs (I), (II), and (III) of paragraph (a) of subsection (1) of this section of the trustee that is subject to removal or to replacement.
- (6)
- (a) Subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section shall not apply to a trustee with respect to trust property and the income from such property where such property would, upon the death of such trustee, be included in the gross estate of such trustee for federal estate tax purposes for any reason other than the powers proscribed by subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section.
  - (b) Subparagraph (I) of paragraph (a) of subsection (1) of this section shall not apply to a trustee



that may be appointed or removed by a person for whose benefit the proscribed powers may be exercised to distribute trust property or the income from such property where such property would, upon the death of such person, be included in the gross estate of such person for federal estate tax purposes for any reason other than such powers to appoint or remove such trustee.

- (7) The provisions of this section neither create a new cause of action nor impair any existing cause of action that, in either case, relates to any power proscribed by subsection (1) of this section that was exercised before July 1, 1996.
- 

California Probate Code § 16081. Duty when trust confers absolute, sole or uncontrolled discretion on trustee.

Division 9. TRUST LAW

Part 4. TRUST ADMINISTRATION

Chapter 1. DUTIES OF TRUSTEES

Article 4. Duties With Regard to Discretionary Powers

§ 16081. Duty when trust confers absolute, sole or uncontrolled discretion on trustee

(a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers "absolute," "sole," or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(b) Notwithstanding the use of terms like "absolute," "sole," or "uncontrolled" by a settlor or a testator, a person who is a beneficiary of a trust that permits the person, either individually or as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard.

(c) Unless a settlor or a testator clearly indicates that a broader power is intended by express reference to this subdivision, a person who is a beneficiary of a trust that permits the person, as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of Sections 2041 and 2514 of the Internal Revenue Code.

Notwithstanding the foregoing and the provisions of Section 15620, if a power to make discretionary distributions of income or principal is conferred upon two or more trustees, the power may be exercised by any trustee who is not a current permissible beneficiary of that power ; and provided further that if there is no trustee who is not a current permissible beneficiary of that power, any party in interest may apply to a court of competent jurisdiction to appoint a trustee who is not a current permissible beneficiary of that power, and the power may be exercised by the trustee appointed by the court.

(d) Subdivision (c) does not apply to either of the following:

(1) Any power held by the settlor of a revocable or amendable trust.

(2) Any power held by a settlor's spouse or a testator's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 21520, has been allowed.

(e) Subdivision (c) applies to any of the following:

(1) Any trust executed on or after January 1, 1997.

(2) Any testamentary trust created under a will executed on or after January 1, 1997.

(3) Any irrevocable trust created under a document executed before January 1, 1997, or any revocable trust executed before that date if the settlor was incapacitated as of that date, unless all parties in interest elect affirmatively not to be subject to the application of subdivision (c) through a written instrument delivered to the trustee. That election shall be made on or before the latest of January 1, 1998, three years after the date on which the trust became irrevocable, or, in the case of a revocable trust where the settlor was incapacitated, three years after the date on which the settlor became incapacitated.

(f) Notwithstanding the foregoing, the provisions of subdivision (c) neither create a new cause of action nor impair an existing cause of action that, in either case, relates to any power limited by subdivision (c) that was exercised before January 1, 1997.

(g) For purposes of this section, the term "party in interest" means any of the following persons:

(1) If the trust is revocable and the settlor is incapacitated, the settlor's legal representative under applicable law, or the settlor's attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable.

(2) If the trust is irrevocable, each trustee, each beneficiary then entitled or authorized to receive income distributions from the trust, or each remainder beneficiary who would be entitled to receive notice of a trust proceeding under Section 15804. Any beneficiary who lacks legal capacity may be represented by the beneficiary's legal representative, attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable, or in the absence of a legal representative or attorney-in-fact, a guardian ad litem appointed for that purpose.



Changes to Part 8 in response to Kevin Millard's comments

March 10, 2017

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(A) 815(a)(1): We did not change the language; the 11-13-13 version of the UTC as introduced by Tom Morris, which we used as our starting point, contains OR, not AND. NCCUSL apparently later changed this to “and.”

