

The following is an edited version of the “Deadlock” Note on Use proffered by **Connie Eyster**. It has now been tweaked to apply not only to cotrustees under a trust agreement, but more broadly to include personal corepresentatives under wills and cotrustees under wills containing trusts.

(Note on Use for *Majority Control* ¶¶ 15.8 & 9.10)

When two fiduciaries are serving, their joinder is required for them to act. Should they be unable to reach agreement, they may, if appropriate under the circumstances, delegate the decision to an agent. Alternatively, the practitioner may choose to draft a provision in the instrument that addresses a deadlock circumstance. Options may include designating a third party to break the deadlock – such as a trust protector – or by including language either suggesting or requiring the fiduciaries to seek some form of alternative dispute resolution such as mediation or arbitration. See, C.R.S. §§ 15-5-807 and 113. See also, the Colorado Dispute Resolution Act, C.R.S. § 13-22-301, *et seq.*

13.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, trustee may exercise those powers set forth in the Colorado Fiduciaries' Powers Act, as amended after the date of this agreement. Settlor incorporates such Act as it exists today by reference and makes it a part of this agreement.

ARTICLE 14 - TRUSTEESHIP

14.1 DESIGNATION OF SUCCESSOR TRUSTEE: If _____ ceases to serve as trustee, settlor appoints _____ of _____ as trustee.

See Appx A Note on Use A

14.2 ACCEPTING OR DECLINING TRUSTEESHIP:

- a) Except as otherwise provided in **paragraph 14.2(c)** of this article, a person designated as trustee accepts the trusteeship by:
 - i) Delivering written consent to (A) settlor, if living, (B) settlor's legal representative and the qualified beneficiaries, if settlor is deceased or incapacitated, and (C) all other acting trustees; or
 - ii) Accepting delivery of trust property, exercising powers or performing duties as a trustee, or otherwise indicating acceptance of the trusteeship.
- b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- c) A person designated as trustee, without accepting the trusteeship, may:
 - i) Act to preserve trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to (A) settlor, if living, (B) settlor's legal representative and a qualified beneficiary, if settlor is deceased or incapacitated, and (C) any acting trustee; and
 - ii) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

See Appx A Note on Use 2

14.3 DESIGNATION OF ADDITIONAL TRUSTEE: If for any reason trustee is unwilling or unable to act as to any property of the trust, or with respect to any provision of this agreement, trustee may designate in writing an individual or bank or trust company to serve as additional trustee as to such property or with respect to such provision, and may revoke any such designation at will. Each additional trustee so serving shall exercise all fiduciary powers granted by this trust unless expressly limited by trustee in the instrument designating such additional trustee. Unless otherwise provided in the designating instrument, any additional trustee so designated may resign at any time ~~by giving written notice to trustee in accordance with the provisions of paragraph 14.7 (Resignation) of this article.~~

14.4 EXONERATION OF TRUSTEE: No trustee shall be obligated to examine the accounts, records, or acts, or in any way or manner be responsible for any act or omission to act on the part of any previous trustee or of the personal representative of settlor's probate estate. No trustee shall be liable to settlor or to any beneficiary for the consequences of any action taken by such trustee which would, but for the prior removal of such trustee or revocation of the trust created hereunder, have been a proper exercise by such trustee of the authority granted to trustee under this agreement, until actual receipt by such trustee of notice of such removal or revocation. Any trustee may acquire from the beneficiaries, or from their guardians or conservators, instruments in writing releasing such trustee from liability which may have arisen from the acts or omissions to act of such trustee, and indemnifying such trustee from liability therefor. Such instruments, if acquired from all then-living beneficiaries, or from their guardians or conservators, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

14.5 RIGHTS OF SUCCESSOR TRUSTEE: Any successor trustee at any time serving hereunder, whether corporate or individual, shall have all of the title, rights, powers, and privileges, and be subject to all of the obligations and duties, both discretionary and ministerial, as herein and hereby given and granted to the original trustee hereunder, and shall be subject to any restrictions herein imposed upon the original trustee. Any fiduciary succeeding to the trust business of any corporate trustee shall become the successor trustee under this agreement with like powers, duties, and obligations.

See Appx A Note on Use 22A

14.6 RESIGNATION: Any trustee may resign:

- a) By giving **at least thirty days'** written notice to (i) settlor, if living, **or settlor's legal representative (if any) if settlor is deceased or incapacitated,** (ii) **the qualified beneficiaries,** and (iii) **all other acting trustees, effective upon acceptance of appointment by a successor trustee if this instrument requires a successor trustee; or**
- b) **With the approval of the court.**

See Appx A Note on Use.22

14.7 REMOVAL OF TRUSTEE: Any trustee may be removed, without cause, by settlor, or if settlor is deceased or incapacitated, by settlor's spouse, or if settlor and settlor's spouse are both deceased or incapacitated, by a majority of the **qualified** beneficiaries by giving written notice to such trustee and to any other trustee then serving, effective in accordance with the provisions of the notice.

14.8 REPLACEMENT OF TRUSTEE: If any trustee fails or ceases to **serve act** and no designated successor trustee serves, settlor, or if settlor is deceased or incapacitated, settlor's spouse, or if settlor and settlor's spouse are both deceased or incapacitated, a majority of the **qualified** beneficiaries may designate a successor trustee. If any vacancy is not filled within thirty days after the vacancy arises, then any **qualified** beneficiary **or the resigning trustee** may petition a court of competent jurisdiction to designate a successor trustee to fill such vacancy. By making such designation, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such designation. Any successor trustee designated hereunder may be an individual or may be a bank or trust company authorized to serve in such capacity under applicable federal or state law.

ARTICLE 15 - ADMINISTRATIVE PROVISIONS

15.1 COURT PROCEEDINGS: The trust estate shall be administered expeditiously consistent with its provisions, free of judicial intervention, and without order, approval, or action of any court. It shall be subject only to the jurisdiction of a court being invoked by trustee or by other interested parties or as otherwise provided by law.

