

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0340.01 Conrad Imel x2313

SENATE BILL 19-105

SENATE SPONSORSHIP

Rodriguez, Crowder, Gardner

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A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO UNIFORM DIRECTED TRUST ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. Under current law, the administration of trusts, including directed trusts, is generally governed by certain provisions in the probate code. The bill repeals provisions governing directed trustees and creates a new "Colorado Uniform Directed Trust Act" (act). The new act includes provisions concerning:

- ! Judicial proceedings;
- ! Trust directors' powers;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
March 7, 2019

SENATE
3rd Reading Unamended
February 11, 2019

SENATE
2nd Reading Unamended
February 8, 2019

! Duties and liabilities of trust directors and directed trustees;
and
! Powers that are excluded from the act.
The bill makes conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** part 8 of article 16 of title 15 as follows:

4 PART 8

5 COLORADO UNIFORM

6 DIRECTED TRUST ACT

7 **15-16-801. Short title.** THIS SHORT TITLE OF THIS PART 8 IS THE
8 "COLORADO UNIFORM DIRECTED TRUST ACT".

9 **15-16-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "BREACH OF TRUST" INCLUDES A VIOLATION BY A TRUST
12 DIRECTOR OR TRUSTEE OF A DUTY IMPOSED ON THAT DIRECTOR OR
13 TRUSTEE BY THE TERMS OF THE TRUST, THIS PART 8, OR LAW OF THIS
14 STATE OTHER THAN THIS PART 8 PERTAINING TO TRUSTS.

15 (2) "DIRECTED TRUST" MEANS A TRUST FOR WHICH THE TERMS OF
16 THE TRUST GRANT A POWER OF DIRECTION.

17 (3) "DIRECTED TRUSTEE" MEANS A TRUSTEE THAT IS SUBJECT TO
18 A TRUST DIRECTOR'S POWER OF DIRECTION.

19 (4) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
20 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
21 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
22 LEGAL ENTITY.

23 (5) "POWER OF DIRECTION" MEANS A POWER OVER A TRUST

1 GRANTED TO A PERSON BY THE TERMS OF THE TRUST TO THE EXTENT THE
2 POWER IS EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE.
3 THE TERM INCLUDES A POWER OVER THE INVESTMENT, MANAGEMENT, OR
4 DISTRIBUTION OF TRUST PROPERTY OR OTHER MATTERS OF TRUST
5 ADMINISTRATION. THE TERM EXCLUDES THE POWERS DESCRIBED IN
6 SECTION 15-16-805 (2).

7 (6) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT
8 CREATES, OR CONTRIBUTES PROPERTY TO, A TRUST. IF MORE THAN ONE
9 PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON
10 IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO
11 THAT PERSON'S CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON
12 HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

13 (7) "STATE" MEANS A STATE OF THE UNITED STATES, THE
14 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
15 ISLANDS, OR ANY OTHER TERRITORY OR POSSESSION SUBJECT TO THE
16 JURISDICTION OF THE UNITED STATES.

17 (8) "TERMS OF A TRUST" MEANS:

18 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8)(b) OF
19 THIS SECTION, THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING
20 A TRUST'S PROVISIONS AS:

21 (I) EXPRESSED IN THE TRUST INSTRUMENT; OR

22 (II) AS MAY BE ESTABLISHED BY OTHER EVIDENCE IN A JUDICIAL
23 PROCEEDING; OR

24 (b) THE TRUST'S PROVISIONS AS ESTABLISHED, DETERMINED, OR
25 AMENDED BY:

26 (I) A TRUSTEE OR TRUST DIRECTOR IN ACCORDANCE WITH
27 APPLICABLE LAW;

- 1 (II) COURT ORDER;
2 (III) A NONJUDICIAL SETTLEMENT AGREEMENT; OR
3 (IV) BY ALTERNATIVE DISPUTE RESOLUTION.

