



The Colorado Uniform Trust Code

BY CONSTANCE TROMBLE EYSTER
AND CARL G. STEVENS

This article discusses the Colorado Uniform Trust Code, which became effective on January 1, 2019.

The Colorado Uniform Trust Code (the CUTC or Code) was signed into law on April 26, 2018, with an effective date of January 1, 2019.¹ The CUTC is generally a retroactive statute² and applies to all trusts except business trusts and a limited number of enumerated arrangements.³ The Code repeals and replaces most of CRS Title 15, Article 16, which governed trust administration.⁴ For now, the Directed Trustees Act⁵ and the Decanting Act⁶ remain in Article 16.⁷

The CUTC's Evolution

The CUTC is based on the Uniform Trust Code (UTC), a comprehensive statute first drafted by the Uniform Law Commission in 2000 and subsequently amended several times. To date,

the UTC has been enacted in some form in 33 jurisdictions.

A committee of the CBA's Trust and Estate Section (the Committee) reviewed the UTC and drafted a proposed bill in 2005. That effort failed for a variety of reasons, but primarily because the trust and estate legal community could not reach consensus on the UTC's provisions regarding creditor's claims. These provisions regarding creditor's claims (UTC Part 5) were not included in the CUTC and continue to be studied by the Committee.

While the CUTC strives to maintain uniformity with the UTC, changes to the uniform law were made to retain important Colorado policy in pre-existing laws. For example, the judicial tool box,⁸ the Cost and Compensation Act,⁹ trust

registration provisions, the pet trust statute,¹⁰ and many other unique aspects of trust law in Colorado have been retained.

The CUTC is divided into 14 parts. Parts 5, 9, 11, and 12 are reserved for future enactments or serve as placeholders for possible transfer of pre-existing statutes related to trusts.

Part 1: General Provisions and Definitions

Most of the CUTC's definitions will look familiar to practitioners because they are similar to the definitions in the Colorado Uniform Probate Code (CUPC),¹¹ but some definitions are new.

"Alternative dispute resolution"¹² (ADR) is a definition unique to the CUTC. It is defined as "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 . . .¹³ ADR clauses in a trust are valid and enforceable unless they could be held invalid on the same grounds as a trust would be deemed invalid (e.g., lack of capacity or undue influence). The court may order parties to a trust proceeding to participate in ADR so long as the court's order is consistent with any ADR provision in the trust agreement.

The definitions of beneficiary, qualified beneficiary, and interested party are of primary importance to parties involved in trust administration or enforcement actions. Understanding these terms is essential, in particular for identifying persons entitled to notice, consent, or participation in judicial proceedings.

Under CRS § 15-5-103(4)(a), "beneficiary" includes a person who has a present or future interest in a trust and a person (other than a trustee) who has a power of appointment over the property. A beneficiary "does *not* include an appointee under a power of appointment unless or until the power is exercised and the trustee has knowledge of the exercise and identity of the appointee."¹⁴

"Interested person" has a substantially more limited meaning in the CUTC than in the CUPC. The term "interested person" is used primarily in CUTC Part 2, which deals with judicial settlements, trust registration, and court action to address matters of trust administration. In the CUTC, an interested person is "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."¹⁵ This definition was drafted to limit interested persons to individuals with a material interest in the trust issue at hand and to exclude individuals who have only a remote or tangential interest.

The term "qualified beneficiary" appears frequently in the CUTC, particularly in matters regarding disclosure, notice, and consent. The definition has been used in other uniform acts adopted in Colorado. A "qualified beneficiary" is

a beneficiary who, on the date of the beneficiary's qualification, is "a distributee or permissible distributee of trust income or principal" or "would be a distributee or permissible distributee of trust income or principal" if the interests of the current beneficiaries terminated on that date without causing the trust to terminate or if the trust terminated on that date.¹⁶ Others, such as "charities" and "beneficiaries" who notify the trustee, may be treated as "qualified beneficiaries."¹⁷

"Terms of a trust" is defined in several places in other Colorado statutes. The various definitions are similar, but not quite the same.¹⁸ The CUTC definition was crafted by consensus among practitioners involved in drafting this and other trust and estate statutes. CRS § 15-5-103(21) defines "terms of a trust" to mean "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 a nonjudicial settlement agreement[]¹⁹ or by alternative dispute resolution . . ."²⁰ CRS § 15-5-103(21) allows trust terms to be defined by terms that "would be admissible" in a judicial proceeding. The Committee modified the UTC definition to include only those terms established in a judicial proceeding or other formal means.

Default Statute and Mandatory Rules

The CUTC is primarily a default statute. Its default provisions can be overridden by the settlor's intent as expressed in the trust instrument. However, 14 CUTC provisions are mandatory²¹ and cannot be modified. The CUTC mandatory rules below are consistent with the UTC, except for item 5.

