

## CHAPTER 169

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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## SENATE BILL 18-180

BY SENATOR(S) Gardner, Cooke, Crowder, Kagan, Martinez Humenik, Tate;  
also REPRESENTATIVE(S) Wist and Gray, Roberts.

**AN ACT****CONCERNING THE COLORADO UNIFORM TRUST CODE.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** article 5 to title 15 as follows:

**ARTICLE 5**  
**Colorado Uniform Trust Code****PART 1**  
**GENERAL PROVISIONS AND DEFINITIONS**

**15-5-101. Short title.** THIS ARTICLE 5 IS KNOWN AND MAY BE CITED AS THE "COLORADO UNIFORM TRUST CODE" AND IS REFERRED TO IN THIS ARTICLE 5 AS "THIS CODE" OR "CODE".

**15-5-102. Scope.** THIS CODE APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE, AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT, OR DECREE THAT REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST. THIS CODE DOES NOT APPLY TO A BUSINESS TRUST, A SECURITY ARRANGEMENT, A TRUST CREATED BY A DEPOSIT ARRANGEMENT IN A FINANCIAL INSTITUTION, OR ANY ARRANGEMENT UNDER WHICH A PERSON IS A NOMINEE OR ESCROWEE FOR ANOTHER.

**15-5-103. Definitions.** AS USED IN THIS ARTICLE 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE TO

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

ACT.

(2) "ALTERNATIVE DISPUTE RESOLUTION" MEANS A METHOD OF NONJUDICIAL DISPUTE RESOLUTION AS SET FORTH IN THE TRUST INSTRUMENT, WHICH MAY INCLUDE BUT IS NOT LIMITED TO A METHOD PRESCRIBED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13.

(3) "ASCERTAINABLE STANDARD" MEANS A STANDARD RELATING TO AN INDIVIDUAL'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE WITHIN THE MEANING OF SECTION 2041 (b)(1)(A) OR 2514 (c)(1) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(4) (a) "BENEFICIARY" MEANS A PERSON WHO:

(I) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR CONTINGENT; OR

(II) IN A CAPACITY OTHER THAN THAT OF TRUSTEE, HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY.

(b) "BENEFICIARY" DOES NOT INCLUDE AN APPOINTEE UNDER A POWER OF APPOINTMENT UNLESS AND UNTIL THE POWER IS EXERCISED AND THE TRUSTEE HAS KNOWLEDGE OF THE EXERCISE AND THE IDENTITY OF THE APPOINTEE.

(5) "BUSINESS TRUST" HAS THE SAME MEANING AS SET FORTH IN SECTION 15-10-201 (6.5).

(6) "CHARITABLE TRUST" MEANS A TRUST, OR A PORTION OF A TRUST, CREATED FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 15-5-405 (1).

(7) "CONSERVATOR" MEANS A PERSON APPOINTED BY A COURT TO ADMINISTER THE ESTATE OF A MINOR OR ADULT INDIVIDUAL.

(8) "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE, OR LOCAL LAW, RULE, REGULATION, OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

(9) "GUARDIAN" MEANS A PERSON APPOINTED BY A COURT TO MAKE DECISIONS REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH, AND WELFARE OF A MINOR OR ADULT INDIVIDUAL. THE TERM DOES NOT INCLUDE A GUARDIAN AD LITEM.

(10) "INTERESTED PERSON" MEANS A QUALIFIED BENEFICIARY OR OTHER PERSON HAVING A PROPERTY RIGHT IN OR CLAIM AGAINST A TRUST ESTATE, WHICH RIGHT OR CLAIM MAY REASONABLY AND MATERIALLY BE AFFECTED BY A JUDICIAL PROCEEDING PURSUANT TO THIS CODE. THE TERM ALSO INCLUDES FIDUCIARIES AND OTHER PERSONS HAVING AUTHORITY TO ACT UNDER THE TERMS OF THE TRUST.

(11) "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS PROVIDED IN THE TERMS OF THE TRUST.

(12) "JURISDICTION", WITH RESPECT TO A GEOGRAPHICAL AREA, INCLUDES A STATE OR COUNTRY.

(13) "PERSON" MEANS AN INDIVIDUAL; CORPORATION; BUSINESS TRUST; ESTATE; TRUST; PARTNERSHIP; LIMITED LIABILITY COMPANY; ASSOCIATION; JOINT VENTURE; GOVERNMENT; GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; PUBLIC CORPORATION; OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(14) "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OTHER THAN A POWER:

(a) EXERCISABLE BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD; OR

(b) EXERCISABLE BY ANOTHER PERSON ONLY UPON CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

(15) "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP, WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST THEREIN.

(16) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

(a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL;

(b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES DESCRIBED IN SUBSECTION (16)(a) OF THIS SECTION TERMINATED ON THAT DATE WITHOUT CAUSING THE TRUST TO TERMINATE; OR

(c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

(17) "REVOCABLE", AS APPLIED TO A TRUST, MEANS REVOCABLE BY THE SETTLOR WITHOUT THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

(18) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES, OR CONTRIBUTES PROPERTY TO, A TRUST. IF MORE THAN ONE PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR HAS A POWER OF WITHDRAWAL OVER THAT PORTION.

(19) "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

(20) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

(21) "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS, AS EXPRESSED IN THE TRUST INSTRUMENT, OR AS MAY BE ESTABLISHED BY OTHER EVIDENCE IN A JUDICIAL PROCEEDING, OR IN A NONJUDICIAL SETTLEMENT AGREEMENT PURSUANT TO SECTION 15-5-111 OR BY ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO SECTION 15-5-113.

(22) "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS THERETO.

(23) "TRUSTEE" INCLUDES AN ORIGINAL, AN ADDITIONAL, AND A SUCCESSOR TRUSTEE OR A COTRUSTEE.

**15-5-104. Knowledge.** (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A PERSON HAS KNOWLEDGE OF A FACT IF THE PERSON:

(a) HAS ACTUAL KNOWLEDGE OF IT;

(b) HAS RECEIVED A NOTICE OR NOTIFICATION OF IT; OR

(c) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE TIME IN QUESTION, AND ACTING IN A REASONABLY PRUDENT MANNER GIVEN THE PERSON'S EXPERIENCE AND EXPERTISE, HAS REASON TO KNOW IT.

(2) AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST, OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES REASONABLE DILIGENCE IF IT MAINTAINS ROUTINES FOR COMMUNICATING SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR DUTIES OR THE INDIVIDUAL KNOWS THAT A MATTER INVOLVING THE TRUST WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

**15-5-105. Default and mandatory rules.** (1) EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS CODE GOVERNS THE DUTIES, RIGHTS, AND POWERS OF A TRUSTEE; RELATIONS AMONG TRUSTEES; THE RIGHTS, POWERS, AND INTERESTS OF A BENEFICIARY; THE RELATIONSHIP BETWEEN THE TRUSTEES AND THE BENEFICIARIES; THE PURPOSE OF THE TRUST; AND OTHER MATTERS WITH RESPECT TO THE TRUST OR THE PROPERTY SUBJECT TO THE TRUST.

(2) THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS CODE EXCEPT:

(a) THE MINIMUM REQUIREMENTS FOR CREATING THE TRUST;

(b) THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES;

(c) THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF ITS

BENEFICIARIES AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT CONTRARY TO PUBLIC POLICY, AND POSSIBLE TO ACHIEVE;

(d) THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST PURSUANT TO SECTIONS 15-5-410 TO 15-5-416;

(e) (Reserved)

(f) THE POWER OF THE COURT PURSUANT TO SECTION 15-5-702 TO REQUIRE, DISPENSE WITH, MODIFY, OR TERMINATE A BOND;

(g) THE POWER OF THE COURT PURSUANT TO SECTION 15-5-708 (2) TO ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS UNREASONABLY LOW OR HIGH;

(h) THE DUTY PURSUANT TO SECTION 15-5-813 (2)(b) AND (2)(c) TO PROVIDE NOTICE OF THE EXISTENCE OF AN IRREVOCABLE TRUST, OF THE IDENTITY OF THE TRUSTEE, AND OF THE RIGHT TO REQUEST TRUSTEE'S REPORTS TO CURRENT DISTRIBUTEEES OR PERMISSIBLE DISTRIBUTEEES OF SUCH TRUST AT ANY AGE, OR TO OTHER QUALIFIED BENEFICIARIES OF SUCH TRUST WHO HAVE ATTAINED TWENTY-FIVE YEARS OF AGE;

(i) THE DUTY PURSUANT TO SECTION 15-5-813 (1) TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY RELATED TO THE ADMINISTRATION OF A TRUST;

(j) THE EFFECT OF AN EXCULPATORY TERM PURSUANT TO SECTION 15-5-1008;

(k) THE RIGHTS PURSUANT TO SECTIONS 15-5-1010 TO 15-5-1013 OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY;

(l) THE PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING;

(m) CONSISTENT WITH THE TERMS OF THE TRUST AND THE PROVISIONS OF THIS CODE, THE POWER OF THE COURT TO TAKE SUCH ACTION AND EXERCISE SUCH JURISDICTION NOT INCONSISTENT WITH A SETTLOR'S INTENT AS MAY BE NECESSARY IN THE INTERESTS OF JUSTICE; AND

(n) THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 15-5-203 AND 15-5-204, UNLESS THE TRUST INSTRUMENT REQUIRES ALTERNATIVE DISPUTE RESOLUTION.

**15-5-106. Common law of trusts - principles of equity - other statutes.** UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THIS CODE, THE COMMON LAW OF TRUSTS AND PRINCIPLES OF LAW AND EQUITY, AND OTHER STATUTES OF THIS STATE, SUPPLEMENT ITS PROVISIONS.

**15-5-107. Governing law.** (1) THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY:

(a) THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS OF THE TRUST UNLESS THE DESIGNATION OF THAT JURISDICTION'S LAW IS CONTRARY TO A STRONG PUBLIC POLICY OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER AT ISSUE; OR

(b) IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE TRUST, THE LAW OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER AT ISSUE.

**15-5-108. Principal place of administration.** (1) WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF:

(a) A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION; OR

(b) ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED JURISDICTION.

(2) IN THE CASE OF COTRUSTEES, THE PRINCIPAL PLACE OF ADMINISTRATION, IF NOT OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT, IS THE USUAL PLACE OF BUSINESS OF THE CORPORATE TRUSTEE IF THERE IS BUT ONE CORPORATE COTRUSTEE, OR THE USUAL PLACE OF BUSINESS OR RESIDENCE OF THE INDIVIDUAL TRUSTEE WHO IS A PROFESSIONAL FIDUCIARY IF THERE IS BUT ONE SUCH PERSON AND NO CORPORATE COTRUSTEE, AND OTHERWISE THE USUAL PLACE OF BUSINESS OR RESIDENCE OF ANY OF THE COTRUSTEES AS AGREED UPON BY THEM.

(3) A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND THE INTERESTS OF THE BENEFICIARIES.

(4) WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE, OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY SUBSECTION (2) OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE THE UNITED STATES.

(5) THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION NOT LESS THAN SIXTY DAYS BEFORE INITIATING THE TRANSFER. THE NOTICE OF A PROPOSED TRANSFER MUST INCLUDE:

(a) THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED;

(b) THE ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER AT THE NEW LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED;

(c) AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER;

(d) THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR;  
AND

(e) THE DATE, NOT LESS THAN SIXTY DAYS AFTER THE GIVING OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER.

(6) IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE OF AN OBJECTION TO A PROPOSED TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE AUTHORITY OF A TRUSTEE PURSUANT TO THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS SUSPENDED, PENDING RESOLUTION OF THE OBJECTION.

(7) IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY TO A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED PURSUANT TO SECTION 15-5-704.

**15-5-109. Methods and waiver of notice in matters other than judicial proceedings.** (1) NOTICE TO A PERSON PURSUANT TO THIS CODE OR THE SENDING OF A DOCUMENT TO A PERSON PURSUANT TO THIS CODE MUST BE ACCOMPLISHED IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT OF THE NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT INCLUDE FIRST-CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST-KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS, OR A PROPERLY DIRECTED ELECTRONIC MESSAGE.

