

# Holding Closely Held Business Assets in Trust

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*Trustees face challenges when administering trusts that own closely held business assets. This article discusses the standard of care that applies to trustees when making business decisions, the duty to inform and report, and the duty to diversify a concentrated position in a closely held business asset.*

A trustee or personal representative is often confronted with the possibility or necessity of holding and/or controlling a closely held business as part of the administration of an estate or trust.<sup>1</sup> When a trust holds an interest in a closely held business asset such as a partnership, limited liability company (LLC), or corporation, the trustee may end up acting in multiple roles, for example, as both the trustee of the trust holding the business and an officer or partner in the business. This article discusses a few of the many considerations for trustees in this situation, including (1) the standard of care

that generally applies (fiduciary standard versus business judgment rule), (2) the duty to inform and report about the business, and (3) the duty to diversify a large holding in a business. Because Colorado law frequently does not address these issues directly (or at all), this article also discusses instructive case law from other states.

#### **The Power to Hold Business Interests**

Colorado law specifically allows a trustee to hold interests in a business or enterprise.<sup>2</sup> The trustee is allowed to continue the business, create a successor business, and take any action that may be taken by shareholders, partners, or

members.<sup>3</sup> Furthermore, the trustee can vote or give proxies to vote with respect to stock and other securities.<sup>4</sup> Finally, Colorado statutes specifically permit a trustee to become a general or limited partner pursuant to the terms of the will or trust and partnership agreement.<sup>5</sup> Colorado law, however, does not address many of the issues that may arise as a result of a trust holding interests in a business.

#### **Trustee's Duty of Loyalty**

One of a trustee's fundamental duties is the duty of loyalty, which requires a trustee to act solely in the interests of the beneficiaries and

to properly manage or avoid any conflicts of interest.<sup>6</sup> When a trust holds an interest in a closely held business, a conflict of interest could arise for a trustee, particularly if the trustee also holds a separate individual interest in the same company. In such case, the trustee must be careful not to favor his or her individual interests over the interests of the trust.

Colorado law addresses these conflicts of interest; a conflict is presumed when a trustee enters into a transaction with a corporation or other enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.<sup>7</sup> As with other conflicts, the conflict can be overcome if the trust document authorizes the transaction, the beneficiaries consent after full disclosure, the court approves the transaction, the transaction involves a contract entered into before the trustee became a trustee, or the statute of limitations for challenging the transaction expires.<sup>8</sup>

### Standard of Care: Fiduciary Standard or Business Judgment Rule?

When a trustee holds an interest in a business that includes voting rights, a directorship, a managerial role, or other interests that require the trustee to make business decisions, the question arises whether the trustee's conduct with respect to the business is governed by the higher fiduciary standard of care applicable to a trustee or the business judgment rule.

The standard of care applicable to fiduciaries under Colorado law is generally set forth in the Colorado Uniform Trust Code (CUTC), CRS §§ 15-5-101 et seq.<sup>9</sup> In broad terms, a trustee must "administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with" the provisions of the CUTC.<sup>10</sup> In adhering to the proper standard of care, a trustee must act in accordance with a variety of fiduciary duties, including, among others, the duties to act prudently,<sup>11</sup> loyally,<sup>12</sup> impartially,<sup>13</sup> and in the best interests of the beneficiaries.<sup>14</sup> The standard of care for a fiduciary is among the highest standard under the law and is perhaps stated best in the oft-quoted case *Meinhardt v. Salmon*:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. . . .<sup>15</sup>

This higher duty of care for a trustee exists because of the imbalance of power between trustees and beneficiaries, which does not exist in an arm's length business relationship.

In addition to being held to a high standard of care, and despite the reality that trustees frequently work with a variety of professional advisors in administering a trust and discharging their duties, a trustee typically may not invoke a good faith reliance on the advice of counsel as a defense to a breach of fiduciary duty claim.<sup>16</sup> This is because a trustee always has the option to seek instructions from the court about a course of action, rather than relying on the advice of counsel, in determining how to proceed.<sup>17</sup>

