

PART 8
DUTIES AND POWERS OF TRUSTEE
General Comment

This article states the fundamental duties of a trustee and lists the trustee's powers. The duties listed are not new, but how the particular duties are formulated and applied has changed over the years. Section 801 deals with the trustee's general duty to administer the trust in good faith; Sections 802, 803 and 804 cover duties of loyalty, impartiality, and prudent administration. Section 805 discusses costs of administration and Section 806 covers trustees' duties with respect to special skills or expertise. Sections 807 and 808 deal with delegation and powers to direct. Sections 809, 810, 811 and 812 discuss the trustee's duties to control and protect trust property, to keep records, to enforce claims of the trust and defend claims against the trust, and to collect trust property from a former trustee. Section 813 covers the trustee's duty to inform and report. Section 814 covers discretionary powers and tax savings. Sections 815 and 816 list general and specific trustee powers. Section 817 discusses distribution on termination. All of the provisions of this article may be overridden in the terms of the trust, except for certain aspects of the trustee's duty to keep the beneficiaries informed of administration (see Section 105(b)(8)), and the trustee's fundamental obligation to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries (see Section 105(b)(2)).

PART 8
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Colorado Comments

No changes were made to Sections 801, 809, 812, and 817.

Minor, non-substantive changes were made to Sections 802, 803, 804, 805, 806, 815, and 816 to maintain consistency with existing Colorado statutes (the Colorado Probate Code, Colorado Uniform Prudent Investor Act, Colorado Fiduciaries' Powers Act, and others).

807(c) - Delegation by Trustee: The underlined words were added for clarity: "A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions ~~an action~~ of the agent to whom the function was delegated."

808 - Powers To Direct: 808(a) was moved to 15-5-603(1)(a) (Settlor's powers – Revocable Trusts). See Part 6 Summary for more detail. The rest of 808 was deleted and reserved, so as not to conflict with Colorado's existing directed trust statute, C.R.S. 15-16-801 *et seq.*

810 - Record-keeping and identification of trust property: Paragraph (c)(2) was added to authorize trustees to hold property in nominee name (consistent with existing C.R.S. §15-1-804(2)(o)); paragraph (c)(3) was added to clarify that 810 does not apply to tangible personal property that is not capable of being maintained in records held by a party other than a trustee or beneficiary.

811 - Enforcement and defense of claims: A knowledge requirement was added.

813 - Duty to inform and report: 813(a), (b)(1), and (d) were revised to refer to “Qualified” beneficiaries throughout. 813(b)(3) was revised pursuant to the 2005 CO UTC committee’s suggestions: “... of the right to request portions ~~a copy~~ of the trust instrument which describe or affect the beneficiary’s interest...”

813(f) was added.

814 - Discretionary powers - tax savings: The last phrase of (a)(1) was deleted, and clarifying language was added to the end of (a)(1) through (a)(2). C.R.S. § 15-1-1401 will be repealed.

DUTIES AND POWERS OF TRUSTEE

15-5-801. Duty to administer trust. UPON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES, AND IN ACCORDANCE WITH THIS ARTICLE.

15-5-802. Duty of loyalty. (a) A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

(b) SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 15-5-1012, A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS:

(1) THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST;

(2) THE TRANSACTION WAS APPROVED BY THE COURT;

(3) THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 15-5-1005;

(4) THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED

THE TRANSACTION, OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 15-5-1009; OR

(5) THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

(c) A SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

- (1) THE TRUSTEE'S SPOUSE;
- (2) THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS, OR THEIR SPOUSES;
- (3) AN AGENT OR ATTORNEY OF THE TRUSTEE; OR
- (4) A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

(d) A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

(e) A TRANSACTION NOT CONCERNING TRUST PROPERTY, AND IN WHICH

THE TRUSTEE ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY, INVOLVES A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE TRUST.

(f) AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY OR INVESTMENT TRUST TO WHICH THE TRUSTEE OR ITS AFFILIATE PROVIDES SERVICES IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE COMPLIES WITH THE COLORADO UNIFORM PRUDENT INVESTOR ACT. ~~PRUDENT INVESTOR RULE OF ARTICLE 1.1 OF THIS TITLE~~. IN ADDITION TO ITS COMPENSATION FOR ACTING AS TRUSTEE, THE TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST. IF THE TRUSTEE RECEIVES COMPENSATION FROM THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING INVESTMENT ADVISORY OR INVESTMENT MANAGEMENT SERVICES, THE TRUSTEE MUST AT LEAST ANNUALLY NOTIFY THE PERSONS ENTITLED UNDER SECTION 5-5-813 TO RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT OF THE RATE AND METHOD BY WHICH THAT COMPENSATION WAS DETERMINED.