(2) A TRUSTEE NEED NOT PROVIDE A NOTICE OR DOCUMENT OTHERWISE REQUIRED PURSUANT TO THIS CODE TO A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY ASCERTAINABLE BY THE TRUSTEE. THE TRUSTEE SHALL MAINTAIN DOCUMENTATION OF THE TRUSTEE'S REASONABLE EFFORTS TO ASCERTAIN THE IDENTITY OR LOCATION OF SUCH A PERSON.

(3) NOTICE PURSUANT TO THIS CODE OR THE SENDING OF A DOCUMENT PURSUANT TO THIS CODE MAY BE WAIVED BY THE PERSON WHO IS TO BE NOTIFIED OR SENT THE DOCUMENT.

(4) NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN AS PROVIDED IN THE COLORADO RULES OF PROBATE PROCEDURE, THE COLORADO PROBATE CODE, AND, IF APPLICABLE, THE COLORADO RULES OF CIVIL PROCEDURE.

**15-5-110. Others treated as qualified beneficiaries.** (1) WHENEVER NOTICE TO QUALIFIED BENEFICIARIES OF A TRUST IS REQUIRED PURSUANT TO THIS CODE, THE TRUSTEE SHALL ALSO GIVE NOTICE TO ANY OTHER BENEFICIARY WHO HAS SENT THE TRUSTEE A REQUEST FOR NOTICE.

(2) A CHARITABLE ORGANIZATION EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST HAS THE RIGHTS OF A QUALIFIED BENEFICIARY PURSUANT TO THIS CODE IF THE CHARITABLE ORGANIZATION, ON THE DATE THE CHARITABLE ORGANIZATION'S QUALIFICATION IS BEING DETERMINED:

(a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL;

(b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL UPON THE TERMINATION OF THE INTERESTS OF OTHER DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES THEN RECEIVING OR ELIGIBLE TO RECEIVE DISTRIBUTIONS; OR

(c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

(3) A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE CARE OF AN ANIMAL OR ANOTHER NONCHARITABLE PURPOSE AS PROVIDED IN SECTION 15-5-408 OR 15-5-409 HAS THE RIGHTS OF A QUALIFIED BENEFICIARY PURSUANT TO THIS CODE.

(4) THE ATTORNEY GENERAL HAS THE RIGHTS OF A QUALIFIED BENEFICIARY WITH RESPECT TO A CHARITABLE TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE.

**15-5-111. Nonjudicial settlement agreements.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, ANY PERSON MAY ENTER INTO A BINDING NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY MATTER INVOLVING A TRUST, REGARDLESS OF WHETHER THE SETTLEMENT AGREEMENT IS SUPPORTED BY CONSIDERATION.

(2) THE REQUIRED PARTIES TO A NONJUDICIAL SETTLEMENT AGREEMENT ARE THOSE PERSONS WHOSE INTERESTS IN THE TRUST WOULD BE MATERIALLY AFFECTED BY ITS PROVISIONS WERE THE SETTLEMENT AGREEMENT TO BE APPROVED BY THE COURT AT THE TIME IT WAS ENTERED INTO BY THE PARTIES.

(3) A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST AND INCLUDES TERMS AND CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT PURSUANT TO THIS CODE OR OTHER APPLICABLE LAW.

(4) MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT INCLUDE BUT ARE NOT LIMITED TO:

(a) THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST;

(b) THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING;

(c) DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER;

(d) THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION OF A TRUSTEE'S COMPENSATION;

(e) TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION; AND

(f) LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.



(5) ANY PERSON WHOSE INTEREST IN THE TRUST MAY BE AFFECTED BY A NONJUDICIAL SETTLEMENT AGREEMENT MAY REQUEST THE COURT TO APPROVE OR DISAPPROVE THE NONJUDICIAL SETTLEMENT AGREEMENT, TO DETERMINE WHETHER THE REPRESENTATION AS PROVIDED IN PART 3 OF THIS CODE WAS ADEQUATE, AND TO DETERMINE WHETHER THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY APPROVED.

**15-5-112. Rules of construction.** UNLESS THE TERMS OF THE TRUST INSTRUMENT CONTAIN CONTRARY RULES OF CONSTRUCTION, THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE INTERPRETATIONS OF AND DISPOSITION OF PROPERTY BY A WILL OR OTHER GOVERNING INSTRUMENT, AS THAT TERM IS DEFINED IN THE "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF THIS TITLE 15, ALSO APPLY AS APPROPRIATE TO THE INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION OF THE TRUST PROPERTY.

**15-5-113. Alternate dispute resolution.** (1) A SETTLOR MAY DESIGNATE IN THE TRUST INSTRUMENT A METHOD OF NONJUDICIAL ALTERNATE DISPUTE RESOLUTION THAT IS VALID, ENFORCEABLE, AND IRREVOCABLE, EXCEPT ON A GROUND THAT EXISTS AT LAW OR IN EQUITY FOR THE INVALIDATION OF A TRUST. SUCH METHODS OF NONJUDICIAL DISPUTE RESOLUTION MAY INCLUDE RULES OF NOTICE AND PROCEDURE. THE SETTLOR MAY BIND BENEFICIARIES AND ASSIGNS TO THE METHODS OF DISPUTE RESOLUTION.

(2) A METHOD OF NONJUDICIAL DISPUTE RESOLUTION PROVIDED BY THE SETTLOR IN THE TRUST INSTRUMENT DOES NOT PRECLUDE THE COURT'S AUTHORITY TO ENTER AN ORDER OF ALTERNATE DISPUTE RESOLUTION, WHICH DOES NOT ELIMINATE OR NEGATE THE METHOD OF NONJUDICIAL DISPUTE RESOLUTION PROVIDED BY THE SETTLOR EXCEPT ON A GROUND THAT EXISTS AT LAW OR IN EQUITY FOR THE INVALIDATION OF A TRUST.

**15-5-114. Insurable interest of trustee - definition.** (1) IN THIS SECTION, "SETTLOR" MEANS A PERSON WHO EXECUTES A TRUST INSTRUMENT. THE TERM INCLUDES A PERSON FOR WHICH A FIDUCIARY OR AGENT IS ACTING.

(2) A TRUSTEE OF A TRUST HAS AN INSURABLE INTEREST IN THE LIFE OF AN INDIVIDUAL INSURED UNDER A LIFE INSURANCE POLICY THAT IS OWNED BY THE TRUSTEE OF THE TRUST ACTING IN A FIDUCIARY CAPACITY OR THAT DESIGNATES THE TRUST ITSELF AS THE OWNER IF, ON THE DATE THE POLICY ISSUED:

(a) THE INSURED IS:

(I) A SETTLOR OF THE TRUST; OR

(II) AN INDIVIDUAL IN WHOM A SETTLOR OF THE TRUST HAS, OR WOULD HAVE HAD IF LIVING AT THE TIME THE POLICY WAS ISSUED, AN INSURABLE INTEREST; AND

(b) THE LIFE INSURANCE PROCEEDS ARE PRIMARILY FOR THE BENEFIT OF ONE OR MORE TRUST BENEFICIARIES THAT HAVE:

(I) AN INSURABLE INTEREST IN THE LIFE OF THE INSURED; OR

(II) A SUBSTANTIAL INTEREST ENGENDERED BY LOVE AND AFFECTION IN THE CONTINUATION OF THE LIFE OF THE INSURED AND, IF NOT ALREADY INCLUDED PURSUANT TO SUBSECTION (2)(b)(I) OF THIS SECTION, WHO ARE:

(A) RELATED WITHIN THE FIFTH DEGREE OR CLOSER, AS MEASURED BY THE CIVIL LAW SYSTEM OF DETERMINING DEGREES OF RELATION, EITHER BY BLOOD OR LAW, TO THE INSURED;

(B) STEPCHILDREN OF THE INSURED OR THEIR DESCENDANTS; OR

(C) INDIVIDUALS WHO ARE DESIGNATED AS BENEFICIARIES OF INSURANCE POLICIES FOR LIFE INSURANCE COVERAGE ON THE LIFE OF THE INSURED UNDER A DESIGNATED BENEFICIARY AGREEMENT EXECUTED PURSUANT TO ARTICLE 22 OF THIS TITLE 15.

(3) THIS SECTION DOES NOT LIMIT OR ABRIDGE ANY INSURABLE INTEREST OR RIGHT TO INSURE UNDER THE COMMON LAW OR ANY OTHER STATUTE.

## PART 2 JUDICIAL PROCEEDINGS

**15-5-201. Role of court in administration of trust.** (1) THE COURT MAY INTERVENE IN THE ADMINISTRATION OF A TRUST TO THE EXTENT ITS JURISDICTION IS INVOKED BY AN INTERESTED PERSON OR AS PROVIDED BY LAW.

(2) A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION UNLESS ORDERED BY THE COURT.

(3) A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO ANY MATTER INVOLVING THE TRUST'S ADMINISTRATION. SUCH MATTERS MAY INCLUDE, BUT ARE NOT LIMITED TO, PROCEEDINGS INVOLVING:

(a) THE APPOINTMENT OR REMOVAL OF A TRUSTEE;

(b) REVIEW OF A TRUSTEE'S FEES AND REVIEW AND SETTLING OF INTERIM OR FINAL ACCOUNTINGS;

(c) REQUESTS FOR INSTRUCTION;

(d) DECLARATIONS OF RIGHTS;

(e) DETERMINATIONS AS TO THE CREATION, EXISTENCE, AND VALIDITY OF ALL OR PART OF A TRUST;

(f) THE ASCERTAINMENT OF BENEFICIARIES, AND DETERMINATIONS OF ANY OTHER QUESTIONS ARISING IN THE ADMINISTRATION OF DISTRIBUTION OF ANY TRUST, INCLUDING QUESTIONS OF CONSTRUCTION IN TRUST INSTRUMENTS, AND THE EXISTENCE OR NONEXISTENCE OF ANY IMMUNITY, POWER, PRIVILEGE, DUTY, OR RIGHT;

(g) THE REGISTRATION OR RELEASE OF REGISTRATION OF A TRUST;

- (h) A DIRECTION TO COMPEL OR REFRAIN FROM PERFORMING A PARTICULAR ACT;
- (i) THE AMENDMENT, MODIFICATION, REVOCATION, OR TERMINATION OF A TRUST;
- (j) THE COMBINATION OR DIVISION OF TRUSTS; OR
- (k) EQUITABLE DOCTRINES OF CY PRES, EQUITABLE DEVIATION, AND OTHER PRINCIPLES OF EQUITY PERTAINING TO CHARITABLE AND OTHER TRUSTS.

**15-5-202. Jurisdiction over trustee and beneficiary.** (1) BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR BY MOVING THE PRINCIPAL PLACE OF ADMINISTRATION TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

(2) WITH RESPECT TO THEIR INTERESTS IN THE TRUST, THE BENEFICIARIES OF A TRUST THAT HAS ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR THAT IS PROPERLY REGISTERED IN THIS STATE ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST. BY ACCEPTING A DISTRIBUTION FROM SUCH A TRUST, THE RECIPIENT SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

(3) THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING JURISDICTION OVER A TRUSTEE, BENEFICIARY, OR OTHER PERSON RECEIVING PROPERTY FROM THE TRUST.

**15-5-203. Subject matter jurisdiction.** (1) THE DISTRICT COURT OR, IN THE CITY AND COUNTY OF DENVER, THE PROBATE COURT, HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS IN THIS STATE BROUGHT BY A TRUSTEE OR BENEFICIARY CONCERNING THE ADMINISTRATION OF A TRUST.

(2) THE DISTRICT COURT OR, IN THE CITY AND COUNTY OF DENVER, THE PROBATE COURT, HAS CONCURRENT JURISDICTION WITH OTHER DISTRICT COURTS OF THIS STATE OF OTHER PROCEEDINGS INVOLVING TRUSTS AND THIRD PARTIES, SUCH AS PROCEEDINGS BY OR AGAINST CREDITORS OR DEBTORS OF TRUSTS.