The business judgment rule, in contrast, is relatively more lenient and provides some measure of protection to corporate officers and directors acting on behalf of the business. Under Colorado law, "officers, directors, and controlling shareholders of a corporation have a fiduciary duty to act in good faith and in a manner they reasonably believe to be in the best interests of the corporation and all of its shareholders."<sup>18</sup> In addition, officers and directors must act with care and are entitled to rely on certain information provided by advisors and experts.<sup>19</sup> In particular, officers and directors may rely on information, opinions, reports, and statements, including financial information, provided by officers or employees reasonably believed to be competent with respect to the information; or legal counsel, accountants, or other persons retained by the business as to matters involving expertise or skills reasonably believed to be within that person's competence.<sup>20</sup>

The business judgment rule shields officers and directors who have adhered to this standard from liability and "bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate

purposes."<sup>21</sup> The rule "reflects the reality that courts are ill equipped and infrequently called on to evaluate what are and must be essentially business judgments."<sup>22</sup> The standard for liability under Colorado's business judgment rule is codified in CRS § 7-108-402, which provides that there is no liability unless the plaintiff establishes that an act, omission, or decision was, among other things,

- not in good faith;
- not rationally believed to be in the best interests of the business;
- at least grossly negligent, unless the governing documents change the standard of liability to something less than gross negligence; or
- one to which the director failed to make an appropriate inquiry in light of particular facts or circumstances that would have alerted a reasonably attentive director of the need for an inquiry.<sup>23</sup>

The business judgment rule does not apply, however, to transactions in which the director has an interest.<sup>24</sup> In this respect, the rule is similar to the fiduciary standard of care, which also imposes a higher level of scrutiny on self-interested transactions.<sup>25</sup>

While Colorado law on the different standards of care is relatively well developed, there is no Colorado law directly addressing which standard of care applies to the trustee's conduct when a trust owns closely held business assets and the trustee is serving in dual roles. The limited statutory authority touching on this issue is potentially conflicting.

On the one hand, the CUTC provides some guidance as to the applicable standard of care and states that the corporate form cannot shield a trustee from the duty to act in the best interests of the beneficiaries:

In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.<sup>26</sup>

The comments to the Uniform Trust Code § 802 state that “[t]he trustee may not use the corporate form to escape the fiduciary duties of trust law.” For example, the trustee cannot hide behind corporate discretion to avoid the duty of impartiality.<sup>27</sup> The trustee’s responsibility is heavier if the trustee holds a large proportion of shares in a corporation or is in control or substantially in control of the corporation.<sup>28</sup> This position follows from the position taken in the Uniform Trust Code that if the trust holds the entire corporation, the “corporate assets are in effect trust assets.”<sup>29</sup>

On the other hand, Colorado law also provides that the business judgment rule applies when a fiduciary forms a successor entity for a family business:

A fiduciary may vote and otherwise deal with respect to interests in the family business as the fiduciary believes in the good faith exercise of the fiduciary’s business judgment, under the business judgment rule, to be necessary or appropriate to complete such formation on such a favorable basis.<sup>30</sup>

The business judgment rule also specifically applies when a trustee, in the formation of a successor entity, accepts a reduction in equity, voting, or control in the successor entity.<sup>31</sup>

There is no Colorado case law directly on point, but case law from other states follows two main approaches. One approach is that the trustee will be held to the higher standard of a fiduciary even when acting in a business capacity. This approach is illustrated by the New York case *In re Shehan*.<sup>32</sup> In *Shehan*, the fiduciary served not only as the personal representative under the decedent’s will, but also as an officer and director of a related corporation and as a voting trustee of voting trusts with control of the corporation.<sup>33</sup> The court examined the precedent and concluded that, regardless of whether the trust, estate, or fiduciary at issue owns a majority stake in the corporation, a fiduciary who serves in dual roles will be held to the higher fiduciary standard of care when acting with respect to the business.<sup>34</sup> The court explained its understanding of the precedent as holding that “a trustee whose conduct as officer and director is motivated by self-interest, to the

injury of beneficiaries whose welfare should be his sole concern, is guilty of a breach of trust . . . [and the holding] does not depend on majority ownership. . . . The corporate entity has always been disregarded where necessary to prevent fraud.”<sup>35</sup> The court then allowed broad discovery into the fiduciary’s conduct as an officer and director of the corporation with respect to the conduct in dispute.<sup>36</sup>