4 (9) "TRUST DIRECTOR" MEANS A PERSON THAT IS GRANTED A
5 POWER OF DIRECTION BY THE TERMS OF A TRUST TO THE EXTENT THE
6 POWER IS EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE.
7 THE PERSON IS A TRUST DIRECTOR WHETHER OR NOT THE TERMS OF THE
8 TRUST REFER TO THE PERSON AS A TRUST DIRECTOR AND WHETHER OR NOT
9 THE PERSON IS A BENEFICIARY OR SETTLOR OF THE TRUST.

10 (10) "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL, AND
11 SUCCESSOR TRUSTEE, AND A COTRUSTEE.

12 (11) "WILLFUL MISCONDUCT" MEANS INTENTIONAL WRONGDOING
13 AND NOT MERE NEGLIGENCE, GROSS NEGLIGENCE, OR RECKLESSNESS.

14 (12) "WRONGDOING" MEANS MALICIOUS CONDUCT OR CONDUCT
15 DESIGNED TO DEFRAUD OR SEEK AN UNCONSCIONABLE ADVANTAGE.

16 **15-16-803. Application - principal place of administration.**

17 (1) THIS PART 8 APPLIES TO A TRUST, WHENEVER CREATED, THAT HAS ITS
18 PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE, SUBJECT TO THE
19 FOLLOWING RULES:

20 (a) IF THE TRUST WAS CREATED BEFORE THE EFFECTIVE DATE OF
21 THIS PART 8, THIS PART 8, AS AMENDED IN 2019, APPLIES ONLY TO A
22 DECISION OR ACTION OCCURRING ON OR AFTER THE EFFECTIVE DATE OF
23 THIS PART 8.

24 (b) IF THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST IS
25 CHANGED TO THIS STATE ON OR AFTER THE EFFECTIVE DATE OF THIS PART
26 8, THIS PART 8 APPLIES ONLY TO A DECISION OR ACTION OCCURRING ON OR
27 AFTER THE DATE OF THE CHANGE.

1 (2) WITHOUT PRECLUDING OTHER MEANS TO ESTABLISH A
2 SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION IN A
3 DIRECTED TRUST, TERMS OF THE TRUST THAT DESIGNATE THE PRINCIPAL
4 PLACE OF ADMINISTRATION OF THE TRUST ARE VALID AND CONTROLLING
5 IF:

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

8 (b) A TRUST DIRECTOR'S PRINCIPAL PLACE OF BUSINESS IS LOCATED
9 IN OR A TRUST DIRECTOR IS A RESIDENT OF THE DESIGNATED JURISDICTION;

10 (c) ALL OR PART OF THE ADMINISTRATION OCCURS IN THE
11 DESIGNATED JURISDICTION; OR

12 (d) THE TRUST IS DULY REGISTERED WITH A COURT IN THE
13 DESIGNATED JURISDICTION.

14 **15-16-804. Common law and principles of equity.** THE
15 COMMON LAW AND PRINCIPLES OF EQUITY SUPPLEMENT THIS PART 8,
16 EXCEPT TO THE EXTENT MODIFIED BY THIS PART 8 OR LAW OF THIS STATE
17 OTHER THAN THIS PART 8.

18 **15-16-805. Exclusions - definition.** (1) IN THIS SECTION, "POWER
19 OF APPOINTMENT" MEANS A POWER THAT ENABLES A PERSON ACTING IN A
20 NONFIDUCIARY CAPACITY TO DESIGNATE A RECIPIENT OF AN OWNERSHIP
21 INTEREST IN OR ANOTHER POWER OF APPOINTMENT OVER TRUST
22 PROPERTY.

23 (2) THIS ACT DOES NOT APPLY TO A:

24 (a) POWER OF APPOINTMENT;

25 (b) POWER TO APPOINT OR REMOVE A TRUSTEE OR TRUST
26 DIRECTOR;

27 (c) POWER OF A SETTLOR OVER A TRUST TO THE EXTENT THE

1 SETTLOR HAS A POWER TO REVOKE THE TRUST;

2 (d) POWER OF A BENEFICIARY OVER A TRUST TO THE EXTENT THE
3 EXERCISE OR NONEXERCISE OF THE POWER AFFECTS THE BENEFICIAL
4 INTEREST OF:

5 (I) THE BENEFICIARY; OR

6 (II) ANOTHER BENEFICIARY REPRESENTED BY THE BENEFICIARY
7 UNDER SECTIONS 15-5-301 TO 15-5-305 WITH RESPECT TO THE EXERCISE
8 OR NONEXERCISE OF THE POWER;

9 (e) POWER OVER A TRUST IF:

10 (I) THE TERMS OF THE TRUST PROVIDE THAT THE POWER IS HELD
11 IN A NONFIDUCIARY CAPACITY; AND

12 (II) THE POWER MUST BE HELD IN A NONFIDUCIARY CAPACITY TO
13 ACHIEVE THE SETTLOR'S TAX OBJECTIVES UNDER THE FEDERAL "INTERNAL
14 REVENUE CODE OF 1986", AS AMENDED, AND REGULATIONS ISSUED
15 THEREUNDER, AS AMENDED; OR

16 (f) A POWER UNDER SECTION 15-5-409.5 (1)(d) TO ENFORCE THE
17 INTENDED USE OF THE PRINCIPAL AND INCOME OF A TRUST AUTHORIZED BY
18 SECTION 15-5-408 FOR THE CARE OF DESIGNATED DOMESTIC OR PET
19 ANIMALS AND THE ANIMALS' OFFSPRING IN GESTATION, IF THE POWER IS
20 HELD BY A PERSON HAVING CUSTODY OF AN ANIMAL FOR WHICH CARE IS
21 PROVIDED BY THE TRUST OR BY A REMAINDER BENEFICIARY OF THE TRUST,
22 UNLESS THE TERMS OF THE TRUST SPECIFICALLY PROVIDE THAT THE
23 POWER HELD BY THE CUSTODIAN OR REMAINDER BENEFICIARY IS SUBJECT
24 TO THIS PART 8.

25 (3) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, A POWER
26 GRANTED TO A PERSON TO DESIGNATE A RECIPIENT OF AN OWNERSHIP
27 INTEREST IN OR POWER OF APPOINTMENT OVER TRUST PROPERTY THAT IS

1 EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE IS A
2 POWER OF APPOINTMENT AND NOT A POWER OF DIRECTION.

3 **15-16-806. Powers of trust director.** (1) SUBJECT TO SECTION
4 15-16-807, THE TERMS OF A TRUST MAY GRANT A POWER OF DIRECTION TO
5 A TRUST DIRECTOR.

6 (2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE:

7 (a) A TRUST DIRECTOR MAY EXERCISE ANY FURTHER POWER
8 APPROPRIATE TO THE EXERCISE OR NONEXERCISE OF A POWER OF
9 DIRECTION GRANTED TO THE DIRECTOR UNDER SUBSECTION (1) OF THIS
10 SECTION; AND

11 (b) TRUST DIRECTORS WITH JOINT POWERS MUST ACT BY MAJORITY
12 DECISION.

13 **15-16-807. Limitations on powers of trust director.** (1) A
14 TRUST DIRECTOR IS SUBJECT TO THE SAME RULES AS A TRUSTEE IN A LIKE
15 POSITION AND UNDER SIMILAR CIRCUMSTANCES IN THE EXERCISE OR
16 NONEXERCISE OF A POWER OF DIRECTION REGARDING:

17 (a) A PAYBACK PROVISION IN THE TERMS OF THE TRUST
18 NECESSARY FOR COMPLIANCE WITH THE REIMBURSEMENT REQUIREMENTS
19 OF MEDICAID LAW IN SECTION 1917 OF THE FEDERAL "SOCIAL SECURITY
20 ACT", 42 U.S.C. SEC. 1396p (d)(4)(A), AS AMENDED, AND REGULATIONS
21 ISSUED THEREUNDER, AS AMENDED; AND

22 (b) A CHARITABLE INTEREST IN THE TRUST, INCLUDING NOTICE
23 REGARDING THE INTEREST TO THE ATTORNEY GENERAL.