(3) THIS SECTION DOES NOT PRECLUDE JUDICIAL OR NONJUDICIAL ALTERNATIVE DISPUTE RESOLUTION.

**15-5-204. Venue.** (1) A JUDICIAL PROCEEDING CONCERNING THE INTERNAL AFFAIRS OF TRUSTS AND INVOLVING TRUSTEES, BENEFICIARIES, OR PERSONS WITH AUTHORITY TO ACT UNDER THE TRUST INSTRUMENT MUST BE COMMENCED IN THE FOLLOWING ORDER OF PRIORITY:

- (a) THE COUNTY OF VENUE SPECIFIED BY THE TERMS OF THE TRUST IF THAT COUNTY HAS A SUBSTANTIAL RELATIONSHIP TO THE PRESENT ADMINISTRATION OF THE TRUST;
- (b) THE COUNTY IN WHICH THE TRUST IS REGISTERED;

(c) EITHER:

(I) THE COUNTY IN WHICH THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS OR IS TO BE LOCATED; OR

(II) IF THE TRUST IS CREATED BY A WILL, THE COUNTY IN WHICH THE DECEDENT'S ESTATE IS BEING ADMINISTERED.

(2) IF A TRUST HAS NO TRUSTEE, A JUDICIAL PROCEEDING FOR THE APPOINTMENT OF A TRUSTEE MUST BE COMMENCED IN THE FOLLOWING ORDER OF PRIORITY:

(a) THE COUNTY REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION;

(b) EITHER:

(I) A COUNTY IN WHICH A BENEFICIARY RESIDES; OR

(II) A COUNTY IN WHICH THE TRUST PROPERTY, OR SOME PORTION OF THE TRUST PROPERTY, IS LOCATED.

(3) A JUDICIAL PROCEEDING OTHER THAN ONE DESCRIBED IN SUBSECTION (1) OR (2) OF THIS SECTION MUST BE COMMENCED IN ACCORDANCE WITH THE RULES OF VENUE APPLICABLE TO CIVIL ACTIONS.

**15-5-205. Registration of trusts.** (1) THE TRUSTEE OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE MAY, AFTER ITS ACCEPTANCE OF THE TRUST, REGISTER THE TRUST IN THE COURT OF THIS STATE AT THE PRINCIPAL PLACE OF ADMINISTRATION UNLESS REGISTRATION WOULD BE INCONSISTENT WITH THE RETAINED JURISDICTION OF A FOREIGN COURT FROM WHICH THE TRUSTEE CANNOT OBTAIN RELEASE.

(2) REGISTRATION OF A FULLY AND CONCURRENTLY REVOCABLE INTER VIVOS TRUST SHALL NOT BE MADE UNTIL SUCH A TIME AS THE SETTLOR'S POWER TO REVOKE SUCH A TRUST HAS TERMINATED.

(3) A TRUST THAT DIVIDES THE CORPUS INTO MULTIPLE TRUSTS OR A WILL THAT CREATES MULTIPLE TRUSTS NEEDS ONLY ONE REGISTRATION RATHER THAN A REGISTRATION OF EACH SEPARATE TRUST.

(4) THIS SECTION AND SECTIONS 15-5-206 TO 15-5-209 DO NOT APPLY TO ANY TRUST CREATED PURSUANT TO SECTION 15-14-412.5 OR 15-14-412.6.

**15-5-206. Registration procedures and content of statement.**

(1) REGISTRATION MAY BE ACCOMPLISHED BY FILING A TRUST REGISTRATION STATEMENT WITH THE COURT AS DESCRIBED IN SECTION 15-5-205 INDICATING THE NAME AND ADDRESS OF THE TRUSTEE IN WHICH THE TRUSTEE ACKNOWLEDGES THE TRUSTEESHIP. THE STATEMENT MUST INDICATE WHETHER THE TRUST HAS BEEN REGISTERED ELSEWHERE, IF KNOWN.

(2) THE STATEMENT MUST IDENTIFY THE TRUST AS FOLLOWS:

(a) IN THE CASE OF A TESTAMENTARY TRUST, BY THE NAME OF THE TESTATOR AND THE DATE AND PLACE OF DOMICILIARY PROBATE;

(b) IN THE CASE OF A WRITTEN INTER VIVOS TRUST, BY THE NAME OF EACH SETTLOR AND THE ORIGINAL TRUSTEE AND THE DATE OF THE TRUST INSTRUMENT; OR

(c) IN THE CASE OF AN ORAL TRUST, BY INFORMATION IDENTIFYING THE SETTLOR OR OTHER SOURCE OF FUNDS OR ASSETS AND DESCRIBING THE TIME AND MANNER OF THE TRUST'S CREATION AND THE TERMS OF THE TRUST, INCLUDING THE SUBJECT MATTER, BENEFICIARIES, AND TIME OF PERFORMANCE.

(3) WITHIN SIXTY DAYS AFTER FILING THE TRUST REGISTRATION STATEMENT, THE TRUSTEE SHALL NOTIFY IN WRITING ALL COTRUSTEES, QUALIFIED BENEFICIARIES, AND OTHER FIDUCIARIES AND PERSONS HAVING AUTHORITY TO ACT UNDER THE TERMS OF THE TRUST. FOR PURPOSES OF PRIVACY, THE NAMES OF QUALIFIED BENEFICIARIES MAY BE REDACTED FROM THE COPY OF THE STATEMENT FILED WITH THE COURT OR PROVIDED TO OTHER QUALIFIED BENEFICIARIES.

(4) THE TRUST REGISTRATION STATEMENT MUST CONTAIN LANGUAGE INDICATING THAT, BECAUSE A COURT WILL NOT ROUTINELY REVIEW OR ADJUDICATE MATTERS UNLESS IT IS SPECIFICALLY REQUESTED TO DO SO BY A BENEFICIARY, CREDITOR, OR OTHER INTERESTED PERSON, ALL INTERESTED PERSONS, INCLUDING BENEFICIARIES AND CREDITORS, HAVE THE RESPONSIBILITY TO PROTECT THEIR OWN RIGHTS AND INTERESTS IN THE TRUST ESTATE.

(5) IF A TRUST HAS BEEN REGISTERED IN A FOREIGN COURT, REGISTRATION IN THIS STATE IS INEFFECTIVE TO THE EXTENT IT IS INCONSISTENT WITH THE FOREIGN REGISTRATION UNTIL THE EARLIER REGISTRATION IS RELEASED, OR AN INSTRUMENT EXECUTED BY THE TRUSTEE AND ALL QUALIFIED BENEFICIARIES IS FILED WITH THE REGISTRATION IN THIS STATE.

**15-5-207. Effect of failure to register.** A TRUSTEE WHO DOES NOT REGISTER A TRUST IN A PROPER PLACE, FOR PURPOSES OF ANY PROCEEDINGS INITIATED BY A BENEFICIARY OF THE TRUST PRIOR TO REGISTRATION, IS SUBJECT TO THE PERSONAL JURISDICTION OF ANY COURT IN WHICH THE TRUST COULD HAVE BEEN REGISTERED AND OTHERWISE AS PROVIDED BY SECTION 15-5-205. IN ADDITION, ANY TRUSTEE WHO, WITHIN THIRTY DAYS AFTER RECEIPT OF A WRITTEN DEMAND BY A SETTLOR OR QUALIFIED BENEFICIARY OF THE TRUST, FAILS TO REGISTER A TRUST MAY BE SUBJECT TO REMOVAL OR TO SURCHARGE AS THE COURT MAY DIRECT.

**15-5-208. Registration - qualification of a foreign trustee.** A FOREIGN CORPORATE TRUSTEE IS REQUIRED TO QUALIFY AS A FOREIGN CORPORATION DOING BUSINESS IN THIS STATE IF IT MAINTAINS THE PRINCIPAL PLACE OF ADMINISTRATION OF ANY TRUST WITHIN THIS STATE. A FOREIGN COTRUSTEE IS NOT REQUIRED TO QUALIFY IN THIS STATE SOLELY BECAUSE ITS COTRUSTEE MAINTAINS THE PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE. UNLESS OTHERWISE DOING BUSINESS IN THIS STATE, LOCAL QUALIFICATION BY A FOREIGN TRUSTEE, CORPORATE OR INDIVIDUAL, IS NOT REQUIRED IN ORDER FOR THE TRUSTEE TO RECEIVE DISTRIBUTION FROM A LOCAL ESTATE OR TO HOLD, INVEST IN, MANAGE, OR ACQUIRE PROPERTY LOCATED IN THIS STATE, OR MAINTAIN LITIGATION. NOTHING IN THIS SECTION AFFECTS A DETERMINATION OF WHAT OTHER ACTS REQUIRE QUALIFICATION AS

DOING BUSINESS IN THIS STATE.

**15-5-209. Release of trust registration statement.** (1) IF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION CHANGES AFTER THE TRUST HAS BEEN REGISTERED IN THIS STATE, THE TRUSTEE MAY WITHDRAW THAT REGISTRATION BY:

(a) FILING A NOTICE OF RELEASE OF TRUST REGISTRATION STATEMENT IN THE SAME COURT IN WHICH THE LAST REGISTRATION STATEMENT WAS FILED; AND

(b) SERVING THE NOTICE OF RELEASE UPON ALL PERSONS DESCRIBED IN SECTION 15-5-206 (3).

(2) THE TRUST REGISTRATION IS DEEMED RELEASED THIRTY-FIVE DAYS AFTER THE FILING OF THE NOTICE OF RELEASE WITH THE COURT UNLESS AN OBJECTION TO THE RELEASE IS FILED WITH THAT COURT AND THE OBJECTOR FILES A NOTICE TO SET A HEARING ON THE OBJECTION WITHIN SAID PERIOD AND SERVES THE OBJECTION AND THE NOTICE TO SET ON THOSE PERSONS DESCRIBED IN SECTION 15-5-206 (3).

**15-5-210. Judicially approved settlements.** (1) A SETTLEMENT OF ANY CONTROVERSY AS TO THE ADMINISTRATION OF A TRUST; THE CONSTRUCTION, VALIDITY, OR EFFECT OF ANY TRUST; OR THE RIGHTS OR INTERESTS OF THE BENEFICIARIES OR PERSONS HAVING CLAIMS AGAINST A TRUST, IF APPROVED IN A FORMAL PROCEEDING IN THE COURT FOR THAT PURPOSE, IS BINDING ON ALL PARTIES THERETO, INCLUDING AN UNBORN INDIVIDUAL, AN UNASCERTAINED INDIVIDUAL, OR A PERSON WHO COULD NOT BE LOCATED. AN APPROVED SETTLEMENT DOES NOT IMPAIR THE RIGHTS OF CREDITORS OR TAXING AUTHORITIES WHO ARE NOT PARTIES TO IT.

(2) NOTICE OF A JUDICIALLY APPROVED SETTLEMENT MUST BE GIVEN TO EVERY INTERESTED PERSON OR TO ONE WHO CAN BIND AN INTERESTED PERSON AS PROVIDED IN THIS CODE.

(3) THE PROCEDURE FOR SECURING COURT APPROVAL OF A SETTLEMENT IS AS FOLLOWS:

(a) THE TERMS OF THE SETTLEMENT MUST BE SET FORTH IN AN AGREEMENT IN WRITING, WHICH MUST BE EXECUTED BY ALL COMPETENT PERSONS AND PARENTS OF ANY MINOR CHILD HAVING A BENEFICIAL INTEREST OR HAVING CLAIMS THAT WILL OR MAY BE AFFECTED BY THE SETTLEMENT. EXECUTION IS NOT REQUIRED BY ANY PERSON WHOSE IDENTITY OR WHEREABOUTS ARE UNKNOWN AND CANNOT BE REASONABLY ASCERTAINED.