Georgia takes a different approach. Building off New York case law, in the *Rollins v. Rollins* series of cases, the Georgia courts developed an exception to the position that the fiduciary standard governs actions taken by the trustee acting in a business capacity where (1) the settlor indicates an intent that the corporate standard of care should control, and (2) the trust owns a minority interest in the business. In such a situation, the corporate standard of care will apply to the fiduciary’s corporate actions and duties.<sup>37</sup>

The Georgia Supreme Court later made clear that the appropriate standard of care should be determined based on the capacity in which the fiduciary was acting and that both standards of care can apply to the same person in a given transaction depending on the particular role the trustee is playing.<sup>38</sup> For example, in the breach of fiduciary duty at issue in *Rollins*, the defendants served both as partners of a family partnership in their individual capacities and as partners in their capacities as trustees of certain trusts.<sup>39</sup> The defendants amended the partnership agreement to name themselves as managing partners and change the distribution scheme. In addressing the issue, the court found that, with respect to a claim that defendants breached their duties when they voted in their individual capacities to amend the partnership agreement, their conduct would be judged by the corporate standard of care.<sup>40</sup> On the other hand, with respect to a claim that they breached their duties when they voted as trustees of the trusts to amend the partnership agreement, their conduct would be judged by the trustee standard of care.<sup>41</sup> In reaching this decision, the *Rollins* court looked to the settlor’s intent and the nature of the business interest to determine what standard of care applied to a fiduciary acting in a corporate role.

Based on the *Rollins* decisions, if a settlor wants the business judgment rule to apply to decisions made by the trustee acting in a corporate capacity, the safest course of action may be for the drafting attorney to include language to that effect in the trust. Given the deference to the settlor’s intent found throughout Colorado law, including such language in a trust may be persuasive to a Colorado court considering the issue. However, it is also important to remember that, while the provisions of the CUTC are generally default provisions that can be altered by the terms of the trust, the trustee always has a duty under Colorado law “to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries,”<sup>42</sup> at least with respect to actions taken in his or her capacity as trustee.

#### **Trustee’s Duty to Monitor Management of the Business**

A trustee may face a difficult decision if the business entity owned by the trust is being managed incompetently. While the trustee must be cognizant of the duty of loyalty and try to avoid potentially creating a conflict of interest by getting too involved in management, the trustee may also have a duty to interfere to protect the interests of the beneficiaries from a poorly run business.<sup>43</sup>

Colorado does not have any case law directly on point, but other states have addressed this issue. In the Mississippi case *Wilbourn v. Wilbourn*, for example, a mother and son were co-trustees of a marital trust that held interests in a holding company that gave the family a controlling interest in a bank.<sup>44</sup> The son’s actions in his roles as chair of the holding company board and bank board created friction with the bank and its employees, interfered with the bank’s daily management, and damaged the family’s relationship with the bank.<sup>45</sup> The holding company removed the son as chair, and his mother later successfully pursued court removal of him as co-trustee.<sup>46</sup> On appeal, the court upheld the removal order because, among other things, the son had taken actions in his own best interests and used the trust to ensure his position on the holding company board.<sup>47</sup>

A further complication may arise when the trustee holds an interest in a company and a beneficiary holds a position individually within that company. In this case the trust may have the power to elect or to remove and replace the beneficiary within the business entity. For example, in the New Jersey case *In re Koretzky's Estate*, the vast majority of the company was held by the estate.<sup>48</sup> The estate's executors allowed the election of beneficiaries (or spouses of beneficiaries) to the board of directors despite their knowledge that the directors had engaged in fraud.<sup>49</sup> In addition, the executors did not make sufficient investigation into the management of the company, including investigation into the officers' increased compensation during a period when the company's income was declining. For these and other reasons, the court affirmed the removal of the executors.<sup>50</sup> Under *Koretzky*, if election of a beneficiary to a position within the company is not in the best interests of the trust, the trustee should not elect the beneficiary to the position (or allow the beneficiary to continue serving in that position), even though the beneficiary may wish to hold the position.

