

UTC ARTICLE 10 SUMMARY

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

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

UTC ARTICLE 10 COLORADO VERSION SUMMARY

The Goal of the Colorado UTC Subcommittee is to conform to the uniform law as originally drafted when possible, and only make substantive changes when necessary to provide clarity for the State of Colorado and its citizens.

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