(b) ANY INTERESTED PERSON, INCLUDING A TRUSTEE, THEN MAY SUBMIT THE SETTLEMENT TO THE COURT FOR ITS APPROVAL AND FOR EXECUTION BY THE TRUSTEE, THE TRUSTEE OF EVERY AFFECTED TESTAMENTARY TRUST, OTHER FIDUCIARIES, AND REPRESENTATIVES.

(c) AFTER NOTICE TO ALL INTERESTED PERSONS OR THEIR REPRESENTATIVES, THE COURT, IF IT FINDS THAT THE CONTEST OR CONTROVERSY IS IN GOOD FAITH AND THAT THE EFFECT OF THE SETTLEMENT UPON THE INTERESTS OF THE PERSONS REPRESENTED BY THE FIDUCIARIES OR REPRESENTATIVES IS JUST AND REASONABLE,

SHALL MAKE AN ORDER APPROVING THE SETTLEMENT AND DIRECTING ALL FIDUCIARIES UNDER ITS SUPERVISION TO EXECUTE THE AGREEMENT. A MINOR CHILD REPRESENTED ONLY BY HIS OR HER PARENTS MAY BE BOUND ONLY IF THERE IS NO CONFLICT OF INTEREST BETWEEN THE PARENT AND THE CHILD. UPON THE MAKING OF THE ORDER AND THE EXECUTION OF THE SETTLEMENT, ALL FURTHER DISPOSITION OF TRUST PROPERTY AFFECTED BY THE SETTLEMENT MUST BE IN ACCORDANCE WITH THE TERMS OF THE SETTLEMENT.

(4) NOTICE TO A PERSON WHO MAY BE REPRESENTED AND BOUND PURSUANT TO THIS CODE OF AN AGREEMENT TO BE APPROVED BY THE COURT MUST BE GIVEN:

(a) DIRECTLY TO THE PERSON OR TO ONE WHO MAY BIND THE PERSON IF THE PERSON MAY BE REPRESENTED AND BOUND PURSUANT TO SECTION 15-5-302 OR 15-5-303; OR

(b) IN THE CASE OF A PERSON WHO MAY BE REPRESENTED AND BOUND PURSUANT TO SECTION 15-5-304 AND WHO IS UNBORN OR WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY ASCERTAINABLE, TO ALL PERSONS WHOSE INTERESTS IN THE JUDICIAL PROCEEDINGS ARE SUBSTANTIALLY IDENTICAL AND WHOSE IDENTITIES AND LOCATIONS ARE KNOWN; OR, IN THE CASE OF OTHER PERSONS WHO MAY BE REPRESENTED AND BOUND PURSUANT TO SECTION 15-5-304, DIRECTLY TO THE PERSON.

### PART 3 REPRESENTATION

**15-5-301. Representation - basic effect.** (1) NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON PURSUANT TO THIS PART 3 HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE OTHER PERSON.

(2) THE CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON PURSUANT TO THIS PART 3 IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

(3) A PERSON WHO PURSUANT TO THIS PART 3 MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF.

(4) A SETTLOR MAY NOT REPRESENT AND BIND A BENEFICIARY PURSUANT TO THIS PART 3 WITH RESPECT TO THE TERMINATION OR MODIFICATION OF A TRUST PURSUANT TO SECTION 15-5-411 (1).

**15-5-301.5. Scope of representative's authority and duty of certain representatives - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "REPRESENTATIVE" MEANS A REPRESENTATIVE ACTING PURSUANT TO SECTION 15-5-302, 15-5-303, 15-5-304, OR 15-5-305.

(2) A REPRESENTATIVE MAY RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF THE INDIVIDUAL REPRESENTED WITH RESPECT TO ANY MATTER ARISING PURSUANT TO THIS ARTICLE 5, REGARDLESS OF

WHETHER A JUDICIAL PROCEEDING CONCERNING THE TRUST IS PENDING.

(3) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFITS ACCRUING TO THE LIVING MEMBERS OF THE REPRESENTED INDIVIDUAL'S FAMILY.

(4) A REPRESENTATIVE ACTING PURSUANT TO SECTION 15-5-303 (1)(f) OR SECTION 15-5-305 SHALL ACT IN GOOD FAITH ON BEHALF OF THE PERSON REPRESENTED. AS USED IN THIS SUBSECTION (4), WITH RESPECT TO REPRESENTATIVES ACTING PURSUANT TO SECTIONS 15-5-303 (1)(f) AND 15-5-305 ONLY, "GOOD FAITH" MEANS HONESTY IN FACT.

**15-5-302. Representation by a holder of general testamentary power of appointment.** TO THE EXTENT THAT THERE IS NO CONFLICT OF INTEREST BETWEEN THE HOLDER OF A GENERAL TESTAMENTARY POWER OF APPOINTMENT AND THE PERSONS REPRESENTED WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, THE HOLDER MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR OTHERWISE, ARE SUBJECT TO THE POWER. FOR PERSONS BOUND BY ORDERS BINDING HOLDERS OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, SEE SECTION 15-10-403 (3)(a).

**15-5-303. Representation by fiduciaries and parents.** (1) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

(a) A CONSERVATOR MAY REPRESENT AND BIND THE PROTECTED PERSON WHOSE ESTATE THE CONSERVATOR CONTROLS;

(b) A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE WARD'S ESTATE HAS NOT BEEN APPOINTED;

(c) AN AGENT HAVING AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL;

(d) A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST;

(e) A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND BIND PERSONS INTERESTED IN THE ESTATE; AND

(f) A PARENT MAY REPRESENT AND BIND, OR APPOINT ANOTHER PERSON TO REPRESENT AND BIND, THE PARENT'S MINOR OR UNBORN CHILD IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED, PROVIDED THAT A PERSON APPOINTED BY A SETTLOR TO REPRESENT THE SETTLOR'S MINOR OR UNBORN CHILD MAY NOT BE RELATED OR SUBORDINATE TO THE SETTLOR WITHIN THE MEANING OF SECTION 672 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

**15-5-304. Representation by person having substantially identical interest.** UNLESS OTHERWISE REPRESENTED, A MINOR, AN INCAPACITATED PERSON, OR AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY ASCERTAINABLE, MAY BE REPRESENTED BY AND BOUND BY



ANOTHER HAVING A SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED.

**15-5-305. Appointment of representative.** IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED PURSUANT TO THIS PART 3, OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF A MINOR, AN INCAPACITATED PERSON, A PROTECTED PERSON, OR AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN. A REPRESENTATIVE MAY BE APPOINTED TO REPRESENT SEVERAL PERSONS OR INTERESTS.

**PART 4**  
**CREATION, VALIDITY, MODIFICATION,**  
**AND TERMINATION OF TRUST**

**15-5-401. Methods of creating trust.** (1) A TRUST MAY BE CREATED BY:

(a) TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE SETTLOR'S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT UPON THE SETTLOR'S DEATH;

(b) DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS IDENTIFIABLE PROPERTY AS TRUSTEE;

(c) EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE; OR

(d) A STATUTE, JUDGMENT, OR DECREE AUTHORIZING THE CREATION OF A TRUST.

**15-5-402. Requirements for creation.** (1) A TRUST IS CREATED ONLY IF:

(a) EITHER:

(I) THE SETTLOR HAS CAPACITY TO CREATE A TRUST AND INDICATES AN INTENTION TO CREATE A TRUST; OR

(II) A STATUTE, JUDGMENT, OR DECREE AUTHORIZES CREATION OF A TRUST;

(b) THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

(I) A CHARITABLE TRUST;

(II) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION 15-5-408; OR

(III) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION 15-5-409;

(c) THE TRUSTEE HAS DUTIES TO PERFORM; AND

(d) THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

(2) A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

(3) A POWER IN A TRUSTEE TO SELECT A BENEFICIARY FROM AN INDEFINITE CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A REASONABLE TIME, THE POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS WHO WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN CONFERRED.

**15-5-403. Trusts created in other jurisdictions.** (1) A TRUST NOT CREATED BY A WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED, OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION:

(a) THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE, OR WAS A NATIONAL;

(b) A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS; OR

(c) ANY TRUST PROPERTY WAS LOCATED.

**15-5-404. Trust purposes.** A TRUST MAY BE CREATED ONLY TO THE EXTENT ITS PURPOSES ARE LAWFUL, NOT CONTRARY TO PUBLIC POLICY, AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

**15-5-405. Charitable purposes - enforcement.** (1) A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY; THE ADVANCEMENT OF EDUCATION OR RELIGION; THE PROMOTION OF HEALTH, GOVERNMENTAL, OR MUNICIPAL PURPOSES; OR OTHER PURPOSES THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

(2) IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR CHARITABLE PURPOSE OR BENEFICIARY, THE TRUSTEE, IF AUTHORIZED BY THE TERMS OF THE TRUST, OR, IF NOT, THE COURT, MAY SELECT ONE OR MORE CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH THE SETTLOR'S INTENTION TO THE EXTENT THAT SUCH INTENTION CAN BE ASCERTAINED.

(3) THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A PROCEEDING TO ENFORCE THE TRUST.

**15-5-406. Creation of trust induced by fraud, duress, or undue influence.** A TRUST IS VOID TO THE EXTENT ITS CREATION WAS INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE.

**15-5-407. Evidence of oral trust.** EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS ARTICLE 5, A TRUST NEED NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST AND ITS TERMS MAY BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE.

**15-5-408. Trust for care of an animal.** SUBJECT TO THIS SECTION AND SECTION 15-5-409.5, A TRUST FOR THE CARE OF DESIGNATED DOMESTIC OR PET ANIMALS AND

THE ANIMALS' OFFSPRING IN GESTATION IS VALID. FOR PURPOSES OF THIS SECTION, THE DETERMINATION OF THE "ANIMALS' OFFSPRING IN GESTATION" IS MADE AT THE TIME THE DESIGNATED DOMESTIC OR PET ANIMALS BECOME PRESENT BENEFICIARIES OF THE TRUST. UNLESS THE TRUST INSTRUMENT PROVIDES FOR AN EARLIER TERMINATION, THE TRUST TERMINATES WHEN NO LIVING ANIMAL IS COVERED BY THE TRUST. A TRUST INSTRUMENT MUST BE LIBERALLY CONSTRUED TO BRING THE TRUST WITHIN THIS SECTION, TO PRESUME AGAINST THE MERELY PRECATORY OR HONORARY NATURE OF ITS DISPOSITION, AND TO CARRY OUT THE GENERAL INTENT OF THE SETTLOR. EXTRINSIC EVIDENCE IS ADMISSIBLE IN DETERMINING THE SETTLOR'S INTENT. ANY TRUST PURSUANT TO THIS SECTION IS AN EXCEPTION TO ANY STATUTORY OR COMMON LAW RULE AGAINST PERPETUITIES.

**15-5-409. Noncharitable trust without ascertainable beneficiary.** SUBJECT TO SECTION 15-5-409.5 AND EXCEPT AS PROVIDED PURSUANT TO SECTIONS 38-30-110 TO 38-30-112, IF A TRUST IS FOR A SPECIFIC, LAWFUL, NONCHARITABLE PURPOSE OR FOR LAWFUL, NONCHARITABLE PURPOSES TO BE SELECTED BY THE TRUSTEE, AND THERE IS NO DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY DESIGNATED, THE TRUST MAY BE PERFORMED BY THE TRUSTEE FOR TWENTY-ONE YEARS BUT NO LONGER, REGARDLESS OF WHETHER THE TERMS OF TRUST CONTEMPLATE A LONGER DURATION.