Similarly, in *In re Hearthside Baking Co.*, a bankruptcy case, a trust was created for the decedent's three children. The trust held the vast majority of the interests in a company and therefore had sole voting control.<sup>51</sup> In addition to being beneficiaries of the trust, one child was the CEO and another was the president of the company. The president urged the co-trustees to investigate the CEO's actions and presented the co-trustees with evidence of the CEO's possible misconduct.<sup>52</sup> The co-trustees had the sole power to remove and replace the officers and directors of the company, but failed to act.<sup>53</sup> The court held that it was a breach of fiduciary duty for the co-trustees to put their heads in the sand and fail to investigate.<sup>54</sup>

The lesson of these cases is that a trustee cannot simply acquiesce to a beneficiary's wishes to hold a position in a company if the beneficiary is not qualified to hold the position or demonstrates an inability to properly perform the job. Instead, under these circumstances, a trustee's duties may require action adverse

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to a particular beneficiary to ensure the proper management of the business.

#### **Personal Liability of Trustee Holding Business Assets**

Generally, a trustee is not personally liable for contracts properly entered into in the trustee's fiduciary capacity, provided that the fiduciary capacity has been disclosed in the contract.<sup>55</sup> However, because this protection may not automatically extend to the trustee who enters into contracts while acting for a business entity owned by a trust, the CUTC provides some specific protection to a trustee who is acting as a general partner.

Under the CUTC, the trustee is protected from personal liability for contracts entered

into or torts committed by a general or limited partnership when the trustee is acting as general partner of the partnership and is not personally at fault.<sup>56</sup> To have this protection, the trustee's fiduciary capacity must be disclosed in the contract or pursuant to the Colorado Uniform Partnership Act or its predecessor act.<sup>57</sup> This protection only applies to a trustee who holds the business interest in a fiduciary capacity and does not apply to interests owned by the trustee in an individual capacity or by the trustee's family members.<sup>58</sup> The protection also does not apply to the trustee of a revocable trust who owns an interest as a general partner; in that case, the settlor is personally liable for partnership contracts as if the settlor were the general partner.<sup>59</sup>

This specific protection for trustees holding a general partnership interest is necessary because the partnership structure does not provide the same protections from liability for partners as the LLC structure does for holders of a manager or membership interest, or as the corporate structure does for shareholders.<sup>60</sup> Accordingly, the CUTC only addresses partnerships.

#### **Duty to Inform and Report When a Trust Holds a Business Asset**

When a trust owns a closely held business, a question arises as to the trustee's duty to inform and report when a beneficiary requests not only information about the trust, but also information about the business entity owned by the trust. Colorado law addresses a trustee's duty to inform and report to the beneficiaries generally and provides that a trustee of an irrevocable trust must respond to a qualified beneficiary's request for trustee's reports and other information reasonably related to the administration of a trust.<sup>61</sup> However, there is no Colorado law directly addressing the duty to inform and report about a business entity the trust owns.

While not directly on point, Colorado statutory law implicitly recognizes at least some measure of difference between information related to a business owned by a trust and information about other trust assets by providing rules specifically relating to the treatment of

business information. First, the law provides that a trustee may withhold information from the beneficiaries when acting pursuant to a settlor's intent to retain an interest in a family business and forming a successor entity; the trustee, acting under the business judgment rule, may form a successor entity without notifying the beneficiaries "where disclosure is forbidden by law" or where the trustee in good faith believes "that nondisclosure is necessary to complete such formation on such a favorable basis."<sup>62</sup> Second, a trustee who conducts a business as a proprietorship or single-member LLC may opt to account for the business separately, and may maintain separate accounting records for business transactions, if the trustee determines that it is in the best interest of the beneficiaries to do so.<sup>63</sup> Finally, the comments to Uniform Trust Code § 813 allow that a

trustee is justified in not providing . . . advance disclosure [of a transaction involving a company owned by the trust] if disclosure is forbidden by other law, as under federal securities laws, or if disclosure would be seriously detrimental to the interests of the beneficiaries, for example, when disclosure would cause the loss of the only serious buyer.<sup>64</sup>

In sum, Colorado law recognizes that there are circumstances under which disclosure of information about the business could be detrimental and may not be appropriate.