1. Minimum requirements for creating a trust. CUTC Part 4 governs what is required to create a trust, which is consistent with Colorado trust law generally. Under CRS § 15-5-402(1), a trust is only created if (1) a settlor with capacity indicates intention to create a trust, or a statute, judgment, or decree authorizes the creation of a trust; (2) the trust has a definite beneficiary; (3) the trustee has duties to perform; and (4) the same person is not the sole trustee and beneficiary. Regarding the last factor, a person is not the "sole" beneficiary, even if that person is

the sole current distributee, so long as there are beneficiaries with future interests in the trust.²²

2. Trustee's duties. A trustee must act in good faith and in accordance with the trust's terms and purposes and the beneficiaries' interests. The trustee's duties are substantially set forth in CUTC Part 8.²³

3. Trust purpose and benefits. A trust must be for the benefit of its beneficiaries and have a purpose that is lawful, not contrary to public policy, and possible to achieve.²⁴

4. Court's powers. The terms of the trust will not prevail over the court's power to modify or terminate a trust as governed by CRS §§ 15-5-410 to -416.

5. Creditor's claims. UTC Part 5 is currently not part of the CUTC. Part 5, concerning creditor's claims, is reserved in the CUTC. If Part 5 is added to the CUTC in the future, it is likely that another mandatory provision will be added to state that a settlor cannot modify the effect of a spendthrift provision or the rights of certain preferred creditors and assignees as set forth in the Code.

6. Bonds. The court has the power to require, dispense with, modify, or terminate a bond.²⁵

7. Trustee compensation. The court has the power to adjust a trustee's compensation when the trust terms provide for compensation that is unreasonably low or high.²⁶

8. Notice. The trustee has a duty 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 distributees or permissible distributees of such trust at any age, or to other qualified beneficiaries of such trust who have attained 25 years of age.²⁷

9. Information requests. The trustee has a duty under CRS § 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 trust administration. Even though a settlor can waive a trustee's duty to provide notice of a trust to a qualified beneficiary who is under age 25 and who is not a current beneficiary, if that person discovers his or her interest and requests such information, the trust agreement cannot waive the trustee's obligations to provide such information to the qualified beneficiary.²⁸

10. Exculpatory provisions. CRS § 15-5-1008 governs the effectiveness of an exculpation of trustee provision.²⁹ Such terms may be invalidated for several reasons. As a practice pointer, where the drafting attorney will serve as trustee, or if a bank or other trust company will serve as trustee and has requested that certain language be included in the trust agreement, those provisions should be specifically called to the attention of the settlor in writing. A drafting attorney/trustee should also suggest to the client that he or she obtain independent counsel to review exculpatory terms.³⁰

11. Rights of non-trustees and non-beneficiaries. CRS §§ 15-5-1010 to -1013 set forth the rights of persons other than a trustee or beneficiary who deal with trustees.

12. Limitation periods. Periods of limitation for commencing a judicial proceeding contesting the validity of a trust or action against a trustee cannot be modified by the terms of a trust.³¹

13. Settlor's intent. Consistent with the terms of the trust and the CUTC, the court has the power to take such action and exercise such jurisdiction not inconsistent with the settlor's intent as may be necessary in the interests of justice.³² The UTC language was altered in the CUTC to emphasize consideration of the settlor's intent.

14. Jurisdiction and venue. The subject matter jurisdiction of the court and venue for commencing a proceeding are provided in CRS §§ 15-5-203 and -204, unless the trust instrument requires alternative dispute resolution. The district court (or the City and County of Denver Probate Court) has jurisdiction over proceedings concerning trusts and their administration.

Governing Law and Place of Administration

The CUTC allows the settlor to designate the law that applies to the terms of the trust, unless designating the law of that jurisdiction is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.³³ The jurisdiction selected need not have any other connection to the trust. However, public policies in other states may invalidate the settlor's choice of law and

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should be reviewed carefully in this regard. If the settlor does not select a governing law, the law of the jurisdiction with the most significant relationship to the matter at issue will apply.

Principal Place of Administration

The settlor can choose the principal place of administration, but only if the trustee's principal place of business is located in or the trustee is a resident of that jurisdiction, or the

administration occurs in the jurisdiction.³⁴ CRS § 15-5-108(5) specifies a process for providing notice to beneficiaries when the trustee intends to change the place of administration.

Notice

CRS § 15-5-109(1) to (3) addresses a trustee's obligations regarding notice of matters set forth in the CUTC. Notice of a judicial proceeding (other than a judicial settlement agreement under the CUTC) is not governed by the CUTC, but rather by applicable rules of civil procedure, the CUPC, and the Colorado Rules of Probate Procedure.³⁵

Nonjudicial Settlement Agreements

The CUTC allows certain persons impacted by an issue involving trusts to reach an enforceable agreement without court approval.³⁶ Nonjudicial settlement agreements will not be valid if they would violate a material purpose of the trust or if the agreement includes terms and conditions that could not be properly approved by a court.³⁷ Persons whose interests may be affected by a nonjudicial settlement agreement can request that the court approve or disprove the settlement agreement.³⁸

Coordination with Other Statutes

The CUTC expressly incorporates the rules of construction applicable to trusts that exist in other Colorado statutes,³⁹ such as CUPC Article 11, Part 7 governing class gifts; the divorce revocation statute, CRS § 15-11-802; the Uniform Disclaimer of Property Interests Act;⁴⁰ and many other statutes that are familiar to trust and estate practitioners.

