

From: [Frank Hill](#)
To: [Melissa Anderson](#); [Steve Brainerd](#); [Darla Daniel](#); [Connie Eyster](#); [Corina Gerety](#); [Lisa Hardin](#); [Richard Hess](#); [Stan Kent](#); [Alison Leary](#); [Marianne Luu-Chen](#); [Julie McVey](#); [Kevin Millard](#); [Carl Stevens](#); [Jacob Tonda](#); [Tony Vaida](#); [Kirsten Waldrip](#); [Sonny Wiegand](#); [Carolyn Wiley](#); [Gene Zuspahn](#)
Cc: [Hayley Lambourn](#); [Dave Kirch](#)
Subject: OBF CUTC Revisions Subcomm Mtg (Virtual) Wed 4/7/21 10:00-11:30am
Date: Monday, April 5, 2021 9:42:00 AM
Attachments: [\[Extract\] 0350-Rev Mar Ded Tst \(2021-03-31\).pdf](#)
[\[Extract\] 0361-Mar Ded Will \(2021-03-31\).pdf](#)
[Page 69, Appx A - Gen & Adm Prov.pdf](#)
[Page 79, Appx A - Gen & Adm Prov.pdf](#)
[Summary Version Notice & Reports.pdf](#)
[Colo Lawyer Article.pdf](#)

Dear Colleagues:

This is the Chair's **4/5/21 Status Report** regarding the actions of the subcommittee through our last meeting on 3/3/21 and our preparation for our next virtual meeting on Zoom this Wednesday morning, 4/7/21, supported by the CBA:

Online: <https://cba-cle.zoom.us/j/92173214603>

Meeting ID: 921 7321 4603

Passcode: 731923

Call-in: 1 (301) 715 8592

Meeting ID: 921 7321 4603

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

Attached please find [\[Extract\] 0350-Rev Mar Ded Tst \(2021-03-31\).pdf](#), [\[Extract\] 0361-Mar Ded Will \(2021-03-31\).pdf](#), [Page 69, Appx A – Gen & Adm Prov.pdf](#), [Page 79, Appx A – Gen & Adm Prov.pdf](#), [Summary Version Notice & Reports.pdf](#), and [Colo Lawyer Article.pdf](#) on which I comment briefly below. **Only the two Extracts are new**; the other docs are the same as were attached to last month's Status Report. You should use a color printer to print them out.

Most of our work was (and still is) in the two extracts. 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. Within the two extracts,

BLACK typeface = **original boilerplate** as it currently exists in the Orange Book Forms,
RED typeface = **changes previously made** to that existing boilerplate by this subcommittee,
and

GREEN typeface = the **latest proposed changes** suggested to be made to these documents.

Last month, we held our virtual mtg on Wednesday, 3/3/21, right in the middle of the week when ACTEC was holding its Annual Meeting. This conflict meant that some of our members who were participating in the conflicting ACTEC virtual meetings were unavailable to assist us with our deliberations. In view of that, as Chair, I decided to consider our actions during the meeting, generally, as a "First

Reading” of the texts under consideration. That way, we would all have an additional month to consider the proffered texts and we would be likely to have more of our members present to participate in our deliberations and to voice their opinions were we to take “Final Action” on any of the texts under consideration.

In view of that, This Status Report is virtually a clone of my 2/26/21 Status Report of last month. I have made some minor edits to it, however, to make it more current. And, more importantly, I have prefaced each topic that got our attention during the meeting, with a purple “Comment Box” reporting the highlights of our deliberations.

Designation of Additional Trustee 14.3 & 8.2 [Darla’s Note on Use]: After raising the issue of “indefinite” vs. “definite” term of appointment during our 1/6/21 mtg, Darla offered to revise the last sentence of the paragraph to perhaps include some comment about the issue. She also offered to revise her proffered Note on Use (attached to my 1/5/21 Status Report) to include some discussion of this issue as well as restructure the existing material to focus on its salient point, *i.e.*, allocation of duty to inform and report. For the reasons explained in the next item regarding Kevin’s Note on Use, Darla was going to hold off on revising her previously offered Note on Use until after we had finalized our discussion of how we want to treat relationships among cofiduciaries generally, as discussed in depth below in this status report. [Should I receive any offering from Darla on her suggested revision the text of ¶¶ 14.3 & 8.2, I will try to distribute it before our meeting.]

Designation of Additional Trustee 14.3 & 8.2 [Kevin’s Note on Use]: Approved during our 12/2/20 mtg, during our 1/6/21 mtg, we had initially decided to relocate this to be attached to the *Cotrustees* paragraphs in our documents. But Kevin thought, on reconsideration, since an additional trustee is in the nature of a cotrustee, we should also link his Note on Use to ¶¶ 14.3 & 8.2 as well, and we concurred.

However, in view of generally favorable comments voiced during our 3/3/21 mtg regarding both the composition and the placement of ¶¶ 15.8 & 9.10 (and the dearth of adverse comments) Kevin and Darla have resumed work on their Note(s) on Use based upon what may be likely at this forthcoming mtg, final approval of these proffered paragraphs as they now appear in the attached Extracts.

In preparing to insert Kevin’s (as well as Darla’s) previously proffered versions of their Notes on Use into the OBF’s enormous “Appendix A – General and Administrative Provisions,” the matrix in the back of the book (which contains ALL the Notes on Use relating to the boilerplate provisions appearing anywhere in the OB wills and trust forms) I discovered that there is already an existing 3-paragraph Note on Use for the old paragraph *Appointment of Cotrustee or Substitute Trustee*. See Note on Use 2 in [Pg. 69, Appx A – Gen & Admin Prov.pdf](#), attached.

In addition, I also discovered an old one-paragraph Note on Use discussing the *Delegation* and *Majority Control* paragraphs, both of which will be part of our focus in this 3/3/21 meeting, as discussed below. See Note on Use 6 on [Pg. 79, Appx A – Gen & Admin Prov.pdf](#), attached. For obvious reasons, we need to be aware of the substance of existing Notes on Use keyed to the material we are revising. We must either revise the old Notes on Use or craft our additional material

to be compatible with the existing text. So, Kevin and Darla are collaborating their work on finalizing their new Note(s) on Use and determining how best to dealing with the existing text of the old Notes on Use).

We reviewed the two *Resignation* paragraphs which merely reflected our “final” action taken during our 2/3/21 mtg. While I don’t recall any discussion one way or the other, for the reasons stated above, I’ve left it here in our “agenda” for final “final” approval during our 4/7/21 mtg.

Resignation 14.6 & 8.5: During our 1/6/21 mtg, we approved Corina’s suggestions for ¶¶ 14.2 & 8.1, *Accepting or Declining Trusteeship*, of including the legal representative of an incapacitated or deceased settlor, and her subdivision letterings, and I suggested that for consistency, the same approach could be taken to the *Resignation* paragraphs. We approved both in the form presented (as attached to my 1/5/21 Status Report) with a minor additional tweak to avoid necessity of getting a legal representative appointed for a deceased or incapacitated settlor when no such representative was in existence. See the final versions of ¶¶ 14.6 & 8.5, *Resignation*, in the rev tst and will extracts, attached.

Cotrustees 15.8: The *Cotrustees* paragraph in Form 350 was approved (as ¶ 14.4 of the “Trusteeship” article) by this subcommittee during our 12/4/19 mtg. in the form presented in the Form 350 rev tst extract attached to my 1/5/21 Status Report. During our 1/6/21 mtg, Kevin observed that with minor tweaking, we could eliminate the layperson-unfriendly cross-reference (and the same edit could be made to the will version in the form). See the final version of *Cotrustees* as ¶ 15.8 in the rev tst extract, attached. The suggested relocation of the paragraph is discussed below.

As you read through the material below, here’s what the subcommittee did with regard to this topic during our 3/3/21 mtg: Both the text and the relocation of both paragraphs garnered favorable comments. The consensus appeared to be that the title of the paragraphs in both the trust form and the will form should be returned to the old “Majority Control” (instead of “Cotrustees” and “Cofiduciaries”). In addition, we resolved the quandary over the term “cofiduciaryship” in the will form by simply deleting the phrase containing term (and for reasons of parallel structure, also deleting the same phrase containing the term “cotrusteeship” from the rev tst).

Cotrustees, Co-PRs, Majority Control, Delegation, Etc.

Long before CUTC (also long before this subcommittee came into existence), and long before anybody thought up the idea of including a *Cotrustees* paragraph, *Majority Control* (which only addressed cotrustees), *Delegation*, and (to a lesser degree) *Release of Powers*. paragraphs already appeared in the “**Administrative Provisions**” article of all OB trust forms and all OB will forms that contained trusts addressing the relationship among cotrustees and (cofiduciaries). There was no provision addressing the relationship among personal corepresentatives *per se*. That was the situation when we began our work. Here’s a brief chronological summary of how our thinking has evolved and how we got to where we are today:

- * September 2019, Sonny Wiegand proffers a new *Cotrustees* paragraph (pretty much a clone of CUTC § 703) to be inserted into the “Trusteeship” article of Form 361 Mar Ded Will. We approved this new paragraph, and likewise decided to insert it into the “Trusteeship” article of Form 350 Rev Mar Ded Tst. Subsequently, we have tweaked and refined the text of this paragraph numerous times during the past year. Most notably, we deferred judgement on what to do with the old *Majority Control* paragraph continuing to exist simultaneously with the “Cotrustees” paragraph in both documents, perhaps thinking we would refocus its attention in the will form from cotrustees to co-PRs.

