

PART 10
LIABILITY OF TRUSTEES AND RIGHTS
OF PERSONS DEALING WITH TRUSTEES

15-5-1001. Remedies for breach of trust.

(a) A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

(b) TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:

- (1) COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES;
- (2) ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST;
- (3) COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY, BY BEING SURCHARGED OR SANCTIONED, OR OTHER MEANS;
- (4) ORDER A TRUSTEE TO ACCOUNT, PROVIDE A STATUS OR FINANCIAL REPORT OR AN INVENTORY;
- (5) APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST;
- (6) RESTRAIN, RESTRICT OR SUSPEND THE TRUSTEE;
- (7) REMOVE THE TRUSTEE AS PROVIDED IN SECTION 15-5-706;
- (8) REDUCE OR DENY COMPENSATION TO THE TRUSTEE OR REQUIRE THE TRUSTEE TO DISGORGE COMPENSATION PREVIOUSLY PAID;

(9) SUBJECT TO SECTION 15-5-1012, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR CONSTRUCTIVE TRUST ON TRUST PROPERTY, OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS; OR

(10) ORDER ANY OTHER APPROPRIATE RELIEF.

(c) IF A REMEDY FOR A BREACH OF TRUST IS SOUGHT BY A CO-TRUSTEE, BENEFICIARY OR INTERESTED PERSON, OR THE COURT ACTS SUA SPONTE, THE PROVISIONS OF PART 5 OF ARTICLE 10 OF TITLE 15, C.R.S. SHALL APPLY.

15-5-1002. Damages for breach of trust.

(a) IN ADDITION TO OTHER REMEDIES PROVIDED BY THIS ARTICLE, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF:

(1) THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED; OR

(2) THE PROFIT THE TRUSTEE MADE, OR THE BENEFIT THE TRUSTEE RECEIVED (OTHER THAN REASONABLE COMPENSATION) BY REASON OF THE BREACH.

(b) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (b), IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.

15-5-1003. Damages in absence of breach.

(a) A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

(b) ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT.

15-5-1004. COMPENSATION AND COSTS. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE PROVISIONS OF PART 6 OF ARTICLE 10 OF TITLE 15, C.R.S. GOVERN THE ENTITLEMENT TO AND PAYMENT OF COMPENSATION AND COSTS TO TRUSTEES, THEIR ATTORNEYS AND THIRD PARTIES INVOLVED WITH TRUSTS.

~~**Attorney fees and costs.** IN A JUDICIAL PROCEEDING INVOLVING THE ADMINISTRATION OF A TRUST, THE COURT, AS JUSTICE AND EQUITY MAY REQUIRE, MAY AWARD COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, TO ANY PARTY, TO BE PAID BY ANOTHER PARTY OR FROM THE TRUST THAT IS THE SUBJECT OF THE CONTROVERSY.~~

15-5-1005. Limitation of actions against trustee.

(a) A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR BREACH OF TRUST MORE THAN ONE YEAR AFTER THE DATE THAT THE BENEFICIARY OR A REPRESENTATIVE ~~OF~~ PERSON WHO MAY REPRESENT AND BIND THE BENEFICIARY, AS PROVIDED IN PART 3 OF THIS ARTICLE, 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.

(b) A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS EXISTENCE.

(c) IF SUBSECTION (a) OF THIS SECTION DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN ~~FIVE~~ THREE YEARS AFTER THE FIRST TO OCCUR OF:

(1) THE REMOVAL, OR RESIGNATION, ~~OR DEATH~~ OF THE TRUSTEE;

(2) THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST; OR

(3) THE TERMINATION OF THE TRUST.

(d) FOR PURPOSES OF SUBSECTION (a) OF THIS SECTION, A BENEFICIARY IS DEEMED TO HAVE BEEN SENT A REPORT IF:

(1) IN THE CASE OF A BENEFICIARY HAVING CAPACITY, IT IS SENT TO THE BENEFICIARY; OR

(2) IN THE CASE OF A BENEFICIARY WHO, UNDER PART 3 OF THIS ARTICLE, MAY BE

REPRESENTED AND BOUND BY ANOTHER PERSON, IT IS SENT TO THE OTHER PERSON.

(e) THIS SECTION DOES NOT PRECLUDE AN ACTION TO RECOVER FOR FRAUD OR MISREPRESENTATION RELATED TO THE REPORT.

15-5-1006. Reliance on trust instrument. A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST ~~AS EXPRESSED IN THE TRUST INSTRUMENT~~ IS NOT LIABLE TO A BENEFICIARY FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.

15-5-1007. Event affecting administration or distribution. IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE OF EDUCATIONAL REQUIREMENTS, OR DEATH, AFFECTS THE ADMINISTRATION OR DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM THE TRUSTEE'S LACK OF KNOWLEDGE.