See Appx A Note on Use 17A

15.2 NO BOND: No trustee acting under this trust shall be required to furnish any bond for the faithful performance of such trustee's duties, but if bond is ever required by any law or court rule, no surety shall be required on such bond.

See Appx A Note on Use 3A

15.3 COMPENSATION: Trustee shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

15.4 INALIENABILITY: No beneficiary shall have any right to anticipate, sell, assign, * * *

15.5 UNDISTRIBUTED INCOME AT DEATH OF BENEFICIARY: Except as * * *

15.6 PROTECTION AGAINST PERPETUITIES RULE: Every trust hereunder, and * * *

15.7 REPRESENTATIVE OF BENEFICIARY: The conservator of the estate or, if none, the guardian of the person of a beneficiary may act for such beneficiary for all purposes under this agreement or may receive information on behalf of such beneficiary.

~~15.8 MAJORITY CONTROL: Except where otherwise expressly provided, in all matters pertaining to the administration of any trust under this agreement, when more than two trustees are serving, the concurrence and joinder of a majority of such trustees shall be required; but if only two trustees are serving, the joinder of both of them shall be required. If a trustee has released or is prohibited from exercising any power under any other provision of this agreement with respect to any action or property, then with respect to such action or property such trustee shall not be counted in the application of the preceding sentence and the other trustee or trustees then serving may exercise such power. Any trustee, however, may dissent or abstain from a decision of the majority and be absolved from personal liability by registering such dissent or abstention in the records of such trust, but such trustee shall thereafter act with the other trustees in any way necessary or appropriate to effectuate the decision of the majority.~~

See Appx A Note on Use 2

15.8 MAJORITY CONTROL:

- a) Cotrustees who are unable to reach a unanimous decision may act by majority decision; if only two cotrustees are acting, the joinder of both is required.
- b) When acting upon decisions made by trustees, the signature of any one trustee is sufficient to bind [(4/27/21 Extract) the trust] [(10/4/21 Extract) all trustees].
- c) If a vacancy occurs, the remaining cotrustees may act for the trust.
- d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or avoid injury to trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
- e) A trustee who does not join in an action of another trustee is not liable for the action, except that each trustee must exercise reasonable care:
 - i) To prevent a cotrustee from committing a serious breach of trust, and
 - ii) To pursue a remedy, at trust expense, for a cotrustee's serious breach of trust.
- f) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

15.9 DELEGATION:

Any trustee may delegate to any other trustee the exercise of any powers, discretionary or otherwise, unless it is a function settlor reasonably expected to be performed jointly. Unless a delegation is irrevocable, the delegating trustee may also revoke it. Such delegation and revocation shall be in writing executed by the delegating trustee and delivered to such other trustee. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken by the trustee receiving the delegation with the same force and effect as if the delegating trustee had personally joined in the exercise of such power or the taking of such action. Anyone dealing with trustee may rely upon the written statement of the delegating trustee relative to the fact and extent of such delegation.

15.10 CUSTODY: Whenever a corporate trustee is serving, such corporate trustee shall * * *

15.11 RELEASE OF POWERS: Any trustee may release, in whole or in part, temporarily or permanently, any power, authority, or discretion conferred by this agreement by a writing delivered to each cotrustee and to each beneficiary then eligible to receive income distributions from any * * *

~~15.12 REPORTS: Trustee shall report no less frequently than annually to settlor, to all adult beneficiaries and to the parents of any minor beneficiaries then eligible to receive current income, all the receipts, disbursements, and distributions during the reporting period, and property then held as the principal of the trust. The records of the trust shall be open at all reasonable times to inspection by settlor and by the beneficiaries of the trust and their representatives.~~

15.12 TRUSTEE'S DUTIES TO INFORM AND TO NOTIFY:

- a) After trustee acquires knowledge that the trust created under this instrument has become irrevocable, 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.
- b) Within sixty days after the date trustee acquires knowledge that the trust created under this instrument has become irrevocable, trustee shall notify the qualified beneficiaries of:
 - i) Settlor's identity;
 - ii) The existence of the trust;
 - iii) Trustee's acceptance of the trust;
 - iv) Trustee's name, address, and telephone number;
 - v) Their right to request portions of the trust instrument that describe or affect the requesting beneficiary's interest; and
 - vi) Their right to request reports as provided in **paragraph 15.13 (Trustee's Duties to Report and to Respond)** of this article.
- c) Trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of trustee's compensation

15.13 TRUSTEE'S DUTIES TO REPORT AND TO RESPOND:

- a) At least annually and at the termination of the trust, trustee shall send to the distributees or permissive distributees of the trust's income or principal, and to other qualified beneficiaries who request it, a report containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values;
 - ii) The liabilities of the trust, if any;
 - iii) The trust's receipts and disbursements during the period covered by the report; and
 - iv) The amount and source of trustee's compensation.
- b) If no cotrustee remains in office upon the occurrence of a vacancy in the trusteeship, the former trustee shall send a report as described in **paragraph 15.13(a)** of this article to the qualified beneficiaries. Should the former trustee be deceased or incapacitated, the former trustee's legal representative may send the report.
- c) Upon request of a qualified beneficiary, trustee shall:
 - i) Respond promptly with information related to the administration of the trust, unless unreasonable under the circumstances; and
 - ii) Furnish promptly a copy of the portions of the trust instrument that describe or affect the requesting beneficiary's interest.

15.14 LITIGATION POWERS: Trustee, in its discretion and at the expense of the trust estate, * * *

15.15 POWERS OF INSURED TRUSTEE: No trustee, other than settlor, may exercise any * * *

15.16 LIMITATIONS ON POWER OF INTERESTED TRUSTEE: No individual trustee, * * *\

15.17 DIGITAL ASSETS: To the extent permitted by applicable law, trustee may (i) access, use, and control digital devices, including desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device that currently exists or may exist as technology develops for the purpose of accessing, modifying, deleting, controlling, or * * *

ARTICLE 16 - GENERAL PROVISIONS

16.1 ADOPTED CHILDREN: A child adopted by any person and the descendants by * * *

16.2 APPLICABLE LAW: The validity and construction of this agreement shall be determined by the laws of Colorado. Questions of administration of any trust established under this agreement shall be determined by the laws of the situs of administration of such trust. The laws of Colorado shall govern the creation, revocation, or amendment of a power of appointment created by this trust and the exercise, release, disclaimer, or other refusal of such a power of appointment.

