

UTC Committee: April 6, 2017 Meeting Attendance

In Person:

Dennis Whitmer
Marc Darling
Jonathan Haskell
Georgine Kryda
Steve Brainerd
John Buckley
Connie Eyster
Barb Dalvano

On Phone:

Joe Hodges

UNIFORM TRUST CODE COMMITTEE
MINUTES
April 6, 2017

Minutes from March 16, 2017, meeting approved.

1. Discussion of Part 1 – ADR committee recently formed as a subcommittee of SRC is looking at changes to the probate code that address ADR issues in wills. They submitted language to us to consider – and use/compare to what we have included in the UTC. Unlikely that there will be an objection from the ADR committee if we leave our version of ADR language as is. Of course, there is always the possibility of statutory revision in the future if needed.
2. In the comments to 113, Connie suggested adding language that would notify practitioners that the court has continuing authority, on a limited basis, to review the ADR provisions in the trust. Marc suggested language such as “The court has continuing authority, on a limited basis, to review ADR provisions provided for in a trust agreement.”
3. Discussion about comments referring to 103(9) “interested person” – Dennis will add citation to the definition of interested person in 15-10-201(27).
4. 103(17) - we are going to preserve UTC 603 as currently enacted under 15-16-703, then references to “power to withdraw” should be removed from 15-5-103(17). **This issue will be addressed at the next meeting.**
5. 103(20) – Terms of a Trust definition. We struck language in the code that would have made included , as part of the terms of a trust, “other evidence that would be admissible” in a judicial proceeding. The committee decided this was too speculative and invited litigation. Accordingly, the revised version of this statute would only allow the terms of the trust to be established by the trust instrument, as determined in a judicial proceeding, or in a nonjudicial settlement agreement. Kevin’s memo asks, why did we make the change, which will create a definition different from the one in the Uniform Principal and Income Act, the Decanting Statute, and the Powers of Appointment Act?

Connie looked at definitions – these are all different anyway. We want a definition that does not provoke litigation. Also want a definition that allows parties to agree on terms of trust without having to go through a judicial proceeding or nonjudicial settlement agreement. In any event, shouldn’t these definitions be consistent?

Committee confirms that it wants the language as modified by this committee.

Steve suggested a change in commas to make the definition structure better, and changes that reflect parts of the definition in the Decanting Statute.

Our version of UTC:

“Terms of a Trust” means the manifestation of the settlor’s intent regarding a trust’s provisions, as expressed in the trust instrument or as may be established in a judicial proceeding, or a nonjudicial settlement agreement pursuant to Section 15-5-111.”

Uniform Principal and Income Act definition:

15-1-402(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

Power of Appointment Act definition:

15-2.5-102(19) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Decanting Statute definition:

15-16-902(28) "Terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument, as may be established by other evidence that would be admissible in a judicial proceeding, or as may be established by court order or nonjudicial settlement agreement.

Change suggested:

“Terms of a Trust” means the manifestation of the settlor’s intent regarding a trust’s provisions, as expressed in the trust instrument, or as may be established by a judicial proceeding, court order or a nonjudicial settlement agreement pursuant to Section 15-5-111 or by alternative dispute resolution pursuant to 15-5-113.”

VOTE ON THIS SUGGESTED LANGUAGE NEXT MONTH

Connie will add this issue of consistency to the conforming amendments – but we will not bring it up as part of the summary.

6. 105 – in Dennis’s summary, change “include the universe of” to “expand the scope of” in reference to 105(a)
7. 105(b)(1) change to “. . . do not prohibit the settlor from creating additional terms in the trust instrument.”;
8. 105(b)(5) This language was reserved since Part 5 (Creditor Claims; Spendthrift and Discretionary Trusts) will not be included in this legislation.

9. 105(b)(13) add reference to 15-5-813(b)(2) and (b)(3).
10. Committee decided to change 105(b)(13) to “not inconsistent with settlor’s intent.”
DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.
11. Discussion of 15-5-105(14) – question about language “except to the extent the trust instrument requires alternative dispute resolution.” UTC allows a settlor to choose venue. Committee decided to change language of this section as follows:

“ . . . ~~except to the extent~~ unless the trust instrument requires alternative dispute resolution.”

DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.
12. 15-5-106 – Kevin’s comments, why did we remove “and another statute of this state?” Committee agreed to add back in – but the reason it was removed was to mirror the probate code. Committee agrees to change the statute as follows:

“ . . . the common law of trusts, principles of law and equity, and other statutes of this state, supplement its provisions.

DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.
13. 108 – Dennis’s comments will indicate that language from 15-5-205 was moved to 108, which was considered a more logical location, than in 108.
14. 108(3) in our version of the UTC will become 108(b) and Dennis will re-letter all other subsections in the statute and in his comments.

DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.
15. Committee looked at 15-5-108(e) and agreed to change as follows to add clarity regarding the nature of the suspension of the trustee’s power:

“If a qualified beneficiary notifies the trustee of an objection to a proposed transfer of the trust’s principal place of administration, the authority of a trustee under this section to transfer a trust’s principal place of administration is suspended, pending resolution of the objection under the Code.”

DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.
16. Committee looked at 15-5-109.
Dennis will make typo correction identified by Kevin.

17. 15-5-111 – no change.
18. 15-5-112, Dennis will make the typo correction identified by Kevin.
19. Agree with Kevin’s comment that ADR will not apply if there is grounds for invalidity of the trust. Use of term “revocation” was pulled from the ADR statute. Should we add “invalidation” as well as “revocation.”

Committee changed 15-5-113 to:

“ . . . for the revocation or invalidation of a contract.”

DENNIS WILL MAKE CHANGE IN PART 1 AND RESUBMIT TO CBA FOR POSTING ON WEBSITE.

Meeting adjourned.

NEXT MEETING April 20, 2017 at 11:30pm

PART 3
REPRESENTATION
General Comment

This article deals with representation of beneficiaries, both representation by fiduciaries (personal representatives, trustee, guardians, and conservators), and what is known as virtual representation.

Section 301 is the introductory section. The representation principles of this article have numerous applications under this Code. The representation principles of this article apply for purposes of settlement of disputes, whether by a court or nonjudicially. They apply for the giving of required notices. They apply for the giving of consents to certain actions.

Sections 302 – 305 cover the different types of representation. Section 302 deals with representation by the holder of a general testamentary power of appointment. (Revocable trusts and presently exercisable general powers of appointment are covered in C.R.S. § 15-1-703 [which will become 15-5-603], which grant the settlor or holder of the power all rights of the beneficiaries or persons whose interests are subject to the power). Section 303 deals with representation by a fiduciary, whether of an estate, trust, conservatorship, or guardianship. The section also allows a parent without a conflict of interest to represent and bind a minor or unborn child. Section 304 is the virtual representation provision. It provides for representation of and the giving of a binding consent by another person having a substantially identical interest with respect to the particular issue. Section 305 authorizes the court to appoint a representative to represent the interests of unrepresented persons or persons for whom the court concludes the other available representation might be inadequate.

Section 306 is not uniform law, but was added by the 2005 Colorado UTC committee to track sections of the probate code that also establish the manner in which settlements may be judicially approved.

The provisions of this article are subject to modification in the terms of the trust (see Section 105). Settlers are free to specify their own methods for providing substituted notice and obtaining substituted consent.

PART 3
REPRESENTATION
Colorado Comments

No changes were made to Section 304.

Minor, nonsubstantive changes were made to Section 301 and 305(a) to correct statutory references.

New 301.5: **Scope of Representative's Authority and Duty of Certain Representatives:**

The language from UTC 305(b) and 305(c) were moved to new section 301.5, and additional language was added. Original sections 305(b) and 305(c) were then deleted.