Cases from other states have addressed the topic, but there is not a national consensus on the scope of a trustee's duty to provide information about the business entity. As explained by Bogert's treatise on trust law,

many cases have held that beneficiaries of the trust are entitled to information about the business entity, especially when the trustee is an officer or director of the entity or, with the trust's interests, controls the entity, while other cases have held beneficiaries are not entitled to such information or have limited their right to receive it.<sup>65</sup>

Among the cases allowing for limited disclosure of business information are the *Rollins* cases out of Georgia and *Jones v. Hagans* out of Washington, D.C. While the Georgia Supreme Court in *Rollins* did not articulate a standard for

when business information must be disclosed, it did recognize that there may be circumstances where limited disclosure may be appropriate. In reversing a court of appeals decision finding that the trial court erred by not ordering an accounting of the business entities controlled by the trustees, the supreme court found that the court of appeals "failed to give due deference to the discretion of the trial court" and noted that "in determining whether a trustee's accounting is sufficient under a given set of circumstances, an appellate court must consider whether a trial court properly exercised its equitable discretion; and the decision of the trial court should be sustained where such discretion has not been abused."<sup>66</sup> In *Hagans*, the appellate court found that the trial court did not abuse its discretion by not ordering the personal representatives to disclose the financial records of a corporation wholly owned by the estate where (1) there were no allegations that the transaction in question was a self-dealing transaction, (2) there were no allegations that the estate was negatively impacted by the transaction, (3) the information would not have allowed the beneficiary to void the transaction, and (4) there were no allegations of fraud.<sup>67</sup>

Many of the cases that have addressed this question come from New York and largely support the position that a trustee has an obligation to disclose at least certain information about the business. In *Matter of Witkind*, the court discussed the rules for disclosure when an estate wholly owns a corporation versus when an estate holds only a minority interest in a corporation.<sup>68</sup> Where the estate wholly owns the corporation, the fiduciaries may be required to account for the corporate transactions. In contrast, if the estate only owns a minority interest and does not have access to the full financial records of the business, the fiduciary may not be required to account for corporate transactions because he or she cannot be ordered to do what is impossible.<sup>69</sup> The fiduciaries in *Witkind* came to control a corporation when the estate's interest was added to their own interests in the corporation. They were, therefore, obligated to account because they had the ability to do so.<sup>70</sup> The fiduciary whose actions were at issue in *Witkind*

controlled the estate's one-third interest in the corporation in addition to his own individual interest, so he had the advantage of holding the balance of power over the corporation. Accordingly, he could not rely on distinguishing his individual interest to avoid accounting for the business where he was positioned to derive an individual profit from the business as a result of his fiduciary position.<sup>71</sup> Similarly, in another New York case, the court held that if trustees become directors of a corporation due to the trust's ownership interest, they must account for their actions as directors.<sup>72</sup> This is true even if as directors they would not have to account unless they were charged with wrongdoing. The court reasoned that this rule was necessary because otherwise the directors' wrongdoing would be concealed and they would be relieved from any substantial accountability.<sup>73</sup>

New York case law also seems to hold the opposite in certain circumstances—if the interest of the fiduciary as an individual can be separated from the interest held by the estate or trust, the court cannot compel the *individual* to account for the business. If the estate holds less than a controlling interest in the corporation's stock, there is a strong inference of fact that the only authority the fiduciary possesses in a representative capacity is the typical authority to receive dividends.<sup>74</sup> Further, if the trustees obtained information about a corporation due to their roles in their individual capacities, a beneficiary cannot require that they disclose such information when the trust owns only a minority interest in the same corporation.<sup>75</sup>

In *Shehan*, yet another New York court addressed the result when fraud is involved.<sup>76</sup> When considering the fiduciary's obligation to account, the court summarized the precedent as, "before a trustee must account or submit to examination regarding the general business affairs of a corporation, he must be dependent upon the estate stock for his connection with the corporation."<sup>77</sup> However, because there was a claim of fraud against the fiduciary (who served as personal representative, as officer and director of a related corporation, and as a voting trustee of voting trusts with control of the corporation), the court concluded that there was no reason to insist upon this showing,

and even though the estate did not wholly own the corporation, the court concluded that the fiduciary must produce the corporate books and records for the time during which he was acting as executor and trustee.<sup>78</sup>

A review of Colorado statutory law and other state case law addressing a trustee's obligation to inform and report shows that whether the trustee will be required to disclose information about the company depends on a number of factors, including the facts and circumstances of the case, the positions held by the trustee, the transactions at issue, and the claims in the case.