(g) 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 INTEREST 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 INTEREST OF THE BENEFICIARIES.

(h) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR TO THE BENEFICIARIES:

(1) AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE APPOINTMENT OR COMPENSATION OF THE TRUSTEE;

(2) PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE;

(3) A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE, GUARDIANSHIP OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A BENEFICIARY HAS AN INTEREST;

(4) A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE INSTITUTION OPERATED BY THE TRUSTEE; OR

(5) AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

(i) THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH RESPECT TO ANY PROPOSED TRANSACTION THAT MIGHT VIOLATE THIS SECTION IF ENTERED INTO BY THE TRUSTEE.

15-5-803. Impartiality. 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. ~~GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.~~

15-5-804. Prudent administration. A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY CONSIDERING THE PURPOSES, TERMS, ~~DISTRIBUTIONAL~~ DISTRIBUTION REQUIREMENTS, AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION.

15-5-805. Costs of administration. IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST, AND THE SKILLS OF THE TRUSTEE.

15-5-806. Trustee's skills. A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR IS NAMED TRUSTEE IN RELIANCE UPON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE ~~SHALL USE~~ THOSE SPECIAL SKILLS OR EXPERTISE.

15-5-807. Delegation by trustee. (a) A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION IN:

- (1) SELECTING AN AGENT;
- (2) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST; AND
- (3) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR

THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

(b) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

(c) A TRUSTEE WHO COMPLIES WITH SUBSECTION (a) OF THIS SECTION IS NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS ~~AN ACTION~~ OF THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

(d) BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE.

15-5-808. Powers to direct. ~~(a) WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.~~ RESERVED.

~~(b) IF THE TERMS OF A TRUST CONFER UPON A PERSON OTHER THAN THE SETTLOR OF A REVOCABLE TRUST POWER TO DIRECT CERTAIN ACTIONS OF THE TRUSTEE, THE TRUSTEE SHALL ACT IN ACCORDANCE WITH AN EXERCISE OF THE POWER UNLESS THE ATTEMPTED EXERCISE IS MANIFESTLY CONTRARY TO THE TERMS OF THE TRUST OR THE TRUSTEE KNOWS THE ATTEMPTED EXERCISE WOULD CONSTITUTE A SERIOUS BREACH OF A FIDUCIARY DUTY THAT THE PERSON HOLDING THE POWER OWES TO THE BENEFICIARIES OF THE TRUST.~~

~~(c) THE TERMS OF A TRUST MAY CONFER UPON A TRUSTEE OR OTHER PERSON A POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.~~

~~(d) A PERSON, OTHER THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.~~

15-5-809. Control and protection of trust property. A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT THE TRUST PROPERTY.

15-5-810. Record-keeping and identification of trust property. (a) A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN PROPERTY.

(c)(1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) ~~OF THIS SECTION~~, A TRUSTEE SHALL CAUSE THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A TRUSTEE OR BENEFICIARY.

(2) NOTHING IN PARAGRAPH (c) OF THIS SECTION 810 SHALL BE CONSTRUED AS PREVENTING A TRUSTEE FROM HOLDING A PROPERTY IN THE NAME OF A NOMINEE OR OTHER FORM, WITHOUT DISCLOSURE OF THE TRUST, AS AUTHORIZED IN SECTION 816(a)(7)(B) OF THIS CODE AND IN C.R.S. §15-1-804(2)(o), PROVIDED THE TRUSTEE MAINTAINS ADEQUATE RECORDS OF ALL TRUST PROPERTY SO HELD.

(3) THIS PARAGRAPH (c) DOES NOT APPLY TO TANGIBLE PERSONAL

PROPERTY OTHER THAN MOTOR VEHICLES, AIRPLANES, AND OTHER PROPERTY
THE TITLE OF WHICH IS REGISTERED WITH A GOVERNMENTAL AUTHORITY.

(d) IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE SEPARATE TRUSTS.

15-5-811. Enforcement and defense of claims. A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST AND TO DEFEND CLAIMS AGAINST THE TRUST OF WHICH THE TRUSTEE HAS KNOWLEDGE.