15-5-1008. Exculpation of trustee.

(a) A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT:

(1) RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES; OR

(2) WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.

(b) AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.

15-5-1009. Beneficiary's consent, release, or ratification.

(a) A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH, OR RATIFIED THE TRANSACTION CONSTITUTING THE BREACH, UNLESS:

(1) THE CONSENT, RELEASE, OR RATIFICATION OF THE BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR

(2) AT THE TIME OF THE CONSENT, RELEASE, OR RATIFICATION, THE BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

15-5-1010. Limitation on personal liability of trustee.

(a) EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

(b) A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF ADMINISTERING A TRUST, OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY IF THE TRUSTEE IS PERSONALLY AT FAULT.

(c) A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, OR ON A TORT COMMITTED IN THE COURSE OF ADMINISTERING A TRUST, MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE TRUSTEE IN THE TRUSTEE'S FIDUCIARY

CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE FOR THE CLAIM.

(D) THE QUESTION OF LIABILITY AS BETWEEN THE TRUST ESTATE AND THE TRUSTEE INDIVIDUALLY MAY BE DETERMINED:

(1) IN A PROCEEDING PURSUANT TO SECTION 15-10-504;

(2) IN A PROCEEDING FOR ACCOUNTING, SURCHARGE, INDEMNIFICATION, SANCTIONS, OR REMOVAL; OR

(3) IN OTHER APPROPRIATE PROCEEDINGS.

(E) A TRUSTEE IS NOT PERSONALLY LIABLE FOR MAKING A DISTRIBUTION OF PROPERTY THAT DOES NOT TAKE INTO CONSIDERATION THE POSSIBLE BIRTH OF A POSTHUMOUSLY CONCEIVED CHILD UNLESS, PRIOR TO THE DISTRIBUTION, THE TRUSTEE RECEIVED NOTICE OR ACQUIRED ACTUAL KNOWLEDGE THAT:

(1) THERE IS OR MAY BE AN INTENTION TO USE AN INDIVIDUAL'S GENETIC MATERIAL TO CREATE A CHILD; AND

(2) THE BIRTH OF THE CHILD COULD AFFECT THE DISTRIBUTION OF THE TRUST ASSETS.

(F) IF A TRUSTEE HAS REVIEWED THE RECORDS OF THE COUNTY CLERK AND RECORDER IN EVERY COUNTY IN COLORADO IN WHICH THE TRUSTEE HAS ACTUAL KNOWLEDGE THAT THE DECEDENT WAS DOMICILED AT ANY TIME DURING THE THREE YEARS PRIOR TO THE DECEDENT'S DEATH AND THE TRUSTEE DOES NOT HAVE ACTUAL NOTICE OR ACTUAL KNOWLEDGE OF THE EXISTENCE OF A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION, THE TRUSTEE SHALL NOT BE INDIVIDUALLY LIABLE FOR DISTRIBUTIONS MADE TO DEVISEES OR HEIRS AT LAW THAT DO NOT TAKE INTO CONSIDERATION THE DESIGNATED BENEFICIARY AGREEMENT.

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.

15-5-1012. Protection of person dealing with trustee.

(a) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A TRUSTEE, OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE TRUSTEE'S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY EXERCISED THE POWER.

(b) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH DEALS WITH A TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS OR THE PROPRIETY OF THEIR EXERCISE.

(c) A PERSON WHO IN GOOD FAITH DELIVERS ASSETS TO A TRUSTEE NEED NOT ENSURE THEIR PROPER APPLICATION.

(d) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A FORMER TRUSTEE, OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A FORMER TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.

(e) COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER THE PROTECTION PROVIDED BY THIS SECTION.

15-5-1013. Certification of trust.

(a) INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:

- (1) THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;
 - (2) THE IDENTITY OF THE SETTLOR;
 - (3) THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE;
 - (4) THE POWERS OF THE TRUSTEE IN THE PENDING TRANSACTION;
 - (5) THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST;
 - (6) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE TRUSTEE;
- AND
- (7) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE TAKEN.

(b) A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED BY ANY TRUSTEE.

(c) A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN REVOKED, MODIFIED, OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE INCORRECT.

(d) A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF A TRUST.

(e) A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER UPON THE TRUSTEE THE POWER TO ACT IN THE

PENDING TRANSACTION.

(f) A PERSON WHO ACTS IN RELIANCE UPON A CERTIFICATION OF TRUST WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED THEREIN ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING UPON THE CERTIFICATION.

(g) A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE UPON A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.

(h) A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO A CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR COSTS, EXPENSES, ATTORNEY FEES, AND DAMAGES IF THE COURT DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST INSTRUMENT.

(i) THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.