*Kevin’s comments:*

The use of “and” or “or” at the end of UTC § 815(a)(1). This was a mistake made by the ULC in the original version of the UTC and then corrected in 2003. See the amendment note at the end of the official comment to UTC § 815:

**2003 Amendment.** The amendment, which changes an “or” to an “and” between subsections (a)(1) and (a)(2), corrects an inadvertent style glitch. As the comments to Section 815 make clear, the drafters intended that the trustee have both the powers stated in the terms of the trust and the powers specified in this Act, not that they be alternatives.

**We need to vote to change the language to AND.**

(B) We agreed with Kevin’s suggestion and will include language in 15-5-101 to refer to this “code” throughout the UTC.

(C) Paragraphs (18) and (19) were deleted for two reasons: 1) to be consistent with C.R.S. 15-1-804, which does not authorize making loans to beneficiaries out of trust property or pledging trust property to guarantee beneficiary loans; and 2) to address concerns raised by some in the UTC subcommittee about these provisions causing problems for special needs trust beneficiaries and qualification for Medicaid.

The strikeout of Paragraph (20) was a mistake on my part (typo). The UTC subcommittee did NOT vote to delete this. I will put fix this and clarify this our March meeting.

## ATTACHMENTS

Current C.R.S. § 15-1-1401

### § 15-1-1401. Restrictions on exercise of certain fiduciary powers

- (1)
  - (a) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary of a trust and other beneficiaries of the trust, any of the following powers conferred upon a trustee shall not be exercised by such trustee:
    - (I) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for that trustee's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended;
    - (II) To make discretionary distributions of either principal or income to satisfy any legal obligations of such trustee; or
    - (III) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of any person who has the right to remove or replace such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for such person's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended.
  - (b) Any of the powers prescribed in paragraph (a) of this subsection (1) that are conferred upon two or more trustees may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise such powers, any party in interest, as described in subsection (3) of this section, may apply to a court of competent jurisdiction to appoint an independent trustee, and such powers may be exercised by the independent trustee appointed by the court. Subparagraph (I) of paragraph (a) of this subsection (1) shall not prohibit a trustee from making payments, including reimbursement of and compensation of such trustee, for the protection of the trust, or the assets thereof, and for all expenses, losses, and liabilities incurred in or by the collection, care, administration, or protection of the trust or the assets thereof.
- (2) This section applies to every trust unless the terms of the trust as it may be amended in accordance with its terms provide expressly to the contrary and either specifically refer to this section or otherwise clearly demonstrate the intent that this rule not apply or unless, if the trust is irrevocable, all parties in interest, as described in subsection (3) of this section, elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this section. Such election shall be made on or before July 1, 1999, or three years after the date on which the trust becomes irrevocable, whichever occurs later.
- (3) For the purpose of subsection (1) or subsection (2) of this section:

- (a) If the trust is revocable or amendable and the settlor is not incapacitated, the party in interest is the settlor.
  - (b) If the trust is revocable or amendable and the settlor is incapacitated, the party in interest is the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney that is sufficient to grant such authority.
  - (c) If the trust is not revocable or amendable, the parties in interest are:
    - (I) Each trustee then serving;
    - (II) Each income beneficiary then in existence or, if any such beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority; and
    - (III) Each remainder beneficiary then in existence or, if any such remainder beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority.
- (4) The affirmative election required under subsection (2) of this section shall be made:
- (a) If the settlor is not incapacitated and the trust is revocable or amendable, through a revocation of or an amendment to the trust;
  - (b) If the settlor is incapacitated and the trust is revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee; or
  - (c) If the trust is not revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee.
- (5) A person who has the right to remove or to replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers proscribed in subparagraphs (I), (II), and (III) of paragraph (a) of subsection (1) of this section of the trustee that is subject to removal or to replacement.
- (6)
- (a) Subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section shall not apply to a trustee with respect to trust property and the income from such property where such property would, upon the death of such trustee, be included in the gross estate of such trustee for federal estate tax purposes for any reason other than the powers proscribed by subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section.
  - (b) Subparagraph (I) of paragraph (a) of subsection (1) of this section shall not apply to a trustee



that may be appointed or removed by a person for whose benefit the proscribed powers may be exercised to distribute trust property or the income from such property where such property would, upon the death of such person, be included in the gross estate of such person for federal estate tax purposes for any reason other than such powers to appoint or remove such trustee.