Part 2: Judicial Proceedings

The CUTC, consistent with current Colorado law, provides that a court can intervene in matters of trust administration to the extent its jurisdiction is invoked by an interested person, or as provided by law.⁴¹

The CUTC expressly allows a settlor to choose a county of venue.⁴²

Trust Registration

Trust registration is no longer mandatory, but a trustee might choose to register the trust

for venue purposes or to establish a place of administration.⁴³ Upon registration, the trustee must provide notice to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the terms of the trust.⁴⁴ A trustee may release a trust registration,⁴⁵ which replaces the former judicial process for release.

Judicially Approved Settlement Agreements

The UTC does not have a provision addressing the process for judicially approving a settlement agreement. Colorado practitioners wanted clarity on this issue, similar to that in the CUPC,⁴⁶ and added CRS § 15-5-210 for that purpose. Interested persons as defined in the CUTC (not the CUPC) must receive notice of any request for a judicially approved settlement agreement, and the settlement must be in writing. A court-approved settlement will be binding on all parties thereto if the court finds that the matter being settled was brought in good faith and that the proposed settlement is just and reasonable.

The new definition of interested person (discussed above) will most pointedly affect judicial proceedings involving trusts. Litigants will now have the ability to limit the number of participants in a judicial settlement proceeding to those persons who have important interests in the outcome of the issues that are the subject of the proceedings. There will still be times when a prudent litigant will choose to include all trust interests in a proceeding (e.g., when a trust modification or termination is at issue), but in many cases the smaller the crowd, the quicker and generally less expensive the result.

Part 3: Representation

Representation, also known as virtual representation, allows a person represented by another person to be bound by notice given to that other person. Representation under Part 3 is useful when settling a dispute, giving notice of trust registrations, identifying individuals entitled to receive accountings, acquiring consents, and other matters. Pursuant to CRS § 15-5-109(1) to (3), the representation rules under Part 3 *do not* apply for the purpose of giving notice of a judicial proceeding; notice

of a judicial proceeding must comply with the Colorado Rules of Civil Procedure, the Colorado Rules of Probate Procedure, and the CUPC.⁴⁷ An exception to this rule is a “judicially approved settlement” under CRS § 15-5-210, which expressly allows notice to be given as provided in Part 3.

Part 4: Trust Creation, Validity, Modification, and Termination

The CUTC has specific provisions governing the creation, modification, and termination of trusts and their validity.

Creating a Trust

The CUTC sets forth the methods of creating a trust and the requirements for creation.⁴⁸ Three of the four methods of creating a trust require a transfer of property (including a testamentary transfer by pour-over will), although these methods are not exclusive. Trust creation can be accomplished by declaration, power of appointment, statute, judgment, or decree authorizing the creation.

Regardless of the method of creation, a trust can nonetheless fail if it does not meet certain requirements for creation. For example, the settlor must have capacity and the trust must have a definite beneficiary, or the trust must be a charitable trust, pet trust, or other noncharitable trust authorized by statute.⁴⁹ These requirements cannot be modified by the trust agreement.⁵⁰ A trust need not be evidenced by a written instrument; an oral trust and its terms may be established by clear and convincing evidence.⁵¹

Pet Trusts and Other Noncharitable Trusts

Existing statutes governing pet trusts and other noncharitable trusts without a definite beneficiary (such as cemetery trusts) were moved into the CUTC.⁵²

Modification or Termination of a Trust

The CUTC governs modification or termination of a noncharitable trust by consent and court approval.⁵³ The ability of a settlor and beneficiaries to join to amend or terminate an irrevocable trust was recognized by the Colorado Court of Appeals in *In re Green Valley Financial*

Holdings.⁵⁴ A settlor’s consent can be given by a representative only in limited circumstances. An agent under a power of attorney can give consent to the extent expressly authorized in the document or the trust.⁵⁵ A conservator or guardian for the settlor can consent with the approval of the court.⁵⁶

The official comments to the UTC provide that “the settlor’s right to join the beneficiaries in terminating or modifying a trust under Section 411 does not rise to the level of a taxable power.”⁵⁷ A nontaxable result in such circumstances has been found in private letter rulings.⁵⁸ However, the issue of whether a settlor’s actual participation in modification of a trust may have an adverse tax result should be considered before proceeding under CRS § 15-5-411 to modify or terminate a trust.

Without the settlor’s consent, a noncharitable trust may be terminated upon the consent of all beneficiaries if the court concludes either that (1) continuing the trust is not necessary to achieve any material purpose of the trust, or (2) modification is not inconsistent with a material purpose of the trust.⁵⁹ A spendthrift provision is not presumed to constitute a material purpose of the trust.⁶⁰ If the spendthrift provision is intended to be a material term of the trust, it is best for a settlor to expressly state such intent in the trust.