24 **15-16-808. Duty and liability of trust director.** (1) SUBJECT TO
25 SUBSECTION (2) OF THIS SECTION, WITH RESPECT TO A POWER OF
26 DIRECTION OR A FURTHER POWER UNDER SECTION 15-16-806 (2)(a):

27 (a) A TRUST DIRECTOR HAS THE SAME FIDUCIARY DUTY AND

1 LIABILITY IN THE EXERCISE OR NONEXERCISE OF THE POWER:

2 (I) IF THE POWER IS HELD INDIVIDUALLY, AS A SOLE TRUSTEE IN A
3 LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES; OR

4 (II) IF THE POWER IS HELD JOINTLY WITH A TRUSTEE OR ANOTHER
5 TRUST DIRECTOR, AS A COTRUSTEE IN A LIKE POSITION AND UNDER SIMILAR
6 CIRCUMSTANCES; AND

7 (b) THE TERMS OF THE TRUST MAY VARY THE DIRECTOR'S DUTY OR
8 LIABILITY TO THE SAME EXTENT THE TERMS OF THE TRUST COULD VARY
9 THE DUTY OR LIABILITY OF A TRUSTEE IN A LIKE POSITION AND UNDER
10 SIMILAR CIRCUMSTANCES.

11 (2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, IF A
12 TRUST DIRECTOR IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED OR
13 PERMITTED BY LAW OTHER THAN THIS PART 8 TO PROVIDE HEALTH CARE
14 IN THE ORDINARY COURSE OF THE DIRECTOR'S BUSINESS OR PRACTICE OF
15 A PROFESSION, TO THE EXTENT THE DIRECTOR ACTS IN THAT CAPACITY,
16 THE DIRECTOR HAS NO DUTY OR LIABILITY UNDER THIS PART 8.

17 (3) THE TERMS OF A TRUST MAY IMPOSE A DUTY OR LIABILITY ON
18 A TRUST DIRECTOR IN ADDITION TO THE DUTIES AND LIABILITIES UNDER
19 THIS SECTION.

20 **15-16-809. Duty and liability of directed trustee.** (1) SUBJECT
21 TO SUBSECTION (2) OF THIS SECTION, A DIRECTED TRUSTEE SHALL TAKE
22 REASONABLE ACTION TO COMPLY WITH A TRUST DIRECTOR'S EXERCISE OR
23 NONEXERCISE OF A POWER OF DIRECTION OR FURTHER POWER UNDER
24 SECTION 15-16-806 (2)(a) AND THE TRUSTEE IS NOT LIABLE FOR THE
25 ACTION.

26 (2) A DIRECTED TRUSTEE MUST NOT COMPLY WITH A TRUST
27 DIRECTOR'S EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION OR

1 FURTHER POWER UNDER SECTION 15-16-806 (2)(a) TO THE EXTENT THAT
2 BY COMPLYING THE TRUSTEE WOULD ENGAGE IN WILLFUL MISCONDUCT.

3 (3) AN EXERCISE OF A POWER OF DIRECTION UNDER WHICH A
4 TRUST DIRECTOR MAY RELEASE A TRUSTEE OR ANOTHER TRUST DIRECTOR
5 FROM LIABILITY FOR BREACH OF TRUST IS NOT EFFECTIVE IF:

6 (a) THE BREACH INVOLVED THE TRUSTEE'S OR OTHER DIRECTOR'S
7 WILLFUL MISCONDUCT;

8 (b) THE RELEASE WAS INDUCED BY IMPROPER CONDUCT OF THE
9 TRUSTEE OR OTHER DIRECTOR IN PROCURING THE RELEASE; OR

10 (c) AT THE TIME OF THE RELEASE, THE DIRECTOR DID NOT KNOW
11 THE MATERIAL FACTS RELATING TO THE BREACH.

12 (4) A DIRECTED TRUSTEE THAT HAS REASONABLE DOUBT ABOUT
13 ITS DUTY UNDER THIS SECTION MAY PETITION THE COURT FOR
14 INSTRUCTIONS.

15 (5) THE TERMS OF A TRUST MAY IMPOSE A DUTY OR LIABILITY ON
16 A DIRECTED TRUSTEE IN ADDITION TO THE DUTIES AND LIABILITIES UNDER
17 THIS SECTION.