15-5-812. Collecting trust property. A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE, AND TO REDRESS A BREACH OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

15-5-813. Duty to inform and report. (a) A TRUSTEE SHALL KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO PROTECT THEIR INTERESTS. UNLESS UNREASONABLE UNDER THE CIRCUMSTANCES, A TRUSTEE SHALL PROMPTLY RESPOND TO A QUALIFIED BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST.

(b) A TRUSTEE:

(1) UPON REQUEST OF A QUALIFIED BENEFICIARY, SHALL PROMPTLY FURNISH TO THE QUALIFIED BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST;

(2) WITHIN 60 DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(3) WITHIN 60 DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF THE CREATION OF AN IRREVOCABLE TRUST, OR THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR SETTLORS, OF THE RIGHT TO REQUEST PORTIONS A COPY OF THE TRUST INSTRUMENT THAT DESCRIBE OR AFFECT THE BENEFICIARY'S INTEREST, AND OF THE RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION (c) ~~OF THIS SECTION~~; AND

(4) SHALL NOTIFY THE QUALIFIED BENEFICIARIES IN ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

(c) A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL, AND TO OTHER QUALIFIED BENEFICIARIES WHO REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS, AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION, A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. UPON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL

REPRESENTATIVE, CONSERVATOR, OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

(d) A QUALIFIED BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER INFORMATION ~~OTHERWISE~~ REQUIRED TO BE FURNISHED UNDER THIS SECTION. A QUALIFIED BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY WITHDRAW A WAIVER PREVIOUSLY GIVEN.

(e) SUBPARAGRAPHS (2) AND (3) OF SUBSECTION (b) OF THIS SECTION DO NOT APPLY TO A TRUSTEE WHO ACCEPTS A TRUSTEESHIP BEFORE THE EFFECTIVE DATE OF THIS CODE ~~JANUARY 1, 2015~~, TO AN IRREVOCABLE TRUST CREATED BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR TO A REVOCABLE TRUST THAT BECOMES IRREVOCABLE BEFORE ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE.

(f) NOTHING IN THIS SECTION 813 SHALL BE CONTRUED TO IMPOSE ON THE TRUSTEE A DUTY TO INFORM OR REPORT TO ANY PERSON OTHER THAN A QUALIFIED BENEFICIARY OR AS DIRECTED BY THE COURT.

15-5-814. Discretionary powers - tax savings. (a)(1) NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN THE TERMS OF THE TRUST, INCLUDING THE USE OF SUCH TERMS AS "ABSOLUTE", "SOLE", OR "UNCONTROLLED", THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH. AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE PARAMETERS FOR

THAT EXERCISE ARE ESTABLISHED BY THE TERMS AND PURPOSES OF THE TRUST, THE INTERESTS OF THE BENEFICIARIES, AND RELEVANT FIDUCIARY DUTIES. A TRUSTEE DOES NOT ABUSE HIS DISCRETION IN EXERCISING OR FAILING TO EXERCISE A DISCRETIONARY POWER IF THE TRUSTEE, FOLLOWING THE TERMS AND PURPOSES OF THE TRUST AND CONSIDERING THE INTERESTS OF ITS BENEFICIARIES, EXERCISES ITS JUDGMENT HONESTLY AND WITH A PROPER MOTIVE.

(2) WHERE A TRUST GIVES A TRUSTEE UNLIMITED DISCRETION, INCLUDING THE USE OF SUCH TERMS AS “ABSOLUTE”, “SOLE”, OR “UNCONTROLLED”, A COURT MAY NOT DETERMINE THAT A TRUSTEE ABUSED ITS DISCRETION MERELY BECAUSE THE COURT WOULD HAVE EXERCISED THE DISCRETION IN A DIFFERENT MANNER OR WOULD NOT HAVE EXERCISED THE DISCRETION.

(b) SUBJECT TO SUBSECTION (d) OF THIS SECTION, AND UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION (b) DOES NOT APPLY:

(1) A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN ACCORDANCE WITH AN ASCERTAINABLE STANDARD; AND

(2) A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE PERSONALLY OWES ANOTHER PERSON.

(c) A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION (b) OF THIS SECTION MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

(d) SUBSECTION (b) ~~OF THIS SECTION~~ DOES NOT APPLY TO:

(1) A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056 (b)(5) OR 2523(e) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED, WAS PREVIOUSLY ALLOWED;

(2) ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR AMENDED BY ITS SETTLOR; OR

(3) A TRUST, IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL EXCLUSION UNDER SECTION 2503(c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS IN EFFECT ON ~~JANUARY 1, 2015~~ THE EFFECTIVE DATE OF THIS CODE, OR AS LATER AMENDED.