- * In March 2020 we began the great discussion of the relationship between the then extant *Appointment of Cotrustee or Substitute Trustee* paragraph and the *Delegation* paragraphs in our forms. In April 2020, I then tried to come up with my first offering of a new array of parallel provisions for the rev tst form and the will form in prep for our (aborted) April mtg. In that process, I had updated the *Delegation* paragraphs of both forms to include the requirements of CUTC § 703(5). Then after our COVID-19 break, during our November 2020 mtg, we reviewed these proffered versions of the *Delegation* paragraph, refined the last two subparagraphs (based on § 703(5)), and generally approved them. (Corina has since raised the issue of whether or not we want to hold Co-PRs to the requirements of § 703(5).)

- * Then in my attempt to have the “Trusteeship” and “Administrative Provisions” articles of the rev tst and the will form be parallel in format with consistent subject matter, I came up with a *Cofiduciaries* paragraph for the will form to be inserted into the “Trusteeship” article of the will form to be parallel with the *Cotrustees* paragraph in the rev tst form. However, Darla observed accurately that a *Cofiduciaries* paragraph didn’t belong in the “Trusteeship” article of the will.

- * Last month, (February 2021), I cloned the *Cotrustees* paragraph from the “Trusteeship” article of the rev tst into the “Trusteeship” article of the will form (thinking we’ve just solved that problem). Meanwhile, Corina, Darla , and I struggled to come up with an appropriate provision for co-PRs in the will form. After discussion, we proffered both Corina’s offering (based upon CPC § 15-12-717) as well as one which picked up on the majority control concept contained in the rev tst’s *Cotrustees* paragraph. (Both of these offerings were entitled, *Personal Corepresentatives* and appeared on page 14 of the Form 361 extract attached to my 2/1/21 status report.)

- We had a lively discussion last month about which approach was more desirable as a “best practice” among co-PRs, -- statutory unanimity or the old majority control approach. Corina pointed out that since as a “best practice” we had adopted the “statutory” approach for cotrustees, shouldn’t we do the same (statutory approach) for co-PRs? But Kevin pointed out that the statutory approach for cotrustees is majority control, that OBF had had the concept of majority control among cotrustees

in them for decades, and that probably most clients would prefer that a consistent approach of majority control be applied to both their co-PRs as well as their cotrustees. (He also suggested we pick up that line from the old *Majority Control* paragraph requiring joinder whenever only two cotrustees are acting.)

- Then Corina suggested that if we were going to choose to adopt majority control for **both** cotrustees and co-PRs in the will form, then why we would we need to include separate provisions for *Cotrustees* and *Personal Corepresentatives*, if they would be saying substantially the same thing? We could just put them together in a single paragraph entitled *Cofiduciaries* or *Majority Control*! (This single paragraph would appear Under the “Administrative Provisions” article to replace the old *Majority Control* paragraph.)

Cofiduciaries [Majority Control?] 9.10: Picking up on the foregoing thread, on pg. 14 of the Form 361 Will extract, please see under the old *Majority Control* paragraph new ¶ 9.10 *Cofiduciaries* [but which could retain the old title of *Majority Control*, if desired]. You’ve seen this paragraph before – it’s the same *Cofiduciaries* paragraph (pretty much a clone of the *Cotrustees* paragraph in the Form 350 Rev Tst extract) that I had tried to improperly insert into the “Trusteeship” article of the will form during our January 2021 meeting. This then is followed by our updated version of the *Delegation* paragraph, discussed below.

Cotrustees [Majority Control?] 15.8: Then place the extract of Form 350 Rev Tst next to that and turn to Pg. 24 and please see under the old *Majority Control* paragraph new ¶ 15.8 *Cotrustees* [but which could retain the old title of *Majority Control*, if desired]. You’ve seen this paragraph before – it’s the same *Cotrustees* paragraph that used to be ¶ 14.4 in the “Trusteeship” article in prior drafts of this instrument. It has merely been relocated to the “Administrative Provisions” article because its predecessor, the old *Majority Control* paragraph has **always** been in the “Administrative Provisions” article, (and belongs there for the sake of consistency and parallel structure with the location of the *Cofiduciaries* paragraph in the Form 361 Will form). Again, like we are doing in the Will form, this then is followed by our updated version of the *Delegation* paragraph, discussed below.

Also, in both the *Cofiduciaries* and *Cotrustees* paragraphs, picking up on Kevin’s suggestion discussed above, I have included that line from the old *Majority Control* paragraph requiring joinder whenever only two cotrustees or cofiduciaries are acting.

We reviewed Corina’s suggested revision of the two the two previously approved *Delegation* paragraphs which we decided merited further editing for the reasons stated below. Comments seemed to be generally favorable; I don’t recall any adverse comments or calling for any corrections. For the reasons stated above, I didn’t call for final approval, postponing that for our 4/7/21 mtg.

Delegation 15.9 & 9.11: As mentioned above, we generally approved these two paragraphs during our November 2020 mtg. And at that time Corina raised the issue of whether we wanted to impose those CUTC § 703(5) duties on co-PRs. After discussion, the consensus of those in attendance

seemed to be that, as a “best practice,” it would be appropriate to include them for co-PRs also.

Then, our discussion turned to the layperson-unfriendly cross-reference at the beginning of the paragraph. When it became apparent that the paragraph would have to be restructured to eliminate it, Corina volunteered to give it a shot. What you see in the current extract is Corina’s work with some minor editing by yours truly.

This was our second look at these proffered provisions. Because they are really crucial, I believe we really need all hands-on deck on this topic, and more in-depth discussion is merited. Julie wondered about referring to the testator in the will version as “settlor” of the testamentary trust and wondered if “creator” would be better. Carl pointed out that the definition of “settlor” in CUTC includes the term “creator.” [Query: If CUTC is O.K. with “creator,” is it worth the hundreds of phone calls to CLE by practitioners wondering why we included “settlor” in a testamentary form?] Comments seemed generally to favor the more-detailed approach rather than the summary approach, along these lines: 1) we are incorporating CUTC default as OBF new “best practices,” 2) they are more instructive to practitioner and a lay trustee, and 3) the drafting practitioner can always trim them back during the drafting process if desired. These proffered provisions await more of our in-depth discussion and our final action.

Notice 15.12 & 9.14 and Reports 15.13 & 9.15: After more than a year of deferral, we were finally able to commence a substantive discussion on this topic. First, we looked at Lisa’s original offering (attached once again to this status report as [Summary Version Notice & Reports.pdf](#)). Then we looked at ¶¶ 9.14 and 9.15 in the will form which were developed in an attempt to include both CUTC’s default as well as mandatory provisions as “best practices.” (Now the annotations have been moved from the previous separate handout into the will and rev tst forms themselves: **mandatory** provisions are indicated by **red typeface references** and **default** provisions by **black typeface references**.) A good discussion was had, but in the end, due to the low turnout of subcommittee members for this meeting, we opted to postpone action of these offerings until our next or a subsequent meeting when a better representation of subcommittee membership could be present.

Carl reminded us, that in order to gear up to be prepared for an in-depth discussion of the applicable provisions of CUTC on this topic of Notice and Reports, it would be good to review the clear and concise chart on the topic appearing on Pgs. 6-9 of the *Colorado Lawyer* article on CUTC which Connie Eyster and he coauthored. See, [Colo Lawyer Article.pdf](#) attached.

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.

We reviewed Carl’s suggested update of these *Other Definitions* paragraphs. And while comments were generally favorably, Carl pointed out that both CUTC and the CPC define some terms differently. So, it became apparent to us that we needed somehow to prioritize CUTC when addressing the trust provisions of the instrument, and then defaulting to the CPC when CUTC didn’t provide a definition. I volunteered to take a crack at that and so my proffered revisions to Carl’s work is attached in our current extracts.

Other Definitions 16.10 & 11.9 (Carl): After Colorado’s adoption of the Uniform Powers of Appointment Act, OBFC realized that the *Other Definitions* and *Applicable Law* paragraphs of our will and trust form would have to be revised to include references to that new act, since containing only references to the CPC was no longer accurate. Accordingly, during our October 2019 meeting, we had reviewed the language of this paragraph and concluded that some carve-out (from the overall generic reference to the CPC for other definitions) should be included for CUTC, similar to that now included for the Colorado Uniform Powers of Appointment Act. Check out both extracts to see what Carl has furnished us for our consideration with his offering of appropriate changes to ¶¶ 16.10 & 11.9 *Other Definitions*. While we are at it, we should consider whether any modifications are appropriate to be made to the related ¶¶ 16.2 & 11.2 *Applicable Law*.

Exoneration of Trustee 14.4 & 8.3 (Darla): Also, during our October 2019 meeting, we had concurred with Darla’s caveat that while it was appropriate to focus our attention on addressing the notice and reporting issues discussed in CUTC §§ 105 and 813, we do really need to address **the impact of CUTC §§ 1008, 1009 and 1010** on our will and trust provisions addressing **trustee exoneration, beneficiary releases, and trustee liability**. In view of the weightiness of those areas of concern, and Darla’s then unavailability, we decided to postpone consideration of ¶¶ 14.4 & 8. *Exoneration of Trustee* and its related provisions until Darla would be able to be present and lead us through that thicket.

Respectfully submitted.