- (7) The provisions of this section neither create a new cause of action nor impair any existing cause of action that, in either case, relates to any power proscribed by subsection (1) of this section that was exercised before July 1, 1996.
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California Probate Code § 16081. Duty when trust confers absolute, sole or uncontrolled discretion on trustee.

Division 9. TRUST LAW

Part 4. TRUST ADMINISTRATION

Chapter 1. DUTIES OF TRUSTEES

Article 4. Duties With Regard to Discretionary Powers

§ 16081. Duty when trust confers absolute, sole or uncontrolled discretion on trustee

(a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers "absolute," "sole," or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(b) Notwithstanding the use of terms like "absolute," "sole," or "uncontrolled" by a settlor or a testator, a person who is a beneficiary of a trust that permits the person, either individually or as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard.

(c) Unless a settlor or a testator clearly indicates that a broader power is intended by express reference to this subdivision, a person who is a beneficiary of a trust that permits the person, as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of Sections 2041 and 2514 of the Internal Revenue Code.

Notwithstanding the foregoing and the provisions of Section 15620, if a power to make discretionary distributions of income or principal is conferred upon two or more trustees, the power may be exercised by any trustee who is not a current permissible beneficiary of that power ; and provided further that if there is no trustee who is not a current permissible beneficiary of that power, any party in interest may apply to a court of competent jurisdiction to appoint a trustee who is not a current permissible beneficiary of that power, and the power may be exercised by the trustee appointed by the court.

(d) Subdivision (c) does not apply to either of the following:

(1) Any power held by the settlor of a revocable or amendable trust.

(2) Any power held by a settlor's spouse or a testator's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 21520, has been allowed.

(e) Subdivision (c) applies to any of the following:

(1) Any trust executed on or after January 1, 1997.

(2) Any testamentary trust created under a will executed on or after January 1, 1997.

(3) Any irrevocable trust created under a document executed before January 1, 1997, or any revocable trust executed before that date if the settlor was incapacitated as of that date, unless all parties in interest elect affirmatively not to be subject to the application of subdivision (c) through a written instrument delivered to the trustee. That election shall be made on or before the latest of January 1, 1998, three years after the date on which the trust became irrevocable, or, in the case of a revocable trust where the settlor was incapacitated, three years after the date on which the settlor became incapacitated.

(f) Notwithstanding the foregoing, the provisions of subdivision (c) neither create a new cause of action nor impair an existing cause of action that, in either case, relates to any power limited by subdivision (c) that was exercised before January 1, 1997.

(g) For purposes of this section, the term "party in interest" means any of the following persons:

(1) If the trust is revocable and the settlor is incapacitated, the settlor's legal representative under applicable law, or the settlor's attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable.

(2) If the trust is irrevocable, each trustee, each beneficiary then entitled or authorized to receive income distributions from the trust, or each remainder beneficiary who would be entitled to receive notice of a trust proceeding under Section 15804. Any beneficiary who lacks legal capacity may be represented by the beneficiary's legal representative, attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable, or in the absence of a legal representative or attorney-in-fact, a guardian ad litem appointed for that purpose.



ARTICLE 8  
DUTIES AND POWERS OF TRUSTEE  
General Comment

This article states the fundamental duties of a trustee and lists the trustee's powers. The duties listed are not new, but how the particular duties are formulated and applied has changed over the years. Section 801 deals with the trustee's general duty to administer the trust in good faith; Sections 802, 803 and 804 cover duties of loyalty, impartiality, and prudent administration. Section 805 discusses costs of administration and Section 806 covers trustees' duties with respect to special skills or expertise. Sections 807 and 808 deal with delegation and powers to direct. Sections 809, 810, 811 and 812 discuss the trustee's duties to control and protect trust property, to keep records, to enforce claims of the trust and defend claims against the trust, and to collect trust property from a former trustee. Section 813 covers the trustee's duty to inform and report. Section 814 covers discretionary powers and tax savings. Sections 815 and 816 list general and specific trustee powers. Section 817 discusses distribution on termination. All of the provisions of this article may be overridden in the terms of the trust, except for certain aspects of the trustee's duty to keep the beneficiaries informed of administration (see Section 105(b)(8)), and the trustee's fundamental obligation to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries (see Section 105(b)(2)).