If less than all beneficiaries consent to a proposed modification or termination, the court may still approve the modification or termination if it finds that the trust could have been terminated or modified if all the beneficiaries had agreed and the interests of a nonconsenting beneficiary will be adequately protected.⁶¹

Unanticipated Circumstances

The court may also modify a trust’s administrative or dispositive terms or terminate a trust as a result of circumstances unanticipated by the settlor, if doing so will further the trust’s purposes.⁶² Modification should be in accordance with the settlor’s probable intention.⁶³ The court can also modify a trust’s administrative terms if the existing terms would result in impractical, wasteful, or impaired trust administration.⁶⁴ This provision broadens the court’s power to terminate or modify a trust in a manner

consistent with the provisions of *Restatement (Third) of Trusts* § 66.⁶⁵

Cy Pres

The doctrine of cy pres is codified in the CUTC at CRS § 15-5-413.⁶⁶

Uneconomic Trusts

Pursuant to CRS § 15-5-414(1), a trust worth less than \$100,000 may be terminated by the trustee, after notice to the qualified beneficiaries, if the trustee concludes that the value of the trust property is not sufficient to justify the cost of administration. In addition, a court may modify or terminate a trust, or remove a trustee, if the court determines that the trust is uneconomical.⁶⁷

Correction of Mistakes and Modification to Achieve Tax Objectives

CRS §§ 15-5-415 and -416 govern reformation to correct mistakes and modification to achieve a settlors' tax objectives. These sections were previously located at CRS §§ 15-11-806 and -807.

Combination or Division of Trusts

A trustee has broad power to combine or divide trusts without court approval after notice to qualified beneficiaries.⁶⁸

Part 6: Revocable Trusts

Part 6 of the CUTC, CRS §§ 15-5-601 to -604, was previously located at CRS §§ 15-16-702 to 704.

Part 7: Office of Trustee

Nonexclusive methods are identified in the CUTC for accepting or declining a trusteeship.⁶⁹ This broadening of the methods for accepting or declining trusteeship is an incorporation of law enacted in response to *In re Estate of McCreath*.⁷⁰

Bond

A trustee may be required by the court to give a bond, and this provision cannot be modified by the trust agreement.⁷¹

Trustee Resignation

CRS § 15-5-705(1)(a) identifies a default method for resigning as trustee by providing 30-day

notice to the qualified beneficiaries, the settlor (if then living), and all cotrustees. A trustee can also resign with court approval.⁷²

Trustee Removal

The court's power to remove a trustee is limited to circumstances in which there has been

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a serious breach of trust, where the lack of cooperation among cotrustees impairs the administration of the trust, or where the removal would be in the best interests of the beneficiaries because of the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively.⁷³

The court also has the power to remove a trustee where all of the qualified beneficiaries consent (or there has been a substantial change in circumstances) and the removal serves the interests of all beneficiaries, the removal is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.⁷⁴ This CUTC section may provide relief to beneficiaries who are dissatisfied with an existing trustee but were not given a removal power in the terms of the trust agreement (because, for example, the trust was drafted at a time when it was less common to include a removal clause in the trust agreement). The assessment of whether removing a trustee would be in the interests of the beneficiaries is not based on the interests of the beneficiaries as defined by themselves, but rather on the beneficial interests of the beneficiaries as provided in the trust.⁷⁵

Trustee Compensation

A trustee is entitled to compensation regardless of whether the trust agreement specifies the amount.⁷⁶ The reasonableness of a trustee's compensation will be determined under the Cost and Compensation Act.⁷⁷ The court's ability to adjust a trustee's compensation is a power that cannot be modified.⁷⁸

Expense Reimbursement

A trustee is entitled to reimbursement for expenses that were *properly* incurred in the administration of the trust.⁷⁹ A trustee can also be reimbursed for expenses not properly incurred in the administration of the trust to prevent unjust enrichment to the trust.⁸⁰

Cotrustees

Default rules govern cotrustees and can be changed by a trust's express terms. Cotrustees act by majority decision if they are unable to achieve unanimous agreement.⁸¹ If there is a vacancy in the cotrusteeship, the other

cotrustees may act for the trust without the need to fill the vacancy.⁸² Rules address delegation among cotrustees and liability of cotrustees for actions of other cotrustees.⁸³

Vacancy in Trusteeship

CRS § 15-5-704(2) to (4) provides default rules for filling a trustee vacancy, including priority for serving as a successor trustee. Courts retain authority to appoint an additional trustee or special fiduciary, even when there is no vacancy, if necessary for the administration of the trust.⁸⁴

Part 8: Trustee’s Duties and Powers

The CUTC extensively enumerates the duties and powers of the trustee, commencing with the duty to administer a trust in good faith, in the best interests of the beneficiaries, and in accordance with its terms.⁸⁵ This duty cannot be modified by the trust terms.⁸⁶ Part 8 also has extensive provisions on loyalty, impartiality, prudence, trustee’s delegation of duties, duty to keep records and identify trust property, defense of claims, and duty to inform and report.

