

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.**

15-5-1004. 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.

Comment [1]:

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Comment [3]:
SHORT TITLE: "Enactment Uniform Trust Code"

~~**Attorney fees and costs.** (a) 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.~~

~~_____ (b) EXCEPT AS PROVIDED IN SUBSECTION (d) OF THIS SECTION, IF ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, OR COURT-APPOINTED TRUSTEE OR FIDUCIARY DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH, WHETHER SUCCESSFUL OR NOT, HE OR SHE IS ENTITLED TO RECEIVE FROM THE TRUST HIS OR HER NECESSARY EXPENSES AND DISBURSEMENTS, INCLUDING REASONABLE ATTORNEY FEES AND COSTS INCURRED. EXCEPT AS LIMITED BY COURT ORDER OR BY THE TERMS OF THE TRUST, COMPENSATION MAY BE PAID AND EXPENSES REIMBURSED WITHOUT COURT ORDER.~~

~~_____ (c) IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, ANY LAWYER FOR A TRUSTEE, ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE TRUST, AND ANY PERSON APPOINTED BY THE COURT AS FIDUCIARY IS ENTITLED TO REIMBURSEMENT FOR COSTS AND REASONABLE COMPENSATION FROM THE TRUST.~~

~~_____ (d) ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, OR COURT-APPOINTED TRUSTEE OR FIDUCIARY WHO IS UNSUCCESSFUL IN DEFENDING THE PROPRIETY OF HIS OR HER ACTIONS FOR BREACH OF FIDUCIARY DUTY IS NOT ENTITLED TO RECOVER HIS OR HER EXPENSES, INCLUDING ATTORNEY FEES AND COSTS, UNDER THIS SECTION TO THE EXTENT OF ANY MATTER IN WHICH A BREACH OF FIDUCIARY DUTY IS FOUND.~~

~~_____ (e) IF ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, COURT-APPOINTED TRUSTEE OR FIDUCIARY, ANY LAWYER FOR THE ABOVE, OR ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE TRUST IS REQUIRED TO DEFEND HIS OR HER FEES OR COSTS, THE COURT SHALL CONDUCT A FEE REVIEW AT THE END OF SUCH PROCEEDING AND SHALL CONSIDER AND MAY AWARD THE FEES AND EXPENSES INCURRED BY SUCH PARTIES IN THE REVIEW OF THEIR FEES AND COSTS, INCLUDING BUT NOT LIMITED TO THEIR ATTORNEY FEES AND COSTS, AS THE COURT DEEMS EQUITABLE. AN AWARD OF FEES AND COSTS TO THE TRUSTEE, FIDUCIARY, LAWYER, OR BENEFICIARY MAY BE ORDERED PAID FROM, AND MAY BE ALLOCATED FROM THE TRUST, OR FROM THE PERSON, PARTY, OR ORGANIZATION THAT REQUIRED THE TRUSTEE, FIDUCIARY, LAWYER, OR BENEFICIARY TO DEFEND HIS OR HER FEES OR COSTS, AS THE COURT DEEMS JUST.~~

~~_____ (f) IF THE COURT DETERMINES THAT ANY PLEADINGS UNDER THIS SECTION WERE NOT SUBSTANTIALLY WARRANTED OR WERE BROUGHT IN BAD FAITH, THE COURT MAY AWARD FEES AND COSTS INCURRED BY THE TRUSTEE OR AFFECTED PARTIES IN RESPONDING TO THE PLEADINGS. NOTHING IN THIS SECTION IS INTENDED TO LIMIT ANY OTHER REMEDY AS PROVIDED BY LAW.~~

~~———— (g) FACTORS TO BE CONSIDERED AS GUIDES IN DETERMINING THE
REASONABLENESS OF ANY FEE REFERRED TO IN THIS SECTION INCLUDE THE FOLLOWING:
———— (1) THE TIME AND LABOR REQUIRED, THE NOVELTY AND DIFFICULTY OF THE
QUESTIONS INVOLVED, AND THE SKILL REQUISITE TO PERFORM THE SERVICES PROPERLY;
———— (2) THE LIKELIHOOD, IF APPARENT, THAT THE ACCEPTANCE OF THE PARTICULAR
EMPLOYMENT WILL PRECLUDE THE PERSON EMPLOYED FROM OTHER EMPLOYMENT;
———— (3) THE FEE CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR SERVICES;
———— (4) THE AMOUNT INVOLVED AND THE RESULTS OBTAINED;
———— (5) THE TIME LIMITATIONS IMPOSED BY THE CIRCUMSTANCES; AND
———— (6) THE EXPERIENCE, REPUTATION, AND ABILITY OF THE PERSON PERFORMING THE
SERVICES.~~