### Duty to Prudently Invest

The Colorado Uniform Prudent Investor Act (UPIA) generally requires trustees to diversify investments; balance risk and return; and consider the terms, distribution provisions, and purposes of the trust when making investment decisions.<sup>79</sup> Accordingly, holding a large interest in a single closely held business may run afoul of the UPIA. The UPIA can, however, be altered by the terms of the trust, and/or a settlor may direct the trustee to retain a certain asset regardless of the duty to diversify.<sup>80</sup>

Colorado law specifically contemplates a settlor's direction to a fiduciary to retain an interest in a family business entity and allows the fiduciary to maintain the business in any form of entity or successor entity.<sup>81</sup> A settlor may also specifically direct the trustee to retain the business and may provide very specific information about succession, either in the trust or the documents governing the business.

Although a trustee may desire or be directed to retain the closely held business interest, the occasion may nonetheless arise where the trustee desires to or must sell the business interest. When this occurs, the sale will be governed by both the business documents and the trustee's fiduciary duties. This rule is illustrated by *Rippey v. Denver U.S. National Bank*, which involved a dispute over the sale of the closely held shares of the Denver Post, Inc.<sup>82</sup> The court found that a trustee has a duty to obtain the highest price available when selling stock.<sup>83</sup> Where the trustee knew there was another highly motivated shareholder interested in the stock and did not explore that option, the trustee breached its fiduciary duties

and caused damages to the trust.<sup>84</sup> This was true even though the trust document gave the trustee broad powers to sell the shares in a private sale and the sale price was fair in relation to the actual value of the shares.

Accordingly, when a trustee is considering retaining or selling an interest in a closely held business, the trustee must consider all applicable fiduciary duties and cannot allow improper motives or conflicts of interest to affect the decision. Whether it is appropriate to retain a large interest in a closely held business or to sell the interest, and whether the terms of the sale are appropriate, will depend on the terms of the trust and the facts and circumstances of each case.

### Conclusion

Trustees are presented with a number of challenges when a trust holds an interest in a closely held business, all of which make the fiduciary relationship potentially more complicated. When faced with this situation, the trustee is well-advised to identify and consider a number of issues, including the nature of the business interest held by the trust, all of the roles that the trustee serves, any potential conflicts of interest, whether holding a concentrated position in the business is prudent, whether the trustee has the duty to disclose information about the business to the beneficiaries, and what standard of care applies to the trustee's actions in each of his or her roles. CL



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### NOTES

1. The term "trustee" is used throughout this article synonymously with "fiduciary," which would also include a personal representative.
2. CRS § 15-5-816(1)(f); CRS § 15-1-804(2)(l).
3. CRS § 15-5-816(1)(f).
4. CRS § 15-5-816(1)(g)(l).
5. CRS § 15-1-701.
6. CRS § 15-5-802.
7. CRS § 15-5-802(3)(d).
8. CRS § 15-5-802(2).
9. CRS § 15-12-703 ("A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. . .").
10. CRS § 15-5-801.
11. CRS § 15-5-804 ("A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.")
12. CRS § 15-5-802 (providing that "[a] trustee shall administer the trust solely in the interests of the beneficiaries" and addressing conflict of interest transactions).
13. CRS § 15-5-803 ("If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, taking into account any differing interests of the beneficiaries.").
14. See CRS §§ 15-5-801 through -804. See also *Destefano v. Grabrian*, 763 P.2d 275, 285 (Colo. 1988) (en banc) ("A fiduciary has a duty to deal with utmost good faith and solely for the benefit of the beneficiary. A fiduciary's obligations to the beneficiary include, among other things, a duty of loyalty, a duty to exercise reasonable care and skill, and a duty to deal impartially with beneficiaries.") (internal citations and quotation omitted).
15. *Meinhardt v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).
16. *In re Matter of Trust of Franzen*, 955 P.2d 1018, 1022 (Colo. 1998) (en banc).
17. *Id.*

18. *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402, 405 (Colo.App. 2000). See also CRS § 7-108-401, which was amended in 2019, with the amendments to be effective as of July 1, 2020. All citations to CRS § 7-108-401 are to the amended version effective as of July 1, 2020.

19. CRS § 7-108-401.

20. *Id.*

21. *Curtis v. Nevens*, 31 P.3d 146, 151 (Colo. 2001) (en banc).

22. *Id.* (internal quotation omitted).

23. CRS § 7-108-402. This section was substantially rewritten in 2019, and the amended version is effective as of July 1, 2020. The revisions to this section are intended to codify and clarify Colorado law on the business judgment rule and are not intended to reflect a change in the law. Lowenstein and Lidstone, "2019 Colorado Business Law Updates," 48 *Colo. Law.* 26, 29 (Nov. 2019). All citations to CRS § 7-108-402 in this article are to the revised version effective as of July 1, 2020.