The duties to keep qualified beneficiaries reasonably informed under CRS § 15-5-813(1) are mandatory and cannot be changed by the trust terms.⁸⁷ The duty to notify qualified beneficiaries within 60 days of accepting trusteeship is also a mandatory term, except with regard to certain qualified beneficiaries who have not attained age 25.⁸⁸ The duties regarding information to distributees and permissible distributees regarding irrevocable trusts are also mandatory.⁸⁹

Powers

A trustee with discretionary power of distribution must exercise that power in good faith, even if terms such as “sole” or “absolute” discretion are used to describe the trustee’s authority.⁹⁰ A trustee’s exercise of discretion will necessarily be governed by the terms and purposes of the trust, the interests of the beneficiaries, and relevant fiduciary duties. A trustee will not be liable for the exercise or failure to exercise a discretionary power if done honestly and with proper motive.⁹¹

As to tax savings matters, the CUTC limits a trustee’s authority to make distributions

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to himself or herself as a beneficiary. Such distributions must be made only in accordance with an ascertainable standard. Further, the trustee cannot make distributions that would satisfy the trustee’s personal legal obligations.⁹² These provisions⁹¹ do not apply to a revocable trust, a trust that qualifies for the federal estate or gift tax marital deduction, or an IRC § 2503(c)

trust created for a minor.⁹³ These are default provisions and may be expressly overridden by the trust.

A trustee has all of the powers conferred by the trust and other powers appropriate to achieve the investment objectives or management of the trust, and the CUTC expressly incorporates the Colorado Fiduciaries’ Powers Act.⁹⁴

The CUTC grants specific powers to a trustee,⁹⁵ most of which are very similar to those found in the Colorado Fiduciaries’ Powers Act. All powers are subject to alteration by the trust. One noteworthy CUTC trustee power is the power to take action with respect to the trust property to address concerns about the possible violation of environmental laws.⁹⁶ The trustee also the power to settle claims, including through ADR.⁹⁷

Part 10: Liability of Trustee and Rights of Persons Dealing with Trustee

The CUTC enumerates a variety of nonexclusive remedies for breach of trust.⁹⁸ A trustee who commits a breach of trust, in addition to other remedies, is liable to the beneficiaries affected.⁹⁹ Where more than one trustee is liable for a breach, a trustee is entitled to contribution from cotrustees.¹⁰⁰ A trustee is not entitled to contribution if that trustee was more at fault than the other cotrustees, or if the trustee committed the breach in bad faith or with reckless indifference to the trust’s purposes or the interests of the beneficiaries.¹⁰¹ If the trustee received a benefit from the breach, the trustee is not entitled to contribution to the extent of the benefit received.¹⁰²

Statutes of Limitation for Breaches of Trust

A beneficiary may not commence an action against a trustee for breach of trust more than one year after the date that the beneficiary 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.¹⁰³ To take advantage of this statute of limitations, the report sent by the trustee must provide sufficient information so the beneficiary knows of the potential claim or should have inquired into its

existence. In contrast, under the former statute, “full” disclosure was required and the statute of limitations applied only to a final account.¹⁰⁴ The previous statute provided a six-month statute of limitations, which period began on the date a beneficiary *received* the report.¹⁰⁵

If the one-year rule does not apply, a beneficiary may bring a breach of trust action within three years of the first to occur of:

1. The removal or resignation of the trustee.
2. The termination of the beneficiary’s interest in the trust.
3. The termination of the trust.

Other Means of Foreclosing Claims

The expirations of the statutes of limitation are not the exclusive means of defending claims against a trustee. The trustee may have received support for his or her action by the consent of the beneficiaries, a release, or the approval of the court with adequate notice. In addition, depending on the cause of action, other statutes of limitation, equitable principals, and other laws may apply to foreclose an action against a trustee.

Defenses and Exculpation of Trustee

If a trustee reasonably relies on the trust terms, the trustee will not be liable to a beneficiary for a breach of trust that resulted from that reliance.¹⁰⁶ A trustee is also not liable for a breach of trust that resulted from the trustee’s lack of knowledge about the happening of an event (such as marriage, divorce, or death) so long as the trustee has exercised reasonable care to ascertain the happening of the event.¹⁰⁷ Similar protections exist in other sections of the CUTC to protect a trustee who does not have knowledge of a particular event.¹⁰⁸

The trustee is not liable to a beneficiary for a breach of trust if the beneficiary consented, released the trustee from liability, or ratified the transaction.¹⁰⁹ This defense does not apply if the beneficiary did not know of rights or facts relating to the breach.¹¹⁰ Practitioners may want to review procedures for obtaining consent and releases to ensure that the beneficiaries had sufficient information.¹¹¹

The trust may include an exculpation clause relieving the trustee of liability, but such clause

will be unenforceable if (1) it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purpose of the trust or the interests of the beneficiaries, or (2) the clause was inserted as a result of an abuse by the trustee of a confidential relationship with the settlor.¹¹² CRS § 15-5-1008 is a mandatory provision that cannot be modified by the trust terms.¹¹³

Personal Liability of a Trustee

Generally, a trustee will not be personally liable on contracts or transactions properly entered into in the course of administration.¹¹⁴ A trustee may be personally liable for torts committed in the course of administering a trust, including liability for violations of environmental laws, if the trustee is personally at fault.¹¹⁵

Where the trustee holds an interest as a general partner in a partnership, the trustee is not personally liable on a contract entered into by the partnership, so long as the fiduciary capacity of the trustee was adequately disclosed.¹¹⁶ Nor is the trustee personally liable for torts committed by the partnership unless the trustee was personally at fault.¹¹⁷ These immunities do not apply if the trustee, as an individual, or the trustee’s spouse, descendants, siblings, or parents (or the spouse of any one of them) holds an interest in the partnership.¹¹⁸ The immunities further do not apply to the settlor of a revocable trust that holds an interest in a partnership as a general partner.¹¹⁹