Section 15-5-301.5(a) is new language.

Section 15-5-301.5(b) is the same UTC 305(b), with the addition of a clarifying phrase. This section permits a representative to exercise substituted judgment in acting on behalf of the person represented in considering the general benefit accruing to the living members of the family of the person represented.

Section 15-5-301.5(c) is the same as UTC 305(c), with the addition of the word “represented”.

Section 15-5-301.5(d) is new. This section places a duty of **good faith** on parents acting as a representative and representatives appointed by the court. Section 15-5-301.5(d) does not apply to other representatives acting under Part 3 because they exercise their authority by virtue of an office which has defined fiduciary duties.

302 – Representation by a holder of a general testamentary power of appointment: A sentence was added to the end of 302 as a cross-reference to existing C.R.S. § 15-10-403(3)(a).

C.R.S. § 15-10-403(3) describes who may be bound by orders binding others in formal proceedings involving trusts or estates of decedents, in judicially supervised settlements, and in select other matters; 403(3)(a) specifically addresses holders of presently exercisable powers of appointment.

A similar cross-reference back to UTC 302 should also be added to C.R.S. § 15-10-403(3)(a), as follows:

“15-10-403(3)(a). . . For persons who may be represented and bound by holders of a general testamentary power of appointment, see section 15-5-302.”

303 – Representation by fiduciaries and parents: The following language was added to 303(6) to clarify that a parent who has no conflict of interest and has power to represent his or her child may appoint a third party to do so, so long as the appointed person has no conflict and there is no guardian or conservator appointed for the child.

“A parent may represent and bind, or appoint another person to represent and bind...”

Additionally, the committee recommended the following change to C.R.S. § 15-10-403(3)(b) to make Section 303 and existing C.R.S. § 15-10-403 consistent with respect to a trustee's ability to bind beneficiaries:

~~“(b) To the extent there is no conflict of interest . . . orders binding a trustee bind the beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties;”~~

305 – Appointment of representative: Paragraph (a) is unchanged.

Paragraphs (b) and (c) were deleted; text was added as new 301.5 in their stead. See 301.5 discussion.

306 – Judicially Approved Settlements:

Part 3 subcommittee recommended moving 306 to another Part:

This section is virtually identical to C.R.S. § 15-12-1101 and 1102. The subcommittee suggests this section be moved to Part 1, which addresses nonjudicial settlement agreements (15-5-111), Part 2, addressing judicial procedure, or alternatively that both provisions relating to settlements be moved to Part 10. Otherwise, the subcommittee recommends adoption of this section.

- Per our December 2013 minutes, 306 was NOT part of the original UTC:

Section 306 – Judicially approved settlements.

- This section is not uniform law, but rather was added by the prior UTC review committee to track sections of the probate code that also establish the manner in which settlements may be judicially approved.
- Concerns were raised about allowing judicially approved settlements that would violate a material purpose of the trust.

What should we do with 306?

REPRESENTATION

15-5-301. Representation - basic effect. (a) NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS PART 3 HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE OTHER PERSON.

(b) THE CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ~~ARTICLE~~ PART 3 IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

(c) EXCEPT AS SPECIFIED IN SECTION 15-5-602, A PERSON WHO UNDER THIS ~~ARTICLE~~ PART 3 MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF.

(d) A SETTLOR MAY NOT REPRESENT AND BIND A BENEFICIARY UNDER THIS PART 3 WITH RESPECT TO THE TERMINATION OR MODIFICATION OF A TRUST UNDER SECTION 15-5-411(a).

15-5-301.5 Scope of Representative's Authority and Duty of Certain

Representatives. (a) AS USED IN THIS SUBSECTION, "REPRESENTATIVE" MEANS A REPRESENTATIVE ACTING UNDER SECTION 15-5-302, 303, 304, OR 305, UNLESS THE CONTEXT REQUIRES OTHERWISE.

(b) A REPRESENTATIVE MAY RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF THE INDIVIDUAL REPRESENTED WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE, WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST IS PENDING.

(c) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFITS ACCRUING TO THE LIVING MEMBERS OF THE REPRESENTED INDIVIDUAL'S FAMILY.

(d) A REPRESENTATIVE ACTING UNDER SECTION 15-5-303(a)(6) OR 305 SHALL ACT IN GOOD FAITH ON BEHALF OF THE PERSON REPRESENTED. AS USED IN THIS SECTION, "GOOD FAITH" MEANS HONESTY IN FACT.

15-5-302. Representation by holder of general testamentary power of appointment. TO THE EXTENT THAT THERE IS NO CONFLICT OF INTEREST BETWEEN THE HOLDER OF A GENERAL TESTAMENTARY POWER OF APPOINTMENT AND THE PERSONS REPRESENTED WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, THE HOLDER MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR OTHERWISE, ARE SUBJECT TO THE POWER. FOR PERSONS BOUND BY ORDERS BINDING HOLDERS OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, SEE SECTION 15-10-403(3)(a).

15-5-303. Representation by fiduciaries and parents. (a) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON

REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

(1) A CONSERVATOR MAY REPRESENT AND BIND THE PROTECTED PERSON WHOSE ESTATE THE CONSERVATOR CONTROLS;

(2) A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE WARD'S ESTATE HAS NOT BEEN APPOINTED;

(3) AN AGENT HAVING AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL;

(4) A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST;

(5) A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND BIND PERSONS INTERESTED IN THE ESTATE; AND

(6) A PARENT MAY REPRESENT AND BIND, OR APPOINT ANOTHER PERSON TO REPRESENT AND BIND, THE PARENT'S MINOR OR UNBORN CHILD IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED.

15-5-304. Representation by person having substantially identical interest. UNLESS OTHERWISE REPRESENTED, A MINOR, AN INCAPACITATED PERSON, OR AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY ASCERTAINABLE, MAY BE REPRESENTED BY AND BOUND BY ANOTHER HAVING A SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED.

15-5-305. Appointment of representative. (a) IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER THIS PART 3 ARTICLE, OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF A MINOR, AN INCAPACITATED PERSON, A PROTECTED PERSON, OR AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN. A REPRESENTATIVE MAY BE APPOINTED TO REPRESENT SEVERAL PERSONS OR INTERESTS.

~~(b) A REPRESENTATIVE MAY ACT ON BEHALF OF THE INDIVIDUAL REPRESENTED WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE, WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST IS PENDING.~~

~~———(c) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFITS ACCRUING TO THE LIVING MEMBERS OF THE INDIVIDUAL'S FAMILY.~~

15-5-306. Judicially approved settlement. (a) A SETTLEMENT OF ANY CONTROVERSY AS TO THE ADMINISTRATION OF A TRUST; THE CONSTRUCTION, VALIDITY, OR EFFECT OF ANY TRUST; OR THE RIGHTS OR INTERESTS OF THE BENEFICIARIES OR PERSONS HAVING CLAIMS AGAINST THE TRUST, IF APPROVED IN A FORMAL PROCEEDING IN THE COURT FOR THAT PURPOSE, IS BINDING ON ALL PARTIES THERETO INCLUDING AN UNBORN INDIVIDUAL, AN UNASCERTAINED INDIVIDUAL, OR A PERSON WHO COULD NOT BE LOCATED. AN APPROVED SETTLEMENT DOES NOT IMPAIR THE RIGHTS OF CREDITORS OR TAXING AUTHORITIES WHO ARE NOT PARTIES TO IT.