**15-5-409.5. Additional provisions applicable to noncharitable trusts without ascertainable beneficiary and trusts for care of animal.** (1) IN ADDITION TO THE PROVISIONS OF SECTIONS 15-5-408 AND 15-5-409, A TRUST COVERED BY EITHER OF THOSE SECTIONS IS SUBJECT TO THE FOLLOWING PROVISIONS:

(a) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THE TRUST INSTRUMENT, NO PORTION OF THE PRINCIPAL OR INCOME MAY BE CONVERTED TO THE USE OF THE TRUSTEE, OTHER THAN REASONABLE TRUSTEE FEES AND EXPENSES OF ADMINISTRATION, OR TO ANY USE OTHER THAN FOR THE TRUST'S PURPOSES OR FOR THE BENEFIT OF A COVERED ANIMAL OR ANIMALS;

(b) UPON TERMINATION, THE TRUSTEE SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER:

(I) AS DIRECTED IN THE TRUST INSTRUMENT;

(II) IF THE TRUST WAS CREATED IN A NONRESIDUARY CLAUSE IN THE SETTLOR'S WILL OR IN A CODICIL TO THE SETTLOR'S WILL, UNDER THE RESIDUARY CLAUSE IN THE SETTLOR'S WILL; AND

(III) IF NO TAKER IS PRODUCED BY THE APPLICATION OF SUBSECTIONS (1)(b)(I) AND (1)(b)(II) OF THIS SECTION, TO THE SETTLOR'S HEIRS PURSUANT TO PART 5 OF ARTICLE 11 OF THIS TITLE 15;

(c) (Reserved)

(d) THE INTENDED USE OF THE PRINCIPAL OR INCOME CAN BE ENFORCED BY AN INDIVIDUAL DESIGNATED FOR THAT PURPOSE IN THE TRUST INSTRUMENT, BY THE PERSON HAVING CUSTODY OF AN ANIMAL FOR WHICH CARE IS PROVIDED BY THE TRUST INSTRUMENT, BY A REMAINDER BENEFICIARY, OR, IF NONE, BY AN INDIVIDUAL

APPOINTED BY A COURT UPON APPLICATION TO IT BY AN INDIVIDUAL;

(e) ALL TRUSTS CREATED PURSUANT TO THIS SECTION MAY BE REGISTERED, AND ALL TRUSTEES ARE SUBJECT TO THE LAWS OF THIS STATE APPLYING TO TRUSTS AND TRUSTEES; AND

(f) (Reserved)

(g) (I) IF NO TRUSTEE IS DESIGNATED OR NO DESIGNATED TRUSTEE IS WILLING OR ABLE TO SERVE, A COURT SHALL NAME A TRUSTEE. A COURT MAY ORDER THE TRANSFER OF THE PROPERTY TO ANOTHER TRUSTEE IF REQUIRED TO ENSURE THAT THE INTENDED USE IS CARRIED OUT AND IF:

(A) NO SUCCESSOR TRUSTEE IS DESIGNATED IN THE TRUST INSTRUMENT; OR

(B) NO DESIGNATED SUCCESSOR TRUSTEE AGREES TO SERVE OR IS ABLE TO SERVE.

(II) A COURT MAY ALSO MAKE SUCH OTHER ORDERS AND DETERMINATIONS AS SHALL BE ADVISABLE TO CARRY OUT THE INTENT OF THE SETTLOR AND THE PURPOSES OF SECTIONS 15-5-408 AND 15-5-409.

**15-5-410. Modification or termination of trust - proceedings for approval or disapproval.** (1) IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS 15-5-411 TO 15-5-414, A TRUST TERMINATES TO THE EXTENT THAT:

(a) THE TRUST IS REVOKED OR EXPIRES PURSUANT TO ITS TERMS;

(b) NO PURPOSE OF THE TRUST REMAINS TO BE ACHIEVED; OR

(c) THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, CONTRARY TO PUBLIC POLICY, OR IMPOSSIBLE TO ACHIEVE.

(2) A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION PURSUANT TO SECTIONS 15-5-411 TO 15-5-416, OR TRUST COMBINATION OR DIVISION PURSUANT TO SECTION 15-5-417, MAY BE COMMENCED BY A TRUSTEE OR A BENEFICIARY.

**15-5-411. Modification or termination of noncharitable irrevocable trust by consent.** (1) IF, UPON PETITION, THE COURT FINDS THAT THE SETTLOR AND ALL BENEFICIARIES CONSENT TO THE MODIFICATION OR TERMINATION OF A NONCHARITABLE IRREVOCABLE TRUST, THE COURT SHALL APPROVE THE MODIFICATION OR TERMINATION EVEN IF THE MODIFICATION OR TERMINATION IS INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST. A SETTLOR'S CONSENT TO A TRUST'S MODIFICATION OR TERMINATION MAY BE GIVEN BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE POWER OF ATTORNEY OR THE TERMS OF THE TRUST, BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP IF AN AGENT IS NOT SO AUTHORIZED, OR BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A CONSERVATOR HAS NOT BEEN APPOINTED.

(2) OTHER THAN A TRUST ESTABLISHED BY COURT ORDER UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1396p (d)(4), A NONCHARITABLE IRREVOCABLE TRUST MAY:

(a) BE TERMINATED UPON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST IS NOT NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST; OR

(b) BE MODIFIED UPON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST.

(3) A SPENDTHRIFT PROVISION IN THE TERMS OF A TRUST IS NOT PRESUMED TO CONSTITUTE A MATERIAL PURPOSE OF THE TRUST.

(4) UPON TERMINATION OF A TRUST PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

(5) IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION OR TERMINATION OF A TRUST PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION, THE MODIFICATION OR TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

(a) IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE BEEN MODIFIED OR TERMINATED PURSUANT TO THIS SECTION; AND

(b) THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE ADEQUATELY PROTECTED.

**15-5-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.** (1) THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE SETTLOR, MODIFICATION OR TERMINATION WILL FURTHER THE PURPOSES OF THE TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN ACCORDANCE WITH THE SETTLOR'S PROBABLE INTENTION.

(2) THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR WASTEFUL OR IMPAIR THE TRUST'S ADMINISTRATION.

(3) UPON TERMINATION OF A TRUST PURSUANT TO THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

**15-5-413. Cy pres.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF A PARTICULAR CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL:

(a) THE TRUST DOES NOT FAIL, IN WHOLE OR IN PART;

(b) THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR'S SUCCESSORS IN INTEREST; AND

(c) THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED, IN WHOLE OR IN PART, IN A MANNER CONSISTENT WITH THE SETTLOR'S CHARITABLE PURPOSES.

(2) A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT IN DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS OVER THE POWER OF THE COURT PURSUANT TO SUBSECTION (1) OF THIS SECTION TO APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

(a) THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS STILL LIVING; OR

(b) FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE TRUST'S CREATION.

**15-5-414. Modification or termination of uneconomic trust.** (1) AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST PROPERTY HAVING A TOTAL VALUE LESS THAN ONE HUNDRED THOUSAND DOLLARS MAY TERMINATE THE TRUST IF THE TRUSTEE CONCLUDES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

(2) THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

(3) UPON TERMINATION OF A TRUST PURSUANT TO THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

(4) THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR PRESERVATION.

**15-5-415. Reformation to correct mistakes.** THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO CONFORM THE TERMS TO THE SETTLOR'S INTENTION IF IT IS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT THE SETTLOR'S INTENT AND THE TERMS OF THE TRUST WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR INDUCEMENT.

**15-5-416. Modification to achieve settlor's tax objectives.** TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR'S PROBABLE INTENTION. THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE EFFECT.

**15-5-417. Combination and division of trusts.** AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO OR MORE TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE SEPARATE TRUSTS, IF THE RESULT DOES NOT IMPAIR THE RIGHTS OF ANY BENEFICIARY OR ADVERSELY AFFECT

ACHIEVEMENT OF THE PURPOSES OF THE TRUST.

PART 5  
(RESERVED)

PART 6  
REVOCABLE TRUSTS

**15-5-601.** (Reserved)

**15-5-602. Revocation or amendment of revocable trust.** (1) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST IS IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS SUBSECTION (1) DOES NOT APPLY TO A TRUST CREATED UNDER AN INSTRUMENT EXECUTED BEFORE AUGUST 7, 2013.

(2) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE OTHERWISE, IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN ONE SETTLOR:

(a) TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE, WITH REGARD TO THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, BUT MAY BE AMENDED ONLY BY JOINT ACTION OF BOTH SPOUSES;

(b) TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION; AND

(c) UPON THE REVOCATION OR AMENDMENT OF THE TRUST BY FEWER THAN ALL OF THE SETTLORS, THE TRUSTEE SHALL PROMPTLY NOTIFY THE OTHER SETTLORS OF THE REVOCATION OR AMENDMENT.

(3) THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST:

(a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF THE TRUST; OR

(b) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ANY OTHER METHOD MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE SETTLOR'S INTENT, WHICH MAY INCLUDE A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED ACCORDING TO THE TERMS OF THE TRUST. A PROVISION IN A TRUST SPECIFYING A METHOD TO REVOKE OR AMEND THE TRUST DOES NOT MAKE THE SPECIFIED METHOD EXCLUSIVE UNLESS THE SPECIFIED METHOD IS REFERRED TO AS THE "SOLE", "EXCLUSIVE", OR "ONLY" METHOD OF REVOKING OR AMENDING THE TRUST OR THE PROVISION INCLUDES SIMILAR LANGUAGE MANIFESTING THE SETTLOR'S INTENT THAT THE TRUST MAY NOT BE REVOKED OR AMENDED BY ANY OTHER METHOD.

(4) UPON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

(5) A SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR THE POWER.

(6) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE OTHERWISE, OR THE POWER TO DO SO HAS BEEN EXPRESSLY GRANTED TO ANOTHER PERSON, A CONSERVATOR OF THE SETTLOR OR, IF NO CONSERVATOR HAS BEEN APPOINTED, A GUARDIAN OF THE SETTLOR, MAY EXERCISE THE SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY, BUT ONLY WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR GUARDIANSHIP.

(7) A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR THE SETTLOR'S SUCCESSORS IN INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS TAKEN ON THE ASSUMPTION THAT THE TRUST HAS NOT BEEN AMENDED OR REVOKED.

**15-5-603. Settlor's powers.** UNLESS THE TERMS OF THE TRUST EXPRESSLY PROVIDE OTHERWISE, WHILE A TRUST IS REVOCABLE, THE RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

**15-5-604. Limitation on action contesting validity of revocable trust.**

(1) (a) A PERSON MUST COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH WITHIN THE EARLIER OF:

(I) THREE YEARS AFTER THE SETTLOR'S DEATH; OR

(II) ONE HUNDRED TWENTY DAYS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE TRUST INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE TRUST'S EXISTENCE, OF THE TRUSTEE'S NAME AND ADDRESS, AND OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING. A TRUSTEE IS NOT LIABLE TO ANY PERSON FOR GIVING OR FAILING TO GIVE NOTICE UNDER THIS SECTION.

(b) THE APPLICABLE TIME LIMIT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION IS AN ABSOLUTE BAR THAT MAY NOT BE WAIVED OR TOLLED.

(2) UPON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO DISTRIBUTE THE TRUST PROPERTY IN ACCORDANCE WITH THE TERMS OF THE TRUST. THE TRUSTEE IS NOT SUBJECT TO LIABILITY FOR DOING SO UNLESS:

(a) THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING CONTESTING THE VALIDITY OF THE TRUST; OR

(b) A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE OF A POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL PROCEEDING IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT SENT THE NOTIFICATION.



(3) UNLESS A DISTRIBUTION OR PAYMENT NO LONGER CAN BE QUESTIONED BECAUSE OF ADJUDICATION, ESTOPPEL, OR LIMITATION, A BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID, OR A DISTRIBUTEE OF PROPERTY IMPROPERLY DISTRIBUTED OR PAID, OR A CLAIMANT WHO IS IMPROPERLY PAID, IS LIABLE FOR THE RETURN OF THE PROPERTY IMPROPERLY RECEIVED AND ITS INCOME, IF ANY, SINCE THE DISTRIBUTION, IF HE OR SHE HAS THE PROPERTY. IF HE OR SHE DOES NOT HAVE THE PROPERTY, THEN HE OR SHE IS LIABLE FOR THE RETURN OF THE VALUE AS OF THE DATE OF HIS OR HER DISPOSITION OF THE PROPERTY IMPROPERLY RECEIVED, AND ITS INCOME AND GAIN, IF ANY RECEIVED BY HIM OR HER.