16.3 BY REPRESENTATION: Whenever property is to be distributed or divided * * *

16.4 CONSTRUCTION: Unless the context requires otherwise, words denoting the singular * * *

16.5 EDUCATION: Under this agreement, distributions for education may, in trustee's * * *

16.6 FIDUCIARY: As used in this agreement, "fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.

16.7 HEADINGS AND TITLES: The headings and paragraph titles are for reference only.

16.8 INCAPACITY: For the purposes of this agreement, an individual may be treated as * * *

16.9 I.R.C.: I.R.C. shall refer to the Internal Revenue Code of the United States. Any * * *

16.10 OTHER DEFINITIONS: Except as otherwise provided in this agreement, terms **are** as defined in **the Colorado Uniform Trust Code, and if not, then in** the Colorado Probate Code, or, with regard to powers of appointment, in the Colorado Uniform Powers of Appointment Act, as **any are** amended after the date of this agreement.

16.11 PERSONAL REPRESENTATIVE: For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, conservator, or any other form of

personal representative, depending upon the context in which such term occurs.

See Appx A Note on Use 20A

16.12 QUALIFIED BENEFICIARY: As used in this agreement, “qualified beneficiary” means a person who:

- a) has a present or future beneficial interest in the trust, vested or contingent, or, holds a power of appointment over property of the trust in a capacity other than that of trustee, and who;
- b) on the date the beneficiary’s qualification is determined:
 - i) is a distributee or permissible distributee of the trust’s income or principal;
 - ii) would be a distributee or permissible distributee of the trust’s income or principal if the interests of the distributees and permissible distributees of the trust’s income or principal terminated on that date without causing the trust to terminate; or
 - iii) would be a distributee or permissible distributee of the trust’s income or principal if the trust terminated on that date.

As used in this paragraph, “person” does not include an appointee under a power of appointment unless and until the power is exercised and trustee has knowledge of the exercise and the identity of the appointee.

16.13 SURVIVORSHIP: If settlor’s spouse in fact survives settlor by any period of time or * * *

16.14 TRUSTEE: As used in this agreement, “trustee” includes an original, additional, and successor trustee, and a cotrustee.

16.15 COUNTERPARTS: This agreement may be executed in counterparts and each such counterpart shall constitute one and the same agreement.

16.16 SEVERABILITY: If any part of this agreement shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

settle, or contest claims. They may employ attorneys, accountants, investment advisors, custodians of trust property, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

7.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, my * * *

7.3 DISTRIBUTION ALTERNATIVES: My fiduciaries may make any payments * * *

ARTICLE 8 – TRUSTEESHIP

See Appx A Note on Use A

8.1 ACCEPTING OR DECLINING TRUSTEESHIP:

- a) Except as otherwise provided in **paragraph 8.1(c)** of this article, a person designated as trustee accepts the trusteeship by:
 - i) Delivering written consent to (A) my personal representative, if acting, (B) the qualified beneficiaries, if my personal representative is no longer acting, and (C) all other acting trustees; or
 - ii) Accepting delivery of trust property, exercising powers or performing duties as a trustee, or otherwise indicating acceptance of the trusteeship.
- b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- c) A person designated as trustee, without accepting the trusteeship, may:
 - i) Act to preserve trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to (A) my personal representative, if acting, (B) a qualified beneficiary, if my personal representative is no longer acting, and (C) any acting trustee; and
 - ii) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

See Appx A Note on Use 2

8.2 **DESIGNATION OF ADDITIONAL TRUSTEE:** If for any reason my trustee is unwilling or unable to act as to any property of any trust hereunder, or with respect to any provision of my will, my trustee may designate in writing an individual or bank or trust company to serve as **additional** trustee as to such property or with respect to such provision, and may revoke any such designation at will. Each **additional** trustee so serving shall exercise all fiduciary powers granted by my will unless expressly limited by my trustee in the instrument designating such **additional** trustee. **Unless otherwise provided in the designating instrument, any additional trustee so designated may resign at any time** ~~by giving written notice to my trustee in accordance with the provisions of paragraph 8.6 (Resignation) of this article.~~

8.3 **EXONERATION OF TRUSTEE:** No trustee shall be obligated to examine the accounts, records, or acts, or in any way or manner be responsible for any act or omission to act on the part of any previous trustee or of the personal representative of my estate. No trustee shall be liable to my personal representative or to any beneficiary for the consequences of any action taken by such trustee which would, but for the prior removal of such trustee, have been a proper exercise by such trustee of the authority granted to trustee under my will, until actual receipt by such trustee of notice of such removal. Any trustee may acquire from the beneficiaries, or from their guardians or conservators, instruments in writing releasing such trustee from liability which may have arisen from the acts or omissions to act of such trustee, and indemnifying such trustee from liability therefor. Such instruments, if acquired from all then-living beneficiaries, or from their guardians or conservators, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

8.4 **RIGHTS OF SUCCESSOR TRUSTEE:** Any successor trustee at any time serving hereunder, whether corporate or individual, shall have all the title, rights, powers and privileges, and be subject to all of the obligations and duties, both discretionary and ministerial, as herein and hereby given and granted to the original trustee hereunder, and shall be subject to any restrictions herein imposed upon the original trustee. Any fiduciary succeeding to the trust business of any corporate trustee shall become my successor trustee under my will with like powers, duties, and obligations.

See Appx A Note on Use 22A

8.5 RESIGNATION: Any trustee may resign:

- a) By giving **at least thirty days'** written notice to (i) my personal representative, if acting, (ii) the **qualified beneficiaries**, and (iii) **all other acting trustees**, effective upon acceptance of appointment by a successor trustee if this instrument requires a successor trustee; or
- b) With the approval of the court.