18 **15-16-810. Duty to provide information to trust director or**
19 **trustee.** (1) SUBJECT TO SECTION 15-16-811, A TRUSTEE SHALL PROVIDE
20 INFORMATION TO A TRUST DIRECTOR TO THE EXTENT THE INFORMATION IS
21 REASONABLY RELATED BOTH TO:

22 (a) THE POWERS OR DUTIES OF THE TRUSTEE; AND

23 (b) THE POWERS OR DUTIES OF THE DIRECTOR.

24 (2) SUBJECT TO SECTION 15-16-811, A TRUST DIRECTOR SHALL
25 PROVIDE INFORMATION TO A TRUSTEE OR ANOTHER TRUST DIRECTOR TO
26 THE EXTENT THE INFORMATION IS REASONABLY RELATED BOTH TO:

27 (a) THE POWERS OR DUTIES OF THE DIRECTOR; AND

1 (b) THE POWERS OR DUTIES OF THE TRUSTEE OR OTHER DIRECTOR.

2 (3) A TRUSTEE THAT ACTS IN RELIANCE ON INFORMATION
3 PROVIDED BY A TRUST DIRECTOR IS NOT LIABLE FOR A BREACH OF TRUST
4 TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE, UNLESS BY
5 SO ACTING THE TRUSTEE ENGAGES IN WILLFUL MISCONDUCT.

6 (4) A TRUST DIRECTOR THAT ACTS IN RELIANCE ON INFORMATION
7 PROVIDED BY A TRUSTEE OR ANOTHER TRUST DIRECTOR IS NOT LIABLE FOR
8 A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE
9 RELIANCE, UNLESS BY SO ACTING THE TRUST DIRECTOR ENGAGES IN
10 WILLFUL MISCONDUCT.

11 (5) A TRUSTEE SHALL PROVIDE A COPY OF THE TERMS OF THE
12 TRUST TO A TRUST DIRECTOR.

13 **15-16-811. No duty to monitor, inform, or advise.** (1) UNLESS
14 THE TERMS OF A TRUST PROVIDE OTHERWISE:

15 (a) A TRUSTEE DOES NOT HAVE A DUTY TO:

16 (I) MONITOR A TRUST DIRECTOR; OR

17 (II) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY,
18 TRUSTEE, OR TRUST DIRECTOR CONCERNING AN INSTANCE IN WHICH THE
19 TRUSTEE MIGHT HAVE ACTED DIFFERENTLY THAN THE DIRECTOR; AND

20 (b) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (1)(a) OF
21 THIS SECTION, A TRUSTEE DOES NOT ASSUME A DUTY EXCLUDED BY
22 SUBSECTION (1)(a) OF THIS SECTION.

23 (2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE:

24 (a) A TRUST DIRECTOR DOES NOT HAVE A DUTY TO:

25 (I) MONITOR A TRUSTEE OR ANOTHER TRUST DIRECTOR; OR

26 (II) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY,
27 TRUSTEE, OR ANOTHER TRUST DIRECTOR CONCERNING AN INSTANCE IN

1 WHICH THE DIRECTOR MIGHT HAVE ACTED DIFFERENTLY THAN A TRUSTEE
2 OR ANOTHER TRUST DIRECTOR; AND

3 (b) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (2)(a) OF
4 THIS SECTION, A TRUST DIRECTOR DOES NOT ASSUME THE DUTY EXCLUDED
5 BY SUBSECTION (2)(a) OF THIS SECTION.

6 (3) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, SECTION
7 15-5-1012 DOES NOT APPLY TO A TRUST DIRECTOR.

8 **15-16-812. Application to cotrustee.** THE TERMS OF A TRUST
9 MAY RELIEVE A COTRUSTEE FROM DUTY AND LIABILITY WITH RESPECT TO
10 ANOTHER COTRUSTEE'S EXERCISE OR NONEXERCISE OF A POWER OF THE
11 OTHER COTRUSTEE TO THE SAME EXTENT THAT IN A DIRECTED TRUST A
12 DIRECTED TRUSTEE IS RELIEVED FROM DUTY AND LIABILITY WITH RESPECT
13 TO A TRUST DIRECTOR'S POWER OF DIRECTION UNDER SECTIONS 15-16-809
14 TO 15-16-811.