PART 8  
DUTIES AND POWERS OF TRUSTEE  
Colorado Comments

No changes were made to Sections 801, 809, 812, and 817.

Minor, non-substantive changes were made to Sections 802, 803, 804, 805, 806, 815, and 816 to maintain consistency with existing Colorado statutes (the Colorado Probate Code, Colorado Uniform Prudent Investor Act, Colorado Fiduciaries' Powers Act, and others).

807(c) - **Delegation by Trustee:** The underlined words were added for clarity: "A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions ~~an action~~ of the agent to whom the function was delegated."

808 - **Powers To Direct:** 808(a) was moved to C.R.S. § 15-16-703 (Settlor's powers – Revocable Trusts). The rest of 808 was deleted so as not to conflict with Colorado's existing directed trust statute, C.R.S. 15-16-801 *et seq.*

810 - **Record-keeping and identification of trust property:** Paragraph (c)(2) was added to authorize trustees to hold property in nominee name (consistent with existing C.R.S. §15-1-804(2)(o)); paragraph (c)(3) was added to clarify that 810 does not apply to tangible personal property that is not capable of being maintained in records held by a party other than a trustee or beneficiary.

811 - **Enforcement and defense of claims:** A knowledge requirement was added.

813 - **Duty to inform and report:** 813(a), (b)(1), and (d) were revised to refer to “Qualified” beneficiaries throughout. 813(b)(3) was revised pursuant to the 2005 CO UTC committee’s suggestions: “... of the right to request portions a copy of the trust instrument which describe or affect the beneficiary’s interest...”

813(f) was added.

814 - **Discretionary powers - tax savings:** The last phrase of (a)(1) was deleted, and clarifying language was added to the end of (a)(1) through (a)(2). **It is contemplated that existing C.R.S. § 15-1-1401 will be repealed.**

DUTIES AND POWERS OF TRUSTEE

**15-5-801. Duty to administer trust.** UPON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES, AND IN ACCORDANCE WITH THIS ARTICLE.

**15-5-802. Duty of loyalty.** (a) A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

(b) SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 15-5-1012, A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS:

(1) THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST;

(2) THE TRANSACTION WAS APPROVED BY THE COURT;

(3) THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 15-5-1005;

(4) THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED

THE TRANSACTION, OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 15-5-1009; OR

(5) THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

(c) A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

- (1) THE TRUSTEE'S SPOUSE;
- (2) THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS, OR THEIR SPOUSES;
- (3) AN AGENT OR ATTORNEY OF THE TRUSTEE; OR
- (4) A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

(d) A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

(e) A TRANSACTION NOT CONCERNING TRUST PROPERTY, AND IN WHICH

THE TRUSTEE ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY, INVOLVES A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE TRUST.

(f) AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY OR INVESTMENT TRUST TO WHICH THE TRUSTEE OR ITS AFFILIATE PROVIDES SERVICES IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE COMPLIES WITH THE COLORADO UNIFORM PRUDENT INVESTOR ACT. ~~PRUDENT INVESTOR RULE OF ARTICLE 1.1 OF THIS TITLE~~. IN ADDITION TO ITS COMPENSATION FOR ACTING AS TRUSTEE, THE TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST. IF THE TRUSTEE RECEIVES COMPENSATION FROM THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING INVESTMENT ADVISORY OR INVESTMENT MANAGEMENT SERVICES, THE TRUSTEE MUST AT LEAST ANNUALLY NOTIFY THE PERSONS ENTITLED UNDER SECTION 5-5-813 TO RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT OF THE RATE AND METHOD BY WHICH THAT COMPENSATION WAS DETERMINED.

(g) IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE BEST INTEREST OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A CORPORATION OR OTHER FORM OF ENTERPRISE, THE



TRUSTEE SHALL ELECT OR APPOINT DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN THE BEST INTEREST OF THE BENEFICIARIES.

(h) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR TO THE BENEFICIARIES:

(1) AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE APPOINTMENT OR COMPENSATION OF THE TRUSTEE;

(2) PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE;

(3) A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE, GUARDIANSHIP OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A BENEFICIARY HAS AN INTEREST;

(4) A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE INSTITUTION OPERATED BY THE TRUSTEE; OR

(5) AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

(i) THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH RESPECT TO ANY PROPOSED TRANSACTION THAT MIGHT VIOLATE THIS SECTION IF ENTERED INTO BY THE TRUSTEE.