See Appx A Note on Use.22

8.6 REMOVAL OF TRUSTEE: Any trustee may be removed, without cause, by my spouse, or if my spouse is deceased or incapacitated, by a majority of the **qualified** beneficiaries by giving written notice to such trustee and to any other trustee then serving, effective in accordance with the provisions of the notice.

8.7 REPLACEMENT OF TRUSTEE: If any trustee fails or ceases to **serve act** and no designated successor trustee serves, my spouse, or if my spouse is deceased or incapacitated, a majority of the **qualified** beneficiaries may designate a successor trustee. If any vacancy is not filled within thirty days after the vacancy arises, then any **qualified** beneficiary **or the resigning trustee** may petition a court of competent jurisdiction to designate a successor trustee to fill such vacancy. By making such designation, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such designation. Any successor trustee designated hereunder may be an individual or may be a bank or trust company authorized to serve in such capacity under applicable federal or state law.

ARTICLE 9 – ADMINISTRATIVE PROVISIONS

9.1 COURT PROCEEDINGS: Any trust established under this instrument shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval, or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

See Appx A Note on Use 17A

9.2 NO BOND: I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

See Appx A Note on Use 3A

9.3 COMPENSATION: Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

9.4 INALIENABILITY: No beneficiary shall have any right to anticipate, sell, assign, * * *

9.5 UNDISTRIBUTED INCOME AT DEATH OF BENEFICIARY: Except as * * *

* * *

9.9 REPRESENTATIVE OF BENEFICIARY: The conservator of the estate or, if none, the guardian of the person of a beneficiary may act for such beneficiary for all purposes under my will or may receive information on behalf of such beneficiary,

~~9.10 MAJORITY CONTROL: Except where otherwise expressly provided, in all matters pertaining to the administration of any trust under this instrument, when more than two trustees are serving, the concurrence and joinder of a majority of such trustees shall be required; but if only two trustees are serving, the joinder of both of them shall be required. If a trustee has released or is prohibited from exercising any power under any other provision of this instrument with respect to any action or property, then with respect to such action or property such trustee shall not be counted in the application of the preceding sentence and the other trustee or trustees then serving may exercise such power. Any trustee, however, may dissent or abstain from a decision of the majority and be absolved from personal liability by registering such dissent or abstention in the records of such trust, but such trustee shall thereafter act with the other trustees in any way necessary or appropriate to effectuate the decision of the majority.~~

See Appx A Note on Use 2

9.10 MAJORITY CONTROL:

- a) Cofiduciaries who are unable to reach a unanimous decision may act by majority decision; if only two cofiduciaries are acting, the joinder of both is required.
- b) When acting upon decisions made by cofiduciaries, [(4/27/21 Extract) the signature of any one cofiduciary is sufficient to bind my estate or any trust under this instrument] [(10/4/21 Extract) the signature of any one personal corepresentative is sufficient to bind all personal corepresentatives, and the signature of any one trustee is sufficient to bind all trustees].
- c) If a vacancy occurs, the remaining cofiduciaries may act for my estate or for any trust under this instrument.
- d) If a cofiduciary is unavailable to perform duties because of absence, illness, disqualification, or other temporary incapacity, and prompt action is necessary to avoid injury to property of my estate, achieve the purposes of a trust or avoid injury to trust property, the remaining cofiduciaries or a majority of the remaining cofiduciaries may act for my estate or for any trust under this instrument.
- e) A trustee who does not join in an action of another trustee is not liable for the action, except that each trustee must exercise reasonable care:
 - i) To prevent a cotrustee from committing a serious breach of trust, and
 - ii) To pursue a remedy, at trust expense, for a cotrustee's serious breach of trust.
- f) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

9.11 DELEGATION:

Any fiduciary may delegate to its cofiduciary the exercise of any powers, discretionary or otherwise, unless it is a function I reasonably expect to be performed jointly. Unless a delegation is irrevocable, the delegating fiduciary may also revoke it. Such delegation and revocation shall be in writing executed by the delegating fiduciary and delivered to such other cofiduciary. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken

by the cofiduciary receiving the delegation with the same force and effect as if the delegating fiduciary had personally joined in the exercise of such power or the taking of such action. Anyone dealing with my fiduciaries may rely upon the written statement of the delegating fiduciary relative to the fact and extent of such delegation.

9.12 CUSTODY: Whenever a corporate fiduciary is serving, such corporate fiduciary * * *

9.13 RELEASE OF POWERS: Any fiduciary may release in whole or in part, * * *

~~9.14 REPORTS: My trustee shall report no less frequently than annually to all adult beneficiaries and to the parents of any minor beneficiaries then eligible to receive current income, all the receipts, disbursements, and distributions during the reporting period, and property then held as the principal of the trust. The records of the trust shall be open at all reasonable times to the inspection of the beneficiaries of the trust and their representatives.~~

9.14 TRUSTEE'S DUTIES TO INFORM AND TO NOTIFY:

- a) My 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.
- b) Within sixty days after accepting the trusteeship, my trustee shall notify the qualified beneficiaries of:
 - i) My identity as settlor of the trust;
 - ii) The existence of the trust;
 - iii) My trustee's acceptance of the trust;
 - iv) My trustee's name, address, and telephone number;
 - v) Their right to request portions of the trust provisions of my will that describe or affect the requesting beneficiary's interest; and
 - vi) Their right to request reports as provided in **paragraph 9.15 (Trustee's Duties to Report and to Respond)** of this article.
- c) My trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of my trustee's compensation.