15 **15-16-813. Limitations of action against trust director.** (1) AN
16 ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF TRUST MUST BE
17 COMMENCED WITHIN THE SAME LIMITATIONS PERIOD AS AN ACTION
18 AGAINST A TRUSTEE FOR A SIMILAR BREACH OF TRUST AS PRESCRIBED BY
19 SECTION 15-5-1005.

20 (2) A REPORT OR ACCOUNTING HAS THE SAME EFFECT ON THE
21 LIMITATIONS PERIOD FOR AN ACTION AGAINST THE DIRECTOR THAT THE
22 REPORT OR ACCOUNTING WOULD HAVE IF THE DIRECTOR WERE A TRUSTEE
23 AS PRESCRIBED BY SECTION 15-5-1005.

24 **15-16-814. Defenses in action against trust director.** IN AN
25 ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF TRUST, THE DIRECTOR
26 MAY ASSERT THE SAME DEFENSES A TRUSTEE IN A LIKE POSITION AND
27 UNDER SIMILAR CIRCUMSTANCES COULD ASSERT IN AN ACTION FOR

1 BREACH OF TRUST AGAINST THE TRUSTEE.

2 **15-16-815. Jurisdiction over trust director.** (1) BY ACCEPTING
3 APPOINTMENT AS A TRUST DIRECTOR OF A TRUST SUBJECT TO THIS PART 8,
4 THE DIRECTOR SUBMITS TO PERSONAL JURISDICTION OF THE COURTS OF
5 THIS STATE REGARDING ANY MATTER RELATED TO A POWER OR DUTY OF
6 THE DIRECTOR.

7 (2) THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF
8 OBTAINING JURISDICTION OVER A TRUST DIRECTOR.

9 **15-16-816. Office of trust director.** (1) UNLESS THE TERMS OF
10 A TRUST PROVIDE OTHERWISE, THE RULES APPLICABLE TO A TRUSTEE
11 APPLY TO A TRUST DIRECTOR REGARDING THE FOLLOWING MATTERS:

12 (a) ACCEPTANCE UNDER SECTION 15-5-701;

13 (b) GIVING OF BOND TO SECURE PERFORMANCE UNDER SECTION
14 15-5-702;

15 (c) REASONABLE COMPENSATION UNDER SECTIONS 15-5-1004,
16 15-10-501 (3), AND 15-10-601;

17 (d) RESIGNATION UNDER SECTION 15-5-705;

18 (e) REMOVAL UNDER SECTION 15-5-706;

19 (f) VACANCY AND APPOINTMENT OF SUCCESSOR UNDER SECTION
20 15-5-704; AND

21 (g) THE RIGHT TO PETITION THE COURT FOR INSTRUCTIONS UNDER
22 SECTION 15-5-201 (3).

23 **15-16-817. Uniformity of application and construction.** IN
24 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
25 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
26 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

27 **15-16-818. Relation to electronic signatures in global and**

1 **national commerce act.** THIS PART 8 MODIFIES, LIMITS, OR SUPERSEDES
2 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
3 COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY,
4 LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001
5 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
6 DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

7 **SECTION 2.** In Colorado Revised Statutes, 15-5-105, **amend** (2)
8 introductory portion as follows:

9 **15-5-105. Default and mandatory rules.** (2) SUBJECT TO
10 SECTIONS 15-16-809, 15-16-810, AND 15-16-811, the terms of a trust
11 prevail over any provision of this code except:

12 **SECTION 3.** In Colorado Revised Statutes, 15-5-201, **amend**
13 (3)(a) and (3)(b) as follows:

14 **15-5-201. Role of court in administration of trust.** (3) A
15 judicial proceeding involving a trust may relate to any matter involving
16 the trust's administration. Such matters may include, but are not limited
17 to, proceedings involving:

- 18 (a) The appointment or removal of a trustee OR TRUST DIRECTOR;
- 19 (b) Review of a trustee's fees OR TRUST DIRECTOR'S FEES and
20 review and settling of interim or final accountings;

21 **SECTION 4.** In Colorado Revised Statutes, 15-5-203, **amend** (1)
22 as follows:

23 **15-5-203. Subject matter jurisdiction.** (1) The district court or,
24 in the city and county of Denver, the probate court, has exclusive
25 jurisdiction of proceedings in this state brought by a trustee, TRUST
26 DIRECTOR, or beneficiary concerning the administration of a trust.

