

15-5-1011. Interest as a general partner.

- (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS SECTION OR UNLESS PERSONAL LIABILITY IS IMPOSED IN THE CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY FILED PURSUANT TO THE "COLORADO UNIFORM PARTNERSHIP ACT (1997)", ARTICLE 64 OF TITLE 7, C.R.S., OR THE "COLORADO UNIFORM LIMITED PARTNERSHIP ACT OF 1981", ARTICLE 62 OF TITLE 7, C.R.S.
- (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS SECTION, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS PERSONALLY AT FAULT.
- (c) THE IMMUNITY PROVIDED BY THIS SECTION DOES NOT APPLY IF AN INTEREST IN THE PARTNERSHIP IS HELD BY THE TRUSTEE IN A CAPACITY OTHER THAN THAT OF TRUSTEE OR IS HELD BY THE TRUSTEE'S SPOUSE OR ONE OR MORE OF THE TRUSTEE'S DESCENDANTS, SIBLINGS, OR PARENTS, OR THE SPOUSE OF ANY OF THEM.
- (d) IF THE TRUSTEE OF A REVOCABLE TRUST HOLDS AN INTEREST AS A GENERAL PARTNER, THE SETTLOR IS PERSONALLY LIABLE FOR CONTRACTS AND OTHER OBLIGATIONS OF THE PARTNERSHIP AS IF THE SETTLOR WERE A GENERAL PARTNER.

NOTES ON 1011

Underlined items were added by the 2005 CO committee

Key NCCUSL comments:

- This section protects a trustee from personal liability for contracts entered into or torts committed by a general or limited partnership of which the trustee was a general partner.
 - o Whether the trustee signs the contract or not
 - o Torts: trustee is protected from personal liability for torts of the partnership unless the trustee was personally at fault.
 - o Contracts: trustee is protected from personal liability IF the other party is on notice of the fiduciary relationship, either in the contract itself or counterparts, AND the trustee is not personally at fault.

2005 CO committee: this is based on 7-306 of the UPC

Review of current CO law:

- **1010** (limitations on personal liability of trustee) is generally consistent with our 15-16-306(1) through (3). See below.
- **1011** does not appear to have a counterpart in the Colorado Probate Code; 15-16-306 does not specifically address trustees holding partnership interests as general partners.

Colorado Fiduciaries' Powers Act, 15-1-804(2)(I) and (2)(ii) provide that a fiduciary has the power to:

- (I) To continue or to participate in the operation of any business activity or enterprise, including a sole proprietorship or partnership, existing at the inception of the estate or trust (in the case of an estate having due regard for those having claims against the estate) and to incorporate or otherwise change its form;
- (ii) Subject to the terms of the documents controlling the entity concerned, to retain or acquire interests in any entity in which the fiduciary does not have general liability, regardless of form, including but not limited to any partnership, corporation, limited liability company, and joint venture, and to become a shareholder, partner, member, or joint venturer.

C.R.S. 15-16-306 provides

§ 15-16-306. Personal liability of trustee to third parties

- (1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.
- (2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration, may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.
- (4) The question of liability as between the trust estate and the trustee individually may be determined:
 - (a) In a proceeding pursuant to section [15-10-504](#) ;
 - (b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or
 - (c) In other appropriate proceedings.
- (5) and (6) Repealed.

One Colorado case has interpreted 15-16-306 but it had nothing to do with partnership interests:

“It is a generally accepted rule that a trustee may be personally liable to third parties for obligations incurred during the administration of a trust. These obligations may arise out of torts committed by the trustee, *see, e.g., Restatement (Second) of Trusts* § 264 (1959); 3 A. Scott, *The Law of Trusts*, § 264 (3d ed. 1967), or as a result of owning property held in trust, *see, e.g., Gibbons v. Pan American Petroleum Corp.*, 262 F.2d 852 (10th Cir.1958); 3 A. Scott, *The Law of Trusts* § 265.3 (3d ed. 1967). According to the

complaint Lively's acts fall within one or other of these categories. Admittedly, in Colorado a trustee will only be personally liable if he is "personally at fault." [C.R.S. 15-16-306\(2\)](#). *Colorado Springs Cablevision, Inc. v. Lively*, 579 F. Supp. 252 (D. Colo. 1984).