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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 COTRUSTEES has been relocated to ¶ 15.8 of the “Administrative Provisions” 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 otherwise provided with respect to the Marital Trust, upon the death of any beneficiary entitled to receive income from any trust established under this agreement, all accrued or undistributed income ***

15.6 PROTECTION AGAINST PERPETUITIES RULE: Every trust hereunder, and every trust created by the exercise of a power of appointment hereunder, shall terminate no later than the end of the period allowed by the applicable Rule Against Perpetuities and the trust property shall be distributed to the persons then entitled to the income from the trust in the proportions in which they are entitled to such income. For this purpose only, any person eligible to receive ***

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 ~~COTRUSTEES 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) ~~If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.~~
- c) ~~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.~~
- d) ~~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.~~
- e) ~~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, and may revoke any such delegation. 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.~~

15.9 DELEGATION:

- ~~a) — Except as otherwise provided in paragraphs 15.8(b) and (c) of this article, a~~ 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 ~~and~~ may also revoke it ~~any such delegation~~. 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.
- ~~b) — Trustee may not delegate to a cotrustee the performance of a function settlor reasonably expected the trustees to perform jointly.~~
- ~~c) — Unless a delegation was irrevocable, trustee may revoke a delegation previously made.~~

15.10 CUSTODY: Whenever a corporate trustee is serving, such corporate trustee shall be the custodian of the trust property and of the books and records of the trust. It may perform all ministerial acts necessary for the acquisition and transfer of personal property and money, including the signing and endorsement of checks, receipts, stock certificates, and other instruments. No person need inquire into the propriety of any such act.

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 trust or, if none, to all ascertainable beneficiaries. Such renunciation or release shall not affect the grant of power, authority, or discretion renounced or released.

~~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 [NOTICE]:

- 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 [§ 813(1)].
- 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 [§ 813(2)(c)];
 - ii) The existence of the trust [§ 813(2)(c)], [§ 105(h)];
 - iii) Trustee's acceptance of the trust [§ 813(2)(b)];
 - iv) Trustee's name, address, and telephone number [§ 813(2)(b)], [§ 105(h)];
 - v) Their right to request portions of the trust instrument that describe or affect the requesting beneficiary's interest [§ 813(2)(c)]; and
 - vi) Their right to request reports as provided in **paragraph 15.13 (Trustee's Duties to Report and to Respond)** of this article [§ 813(2)(c)], [§ 105(h)].
- c) Trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of trustee's compensation [§ 813(2)(d)].

15.13 TRUSTEE'S DUTIES TO REPORT AND TO RESPOND [REPORTS]:

- 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 [§ 813(3)(a)], [§ 105(i)], a report containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values [§ 813(3)(a)(I)], [§ 813(3)(a)(II)];
 - ii) The liabilities of the trust, if any [§ 813(3)(a)(I)];
 - iii) The trust's receipts and disbursements during the period covered by the report [§ 813(3)(a)(I)]; and
 - iv) The amount and source of trustee's compensation [§ 813(3)(a)(I)].
- 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 [§ 813(3)(b)].
- 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 [§ 813(1)], [§ 105(i)]; and
 - ii) Furnish promptly a copy of the portions of the trust instrument that describe or affect the requesting beneficiary's interest [§ 813(2)(a)].

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

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, other***

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 ***

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. [RUFADAA: C.R.S. § 15-1-1501(14)]

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 ~~shall be~~ 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 ~~either may be any~~ are amended after the date of this agreement and after settlor's death.

16.11 PERSONAL REPRESENTATIVE: For the purposes of this agreement, the term ***

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 DEFINITION: As used throughout in this agreement, the word “trustee” shall always refer to the original trustee as well as to any successor, replacement or additional person, corporation or other entity from time to time serving, whether in fact there shall be one or more trustees serving from time to time. includes an original, additional, and successor trustee, and a cotrustee. [CUDTA: C.R.S. § 15-16-802(10)]

16.15 COUNTERPARTS: This agreement may be executed in counterparts and each ***

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 fiduciaries may exercise those powers set forth in the Colorado Fiduciaries' Powers Act as amended after the date of this instrument. I incorporate such Act as it exists today by reference and make it a part of this instrument.

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, mortgage, pledge, or otherwise dispose of or encumber all or any part of any trust ***

9.5 UNDISTRIBUTED INCOME AT DEATH OF BENEFICIARY: Except as otherwise provided with respect to the Marital Trust, upon the death of any beneficiary entitled to ***

9.6 BENEFITS PAYABLE TO TRUSTEE: The trustee of any trust established under this instrument shall not be obligated to undertake litigation for collection of any benefits or ***

9.7 PROTECTION AGAINST PERPETUITIES RULE: Every trust hereunder, and every trust created by the exercise of a power of appointment hereunder, shall terminate no later ***

9.8 DISTRIBUTION TO INCAPACITATED PERSONS OR PERSONS UNDER 21: If any beneficiary, other than my spouse, to whom my personal representative or trustee is directed to distribute any share of trust principal is under the age of 21 years or is, in the opinion of that fiduciary, under any incapacity which renders such beneficiary unable to administer ***

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.~~

9.10 **COFIDUCIARIES 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) If a vacancy occurs ~~in a cofiduciaryship~~, the remaining cofiduciaries may act for my estate or for any trust under this instrument.
- c) 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.
- d) 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.
- e) 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.

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~~9.11 DELEGATION: Any fiduciary may delegate to its cofiduciary the exercise of any powers, discretionary or otherwise, and may revoke any such delegation. Such delegation and revocation shall be in writing executed by the delegating cofiduciary 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 cofiduciary had personally joined in the exercise of such power or the taking of such action. Anyone dealing with the fiduciaries may rely upon the written statement of the delegating cofiduciary relative to the fact and extent of such delegation.~~

9.11 DELEGATION:

- a) ~~Except as otherwise provided in paragraphs 9.10(b) and (c) of this article, a~~ 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~~ ~~and may also revoke it any such delegation.~~ 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.
- ~~b) My fiduciaries may not delegate to a cofiduciary the performance of a function I reasonably expect my cofiduciaries to perform jointly.~~
- ~~c) Unless a delegation was irrevocable, the delegating fiduciary may revoke a delegation previously made.~~

9.12 CUSTODY: Whenever a corporate fiduciary is serving, such corporate fiduciary shall be the custodian of my estate and trust property and of the books and records of my estate or trust. It may perform all ministerial acts necessary for the acquisition and transfer of personal***

[Extract] 0361-Mar Ded Will (2021-03-31).doc

9.13 RELEASE OF POWERS: Any fiduciary may release in whole or in part, temporarily or permanently, any power, authority, or discretion conferred by my will or trust by a writing delivered to any cofiduciary and to each beneficiary then eligible to receive income distributions from any trust or, if none, to all ascertainable beneficiaries. Such renunciation or release shall not affect the grant of power, authority, or discretion renounced or released.

~~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 [NOTICE]:

- 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 [§ 813(1)].
- b) Within sixty days after accepting the trusteeship, my trustee shall notify the qualified beneficiaries of:
 - i) My identity as settlor of the trust [§ 813(2)(c)];
 - ii) The existence of the trust [§ 813(2)(c)], [§ 105(h)];
 - iii) My trustee's acceptance of the trust [§ 813(2)(b)];
 - iv) My trustee's name, address, and telephone number [§ 813(2)(b)], [§ 105(h)];
 - v) Their right to request portions of the trust provisions of my will that describe or affect the requesting beneficiary's interest [§ 813(2)(c)]; and
 - vi) Their right to request reports as provided in **paragraph 9.15 (Trustee's Duties to Report and to Respond)** of this article [§ 813(2)(c)], [§ 105(h)].
- c) My trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of my trustee's compensation [§ 813(2)(d)].

9.15 TRUSTEE'S DUTIES TO REPORT AND TO RESPOND [REPORTS]:

- 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 [§ 813(3)(a)], [§ 105(i)], a report containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values [§ 813(3)(a)(I)], [§ 813(3)(a)(II)];
 - ii) The liabilities of the trust, if any [§ 813(3)(a)(I)];
 - iii) The trust's receipts and disbursements during the period covered by the report [§ 813(3)(a)(I)]; and
 - iv) The amount and source of my trustee's compensation [§ 813(3)(a)(I)].
- 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 [§ 813(3)(b)].
- 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 [§ 813(1)], [§ 105(i)]; 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 [§ 813(2)(a)].

9.16 ANCILLARY FIDUCIARY: In the event ancillary administration shall be required or desired and my domiciliary personal representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary personal representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary personal representative may delegate to such ancillary fiduciary such powers granted to my original personal representative as my personal representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary personal representative. * * *

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 ***

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. [RUFADAA: C.R.S. § 15-1-1501(14)]

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 ~~shall be~~ are as 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 ~~either may be any~~ are amended after the date of this instrument and after my death.

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 DEFINITION: As used throughout in this instrument, the word “trustee” shall always refer to the original trustee as well as to any successor, replacement or additional person, corporation or other entity from time to time serving, whether in fact there shall be one or more trustees serving from time to time. *includes an original, additional, and successor trustee, and a cotrustee.* [CUDTA: C.R.S. § 15-16-802(10)]

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.

NOTES ON USE

- A) **ACCEPTING OR DECLINING TRUSTEESHIP:** The Colorado Uniform Trust Code (C.R.S. § 15-5-701) contains the default for acceptance of the trusteeship. The terms of the trust may specify different method(s) to accept or decline. However, if a method to accept or decline is intended to be exclusive, it must be expressed in language manifesting the intent that the acceptance or declination may not be by any other method (e.g., “sole,” “exclusive,” “only”).
- 1) **ADOPTED CHILDREN:** Consider appropriateness of this provision concerning children adopted by descendants, or consider appropriateness of a substitute provision concerning children relinquished by a family member for adoption by strangers. The client’s intent should be ascertained in those areas because of the legal and social changes in adoption procedures. *See* C.R.S. § 15-11-114(2).
- 2) **APPOINTMENT DESIGNATION OF ~~COTRUSTEE OR SUBSTITUTE~~ ADDITIONAL TRUSTEE:** The practitioner should consider the inclusion of the substitute trustee provision to provide flexibility in handling assets of the trust that require special expertise in handling, such as oil and gas leases or other mineral interests. A clause which allows the appointment of a substitute trustee would also be useful in the case where trust assets include environmentally tainted real property. Many corporate trustees and individual trustees will refuse to accept the appointment as trustee if they must hold real property which may be subject to EPA action. A clause allowing a substitute trustee to hold the tainted assets or the appointment of a substitute trustee to hold the non-tainted assets may be helpful in persuading reluctant trustees.