24. *Kim v. Grover C. Coors Trust*, 179 P.3d 86, 95 (Colo.App. 2007).

25. See CRS § 15-5-802.

26. CRS § 15-5-802(7).

27. Uniform Trust Code § 802 cmt. See also CRS § 15-5-803 on the duty of impartiality.

28. *Restatement (Second) of Trusts* § 193 cmt. a (1959) (cited in the Uniform Trust Code § 802 cmt.).

29. Uniform Trust Code § 802 cmt.

30. CRS § 15-1-702(3)(b).

31. CRS § 15-1-702(3)(c).

32. *In re Shehan*, 285 A.D. 785 (N.Y.App.Div. 1955).

33. *Id.* at 787.

34. *Id.* at 794.

35. *Id.*

36. *Id.* at 795.

37. *Rollins v. Rollins*, 755 S.E.2d 727, 731 (Ga. 2014).

38. *Rollins v. Rollins*, 780 S.E.2d 328 (Ga. 2015); *Rollins v. Rollins*, 790 S.E.2d 157 (Ga.Ct.App. 2016) (applying the rule).

39. *Rollins*, 780 S.E.2d at 336.

40. *Id.* at 337.

41. *Id.* at 336.

42. CRS § 15-5-105(2)(b).

43. *In re Hearthside Baking Co., Inc.*, 402 B.R. 233 (Bkrtcy. N.D.Ill. 2009); *Wilbourn v. Wilbourn*, 106 So. 3d 360 (Miss.Ct.App. 2012).

44. *Wilbourn*, 106 So. 3d at 364.

45. *Id.* at 365-66.

46. *Id.* at 367-68.

47. *Id.* at 372.

48. *In re Koretzky's Estate*, 86 A. 2d 238 (N.J. 1951).

49. *Id.* at 248.

50. *Id.* See also *In re Estate of Baldwin*, 442 A. 2d 529 (Me. 1982).

51. *Hearthside*, 402 B.R. at 240-41.

52. *Id.* at 248.

53. *Id.* at 246.

54. *Id.* at 248.

55. CRS § 15-5-1010(1).

56. CRS § 15-5-1011. See also Uniform Trust Code § 1011 cmt.

57. CRS § 15-5-1011(1).

58. CRS § 15-5-1011(3).

59. CRS § 15-5-1011(4).

60. Uniform Trust Code § 1011 cmt.

61. CRS §§ 15-5-813(1) and -105(2)(i).

62. CRS § 15-1-702(3)(d).

63. CRS § 15-1-413 and cmts. The comments also acknowledge a degree of independence for the governance of a corporation that is wholly owned by a trust, noting that "the board of directors of a corporation owned entirely by the trust would decide the amount of the annual dividend to be paid to the trust."

64. Uniform Trust Code § 813 cmt.; CRS § 15-5-813.

65. Bogert et al., *Bogert's The Law of Trusts and Trustees* § 962 (Thomson Reuters 2019).

66. *Rollins*, 755 S.E.2d at 730.

67. *Jones v. Hagans*, 634 A. 2d 1219, 1222-24 (D.C. 1993).

68. *Matter of Witkind*, 167 Misc. 885 (N.Y.Ct. 1938).

69. *Id.* at 893.

70. *Id.*

71. *Id.* at 894.

72. *Farmers' Loan and Trust Co. v. Pierson*, 130 Misc. 110 (N.Y.Sup.Ct. 1927).

73. *Id.* at 121.

74. *Matter of Sullivan*, 169 Misc. 16, 18 (N.Y.Surr. Ct. 1938).

75. *In re Sylvester's Estate*, 5 A.D.2d 970 (N.Y.Surr.Ct. 1958).

76. *Shehan*, 285 A.D. 785.

77. *Id.* at 793.

78. *Id.* at 795.

79. CRS § 15-1-102.

80. CRS § 15-1-101(b).

81. CRS § 15-1-702.

82. *Rippey v. Denver U.S. Nat'l Bank*, 273 F.Supp. 718, 723 (D.Colo. 1967).

83. *Id.* at 739.

84. *Id.* at 739-42.

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