**15-5-803. Impartiality.** IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT IMPARTIALLY IN INVESTING, MANAGING, AND DISTRIBUTING THE TRUST PROPERTY, TAKING INTO ACCOUNT ANY DIFFERING INTERESTS OF THE BENEFICIARIES. ~~GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.~~

**15-5-804. Prudent administration.** A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY CONSIDERING THE PURPOSES, TERMS, ~~DISTRIBUTIONAL~~ DISTRIBUTION REQUIREMENTS, AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION.

**15-5-805. Costs of administration.** IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST, AND THE SKILLS OF THE TRUSTEE.

**15-5-806. Trustee's skills.** A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR IS NAMED TRUSTEE IN RELIANCE UPON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE ~~SHALL USE~~ THOSE SPECIAL SKILLS OR EXPERTISE.

**15-5-807. Delegation by trustee.** (a) A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION IN:

- (1) SELECTING AN AGENT;
- (2) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST; AND
- (3) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR

THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

(b) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

(c) A TRUSTEE WHO COMPLIES WITH SUBSECTION (a) OF THIS SECTION IS NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS ~~AN ACTION~~ OF THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

(d) BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE.

**15-5-808. Powers to direct.** ~~(a) WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST. RESERVED.~~

~~(b) IF THE TERMS OF A TRUST CONFER UPON A PERSON OTHER THAN THE SETTLOR OF A REVOCABLE TRUST POWER TO DIRECT CERTAIN ACTIONS OF THE TRUSTEE, THE TRUSTEE SHALL ACT IN ACCORDANCE WITH AN EXERCISE OF THE POWER UNLESS THE ATTEMPTED EXERCISE IS MANIFESTLY CONTRARY TO THE TERMS OF THE TRUST OR THE TRUSTEE KNOWS THE ATTEMPTED EXERCISE WOULD CONSTITUTE A SERIOUS BREACH OF A FIDUCIARY DUTY THAT THE PERSON HOLDING THE POWER OWES TO THE BENEFICIARIES OF THE TRUST.~~

~~(c) THE TERMS OF A TRUST MAY CONFER UPON A TRUSTEE OR OTHER PERSON A POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.~~

~~(d) A PERSON, OTHER THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.~~

**15-5-809. Control and protection of trust property.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT THE TRUST PROPERTY.

**15-5-810. Record-keeping and identification of trust property.** (a) A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN PROPERTY.

(c)(1) ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS SECTION,~~ A TRUSTEE SHALL CAUSE THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A TRUSTEE OR BENEFICIARY.

(2) NOTHING IN PARAGRAPH (c) OF THIS SECTION 810 SHALL BE CONSTRUED AS PREVENTING A TRUSTEE FROM HOLDING A PROPERTY IN THE NAME OF A NOMINEE OR OTHER FORM, WITHOUT DISCLOSURE OF THE TRUST, AS AUTHORIZED IN SECTION 816(a)(7)(B) OF THIS CODE AND IN C.R.S. §15-1-804(2)(c), PROVIDED THE TRUSTEE MAINTAINS ADEQUATE RECORDS OF ALL TRUST PROPERTY SO HELD.

(3) THIS PARAGRAPH (c) DOES NOT APPLY TO TANGIBLE PERSONAL

PROPERTY OTHER THAN MOTOR VEHICLES, AIRPLANES, AND OTHER PROPERTY  
THE TITLE OF WHICH IS REGISTERED WITH A GOVERNMENTAL AUTHORITY.

(d) IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE SEPARATE TRUSTS.

**15-5-811. Enforcement and defense of claims.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST AND TO DEFEND CLAIMS AGAINST THE TRUST OF WHICH THE TRUSTEE HAS KNOWLEDGE.