In addition, the ability to appoint a substitute trustee or cotrustee is useful in the case where the original trustee may trigger an income or estate taxable event through the exercise of trustee discretion. By the use of a substitute trustee or cotrustee, and a renunciation of the power by the original trustee, the original trustee could be protected from such tax liability.

Finally, corporate trustees who utilize pooled funds which are regulated by the Comptroller of the Currency Reg. 9 cannot use these pooled funds in customer account unless the corporate trustee is serving in a fiduciary capacity. The ability to appoint a cotrustee would allow the utilization of corporate trustee pooled funds without the necessity of a court appointment as cotrustee.

Generally, each trustee has fiduciary duties to use reasonable care to prevent a another cotrustee from committing a breach of trust and to seek redress if a cotrustee commits a breach. C.R.S. § 15-5-703(7). Under the Colorado Uniform Directed Trust Act, the terms of the trust may relieve a cotrustee from these duties to the same extent that the terms of a directed trust may relieve the directed trustee from liability for acts of a trust director. C.R.S. § 15-16-812. Because a cotrustee is relieved from these duties only as provided by the terms of the trust, the drafter should consider whether to include express language to that effect in this paragraph.

DEFINITION OF RESIDUARY ESTATE: All the remainder of my estate, including property referred to above that is not effectively disposed of, and any lapsed gifts or devises, shall be referred to in this will as my “residuary estate.” I do not exercise any power of appointment under the provisions of this article.

The phrase “and any lapsed gifts or devises” is suggested in the official comments to UPC II as one method of ensuring that lapsed gifts will fall into the residue.

- 6) DELEGATION and MAJORITY CONTROL: The practitioner should note that common law requires a unanimous vote of cotrustees. The Majority Controls and Delegation clauses are offered for the practitioner’s consideration to promote efficiency in handling conflicts between fiduciaries. This approach is contrary to common law and the inclusion of these provisions should only be made after due consideration of the overall effect. To develop an understanding of matters of liability of the delegating fiduciary, see C.R.S. § 15-12-717, and *Scott on Trusts*, §§ 171-171.4, 194, and 224.2.
- 7) DISTRIBUTION ALTERNATIVES and REPRESENTATIVE OF BENEFICIARY. In cases of dissolution of marriage, your client may wish to have “Distribution Alternatives” and “Representative of Beneficiary” modified to specifically exclude a former spouse.
- 8) DISTRIBUTION TO INCAPACITATED PERSONS OR PERSONS UNDER TWENTY-ONE: This provision permits a fiduciary to retain in trust the share of a beneficiary which would otherwise be distributable to the beneficiary but for the beneficiary’s perceived inability to manage such distribution effectively due to lack of capacity brought about by the beneficiary’s incapacity or minority. While such a trust is in effect, the trustee’s discretion is not governed by the ascertainable standards of health, education, support, or maintenance, but rather all such distributions, if any, are within the trustee’s absolute discretion. This absence of ascertainable standards was chosen so as not to jeopardize a beneficiary’s ability to qualify for public assistance and other benefits. In any event, even the presence of ascertainable standards specifying and limiting the purposes of distributions to the beneficiary would not shield a trustee who owed the beneficiary a legal obligation of support from exposure to the possible adverse tax consequences of being an interested trustee. *See* Note on Use 17.
- 9) DISTRIBUTIONS FREE FROM TRUST: This paragraph eliminates the perceived necessity of funding a trust just to distribute it when the event triggering such distribution (for example, the beneficiary reaching an attained age) may have already occurred.
- 10) EDUCATION: This paragraph defines the term “education.” The committee considers inclusion of a provision defining education to be optional with the drafter, while generally desirable. At least one professional fiduciary has commented favorably on the additional clarity such a definition brings to administration of trusts. The focus of the form is a settlor who might prefer more latitude in the exercise of discretion by the trustee — a settlor who would expect the trustee to look favorably upon requests by beneficiaries for reimbursement

Lisa Hardin 79.14 Notice Report 11.06.2019.pdf
[HANDOUT] REVISED 2/5/20

Reports: My Trustee shall report no less frequently than annually and at the termination of the trust to all qualified beneficiaries, ~~including those under the age of twenty five, and to the guardians of any minor beneficiaries,~~ all the trust property, liabilities, receipts, disbursements, including the source and amount of the trustee's compensation, during the reporting period, and a listing of the trust assets and, if feasible, their respective market value.

Notice: ~~For purposes of notice requirements under this Section, qualified beneficiaries shall also include those under the age of twenty five and the guardians of any minor qualified beneficiary.~~ Within sixty days after accepting trusteeship, my Trustee shall notify all qualified beneficiaries of the trustee's:

- (1) acceptance;
- (2) name;
- (3) address; and
- (4) telephone number.

In addition, within sixty days of my trustee's knowledge that the trust is irrevocable, my trustee shall notify all qualified beneficiaries of:

- (1) the trust's existence;
- (2) settlor's name;
- (3) the right of the beneficiary to request the portion of the trust instrument describing the beneficiary's interest; and
- (4) their right to request a report.

My trustee shall notify all qualified beneficiaries of any change in the trustee's compensation.

The Colorado Uniform Trust Code

BY CONSTANCE TROMBLE EYSTER
AND CARL G. STEVENS

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This article discusses the Colorado Uniform Trust Code, which became effective on January 1, 2019.

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The Colorado Uniform Trust Code (the CUTC or Code) was signed into law on April 26, 2018, with an effective date of January 1, 2019.¹ The CUTC is generally a retroactive statute² and applies to all trusts except business trusts and a limited number of enumerated arrangements.³ The Code repeals and replaces most of CRS Title 15, Article 16, which governed trust administration.⁴ For now, the Directed Trustees Act⁵ and the Decanting Act⁶ remain in Article 16.⁷

The CUTC's Evolution

The CUTC is based on the Uniform Trust Code (UTC), a comprehensive statute first drafted by the Uniform Law Commission in 2000 and subsequently amended several times. To date,

the UTC has been enacted in some form in 33 jurisdictions.

A committee of the CBA's Trust and Estate Section (the Committee) reviewed the UTC and drafted a proposed bill in 2005. That effort failed for a variety of reasons, but primarily because the trust and estate legal community could not reach consensus on the UTC's provisions regarding creditor's claims. These provisions regarding creditor's claims (UTC Part 5) were not included in the CUTC and continue to be studied by the Committee.

While the CUTC strives to maintain uniformity with the UTC, changes to the uniform law were made to retain important Colorado policy in pre-existing laws. For example, the judicial tool box,⁸ the Cost and Compensation Act,⁹ trust

registration provisions, the pet trust statute,¹⁰ and many other unique aspects of trust law in Colorado have been retained.

The CUTC is divided into 14 parts. Parts 5, 9, 11, and 12 are reserved for future enactments or serve as placeholders for possible transfer of pre-existing statutes related to trusts.

Part 1: General Provisions and Definitions

Most of the CUTC's definitions will look familiar to practitioners because they are similar to the definitions in the Colorado Uniform Probate Code (CUPC),¹¹ but some definitions are new.

"Alternative dispute resolution"¹² (ADR) is a definition unique to the CUTC. It is defined as "a method of nonjudicial dispute resolution

as set forth in the trust instrument, which may include but is not limited to a method prescribed pursuant to the uniform arbitration act . . .¹³ ADR clauses in a trust are valid and enforceable unless they could be held invalid on the same grounds as a trust would be deemed invalid (e.g., lack of capacity or undue influence). The court may order parties to a trust proceeding to participate in ADR so long as the court's order is consistent with any ADR provision in the trust agreement.

The definitions of beneficiary, qualified beneficiary, and interested party are of primary importance to parties involved in trust administration or enforcement actions. Understanding these terms is essential, in particular for identifying persons entitled to notice, consent, or participation in judicial proceedings.

Under CRS § 15-5-103(4)(a), "beneficiary" includes a person who has a present or future interest in a trust and a person (other than a trustee) who has a power of appointment over the property. A beneficiary "does *not* include an appointee under a power of appointment unless or until the power is exercised and the trustee has knowledge of the exercise and identity of the appointee."¹⁴

"Interested person" has a substantially more limited meaning in the CUTC than in the CUPC. The term "interested person" is used primarily in CUTC Part 2, which deals with judicial settlements, trust registration, and court action to address matters of trust administration. In the CUTC, an interested person is "a qualified beneficiary or other person having a property right in or claim against a trust estate, which right or claim may reasonably and materially be affected by a judicial proceeding pursuant to this Code. The term also includes fiduciaries and other persons having authority to act under the terms of the trust."¹⁵ This definition was drafted to limit interested persons to individuals with a material interest in the trust issue at hand and to exclude individuals who have only a remote or tangential interest.

The term "qualified beneficiary" appears frequently in the CUTC, particularly in matters regarding disclosure, notice, and consent. The definition has been used in other uniform acts adopted in Colorado. A "qualified beneficiary" is

a beneficiary who, on the date of the beneficiary's qualification, is "a distributee or permissible distributee of trust income or principal" or "would be a distributee or permissible distributee of trust income or principal" if the interests of the current beneficiaries terminated on that date without causing the trust to terminate or if the trust terminated on that date.¹⁶ Others, such as "charities" and "beneficiaries" who notify the trustee, may be treated as "qualified beneficiaries."¹⁷

"Terms of a trust" is defined in several places in other Colorado statutes. The various definitions are similar, but not quite the same.¹⁸ The CUTC definition was crafted by consensus among practitioners involved in drafting this and other trust and estate statutes. CRS § 15-5-103(21) defines "terms of a trust" to mean "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 in a judicial proceeding, or a nonjudicial settlement agreement[]¹⁹ or by alternative dispute resolution . . ."²⁰ CRS § 15-5-103(21) allows trust terms to be defined by terms that "would be admissible" in a judicial proceeding. The Committee modified the UTC definition to include only those terms established in a judicial proceeding or other formal means.