9.15 TRUSTEE’S DUTIES TO REPORT AND TO RESPOND:

- a) At least annually and at the termination of the trust, my trustee shall send to the distributees or permissive distributees of the trust’s income or principal, and to other qualified beneficiaries who request it, a report containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values;
 - ii) The liabilities of the trust, if any;
 - iii) The trust’s receipts and disbursements during the period covered by the report; and
 - iv) The amount and source of my trustee’s compensation.
- b) If no cotrustee remains in office upon the occurrence of a vacancy in the trusteeship, my former trustee shall send a report as described in **paragraph 9.15(a)** of this article to the qualified beneficiaries. Should my former trustee be deceased or incapacitated, my former trustee’s legal representative may send the report.
- c) Upon request of a qualified beneficiary, my trustee shall:
 - i) Respond promptly with information related to the administration of the trust, unless unreasonable under the circumstances; and
 - ii) Furnish promptly a copy of the portions of the trust provisions of my will that describe or affect the requesting beneficiary’s interest.

9.16 ANCILLARY FIDUCIARY: In the event ancillary administration shall be * * *

* * *

ARTICLE 10 – TAX PROVISIONS

10.1 TAX APPORTIONMENT: I direct that all estate, inheritance, and succession * * *

10.2 TAX ELECTIONS: In exercising any permitted elections regarding taxes, my * * *

ARTICLE 11 – GENERAL PROVISIONS

11.1 ADOPTED CHILDREN: A child adopted by any person and the descendants by * * *

11.2 APPLICABLE LAW: The validity and construction of my will shall be determined by the laws of Colorado. Questions of administration of any trust established under my will shall be determined by the laws of the situs of administration of such trust. The laws of Colorado shall govern the creation, revocation, or amendment of a power of appointment created by this trust and the exercise, release, disclaimer, or other refusal of such a power of appointment.

11.3 BY REPRESENTATION: Whenever property is to be distributed or divided * * *

11.4 CONSTRUCTION: Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

11.5 EDUCATION: Under this instrument, distributions for education may, in the * * *

11.6 FIDUCIARY: As used in this instrument, “fiduciary” means an original, additional, or successor personal representative, conservator, agent, or trustee.

11.7 HEADINGS AND TITLES: The headings and paragraph titles are for reference only.

11.8 I.R.C.: I.R.C. shall refer to the Internal Revenue Code of the United States. Any reference to specific sections of the I.R.C. shall include sections of like or similar import which replace the specific sections as a result of changes to the I.R.C. made after the date of this instrument.

11.9 OTHER DEFINITIONS: Except as otherwise provided in this instrument, terms are defined in the Colorado Probate Code, or, with regard to trust provisions, in the Colorado Uniform Trust Code, or, with regard to powers of appointment, in the Colorado Uniform Powers of Appointment Act, as any are amended after the date of this instrument.

See Appx A Note on Use 20A

11.10 QUALIFIED BENEFICIARY: As used in any trust under this instrument, “qualified beneficiary” means a person who:

- a) has a present or future beneficial interest in the trust, vested or contingent, or, holds a power of appointment over property of the trust in a capacity other than that of trustee, and who;
- b) on the date the beneficiary’s qualification is determined:
 - i) is a distributee or permissible distributee of the trust’s income or principal;
 - ii) would be a distributee or permissible distributee of the trust’s income or principal if the interests of the distributees and permissible distributees of the trust’s income or principal terminated on that date without causing the trust to terminate; or
 - iii) would be a distributee or permissible distributee of the trust’s income or principal if the trust terminated on that date.

As used in this paragraph, “person” does not include an appointee under a power of appointment unless and until the power is exercised and my trustee has knowledge of the exercise and the identity of the appointee.

11.11 SURVIVORSHIP: For purposes of this will, if my spouse in fact survives me by any period of time or if the order of our deaths is not known, then my spouse shall be deemed to have survived me. Any other beneficiary shall be deemed to have predeceased me if such beneficiary dies within 30 days after the date of my death.

11.12 TRUSTEE: As used in this instrument, “trustee” includes an original, additional, and successor trustee, and a cotrustee.

11.13 SEVERABILITY: If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

14.4 LIABILITY OF TRUSTEE; BENEFICIARY RIGHTS

- a) Exoneration of Trustee; No Duty to Examine Records of Former Trustee: No trustee shall be obligated to examine the accounts, records, or acts, or in any way or manner be responsible for any act or omission ~~to act~~ on the part of any ~~previous former~~ trustee or of the personal representative of settlor's probate estate ~~unless a breach of trust is known to have been committed by a former trustee as provided by C.R.S. § 15-5-812.~~

Exoneration of Trustee; Duties Regarding Previous Fiduciaries: A trustee is not liable for an act or omission of a former trustee or of the personal representative of settlor's estate. Also, trustee has no duty to examine the accounts, records, or acts of any former trustee or of the personal representative of settlor's estate. But trustee shall take reasonable steps to redress a breach of trust known to trustee to have been committed by a former trustee.

- b) Exoneration of Trustee Actions: ~~No trustee shall be~~ Trustee is not liable to settlor or to any beneficiary for the consequences of any action taken by ~~that such a former~~ trustee which would, but for the prior removal of ~~that such the former~~ trustee or revocation of the trust ~~created hereunder~~, have been a proper exercise by ~~that such the~~ trustee of the authority granted to trustee under this agreement, until actual receipt by ~~that such the~~ trustee of notice of such removal or revocation.
- c) Beneficiary's Consent, Release, or Ratification: Any trustee may acquire from the beneficiaries, ~~or from their guardians or conservators,~~ instruments in writing releasing ~~that such the current~~ trustee from liability which may have arisen from the acts or omissions ~~to act~~ of ~~that such the former~~ trustee, and indemnifying ~~that such the current~~ trustee from liability, ~~pursuant to C.R.S. §§ 15-5-1008 and 15-5-1009 therefor.~~ ~~Such~~ The instruments, ~~if acquired from all then living beneficiaries, or from their guardians or conservators,~~ shall be conclusive and binding upon all parties ~~who execute the instrument, born or unborn,~~ or who may have, or ~~may in the future~~ acquire, an interest in the trust ~~and are bound pursuant to C.R.S. §§ 15-5-301, et seq.~~