**15-5-812. Collecting trust property.** A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE, AND TO REDRESS A BREACH OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

**15-5-813. Duty to inform and report.** (a) A TRUSTEE SHALL KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO PROTECT THEIR INTERESTS. UNLESS UNREASONABLE UNDER THE CIRCUMSTANCES, A TRUSTEE SHALL PROMPTLY RESPOND TO A QUALIFIED BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE:

(1) UPON REQUEST OF A QUALIFIED BENEFICIARY, SHALL PROMPTLY FURNISH TO THE QUALIFIED BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST;

(2) WITHIN 60 DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(3) WITHIN 60 DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF THE CREATION OF AN IRREVOCABLE TRUST, OR THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR SETTLORS, OF THE RIGHT TO REQUEST PORTIONS A COPY OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST, AND OF THE RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION (c) ~~OF THIS SECTION~~; AND

(4) SHALL NOTIFY THE QUALIFIED BENEFICIARIES IN ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

(c) A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL, AND TO OTHER QUALIFIED BENEFICIARIES WHO REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS, AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION, A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. UPON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL

REPRESENTATIVE, CONSERVATOR, OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

(d) A QUALIFIED BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER INFORMATION ~~OTHERWISE~~ REQUIRED TO BE FURNISHED UNDER THIS SECTION. A QUALIFIED BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY WITHDRAW A WAIVER PREVIOUSLY GIVEN.

(e) SUBPARAGRAPHS (2) AND (3) OF SUBSECTION (b) OF THIS SECTION DO NOT APPLY TO A TRUSTEE WHO ACCEPTS A TRUSTEESHIP BEFORE THE EFFECTIVE DATE OF THIS CODE ~~JANUARY 1, 2015~~, TO AN IRREVOCABLE TRUST CREATED BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR TO A REVOCABLE TRUST THAT BECOMES IRREVOCABLE BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE.

(f) NOTHING IN THIS SECTION 813 SHALL BE CONTRUED TO IMPOSE ON THE TRUSTEE A DUTY TO INFORM OR REPORT TO ANY PERSON OTHER THAN A QUALIFIED BENEFICIARY OR AS DIRECTED BY THE COURT.

**15-5-814. Discretionary powers - tax savings.** (a)(1)NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN THE TERMS OF THE TRUST, INCLUDING THE USE OF SUCH TERMS AS "ABSOLUTE", "SOLE", OR "UNCONTROLLED", THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH. AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE PARAMETERS FOR

THAT EXERCISE ARE ESTABLISHED BY THE TERMS AND PURPOSES OF THE TRUST, THE INTERESTS OF THE BENEFICIARIES, AND RELEVANT FIDUCIARY DUTIES. A TRUSTEE DOES NOT ABUSE HIS DISCRETION IN EXERCISING OR FAILING TO EXERCISE A DISCRETIONARY POWER IF THE TRUSTEE, FOLLOWING THE TERMS AND PURPOSES OF THE TRUST AND CONSIDERING THE INTERESTS OF ITS BENEFICIARIES, EXERCISES ITS JUDGMENT HONESTLY AND WITH A PROPER MOTIVE.

(2) WHERE A TRUST GIVES A TRUSTEE UNLIMITED DISCRETION, INCLUDING THE USE OF SUCH TERMS AS “ABSOLUTE”, “SOLE”, OR “UNCONTROLLED”, A COURT MAY NOT DETERMINE THAT A TRUSTEE ABUSED ITS DISCRETION MERELY BECAUSE THE COURT WOULD HAVE EXERCISED THE DISCRETION IN A DIFFERENT MANNER OR WOULD NOT HAVE EXERCISED THE DISCRETION.

(b) SUBJECT TO SUBSECTION (d) OF THIS SECTION, AND UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION (b) DOES NOT APPLY:

(1) A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN ACCORDANCE WITH AN ASCERTAINABLE STANDARD; AND



(2) A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE PERSONALLY OWES ANOTHER PERSON.

(c) A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION (b) OF THIS SECTION MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

(d) SUBSECTION (b) ~~OF THIS SECTION~~ DOES NOT APPLY TO:

(1) A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056 (b)(5) OR 2523(e) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED, WAS PREVIOUSLY ALLOWED;

(2) ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR AMENDED BY ITS SETTLOR; OR

(3) A TRUST, IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL EXCLUSION UNDER SECTION 2503(c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED.

**15-5-815. General powers of trustee.** (a) A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

(1) POWERS CONFERRED BY THE TERMS OF THE TRUST; ~~AND OR~~

(2) EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

(A) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY;

(B) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT, MANAGEMENT, AND DISTRIBUTION OF THE TRUST PROPERTY; AND

(C) ANY OTHER POWERS CONFERRED BY THIS ~~CODE ARTICLE~~ AND THE “COLORADO FIDUCIARIES’ POWERS ACT”.