Default Statute and Mandatory Rules

The CUTC is primarily a default statute. Its default provisions can be overridden by the settlor's intent as expressed in the trust instrument. However, 14 CUTC provisions are mandatory²¹ and cannot be modified. The CUTC mandatory rules below are consistent with the UTC, except for item 5.

1. Minimum requirements for creating a trust. CUTC Part 4 governs what is required to create a trust, which is consistent with Colorado trust law generally. Under CRS § 15-5-402(1), a trust is only created if (1) a settlor with capacity indicates intention to create a trust, or a statute, judgment, or decree authorizes the creation of a trust; (2) the trust has a definite beneficiary; (3) the trustee has duties to perform; and (4) the same person is not the sole trustee and beneficiary. Regarding the last factor, a person is not the "sole" beneficiary, even if that person is

the sole current distributee, so long as there are beneficiaries with future interests in the trust.²²

2. Trustee's duties. A trustee must act in good faith and in accordance with the trust's terms and purposes and the beneficiaries' interests. The trustee's duties are substantially set forth in CUTC Part 8.²³

3. Trust purpose and benefits. A trust must be for the benefit of its beneficiaries and have a purpose that is lawful, not contrary to public policy, and possible to achieve.²⁴

4. Court's powers. The terms of the trust will not prevail over the court's power to modify or terminate a trust as governed by CRS §§ 15-5-410 to -416.

5. Creditor's claims. UTC Part 5 is currently not part of the CUTC. Part 5, concerning creditor's claims, is reserved in the CUTC. If Part 5 is added to the CUTC in the future, it is likely that another mandatory provision will be added to state that a settlor cannot modify the effect of a spendthrift provision or the rights of certain preferred creditors and assignees as set forth in the Code.

6. Bonds. The court has the power to require, dispense with, modify, or terminate a bond.²⁵

7. Trustee compensation. The court has the power to adjust a trustee's compensation when the trust terms provide for compensation that is unreasonably low or high.²⁶

8. Notice. The trustee has a duty 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 25 years of age.²⁷

9. Information requests. The trustee has a duty under CRS § 15-5-813(1) to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the trust administration. Even though a settlor can waive a trustee's duty to provide notice of a trust to a qualified beneficiary who is under age 25 and who is not a current beneficiary, if that person discovers his or her interest and requests such information, the trust agreement cannot waive the trustee's obligations to provide such information to the qualified beneficiary.²⁸

10. Exculpatory provisions. CRS § 15-5-1008 governs the effectiveness of an exculpation of trustee provision.²⁹ Such terms may be invalidated for several reasons. As a practice pointer, where the drafting attorney will serve as trustee, or if a bank or other trust company will serve as trustee and has requested that certain language be included in the trust agreement, those provisions should be specifically called to the attention of the settlor in writing. A drafting attorney/trustee should also suggest to the client that he or she obtain independent counsel to review exculpatory terms.³⁰

11. Rights of non-trustees and non-beneficiaries. CRS §§ 15-5-1010 to -1013 set forth the rights of persons other than a trustee or beneficiary who deal with trustees.

12. Limitation periods. Periods of limitation for commencing a judicial proceeding contesting the validity of a trust or action against a trustee cannot be modified by the terms of a trust.³¹

13. Settlor's intent. Consistent with the terms of the trust and the CUTC, the court has the power to take such action and exercise such jurisdiction not inconsistent with the settlor's intent as may be necessary in the interests of justice.³² The UTC language was altered in the CUTC to emphasize consideration of the settlor's intent.

14. Jurisdiction and venue. The subject matter jurisdiction of the court and venue for commencing a proceeding are provided in CRS §§ 15-5-203 and -204, unless the trust instrument requires alternative dispute resolution. The district court (or the City and County of Denver Probate Court) has jurisdiction over proceedings concerning trusts and their administration.

Governing Law and Place of Administration

The CUTC allows the settlor to designate the law that applies to the terms of the trust, unless designating the law of that jurisdiction is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.³³ The jurisdiction selected need not have any other connection to the trust. However, public policies in other states may invalidate the settlor's choice of law and

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As a practice pointer, where the drafting attorney will serve as trustee, or if a bank or other trust company will serve as trustee and has requested that certain language be included in the trust agreement, those provisions should be specifically called to the attention of the settlor in writing.
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should be reviewed carefully in this regard. If the settlor does not select a governing law, the law of the jurisdiction with the most significant relationship to the matter at issue will apply.

Principal Place of Administration

The settlor can choose the principal place of administration, but only if the trustee's principal place of business is located in or the trustee is a resident of that jurisdiction, or the

administration occurs in the jurisdiction.³⁴ CRS § 15-5-108(5) specifies a process for providing notice to beneficiaries when the trustee intends to change the place of administration.

Notice

CRS § 15-5-109(1) to (3) addresses a trustee's obligations regarding notice of matters set forth in the CUTC. Notice of a judicial proceeding (other than a judicial settlement agreement under the CUTC) is not governed by the CUTC, but rather by applicable rules of civil procedure, the CUPC, and the Colorado Rules of Probate Procedure.³⁵

Nonjudicial Settlement Agreements

The CUTC allows certain persons impacted by an issue involving trusts to reach an enforceable agreement without court approval.³⁶ Nonjudicial settlement agreements will not be valid if they would violate a material purpose of the trust or if the agreement includes terms and conditions that could not be properly approved by a court.³⁷ Persons whose interests may be affected by a nonjudicial settlement agreement can request that the court approve or disprove the settlement agreement.³⁸

Coordination with Other Statutes

The CUTC expressly incorporates the rules of construction applicable to trusts that exist in other Colorado statutes,³⁹ such as CUPC Article 11, Part 7 governing class gifts; the divorce revocation statute, CRS § 15-11-802; the Uniform Disclaimer of Property Interests Act;⁴⁰ and many other statutes that are familiar to trust and estate practitioners.

Part 2: Judicial Proceedings

The CUTC, consistent with current Colorado law, provides that a court can intervene in matters of trust administration to the extent its jurisdiction is invoked by an interested person, or as provided by law.⁴¹

The CUTC expressly allows a settlor to choose a county of venue.⁴²

Trust Registration

Trust registration is no longer mandatory, but a trustee might choose to register the trust

for venue purposes or to establish a place of administration.⁴³ Upon registration, the trustee must provide notice to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the terms of the trust.⁴⁴ A trustee may release a trust registration,⁴⁵ which replaces the former judicial process for release.

Judicially Approved Settlement Agreements

The UTC does not have a provision addressing the process for judicially approving a settlement agreement. Colorado practitioners wanted clarity on this issue, similar to that in the CUPC,⁴⁶ and added CRS § 15-5-210 for that purpose. Interested persons as defined in the CUTC (not the CUPC) must receive notice of any request for a judicially approved settlement agreement, and the settlement must be in writing. A court-approved settlement will be binding on all parties thereto if the court finds that the matter being settled was brought in good faith and that the proposed settlement is just and reasonable.

The new definition of interested person (discussed above) will most pointedly affect judicial proceedings involving trusts. Litigants will now have the ability to limit the number of participants in a judicial settlement proceeding to those persons who have important interests in the outcome of the issues that are the subject of the proceedings. There will still be times when a prudent litigant will choose to include all trust interests in a proceeding (e.g., when a trust modification or termination is at issue), but in many cases the smaller the crowd, the quicker and generally less expensive the result.

Part 3: Representation

Representation, also known as virtual representation, allows a person represented by another person to be bound by notice given to that other person. Representation under Part 3 is useful when settling a dispute, giving notice of trust registrations, identifying individuals entitled to receive accountings, acquiring consents, and other matters. Pursuant to CRS § 15-5-109(1) to (3), the representation rules under Part 3 *do not* apply for the purpose of giving notice of a judicial proceeding; notice

of a judicial proceeding must comply with the Colorado Rules of Civil Procedure, the Colorado Rules of Probate Procedure, and the CUPC.⁴⁷ An exception to this rule is a “judicially approved settlement” under CRS § 15-5-210, which expressly allows notice to be given as provided in Part 3.

Part 4: Trust Creation, Validity, Modification, and Termination

The CUTC has specific provisions governing the creation, modification, and termination of trusts and their validity.

Creating a Trust

The CUTC sets forth the methods of creating a trust and the requirements for creation.⁴⁸ Three of the four methods of creating a trust require a transfer of property (including a testamentary transfer by pour-over will), although these methods are not exclusive. Trust creation can be accomplished by declaration, power of appointment, statute, judgment, or decree authorizing the creation.

