

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0133.01 Richard Sweetman x4333

SENATE BILL 16-085

SENATE SPONSORSHIP

Steadman,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM TRUST DECANTING 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://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. “Decanting” is a term used to describe the distribution of assets from one trust into a second trust. The bill enacts the "Colorado Uniform Trust Decanting Act" (act), which allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

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

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 9 to article
3 16 of title 15 as follows:

4 **PART 9**

5 **COLORADO UNIFORM TRUST DECANTING ACT**

6 **15-16-901. Short title.** THE SHORT TITLE OF THIS PART 9 IS THE
7 "COLORADO UNIFORM TRUST DECANTING ACT".

8 **15-16-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "APPOINTIVE PROPERTY" MEANS THE PROPERTY OR PROPERTY
11 INTEREST SUBJECT TO A POWER OF APPOINTMENT.

12 (2) "ASCERTAINABLE STANDARD" MEANS A STANDARD RELATING
13 TO AN INDIVIDUAL'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE
14 WITHIN THE MEANING OF 26 U.S.C. SEC. 2041 (b) (1)(A), AS AMENDED, OR
15 26 U.S.C. SEC. 2514 (c) (1), AS AMENDED, AND ANY APPLICABLE
16 REGULATIONS.

17 (3) "AUTHORIZED FIDUCIARY" MEANS:

18 (a) A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A SETTLOR,
19 THAT HAS DISCRETION TO DISTRIBUTE OR DIRECT A TRUSTEE TO
20 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE FIRST TRUST TO ONE OR
21 MORE CURRENT BENEFICIARIES;

22 (b) A SPECIAL FIDUCIARY APPOINTED UNDER SECTION 15-16-909;

23 OR

24 (c) A SPECIAL-NEEDS FIDUCIARY UNDER SECTION 15-16-913.

25 (4) "BENEFICIARY" MEANS A PERSON THAT:

26 (a) HAS A PRESENT OR FUTURE, VESTED OR CONTINGENT,

1 BENEFICIAL INTEREST IN A TRUST;

2 (b) HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY; OR

3 (c) IS AN IDENTIFIED CHARITABLE ORGANIZATION THAT WILL OR

4 MAY RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.

5 (5) "CHARITABLE INTEREST" MEANS AN INTEREST IN A TRUST

6 WHICH:

7 (a) IS HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION AND

8 MAKES THE ORGANIZATION A QUALIFIED BENEFICIARY;

9 (b) BENEFITS ONLY CHARITABLE ORGANIZATIONS AND, IF THE

10 INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION,

11 WOULD MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY; OR

12 (c) IS HELD SOLELY FOR CHARITABLE PURPOSES AND, IF THE

13 INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION,

14 WOULD MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY.

15 (6) "CHARITABLE ORGANIZATION" MEANS:

16 (a) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND

17 OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES; OR

18 (b) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR

19 INSTRUMENTALITY, TO THE EXTENT IT HOLDS FUNDS EXCLUSIVELY FOR A

20 CHARITABLE PURPOSE.

21 (7) "CHARITABLE PURPOSE" MEANS THE RELIEF OF POVERTY, THE

22 ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH,

23 A MUNICIPAL OR OTHER GOVERNMENTAL PURPOSE, OR ANOTHER PURPOSE,

24 THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

25 (8) "COURT" MEANS THE COURT IN THIS STATE HAVING

26 JURISDICTION IN MATTERS RELATING TO TRUSTS.

27 (9) "CURRENT BENEFICIARY" MEANS A BENEFICIARY THAT ON THE

1 DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED IS A DISTRIBUTE
2 OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL. THE TERM
3 INCLUDES THE HOLDER OF A PRESENTLY EXERCISABLE GENERAL POWER OF
4 APPOINTMENT BUT DOES NOT INCLUDE A PERSON THAT IS A BENEFICIARY
5 ONLY BECAUSE THE PERSON HOLDS ANY OTHER POWER OF APPOINTMENT.

6 (10) "DECANTING POWER" OR "THE DECANTING POWER" MEANS
7 THE POWER OF AN AUTHORIZED FIDUCIARY UNDER THIS PART 9 TO
8 DISTRIBUTE PROPERTY OF A FIRST TRUST TO ONE OR MORE SECOND TRUSTS
9 OR TO MODIFY THE TERMS OF THE FIRST TRUST.

10 (11) "EXPANDED DISTRIBUTIVE DISCRETION" MEANS A
11 DISCRETIONARY POWER OF DISTRIBUTION THAT IS NOT LIMITED TO AN
12 ASCERTAINABLE STANDARD OR A REASONABLY DEFINITE STANDARD.

13 (12) "FIRST TRUST" MEANS A TRUST OVER WHICH AN AUTHORIZED
14 FIDUCIARY MAY EXERCISE THE DECANTING POWER.

15 (13) "FIRST-TRUST INSTRUMENT" MEANS THE TRUST INSTRUMENT
16 FOR A FIRST TRUST.

17 (14) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF
18 APPOINTMENT EXERCISABLE IN FAVOR OF A POWERHOLDER, THE
19 POWERHOLDER'S ESTATE, A CREDITOR OF THE POWERHOLDER, OR A
20 CREDITOR OF THE POWERHOLDER'S ESTATE.

21 (15) "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA,
22 INCLUDES A STATE OR COUNTRY.

23 (16) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
24 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
25 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
26 LEGAL ENTITY.

27 (17) "POWER OF APPOINTMENT" MEANS A POWER THAT ENABLES

1 A POWERHOLDER ACTING IN A NONFIDUCIARY CAPACITY TO DESIGNATE A
2 RECIPIENT OF AN OWNERSHIP INTEREST IN OR ANOTHER POWER OF
3 APPOINTMENT OVER THE APPOINTIVE PROPERTY. THE TERM DOES NOT
4 INCLUDE A POWER OF ATTORNEY.

5 (18) "POWERHOLDER" MEANS A PERSON IN WHICH A DONOR
6 CREATES A POWER OF APPOINTMENT.

7 (19) "PRESENTLY EXERCISABLE POWER OF APPOINTMENT" MEANS
8 A POWER OF APPOINTMENT EXERCISABLE BY THE POWERHOLDER AT THE
9 RELEVANT TIME. THE TERM:

10 (a) INCLUDES A POWER OF APPOINTMENT EXERCISABLE ONLY
11 AFTER THE OCCURRENCE OF A SPECIFIED EVENT, THE SATISFACTION OF AN
12 ASCERTAINABLE STANDARD, OR THE PASSAGE OF A SPECIFIED TIME ONLY
13 AFTER:

14 (I) THE OCCURRENCE OF THE SPECIFIED EVENT;

15 (II) THE SATISFACTION OF THE ASCERTAINABLE STANDARD; OR

16 (III) THE PASSAGE OF THE SPECIFIED TIME; AND

17 (b) DOES NOT INCLUDE A POWER EXERCISABLE ONLY AT THE
18 POWERHOLDER'S DEATH.

19 (20) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY THAT ON
20 THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

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

23 (b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
24 TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES
25 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (20) TERMINATED ON
26 THAT DATE WITHOUT CAUSING THE TRUST TO TERMINATE; OR

27 (c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF

1 TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

2 (21) "REASONABLY DEFINITE STANDARD" MEANS A CLEARLY
3 MEASURABLE STANDARD UNDER WHICH A HOLDER OF A POWER OF
4 DISTRIBUTION IS LEGALLY ACCOUNTABLE WITHIN THE MEANING OF 26
5 U.S.C. SEC. 674 (b) (5) (A), AS AMENDED, AND ANY APPLICABLE
6 REGULATIONS.

7 (22) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
8 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
9 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

10 (23) "SECOND TRUST" MEANS:

11 (a) A FIRST TRUST AFTER MODIFICATION UNDER THIS PART 9; OR

12 (b) A TRUST TO WHICH A DISTRIBUTION OF PROPERTY FROM A FIRST
13 TRUST IS OR MAY BE MADE UNDER THIS PART 9.

14 (24) "SECOND-TRUST INSTRUMENT" MEANS THE TRUST
15 INSTRUMENT FOR A SECOND TRUST.

16 (25) "SETTLOR", EXCEPT AS OTHERWISE PROVIDED IN SECTION
17 15-16-925, MEANS A PERSON, INCLUDING A TESTATOR, THAT CREATES OR
18 CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES
19 OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF
20 THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THE PERSON'S
21 CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON HAS POWER TO
22 REVOKE OR WITHDRAW THAT PORTION.

23 (26) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
24 ADOPT A RECORD:

25 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

26 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
27 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

1 (27) "STATE" MEANS A STATE OF THE UNITED STATES, THE
2 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
3 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
4 JURISDICTION OF THE UNITED STATES.