(b) THE EXERCISE OF A POWER IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ~~ARTICLE~~ CODE.

**15-5-816. Specific powers of trustee.** (a) WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 15-5-815 AND IN ADDITION TO THE POWERS CONFERRED UNDER THE “COLORADO FIDUCIARIES’ POWERS ACT”, ~~PART 8 OF ARTICLE 4 OF THIS TITLE~~, A TRUSTEE MAY:

(1) COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST PROPERTY FROM A SETTLOR OR ANY OTHER PERSON;

(2) ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR PRIVATE SALE;

(3) EXCHANGE, PARTITION, OR OTHERWISE CHANGE THE CHARACTER OF TRUST PROPERTY;

(4) DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE INSTITUTION;

(5) BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(6) WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION, OR OTHER FORM OF BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS, OR PROPERTY OWNERS, INCLUDING MERGING, DISSOLVING, OR OTHERWISE CHANGING THE FORM OF BUSINESS ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL;

(7) WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

(A) VOTE OR GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION, OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT;

(B) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY;

(C) PAY CALLS, ASSESSMENTS, AND OTHER SUMS CHARGEABLE OR ACCRUING AGAINST THE SECURITIES, AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS; AND

(D) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED FINANCIAL SERVICE INSTITUTION;

(8) WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT, OR MAKE ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO, OR IMPROVEMENTS IN, BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS, AND MAKE OR VACATE PLATS AND ADJUST BOUNDARIES;

(9) ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES, WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(10) GRANT AN OPTION INVOLVING A SALE, LEASE, OR OTHER DISPOSITION OF TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY, INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND EXERCISE AN OPTION SO ACQUIRED;

(11) INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE THE TRUSTEE, THE TRUSTEE'S AGENTS, AND BENEFICIARIES AGAINST LIABILITY ARISING FROM THE ADMINISTRATION OF THE TRUST;

(12) ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION;

(13) WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF

ENVIRONMENTAL LAW:

(A) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY;

(B) TAKE ACTION TO PREVENT, ABATE, OR OTHERWISE REMEDY ANY ACTUAL OR POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT;

(C) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW;

(D) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN ALLEGED VIOLATION OF ENVIRONMENTAL LAW; AND

(E) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT, OR REMEDIAL ACTION TO COMPLY WITH ENVIRONMENTAL LAW;

(14) PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST, AND RELEASE, IN WHOLE OR IN PART, A CLAIM BELONGING TO THE TRUST;

(15) PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF EMPLOYEES AND AGENTS OF THE TRUST, AND OTHER EXPENSES INCURRED IN

THE ADMINISTRATION OF THE TRUST;

(16) EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE, AND LOCAL TAXES;

(17) SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT PLAN, ANNUITY, OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS;

~~(18) MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES, AND ASSERT THE TRUSTEE'S LIEN ON FUTURE DISTRIBUTIONS FOR REPAYMENT OF THOSE LOANS;~~

~~(19) PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE BENEFICIARY;~~

(20) APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER UPON THE APPOINTED TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT THE APPOINTED TRUSTEE FURNISH SECURITY, AND REMOVE ANY TRUSTEE SO APPOINTED;

(21) PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT, OR BY:

(A) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN;

(B) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S., OR CUSTODIAL TRUSTEE UNDER THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL TRUST;

(C) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN, OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY, TO BE EXPENDED ON THE BENEFICIARY'S BEHALF; OR

(D) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF, SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION;

(22) ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE PARTICULAR ASSETS IN PROPORTIONATE OR DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES, AND ADJUST FOR RESULTING DIFFERENCES IN VALUATION;

(23) RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION, OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION;

(24) PROSECUTE OR DEFEND AN ACTION, CLAIM, OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES;

(25) SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS;  
AND

(26) ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

**15-5-817. Distribution upon termination.** (a) UPON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

(b) UPON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE SHALL PROCEED EXPEDITIOUSLY TO DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT, SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES, AND TAXES.

(c) A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:



- (1) IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR
- (2) THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.