From: [Frank Hill](#)
To: [Melissa Anderson](#); [Darla Daniel](#); [Connie Eyster](#); [Corina Gerety](#); [Lisa Hardin](#); [Richard Hess](#); [Stan Kent](#); [Alison Leary](#); [Marianne Luu-Chen](#); [Julie McVey](#); [Kevin Millard](#); [Matthew Skotak](#); [Carl Stevens](#); [Tony Vaida](#); [Kirsten Waldrip](#); [Sonny Wiegand](#); [Carolyn Wiley](#); [Gene Zuspenn](#)
Cc: [Hayley Lambourn](#); [Rikke Liska](#); [Dave Kirch](#)
Subject: Chair's 3/8/2022 Status Report: OBF CUTC Revisions Subcommittee
Date: Tuesday, March 8, 2022 12:27:00 PM
Attachments: [\[Edited\] Deadlock NoU \[15.8 9.10\] WIP \(2022-03-08\).pdf](#)
[Single Sig \[15.8 9.10\] CDG \(2022-02-10\).pdf](#)
[Exoneration \[Rev Tst 14.4\]-WIP \(as of 2022-03-07\).pdf](#)
[Pers Rep-Legal Rep \[16.11\] WIP \(2022-03-08\).pdf](#)

Dear Colleagues,

Our next meeting will be held (virtually) **TOMORROW AFTERNOON, Wednesday, March 9th, 2022, @ 1:00-2:30 PM**. This report covers actions of our subcommittee during our last meeting on 2/9/22 as well as in preparation for this meeting. Here's our virtual meeting access info provided by the CBA:

<https://cba-cle.zoom.us/j/89500805835?pwd=K1VybWNENXQwUnpoTlBnRzI3UExzZz09>

Meeting ID: 895 0080 5835

Passcode: 090355

Call-in: 1 253 215 8782

Find your local number: <https://cba-cle.zoom.us/u/kc4IE2ktv>

Attached please find [\[Edited\] Deadlock NoU \[15.8 9.10\]_WIP \(2022-03-08\).pdf](#), [Single Sig \[15.8 9.10\]_CDG \(2022-02-10\).pdf](#), [Exoneration \[Rev Tst 14.4\] _WIP \(as of 2022-03-07\).pdf](#), and [Pers Rep-Legal Rep \[16.11\]_WIP \(2022-03-08\).pdf](#), on which I comment below. You should consider using a color printer to print some of them out.

Much of our work has been in the rev tst [Form 350] and will [Form 361] extracts (and in specific numbered paragraph selections taken from them). When parallel paragraph reference numbers are given below, the first one will be to the rev tst [Form 350] extract and the second one will be to the will [Form 361] extract. For your reference I have attached both the rev tst and the will extracts, [\[Extract\] 0350-Rev Mar Ded Tst \(2021-10-29\).pdf](#), and [\[Extract\] 0361-Mar Ded Will \(2021-10-29\).pdf](#). ***These are not new; they have not yet been updated since last October.*** That is because, for convenience, we have instead been working on separate copies of extracted paragraphs. Within all extracts,

BLACK typeface = ***original boilerplate*** as it currently exists in the Orange Book Forms,
RED typeface = ***approved changes*** to that existing boilerplate made by this subcommittee,
and
GREEN typeface = ***proposed changes*** suggested to be made to these documents.

Old Stuff ...

Majority Control 15.8 & 9.10:

Note on Use: The “Two-Trustee Impasse” Issue

During our last meeting on 2/9/22, we reviewed and approved the “edited version” of Connie’s suggested Note on Use that we had approved substantively back on 1/5/22. That edited version, [Edited] Deadlock NoU [15.8 9.10]_WIP (2022-01-05).pdf, had been attached to my 2/8/22 Status Report. But as Connie’s Note on Use had been drafted specifically for trustees in the rev tst, we discussed what tweaks we would have to make to it to “genericize” it sufficiently to make it appropriate as a Note on Use for the *Majority Control* provision in *both* the will and rev tst forms.

After getting your guidance as to what needed to be done, I volunteered to take a crack at genericizing Connie’s edited Note on Use. See the result of that slight revision project, [Edited] Deadlock NoU [15.8 9.10]_WIP (2022-03-08).pdf , attached.

Single Signature Facility

So, during our meeting last month on 2/9/22, we hashed out all the issues on this topic which I had enumerated in my 2/8/22 Status Report. And if memory serves me, **we decided** that:

- **YES**, we wanted to include a separate numbered single signature facility provision for fiduciaries following *Majority Control* in both the rev tsts and the wills.
- Among the four proffered provisions, we liked Connie’s best, but to address Gene’s concerns about its overly broad scope, it would have to be limited to the fiduciaries’ cash accounts.
- *A written delegation* among cofiduciaries granting this facility be *required*.
- *Required* that whenever a corporate fiduciary was serving, *it would be the **only** fiduciary* to have single signature authority.
- The third sentence in Connie’s draft about the depository bank not needing to inquire be moved from 3rd position to 2nd position ahead of corporate fiduciary acting alone.

So, Corina volunteered to revise Connie’s offering to address all our concerns and decisions stated above. Please see Corina’s revision of Connie’s original offering as the *first* paragraph appearing in [Single Sig \[15.8 9.10\]_CDG \(2022-02-10\).pdf](#), attached.

It looks to me that, substantively, Corina hit the proverbial nail on the head in her revision. But got to thinking that we would need to “genericize” it for use in the will versions to cover multiple “fiduciaries” and not just “trustees.” And that, recognizing that fiduciaries may use “online Banking” perhaps we shouldn’t limit it to “signature.” But that we should limit the authority to “deposit” accounts which, I’m told, are technically the only type of account we want to grant authority over. Also, perhaps some of the legalese could be replaced with plain English, (and thought of reserving “shall” to those situations where we are imposing a duty upon an actor). So, the *second* paragraph on the page, entitled [Edited] is an attempt to tweak Corina’s revision a little further.