5 (28) "TERMS OF THE TRUST" MEANS THE MANIFESTATION OF THE
6 SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN
7 THE TRUST INSTRUMENT, AS MAY BE ESTABLISHED BY OTHER EVIDENCE
8 THAT WOULD BE ADMISSIBLE IN A JUDICIAL PROCEEDING, OR AS MAY BE
9 ESTABLISHED BY COURT ORDER OR NONJUDICIAL SETTLEMENT
10 AGREEMENT.

11 (29) "TRUST INSTRUMENT" MEANS A RECORD EXECUTED BY THE
12 SETTLOR TO CREATE A TRUST OR BY ANY PERSON TO CREATE A SECOND
13 TRUST WHICH CONTAINS SOME OR ALL OF THE TERMS OF THE TRUST,
14 INCLUDING ANY AMENDMENTS.

15 **15-16-903. Scope - definitions.** (1) EXCEPT AS OTHERWISE
16 PROVIDED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, THIS PART 9
17 APPLIES TO AN EXPRESS TRUST THAT IS:

18 (a) IRREVOCABLE; OR
19 (b) REVOCABLE BY THE SETTLOR ONLY WITH THE CONSENT OF THE
20 TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

21 (2) THIS PART 9 DOES NOT APPLY TO A TRUST HELD SOLELY FOR
22 CHARITABLE PURPOSES.

23 (3) SUBJECT TO SECTION 15-16-915, A TRUST INSTRUMENT MAY
24 RESTRICT OR PROHIBIT EXERCISE OF THE DECANTING POWER.

25 (4) THIS PART 9 DOES NOT LIMIT THE POWER OF A TRUSTEE,
26 POWERHOLDER, OR OTHER PERSON TO DISTRIBUTE OR APPOINT PROPERTY
27 IN FURTHER TRUST OR TO MODIFY A TRUST UNDER THE TRUST

1 INSTRUMENT, LAW OF THIS STATE OTHER THAN THIS PART 9, COMMON
2 LAW, A COURT ORDER, OR A NONJUDICIAL SETTLEMENT AGREEMENT.

3 (5) THIS PART 9 DOES NOT AFFECT THE ABILITY OF A SETTLOR TO
4 PROVIDE IN A TRUST INSTRUMENT FOR THE DISTRIBUTION OF THE TRUST
5 PROPERTY OR APPOINTMENT IN FURTHER TRUST OF THE TRUST PROPERTY
6 OR FOR MODIFICATION OF THE TRUST INSTRUMENT.

7 (6) (a) NEITHER THIS PART 9 NOR AN EXERCISE OF THE DECANTING
8 POWER DESCRIBED IN THIS PART 9 AFFECTS:

9 (I) THE DETERMINATION WHETHER A BENEFICIAL INTEREST IN A
10 FIRST TRUST OR SECOND TRUST IS PROPERTY OR AN ASSET OF A SPOUSE FOR
11 PURPOSES OF DISTRIBUTION OF PROPERTY UNDER SECTION 14-10-113,
12 C.R.S.; OR

13 (II) THE POWER OF A DIVORCE COURT TO FASHION REMEDIES
14 BETWEEN THE PARTIES IN AN ACTION UNDER TITLE 14, C.R.S.

15 (b) NOTHING IN THIS SUBSECTION (6) EXPANDS OR LIMITS THE
16 POWER OF A DIVORCE COURT IN LAW OR EQUITY OVER A FIRST TRUST OR
17 A SECOND TRUST OR ANY TRUSTEE THEREOF.

18 (c) AS USED IN THIS SUBSECTION (6), UNLESS THE CONTEXT
19 REQUIRES OTHERWISE, "DIVORCE COURT" MEANS A COURT IN THIS STATE
20 HAVING JURISDICTION OVER MATTERS BROUGHT PURSUANT TO TITLE 14,
21 C.R.S.

22 **15-16-904. Fiduciary duty.** (1) IN EXERCISING THE DECANTING
23 POWER, AN AUTHORIZED FIDUCIARY SHALL ACT IN ACCORDANCE WITH ITS
24 FIDUCIARY DUTIES, INCLUDING THE DUTY TO ACT IN ACCORDANCE WITH
25 THE PURPOSES OF THE FIRST TRUST.

26 (2) THIS PART 9 DOES NOT CREATE OR IMPLY A DUTY TO EXERCISE
27 THE DECANTING POWER OR TO INFORM BENEFICIARIES ABOUT THE

1 APPLICABILITY OF THIS PART 9.

2 (3) EXCEPT AS OTHERWISE PROVIDED IN A FIRST-TRUST
3 INSTRUMENT, FOR PURPOSES OF THIS PART 9 THE TERMS OF THE FIRST
4 TRUST ARE DEEMED TO INCLUDE THE DECANTING POWER.

5 **15-16-905. Application - governing law.** (1) THIS PART 9
6 APPLIES TO A TRUST CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE
7 OF THIS PART 9 WHICH:

8 (a) HAS ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE,
9 INCLUDING A TRUST WHOSE PRINCIPAL PLACE OF ADMINISTRATION HAS
10 BEEN CHANGED TO THIS STATE; OR

11 (b) PROVIDES BY ITS TRUST INSTRUMENT THAT IT IS GOVERNED BY
12 THE LAW OF THIS STATE OR IS GOVERNED BY THE LAW OF THIS STATE FOR
13 THE PURPOSE OF:

14 (I) ADMINISTRATION, INCLUDING ADMINISTRATION OF A TRUST
15 WHOSE GOVERNING LAW FOR PURPOSES OF ADMINISTRATION HAS BEEN
16 CHANGED TO THE LAW OF THIS STATE;

17 (II) CONSTRUCTION OF TERMS OF THE TRUST; OR

18 (III) DETERMINING THE MEANING OR EFFECT OF TERMS OF THE
19 TRUST.

20 **15-16-906. Reasonable reliance.** A TRUSTEE OR OTHER PERSON
21 THAT REASONABLY RELIES ON THE VALIDITY OF A DISTRIBUTION OF PART
22 OR ALL OF THE PROPERTY OF A TRUST TO ANOTHER TRUST, OR A
23 MODIFICATION OF A TRUST, UNDER THIS PART 9, LAW OF THIS STATE OTHER
24 THAN THIS PART 9, OR THE LAW OF ANOTHER JURISDICTION IS NOT LIABLE
25 TO ANY PERSON FOR ANY ACTION OR FAILURE TO ACT AS A RESULT OF THE
26 RELIANCE.

27 **15-16-907. Notice - exercise of decanting power.** (1) IN THIS

1 SECTION, A NOTICE PERIOD BEGINS ON THE DAY NOTICE IS GIVEN UNDER
2 SUBSECTION (3) OF THIS SECTION AND ENDS SIXTY-TWO DAYS AFTER THE
3 DAY NOTICE IS GIVEN.

4 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 9, AN
5 AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER WITHOUT
6 THE CONSENT OF ANY PERSON AND WITHOUT COURT APPROVAL.

7 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS
8 SECTION, AN AUTHORIZED FIDUCIARY SHALL GIVE NOTICE IN A RECORD OF
9 THE INTENDED EXERCISE OF THE DECANTING POWER NOT LATER THAN
10 SIXTY-THREE DAYS BEFORE THE EXERCISE TO:

11 (a) EACH SETTLOR OF THE FIRST TRUST, IF LIVING OR THEN IN
12 EXISTENCE;

13 (b) EACH QUALIFIED BENEFICIARY OF THE FIRST TRUST;

14 (c) EACH HOLDER OF A PRESENTLY EXERCISABLE POWER OF
15 APPOINTMENT OVER ANY PART OR ALL OF THE FIRST TRUST;

16 (d) EACH PERSON THAT CURRENTLY HAS THE RIGHT TO REMOVE OR
17 REPLACE THE AUTHORIZED FIDUCIARY;

18 (e) EACH OTHER FIDUCIARY OF THE FIRST TRUST;

19 (f) EACH FIDUCIARY OF THE SECOND TRUST; AND

20 (g) THE ATTORNEY GENERAL, IF SECTION 15-16-914 (2) APPLIES.

21 (4) AN AUTHORIZED FIDUCIARY IS NOT REQUIRED TO GIVE NOTICE
22 UNDER SUBSECTION (3) OF THIS SECTION TO A QUALIFIED BENEFICIARY
23 WHO IS A MINOR AND HAS NO REPRESENTATIVE OR TO A PERSON THAT IS
24 NOT KNOWN TO THE FIDUCIARY OR IS KNOWN TO THE FIDUCIARY BUT
25 CANNOT BE LOCATED BY THE FIDUCIARY AFTER REASONABLE DILIGENCE.