27 **SECTION 5.** In Colorado Revised Statutes, 15-5-204, **amend**

1 (2)(b) as follows:

2 **15-5-204. Venue.** (2) If a trust has no trustee, a judicial
3 proceeding for the appointment of a trustee must be commenced in the
4 following order of priority:

5 (b) ~~Either~~ ANY OF THE FOLLOWING:

6 (I) A county in which a beneficiary resides; ~~or~~

7 (II) A county in which the trust property, or some portion of the
8 trust property, is located; OR

9 (III) A COUNTY IN WHICH A TRUST DIRECTOR RESIDES OR HAS A
10 PRINCIPAL PLACE OF BUSINESS.

11 **SECTION 6.** In Colorado Revised Statutes, **amend** 15-5-417 as
12 follows:

13 **15-5-417. Combination and division of trusts.** After notice to
14 the qualified beneficiaries AND TRUST DIRECTORS, a trustee may combine
15 two or more trusts into a single trust or divide a trust into two or more
16 separate trusts, if the result does not impair the rights of any beneficiary
17 or adversely affect achievement of the purposes of the trust.

18 **SECTION 7.** In Colorado Revised Statutes, **amend** 15-5-603 as
19 follows:

20 **15-5-603. Settlor's powers.** ~~Unless the terms of the trust~~
21 ~~expressly provide otherwise, while a trust is revocable, the rights of the~~
22 ~~beneficiaries are subject to the control of, and the duties of the trustee are~~
23 ~~owed exclusively to, the settlor.~~ (1) TO THE EXTENT A TRUST IS
24 REVOCABLE BY A SETTLOR, A TRUSTEE MAY FOLLOW A DIRECTION OF THE
25 SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST. TO THE EXTENT
26 A TRUST IS REVOCABLE BY A SETTLOR IN CONJUNCTION WITH A PERSON
27 OTHER THAN A TRUSTEE OR PERSON HOLDING AN ADVERSE INTEREST, THE

1 TRUSTEE MAY FOLLOW A DIRECTION FROM THE SETTLOR AND THE OTHER
2 PERSON HOLDING THE POWER TO REVOKE, EVEN IF THE DIRECTION IS
3 CONTRARY TO THE TERMS OF THE TRUST.

4 (2) TO THE EXTENT A TRUST IS REVOCABLE, RIGHTS OF THE
5 BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE
6 TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

7 (3) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE
8 HOLDER OF A POWER OF WITHDRAWAL HAS THE RIGHTS OF A SETTLOR OF
9 A REVOCABLE TRUST UNDER THIS SECTION TO THE EXTENT OF THE
10 PROPERTY SUBJECT TO THE POWER.

11 **SECTION 8.** In Colorado Revised Statutes, 15-5-703, **amend** (3)
12 and (7) introductory portion as follows:

13 **15-5-703. Cotrustees.** (3) SUBJECT TO SECTION 15-16-812, a
14 cotrustee shall participate in the performance of a trustee's function unless
15 the cotrustee is unavailable to perform the function because of absence,
16 illness, disqualification, or other temporary incapacity or the cotrustee has
17 properly delegated the performance of the function to another trustee.