#### PART 7 OFFICE OF TRUSTEE

**15-5-701. Accepting or declining trusteeship.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, A PERSON DESIGNATED AS TRUSTEE ACCEPTS THE TRUSTEESHIP:

(a) BY SUBSTANTIALLY COMPLYING WITH A METHOD OF ACCEPTANCE PROVIDED IN THE TERMS OF THE TRUST; OR

(b) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY OF THE TRUST PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS A TRUSTEE, OR OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP. A PROVISION IN A TRUST SPECIFYING A METHOD TO ACCEPT OR DECLINE TRUSTEESHIP DOES NOT MAKE THE SPECIFIED METHOD EXCLUSIVE UNLESS THE SPECIFIED METHOD IS REFERRED TO AS THE "SOLE", "EXCLUSIVE", OR "ONLY" METHOD OF ACCEPTING OR DECLINING TRUSTEESHIP OR THE PROVISION INCLUDES SIMILAR LANGUAGE MANIFESTING THAT THE SETTLOR'S INTENT WAS THAT THE TRUSTEESHIP MAY NOT BE ACCEPTED OR DECLINED BY ANY OTHER METHOD.

(2) A PERSON DESIGNATED AS TRUSTEE WHO HAS NOT YET ACCEPTED THE TRUSTEESHIP MAY REJECT THE TRUSTEESHIP. A DESIGNATED TRUSTEE WHO DOES NOT ACCEPT THE TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

(3) A PERSON DESIGNATED AS A TRUSTEE, WITHOUT ACCEPTING THE TRUSTEESHIP, MAY:

(a) ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A REASONABLE TIME AFTER ACTING, THE PERSON SENDS A REJECTION OF THE TRUSTEESHIP TO THE SETTLOR OR, IF THE SETTLOR IS DEAD OR LACKS CAPACITY, TO ANY ACTING TRUSTEE AND A QUALIFIED BENEFICIARY; AND

(b) INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE POTENTIAL LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY OTHER PURPOSE.

**15-5-702. Trustee's bond.** (1) A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE TRUSTEE'S DUTIES ONLY IF THE COURT FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST AND THE COURT HAS NOT DISPENSED WITH THE REQUIREMENT.

(2) THE COURT MAY SPECIFY THE AMOUNT OF A BOND, ITS LIABILITIES, AND WHETHER SURETIES ARE NECESSARY. THE COURT MAY MODIFY OR TERMINATE A BOND AT ANY TIME.

(3) UNLESS OTHERWISE DIRECTED BY THE COURT OR THE TERMS OF THE TRUST, THE COST OF A BOND IS CHARGED TO THE TRUST.

**15-5-703. Cotrustees.** (1) COTRUSTEES WHO ARE UNABLE TO REACH A UNANIMOUS DECISION MAY ACT BY MAJORITY DECISION.

(2) IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

(3) A COTRUSTEE SHALL PARTICIPATE IN THE PERFORMANCE OF A TRUSTEE'S FUNCTION UNLESS THE COTRUSTEE IS UNAVAILABLE TO PERFORM THE FUNCTION BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION, OR OTHER TEMPORARY INCAPACITY OR THE COTRUSTEE HAS PROPERLY DELEGATED THE PERFORMANCE OF THE FUNCTION TO ANOTHER TRUSTEE.

(4) IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION, OR OTHER TEMPORARY INCAPACITY, AND PROMPT ACTION IS NECESSARY TO ACHIEVE THE PURPOSES OF THE TRUST OR TO AVOID INJURY TO THE TRUST PROPERTY, THE REMAINING COTRUSTEE OR A MAJORITY OF THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

(5) A TRUSTEE MAY NOT DELEGATE TO A COTRUSTEE THE PERFORMANCE OF A FUNCTION THE SETTLOR REASONABLY EXPECTED THE TRUSTEES TO PERFORM JOINTLY. UNLESS A DELEGATION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A DELEGATION PREVIOUSLY MADE.

(6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7) OF THIS SECTION, A TRUSTEE WHO DOES NOT JOIN IN AN ACTION OF ANOTHER TRUSTEE IS NOT LIABLE FOR THE ACTION.

(7) EACH TRUSTEE SHALL EXERCISE REASONABLE CARE TO:

(a) PREVENT A COTRUSTEE FROM COMMITTING A SERIOUS BREACH OF TRUST; AND

(b) PURSUE A REMEDY, AT TRUST EXPENSE, FOR A COTRUSTEE'S SERIOUS BREACH OF TRUST.

(8) A DISSENTING TRUSTEE WHO JOINS IN AN ACTION AT THE DIRECTION OF THE MAJORITY OF THE TRUSTEES AND WHO NOTIFIED ANY COTRUSTEE OF THE DISSENT AT OR BEFORE THE TIME OF THE ACTION IS NOT LIABLE FOR THE ACTION UNLESS THE ACTION IS A SERIOUS BREACH OF TRUST.

**15-5-704. Vacancy in trusteeship - appointment of successor.** (1) A VACANCY IN A TRUSTEESHIP OCCURS IF:

(a) A PERSON DESIGNATED AS TRUSTEE REJECTS THE TRUSTEESHIP;

(b) A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT EXIST;

(c) A TRUSTEE RESIGNS;

(d) A TRUSTEE IS DISQUALIFIED OR REMOVED;

(e) A TRUSTEE DIES; OR

(f) A GUARDIAN OR CONSERVATOR IS APPOINTED FOR AN INDIVIDUAL SERVING AS TRUSTEE.

(2) IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY IN A TRUSTEESHIP NEED NOT BE FILLED. A VACANCY IN A TRUSTEESHIP MUST BE FILLED IF THE TRUST HAS NO REMAINING TRUSTEE.

(3) A VACANCY IN A TRUSTEESHIP OF A NONCHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

(a) BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE;

(b) BY A PERSON APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED BENEFICIARIES; OR

(c) BY A PERSON APPOINTED BY THE COURT.

(4) A VACANCY IN A TRUSTEESHIP OF A CHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

(a) BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE;

(b) BY A PERSON SELECTED BY THE CHARITABLE ORGANIZATIONS EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST IF THE ATTORNEY GENERAL IS PROVIDED WRITTEN NOTICE OF THE SELECTION AND FAILS TO OBJECT OR CONCURS IN THE SELECTION WITHIN THIRTY DAYS OF SUCH NOTICE; OR

(c) BY A PERSON APPOINTED BY THE COURT.

(5) REGARDLESS OF WHETHER A VACANCY IN A TRUSTEESHIP EXISTS OR IS REQUIRED TO BE FILLED, THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL FIDUCIARY WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY FOR THE ADMINISTRATION OF THE TRUST.

**15-5-705. Resignation of trustee.** (1) A TRUSTEE MAY RESIGN:

(a) UPON AT LEAST THIRTY DAYS' NOTICE TO THE QUALIFIED BENEFICIARIES; THE SETTLOR, IF LIVING; AND ALL COTRUSTEES; OR

(b) WITH THE APPROVAL OF THE COURT.

(2) IN APPROVING A RESIGNATION PURSUANT TO THIS SECTION, THE COURT MAY ISSUE ORDERS AND IMPOSE CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF THE TRUST PROPERTY.

(3) ANY LIABILITY OF A RESIGNING TRUSTEE OR OF ANY SURETIES ON THE TRUSTEE'S BOND FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT DISCHARGED OR AFFECTED BY THE TRUSTEE'S RESIGNATION.

**15-5-706. Removal of trustee.** (1) THE SETTLOR, A COTRUSTEE, OR A BENEFICIARY MAY REQUEST THE COURT TO REMOVE A TRUSTEE, OR A TRUSTEE MAY BE REMOVED BY THE COURT ON ITS OWN INITIATIVE.

(2) THE COURT MAY REMOVE A TRUSTEE IF:

(a) THE TRUSTEE HAS COMMITTED A SERIOUS BREACH OF TRUST;

(b) LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY IMPAIRS THE ADMINISTRATION OF THE TRUST;

(c) BECAUSE OF UNFITNESS, UNWILLINGNESS, OR PERSISTENT FAILURE OF THE TRUSTEE TO ADMINISTER THE TRUST EFFECTIVELY, THE COURT DETERMINES THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF THE BENEFICIARIES; OR

(d) (I) THERE HAS BEEN A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR REMOVAL IS REQUESTED BY ALL OF THE QUALIFIED BENEFICIARIES;

(II) THE COURT FINDS THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF ALL OF THE BENEFICIARIES AND IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST; AND

(III) A SUITABLE COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE.

(3) PENDING A FINAL DECISION ON A REQUEST TO REMOVE A TRUSTEE, OR IN LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT MAY ORDER SUCH APPROPRIATE RELIEF PURSUANT TO SECTION 15-5-1001 (2) AS MAY BE NECESSARY TO PROTECT THE TRUST PROPERTY OR THE INTERESTS OF THE BENEFICIARIES.

**15-5-707. Delivery of property by former trustee.** (1) UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT OTHERWISE ORDERS, AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT, A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED HAS THE DUTIES OF A TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

(2) A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED SHALL PROCEED EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY WITHIN THE TRUSTEE'S POSSESSION TO THE COTRUSTEE, SUCCESSOR TRUSTEE, OR OTHER PERSON ENTITLED TO IT.

**15-5-708. Compensation of trustee.** (1) IF THE TERMS OF THE TRUST DO NOT SPECIFY THE TRUSTEE'S COMPENSATION, A TRUSTEE'S COMPENSATION IS DETERMINED IN ACCORDANCE WITH PART 6 OF ARTICLE 10 OF THIS TITLE 15.

(2) IF THE TERMS OF A TRUST SPECIFY THE TRUSTEE'S COMPENSATION, THE TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED, BUT THE COURT MAY ALLOW MORE OR LESS COMPENSATION IF THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE UNREASONABLY LOW OR HIGH AS DETERMINED IN ACCORDANCE WITH THE FACTORS SET FORTH IN PART 6 OF ARTICLE 10 OF THIS TITLE 15 AND TAKING INTO CONSIDERATION WHETHER THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE CONTEMPLATED WHEN THE TRUST WAS CREATED.

**15-5-709. Reimbursement of expenses.** (1) A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST PROPERTY, WITH INTEREST AS APPROPRIATE, FOR:

(a) EXPENSES THAT WERE PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST; AND

(b) TO THE EXTENT NECESSARY TO PREVENT UNJUST ENRICHMENT OF THE TRUST, EXPENSES THAT WERE NOT PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

(2) A REASONABLE ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE REIMBURSEMENT WITH REASONABLE INTEREST.

## PART 8 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 5.

**15-5-802. Duty of loyalty.** (1) A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

(2) 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:

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

(b) THE TRANSACTION WAS APPROVED BY THE COURT;

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

(d) THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED THE TRANSACTION, OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION

15-5-1009; OR

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

(3) 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:

(a) THE TRUSTEE'S SPOUSE;

(b) THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS, OR THEIR SPOUSES;

(c) AN AGENT OR ATTORNEY OF THE TRUSTEE; OR

(d) 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.

(4) 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.

(5) 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.

(6) 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", ARTICLE 1.1 OF THIS TITLE 15. 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 PURSUANT TO SECTION 15-5-813 TO RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT OF THE RATE AND METHOD BY WHICH THAT COMPENSATION WAS DETERMINED.

(7) 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.

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

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

(b) PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE;

(c) 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;

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

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

(9) 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.

**15-5-804. Prudent administration.** 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.

**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 THOSE SPECIAL SKILLS OR EXPERTISE.

**15-5-807. Delegation by trustee.** (1) 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:

(a) SELECTING AN AGENT;

(b) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST; AND

(c) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

(2) 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.

(3) A TRUSTEE WHO COMPLIES WITH SUBSECTION (1) OF THIS SECTION IS NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS OF THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

(4) 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.** (Reserved)

**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.** (1) A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE TRUST.

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

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) 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.