26 (5) A NOTICE UNDER SUBSECTION (3) OF THIS SECTION MUST:

27 (a) SPECIFY THE MANNER IN WHICH THE AUTHORIZED FIDUCIARY

1 INTENDS TO EXERCISE THE DECANTING POWER;

2 (b) SPECIFY THE PROPOSED EFFECTIVE DATE FOR EXERCISE OF THE
3 POWER;

4 (c) INCLUDE A COPY OF THE FIRST-TRUST INSTRUMENT; AND

5 (d) INCLUDE A COPY OF ALL SECOND-TRUST INSTRUMENTS.

6 (6) THE DECANTING POWER MAY BE EXERCISED BEFORE
7 EXPIRATION OF THE NOTICE PERIOD UNDER SUBSECTION (1) OF THIS
8 SECTION IF ALL PERSONS ENTITLED TO RECEIVE NOTICE WAIVE THE PERIOD
9 IN A SIGNED RECORD.

10 (7) THE RECEIPT OF NOTICE, WAIVER OF THE NOTICE PERIOD, OR
11 EXPIRATION OF THE NOTICE PERIOD DOES NOT AFFECT THE RIGHT OF A
12 PERSON TO FILE AN APPLICATION UNDER SECTION 15-16-909 ASSERTING
13 THAT:

14 (a) AN ATTEMPTED EXERCISE OF THE DECANTING POWER IS
15 INEFFECTIVE BECAUSE IT DID NOT COMPLY WITH THIS PART 9 OR WAS AN
16 ABUSE OF DISCRETION OR BREACH OF FIDUCIARY DUTY; OR

17 (b) SECTION 15-16-922 APPLIES TO THE EXERCISE OF THE
18 DECANTING POWER.

19 (8) AN EXERCISE OF THE DECANTING POWER IS NOT INEFFECTIVE
20 BECAUSE OF THE FAILURE TO GIVE NOTICE TO ONE OR MORE PERSONS
21 UNDER SUBSECTION (3) OF THIS SECTION IF THE AUTHORIZED FIDUCIARY
22 ACTED WITH REASONABLE CARE TO COMPLY WITH SUBSECTION (3) OF THIS
23 SECTION.

24 **15-16-908. Representation.** (1) NOTICE TO A PERSON WITH
25 AUTHORITY TO REPRESENT AND BIND ANOTHER PERSON UNDER A
26 FIRST-TRUST INSTRUMENT OR THIS PART 9 HAS THE SAME EFFECT AS
27 NOTICE GIVEN DIRECTLY TO THE PERSON REPRESENTED.

1 (2) CONSENT OF OR WAIVER BY A PERSON WITH AUTHORITY TO
2 REPRESENT AND BIND ANOTHER PERSON UNDER A FIRST-TRUST
3 INSTRUMENT OR THIS PART 9 IS BINDING ON THE PERSON REPRESENTED
4 UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION
5 BEFORE THE CONSENT OR WAIVER OTHERWISE WOULD BECOME EFFECTIVE.

6 (3) A PERSON WITH AUTHORITY TO REPRESENT AND BIND ANOTHER
7 PERSON UNDER A FIRST-TRUST INSTRUMENT OR THIS PART 9 MAY FILE AN
8 APPLICATION UNDER SECTION 15-16-909 ON BEHALF OF THE PERSON
9 REPRESENTED.

10 (4) A SETTLOR MAY NOT REPRESENT OR BIND A BENEFICIARY
11 UNDER THIS PART 9.

12 (5) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN
13 THE HOLDER OF A GENERAL TESTAMENTARY POWER OF APPOINTMENT AND
14 THE PERSONS REPRESENTED WITH RESPECT TO AN EXERCISE OF THE
15 DECANTING POWER, THE HOLDER MAY REPRESENT AND BIND PERSONS
16 WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR
17 OTHERWISE, ARE SUBJECT TO THE POWER.

18 (6) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN
19 THE REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE
20 BEING REPRESENTED WITH RESPECT TO AN EXERCISE OF THE DECANTING
21 POWER:

22 (a) A CONSERVATOR MAY REPRESENT AND BIND THE PROTECTED
23 PERSON'S ESTATE;

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

26 (c) AN AGENT HAVING AUTHORITY TO ACT WITH RESPECT TO THE
27 PRINCIPAL'S BENEFICIAL INTEREST IN THE TRUST MAY REPRESENT AND

1 BIND THE PRINCIPAL;

2 (d) THE TRUSTEE OF A TRUST THAT IS A BENEFICIARY OF THE FIRST
3 TRUST MAY REPRESENT AND BIND THE BENEFICIARIES OF THAT TRUST, AND
4 THE TRUSTEE OF A TRUST THAT IS A BENEFICIARY OF THE SECOND TRUST
5 MAY REPRESENT AND BIND THE BENEFICIARIES OF THAT TRUST;

6 (e) A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY
7 REPRESENT AND BIND INTERESTED PERSONS WITH RESPECT TO THE ESTATE;
8 AND

9 (f) A PARENT MAY REPRESENT AND BIND THE PARENT'S MINOR OR
10 UNBORN CHILD IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT
11 BEEN APPOINTED.

12 (7) UNLESS OTHERWISE REPRESENTED, A MINOR, INCAPACITATED,
13 OR UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS
14 UNKNOWN AND NOT REASONABLY ASCERTAINABLE, MAY BE REPRESENTED
15 BY AND BOUND BY ANOTHER HAVING A SUBSTANTIALLY IDENTICAL
16 INTEREST WITH RESPECT TO AN EXERCISE OF THE DECANTING POWER, BUT
17 ONLY TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE
18 REPRESENTATIVE AND THE PERSON REPRESENTED.

19 (8) IF SECTION 15-16-909 IS INVOKED AND THE COURT DETERMINES
20 THAT AN INTEREST IS NOT REPRESENTED UNDER THIS PART 9, OR THAT THE
21 OTHERWISE AVAILABLE REPRESENTATION MIGHT BE INADEQUATE, THE
22 COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE
23 CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF A
24 MINOR, INCAPACITATED, OR UNBORN INDIVIDUAL, OR A PERSON WHOSE
25 IDENTITY OR LOCATION IS UNKNOWN. A REPRESENTATIVE MAY BE
26 APPOINTED TO REPRESENT SEVERAL PERSONS OR INTERESTS.

27 (9) A REPRESENTATIVE MAY ACT ON BEHALF OF THE INDIVIDUAL

1 REPRESENTED WITH RESPECT TO AN EXERCISE OF THE DECANTING POWER
2 REGARDLESS OF WHETHER A JUDICIAL PROCEEDING CONCERNING THE
3 EXERCISE OF THE DECANTING POWER IS PENDING.

4 (10) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER
5 GENERAL BENEFIT ACCRUING TO THE LIVING MEMBERS OF THE
6 REPRESENTED INDIVIDUAL'S FAMILY.

7 (11) THE AUTHORITY TO REPRESENT AND BIND ANOTHER PERSON
8 UNDER THIS SECTION APPLIES TO THE RESULTS OF THE EXERCISE OF THE
9 DECANTING POWER UNDER THIS PART 9, INCLUDING BUT NOT LIMITED TO
10 TRUST DIVISION, MODIFICATION, OR REFORMATION, REGARDLESS OF ANY
11 OTHER LAW OF THE STATE.

12 **15-16-909. Court involvement.** (1) ON APPLICATION OF AN
13 AUTHORIZED FIDUCIARY, A PERSON ENTITLED TO NOTICE UNDER SECTION
14 15-16-907 (3), A BENEFICIARY, OR WITH RESPECT TO A CHARITABLE
15 INTEREST THE ATTORNEY GENERAL OR OTHER PERSON THAT HAS
16 STANDING TO ENFORCE THE CHARITABLE INTEREST, THE COURT MAY:

17 (a) PROVIDE INSTRUCTIONS TO THE AUTHORIZED FIDUCIARY
18 REGARDING WHETHER A PROPOSED EXERCISE OF THE DECANTING POWER
19 IS PERMITTED UNDER THIS PART 9 AND CONSISTENT WITH THE FIDUCIARY
20 DUTIES OF THE AUTHORIZED FIDUCIARY;

21 (b) APPOINT A SPECIAL FIDUCIARY AND AUTHORIZE THE SPECIAL
22 FIDUCIARY TO DETERMINE WHETHER THE DECANTING POWER SHOULD BE
23 EXERCISED UNDER THIS PART 9 AND TO EXERCISE THE DECANTING POWER;

24 (c) APPROVE AN EXERCISE OF THE DECANTING POWER;

25 (d) DETERMINE THAT A PROPOSED OR ATTEMPTED EXERCISE OF
26 THE DECANTING POWER IS INEFFECTIVE BECAUSE:

27 (I) AFTER APPLYING SECTION 15-16-922, THE PROPOSED OR

1 ATTEMPTED EXERCISE DOES NOT OR DID NOT COMPLY WITH THIS PART 9;

2 OR

3 (II) THE PROPOSED OR ATTEMPTED EXERCISE WOULD BE OR WAS
4 AN ABUSE OF THE FIDUCIARY'S DISCRETION OR A BREACH OF FIDUCIARY
5 DUTY;

6 (e) DETERMINE THE EXTENT TO WHICH SECTION 15-16-922 APPLIES
7 TO A PRIOR EXERCISE OF THE DECANTING POWER;

8 (f) PROVIDE INSTRUCTIONS TO THE TRUSTEE REGARDING THE
9 APPLICATION OF SECTION 15-16-922 TO A PRIOR EXERCISE OF THE
10 DECANTING POWER; OR

11 (g) ORDER OTHER RELIEF TO CARRY OUT THE PURPOSES OF THIS
12 PART 9.