(b) NOTICE OF A JUDICIALLY APPROVED SETTLEMENT MUST BE GIVEN TO EVERY INTERESTED PERSON OR TO ONE WHO CAN BIND AN INTERESTED PERSON AS PROVIDED IN THIS PART 3. FOR PURPOSES OF THIS SECTION, "INTERESTED PERSON" MEANS THE TRUSTEE AND ANY BENEFICIARY WHOSE INTEREST IN THE TRUST MIGHT BE AFFECTED BY THE SETTLEMENT.

(c) THE PROCEDURE FOR SECURING COURT APPROVAL OF A SETTLEMENT IS AS FOLLOWS:

(1) THE TERMS OF THE SETTLEMENT MUST BE SET FORTH IN AN AGREEMENT IN WRITING, WHICH SHALL BE EXECUTED BY ALL COMPETENT PERSONS AND PARENTS OF ANY MINOR CHILD HAVING A BENEFICIAL INTEREST OR HAVING CLAIMS THAT WILL OR MAY BE AFFECTED BY THE SETTLEMENT. EXECUTION IS NOT REQUIRED BY ANY PERSON WHOSE IDENTITY CANNOT BE ASCERTAINED OR WHOSE WHEREABOUTS ARE UNKNOWN AND CANNOT BE ASCERTAINED.

(2) ANY INTERESTED PERSON, INCLUDING A TRUSTEE, THEN MAY SUBMIT THE SETTLEMENT TO THE COURT FOR ITS APPROVAL AND FOR EXECUTION BY THE TRUSTEE, THE TRUSTEE OF EVERY AFFECTED TESTAMENTARY TRUST, OTHER FIDUCIARIES, AND REPRESENTATIVES.

(3) AFTER NOTICE TO ALL INTERESTED PERSONS OR THEIR REPRESENTATIVES, THE COURT, IF IT FINDS THAT THE CONTEST OR CONTROVERSY IS IN GOOD FAITH AND THAT THE EFFECT OF THE SETTLEMENT UPON THE INTERESTS OF THE PERSONS REPRESENTED BY THE FIDUCIARIES OR REPRESENTATIVES IS JUST AND REASONABLE, SHALL MAKE AN ORDER

APPROVING THE SETTLEMENT AND DIRECTING ALL FIDUCIARIES UNDER ITS SUPERVISION TO EXECUTE THE AGREEMENT. A MINOR CHILD REPRESENTED ONLY BY HIS OR HER PARENTS MAY BE BOUND ONLY IF THERE IS NO CONFLICT OF INTEREST BETWEEN THE PARENT AND CHILD. UPON THE MAKING OF THE ORDER AND THE EXECUTION OF THE SETTLEMENT, ALL FURTHER DISPOSITION OF TRUST PROPERTY AFFECTED BY THE SETTLEMENT MUST BE IN ACCORDANCE WITH THE TERMS OF THE SETTLEMENT.

(d) NOTICE TO A PERSON WHO MAY BE REPRESENTED AND BOUND UNDER THIS PART 3 OF AN AGREEMENT TO BE APPROVED BY THE COURT MUST BE GIVEN:

(1) DIRECTLY TO THE PERSON OR TO ONE WHO MAY BIND THE PERSON IF THE PERSON MAY BE REPRESENTED AND BOUND UNDER SECTION 15-5-302 OR 15-5-303; OR

(2) IN THE CASE OF A PERSON WHO MAY BE REPRESENTED AND BOUND UNDER SECTION 15-5-304 AND WHO IS UNBORN OR WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY ASCERTAINABLE, TO ALL PERSONS WHOSE INTERESTS IN THE JUDICIAL PROCEEDINGS ARE SUBSTANTIALLY IDENTICAL AND WHOSE IDENTITIES AND LOCATIONS ARE KNOWN.

(3) IN THE CASE OF OTHER PERSONS WHO MAY BE REPRESENTED AND BOUND UNDER SECTION 15-5-304, DIRECTLY TO THE PERSON.

PART 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 15-5-603(1)(a) (Settlor's powers – Revocable Trusts). See Part 6 Summary for more detail. The rest of 808 was deleted and reserved, 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)(o), 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 1 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.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

15-5-101. Short title. THIS ~~ACT~~ 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'.

15-5-102. Scope. THIS ~~ARTICLE~~ CODE APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE, AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT, OR DECREE THAT REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST. THIS ~~ARTICLE~~ CODE DOES NOT APPLY TO A TRUST THAT IS USED PRIMARILY FOR BUSINESS, EMPLOYMENT, INVESTMENT, OR COMMERCIAL TRANSACTIONS, SUCH AS A BUSINESS TRUST; LAND TRUST; VOTING TRUST; COMMON TRUST FUND; SECURITY ARRANGEMENT; LIQUIDATION TRUST; TRUST CREATED BY A DEPOSIT ARRANGEMENT IN A FINANCIAL INSTITUTION; TRUST CREATED FOR PAYING DEBTS, DIVIDENDS, INTEREST, SALARIES, WAGES, PROFITS, PENSIONS, OR EMPLOYEE BENEFITS OF ANY KIND; OR ANY ARRANGEMENT UNDER WHICH A PERSON IS A NOMINEE OR ESCROWEE FOR ANOTHER.

15-5-103. Definitions. AS USED IN THIS ~~ARTICLE~~ CODE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE TO ACT.

(2) "ALTERNATIVE DISPUTE RESOLUTION" MEANS A METHOD OF NON-JUDICIAL DISPUTE RESOLUTION AS SET FORTH IN THE TRUST INSTRUMENT, WHICH MAY INCLUDE BUT IS NOT LIMITED TO A METHOD PRESCRIBED UNDER THE UNIFORM ARBITRATION ACT (C.R.S. 13-22-201 ET SEQ).

~~(2)~~ (3) "ASCERTAINABLE STANDARD" MEANS A STANDARD RELATING TO AN INDIVIDUAL'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE WITHIN THE MEANING OF SECTION 2041 (b) (1) (A) OR 2514 (c) (1) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON THE DATE OF ENACTMENT, OR AS LATER AMENDED.

~~(3)~~ (4)(A) "BENEFICIARY" MEANS A PERSON ~~THAT~~ WHO:

(i) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR CONTINGENT; OR

(ii) IN A CAPACITY OTHER THAN THAT OF TRUSTEE, HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY.

(B) "BENEFICIARY" DOES NOT INCLUDE AN APPOINTEE UNDER A POWER OF APPOINTMENT UNLESS AND UNTIL THE POWER IS EXERCISED AND THE TRUSTEE HAS KNOWLEDGE OF THE EXERCISE AND THE IDENTITY OF THE APPOINTEE.

~~(4)~~ (5) "CHARITABLE TRUST" MEANS A TRUST, OR A PORTION OF A TRUST, CREATED FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 15-5-405 (a).

~~(5)~~ (6)"CONSERVATOR" MEANS A PERSON APPOINTED BY A COURT TO ADMINISTER THE ESTATE OF A MINOR OR ADULT INDIVIDUAL.

~~(6)~~ (7) "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE, OR LOCAL LAW, RULE, REGULATION, OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

~~(7)~~ (8) "GUARDIAN" MEANS A PERSON APPOINTED BY A COURT TO MAKE DECISIONS REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH, AND WELFARE OF A MINOR OR ADULT INDIVIDUAL. THE TERM DOES NOT INCLUDE A GUARDIAN AD LITEM.