(b) NOTHING IN SUBSECTION (3)(a) OF THIS SECTION MAY 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 15-5-816 (1)(g)(II) AND IN SECTION 15-1-804 (2)(o), PROVIDED THE TRUSTEE MAINTAINS ADEQUATE RECORDS OF ALL TRUST PROPERTY SO HELD.

(c) THIS SUBSECTION (3) 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.

(4) 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.** (1) 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.

(2) A TRUSTEE:

(a) 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;

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

(c) WITHIN SIXTY 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 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 (3) OF THIS SECTION; AND

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

(3)(a) AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL, AND TO OTHER QUALIFIED BENEFICIARIES WHO REQUEST IT:

(I) A REPORT OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS, AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION; AND

(II) A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES.

(b) UPON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN

OFFICE, THE FORMER TRUSTEE SHALL SEND A REPORT TO THE QUALIFIED BENEFICIARIES. A PERSONAL REPRESENTATIVE, CONSERVATOR, OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

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

(5) SUBSECTIONS (2)(b) AND (2)(c) OF THIS SECTION DO NOT APPLY TO A TRUSTEE WHO ACCEPTS A TRUSTEESHIP BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5, TO AN IRREVOCABLE TRUST CREATED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5, OR TO A REVOCABLE TRUST THAT BECOMES IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5.

(6) NOTHING IN THIS SECTION MAY BE CONSTRUED 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.** (1) (a) 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. 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 ITS DISCRETION 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.

(b) 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.

(2) SUBJECT TO SUBSECTION (4) OF THIS SECTION, AND UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION (2) DOES NOT APPLY:

(a) 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

(b) 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.

(3) A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION (2) 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.

(4) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO:

(a) 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 AMENDED, WAS PREVIOUSLY ALLOWED;

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

(c) 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 AMENDED.

**15-5-815. General powers of trustee.** (1) A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

(a) POWERS CONFERRED BY THE TERMS OF THE TRUST; AND

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

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

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

(III) ANY OTHER POWERS CONFERRED BY THIS CODE AND THE "COLORADO FIDUCIARIES' POWERS ACT", PART 8 OF ARTICLE 1 OF THIS TITLE 15.

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

**15-5-816. Specific powers of trustee.** (1) WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 15-5-815, AND IN ADDITION TO THE POWERS CONFERRED PURSUANT TO THE "COLORADO FIDUCIARIES' POWERS ACT", PART 8 OF ARTICLE 1 OF THIS TITLE 15, A TRUSTEE MAY:

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

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

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

(d) DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE

INSTITUTION;

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

(f) 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;

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

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

(II) 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;

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

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

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR

INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION;

(m) WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW:

(I) 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;

(II) 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 GOVERNMENT ENFORCEMENT;

(III) 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;

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

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

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

(o) 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;

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

(q) 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;

(r) (Reserved)

(s) (Reserved)

(t) 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;

(u) 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:

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

(II) PAYING IT TO THE BENEFICIARY'S CUSTODIAN PURSUANT TO THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, OR CUSTODIAL TRUSTEE PURSUANT TO THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE 15, AND FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OF CUSTODIAL TRUST;

(III) 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

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

(v) 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;

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

(x) 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;

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

(z) 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 on termination.** (1) 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.

(2) 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 PAYMENTS OF DEBTS, EXPENSES, AND TAXES.

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

(a) IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR

(b) 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.

**15-5-818. Reimbursement for taxes - definitions.** (1) AS USED IN THIS SECTION:

(a) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO IS NOT RELATED OR SUBORDINATE TO THE SETTLOR WITHIN THE MEANING OF SECTION 672 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(b) "SETTLOR" MEANS THE GRANTOR OR ANOTHER PERSON TREATED AS THE OWNER OF ANY PORTION OF A TRUST UNDER SECTION 671 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(2) UNLESS OTHERWISE PROVIDED IN THE GOVERNING INSTRUMENT, AN INDEPENDENT TRUSTEE OF A TRUST MAY, FROM TIME TO TIME, IN THE TRUSTEE'S DISCRETION, DISTRIBUTE TO THE SETTLOR AN AMOUNT EQUAL TO ANY INCOME TAXES ON ANY PORTION OF THE TRUST'S TAXABLE INCOME FOR WHICH THE SETTLOR IS LIABLE.

(3) A TRUSTEE SHALL NOT EXERCISE OR PARTICIPATE IN THE EXERCISE OF DISCRETION PURSUANT TO THIS SECTION THAT WOULD CAUSE THE INCLUSION OF THE TRUST ASSETS IN THE SETTLOR'S GROSS TAXABLE ESTATE FOR FEDERAL ESTATE TAX PURPOSES AT THE TIME OF EXERCISE OR IN A MANNER INCONSISTENT WITH THE QUALIFICATION OF ALL OR ANY PORTION OF THE TRUST FOR THE FEDERAL GIFT OR ESTATE TAX MARITAL DEDUCTION, TO THE EXTENT THE TRUST IS INTENDED TO QUALIFY FOR SUCH DEDUCTION.

(4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

(a) ANY TRUST BY WHICH A FUTURE ESTATE IS INDEFEASIBLY VESTED IN THE UNITED STATES OR A POLITICAL SUBDIVISION THEREOF FOR EXCLUSIVELY PUBLIC PURPOSES;

(b) A CORPORATION ORGANIZED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES, INCLUDING THE ENCOURAGEMENT OF ART AND THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS, NO PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH IS CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO

INFLUENCE LEGISLATION;

(c) A TRUSTEE, OR A FRATERNAL SOCIETY, ORDER, OR ASSOCIATION OPERATING UNDER THE LODGE SYSTEM, PROVIDED THE PRINCIPAL OR INCOME OF SUCH TRUST IS TO BE USED BY SUCH TRUSTEE OR BY SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES, OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF SUCH TRUSTEE OR OF SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION IS CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE LEGISLATION; OR

(d) ANY VETERANS' ORGANIZATION INCORPORATED BY AN ACT OF CONGRESS, OR ANY DEPARTMENT OR LOCAL CHAPTERS OR POSTS OF SUCH AN ORGANIZATION, NO PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

(5) A CREDITOR OF THE SETTLOR OF AN IRREVOCABLE TRUST IS NOT ENTITLED TO ATTACH OR OTHERWISE REACH ANY TRUST PROPERTY DUE TO THE POWER GRANTED TO A TRUSTEE OR OTHER THIRD PARTY BY THE TERMS OF THE TRUST, COURT ORDER, AGREEMENT OF THE BENEFICIARIES, OR ANY OTHER PROVISION OF LAW, INCLUDING SUBSECTION (2) OF THIS SECTION, TO REIMBURSE THE SETTLOR OF THE TRUST AN AMOUNT FOR WHICH THE SETTLOR IS LIABLE FOR INCOME TAX ON THE TAXABLE INCOME OF THE TRUST.

(6) THE PROVISIONS OF THIS SECTION APPLY TO ALL TRUSTS UNLESS AN INDEPENDENT TRUSTEE OF A TRUST ELECTS OTHERWISE IN WRITING.

PART 9  
(RESERVED)

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

**15-5-1001. Remedies for breach of trust.** (1) A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

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

- (a) COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES;
- (b) ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST;
- (c) COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY, BEING SURCHARGED OR SANCTIONED, OR OTHER MEANS;
- (d) ORDER A TRUSTEE TO ACCOUNT, PROVIDE A STATUS OR FINANCIAL REPORT, OR PROVIDE AN INVENTORY;
- (e) APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY



AND ADMINISTER THE TRUST;

(f) RESTRAIN, RESTRICT, OR SUSPEND THE TRUSTEE;

(g) REMOVE THE TRUSTEE AS PROVIDED IN SECTION 15-5-706;

(h) REDUCE OR DENY COMPENSATION TO THE TRUSTEE OR REQUIRE THE TRUSTEE TO DISGORGE COMPENSATION PREVIOUSLY PAID;

(i) 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

(j) ORDER OTHER APPROPRIATE RELIEF.

(3) IF A REMEDY FOR A BREACH OF TRUST IS SOUGHT BY A COTRUSTEE, BENEFICIARY, OR INTERESTED PERSON, OR THE COURT ACTS SUA SPONTE, THE PROVISIONS OF PART 5 OF ARTICLE 10 OF THIS TITLE 15 APPLY.

**15-5-1002. Damages for breach of trust.** (1) IN ADDITION TO OTHER REMEDIES PROVIDED BY THIS ARTICLE 5, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF:

(a) 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

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

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2), 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.** (1) 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.

(2) 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 5, THE PROVISIONS OF PART 6 OF ARTICLE 10 OF THIS TITLE 15 GOVERN THE ENTITLEMENT TO AND PAYMENT OF COMPENSATION AND COSTS TO TRUSTEES, THEIR

ATTORNEYS, AND THIRD PARTIES INVOLVED WITH TRUSTS.

**15-5-1005. Limitation of actions against trustee.** (1) 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 PERSON WHO MAY REPRESENT AND BIND THE BENEFICIARY, AS PROVIDED IN PART 3 OF THIS ARTICLE 5, 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.

(2) 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.

(3) IF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN THREE YEARS AFTER THE FIRST TO OCCUR OF:

- (a) THE REMOVAL OR RESIGNATION OF THE TRUSTEE;
- (b) THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST; OR
- (c) THE TERMINATION OF THE TRUST.

(4) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION, A BENEFICIARY IS DEEMED TO HAVE BEEN SENT A REPORT IF:

- (a) IN THE CASE OF A BENEFICIARY HAVING CAPACITY, IT IS SENT TO THE BENEFICIARY; OR
- (b) IN THE CASE OF A BENEFICIARY WHO, PURSUANT TO PART 3 OF THIS ARTICLE 5, MAY BE REPRESENTED AND BOUND BY ANOTHER PERSON, IT IS SENT TO THE OTHER PERSON.

(5) 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 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.** (1) A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT

THAT IT:

(a) 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

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

(2) 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.** (1) 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:

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

(b) 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.** (1) 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.

(2) 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.

(3) 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.

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

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

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

(c) IN OTHER APPROPRIATE PROCEEDINGS.

(5) 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:

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

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

(6) 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 IS NOT 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.** (1) EXCEPT AS PROVIDED IN SUBSECTION (3) 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, OR THE "COLORADO UNIFORM LIMITED PARTNERSHIP ACT OF 1981", ARTICLE 62 OF TITLE 7.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) 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.

(3) 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.

(4) 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.** (1) 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 WERE PROPERLY EXERCISING THE POWER.

(2) 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 AND, IN THE ABSENCE OF CONTRARY KNOWLEDGE, MAY ASSUME THE EXISTENCE AND PROPER USE OF THE POWER BEING EXERCISED.

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

(4) 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.

(5) 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.** (1) 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:

(a) THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;

(b) THE IDENTITY OF THE SETTLOR;

(c) THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE;

(d) THE POWERS OF THE TRUSTEE IN THE PENDING TRANSACTION;

(e) THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST;

(f) 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

(g) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE TAKEN.

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

(3) 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.