13 (2) ON APPLICATION OF AN AUTHORIZED FIDUCIARY, THE COURT
14 MAY APPROVE:

15 (a) AN INCREASE IN THE FIDUCIARY'S COMPENSATION UNDER
16 SECTION 15-16-916; OR

17 (b) A MODIFICATION UNDER SECTION 15-16-918 OF A PROVISION
18 GRANTING A PERSON THE RIGHT TO REMOVE OR REPLACE THE FIDUCIARY.

19 **15-16-910. Formalities.** AN EXERCISE OF THE DECANTING POWER
20 MUST BE MADE IN A RECORD SIGNED BY AN AUTHORIZED FIDUCIARY. THE
21 SIGNED RECORD MUST, DIRECTLY OR BY REFERENCE TO THE NOTICE
22 REQUIRED BY SECTION 15-16-907, IDENTIFY THE FIRST TRUST AND THE
23 SECOND TRUST OR TRUSTS AND STATE THE PROPERTY OF THE FIRST TRUST
24 BEING DISTRIBUTED TO EACH SECOND TRUST AND THE PROPERTY, IF ANY,
25 THAT REMAINS IN THE FIRST TRUST.

26 **15-16-911. Decanting power under expanded distributive**
27 **discretion - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE

1 CONTEXT OTHERWISE REQUIRES:

2 (a) "NONCONTINGENT RIGHT" MEANS A RIGHT THAT IS NOT
3 SUBJECT TO THE EXERCISE OF DISCRETION OR THE OCCURRENCE OF A
4 SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR. THE TERM DOES NOT
5 INCLUDE A RIGHT HELD BY A BENEFICIARY IF ANY PERSON HAS DISCRETION
6 TO DISTRIBUTE PROPERTY SUBJECT TO THE RIGHT TO ANY PERSON OTHER
7 THAN THE BENEFICIARY OR THE BENEFICIARY'S ESTATE.

8 (b) "PRESUMPTIVE REMAINDER BENEFICIARY" MEANS A QUALIFIED
9 BENEFICIARY OTHER THAN A CURRENT BENEFICIARY.

10 (c) "SUCCESSOR BENEFICIARY" MEANS A BENEFICIARY THAT IS NOT
11 A QUALIFIED BENEFICIARY ON THE DATE THE BENEFICIARY'S
12 QUALIFICATION IS DETERMINED. THE TERM DOES NOT INCLUDE A PERSON
13 THAT IS A BENEFICIARY ONLY BECAUSE THE PERSON HOLDS A
14 NONGENERAL POWER OF APPOINTMENT.

15 (d) "VESTED INTEREST" MEANS:

16 (I) A RIGHT TO A MANDATORY DISTRIBUTION THAT IS A
17 NONCONTINGENT RIGHT AS OF THE DATE OF THE EXERCISE OF THE
18 DECANTING POWER;

19 (II) A CURRENT AND NONCONTINGENT RIGHT, ANNUALLY OR MORE
20 FREQUENTLY, TO A MANDATORY DISTRIBUTION OF INCOME, A SPECIFIED
21 DOLLAR AMOUNT, OR A PERCENTAGE OF VALUE OF SOME OR ALL OF THE
22 TRUST PROPERTY;

23 (III) A CURRENT AND NONCONTINGENT RIGHT, ANNUALLY OR
24 MORE FREQUENTLY, TO WITHDRAW INCOME, A SPECIFIED DOLLAR
25 AMOUNT, OR A PERCENTAGE OF VALUE OF SOME OR ALL OF THE TRUST
26 PROPERTY;

27 (IV) A PRESENTLY EXERCISABLE GENERAL POWER OF

1 APPOINTMENT; OR

2 (V) A RIGHT TO RECEIVE AN ASCERTAINABLE PART OF THE TRUST
3 PROPERTY ON THE TRUST'S TERMINATION WHICH IS NOT SUBJECT TO THE
4 EXERCISE OF DISCRETION OR TO THE OCCURRENCE OF A SPECIFIED EVENT
5 THAT IS NOT CERTAIN TO OCCUR.

6 (2) SUBJECT TO SUBSECTION (3) OF THIS SECTION AND SECTION
7 15-16-914, AN AUTHORIZED FIDUCIARY THAT HAS EXPANDED
8 DISTRIBUTIVE DISCRETION OVER THE PRINCIPAL OF A FIRST TRUST FOR THE
9 BENEFIT OF ONE OR MORE CURRENT BENEFICIARIES MAY EXERCISE THE
10 DECANTING POWER OVER THE PRINCIPAL OF THE FIRST TRUST.

11 (3) SUBJECT TO SECTION 15-16-913, IN AN EXERCISE OF THE
12 DECANTING POWER UNDER THIS SECTION, A SECOND TRUST MAY NOT:

13 (a) INCLUDE AS A CURRENT BENEFICIARY A PERSON THAT IS NOT
14 A CURRENT BENEFICIARY OF THE FIRST TRUST, EXCEPT AS OTHERWISE
15 PROVIDED IN SUBSECTION (4) OF THIS SECTION;

16 (b) INCLUDE AS A PRESUMPTIVE REMAINDER BENEFICIARY OR
17 SUCCESSOR BENEFICIARY A PERSON THAT IS NOT A CURRENT BENEFICIARY,
18 PRESUMPTIVE REMAINDER BENEFICIARY, OR SUCCESSOR BENEFICIARY OF
19 THE FIRST TRUST, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF
20 THIS SECTION; OR

21 (c) REDUCE OR ELIMINATE A VESTED INTEREST.

22 (4) SUBJECT TO SECTION 15-16-914 AND PARAGRAPH (c) OF
23 SUBSECTION (3) OF THIS SECTION, IN AN EXERCISE OF THE DECANTING
24 POWER UNDER THIS SECTION, A SECOND TRUST MAY BE A TRUST CREATED
25 OR ADMINISTERED UNDER THE LAW OF ANY JURISDICTION AND MAY:

26 (a) RETAIN A POWER OF APPOINTMENT GRANTED IN THE FIRST
27 TRUST;

1 (b) OMIT A POWER OF APPOINTMENT GRANTED IN THE FIRST TRUST,
2 OTHER THAN A PRESENTLY EXERCISABLE GENERAL POWER OF
3 APPOINTMENT;

4 (c) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
5 POWERHOLDER IS A CURRENT BENEFICIARY OF THE FIRST TRUST AND THE
6 AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION TO
7 DISTRIBUTE PRINCIPAL TO THE BENEFICIARY; AND

8 (d) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
9 POWERHOLDER IS A PRESUMPTIVE REMAINDER BENEFICIARY OR
10 SUCCESSOR BENEFICIARY OF THE FIRST TRUST, BUT THE EXERCISE OF THE
11 POWER MAY TAKE EFFECT ONLY AFTER THE POWERHOLDER BECOMES, OR
12 WOULD HAVE BECOME IF THEN LIVING, A CURRENT BENEFICIARY.

13 (5) A POWER OF APPOINTMENT DESCRIBED IN PARAGRAPH (a), (b),
14 (c), OR (d) OF SUBSECTION (4) OF THIS SECTION MAY BE GENERAL OR
15 NONGENERAL. THE CLASS OF PERMISSIBLE APPOINTEES IN FAVOR OF WHICH
16 THE POWER MAY BE EXERCISED MAY BE BROADER THAN OR DIFFERENT
17 FROM THE BENEFICIARIES OF THE FIRST TRUST.

18 (6) IF AN AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE
19 DISCRETION OVER PART BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST,
20 THE FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS
21 SECTION OVER THAT PART OF THE PRINCIPAL OVER WHICH THE
22 AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION.

23 **15-16-912. Decanting power under limited distributive**
24 **discretion - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES, "LIMITED DISTRIBUTIVE DISCRETION"
26 MEANS A DISCRETIONARY POWER OF DISTRIBUTION THAT IS LIMITED TO AN
27 ASCERTAINABLE STANDARD OR A REASONABLY DEFINITE STANDARD.

1 (2) AN AUTHORIZED FIDUCIARY THAT HAS LIMITED DISTRIBUTIVE
2 DISCRETION OVER THE PRINCIPAL OF THE FIRST TRUST FOR BENEFIT OF ONE
3 OR MORE CURRENT BENEFICIARIES MAY EXERCISE THE DECANTING POWER
4 OVER THE PRINCIPAL OF THE FIRST TRUST.