(9) "INTERESTED PERSON" FOR PURPOSES OF ARTICLE 5 'INTERESTED PERSON' MEANS QUALIFIED BENEFICIARIES, AND OTHER PERSONS HAVING A PROPERTY RIGHT IN OR CLAIM AGAINST A TRUST ESTATE WHICH MAY REASONABLY AND MATERIALLY BE AFFECTED BY A JUDICIAL PROCEEDING UNDER THIS CODE. IT ALSO INCLUDES FIDUCIARIES AND OTHER PERSONS HAVING AUTHORITY TO ACT UNDER THE TERMS OF THE TRUST.

~~(8)~~ (10) "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS PROVIDED IN THE TERMS OF THE TRUST.

~~(9)~~ (11) "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, INCLUDES A STATE OR COUNTRY.

~~(10)~~ (12) "PERSON" MEANS AN INDIVIDUAL; CORPORATION; BUSINESS TRUST; ESTATE; TRUST; PARTNERSHIP; LIMITED LIABILITY COMPANY; ASSOCIATION; JOINT VENTURE; GOVERNMENT; GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; PUBLIC CORPORATION; OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

~~(11)~~ (13) "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OTHER THAN A POWER:

(A) EXERCISABLE BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD;
OR

(B) EXERCISABLE BY ANOTHER PERSON ONLY UPON CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

~~(12)~~ (14) "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP, WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST THEREIN.

~~(13)~~ (15) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

(A) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL;

(B) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH (15) TERMINATED ON THAT DATE WITHOUT CAUSING THE TRUST TO TERMINATE; OR

(C) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

~~(14)~~ (16) "REVOCABLE", AS APPLIED TO A TRUST, MEANS REVOCABLE BY THE SETTLOR WITHOUT THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

~~(15)~~ (17) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES, OR CONTRIBUTES PROPERTY TO, A TRUST. IF MORE THAN ONE PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE

EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR HAS THE POWER OF WITHDRAWAL OVER ~~WITHDRAW~~ THAT PORTION.

~~(16)~~ (18) "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

~~(17)~~ (19) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

~~(18)~~ (20) "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS, AS EXPRESSED IN THE TRUST INSTRUMENT, OR AS MAY BE ESTABLISHED ~~BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A JUDICIAL PROCEEDING~~ BY A COURT ORDER, OR A NONJUDICIAL SETTLEMENT AGREEMENT PURSUANT TO SECTION 15-5-111 OR BY ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO 15-5-113.

~~(19)~~ (21) "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS THERETO.

~~(20)~~ (22) "TRUSTEE" INCLUDES AN ORIGINAL, AN ADDITIONAL, AND A SUCCESSOR TRUSTEE AND A COTRUSTEE.

15-5-104. Knowledge. (a) SUBJECT TO SUBSECTION (b) OF THIS SECTION, A PERSON HAS KNOWLEDGE OF A FACT IF THE PERSON:

(1) HAS ACTUAL KNOWLEDGE OF IT;

(2) HAS RECEIVED A NOTICE OR NOTIFICATION OF IT; OR

(3) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE TIME IN QUESTION, HAS REASON TO KNOW IT.

(b) AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST, OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES REASONABLE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR COMMUNICATING SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR DUTIES OR THE INDIVIDUAL KNOWS THAT A MATTER INVOLVING THE TRUST WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

15-5-105. Default and mandatory rules. (a) EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS ~~ARTICLE~~ CODE GOVERNS THE DUTIES RIGHTS AND POWERS OF A TRUSTEE, RELATIONS AMONG TRUSTEES, AND THE RIGHTS, POWERS AND INTERESTS OF A BENEFICIARY, THE RELATIONSHIP BETWEEN THE TRUSTEES AND THE BENEFICIARIES, THE PURPOSES OF THE TRUST AND OTHER MATTERS WITH RESPECT TO THE TRUST OR THE PROPERTY SUBJECT TO THE TRUST.

(b) THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS ~~ARTICLE~~ CODE

EXCEPT:

- (1) THE MINIMUM REQUIREMENTS FOR CREATING ~~A~~ THE TRUST;
- (2) THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES;
- (3) THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF ITS BENEFICIARIES, AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT CONTRARY TO PUBLIC POLICY, AND POSSIBLE TO ACHIEVE;
- (4) THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST UNDER SECTIONS 15-5-410 TO 15-5-416;
- (5) Reserved ~~—THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN PART 5 OF THIS ARTICLE;~~
- (6) THE POWER OF THE COURT UNDER SECTION 15-5-702 TO REQUIRE, DISPENSE WITH, MODIFY, OR TERMINATE A BOND;
- (7) THE POWER OF THE COURT UNDER SECTION 15-5-708 (b) TO ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS UNREASONABLY LOW OR HIGH;
- (8) THE DUTY UNDER SECTION 15-5-813 (b) (2) AND (b) (3) TO PROVIDE NOTICE OF THE EXISTENCE OF AN IRREVOCABLE TRUST, OF THE IDENTITY OF THE TRUSTEE, AND OF THE RIGHT TO REQUEST TRUSTEE'S REPORTS TO CURRENT DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES OF SUCH TRUST AT ANY AGE, OR TO OTHER QUALIFIED BENEFICIARIES OF SUCH TRUST WHO HAVE ATTAINED

TWENTY-FIVE YEARS OF AGE. NOTIFY QUALIFIED BENEFICIARIES OF AN IRREVOCABLE TRUST WHO HAVE ATTAINED TWENTY-FIVE YEARS OF AGE OF THE EXISTENCE OF THE TRUST, OF THE IDENTITY OF THE TRUSTEE, AND OF THEIR RIGHT TO REQUEST TRUSTEE'S REPORTS;

(9) THE DUTY UNDER SECTION 15-5-813 (a) TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY RELATED TO THE ADMINISTRATION OF A TRUST;

(10) THE EFFECT OF AN EXCULPATORY TERM UNDER SECTION 15-5-1008;

(11) THE RIGHTS UNDER SECTIONS 15-5-1010 TO 15-5-1013 OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY;

(12) PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING;

(13) CONSISTENT WITH THE TERMS OF THE TRUST AND THE PROVISIONS OF THIS CODE, THE POWER OF THE COURT TO TAKE SUCH ACTION AND EXERCISE SUCH JURISDICTION NOT INCONSISTENT WITH SETTLOR'S INTENT AS MAY BE NECESSARY IN THE INTERESTS OF JUSTICE; AND

(14) THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 15-5-203 AND 15-5-204, UNLESS THE TRUST INSTRUMENT REQUIRES ALTERNATIVE DISPUTE RESOLUTION.

.

15-5-106. Common law of trusts - principles of equity. ~~THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS ARTICLE, EXCEPT TO THE EXTENT MODIFIED BY THIS ARTICLE OR ANOTHER STATUTE OF THIS STATE.~~ UNLESS DISPLACED BY

THE PARTICULAR PROVISIONS OF THIS CODE, THE COMMON LAW OF TRUSTS AND PRINCIPLES OF LAW AND EQUITY, AND OTHER STATUTES OF THIS STATE, SUPPLEMENT ITS PROVISIONS.

15-5-107. Governing law. (a) THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY:

(1) THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS OF THE TRUST UNLESS THE DESIGNATION OF THAT JURISDICTION'S LAW IS CONTRARY TO A STRONG PUBLIC POLICY OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER AT ISSUE; OR

(2) IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE TRUST, THE LAW OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER AT ISSUE.

15-5-108. Principal place of administration. (a) WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF:

(1) A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION; OR

(2) ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED JURISDICTION.