Protection for Persons Dealing with Trustee

The CUTC affords rights to persons other than a trustee or beneficiary.¹²⁰ These provisions are mandatory and cannot be modified by the terms of a trust.¹²¹ For example, a person who acts in good faith in dealing with a trustee, without knowledge that the trustee is acting improperly, is protected from liability in the same manner as if the trustee had properly exercised the trustee’s power.¹²²

As to third parties dealing with trustees and settlors who desire to keep trust terms confidential, the CUTC allows for a “certification of trust” to provide a safe harbor to persons relying on the trustee’s authority to act.¹²³ A person

receiving a certification of trust may nonetheless require a trustee to furnish the relevant parts of the trust agreement that substantiate the information set forth in the certification of trust.¹²⁴ A trustee cannot use a certification of trust to satisfy a trustee’s obligations to furnish information to a beneficiary.

Part 13: Life Insurance Owned by Trust

Part 13 of the CUTC was previously located at CRS §§ 15-16-601 et seq.

Part 14: Miscellaneous

Part 14 contains miscellaneous provisions on the application and construction of the CUTC and addresses electronic records and signatures.

Conclusion

By enacting the CUTC, Colorado has created a code for the administration of trusts that is comprehensive and will increase uniformity across jurisdictions. Practitioners must become familiar with the CUTC to ensure that trusts they draft are in compliance with its provisions. 

This article is based on an outline for a presentation by the CBA Uniform Trust Committee members at the 2018 Estate Planning Retreat of the Trust and Estate Section prepared by Constance T. Eyster and reviewed by committee members Stephen Brainerd, Marc Darling, and Darla Daniel.



Constance Tromble Eyster

is a member of Hutchinson Black and Cook, LLC in Boulder. Her practice focuses on estate planning as well as probate and trust administration—eyster@hbcoboulder.com. **Carl G. Stevens** is a shareholder in Davis Schilken, PC in Denver. He practices primarily in the areas of estate planning, business succession planning, elder law, trust and estate administration, estate planning for oil and gas mineral owners, and probate—cgstevens@dslawcolorado.com.

Coordinating Editors: David W. Kirch, dkirch@dwkpc.net; Emily Bowman, ebowman@dwkpc.net

CUTC Notification Requirements*

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration.	CRS § 15-5-108(5)	Not less than 60 days before initiating the transfer	Yes
If the trustee registers a trust, the trustee shall provide notice of the registration in writing to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the term of the trust.		60 days after filing the trust registration statement	Yes
A trustee who changes the principal place of administration may withdraw a previously filed trust registration statement by providing notice to all cotrustees, qualified beneficiaries, and other fiduciaries and persons having authority to act under the terms of the trust.	CRS § 15-5-209		Yes
The trustee of a trust with a total value of less than \$100,000 may terminate a trust after notice to the qualified beneficiaries if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.	CRS § 15-5-414		Yes
After notice to qualified beneficiaries, the 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.	CRS § 15-5-417		Yes
Upon revocation or amendment of a trust by fewer than all the settlors, the trustee must notify the other settlors of the revocation or amendment.	CRS § 15-5-602	Promptly	Yes

*This chart is intended to address the most substantial notice obligations. It does not address matters of virtual representation, nor does it address which individuals will be treated as "qualified beneficiaries," beyond those identified in CRS § 15-5-102(16). For statutes addressing individuals entitled to notice, see CRS §§ 15-5-110 and CUTC Part 3.

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
<p>The time to bring a proceeding to contest the validity of a revocable trust after the death of the settlor can be limited by the trustee to 120 days, if the trustee provided a copy of the trust instrument to the litigant and a notice informing that person of the trust's existence, the trustee's name and address, and the time allowed for commencing a proceeding to contest the validity of a trust.</p>	<p>CRS § 15-5-604</p>		<p>Yes</p>
<p>One way for a trustee to resign is by providing notice to the qualified beneficiaries.</p>	<p>CRS § 15-5-705</p>	<p>30 days</p>	<p>Yes</p>
<p>If a trustee receives compensation from an investment company or investment trust for providing investment advisory or investment management services, the trustee may notify qualified beneficiaries of the rate and method by which that compensation was determined.</p>	<p>CRS § 15-5-802(6)</p>	<p>Annually</p>	<p>Yes</p>
<p>The trustee shall keep the qualified beneficiaries 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.</p> <p>The trustee's duty to respond to requests of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust cannot be modified by the trust instrument.</p>	<p>CRS § 15-5-813(1) See also CRS § 15-5-105(2)(i)</p>		<p>No</p>
<p>Upon request of a qualified beneficiary, the trustee shall promptly furnish a copy of the trust portions of the trust that describe or affect the beneficiary's interest.</p>	<p>CRS § 15-5-813(2)(a)</p>		<p>Yes</p>