5 (3) UNDER THIS SECTION AND SUBJECT TO SECTION 15-16-914, A
6 SECOND TRUST MAY BE CREATED OR ADMINISTERED UNDER THE LAW OF
7 ANY JURISDICTION. UNDER THIS SECTION, THE SECOND TRUSTS, IN THE
8 AGGREGATE, MUST GRANT EACH BENEFICIARY OF THE FIRST TRUST
9 BENEFICIAL INTERESTS WHICH ARE SUBSTANTIALLY SIMILAR TO THE
10 BENEFICIAL INTERESTS OF THE BENEFICIARY IN THE FIRST TRUST.

11 (4) A POWER TO MAKE A DISTRIBUTION UNDER A SECOND TRUST
12 FOR THE BENEFIT OF A BENEFICIARY WHO IS AN INDIVIDUAL IS
13 SUBSTANTIALLY SIMILAR TO A POWER UNDER THE FIRST TRUST TO MAKE
14 A DISTRIBUTION DIRECTLY TO THE BENEFICIARY. A DISTRIBUTION IS FOR
15 THE BENEFIT OF A BENEFICIARY IF:

16 (a) THE DISTRIBUTION IS APPLIED FOR THE BENEFIT OF THE
17 BENEFICIARY;

18 (b) THE BENEFICIARY IS UNDER A LEGAL DISABILITY OR THE
19 TRUSTEE REASONABLY BELIEVES THE BENEFICIARY IS INCAPACITATED,
20 AND THE DISTRIBUTION IS MADE AS PERMITTED UNDER OTHER LAW OF THIS
21 STATE; OR

22 (c) THE DISTRIBUTION IS MADE AS PERMITTED UNDER THE TERMS
23 OF THE FIRST-TRUST INSTRUMENT AND THE SECOND-TRUST INSTRUMENT
24 FOR THE BENEFIT OF THE BENEFICIARY.

25 (5) IF AN AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE
26 DISCRETION OVER PART BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST,
27 THE FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS

1 SECTION OVER THAT PART OF THE PRINCIPAL OVER WHICH THE
2 AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE DISCRETION.

3 **15-16-913. Trust for beneficiary with disability - definitions.**

4 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
5 REQUIRES:

6 (a) "BENEFICIARY WITH A DISABILITY" MEANS A BENEFICIARY OF
7 A FIRST TRUST WHO THE SPECIAL-NEEDS FIDUCIARY BELIEVES MAY
8 QUALIFY FOR GOVERNMENTAL BENEFITS BASED ON DISABILITY, WHETHER
9 OR NOT THE BENEFICIARY CURRENTLY RECEIVES THOSE BENEFITS OR IS AN
10 INDIVIDUAL WHO HAS BEEN ADJUDICATED AN INCAPACITATED PERSON.

11 (b) "GOVERNMENTAL BENEFITS" MEANS FINANCIAL AID OR
12 SERVICES FROM A STATE, FEDERAL, OR OTHER PUBLIC AGENCY.

13 (c) "SPECIAL-NEEDS FIDUCIARY" MEANS, WITH RESPECT TO A
14 TRUST THAT HAS A BENEFICIARY WITH A DISABILITY:

15 (I) A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A SETTLOR,
16 THAT HAS DISCRETION TO DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF
17 A FIRST TRUST TO ONE OR MORE CURRENT BENEFICIARIES;

18 (II) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER
19 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), A TRUSTEE OR OTHER
20 FIDUCIARY, OTHER THAN A SETTLOR, THAT HAS DISCRETION TO DISTRIBUTE
21 PART OR ALL OF THE INCOME OF THE FIRST TRUST TO ONE OR MORE
22 CURRENT BENEFICIARIES; OR

23 (III) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER
24 SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (c), A TRUSTEE OR OTHER
25 FIDUCIARY, OTHER THAN A SETTLOR, THAT IS REQUIRED TO DISTRIBUTE
26 PART OR ALL OF THE INCOME OR PRINCIPAL OF THE FIRST TRUST TO ONE OR
27 MORE CURRENT BENEFICIARIES.

1 (IV) "SPECIAL-NEEDS TRUST" MEANS A TRUST THE TRUSTEE
2 BELIEVES WOULD NOT BE CONSIDERED A RESOURCE FOR PURPOSES OF
3 DETERMINING WHETHER A BENEFICIARY WITH A DISABILITY IS ELIGIBLE
4 FOR GOVERNMENTAL BENEFITS.

5 (2) A SPECIAL-NEEDS FIDUCIARY MAY EXERCISE THE DECANTING
6 POWER DESCRIBED IN SECTION 15-16-911 OVER THE PRINCIPAL OF A FIRST
7 TRUST AS IF THE FIDUCIARY HAD AUTHORITY TO DISTRIBUTE PRINCIPAL TO
8 A BENEFICIARY WITH A DISABILITY SUBJECT TO EXPANDED DISTRIBUTIVE
9 DISCRETION IF:

10 (a) A SECOND TRUST IS A SPECIAL-NEEDS TRUST THAT BENEFITS
11 THE BENEFICIARY WITH A DISABILITY; AND

12 (b) THE SPECIAL-NEEDS FIDUCIARY DETERMINES THAT EXERCISE
13 OF THE DECANTING POWER WILL FURTHER THE PURPOSES OF THE FIRST
14 TRUST.

15 (3) IN AN EXERCISE OF THE DECANTING POWER UNDER THIS
16 SECTION, THE FOLLOWING RULES APPLY:

17 (a) NOTWITHSTANDING SECTION 15-15-911 (3) (b), THE INTEREST
18 IN THE SECOND TRUST OF A BENEFICIARY WITH A DISABILITY MAY:

19 (I) BE A POOLED TRUST AS DEFINED BY MEDICAID LAW FOR THE
20 BENEFIT OF THE BENEFICIARY WITH A DISABILITY UNDER 42 U.S.C. SEC.
21 1396p (d) (4) (C), AS AMENDED; OR

22 (II) CONTAIN PAYBACK PROVISIONS COMPLYING WITH
23 REIMBURSEMENT REQUIREMENTS OF MEDICAID LAW UNDER 42 U.S.C. SEC.
24 1396p (d) (4) (A), AS AMENDED.

25 (b) SECTION 15-16-911 (3) (c) DOES NOT APPLY TO THE INTERESTS
26 OF THE BENEFICIARY WITH A DISABILITY.

27 (c) EXCEPT AS AFFECTED BY ANY CHANGE TO THE INTERESTS OF

1 THE BENEFICIARY WITH A DISABILITY, THE SECOND TRUST, OR IF THERE
2 ARE TWO OR MORE SECOND TRUSTS, THE SECOND TRUSTS IN THE
3 AGGREGATE, MUST GRANT EACH OTHER BENEFICIARY OF THE FIRST TRUST
4 BENEFICIAL INTERESTS IN THE SECOND TRUSTS WHICH ARE
5 SUBSTANTIALLY SIMILAR TO THE BENEFICIARY'S BENEFICIAL INTERESTS IN
6 THE FIRST TRUST.

7 **15-16-914. Protection of charitable interest - definitions. (1)**

8 AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "DETERMINABLE CHARITABLE INTEREST" MEANS A CHARITABLE
10 INTEREST THAT IS A RIGHT TO A MANDATORY DISTRIBUTION CURRENTLY,
11 PERIODICALLY, ON THE OCCURRENCE OF A SPECIFIED EVENT, OR AFTER THE
12 PASSAGE OF A SPECIFIED TIME AND WHICH IS UNCONDITIONAL OR WILL BE
13 HELD SOLELY FOR CHARITABLE PURPOSES.

14 (b) "UNCONDITIONAL" MEANS NOT SUBJECT TO THE OCCURRENCE
15 OF A SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR, OTHER THAN A
16 REQUIREMENT IN A TRUST INSTRUMENT THAT A CHARITABLE
17 ORGANIZATION BE IN EXISTENCE OR QUALIFY UNDER A PARTICULAR
18 PROVISION OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
19 AMENDED, ON THE DATE OF THE DISTRIBUTION, IF THE CHARITABLE
20 ORGANIZATION MEETS THE REQUIREMENT ON THE DATE OF
21 DETERMINATION.

22 (2) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE
23 INTEREST, THE ATTORNEY GENERAL HAS THE RIGHTS OF A QUALIFIED
24 BENEFICIARY AND MAY REPRESENT AND BIND THE CHARITABLE INTEREST.