(b) IN THE CASE OF COTRUSTEES, THE PRINCIPAL PLACE OF ADMINISTRATION, IF NOT OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT,

IS THE USUAL PLACE OF BUSINESS OF THE CORPORATE TRUSTEE IF THERE IS BUT ONE CORPORATE COTRUSTEE OR THE USUAL PLACE OF BUSINESS OR RESIDENCE OF THE INDIVIDUAL TRUSTEE WHO IS A PROFESSIONAL FIDUCIARY IF THERE IS BUT ONE SUCH PERSON AND NO CORPORATE COTRUSTEE, AND OTHERWISE THE USUAL PLACE OF BUSINESS OR RESIDENCE OF ANY OF THE COTRUSTEES AS AGREED UPON BY THEM.

~~(b c)~~ A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND THE INTERESTS OF THE BENEFICIARIES.

~~(e d)~~ WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE, OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY SUBSECTION (b) OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE OF THE UNITED STATES.

~~(d e)~~ THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION NOT LESS THAN SIXTY DAYS BEFORE INITIATING THE TRANSFER. THE NOTICE OF PROPOSED TRANSFER MUST INCLUDE:

(1) THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED;

(2) THE ADDRESS, EMAIL ADDRESS AND TELEPHONE NUMBER AT THE NEW LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED;

(3) AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER;

(4) THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR;

AND

(5) THE DATE, NOT LESS THAN SIXTY DAYS AFTER THE GIVING OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER.

~~(e f) THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE.~~ IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE OF AN OBJECTION TO A PROPOSED TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS SUSPENDED, PENDING RESOLUTION OF THE OBJECTION UNDER THE CODE.

(f g) IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY TO A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED PURSUANT TO SECTION 15-5-704.

15-5-109. Methods and waiver of notice in matters other than judicial proceedings. (a) NOTICE TO A PERSON UNDER THIS ~~ARTICLE~~ CODE OR THE SENDING OF A DOCUMENT TO A PERSON UNDER THIS ~~ARTICLE~~ CODE MUST BE ACCOMPLISHED IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN

RECEIPT OF THE NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT INCLUDE FIRST-CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST-KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS, OR A PROPERLY DIRECTED ELECTRONIC MESSAGE.

(b) ~~Reserved.~~ A TRUSTEE NEED NOT PROVIDE A NOTICE OR DOCUMENT OTHERWISE REQUIRED UNDER THIS CODE TO A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY ASCERTAINABLE BY THE TRUSTEE. THE TRUSTEE SHALL MAINTAIN DOCUMENTATION OF THE TRUSTEE'S REASONABLE EFFORTS TO ASCERTAIN THE IDENTITY AND/OR LOCATION OF SUCH A PERSON.

(c) NOTICE UNDER THIS ~~ARTICLE~~ CODE OR THE SENDING OF A DOCUMENT UNDER THIS ~~ARTICLE~~ CODE MAY BE WAIVED BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.

(d) NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN AS PROVIDED IN THE ~~APPLICABLE RULES OF CIVIL PROCEDURE~~ COLORADO RULES OF PROBATE PROCEDURE, THE COLORADO PROBATE CODE , AND IF APPLICABLE, THE COLORADO RULES OF CIVIL PROCEDURE.

15-5-110. Others treated as qualified beneficiaries. (a) WHENEVER NOTICE TO QUALIFIED BENEFICIARIES OF A TRUST IS REQUIRED UNDER THIS ~~ARTICLE~~ CODE, THE TRUSTEE SHALL ALSO GIVE NOTICE TO ANY OTHER BENEFICIARY WHO HAS SENT THE TRUSTEE A REQUEST FOR NOTICE.

(b) A CHARITABLE ORGANIZATION EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST HAS THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS ~~ARTICLE~~ CODE IF THE CHARITABLE ORGANIZATION,

ON THE DATE THE CHARITABLE ORGANIZATION'S QUALIFICATION IS BEING DETERMINED:

(1) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
PRINCIPAL;

(2) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
PRINCIPAL UPON THE TERMINATION OF THE INTERESTS OF OTHER DISTRIBUTES OR
PERMISSIBLE DISTRIBUTES THEN RECEIVING OR ELIGIBLE TO RECEIVE DISTRIBUTIONS; OR

(3) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

(c) A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE CARE OF AN
ANIMAL OR ANOTHER NONCHARITABLE PURPOSE AS PROVIDED IN SECTION 15-11-901 (1)
OR (2) HAS THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS ~~ARTICLE~~ CODE.

(d) THE ATTORNEY GENERAL HAS THE RIGHTS OF A QUALIFIED BENEFICIARY WITH
RESPECT TO A CHARITABLE TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN
THIS STATE.

15-5-111. Nonjudicial settlement agreements. (a) ~~FOR PURPOSES OF THIS
SECTION, "INTERESTED PERSONS" MEANS PERSONS WHOSE CONSENT WOULD BE
REQUIRED IN ORDER TO ACHIEVE A BINDING SETTLEMENT WERE THE SETTLEMENT
TO BE APPROVED BY THE COURT. EXCEPT AS OTHERWISE PROVIDED IN
SUBSECTION (C) OF THIS SECTION, ANY PERSON MAY ENTER INTO A BINDING
NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY MATTER
INVOLVING A TRUST, WHETHER OR NOT SUPPORTED BY CONSIDERATION.~~

(b) ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS SECTION,
INTERESTED PERSONS MAY ENTER INTO A BINDING NONJUDICIAL SETTLEMENT~~

~~AGREEMENT WITH RESPECT TO ANY MATTER INVOLVING A TRUST. THE REQUIRED PARTIES TO THE NONJUDICIAL SETTLEMENT AGREEMENT SHALL CONSIST OF THE ARE THOSE PERSONS WHOSE INTERESTS IN THE TRUST WOULD BE MATERIALLY AFFECTED BY ITS PROVISIONS REQUIRED IN ORDER TO ACHIEVE A BINDING SETTLEMENT TO BIND AN INTEREST IN THE TRUST WERE THE SETTLEMENT TO BE APPROVED BY THE COURT AT THE TIME IT WAS ENTERED INTO BY THE PARTIES.~~

(c) A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST AND INCLUDES TERMS AND CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT UNDER THIS ~~ARTICLE~~ CODE OR OTHER APPLICABLE LAW.

(d) MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT INCLUDE BUT ARE NOT LIMITED TO:

- (1) THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST;
- (2) THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING;
- (3) DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER;
- (4) THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION OF A TRUSTEE'S COMPENSATION;
- (5) TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION; AND
- (6) LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.

(e) ANY ~~INTERESTED PERSON~~ WHOSE INTEREST IN THE TRUST MAY BE AFFECTED BY A NONJUDICIAL SETTLEMENT AGREEMENT MAY REQUEST THE COURT TO APPROVE

OR DISAPPROVE THE NONJUDICIAL SETTLEMENT AGREEMENT, TO DETERMINE WHETHER THE REPRESENTATION AS PROVIDED IN PART 3 OF THIS ~~ARTICLE~~ CODE WAS ADEQUATE, AND TO DETERMINE WHETHER THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY APPROVED.

15-5-112. Rules of construction. UNLES THE TERMS OF THE TRUST INSTRUMENT CONTAIN CONTRARY RULES OF CONSTRUCTION, THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE INTERPRETATION OF AND DISPOSITION OF PROPERTY BY A WILL OR OTHER GOVERNING INSTRUMENT, AS THAT TERM IS DEFINED IN THE "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF THIS TITLE, ALSO APPLY AS APPROPRIATE TO THE-INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION OF THE TRUST PROPERTY.