15-5-815. General powers of trustee. (a) A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

(1) POWERS CONFERRED BY THE TERMS OF THE TRUST; ~~AND OR~~

(2) EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

(A) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY;

(B) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT, MANAGEMENT, AND DISTRIBUTION OF THE TRUST PROPERTY; AND

(C) ANY OTHER POWERS CONFERRED BY THIS ~~CODE ARTICLE~~ AND THE “COLORADO FIDUCIARIES’ POWERS ACT”.

(b) THE EXERCISE OF A POWER IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ~~ARTICLE~~ CODE.

15-5-816. Specific powers of trustee. (a) WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 15-5-815 AND IN ADDITION TO THE POWERS CONFERRED UNDER THE “COLORADO FIDUCIARIES’ POWERS ACT”, ~~PART 8 OF ARTICLE 1 OF THIS TITLE~~, A TRUSTEE MAY:

(1) COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST PROPERTY FROM A SETTLOR OR ANY OTHER PERSON;

(2) ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR PRIVATE SALE;

(3) EXCHANGE, PARTITION, OR OTHERWISE CHANGE THE CHARACTER OF TRUST PROPERTY;

(4) DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE INSTITUTION;

(5) BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(6) WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION, OR OTHER FORM OF BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS, OR PROPERTY OWNERS, INCLUDING MERGING, DISSOLVING, OR OTHERWISE CHANGING THE FORM OF BUSINESS ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL;

(7) WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

(A) VOTE OR GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION, OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT;

(B) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY;

(C) PAY CALLS, ASSESSMENTS, AND OTHER SUMS CHARGEABLE OR ACCRUING AGAINST THE SECURITIES, AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS; AND

(D) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED FINANCIAL SERVICE INSTITUTION;

(8) WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT, OR MAKE ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO, OR IMPROVEMENTS IN, BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS, AND MAKE OR VACATE PLATS AND ADJUST BOUNDARIES;

(9) ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES, WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST;

(10) GRANT AN OPTION INVOLVING A SALE, LEASE, OR OTHER DISPOSITION OF TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY, INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND EXERCISE AN OPTION SO ACQUIRED;

(11) INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE THE TRUSTEE, THE TRUSTEE'S AGENTS, AND BENEFICIARIES AGAINST LIABILITY ARISING FROM THE ADMINISTRATION OF THE TRUST;

(12) ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION;

(13) WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF

ENVIRONMENTAL LAW:

(A) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY;

(B) TAKE ACTION TO PREVENT, ABATE, OR OTHERWISE REMEDY ANY ACTUAL OR POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT;

(C) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW;

(D) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN ALLEGED VIOLATION OF ENVIRONMENTAL LAW; AND

(E) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT, OR REMEDIAL ACTION TO COMPLY WITH ENVIRONMENTAL LAW;

(14) PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST, AND RELEASE, IN WHOLE OR IN PART, A CLAIM BELONGING TO THE TRUST;

(15) PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF EMPLOYEES AND AGENTS OF THE TRUST, AND OTHER EXPENSES INCURRED IN

THE ADMINISTRATION OF THE TRUST;

(16) EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE, AND LOCAL TAXES;

(17) SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT PLAN, ANNUITY, OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS;

~~(18) MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES, AND ASSERT THE TRUSTEE'S LIEN ON FUTURE DISTRIBUTIONS FOR REPAYMENT OF THOSE LOANS;~~

~~(19) PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE BENEFICIARY;~~

(20) APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER UPON THE APPOINTED TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT THE APPOINTED TRUSTEE FURNISH SECURITY, AND REMOVE ANY TRUSTEE SO APPOINTED;

(21) PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT, OR BY:

(A) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN;

(B) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S., OR CUSTODIAL TRUSTEE UNDER THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL TRUST;

(C) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN, OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY, TO BE EXPENDED ON THE BENEFICIARY'S BEHALF; OR

(D) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF, SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION;

(22) ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE PARTICULAR ASSETS IN PROPORTIONATE OR DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES, AND ADJUST FOR RESULTING DIFFERENCES IN VALUATION;

(23) RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION, OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION;

(24) PROSECUTE OR DEFEND AN ACTION, CLAIM, OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES;

(25) SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS;
AND

(26) ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

15-5-817. Distribution upon termination. (a) UPON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

(b) UPON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE SHALL PROCEED EXPEDITIOUSLY TO DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT, SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES, AND TAXES.

(c) A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:

- (1) IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR
- (2) THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.