

PART 1
GENERAL PROVISIONS AND DEFINITIONS
General Comment

The Uniform Trust Code is primarily a default statute. Most of the Code's provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

The remainder of the article specifies the scope of the Code (Section 102), provides definitions (Section 103), and collects provisions of importance not amenable to codification elsewhere in the Uniform Trust Code. Sections 106 and 107 focus on the sources of law that will govern a trust. Section 106 clarifies that despite the Code's comprehensive scope, not all aspects of the law of trusts have been codified. The Uniform Trust Code is supplemented by the common law of trusts and principles of equity. Section 107 addresses selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust's terms.

Changing a trust's principal place of administration is sometimes desirable, particularly to lower a trust's state income tax. Such transfers are authorized in Section 108. The trustee, following notice to the "qualified beneficiaries," defined in Section 103(13), may without approval of court transfer the principal place of administration to another State or country if a qualified beneficiary does not object and if the transfer is consistent with the trustee's duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. The settlor, if minimum contacts are present, may also designate the trust's principal place of administration.

Sections 104 and 109 through 111 address procedural issues. Section 104 specifies when persons, particularly persons who work in organizations, are deemed to have acquired knowledge of a fact. Section 109 specifies the methods for giving notice and excludes from the Code's notice requirements persons whose identity or location is unknown and not reasonably ascertainable. Section 110 allows beneficiaries with remote interests to request notice of actions, such as notice of a trustee resignation, which are normally given only to the qualified beneficiaries.

Section 111 ratifies the use of nonjudicial settlement agreements. While the judicial settlement procedures may be used in all court proceedings relating to the trust, the nonjudicial settlement procedures will not always be available. The terms of the trust may direct that the procedures not be used, or settlors may negate or modify them by specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve.

The Uniform Trust Code does not prescribe the rules of construction to be applied to trusts created under the Code. The Code instead recognizes that enacting jurisdictions are likely

to take a diversity of approaches, just as they have with respect to the rules of construction applicable to wills. Section 112 accommodates this variation by providing that the State's specific rules on construction of wills, whatever they may be, also apply to the construction of trusts.

PART 1

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Colorado Comments

The following changes have been made to the Uniform Trust Code as presented to the Colorado Legislature on 11/13/2013:

101 **Short Title.** Language was changed to refer to this act as Code rather than Article throughout Article 5 of Title 15. Uniform was dropped in the citation of "Colorado Uniform Trust Code" to read "Colorado Trust Code" to mirror the "Colorado Probate Code".

103 Definitions.

103 (2) A definition of "**Alternative Dispute Resolution**" was added to provide clarity for an enabling provision for alternative dispute resolution that was added at 113.

103 (4) Grammatical change.

103 (9) A definition for "**Interested Person**" was added to the Code to avoid confusion with the "Interested Person" definition appearing in the Colorado Probate Code, at 15-10-201(27), which is broader than the UTC definition of "Interested Person".

103 (17) Grammatical change to conform with 103 (13).

103 (20) "**Terms of a Trust**" Language was deleted that was speculative and would invite litigation and modifications were made reflecting parts of the "terms of the trust" definition found in the decanting statute. In addition, language was added to include the application of a nonjudicial settlement agreement and ADR. (Minutes December 17 and January 21, 2015)

105 Default and mandatory rules. (a) Language was changed to expand the scope of rights, powers and duties that the UTC might govern. (Minutes January 21 and March 17, 2016)

(b) (1) Language was added to ensure that these are clearly minimum requirements and they do not prohibit the settlor from creating additional requirements in the trust instrument. (Minutes January 21, 2016)

(b) (5) Language was deleted since part 5, (Creditor Claims; Spendthrift and Discretionary Trusts) will not be included in this legislation.

(b) (8) Language was changed to require notice to all current distributees or permissible distributees of any age. (Minutes January 21, February 18 and April 21, 2016)

(b)(13). Language was added, as set forth in 15-5-813(b)(2) and (b)(3), to insure in cases of judicial review the power of the court to construe the terms of the trust is constrained by settlor's intent so that settlors have more certainty as to the results of such judicial review. (Minutes March 2016).

(b) (14) Language was added to recognize that the settlor may require alternative dispute resolution in the trust instrument which can limit court review. (Minutes March 17, 2016)

106 Common law of trusts – principles of equity. Language was changed to mirror the language in Colorado Uniform Probate Code. (Minutes Jan 21, 2016)

108 Principal place of administration. (b) Language was moved from 15-5-205 to 108 which was considered a more logical location. (Minutes 7-16-2015)

108 (e) (2) Email address was added.

108 (f) Language was changed to provide clarity. (Minutes June 16, 2016)

109 Methods and waiver of notice in matters other than judicial proceedings. Language in heading was added to clarify that matters of notice covered in this section does not apply to judicial proceedings. Language was added to provide direction on nonjudicial methods of notice and waiver of notice. (Minutes 9-15-16)

111 Nonjudicial settlement agreement. The language was changed to eliminate the term interested person to avoid confusion with other “interested persons” definitions in Colorado Statutes. Additional language was changed to more accurately identify the parties that may enter into and be subject to a nonjudicial settlement agreement. (Minutes September 17, 2015)

112 Rules of construction. Language was added to recognize that the settlor may provide rules of construction in the trust governing instrument.

113 Alternative Dispute Resolution. A provision was added to recognize that the settlor may provide a required form of alternative dispute resolution in the trust governing instrument. However, the court has continuing authority, on a limited basis, to review ADR provisions provided for in a trust agreement or require ADR that is not in conflict with settlor's directions. This approach was taken from Colorado Revised Statutes § [13-22-206](#). (minutes July and August 2015)