Regardless of the method of creation, a trust can nonetheless fail if it does not meet certain requirements for creation. For example, the settlor must have capacity and the trust must have a definite beneficiary, or the trust must be a charitable trust, pet trust, or other noncharitable trust authorized by statute.⁴⁹ These requirements cannot be modified by the trust agreement.⁵⁰ A trust need not be evidenced by a written instrument; an oral trust and its terms may be established by clear and convincing evidence.⁵¹

Pet Trusts and Other Noncharitable Trusts

Existing statutes governing pet trusts and other noncharitable trusts without a definite beneficiary (such as cemetery trusts) were moved into the CUTC.⁵²

Modification or Termination of a Trust

The CUTC governs modification or termination of a noncharitable trust by consent and court approval.⁵³ The ability of a settlor and beneficiaries to join to amend or terminate an irrevocable trust was recognized by the Colorado Court of Appeals in *In re Green Valley Financial*

Holdings.⁵⁴ A settlor’s consent can be given by a representative only in limited circumstances. An agent under a power of attorney can give consent to the extent expressly authorized in the document or the trust.⁵⁵ A conservator or guardian for the settlor can consent with the approval of the court.⁵⁶

The official comments to the UTC provide that “the settlor’s right to join the beneficiaries in terminating or modifying a trust under Section 411 does not rise to the level of a taxable power.”⁵⁷ A nontaxable result in such circumstances has been found in private letter rulings.⁵⁸ However, the issue of whether a settlor’s actual participation in modification of a trust may have an adverse tax result should be considered before proceeding under CRS § 15-5-411 to modify or terminate a trust.

Without the settlor’s consent, a noncharitable trust may be terminated upon the consent of all beneficiaries if the court concludes either that (1) continuing the trust is not necessary to achieve any material purpose of the trust, or (2) modification is not inconsistent with a material purpose of the trust.⁵⁹ A spendthrift provision is not presumed to constitute a material purpose of the trust.⁶⁰ If the spendthrift provision is intended to be a material term of the trust, it is best for a settlor to expressly state such intent in the trust.

If less than all beneficiaries consent to a proposed modification or termination, the court may still approve the modification or termination if it finds that the trust could have been terminated or modified if all the beneficiaries had agreed and the interests of a nonconsenting beneficiary will be adequately protected.⁶¹

Unanticipated Circumstances

The court may also modify a trust’s administrative or dispositive terms or terminate a trust as a result of circumstances unanticipated by the settlor, if doing so will further the trust’s purposes.⁶² Modification should be in accordance with the settlor’s probable intention.⁶³ The court can also modify a trust’s administrative terms if the existing terms would result in impractical, wasteful, or impaired trust administration.⁶⁴ This provision broadens the court’s power to terminate or modify a trust in a manner

consistent with the provisions of *Restatement (Third) of Trusts* § 66.⁶⁵

Cy Pres

The doctrine of cy pres is codified in the CUTC at CRS § 15-5-413.⁶⁶

Uneconomic Trusts

Pursuant to CRS § 15-5-414(1), a trust worth less than \$100,000 may be terminated by the trustee, after notice to the qualified beneficiaries, if the trustee concludes that the value of the trust property is not sufficient to justify the cost of administration. In addition, a court may modify or terminate a trust, or remove a trustee, if the court determines that the trust is uneconomical.⁶⁷

Correction of Mistakes and Modification to Achieve Tax Objectives

CRS §§ 15-5-415 and -416 govern reformation to correct mistakes and modification to achieve a settlors' tax objectives. These sections were previously located at CRS §§ 15-11-806 and -807.

Combination or Division of Trusts

A trustee has broad power to combine or divide trusts without court approval after notice to qualified beneficiaries.⁶⁸

Part 6: Revocable Trusts

Part 6 of the CUTC, CRS §§ 15-5-601 to -604, was previously located at CRS §§ 15-16-702 to 704.

Part 7: Office of Trustee

Nonexclusive methods are identified in the CUTC for accepting or declining a trusteeship.⁶⁹ This broadening of the methods for accepting or declining trusteeship is an incorporation of law enacted in response to *In re Estate of McCreath*.⁷⁰

Bond

A trustee may be required by the court to give a bond, and this provision cannot be modified by the trust agreement.⁷¹

Trustee Resignation

CRS § 15-5-705(1)(a) identifies a default method for resigning as trustee by providing 30-day

notice to the qualified beneficiaries, the settlor (if then living), and all cotrustees. A trustee can also resign with court approval.⁷²

Trustee Removal

The court's power to remove a trustee is limited to circumstances in which there has been

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Without the settlor's consent, a noncharitable trust may be terminated upon the consent of all beneficiaries if the court concludes either that (1) continuing the trust is not necessary to achieve any material purpose of the trust, or (2) modification is not inconsistent with a material purpose of the trust.
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a serious breach of trust, where the lack of cooperation among cotrustees impairs the administration of the trust, or where the removal would be in the best interests of the beneficiaries because of the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively.⁷³

The court also has the power to remove a trustee where all of the qualified beneficiaries consent (or there has been a substantial change in circumstances) and the removal serves the interests of all beneficiaries, the removal is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.⁷⁴ This CUTC section may provide relief to beneficiaries who are dissatisfied with an existing trustee but were not given a removal power in the terms of the trust agreement (because, for example, the trust was drafted at a time when it was less common to include a removal clause in the trust agreement). The assessment of whether removing a trustee would be in the interests of the beneficiaries is not based on the interests of the beneficiaries as defined by themselves, but rather on the beneficial interests of the beneficiaries as provided in the trust.⁷⁵

Trustee Compensation

A trustee is entitled to compensation regardless of whether the trust agreement specifies the amount.⁷⁶ The reasonableness of a trustee's compensation will be determined under the Cost and Compensation Act.⁷⁷ The court's ability to adjust a trustee's compensation is a power that cannot be modified.⁷⁸

Expense Reimbursement

A trustee is entitled to reimbursement for expenses that were *properly* incurred in the administration of the trust.⁷⁹ A trustee can also be reimbursed for expenses not properly incurred in the administration of the trust to prevent unjust enrichment to the trust.⁸⁰

Cotrustees

Default rules govern cotrustees and can be changed by a trust's express terms. Cotrustees act by majority decision if they are unable to achieve unanimous agreement.⁸¹ If there is a vacancy in the cotrusteeship, the other

cotrustees may act for the trust without the need to fill the vacancy.⁸² Rules address delegation among cotrustees and liability of cotrustees for actions of other cotrustees.⁸³

Vacancy in Trusteeship

CRS § 15-5-704(2) to (4) provides default rules for filling a trustee vacancy, including priority for serving as a successor trustee. Courts retain authority to appoint an additional trustee or special fiduciary, even when there is no vacancy, if necessary for the administration of the trust.⁸⁴

Part 8: Trustee’s Duties and Powers

The CUTC extensively enumerates the duties and powers of the trustee, commencing with the duty to administer a trust in good faith, in the best interests of the beneficiaries, and in accordance with its terms.⁸⁵ This duty cannot be modified by the trust terms.⁸⁶ Part 8 also has extensive provisions on loyalty, impartiality, prudence, trustee’s delegation of duties, duty to keep records and identify trust property, defense of claims, and duty to inform and report.

The duties to keep qualified beneficiaries reasonably informed under CRS § 15-5-813(1) are mandatory and cannot be changed by the trust terms.⁸⁷ The duty to notify qualified beneficiaries within 60 days of accepting trusteeship is also a mandatory term, except with regard to certain qualified beneficiaries who have not attained age 25.⁸⁸ The duties regarding information to distributees and permissible distributees regarding irrevocable trusts are also mandatory.⁸⁹

Powers

A trustee with discretionary power of distribution must exercise that power in good faith, even if terms such as “sole” or “absolute” discretion are used to describe the trustee’s authority.⁹⁰ A trustee’s exercise of discretion will necessarily be governed by the terms and purposes of the trust, the interests of the beneficiaries, and relevant fiduciary duties. A trustee will not be liable for the exercise or failure to exercise a discretionary power if done honestly and with proper motive.⁹¹

As to tax savings matters, the CUTC limits a trustee’s authority to make distributions

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 A trustee is also not liable for a breach of trust that resulted from the trustee’s lack of knowledge about the happening of an event (such as marriage, divorce, or death) so long as the trustee has exercised reasonable care to ascertain the happening of the event.
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to himself or herself as a beneficiary. Such distributions must be made only in accordance with an ascertainable standard. Further, the trustee cannot make distributions that would satisfy the trustee’s personal legal obligations.⁹² These provisions⁹¹ do not apply to a revocable trust, a trust that qualifies for the federal estate or gift tax marital deduction, or an IRC § 2503(c)

trust created for a minor.⁹³ These are default provisions and may be expressly overridden by the trust.

A trustee has all of the powers conferred by the trust and other powers appropriate to achieve the investment objectives or management of the trust, and the CUTC expressly incorporates the Colorado Fiduciaries’ Powers Act.⁹⁴

The CUTC grants specific powers to a trustee,⁹⁵ most of which are very similar to those found in the Colorado Fiduciaries’ Powers Act. All powers are subject to alteration by the trust. One noteworthy CUTC trustee power is the power to take action with respect to the trust property to address concerns about the possible violation of environmental laws.⁹⁶ The trustee also the power to settle claims, including through ADR.⁹⁷

Part 10: Liability of Trustee and Rights of Persons Dealing with Trustee

The CUTC enumerates a variety of nonexclusive remedies for breach of trust.⁹⁸ A trustee who commits a breach of trust, in addition to other remedies, is liable to the beneficiaries affected.⁹⁹ Where more than one trustee is liable for a breach, a trustee is entitled to contribution from cotrustees.¹⁰⁰ A trustee is not entitled to contribution if that trustee was more at fault than the other cotrustees, or if the trustee committed the breach in bad faith or with reckless indifference to the trust’s purposes or the interests of the beneficiaries.¹⁰¹ If the trustee received a benefit from the breach, the trustee is not entitled to contribution to the extent of the benefit received.¹⁰²

Statutes of Limitation for Breaches of Trust

A beneficiary may not commence an action against a trustee for breach of trust more than one year after the date that the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.¹⁰³ To take advantage of this statute of limitations, the report sent by the trustee must provide sufficient information so the beneficiary knows of the potential claim or should have inquired into its

existence. In contrast, under the former statute, “full” disclosure was required and the statute of limitations applied only to a final account.¹⁰⁴ The previous statute provided a six-month statute of limitations, which period began on the date a beneficiary *received* the report.¹⁰⁵

If the one-year rule does not apply, a beneficiary may bring a breach of trust action within three years of the first to occur of:

1. The removal or resignation of the trustee.
2. The termination of the beneficiary’s interest in the trust.
3. The termination of the trust.