Then I read my own bank’s 30-page *Depository Agreement* and found that *they do specifically address* the issue addressed in the second sentence for their *fiduciary accounts*. So rather than re-

inventing the wheel, I thought we might throw the bank's language back at them (like we do when dealing with the IRS). So, the third paragraph on the page is a clean version of the second paragraph, *with the second sentence replaced* with a bank's own statement (regarding multiple signatories on a fiduciary account) to the same effect.

After working on the foregoing versions, it has occurred to me that we could very easily have two versions of this provision, one for the rev tsts that would simply address "trustees," and another similar version for the will docs that would grant the facility to "fiduciaries" acting under the instrument.

Exoneration of Trustee 14.4 & 8.3:

During a previous meeting, Carl had suggested that Gene's reformatted version of Carl's revision (as we have tweaked it over the past few months) would be a lot more readable if the statutory references were removed from the text of the provision and placed instead into a Note on Use. So, last month we reviewed his updated version of the provision, Exoneration [Rev Tst 14.4]_CGS (2022-02-07).pdf, as well as his suggested Note on Use, Note on Use – Exoneration [Rev Tst 14.4] _CGS (2022-02-07).pdf, both of which had been attached to my 2/8/22 Status Report.

Generally, we liked the revised version of the form provision with the statutory citations deleted and transferred to his Note on Use offering. And while his Note on Use offering was useful, we felt it could be more useful still to practitioners were it to be "fleshed out" a bit, especially when we started discussing how CUTC § 5-812 had been a change to the Common Law. Carl said he would look to the Comments to the Uniform Act for additional material which might be added to his Note on Use.

That discussion on the impact of CUTC § 5-812 got yours truly thinking that the *original language* in the first sentence of ¶¶ 14.4 and 8.3 was drafted many years before the UTC was ever thought of. In view of that, *maybe we shouldn't just be trying to tweak it but rather recast it entirely in the light of CUTC § 5-812!* Accordingly, yours truly took a crack at that. Please see the suggested revised version appearing in purple typeface right below the existing version of subparagraph (a) in [Exoneration \[Rev Tst 14.4\]-WIP \(as of 2022-03-07\).pdf](#), attached.

Representative of Beneficiary 15.7 & 9.9: Previously, we had approved Marianne's offerings of these two revised provisions without change during our 1/5/22 mtg. Following that, however, we noted that *Other Definitions*, ¶¶ 16.10 & 11.9 both incorporate the definitions contained in the Colorado Probate Code and, where applicable, those in the Colorado Uniform Trust Code. The definition of "Guardian" contained in both of those statutes specifically excludes guardian ad litem from being included in the defined term "guardian." See, C.R.S. § 15-10-201 (23), and C.R.S. § 15-5-103 (9). Accordingly, since the exclusion is already covered by the governing statutes, we decided to delete it from our revision of these two paragraphs. So, we approved the edited version showing this deletion, [Edited] Rep of Benef [15.7 9.9]_WIP (2022-01-05).pdf, that had been attached to my 2/8/22 status report.

TRUST SITUS: During our 1/5/22 meeting, we had approved Connie's offering (which had been

attached to my 1/4/22 Status Report) after some consternation over the term “removal,” and the appropriateness of including a notice requirement.

After noting that the statute itself addressed many of our concerns, yours truly set about tweaking Connie’s approved provision as directed by the subcommittee, and with an eye toward minimizing legalese and replacing it with plain English.

After review and discussion (including deletion of the word “prior” as surplusage), we approved this tweaked version, [Edited] Trust Situs [none yet]_WIP (2022-01-05).pdf, that had been attached to my 2/8/22 Status Report.

Trustee’s Duties to Inform and to Notify 15.12 & 9.14 and Trustee’s Duties to Report and to Respond 15.13 & 9.15:

During our 12/1/21 meeting, after review and discussion, we approved Carolyn’s final drafts, 1. Notice [Rev Tst 15.12] NoU_CCW (2021-11-26).pdf, 2. Notice [Will 9.14] NoU_CCW (2021-11-26).pdf, 3. Reports [Rev Tst 15.13] NoU_CCW (2021-11-26).pdf, 4. Reports [Will 9.15] NoU_CCW (2021-11-26).pdf, all of which had been attached to my 11/28/21 Status Report.

Following our approval, Carolyn asked for a little assistance with some minor editing (not substantive revisions) and I offered to do that. However, due to the poor planning on my part, I was unable to get that done in time to have them for this Status Report. I apologize and will have to include them in my *next* Status Report (after first sending them to Carolyn for her approval).

New Stuff ...

Personal Representative 16.11: This very old (`89-`93) definition only exists in our trusts. It is different than the statutory definition of the term in the CPC, because, as used in the two places it exists in our trust documents, you’ll see that it really means the broader term intended to be a person’s “legal representative,” which could conceivably include a court appointed P.R. Please now see the attached [Pers Rep-Legal Rep \[16.11\]_WIP \(2022-03-08\).pdf](#) attached.

We have long ago approved the first two provisions on the attachment, *Accepting or Declining Trusteeship* and *Resignation*. You will note that they include the term “legal representative,” when referring to the settlor.

Now look at ¶ 16.11 *Personal Representative* as it currently exists in all our *inter vivos* trust forms.

Then please look at ¶ 16.11 *Legal Representative* as I am proposing that we change it.

Then please look at ¶ 11.2 *Distribution Alternatives* and ¶ 16.7 *Incapacity* to see how the old generic “personal representative” term appears in all of our *inter vivos* trust forms and how I am proposing that we change it to pick up our new defined generic “legal representative” which will no longer be seen as posing an alternate definition to the CPC’s statutory definition of “personal Representative.”

Other Stuff ...

FOLLOWING CUTC'S LEAD: MODERN DRAFTING STYLE; RETIRING SUPERFLUOUS ADJECTIVES:

During our 12/2/20 mtg, I suggested that OBF having been conceived decades before CUTC, the OBFC had to decide on generally using the term "serving" or "acting" when referring to the status of a fiduciary. I reported that I had made a quick review of CUTC and found that there is a consistent preference for "act" over "serve" (which only occurs once referring to a conservator). So, I suggested that we change "serve" and "serving" to "act" and "acting" in OBF to bring us consistent with Uniform Acts drafting style.