25 (3) IF A FIRST TRUST CONTAINS A CHARITABLE INTEREST, THE
26 SECOND TRUST OR TRUSTS MAY NOT:

27 (a) DIMINISH THE CHARITABLE INTEREST;

1 (b) DIMINISH THE INTEREST OF AN IDENTIFIED CHARITABLE
2 ORGANIZATION THAT HOLDS THE CHARITABLE INTEREST;

3 (c) ALTER ANY CHARITABLE PURPOSE STATED IN THE FIRST-TRUST
4 INSTRUMENT; OR

5 (d) ALTER ANY CONDITION OR RESTRICTION RELATED TO THE
6 CHARITABLE INTEREST.

7 (4) IF THERE ARE TWO OR MORE SECOND TRUSTS, THE SECOND
8 TRUSTS SHALL BE TREATED AS ONE TRUST FOR PURPOSES OF DETERMINING
9 WHETHER THE EXERCISE OF THE DECANTING POWER DIMINISHES THE
10 CHARITABLE INTEREST OR DIMINISHES THE INTEREST OF AN IDENTIFIED
11 CHARITABLE ORGANIZATION FOR PURPOSES OF SUBSECTION (3) OF THIS
12 SECTION.

13 (5) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE
14 INTEREST, THE SECOND TRUST OR TRUSTS THAT INCLUDE A CHARITABLE
15 INTEREST PURSUANT TO SUBSECTION (3) OF THIS SECTION MUST BE
16 ADMINISTERED UNDER THE LAW OF THIS STATE UNLESS:

17 (a) THE ATTORNEY GENERAL, AFTER RECEIVING NOTICE UNDER
18 SECTION 15-16-907, FAILS TO OBJECT IN A SIGNED RECORD DELIVERED TO
19 THE AUTHORIZED FIDUCIARY WITHIN THE NOTICE PERIOD;

20 (b) THE ATTORNEY GENERAL CONSENTS IN A SIGNED RECORD TO
21 THE SECOND TRUST OR TRUSTS BEING ADMINISTERED UNDER THE LAW OF
22 ANOTHER JURISDICTION; OR

23 (c) THE COURT APPROVES THE EXERCISE OF THE DECANTING
24 POWER.

25 (6) THIS PART 9 DOES NOT LIMIT THE POWERS AND DUTIES OF THE
26 ATTORNEY GENERAL UNDER LAW OF THIS STATE OTHER THAN THIS PART
27 9.

1 **15-16-915. Trust limitation on decanting.** (1) AN AUTHORIZED
2 FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO THE EXTENT
3 THE FIRST-TRUST INSTRUMENT EXPRESSLY PROHIBITS EXERCISE OF:

4 (a) THE DECANTING POWER; OR

5 (b) A POWER GRANTED BY STATE LAW TO THE FIDUCIARY TO
6 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE TRUST TO ANOTHER
7 TRUST OR TO MODIFY THE TRUST.

8 (2) EXERCISE OF THE DECANTING POWER IS SUBJECT TO ANY
9 RESTRICTION IN THE FIRST-TRUST INSTRUMENT THAT EXPRESSLY APPLIES
10 TO EXERCISE OF:

11 (a) THE DECANTING POWER; OR

12 (b) A POWER GRANTED BY STATE LAW TO A FIDUCIARY TO
13 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE TRUST TO ANOTHER
14 TRUST OR TO MODIFY THE TRUST.

15 (3) A GENERAL PROHIBITION OF THE AMENDMENT OR REVOCATION
16 OF A FIRST TRUST, A SPENDTHRIFT CLAUSE, OR A CLAUSE RESTRAINING THE
17 VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST
18 DOES NOT PRECLUDE EXERCISE OF THE DECANTING POWER.

19 (4) SUBJECT TO SUBSECTIONS (1) AND (2) OF THIS SECTION, AN
20 AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER
21 THIS PART 9 EVEN IF THE FIRST-TRUST INSTRUMENT PERMITS THE
22 AUTHORIZED FIDUCIARY OR ANOTHER PERSON TO MODIFY THE
23 FIRST-TRUST INSTRUMENT OR TO DISTRIBUTE PART OR ALL OF THE
24 PRINCIPAL OF THE FIRST TRUST TO ANOTHER TRUST.

25 (5) IF A FIRST-TRUST INSTRUMENT CONTAINS AN EXPRESS
26 PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR AN
27 EXPRESS RESTRICTION DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE

1 PROVISION MUST BE INCLUDED IN THE SECOND-TRUST INSTRUMENT.

2 **15-16-916. Change in compensation.** (1) IF A FIRST-TRUST
3 INSTRUMENT SPECIFIES AN AUTHORIZED FIDUCIARY'S COMPENSATION, THE
4 FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO INCREASE THE
5 FIDUCIARY'S COMPENSATION ABOVE THE SPECIFIED COMPENSATION
6 UNLESS:

7 (a) ALL QUALIFIED BENEFICIARIES OF THE SECOND TRUST CONSENT
8 TO THE INCREASE IN A SIGNED RECORD; OR

9 (b) THE INCREASE IS APPROVED BY THE COURT.

10 (2) IF A FIRST-TRUST INSTRUMENT DOES NOT SPECIFY AN
11 AUTHORIZED FIDUCIARY'S COMPENSATION, THE FIDUCIARY MAY NOT
12 EXERCISE THE DECANTING POWER TO INCREASE THE FIDUCIARY'S
13 COMPENSATION ABOVE THE COMPENSATION PERMITTED BY THE LAWS OF
14 THIS STATE UNLESS:

15 (a) ALL QUALIFIED BENEFICIARIES OF THE SECOND TRUST CONSENT
16 TO THE INCREASE IN A SIGNED RECORD; OR

17 (b) THE INCREASE IS APPROVED BY THE COURT.

18 (3) A CHANGE IN AN AUTHORIZED FIDUCIARY'S COMPENSATION
19 WHICH IS INCIDENTAL TO OTHER CHANGES MADE BY THE EXERCISE OF THE
20 DECANTING POWER IS NOT AN INCREASE IN THE FIDUCIARY'S
21 COMPENSATION FOR PURPOSES OF SUBSECTIONS (1) AND (2) OF THIS
22 SECTION.

23 **15-16-917. Relief from liability and indemnification.**

24 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SECOND-TRUST
25 INSTRUMENT MAY NOT RELIEVE AN AUTHORIZED FIDUCIARY FROM
26 LIABILITY FOR BREACH OF TRUST TO A GREATER EXTENT THAN THE
27 FIRST-TRUST INSTRUMENT.

1 (2) A SECOND-TRUST INSTRUMENT MAY PROVIDE FOR
2 INDEMNIFICATION OF AN AUTHORIZED FIDUCIARY OF THE FIRST TRUST OR
3 ANOTHER PERSON ACTING IN A FIDUCIARY CAPACITY UNDER THE FIRST
4 TRUST FOR ANY LIABILITY OR CLAIM THAT WOULD HAVE BEEN PAYABLE
5 FROM THE FIRST TRUST IF THE DECANTING POWER HAD NOT BEEN
6 EXERCISED.

7 (3) A SECOND-TRUST INSTRUMENT MAY NOT REDUCE FIDUCIARY
8 LIABILITY IN THE AGGREGATE.

9 (4) SUBJECT TO SUBSECTION (3) OF THIS SECTION, A SECOND-TRUST
10 INSTRUMENT MAY DIVIDE AND REALLOCATE FIDUCIARY POWERS AMONG
11 FIDUCIARIES, INCLUDING ONE OR MORE TRUSTEES, DISTRIBUTION
12 ADVISORS, INVESTMENT ADVISORS, TRUST PROTECTORS, OR OTHER
13 PERSONS, AND RELIEVE A FIDUCIARY FROM LIABILITY FOR AN ACT OR
14 FAILURE TO ACT OF ANOTHER FIDUCIARY AS PERMITTED BY LAW OF THIS
15 STATE OTHER THAN THIS PART 9.

16 **15-16-918. Removal or replacement of authorized fiduciary.**

17 (1) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING
18 POWER TO MODIFY A PROVISION IN A FIRST-TRUST INSTRUMENT GRANTING
19 ANOTHER PERSON POWER TO REMOVE OR REPLACE THE FIDUCIARY UNLESS:

20 (a) THE PERSON HOLDING THE POWER CONSENTS TO THE
21 MODIFICATION IN A SIGNED RECORD AND THE MODIFICATION APPLIES ONLY
22 TO THE PERSON;

23 (b) THE PERSON HOLDING THE POWER AND THE QUALIFIED
24 BENEFICIARIES OF THE SECOND TRUST CONSENT TO THE MODIFICATION IN
25 A SIGNED RECORD AND THE MODIFICATION GRANTS A SUBSTANTIALLY
26 SIMILAR POWER TO ANOTHER PERSON; OR

27 (c) THE COURT APPROVES THE MODIFICATION AND THE

1 MODIFICATION GRANTS A SUBSTANTIALLY SIMILAR POWER TO ANOTHER
2 PERSON.

3 **15-16-919. Tax-related limitations - definitions.** (1) AS USED
4 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

5 (a) "GRANTOR TRUST" MEANS A TRUST AS TO WHICH A SETTLOR OF
6 A FIRST TRUST IS CONSIDERED THE OWNER UNDER 26 U.S.C. SECS.
7 671-677, AS AMENDED, OR 26 U.S.C. SEC. 679, AS AMENDED.