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
<p>The trustee must notify qualified beneficiaries of the acceptance of the trusteeship and the trustee's name, address, and telephone number.</p> <p>This obligation does not apply to a trustee who accepts a trusteeship before January 1, 2019, to an irrevocable trust created before that date, or to a revocable trust that becomes irrevocable before that date.</p>	<p>CRS § 15-5-813(2)(b) <i>See also</i> CRS § 15-5-105(2)(h)</p>	<p>60 days after accepting a trusteeship</p>	<p>No**</p>
<p>The trustee must provide notice of the existence of an irrevocable trust, identity of the settlor or settlors, the right to request portions of the trust instrument that describe his or her interest, the right to a trustee's report, and the right to request trustee reports to qualified beneficiaries.</p> <p>This obligation does not apply to a trustee who accepts a trusteeship before January 1, 2019, to an irrevocable trust created before that date, or to a revocable trust that becomes irrevocable before that date.</p>	<p>CRS § 15-5-813(2)(c) <i>See also</i> CRS § 15-5-105(2)(h)</p>	<p>60 days after acquiring knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable</p>	<p>No**</p>
<p>**The rights described in CRS §§ 15-5-813(2)(b) and 15-5-813(2)(c) to provide notice of the existence of an irrevocable trust, identity of the trustee, and the right to request trustee reports is not modifiable with respect to permissible distributees and to qualified beneficiaries who have attained the age of 25.</p>	<p>CRS § 15-5-813(2)(b) and CRS § 15-5-813(2)(c) <i>See also</i> CRS § 15-5-105(2)(h)</p>		<p>No</p>
<p>The trustee must notify qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.</p>	<p>CRS § 15-5-813(2)(d)</p>	<p>In advance</p>	<p>Yes</p>

Notice Obligation	Statutory Reference	Time Period (if applicable)	Can it be modified?
The trustee shall send to distributees and permissible distributees of income or principal, and to other qualified beneficiaries who request it: <ol style="list-style-type: none"> a. A report of the trust property, liabilities, receipts, and disbursements (including trustee compensation). b. A list of the trust assets and, if feasible, their market values. 	CRS § 15-5-813(3)(a)	At least annually and upon termination of the trust	Yes
Upon a vacancy in the 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.	CRS § 15-5-813(3)(b)		Yes
The trustee may send notice of a proposal of distribution upon termination of a trust to beneficiaries. The right of a beneficiary to object terminates after 30 days if the beneficiary received notice of the distribution proposal and was informed of the right to object and the time for doing so.	CRS § 15-5-817		Yes
The trustee may give written notice to qualified beneficiaries of the intent to purchase life insurance as an asset of the trust, and by doing so limit the trustee's liability for such purchase.	CRS § 15-5-1301(2)(a)(I)		Yes

NOTES

1. CRS §§ 15-5-101 et seq.
2. CRS § 15-5-1404. This section includes exceptions to retroactive application, such as allowing the court to apply the superseded law if application of the CUTC would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of the parties.
3. CRS § 15-5-102 excludes from the CUTC's scope business trusts, 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.
4. The CUTC repeals Parts 1 to 7 of CRS Title 15, Article 16.
 5. CRS §§ 15-16-801 et seq.
 6. CRS §§ 15-16-901 et seq.
 7. A revised Uniform Directed Trust Act will likely be introduced in the 2019 General Assembly. If enacted, it would replace the existing Directed Trustee statute. It is expected that the Directed Trustee statute and the Decanting Act will

- eventually be moved into (or near) the CUTC, once minor inconsistencies in definitions are addressed.
8. CRS §§ 15-10-501 et seq.
 9. CRS §§ 15-10-601 et seq.
 10. CRS § 15-5-408.
 11. CRS § 15-10-201.
 12. CRS § 15-5-103(2).
 13. CRS § 13-22-201.
 14. CRS § 15-5-103(4)(b) (emphasis added).