15-5-113 Alternative Dispute Resolution: (A) A SETTLOR MAY DESIGNATE IN THE GOVERNING INSTRUMENT OF THE TRUST A METHOD OF NON-JUDICIAL ALTERNATIVE DISPUTE RESOLUTION WHICH IS VALID, ENFORCEABLE, AND IRREVOCABLE, EXCEPT ON A GROUND THAT EXISTS AT LAW OR IN EQUITY FOR THE REVOCATION OR INVALIDATION OF A CONTRACT. SUCH METHOD OF NON-JUDICIAL DISPUTE RESOLUTION MAY INCLUDE RULES OF NOTICE AND PROCEDURE. THE SETTLOR MAY BIND BENEFICIARIES AND ASSIGNS TO THE METHOD OF DISPUTE RESOLUTION.

(B) A METHOD OF NON-JUDICIAL DISPUTE RESOLUTION PROVIDED BY THE SETTLOR IN THE TRUST INSTRUMENT DOES NOT PRECLUDE THE COURT'S

AUTHORITY TO ENTER AN ORDER OF ALTERNATIVE DISPUTE RESOLUTION
WHICH DOES NOT ELIMINATE OR NEGATE THE METHOD OF NON-JUDICIAL
RESOLUTION PROVIDED BY THE SETTLOR EXCEPT ON A GROUND THAT EXISTS
AT LAW OR IN EQUITY FOR THE REVOCATION OR INVALIDATION OF A
CONTRACT.

~~15-5-113~~ 15-5-114. [Formerly 15-16-501] Insurable interest of trustee -

definition. ~~(1)~~ (a) In this ~~part 5~~ SECTION, "settlor" means a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

~~(2)~~ (b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

~~(a)~~ (1) The insured is:

~~(A)~~ (A) A settlor of the trust; or

~~(B)~~ (B) An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

~~(b)~~ (2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have:

~~(A)~~ (A) An insurable interest in the life of the insured; or

~~(B)~~ (B) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph ~~(A)~~ (A) of this

paragraph ~~(b)~~ (2), who are:

~~(A)~~ (i) Related within the fifth degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured;

~~(B)~~ (ii) Stepchildren of the insured or their descendants; or

~~(C)~~ (iii) Individuals who are designated as beneficiaries of insurance policies for life insurance coverage on the life of the insured under a designated beneficiary agreement executed pursuant to article 22 of this title.

~~(3)~~ (c) This section does not limit or abridge any insurable interest or right to insure under the common law or any other statute.

Updated Changes to Part 3 in response to Kevin Millard's comments

April 4, 2017

2.1 Section 301(c) contains a reference to Part 6, Section 603 of the UTC, which reads “while a trust is revocable *and the settlor has capacity*” . . .

This is not what Colorado adopted as 15-16-703, however. Our C.R.S. 15-16-703 does not contain the italicized phrase “*and the settlor has capacity*”.

Should we take out 301(c) altogether?

Or mark it as “reserved” and come back to it if/when we come back to 601?

Kevin: We ARE moving all of C.R.S. 15-16-701 *et seq.* into the CO UTC as Part 6.

2.2 Section 301.5(d) Kevin asked about the definition of good faith as “honesty in fact” here, as it applies to 303(a)(6) (parent or person appointed by a parent), or 305 (representative appointed by a court). Specifically, he wondered why we would use such a low standard of care?

- Minutes indicate we had lengthy discussions about using and defining good faith. Here are excerpts:

May 15, 2014:

Concerns were raised about the utility and appropriateness of a “good faith” standard where a parent or other representative is involved. However, fundamentally there can be no conflict of interest for any representative, and the proposed 301.5 places a duty on parents and others who do not clearly have a fiduciary duty to clarify what duty they do have. Concern was raised again as in prior meetings about the potential inability to modify this in trust documents, however, it was pointed out again that Section 105 (default and mandatory rules) provides for certain non-modifiable provisions as to duties and powers of trustees only, and does not apply here. John DeBruyn suggested separating duties of a parent vs duties of a representative given the concern about need to retain parental control, and the committee discussed whether the standard should be modified by the settlor or whether it should be a mandatory provision. The debate centered on whether a trust can be drawn to exculpate the trustee from all standards (other than illegal or against public policy) or is that an invalid trust because the trustee has no

duties. The committee discussed use of term “reasonable reliance on the terms of the trust” as a possible exception (or replacement) to the standard, or a definition of good faith. Carl Stevens and others argued that settlors should be able to write the trust in any way they wish so long as it is not illegal or against public policy, and arguments were made that if the trustee can act in bad faith then there is no trust at all. Carl Stevens and others agreed that acting in reasonable reliance on the terms of the trust could be acceptable so long as it was a default rule but they would want to be sure a settlor could draft around that if they wanted to do so.

MOTION: John DeBruyn moved that parents acting under Part 3 as a representative be subject to a “good faith” standard. Merry Balson seconded. Vote: 9 in favor, 9 opposed. TIE-FAILED.

MOTION: John DeBruyn moved to table the discussion re the applicable standard in proposed 15-5-301.5 until the committee discussed the standard that should apply to trustees, noting there is no standard in CRS 15-10-403 currently (though representatives appointed by the court are guardian ad litem). APPROVED – add this to the list of items to discuss at future date.

- These discussions took place long before we discussed Part 1.

- In Part 1, after much discussion, we voted not to define “good faith”.

Should we revisit this now, in order to be consistent here in 301.5(d)?

2.3 Section 303(6). We need to discuss Kevin’s comments:

Subject to the overriding “no-conflict-of-interest” requirement, § 15-5-303(6) allows a parent to appoint another person to represent the parent’s minor or unborn child if there is no conservator or guardian. Under § 15-5-301(d), a settlor may not represent a beneficiary with respect to the termination or modification of the trust. That limitation was added to the UTC because of concern that allowing a settlor-parent to represent a beneficiary with respect to termination or modification might cause inclusion of the trust property in the settlor-parent’s gross estate under Internal Revenue Code § 2036 or 2038. It strikes me as not much of a stretch to extend that concern to a representative appointed by the settlor-parent, because the representative appointed by the parent could be someone under the control of the parent or

with whom the parent has an agreement or understanding as to how the representative will act.

(A) One approach to this issue might be to modify § 15-5-301(d) to prohibit either a parent or a person appointed by a parent from representing a beneficiary with respect to termination or modification of the trust.

(B) But the issue may be broader than that. The IRS world-view is that, if the settlor of a trust can remove a trustee and appoint a trustee who does not satisfy the IRS's idea of an "independent" trustee, then the settlor is deemed to have all of the powers of the trustee. See Treas. Reg. §§ 20.2036-1(b)(3) and 20.2038-1(a)(3); Rev. Rul. 95-58, 1995-2 C.B. 191. So perhaps it would be better, in § 15-5-303(a)(6), either (1) to allow only a parent who is not the settlor to appoint a person who can represent the parent's child, or (2) require a person appointed as a representative by the beneficiary's settlor-parent to meet the same standard of independence that the IRS applies to a power to appoint a trustee, that is, that the person appointed may not be "related or subordinate to" the settlor-parent within the meaning of IRC § 672(c).

2.4 Part 3 and The Uniform Trust Decanting Act.

The Uniform Trust Decanting Act includes a provision (§ 8) on representation, which cross-references the state's existing law on representation. When we enacted the Uniform Trust Decanting Act, because Colorado did not have a statute on representation other than § 15-10-403, which applies only in formal proceedings, we added representation provisions, in CRS § 15-16-908, based on UTC Article 3. When Colorado adopts the UTC, there should be a conforming amendment to § 15-16-908 so that it will track the cross-referencing approach of § 8 of the Uniform Trust Decanting Act.