8 (b) "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL
9 REVENUE CODE OF 1986", AS AMENDED.

10 (c) "NONGRANTOR TRUST" MEANS A TRUST THAT IS NOT A
11 GRANTOR TRUST.

12 (d) "QUALIFIED BENEFITS PROPERTY" MEANS PROPERTY SUBJECT
13 TO THE MINIMUM DISTRIBUTION REQUIREMENTS OF 26 U.S.C. SEC. 401 (a)
14 (9), AS AMENDED, AND ANY APPLICABLE REGULATIONS, OR TO ANY
15 SIMILAR REQUIREMENTS THAT REFER TO 26 U.S.C. SEC. 401 (a) (9) OR THE
16 REGULATIONS.

17 (2) AN EXERCISE OF THE DECANTING POWER IS SUBJECT TO THE
18 FOLLOWING LIMITATIONS:

19 (a) IF A FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
20 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
21 THIS SECTION, FOR A MARITAL DEDUCTION FOR PURPOSES OF THE GIFT OR
22 ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR A STATE GIFT,
23 ESTATE, OR INHERITANCE TAX, THE SECOND-TRUST INSTRUMENT MUST
24 NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN OR OMITTED FROM
25 THE TRUST INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY WAS
26 TRANSFERRED, WOULD HAVE PREVENTED THE TRANSFER FROM
27 QUALIFYING FOR THE DEDUCTION, OR WOULD HAVE REDUCED THE

1 AMOUNT OF THE DEDUCTION, UNDER THE SAME PROVISIONS OF THE
2 INTERNAL REVENUE CODE OR STATE LAW UNDER WHICH THE TRANSFER
3 QUALIFIED.

4 (b) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
5 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
6 THIS SECTION, FOR A CHARITABLE DEDUCTION FOR PURPOSES OF THE
7 INCOME, GIFT, OR ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR A
8 STATE INCOME, GIFT, ESTATE, OR INHERITANCE TAX, THE SECOND-TRUST
9 INSTRUMENT MUST NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED
10 IN OR OMITTED FROM THE TRUST INSTRUMENT FOR THE TRUST TO WHICH
11 THE PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED THE
12 TRANSFER FROM QUALIFYING FOR THE DEDUCTION, OR WOULD HAVE
13 REDUCED THE AMOUNT OF THE DEDUCTION, UNDER THE SAME PROVISIONS
14 OF THE INTERNAL REVENUE CODE OR STATE LAW UNDER WHICH THE
15 TRANSFER QUALIFIED.

16 (c) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
17 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
18 THIS SECTION, FOR THE EXCLUSION FROM THE GIFT TAX DESCRIBED IN 26
19 U.S.C. SEC. 2503 (b), AS AMENDED, THE SECOND-TRUST INSTRUMENT
20 MUST NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN OR OMITTED
21 FROM THE TRUST INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY
22 WAS TRANSFERRED, WOULD HAVE PREVENTED THE TRANSFER FROM
23 QUALIFYING UNDER 26 U.S.C. SEC. 2503 (b), AS AMENDED. IF THE FIRST
24 TRUST CONTAINS PROPERTY THAT QUALIFIED, OR WOULD HAVE QUALIFIED
25 BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN THIS SECTION, FOR THE
26 EXCLUSION FROM THE GIFT TAX DESCRIBED IN 26 U.S.C. SEC. 2503 (b), AS
27 AMENDED, BY APPLICATION OF 26 U.S.C. SEC. 2503 (c), AS AMENDED, THE

1 SECOND-TRUST INSTRUMENT MUST NOT INCLUDE OR OMIT A TERM THAT,
2 IF INCLUDED OR OMITTED FROM THE TRUST INSTRUMENT FOR THE TRUST
3 TO WHICH THE PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED
4 THE TRANSFER FROM QUALIFYING UNDER 26 U.S.C. SEC. 2503 (c), AS
5 AMENDED.

6 (d) IF THE PROPERTY OF THE FIRST TRUST INCLUDES SHARES OF
7 STOCK IN AN S CORPORATION, AS DEFINED IN 26 U.S.C. SEC. 1361, AS
8 AMENDED, AND THE FIRST TRUST IS, OR BUT FOR PROVISIONS OF THIS PART
9 9 OTHER THAN THIS SECTION WOULD BE, A PERMITTED SHAREHOLDER
10 UNDER ANY PROVISION OF 26 U.S.C. SEC. 1361, AS AMENDED, AN
11 AUTHORIZED FIDUCIARY MAY EXERCISE THE POWER WITH RESPECT TO
12 PART OR ALL OF THE S CORPORATION STOCK ONLY IF ANY SECOND TRUST
13 RECEIVING THE STOCK IS A PERMITTED SHAREHOLDER UNDER 26 U.S.C.
14 SEC. 1361 (c) (2), AS AMENDED. IF THE PROPERTY OF THE FIRST TRUST
15 INCLUDES SHARES OF STOCK IN AN S CORPORATION AND THE FIRST TRUST
16 IS, OR BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN THIS SECTION
17 WOULD BE, A QUALIFIED SUBCHAPTER S TRUST WITHIN THE MEANING OF
18 26 U.S.C. SEC. 1361 (d), AS AMENDED, THE SECOND-TRUST INSTRUMENT
19 MUST NOT INCLUDE OR OMIT A TERM THAT PREVENTS THE SECOND TRUST
20 FROM QUALIFYING AS A QUALIFIED SUBCHAPTER S TRUST.

21 (e) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
22 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
23 THIS SECTION, FOR A ZERO INCLUSION RATIO FOR PURPOSES OF THE
24 GENERATION-SKIPPING TRANSFER TAX UNDER 26 U.S.C. SEC. 2642 (c), AS
25 AMENDED, THE SECOND-TRUST INSTRUMENT MUST NOT INCLUDE OR OMIT
26 A TERM THAT, IF INCLUDED IN OR OMITTED FROM THE FIRST-TRUST
27 INSTRUMENT, WOULD HAVE PREVENTED THE TRANSFER TO THE FIRST

1 TRUST FROM QUALIFYING FOR A ZERO INCLUSION RATIO UNDER 26 U.S.C.
2 SEC. 2642 (c), AS AMENDED.

3 (f) IF THE FIRST TRUST IS DIRECTLY OR INDIRECTLY THE
4 BENEFICIARY OF QUALIFIED BENEFITS PROPERTY, THE SECOND-TRUST
5 INSTRUMENT MAY NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN
6 OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE
7 INCREASED THE MINIMUM DISTRIBUTIONS REQUIRED WITH RESPECT TO THE
8 QUALIFIED BENEFITS PROPERTY UNDER 26 U.S.C. SEC. 401 (a) (9), AS
9 AMENDED, AND ANY APPLICABLE REGULATIONS, OR ANY SIMILAR
10 REQUIREMENTS THAT REFER TO 26 U.S.C. SEC. 401 (a) (9), AS AMENDED
11 OR THE REGULATIONS. IF AN ATTEMPTED EXERCISE OF THE DECANTING
12 POWER VIOLATES THE PRECEDING SENTENCE, THE TRUSTEE IS DEEMED TO
13 HAVE HELD THE QUALIFIED BENEFITS PROPERTY AND ANY REINVESTED
14 DISTRIBUTIONS OF THE PROPERTY AS A SEPARATE SHARE FROM THE DATE
15 OF THE EXERCISE OF THE POWER, AND SECTION 15-16-922 APPLIES TO THE
16 SEPARATE SHARE.

17 (g) IF THE FIRST TRUST QUALIFIES AS A GRANTOR TRUST BECAUSE
18 OF THE APPLICATION OF 26 U.S.C. SEC. 672 (f) (2) (A), AS AMENDED, THE
19 SECOND TRUST MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN
20 OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE
21 PREVENTED THE FIRST TRUST FROM QUALIFYING UNDER 26 U.S.C. SEC. 672
22 (f) (2) (A), AS AMENDED.