Other Means of Foreclosing Claims

The expirations of the statutes of limitation are not the exclusive means of defending claims against a trustee. The trustee may have received support for his or her action by the consent of the beneficiaries, a release, or the approval of the court with adequate notice. In addition, depending on the cause of action, other statutes of limitation, equitable principals, and other laws may apply to foreclose an action against a trustee.

Defenses and Exculpation of Trustee

If a trustee reasonably relies on the trust terms, the trustee will not be liable to a beneficiary for a breach of trust that resulted from that reliance.¹⁰⁶ A trustee is also not liable for a breach of trust that resulted from the trustee’s lack of knowledge about the happening of an event (such as marriage, divorce, or death) so long as the trustee has exercised reasonable care to ascertain the happening of the event.¹⁰⁷ Similar protections exist in other sections of the CUTC to protect a trustee who does not have knowledge of a particular event.¹⁰⁸

The trustee is not liable to a beneficiary for a breach of trust if the beneficiary consented, released the trustee from liability, or ratified the transaction.¹⁰⁹ This defense does not apply if the beneficiary did not know of rights or facts relating to the breach.¹¹⁰ Practitioners may want to review procedures for obtaining consent and releases to ensure that the beneficiaries had sufficient information.¹¹¹

The trust may include an exculpation clause relieving the trustee of liability, but such clause

will be unenforceable if (1) it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purpose of the trust or the interests of the beneficiaries, or (2) the clause was inserted as a result of an abuse by the trustee of a confidential relationship with the settlor.¹¹² CRS § 15-5-1008 is a mandatory provision that cannot be modified by the trust terms.¹¹³

Personal Liability of a Trustee

Generally, a trustee will not be personally liable on contracts or transactions properly entered into in the course of administration.¹¹⁴ A trustee may be personally liable for torts committed in the course of administering a trust, including liability for violations of environmental laws, if the trustee is personally at fault.¹¹⁵

Where the trustee holds an interest as a general partner in a partnership, the trustee is not personally liable on a contract entered into by the partnership, so long as the fiduciary capacity of the trustee was adequately disclosed.¹¹⁶ Nor is the trustee personally liable for torts committed by the partnership unless the trustee was personally at fault.¹¹⁷ These immunities do not apply if the trustee, as an individual, or the trustee’s spouse, descendants, siblings, or parents (or the spouse of any one of them) holds an interest in the partnership.¹¹⁸ The immunities further do not apply to the settlor of a revocable trust that holds an interest in a partnership as a general partner.¹¹⁹

Protection for Persons Dealing with Trustee

The CUTC affords rights to persons other than a trustee or beneficiary.¹²⁰ These provisions are mandatory and cannot be modified by the terms of a trust.¹²¹ For example, a person who acts in good faith in dealing with a trustee, without knowledge that the trustee is acting improperly, is protected from liability in the same manner as if the trustee had properly exercised the trustee’s power.¹²²

As to third parties dealing with trustees and settlors who desire to keep trust terms confidential, the CUTC allows for a “certification of trust” to provide a safe harbor to persons relying on the trustee’s authority to act.¹²³ A person

receiving a certification of trust may nonetheless require a trustee to furnish the relevant parts of the trust agreement that substantiate the information set forth in the certification of trust.¹²⁴ A trustee cannot use a certification of trust to satisfy a trustee’s obligations to furnish information to a beneficiary.


Part 13: Life Insurance Owned by Trust

Part 13 of the CUTC was previously located at CRS §§ 15-16-601 et seq.

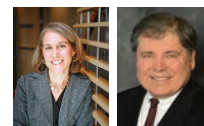
Part 14: Miscellaneous

Part 14 contains miscellaneous provisions on the application and construction of the CUTC and addresses electronic records and signatures.

Conclusion

By enacting the CUTC, Colorado has created a code for the administration of trusts that is comprehensive and will increase uniformity across jurisdictions. Practitioners must become familiar with the CUTC to ensure that trusts they draft are in compliance with its provisions. 

This article is based on an outline for a presentation by the CBA Uniform Trust Committee members at the 2018 Estate Planning Retreat of the Trust and Estate Section prepared by Constance T. Eyster and reviewed by committee members Stephen Brainerd, Marc Darling, and Darla Daniel.



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CUTC Notification Requirements*

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration.	CRS § 15-5-108(5)	Not less than 60 days before initiating the transfer	Yes
If the trustee registers a trust, the trustee shall provide notice of the registration in writing to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the term of the trust.		60 days after filing the trust registration statement	Yes
A trustee who changes the principal place of administration may withdraw a previously filed trust registration statement by providing notice to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the terms of the trust.	CRS § 15-5-209		Yes
The trustee of a trust with a total value of less than \$100,000 may terminate a trust after notice to the qualified beneficiaries if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.	CRS § 15-5-414		Yes
After notice to qualified beneficiaries, the trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.	CRS § 15-5-417		Yes
Upon revocation or amendment of a trust by fewer than all the settlors, the trustee must notify the other settlors of the revocation or amendment.	CRS § 15-5-602	Promptly	Yes

*This chart is intended to address the most substantial notice obligations. It does not address matters of virtual representation, nor does it address which individuals will be treated as "qualified beneficiaries," beyond those identified in CRS § 15-5-102(16). For statutes addressing individuals entitled to notice, see CRS §§ 15-5-110 and CUTC Part 3.

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
<p>The time to bring a proceeding to contest the validity of a revocable trust after the death of the settlor can be limited by the trustee to 120 days, if the trustee provided a copy of the trust instrument to the litigant and a notice informing that person of the trust's existence, the trustee's name and address, and the time allowed for commencing a proceeding to contest the validity of a trust.</p>	<p>CRS § 15-5-604</p>		<p>Yes</p>
<p>One way for a trustee to resign is by providing notice to the qualified beneficiaries.</p>	<p>CRS § 15-5-705</p>	<p>30 days</p>	<p>Yes</p>
<p>If a trustee receives compensation from an investment company or investment trust for providing investment advisory or investment management services, the trustee may notify qualified beneficiaries of the rate and method by which that compensation was determined.</p>	<p>CRS § 15-5-802(6)</p>	<p>Annually</p>	<p>Yes</p>
<p>The trustee shall keep the qualified beneficiaries 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.</p> <p>The trustee's duty to respond to requests of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust cannot be modified by the trust instrument.</p>	<p>CRS § 15-5-813(1) See also CRS § 15-5-105(2)(i)</p>		<p>No</p>
<p>Upon request of a qualified beneficiary, the trustee shall promptly furnish a copy of the trust portions of the trust that describe or affect the beneficiary's interest.</p>	<p>CRS § 15-5-813(2)(a)</p>		<p>Yes</p>

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
<p>The trustee must notify qualified beneficiaries of the acceptance of the trusteeship and the trustee's name, address, and telephone number.</p> <p>This obligation does not apply to a trustee who accepts a trusteeship before January 1, 2019, to an irrevocable trust created before that date, or to a revocable trust that becomes irrevocable before that date.</p>	<p>CRS § 15-5-813(2)(b) <i>See also</i> CRS § 15-5-105(2)(h)</p>	<p>60 days after accepting a trusteeship</p>	<p>No**</p>
<p>The trustee must provide notice of the existence of an irrevocable trust, identity of the settlor or settlors, the right to request portions of the trust instrument that describe his or her interest, the right to a trustee's report, and the right to request trustee reports to qualified beneficiaries.</p> <p>This obligation does not apply to a trustee who accepts a trusteeship before January 1, 2019, to an irrevocable trust created before that date, or to a revocable trust that becomes irrevocable before that date.</p>	<p>CRS § 15-5-813(2)(c) <i>See also</i> CRS § 15-5-105(2)(h)</p>	<p>60 days after acquiring knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable</p>	<p>No**</p>
<p>**The rights described in CRS §§ 15-5-813(2)(b) and 15-5-813(2)(c) to provide notice of the existence of an irrevocable trust, identity of the trustee, and the right to request trustee reports is not modifiable with respect to permissible distributees and to qualified beneficiaries who have attained the age of 25.</p>	<p>CRS § 15-5-813(2)(b) and CRS § 15-5-813(2)(c) <i>See also</i> CRS § 15-5-105(2)(h)</p>		<p>No</p>
<p>The trustee must notify qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.</p>	<p>CRS § 15-5-813(2)(d)</p>	<p>In advance</p>	<p>Yes</p>

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
The trustee shall send to distributees and permissible distributees of income or principal, and to other qualified beneficiaries who request it: <ol style="list-style-type: none"> a. A report of the trust property, liabilities, receipts, and disbursements (including trustee compensation). b. A list of the trust assets and, if feasible, their market values. 	CRS § 15-5-813(3)(a)	At least annually and upon termination of the trust	Yes
Upon a vacancy in the trusteeship, unless a cotrustee remains in office, the former trustee shall send a report to the qualified beneficiaries. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.	CRS § 15-5-813(3)(b)		Yes
The trustee may send notice of a proposal of distribution upon termination of a trust to beneficiaries. The right of a beneficiary to object terminates after 30 days if the beneficiary received notice of the distribution proposal and was informed of the right to object and the time for doing so.	CRS § 15-5-817		Yes
The trustee may give written notice to qualified beneficiaries of the intent to purchase life insurance as an asset of the trust, and by doing so limit the trustee's liability for such purchase.	CRS § 15-5-1301(2)(a)(I)		Yes

NOTES

1. CRS §§ 15-5-101 et seq.
2. CRS § 15-5-1404. This section includes exceptions to retroactive application, such as allowing the court to apply the superseded law if application of the CUTC would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of the parties.
3. CRS § 15-5-102 excludes from the CUTC's scope business trusts, a security arrangement, a trust created by a deposit arrangement in a financial institution, or any arrangement under which a person is a nominee or escrowee for another.
4. The CUTC repeals Parts 1 to 7 of CRS Title 15, Article 16.
5. CRS §§ 15-16-801 et seq.
6. CRS §§ 15-16-901 et seq.
7. A revised Uniform Directed Trust Act will likely be introduced in the 2019 General Assembly. If enacted, it would replace the existing Directed Trustee statute. It is expected that the Directed Trustee statute and the Decanting Act will eventually be moved into (or near) the CUTC, once minor inconsistencies in definitions are addressed.
8. CRS §§ 15-10-501 et seq.
9. CRS §§ 15-10-601 et seq.
10. CRS § 15-5-408.
11. CRS § 15-10-201.
12. CRS § 15-5-103(2).
13. CRS § 13-22-201.
14. CRS § 15-5-103(4)(b) (emphasis added).