Kevin: I reviewed Part 8 of the Decanting Act below, together with our final draft of UTC Part 3. Would you please look these over together and clarify for me:

1- what cross-referencing needs to be done (I'm not sure I followed you)?

2- whether there is anything else we might need to do to harmonize these two statutes?

Here is Part 8 of the new CO Decanting Act:

Part 9. COLORADO UNIFORM TRUST DECANTING ACT

Current through Chapter 79 of the 2017 Legislative Session

§ 15-16-908. Representation

(1) Notice to a person with authority to represent and bind another person under a first-trust

instrument or this part 9 has the same effect as notice given directly to the person represented.

- (2) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or this part 9 is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.
- (3) A person with authority to represent and bind another person under a first-trust instrument or this part 9 may file an application under section [15-16-909](#) on behalf of the person represented.
- (4) A settlor may not represent or bind a beneficiary under this part 9.
- (5) To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to an exercise of the decanting power, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.
- (6) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to an exercise of the decanting power:
 - (a) A conservator may represent and bind the protected person's estate;
 - (b) A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;
 - (c) An agent having authority to act with respect to the principal's beneficial interest in the trust may represent and bind the principal;
 - (d) The trustee of a trust that is a beneficiary of the first trust may represent and bind the beneficiaries of that trust, and the trustee of a trust that is a beneficiary of the second trust may represent and bind the beneficiaries of that trust;
 - (e) A personal representative of a decedent's estate may represent and bind interested persons with respect to the estate; and
 - (f) A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.
- (7) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to an exercise of the decanting power, but only to the extent there is no conflict of interest

between the representative and the person represented.

- (8) If section [15-16-909](#) is invoked and the court determines that an interest is not represented under this part 9, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.
- (9) A representative may act on behalf of the individual represented with respect to an exercise of the decanting power regardless of whether a judicial proceeding concerning the exercise of the decanting power is pending.
- (10) In making decisions, a representative may consider general benefit accruing to the living members of the represented individual's family.
- (11) The authority to represent and bind another person under this section applies to the results of the exercise of the decanting power under this part 9, including but not limited to trust division, modification, or reformation, regardless of any other law of the state.

Cite as C.R.S. § 15-16-908

History. Added by [2016 Ch. 228, §1](#), eff. 8/10/2016.

Note:

COMMENT

Subsection (1) provides that the first-trust instrument or general rules in the state's trust code or other law determine who may receive notice of an exercise of the decanting power on behalf of a minor beneficiary or an incapacitated beneficiary, settlor, holder of a presently exercisable power of appointment or person with the right to remove or replace the authorized fiduciary. It is similar to Section 301(a) of the Uniform Trust Code except that it expressly recognizes that if the first-trust instrument authorizes certain persons to receive notice on behalf of incapacitated beneficiaries or other persons, such rules should also apply for purposes of notice under Section [15-16-907](#).

Subsection (2) provides that the first-trust instrument or general rules in the state's trust code or other law determine who may waive the notice period under Section [15-16-907](#) or consent to certain modifications under Section [15-16-916](#) and Section [15-16-918](#). It is similar to Section 301(b) of the Uniform Trust Code except that it expressly recognizes that if the first-trust instrument authorizes certain persons to consent on behalf of minor or incapacitated persons,

such rules should also apply for purposes of waiving the notice period under Section [15-16-907](#) or consenting to modifications under Section [15-16-916](#) or Section [15-16-918](#).

Subsection (3) makes clear that a person who represents another may file a court petition under Section [15-16-909](#) on behalf of the person represented. This includes the Attorney General or other official with enforcement authority over charitable interests. See Section [15-16-902\(5\)](#) for the definition of "charitable interest."

Subsection (4) prohibits a settlor from representing a beneficiary. Subsection (4) is similar to optional subsection (d) of Section 301 of the Uniform Trust Code, which was added to the Uniform Trust Code because of a concern that allowing a settlor to represent a beneficiary could cause the trust to be included in the settlor's estate.

PART 6
REVOCABLE TRUSTS
General Comment

Existing C.R.S. §§15-16-701, 702, 703, and 704 will be moved into this Part 6.

Section 601 deals with a Settlor's capacity to create a revocable trust. Colorado previously elected not to enact 601, instead creating a "reserved" placeholder at C.R.S. § 15-16-701.

Colorado previously enacted versions of Sections UTC 602, 603, and 604, which are currently found in C.R.S. §§15-16-702, 703, and 704.

Section 602, after providing that a trust is presumed revocable unless stated otherwise, prescribes the procedure for revocation or amendment, whether the trust contains one or several settlors. Section 603(1) provides that while a trust is revocable: (a) the rights of beneficiaries are subject to the settlor's control, and (b) the trustee may follow a direction of the settlor that is contrary to the terms of the trust, and trustee duties are owed exclusively to the settlor. Section 603(2) provides that a holder of a power of withdrawal has the same powers over the trust as the settlor of a revocable trust. Colorado previously elected not to adopt this provision when 15-16-703 was enacted, perhaps due to the Rhoadarmer case. Section 604 prescribes a statute of limitations on contest of revocable trusts.

PART 6
Revocable Trusts
Colorado Comments

No changes were made to Section 601 – it remains "reserved".

No changes were made to Section 602 – it remains the same as existing C.R.S. § 15-16-702.

Section 603 was changed:

- 1) Section 603(1)(a) is the same as existing C.R.S. §15-16-703.
- 2) Section 603(1)(b) was added – this sentence was moved from UTC 808(a).
- 3) Section 603(2) was added from UTC 603(b). Colorado did not adopt UTC 603(b) when 15-16-703 was originally enacted.

No changes were made to Section 604 – it remains the same as existing C.R.S. § 15-16-704.

PART 6

REVOCABLE TRUSTS

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

Article 16. Trust Administration

Part 7. REVOCABLE TRUSTS

All of Part 7 of Article 16 will be moved into UTC as Part 6.

New 15-5-601 from § 15-16-701.

Reserved.

New 15-5-602 from § 15-16-702.

Revocation or amendment of revocable trust

- (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection (1) does not apply to a trust created under an instrument executed before **August 7, 2013. [keep this date?]**
- (2) Unless the terms of a trust expressly provide otherwise, if a revocable trust is created or funded by more than one settlor:
 - (a) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone, with regard to the portion of the trust property attributable to that settlor's contribution, but may be amended only by joint action of both spouses;
 - (b) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property

attributable to that settlor's contribution; and

- (c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust:

- (a) By substantial compliance with a method provided in the terms of the trust; or
- (b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear and convincing evidence of the settlor's intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust. A provision in a trust specifying a method to revoke or amend the trust does not make the specified method exclusive unless the specified method is referred to as the "sole", "exclusive", or "only" method of revoking or amending the trust or the provision includes similar language manifesting the settlor's intent that the trust may not be revoked or amended by any other method.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(6) Unless the terms of a trust expressly provide otherwise, or the power to do so has been expressly granted to another person, a conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor, may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property, but only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or the settlor's successors interest for distributions made and other actions taken on the assumption that the trust has not been amended or revoked.

New 15-5-603 from § 15-16-703 with proposed additions.

Settlor's powers

(1) Unless the terms of the trust expressly provide otherwise, while a trust is revocable:

(a) The rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

(2) 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.

New 15-5-604 from § 15-16-704.

Limitation on action contesting validity of revocable trust

(1) (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(I) Three years after the settlor's death; or

(II) One hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. A trustee shall not be liable to any person for giving or failing to give notice under this section.