15. CRS § 15-5-103(10).
16. CRS § 15-5-103(16).
17. CRS § 15-5-110.
18. Other definitions of “terms of a trust” are found in the Uniform Principal and Income Act, CRS § 15-1-402(12); in the Uniform Power of Appointment Act, CRS § 15-2.5-102(19); and in the Colorado Uniform Trust Decanting Act, CRS § 15-16-902(28).
19. CRS § 15-5-111.
20. CRS § 15-5-113.
21. CRS § 15-5-105(2).
22. CRS § 15-5-402.
23. See CRS § 15-5-801 (Duty to Administer Trust); CRS § 15-5-802 (Duty of Loyalty); CRS § 15-5-814 (setting forth duties to act in good faith when exercising discretionary powers); CRS § 15-5-1008 (exculpatory term of a trust is unenforceable to the extent it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust and the beneficiaries’ interests).
24. See CRS § 15-5-404 (Trust Purposes).
25. CRS § 15-5-702.
26. CRS § 15-5-708(2).
27. CRS § 15-5-813(2). CRS § 15-5-105(2)(h) was included in the CUTC to allow settlors the option of preventing the trust or its contents from being disclosed to young persons who do not have a present interest in the trust. This latitude should not be confused with the trustee’s duties, which remain to act in the best interests of all beneficiaries, regardless of whether such persons are aware of the existence of the trust. Under former CRS § 15-16-303, a beneficiary was entitled to this information. A beneficiary under the CUPC includes any person who has any present or future interest in a trust, vested or contingent. The CUTC restricts the persons to whom a trustee owes duties of notification.
28. CRS § 15-5-105(2)(i).
29. CRS § 15-5-1008.
30. Although a detailed discussion is beyond the scope of this article, while it is permissible for a lawyer to serve both as scrivener and as fiduciary, the lawyer should be aware of the possible conflicts of interest that can arise in such circumstances, as set forth in Colo. RPC 1.7 and 1.8. Further information, specifically on exculpatory clauses in such circumstances, can be found in the ACTEC Commentaries on Model Rules of Professional Conduct (5th ed. 2016), and the ACTEC Engagement Letters: A Guide for Practitioners (3d. ed. 2017).
31. CRS § 15-5-1005.
32. CRS § 15-5-105(2)(m).
33. CRS § 15-5-107.
34. CRS § 15-5-108.
35. CRS § 15-5-109(4).
36. CRS § 15-5-111.
37. CRS § 15-5-111(3).
38. CRS § 15-5-111(5).
39. CRS § 15-5-112.
40. 15 CRS Article 11, Part 12.
41. CRS § 15-5-201.
42. CRS § 15-5-204(1).
43. CRS § 15-5-205.
44. CRS § 15-5-206.
45. CRS § 15-5-209.
46. CRS §§ 15-10-403, 15-12-1101, and -1102.
47. CRS § 15-5-109(4).
48. CRS §§ 15-5-401 and -402.
49. CRS § 15-5-402.
50. CRS § 15-5-105(2)(a).
51. CRS § 15-5-407.
52. CRS §§ 15-5-408, -409, and -409.5.
53. CRS §§ 15-5-411 et seq.
54. *In re Green Valley Fin. Holdings*, 32 P.3d 643, 646 (Colo.App. 2001).
55. CRS § 15-5-411.
56. *Id.*
57. Citing Treas. Reg. § 20.2038-1(a)(2).
58. PLR 201417001 (Dec. 10, 2013), www.irs.gov/pub/irs-wd/1417001.pdf.
59. CRS § 15-5-411(2)(a) and (b).
60. CRS § 15-5-411(3).
61. CRS § 15-5-411(5).
62. CRS § 15-5-412.
63. CRS § 15-5-412(1).
64. CRS § 15-5-412(2).
65. *Restatement (Third) of Trusts* §66 (American Law Institute 2003).
66. CRS § 15-5-413.
67. CRS § 15-5-414(a).
68. CRS § 15-5-417.
69. CRS § 15-5-701.
70. *In re Estate of McCreath*, 240 P.3d 413, 421 (Colo.App. 2009). See former CRS § 15-16-702(3)(b) (now CRS §15-602(3)(b)).
71. CRS § 15-5-702; CRS § 15-5-105(2)(f).
72. CRS § 15-5-705(1)(b).
73. CRS § 15-5-706(2)(a) to (c).
74. CRS § 15-5-706(2)(d).
75. See CRS § 15-5-103(11) (defining “interests of the beneficiaries”).
76. CRS § 15-5-708.
77. CRS §§ 15-10-601 et seq.
78. CRS § 15-5-105(2)(g).
79. CRS § 15-5-709(1)(a).
80. CRS § 15-5-709(1)(b).
81. CRS § 15-5-703(1).
82. CRS § 15-5-703(2).
83. CRS § 15-5-703.
84. CRS § 15-5-704.
85. CRS § 15-5-801. The adoption of a good faith standard was a point of controversy for some opponents of the UTC proposal in 2005.
86. CRS § 15-5-105(2)(b).
87. CRS § 15-5-105(2)(i).
88. CRS § 15-5-813(2)(b); CRS § 15-5-105(2)(h).
89. *Id.*
90. CRS §15-5-814(1)(a).
91. CRS § 15-5-814. These savings clauses currently exist in substantially similar form in CRS § 15-1-1401.
92. CRS § 15-5-814(2).
93. CRS § 15-5-814(4).
94. CRS § 15-1-816(1).
95. CRS § 15-5-816.
96. CRS § 15-5-816(1)(m).
97. CRS § 15-5-816(1)(n) and (w).
98. CRS § 15-5-1001.
99. CRS § 15-5-1002.
100. CRS § 15-5-1002(2).
101. *Id.*
102. *Id.*
103. CRS § 15-5-1005.
104. CRS. § 15-16-307 (repealed).
105. *Id.*
106. CRS § 15-5-1006.
107. CRS § 15-5-1007.
108. CRS § 15-5-103(4)(b) (exercise of power of appointment); CRS § 15-5-1010(5) and (6) (unknown births or unrecorded designated beneficiary agreement).
109. CRS § 15-5-1009.
110. *Id.*
111. CRS § 15-5-1009(1).
112. CRS § 15-5-1008.
113. CRS § 15-5-105(2)(j).
114. CRS § 15-5-1010(1).
115. CRS § 15-5-1010(2).
116. CRS § 15-5-1011(1).
117. CRS § 15-5-1011(2).
118. CRS § 15-5-1011(3).
119. CRS § 15-5-1011(4).
120. CRS §§ 15-5-1011 to -1013.
121. CRS § 15-5-105(2)(k).
122. CRS § 15-5-1012(1).
123. CRS § 15-5-1013(1).
124. CRS § 15-5-1013(5).