18 (7) SUBJECT TO SECTION 15-16-812, each trustee shall exercise
19 reasonable care to:

20 **SECTION 9.** In Colorado Revised Statutes, 15-10-201, **amend**
21 the introductory portion and (27) as follows:

22 **15-10-201. General definitions.** Subject to additional definitions
23 contained in this ~~article~~ ARTICLE 10 and the subsequent articles that are
24 applicable to specific articles, parts, or sections, and unless the context
25 otherwise requires, in this code:

26 (27) "Interested person" includes heirs, devisees, children,
27 spouses, creditors, beneficiaries, TRUST DIRECTORS, and any others having

1 a property right in or claim against a trust estate or the estate of a
2 decedent, ward, or protected person, which may be affected by the
3 proceeding. It also includes persons having priority for an appointment as
4 a personal representative and other fiduciaries representing the interested
5 person. The meaning as it relates to particular persons may vary from time
6 to time and shall be determined according to the particular purposes of,
7 and matter involved in, any proceeding.

8 **SECTION 10.** In Colorado Revised Statutes, 15-10-501, **amend**
9 (3) as follows:

10 **15-10-501. Court powers - definitions - application.**

11 (3) **Application.** The provisions of this part 5 shall apply to any fiduciary
12 over whom a court has obtained jurisdiction, including but not limited to
13 a personal representative, special administrator, guardian, conservator,
14 special conservator, trustee, TRUST DIRECTOR, agent under a power of
15 attorney, and custodian, including a custodian of assets or accounts
16 created under the "Colorado Uniform Transfers to Minors Act", article 50
17 of title 11. ~~C.R.S.~~

18 **SECTION 11.** In Colorado Revised Statutes, 15-10-504, **amend**
19 (2) and (4); and **add** (5) as follows:

20 **15-10-504. Surcharge - contempt - sanctions against**

21 **fiduciaries.** (2) **Surcharge.** (a) If a court, after a hearing, determines
22 that a breach of fiduciary duty has occurred or an exercise of power by a
23 fiduciary has been improper, AFTER APPLYING THE STANDARDS OF CARE
24 APPLICABLE TO EACH FIDUCIARY IN A PROCEEDING, the court may
25 surcharge the fiduciary for any damage or loss to the estate, beneficiaries,
26 or interested persons. Such damages may include compensatory damages,
27 interest, and attorney fees and costs. WHEN ALLOCATING ANY SUCH

1 DAMAGES AMONG FIDUCIARIES, THE COURT SHALL CONSIDER THE
2 STANDARDS OF CARE APPLICABLE TO THE FIDUCIARIES IN THE
3 PROCEEDING.

4 (b) In awarding attorney fees and costs pursuant to this section, a
5 court may consider the provisions of part 6 of this ~~article~~ ARTICLE 10 AND
6 SHALL CONSIDER THE STANDARDS OF CARE APPLICABLE TO THE
7 FIDUCIARIES IN THE PROCEEDING.

8 (4) **Sanctions.** If a court determines that a breach of fiduciary duty
9 has occurred or an exercise of power by a fiduciary has been improper,
10 the court, after a hearing, may order such other sanctions as the court
11 deems appropriate, BUT THE COURT SHALL TAKE INTO ACCOUNT THE
12 STANDARDS OF CARE APPLICABLE TO EACH FIDUCIARY IN THE
13 PROCEEDING.

14 (5) **Remedies.** IF REMEDIES ARE SOUGHT AGAINST A DIRECTED
15 TRUSTEE FOR COMPLYING WITH THE DIRECTION OF A TRUST DIRECTOR
16 UNDER THE "COLORADO UNIFORM DIRECTED TRUST ACT", PART 8 OF
17 ARTICLE 16 OF THIS TITLE 15, OR COMPARABLE ARRANGEMENT CREATED
18 UNDER THE TERMS OF A TRUST, THE COURT SHALL TAKE INTO ACCOUNT
19 THE STANDARDS OF CARE APPLICABLE TO EACH FIDUCIARY IN THE
20 PROCEEDING WHEN APPORTIONING DAMAGES, FEES, COSTS, OR FAULT
21 AMONG THE FIDUCIARIES.

22 **SECTION 12.** In Colorado Revised Statutes, 15-10-601, **amend**
23 (2)(a) as follows:

24 **15-10-601. Definitions.** As used in this part 6, unless the context
25 otherwise requires:

26 (2) "Fiduciary" means:

27 (a) A personal representative, guardian, conservator, TRUST

1 DIRECTOR, or trustee;

2 **SECTION 13. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2020 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.