- (b) The applicable time limit described in paragraph (a) of this subsection (1) is an absolute bar that may not be waived or tolled.
- (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:
 - (a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or
 - (b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.
- (3) Unless a distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a beneficiary of a trust that is determined to have been invalid, or a distributee of property improperly distributed or paid, or a claimant who is improperly paid, is liable for the return of the property improperly received and its income, if any, since the distribution if he or she has the property. If he or she does not have the property, then he or she is liable for the return of the value as of the date of his or her disposition of the property improperly received, and its income and gain, if any received by him or her.

PART 1
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 1

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 to the Code to avoid confusion with the “Interested Person” definition appearing in the Colorado Probate Code, at 15-10-201(27), which is broader than the UTC definition of “Interested Person”.

103 (17) Grammatical change.

103 (20) “**Terms of a Trust**” Language was deleted that was speculative and would invite litigation and modifications were made reflecting parts of the “terms of the trust” definition found in the decanting statute. In addition, 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 expand the scope 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 from creating additional requirements in the trust instrument. (Minutes January 21, 2016)

(b) (5) Language was deleted since part 5, (Creditor Claims; Spendthrift and Discretionary Trusts) 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, as set forth in 15-5-813(b)(2) and (b)(3), 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 15-5-205 to 108 which was considered a more logical location. (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 waiver 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. However, the court has continuing authority, on a limited basis, to review ADR provisions provided for in a trust agreement or require ADR that is not in conflict with settlor’s directions. (minutes July and August 2015)

1-8 Modern Estate Planning 8.03 (Matthew Bender)

[3] Impact of Power to Remove and Replace Trustee

The ability to remove a trustee and appoint a successor trustee may amount to a power of appointment. A beneficiary's power to remove a trustee amounts to a power of appointment if the trustee may appoint property to a beneficiary, and that beneficiary may in turn remove that trustee and substitute herself for the trustee. The power of appointment results because the beneficiary could name herself trustee and thereby appoint property to herself as beneficiary.¹ The regulations contrast a power of removal exercisable under limited conditions. The trust beneficiary does *not* possess a power of appointment if the beneficiary only had the power to appoint a successor trustee, including herself, under limited conditions which do not exist at the time of death or at the time of exercise of the power, provided the beneficiary does not also have an unrestricted power to remove the trustee.²

Determination of whether an unrestricted power to remove and replace a trustee is a general power of appointment depends on the characteristics of the trustee's power to appoint property. A person that holds an unrestricted power to remove and replace a trustee with anyone the person chooses holds a general power of appointment if, in the event the person was trustee, the person as trustee would be deemed to have a general power of appointment. As a corollary, a person with an unrestricted power to remove and replace a trustee holds only a limited power of appointment if, in the event the person stepped into the shoes of trustee, the person could not appoint to herself, her creditors, her estate or the creditors of her estate within the meaning of a general power of appointment.

▼ Example 1:

Ellie is beneficiary of a trust created by her mother. Ellie's aunt Sara serves as trustee. As trustee Sara may distribute income and principal for Ellie's support and education. When Ellie attains age 25, Ellie ceases to be a beneficiary of the trust. Ellie, who is 22 years old holds an unrestricted power to remove and replace Sara as trustee. Ellie does not have a general power of appointment because, even if Ellie was to act as trustee, the power to appoint to herself is limited by an ascertainable standard.

▼ Example 2:

Sam is a trust beneficiary and also may serve on a committee to remove trustees and appoint successor trustees. The trust specifically precludes any trustee from participating in a decision to pay income or principal to the trustee or the trustee's children. Only the other trustees may make that decision. Sam does not hold a general power of appointment.³

Restricting the ability to replace a trustee with only those persons who are not related or subordinate within the meaning of [I.R.C. Section 672\(c\)](#) to the person holding the removal and replacement power avoids characterization of the removal and replacement power as a general power of appointment.⁴

¹ Thus, even if the trustee may appoint property for the benefit of a person who holds a power to remove and replace the trustee, the person will not be deemed to hold a general power of appointment if the trust instrument limits the power to replace the trustee to a person who is not related or subordinate within the meaning of [I.R.C. Section 672\(c\)](#) to the person holding the power of removal and replacement. The Service in private letter rulings has extended its [I.R.C. Section 2036](#) analysis of such a restricted removal and replacement power to [I.R.C. Section 2041](#).⁵ [Revenue Ruling 95-58](#) reversed the Service's long standing position on removal and replacement powers.⁶ Prior to [Revenue Ruling 95-58](#), the Service characterized retention of a removal and replacement power held by the donor as a retained interest causing inclusion under [I.R.C. Section 2036](#) where the trustee had discretion to determine income and principal distributions.⁷ [Revenue Ruling 95-58](#) ruled that so long as

the trustee could be replaced only with someone who is not related or subordinate within the meaning of [I.R.C. Section 672\(c\)](#) to the donor, [I.R.C. Section 2036](#) would not apply to cause inclusion on that basis.

§ 20.2041-1 Powers of appointment; in general.

- **(a)** Introduction. A decedent's gross estate includes under section 2041 [\[26 USCS § 2041\]](#) the value of property in respect of which the decedent possessed, exercised, or released certain powers of appointment. This section contains rules of general application; § 20.2041-2 contains rules specifically applicable to general powers of appointment created on or before October 21, 1942; and § 20.2041-3 sets forth specific rules applicable to powers of appointment created after October 21, 1942.
- **(b)** Definition of "power of appointment"--(1) In general. The term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment. If the community property laws of a State confer upon the wife a power of testamentary disposition over property in which she does not have a vested interest she is considered as having a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the decedent is not considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of his death, without an accompanying unrestricted power of removal.

for UTC meeting Thursday 4/6 at 1:30 p.m.

Darla L Daniel [darla@balsonfaix.com]

Sent: Tuesday, April 04, 2017 3:05 PM
To: DennisN Whitmer; Connie T. Eyster [Eyster@hbcboulder.com]
Cc: Elizabeth Akalin [eakalin@cobar.org]
Attachments: Part 6 - summary and comm~1.docx (18 KB) ; Part 8 Final 4-4-17 with ~1.docx (39 KB) ; Research on 15-1-1401 sub~1.docx (21 KB) ; UTC Part 3 Final 4-4-17 w~1.docx (22 KB) ; Response to KM - Part 3 ~1.docx (21 KB)

Here are updated versions of:

Part 8 and comments

Part 6 and comments (just moving the existing 15-16-701 et seq. into Part 6, but we do need to discuss an issue with 603)

Part 3 and comments, and Response to Kevin Millard's questions on Part 3.

I did reach out to Carl Stevens (with respect to 603b), and to Kevin Millard (with respect to his concerns on Part 3).

With respect to 814 and the repeal of the "savings" provisions in 15-1-1401: I found a few bits of information that may be relevant to the power to remove and replace a trustee in 15-1-1401(5). It's attached. Looks like a removal and replacement power is no longer a 2036 inclusion issue, but it could still be a 2041 inclusion issue?

Even so, I'm not really convinced that it would be harmful to just repeal 15-1-1401 entirely, in favor of 814. Kevin believes we should just repeal all of 15-1-1401 and not worry about it. What are your thoughts?

I hope I can keep all of these parts straight on Thursday.

Darla L. Daniel
Special Counsel
Balson & Faix, LLP
7400 E. Caley Avenue, Suite 300
Centennial, CO 80111
[\(720\) 974-6332](tel:7209746332) direct
[\(720\) 974-6350](tel:7209746350) main
[\(720\) 208-0629](tel:7202080629) fax
www.balsonfaix.com
Darla@balsonfaix.com
<https://www.linkedin.com/in/darla-daniel-23379b8>

Email Confidentiality Statement: This message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, and contain information intended for the specified individual(s) only. This information is confidential. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.