

UTC ARTICLE 4 SUMMARY

Article 4, Creation, Validity, Modification and Termination of a Trust, has a self-evident set of rules. A trust is created when property is transferred to a trustee with the intent to create a trust relationship. There must be a definite beneficiary or the trust must be a charitable trust, a trust for animals (specially provided for as a kind of honorary trust), or a trust for a noncharitable purpose (also a kind of honorary trust).

It is not necessary to have a trust instrument to create a trust. Oral trusts are allowed, but the standard of proof for an oral trust is the higher "clear and convincing evidence" standard.

There are clear (default) rules that apply upon consent of the parties to the trust or that govern a court in modifying or terminating a trust. A court may apply the doctrine of cy pres to charitable trusts, when the charitable purpose is no longer obtainable. A comparable charitable purpose may be selected.

UTC ARTICLE 4 COLORADO VERSION SUMMARY

15-5-408 through 15-5-409.5: The proposed changes migrate the provisions of C.R.S. § 15-11-901, which deals with Pet and Honorary Trusts, to UTC Sections 15-5-408, 15-5-409, and 15-5-409.5, in order for them to be located in the sections reserved for them in the UTC numbering system.

15-5-410: The last sentence of 410(b) was added to conform to the 2010 version of the UTC.

15-5-411: The proposed changes to 15-5-411(a) detail the procedure when the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust. 15-5-411(b) provides for modification or termination of an irrevocable trust if all of the beneficiaries consent and the court concludes that either (1) continuance of the trust is not necessary to achieve any material purpose of the trust; or (2) is not inconsistent with a material purpose of the trust; the settlor's involvement is not required. As in the uniform law, a spendthrift provision is not presumed to constitute a material purpose.

15-5-415 and 15-5-416: The proposed changes migrate the provisions of C.R.S. §§ 15-11-806 and 15-11-807 relating to reformation to correct mistakes and modification to achieve the settlor's tax objectives, which would be migrated to UTC §§ 15-5-415 and 15-5-416.

No changes were made to §§ 15-5-401 through 15-5-407, 15-5-412 through 15-5-414, and 15-5-417.