15. CRS § 15-5-103(10).
16. CRS § 15-5-103(16).
17. CRS § 15-5-110.
18. Other definitions of “terms of a trust” are found in the Uniform Principal and Income Act, CRS § 15-1-402(12); in the Uniform Power of Appointment Act, CRS § 15-2.5-102(19); and in the Colorado Uniform Trust Decanting Act, CRS § 15-16-902(28).
19. CRS § 15-5-111.
20. CRS § 15-5-113.
21. CRS § 15-5-105(2).
22. CRS § 15-5-402.
23. See CRS § 15-5-801 (Duty to Administer Trust); CRS § 15-5-802 (Duty of Loyalty); CRS § 15-5-814 (setting forth duties to act in good faith when exercising discretionary powers); CRS § 15-5-1008 (exculpatory term of a trust is unenforceable to the extent it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust and the beneficiaries’ interests).
24. See CRS § 15-5-404 (Trust Purposes).
25. CRS § 15-5-702.
26. CRS § 15-5-708(2).
27. CRS § 15-5-813(2). CRS § 15-5-105(2)(h) was included in the CUTC to allow settlors the option of preventing the trust or its contents from being disclosed to young persons who do not have a present interest in the trust. This latitude should not be confused with the trustee’s duties, which remain to act in the best interests of all beneficiaries, regardless of whether such persons are aware of the existence of the trust. Under former CRS § 15-16-303, a beneficiary was entitled to this information. A beneficiary under the CUPC includes any person who has any present or future interest in a trust, vested or contingent. The CUTC restricts the persons to whom a trustee owes duties of notification.
28. CRS § 15-5-105(2)(i).
29. CRS § 15-5-1008.
30. Although a detailed discussion is beyond the scope of this article, while it is permissible for a lawyer to serve both as scrivener and as fiduciary, the lawyer should be aware of the possible conflicts of interest that can arise in such circumstances, as set forth in Colo. RPC 1.7 and 1.8. Further information, specifically on exculpatory clauses in such circumstances, can be found in the ACTEC Commentaries on Model Rules of Professional Conduct (5th ed. 2016), and the ACTEC Engagement Letters: A Guide for Practitioners (3d. ed. 2017).
31. CRS § 15-5-1005.
32. CRS § 15-5-105(2)(m).
33. CRS § 15-5-107.
34. CRS § 15-5-108.
35. CRS § 15-5-109(4).
36. CRS § 15-5-111.
37. CRS § 15-5-111(3).
38. CRS § 15-5-111(5).
39. CRS § 15-5-112.
40. 15 CRS Article 11, Part 12.
41. CRS § 15-5-201.
42. CRS § 15-5-204(1).
43. CRS § 15-5-205.
44. CRS § 15-5-206.
45. CRS § 15-5-209.
46. CRS §§ 15-10-403, 15-12-1101, and -1102.
47. CRS § 15-5-109(4).
48. CRS §§ 15-5-401 and -402.
49. CRS § 15-5-402.
50. CRS § 15-5-105(2)(a).
51. CRS § 15-5-407.
52. CRS §§ 15-5-408, -409, and -409.5.
53. CRS §§ 15-5-411 et seq.
54. *In re Green Valley Fin. Holdings*, 32 P.3d 643, 646 (Colo.App. 2001).
55. CRS § 15-5-411.
56. *Id.*
57. Citing Treas. Reg. § 20.2038-1(a)(2).
58. PLR 201417001 (Dec. 10, 2013), www.irs.gov/pub/irs-wd/1417001.pdf.
59. CRS § 15-5-411(2)(a) and (b).
60. CRS § 15-5-411(3).
61. CRS § 15-5-411(5).
62. CRS § 15-5-412.
63. CRS § 15-5-412(1).
64. CRS § 15-5-412(2).
65. *Restatement (Third) of Trusts* §66 (American Law Institute 2003).
66. CRS § 15-5-413.
67. CRS § 15-5-414(a).
68. CRS § 15-5-417.
69. CRS § 15-5-701.
70. *In re Estate of McCreath*, 240 P.3d 413, 421 (Colo.App. 2009). See former CRS § 15-16-702(3)(b) (now CRS §15-602(3)(b)).
71. CRS § 15-5-702; CRS § 15-5-105(2)(f).
72. CRS § 15-5-705(1)(b).
73. CRS § 15-5-706(2)(a) to (c).
74. CRS § 15-5-706(2)(d).
75. See CRS § 15-5-103(11) (defining “interests of the beneficiaries”).
76. CRS § 15-5-708.
77. CRS §§ 15-10-601 et seq.
78. CRS § 15-5-105(2)(g).
79. CRS § 15-5-709(1)(a).
80. CRS § 15-5-709(1)(b).
81. CRS § 15-5-703(1).
82. CRS § 15-5-703(2).
83. CRS § 15-5-703.
84. CRS § 15-5-704.
85. CRS § 15-5-801. The adoption of a good faith standard was a point of controversy for some opponents of the UTC proposal in 2005.
86. CRS § 15-5-105(2)(b).
87. CRS § 15-5-105(2)(i).
88. CRS § 15-5-813(2)(b); CRS § 15-5-105(2)(h).
89. *Id.*
90. CRS §15-5-814(1)(a).
91. CRS § 15-5-814. These savings clauses currently exist in substantially similar form in CRS § 15-1-1401.
92. CRS § 15-5-814(2).
93. CRS § 15-5-814(4).
94. CRS § 15-1-816(1).
95. CRS § 15-5-816.
96. CRS § 15-5-816(1)(m).
97. CRS § 15-5-816(1)(n) and (w).
98. CRS § 15-5-1001.
99. CRS § 15-5-1002.
100. CRS § 15-5-1002(2).
101. *Id.*
102. *Id.*
103. CRS § 15-5-1005.
104. CRS. § 15-16-307 (repealed).
105. *Id.*
106. CRS § 15-5-1006.
107. CRS § 15-5-1007.
108. CRS § 15-5-103(4)(b) (exercise of power of appointment); CRS § 15-5-1010(5) and (6) (unknown births or unrecorded designated beneficiary agreement).
109. CRS § 15-5-1009.
110. *Id.*
111. CRS § 15-5-1009(1).
112. CRS § 15-5-1008.
113. CRS § 15-5-105(2)(j).
114. CRS § 15-5-1010(1).
115. CRS § 15-5-1010(2).
116. CRS § 15-5-1011(1).
117. CRS § 15-5-1011(2).
118. CRS § 15-5-1011(3).
119. CRS § 15-5-1011(4).
120. CRS §§ 15-5-1011 to -1013.
121. CRS § 15-5-105(2)(k).
122. CRS § 15-5-1012(1).
123. CRS § 15-5-1013(1).
124. CRS § 15-5-1013(5).

From: [Frank Hill](#)
To: [Melissa Anderson](#); [Steve Brainerd](#); [Darla Daniel](#); [Connie Eyster](#); [Corina Gerety](#); [Lisa Hardin](#); [Richard Hess](#); [Stan Kent](#); [Alison Leary](#); [Marianne Luu-Chen](#); [Julie McVey](#); [Kevin Millard](#); [Carl Stevens](#); [Jacob Tonda](#); [Tony Vaida](#); [Kirsten Waldrip](#); [Sonny Wiegand](#); [Carolyn Wiley](#); [Gene Zuspahn](#)
Cc: [Hayley Lambourn](#); [Dave Kirch](#)
Subject: ADDENDUM: OBF CUTC Revisions Subcomm Mtg 4/7/21
Date: Monday, April 5, 2021 10:27:00 AM
Attachments: [2021 04 05 Page 69 Appx A - Gen Adm Prov w kdm change-20210405-.pdf](#)

Folks,

Kevin's email to me and my status report "crossed in the mails." So, attached please find his 4-5-2021 contribution regarding his Note on Use discussed more fully in my 4-5-2021 Status Report.

And by way of explanation, in his transmittal email he makes the following comments:

I have looked back at your prior emails and my draft of the note on use dealing with the duty of trustees to monitor each other and the possibility of modifying that duty. I don't think that my note on use is inconsistent with the other existing notes on use, but I think it needs to be a general note to the trusteeship article, Rather than a note referring to any specific section of that article, because the note on use is relevant any time there is more than one trustee, no matter how the multiple trustee situation came to be. I did modify the wording slightly at the end, because it originally referred to "this paragraph" and should I think refer to either the trust agreement or the will. This slightly revised version is attached.

Respectfully submitted,

Frank Hill

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