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

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

PART 11  
(Reserved)

PART 12  
(Reserved)

PART 13  
LIFE INSURANCE POLICY OWNED BY A TRUSTEE

**15-5-1301. Life insurance policy owned by a trustee - definition.**

(1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND THE PROVISIONS OF THE "COLORADO UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF THIS TITLE 15, A TRUSTEE MAY NOT ACQUIRE OR HOLD AS A TRUST ASSET A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON UNLESS THE TRUSTEE HAS AN INSURABLE INTEREST, AS DESCRIBED IN SECTION 15-5-114, IN THE PERSON. A TRUSTEE WHO ACQUIRES AS A TRUST ASSET A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON IN WHOM THE TRUSTEE HAS AN INSURABLE INTEREST MAY CONTINUE TO HOLD THE LIFE INSURANCE POLICY WITHOUT LIABILITY FOR LOSS ARISING FROM THE TRUSTEE'S FAILURE TO:

(a) DETERMINE WHETHER THE POLICY IS OR REMAINS A PROPER INVESTMENT;

(b) INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE INSURANCE COMPANY;

(c) EXERCISE OR NOT EXERCISE ANY OPTION, RIGHT, OR PRIVILEGE AVAILABLE UNDER THE POLICY, INCLUDING FINANCING THE PAYMENT OF PREMIUMS, UNLESS THERE IS SUFFICIENT CASH OR THERE ARE OTHER READILY MARKETABLE TRUST ASSETS FROM WHICH TO PAY PREMIUMS, REGARDLESS OF WHETHER THE EXERCISE OR NONEXERCISE OF THESE POWERS RESULTS IN THE LAPSE OR TERMINATION OF THE POLICY;

(d) INQUIRE ABOUT OR INVESTIGATE THE HEALTH OR FINANCIAL CONDITION OF ANY INSURED UNDER THE POLICY; OR

(e) RETAIN THE POLICY WITHOUT REGARD TO ANY LACK OF DIVERSIFICATION OF TRUST ASSETS RESULTING FROM OWNERSHIP OF SUCH POLICY AND WITHOUT REGARD TO THE TERMS AND CONDITIONS OF THE POLICY.

(2) (a) THIS SECTION DOES NOT RELIEVE A TRUSTEE OF LIABILITY WITH RESPECT TO ANY LIFE INSURANCE POLICY PURCHASED FROM AN AFFILIATED COMPANY, OR WITH RESPECT TO WHICH THE TRUSTEE OR ANY AFFILIATED COMPANY OF THE TRUSTEE RECEIVES ANY COMMISSION, UNLESS EITHER:

(I) THE TRUSTEE HAS GIVEN WRITTEN NOTICE OF SUCH INTENDED PURCHASE TO ALL QUALIFIED BENEFICIARIES OF THE TRUST AS DEFINED IN SECTION 15-1-402 (10.5), OR TO THEIR LEGAL REPRESENTATIVES, AND EITHER RECEIVES WRITTEN CONSENT TO SUCH PURCHASE FROM QUALIFIED BENEFICIARIES OR DOES NOT RECEIVE FROM A QUALIFIED BENEFICIARY A RESPONSE TO WRITTEN NOTICE BY THE TRUSTEE WITHIN THIRTY DAYS AFTER THE MAILING OF SUCH NOTICE TO THE QUALIFIED BENEFICIARY OR LEGAL REPRESENTATIVE AT HIS OR HER LAST KNOWN ADDRESS; OR

(II) THE TRUST AGREEMENT CONTAINS A PROVISION THAT PERMITS PURCHASES OF LIFE INSURANCE FROM AN AFFILIATE.

(b) FOR PURPOSES OF THIS SECTION, AN "AFFILIATED COMPANY" HAS THE SAME MEANING AS SET FORTH IN 15 U.S.C. SEC. 80a-2 (a)(2).

(3) THIS SECTION APPLIES TO A TRUST ESTABLISHED BEFORE, ON, OR AFTER AUGUST 7, 2013, AND TO A LIFE INSURANCE POLICY ACQUIRED, RETAINED, OR OWNED BY A TRUSTEE BEFORE, ON, OR AFTER AUGUST 7, 2013.

(4) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THIS SECTION DOES NOT APPLY TO ANY TRUST THAT EXPRESSLY PROVIDES THAT THIS SECTION DOES NOT APPLY TO SUCH TRUST, OR TO ANY TRUST THAT OTHERWISE PROVIDES FOR A DIFFERENT STANDARD OF FIDUCIARY CARE OR OBLIGATION GREATER THAN THAT PROVIDED IN THIS SECTION; EXCEPT THAT A TRUST MAY NOT PERMIT A TRUSTEE TO ACQUIRE OR HOLD AS A TRUST ASSET A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON IN WHOM THE TRUSTEE DOES NOT HOLD AN INSURABLE INTEREST.

PART 14  
MISCELLANEOUS PROVISIONS

**15-5-1401. Uniformity of application and construction.** IN APPLYING AND CONSTRUING THE LANGUAGE OF THIS ARTICLE 5 THAT IS CONSISTENT WITH UNIFORM LAW, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

**15-5-1402. Electronic records and signatures.** THE PROVISIONS OF THIS ARTICLE 5 GOVERNING THE LEGAL EFFECT, VALIDITY, OR ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF CONTRACTS FORMED OR PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES, CONFORM TO THE REQUIREMENTS OF SECTION 102 OF THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7002, AND SUPERSEDE, MODIFY, AND LIMIT THE REQUIREMENTS OF THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ.

**15-5-1403. Severability clause.** IF ANY PROVISION OF THIS ARTICLE 5 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OF APPLICATIONS OF THIS ARTICLE 5 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE 5 ARE SEVERABLE.

**15-5-1404. Application to existing relationships.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE 5, ON THE EFFECTIVE DATE OF THIS ARTICLE 5:

(a) THIS ARTICLE 5 APPLIES TO ALL TRUSTS CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 5;

(b) THIS ARTICLE 5 APPLIES TO ALL JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 5;

(c) THIS ARTICLE 5 APPLIES TO JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5 UNLESS THE COURT FINDS THAT APPLICATION OF A PARTICULAR PROVISION OF THIS ARTICLE 5 WOULD SUBSTANTIALLY INTERFERE WITH THE EFFECTIVE CONDUCT OF THE JUDICIAL PROCEEDINGS OR PREJUDICE THE RIGHTS OF THE PARTIES, IN WHICH CASE THE PARTICULAR PROVISION OF THIS ARTICLE 5 DOES NOT APPLY AND THE SUPERSEDED LAW APPLIES;

(d) ANY RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN THIS ARTICLE 5 APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5 UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN THE TERMS OF THE TRUST; AND

(e) AN ACT DONE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5 IS NOT AFFECTED BY THIS ARTICLE 5.

(2) IF A RIGHT IS ACQUIRED, EXTINGUISHED, OR BARRED UPON THE EXPIRATION OF A PRESCRIBED PERIOD THAT HAS COMMENCED TO RUN PURSUANT TO ANY OTHER STATUTE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 5, THEN THE PERIOD PRESCRIBED BY THAT STATUTE AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE 5 CONTINUES TO APPLY TO THE RIGHT, EVEN IF THE STATUTE HAS BEEN REPEALED OR SUSPENDED.



**SECTION 2.** In Colorado Revised Statutes, **repeal** parts 1, 2, 3, 4, 5, 6, and 7 of article 16 of title 15.

**SECTION 3.** In Colorado Revised Statutes, 10-7-704, **amend** (1)(d) as follows:

**10-7-704. Insurable interest.** (1) An insurable interest, with reference to insurance on the life of another, exists only as follows:

(d) A trustee of a trust has an insurable interest in the life of an insured under a life insurance policy as provided in ~~section 15-16-501, C.R.S.~~ SECTION 15-5-114;

**SECTION 4.** In Colorado Revised Statutes, 11-106-105, **amend** (1) introductory portion as follows:

**11-106-105. Substitution of Colorado bank or Colorado trust company.** (1) In addition to the procedures initiated by an interested party concerning internal affairs of ~~their~~ THE PARTY'S trust ~~under section 15-16-201, C.R.S.~~ PURSUANT TO PART 2 OF ARTICLE 5 OF TITLE 15, or procedures otherwise permitted by Colorado law, and unless a will, agreement, or trust instrument otherwise provides, a company may be substituted as fiduciary for all or a part of the fiduciary business of another company without court approval if:

**SECTION 5.** In Colorado Revised Statutes, 13-32-102, **amend** (1) introductory portion and (1)(e) as follows:

**13-32-102. Fees in probate proceedings.** (1) On and after July 1, 2008, for services rendered by judges and clerks of district or probate courts in all counties of the state of Colorado in proceedings had pursuant to articles 10 to 17 of title 15, ~~C.R.S.~~, THE COURT SHALL CHARGE the following fees: ~~shall be charged:~~

(e) Registration fee for registration of trust pursuant to ~~article 16~~ ARTICLE 5 of title 15 ~~C.R.S.~~: ..... 163.00

**SECTION 6.** In Colorado Revised Statutes, 15-1-1512, **amend** (1)(b) as follows:

**15-1-1512. Disclosure of contents of electronic communications held in trust when trustee not original user.** (1) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(b) A certified copy of the trust instrument or a registration of the trust under ~~part 1 of article 16~~ PART 2 OF ARTICLE 5 of this ~~title~~ TITLE 15 that includes consent to disclosure of the content of electronic communications to the trustee;

**SECTION 7.** In Colorado Revised Statutes, 15-1-1513, **amend** (1)(b) as follows:

**15-1-1513. Disclosure of other digital assets held in trust when trustee not original user.** (1) Unless otherwise ordered by the court, directed by the user, or

provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(b) A certified copy of the trust instrument or a registration of the trust under ~~part of article 16~~ PART 2 OF ARTICLE 5 of this ~~title~~ TITLE 15;

**SECTION 8.** In Colorado Revised Statutes, 15-10-301, **amend** (1)(e) as follows:

**15-10-301. Territorial application.** (1) Except as otherwise provided in this code, this code applies to:

(e) Trusts subject to administration in this state, TO THE EXTENT SUCH APPLICATION IS NOT INCONSISTENT WITH THE "COLORADO UNIFORM TRUST CODE", ARTICLE 5 OF THIS TITLE 15; and

**SECTION 9.** In Colorado Revised Statutes, 15-10-601, **amend** (1) as follows:

**15-10-601. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code OR ANY CODE INCLUDED AS PART OF THIS TITLE 15 as the estate is originally constituted and as the estate exists from time to time during administration. "Estate" includes custodial property as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11; ~~C.R.S.~~; custodial trust property as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this ~~title~~ TITLE 15; and the property of a principal that is subject to a power of attorney.

**SECTION 10.** In Colorado Revised Statutes, **amend** 15-11-806 as follows:

**15-11-806. Reformation to correct mistakes.** The court may reform the terms of a governing instrument OTHER THAN A TRUST THAT IS GOVERNED BY SECTION 15-5-415, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence ~~that~~ WHAT the transferor's intent WAS and THAT the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

**SECTION 11.** In Colorado Revised Statutes, **amend** 15-11-807 as follows:

**15-11-807. Modification to achieve transferor's tax objectives.** To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument OTHER THAN A TRUST THAT IS GOVERNED BY SECTION 15-5-416 in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

**SECTION 12.** In Colorado Revised Statutes, 15-12-703, **amend** (1) as follows:

**15-12-703. General duties - relation and liability to persons interested in estate - duty to search for a designated beneficiary agreement - standing to sue.**

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by ~~section 15-16-302~~ PART 8 OF ARTICLE 5 OF THIS TITLE 15. A personal representative ~~is under~~ HAS a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. ~~He~~ A PERSONAL REPRESENTATIVE shall use the authority conferred upon him OR HER by this code, the terms of the will, if any, and any order in proceedings to which he OR SHE is party for the best interests of successors to the estate.

**SECTION 13.** In Colorado Revised Statutes, 15-12-913, **amend** (1) as follows:

**15-12-913. Distributions to trustee.** (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in ~~section 15-16-303~~ SECTION 15-5-206.

**SECTION 14.** In Colorado Revised Statutes, 15-16-806, **amend** (3) as follows:

**15-16-806. Duty to communicate - no duty to warn.** (3) A trust advisor has a duty to keep the beneficiaries of a trust reasonably informed of the trust and its administration, to the extent that such information relates to a duty or function being performed by the trust advisor. This duty is governed by ~~section 15-16-303~~ SECTION 15-5-206.

**SECTION 15.** In Colorado Revised Statutes, 15-17-101, **amend** (2) introductory portion as follows:

**15-17-101. Time of taking effect - provisions for transition.** (2) Except as provided elsewhere in this code, including but not limited to sections 15-11-601, 15-11-701, 15-11-1106, ~~15-16-702~~, and 15-17-103, on the effective date of this code or of any amendment to this code:

**SECTION 16. Act subject to petition - effective date.** This act takes effect January 1, 2019; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on January 1, 2019, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: April 26, 2018