But more importantly, I discovered that CUTC does not use "current", "then-acting," "so serving," "acting as" and other such references when talking about those who are **IN OFFICE** as trustee. As you read through CUTC, you clearly see that giving notice to "**the trustee**" or to "**any cotrustee**" IS giving notice to the "then-acting," "current," trustee and/or cotrustee. In other words, the CUTC approach is that **if they are in office, they are the trustee and/or a cotrustee** and adding archaic adjectives emphasizing that status is simply unnecessary.

The only exception I can think that might still justify retaining a status adjective might be the personal representative, so that a provision directing notice be given to "my personal representative" not be interpreted to require re-opening an estate to secure the appointment of a PR just for the purpose of complying with a notice provision in a document.

While the foregoing suggestion appeared to be favorably received by the few of our number present during our 2/3/21 mtg, I have included it here again to see if our consensus changes with more members participating, before I go to the effort of actually making those changes in these two documents wherever they might occur.

Respectfully submitted,

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Personal Representative / Legal Representative

14.2 ACCEPTING OR DECLINING TRUSTEESHIP:

- a) Except as otherwise provided in **paragraph 14.2(c)** of this article, a person designated as trustee accepts the trusteeship by:
 - i) Delivering written consent to (A) settlor, if living, (B) settlor's **legal representative** and the qualified beneficiaries, if settlor is deceased or incapacitated, and (C) all other acting trustees; or
 - ii) Accepting delivery of trust property, exercising powers or performing duties as a trustee, or otherwise indicating acceptance of the trusteeship.
- b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- c) A person designated as trustee, without accepting the trusteeship, may:
 - i) Act to preserve trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to (A) settlor, if living, (B) settlor's **legal representative** and a qualified beneficiary, if settlor is deceased or incapacitated, and (C) any acting trustee; and
 - ii) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

14.6 RESIGNATION: Any trustee may resign:

- a) By giving at least thirty days' written notice to (i) settlor, if living, or settlor's **legal representative** (if any) if settlor is deceased or incapacitated, (ii) the qualified beneficiaries, and (iii) all other acting trustees, effective upon acceptance of appointment by a successor trustee if this instrument requires a successor trustee; or
- b) With the approval of the court.

16.11 PERSONAL REPRESENTATIVE For purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, conservator, or any other form of personal representative, depending upon the context in which such term occurs.

16.11 LEGAL REPRESENTATIVE: For purposes of this agreement, "legal representative" includes a person's attorney-in-fact acting under a durable power of attorney, the conservator of the person's estate, the person's guardian, the personal representative, executor, or administrator of the person's decedent's estate, or any other form of legal representative, depending upon the context in which the term occurs.

11.2 DISTRIBUTION ALTERNATIVES: Should trustee, in its reasonable discretion, determine that it would not be in the best interests of an incapacitated person described in **paragraph 11.1 (Continued Retention in Trust)** of this article for trustee to retain in trust any property set aside for, or otherwise payable to, such person, such property may be distributed by trustee, in any of the ways authorized by this paragraph, without continuing court supervision or the intervention of a ~~guardian or conservator or other personal~~ legal representative, and without giving or requiring any bond. Any distribution so made shall be without obligation on the part of trustee to see to the further application thereof. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of trustee's fiduciary duties hereunder, shall fully discharge trustee. Such distributions may be made: ...

16.7 INCAPACITY: For the purposes of this agreement, an individual may be treated as being incapacitated if so declared or adjudicated by an appropriate court; or if a ~~guardian, conservator, or other personal~~ legal representative of such individual's person or estate or both has been appointed by an appropriate court; or if certified in writing by his or her personal physician to be unable to properly manage his or her financial affairs; or if such individual is a minor.

Connie's version revised per discussion on 2/9/2022

When two or more individuals are serving as trustee, an individual trustee may sign alone on any trust account maintained by the trustee at any bank or other financial institution if authorized to do so pursuant to a written delegation agreement. The bank or other financial institution shall have no duty to investigate or inquire with respect to any actions taken by an authorized individual trustee acting alone. Notwithstanding the foregoing, when a professional trustee, such as a bank or trust company, is serving as trustee, such trustee shall be the only trustee authorized to act alone on any trust account maintained by the trustee at any bank or financial institution.

[Edited]:

When two or more individuals are serving as ~~trustee~~ fiduciary, an individual ~~trustee~~ fiduciary may ~~sign~~ execute transactions alone on any ~~trust~~ deposit account maintained by the ~~trustee~~ fiduciaries at ~~any~~ a bank or other financial institution if authorized to do so ~~pursuant to~~ under a written delegation agreement. The bank or other financial institution ~~shall have~~ has no duty to investigate or inquire with respect to any actions taken by an ~~authorized~~ individual ~~trustee~~ fiduciary acting alone. ~~Notwithstanding the foregoing,~~ But when a professional ~~trustee~~ fiduciary, such as a bank or trust company, is serving as ~~trustee~~ fiduciary, ~~such trustee~~ the professional fiduciary ~~shall be~~ is the only ~~trustee~~ fiduciary authorized to act alone on any ~~trust~~ deposit account maintained by the ~~trustee~~ fiduciaries at ~~any~~ a bank or ~~other~~ financial institution.

[Edited] with new second sentence:

When two or more individuals are serving in a fiduciary capacity, an individual fiduciary may execute transactions alone on any deposit account maintained by the fiduciaries at a bank or other financial institution if authorized to do so under a written delegation agreement. ~~The bank or other financial institution may act on the signature or instruction of any individual named as fiduciary on the account without regard to the terms of any document governing the fiduciary's actions.~~ But when a professional trustee, such as a bank or trust company, is serving as fiduciary, the professional fiduciary is the only fiduciary authorized to act alone on any deposit account maintained by the fiduciaries.