23 (h) AS USED IN THIS PARAGRAPH (h), UNLESS THE CONTEXT
24 REQUIRES OTHERWISE, "TAX BENEFIT" MEANS A FEDERAL OR STATE TAX
25 DEDUCTION, EXEMPTION, EXCLUSION, OR OTHER BENEFIT NOT OTHERWISE
26 LISTED IN THIS SECTION, EXCEPT FOR A BENEFIT ARISING FROM BEING A
27 GRANTOR TRUST. SUBJECT TO PARAGRAPH (i) OF THIS SUBSECTION (2), A

1 SECOND-TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM THAT, IF
2 INCLUDED IN OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD
3 HAVE PREVENTED QUALIFICATION FOR A TAX BENEFIT IF:

4 (I) THE FIRST-TRUST INSTRUMENT EXPRESSLY INDICATES AN
5 INTENT TO QUALIFY FOR THE BENEFIT OR THE FIRST-TRUST INSTRUMENT
6 CLEARLY IS DESIGNED TO ENABLE THE FIRST TRUST TO QUALIFY FOR THE
7 BENEFIT; AND

8 (II) THE TRANSFER OF PROPERTY HELD BY THE FIRST TRUST OR THE
9 FIRST TRUST QUALIFIED, OR BUT FOR PROVISIONS OF THIS PART 9 OTHER
10 THAN THIS SECTION, WOULD HAVE QUALIFIED FOR THE TAX BENEFIT.

11 (i) SUBJECT TO PARAGRAPH (d) OF THIS SUBSECTION (2):

12 (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (g) OF THIS
13 SUBSECTION (2), THE SECOND TRUST MAY BE A NONGRANTOR TRUST, EVEN
14 IF THE FIRST TRUST IS A GRANTOR TRUST; AND

15 (II) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (j) OF THIS
16 SUBSECTION (2), THE SECOND TRUST MAY BE A GRANTOR TRUST, EVEN IF
17 THE FIRST TRUST IS A NONGRANTOR TRUST.

18 (j) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE
19 DECANTING POWER IF A SETTLOR OBJECTS IN A SIGNED RECORD DELIVERED
20 TO THE FIDUCIARY WITHIN THE NOTICE PERIOD AND:

21 (I) THE FIRST TRUST AND A SECOND TRUST ARE BOTH GRANTOR
22 TRUSTS, IN WHOLE OR IN PART, THE FIRST TRUST GRANTS THE SETTLOR OR
23 ANOTHER PERSON THE POWER TO CAUSE THE SECOND TRUST TO CEASE TO
24 BE A GRANTOR TRUST, AND THE SECOND TRUST DOES NOT GRANT AN
25 EQUIVALENT POWER TO THE SETTLOR OR OTHER PERSON; OR

26 (II) THE FIRST TRUST IS A NONGRANTOR TRUST AND A SECOND
27 TRUST IS A GRANTOR TRUST, IN WHOLE OR IN PART, WITH RESPECT TO THE

1 SETTLOR, UNLESS:

2 (A) THE SETTLOR HAS THE POWER AT ALL TIMES TO CAUSE THE
3 SECOND TRUST TO CEASE TO BE A GRANTOR TRUST; OR

4 (B) THE FIRST-TRUST INSTRUMENT CONTAINS A PROVISION
5 GRANTING THE SETTLOR OR ANOTHER PERSON A POWER THAT WOULD
6 CAUSE THE FIRST TRUST TO CEASE TO BE A GRANTOR TRUST AND THE
7 SECOND-TRUST INSTRUMENT CONTAINS THE SAME PROVISION.

8 **15-16-920. Duration of second trust.** (1) SUBJECT TO
9 SUBSECTION (2) OF THIS SECTION, A SECOND TRUST MAY HAVE A
10 DURATION THAT IS THE SAME AS OR DIFFERENT FROM THE DURATION OF
11 THE FIRST TRUST.

12 (2) TO THE EXTENT THAT PROPERTY OF A SECOND TRUST IS
13 ATTRIBUTABLE TO PROPERTY OF THE FIRST TRUST, THE PROPERTY OF THE
14 SECOND TRUST IS SUBJECT TO ANY RULES GOVERNING MAXIMUM
15 PERPETUITY, ACCUMULATION, OR SUSPENSION OF THE POWER OF
16 ALIENATION WHICH APPLY TO PROPERTY OF THE FIRST TRUST.

17 **15-16-921. Need to distribute not required.** AN AUTHORIZED
18 FIDUCIARY MAY EXERCISE THE DECANTING POWER REGARDLESS OF
19 WHETHER UNDER THE FIRST TRUST'S DISCRETIONARY DISTRIBUTION
20 STANDARD THE FIDUCIARY WOULD HAVE MADE OR COULD HAVE BEEN
21 COMPELLED TO MAKE A DISCRETIONARY DISTRIBUTION OF PRINCIPAL AT
22 THE TIME OF THE EXERCISE.

23 **15-16-922. Saving provision.** (1) IF EXERCISE OF THE DECANTING
24 POWER WOULD BE EFFECTIVE UNDER THIS PART 9 EXCEPT THAT THE
25 SECOND-TRUST INSTRUMENT IN PART DOES NOT COMPLY WITH THIS PART
26 9, THE EXERCISE OF THE POWER IS EFFECTIVE AND THE FOLLOWING RULES
27 APPLY WITH RESPECT TO THE PRINCIPAL OF THE SECOND TRUST

1 ATTRIBUTABLE TO THE EXERCISE OF THE POWER:

2 (a) A PROVISION IN THE SECOND-TRUST INSTRUMENT WHICH IS NOT
3 PERMITTED UNDER THIS PART 9 IS VOID TO THE EXTENT NECESSARY TO
4 COMPLY WITH THIS PART 9.

5 (b) A PROVISION REQUIRED BY THIS PART 9 TO BE IN THE
6 SECOND-TRUST INSTRUMENT WHICH IS NOT CONTAINED IN THE
7 INSTRUMENT IS DEEMED TO BE INCLUDED IN THE INSTRUMENT TO THE
8 EXTENT NECESSARY TO COMPLY WITH THIS PART 9.

9 (2) IF A TRUSTEE OR OTHER FIDUCIARY OF A SECOND TRUST
10 DETERMINES THAT SUBSECTION (1) OF THIS SECTION APPLIES TO A PRIOR
11 EXERCISE OF THE DECANTING POWER, THE FIDUCIARY SHALL TAKE
12 CORRECTIVE ACTION CONSISTENT WITH THE FIDUCIARY'S DUTIES.

13 **15-16-923. Trust for care of animal - definitions.** (1) AS USED
14 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

15 (a) "ANIMAL TRUST" MEANS A TRUST OR AN INTEREST IN A TRUST
16 CREATED TO PROVIDE FOR THE CARE OF ONE OR MORE ANIMALS.

17 (b) "PROTECTOR" MEANS A PERSON LISTED UNDER SECTION
18 15-11-901 (3)(d) WITH AUTHORITY TO ENFORCE THE TRUST ON BEHALF OF
19 THE ANIMAL.

20 (2) THE DECANTING POWER MAY BE EXERCISED OVER AN ANIMAL
21 TRUST THAT HAS A PROTECTOR TO THE EXTENT THE TRUST COULD BE
22 DECANTED UNDER THIS PART 9 IF EACH ANIMAL THAT BENEFITS FROM THE
23 TRUST WERE AN INDIVIDUAL, IF THE PROTECTOR CONSENTS IN A SIGNED
24 RECORD TO THE EXERCISE OF THE POWER.

25 (3) A PROTECTOR FOR AN ANIMAL HAS THE RIGHTS UNDER THIS
26 PART 9 OF A QUALIFIED BENEFICIARY.

27 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 9, IF

1 A FIRST TRUST IS AN ANIMAL TRUST, IN AN EXERCISE OF THE DECANTING
2 POWER, THE SECOND TRUST MUST PROVIDE THAT TRUST PROPERTY MAY BE
3 APPLIED ONLY TO ITS INTENDED PURPOSE FOR THE PERIOD THE FIRST TRUST
4 BENEFITTED THE ANIMAL.

5 **15-16-924. Terms of second trust.** A REFERENCE IN THIS TITLE 15
6 TO A TRUST INSTRUMENT OR TERMS OF THE TRUST INCLUDES A
7 SECOND-TRUST INSTRUMENT AND THE TERMS OF THE SECOND TRUST.

8 **15-16-925. Settlor.** (1) FOR PURPOSES OF LAW OF THIS STATE
9 OTHER THAN THIS PART 9, AND SUBJECT TO SUBSECTION (2) OF THIS
10 SECTION, A SETTLOR OF A FIRST TRUST IS DEEMED TO BE THE SETTLOR OF
11 THE SECOND TRUST WITH RESPECT TO THE PORTION OF THE PRINCIPAL OF
12 THE FIRST TRUST SUBJECT TO THE EXERCISE OF THE DECANTING POWER.

13 (2) IN DETERMINING SETTLOR INTENT WITH RESPECT TO A SECOND
14 TRUST, THE INTENT OF A SETTLOR OF THE FIRST TRUST, A SETTLOR OF THE
15 SECOND TRUST, AND THE AUTHORIZED FIDUCIARY MAY BE CONSIDERED.

16 **15-16-926. Later-discovered property.** (1) EXCEPT AS
17 OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, IF EXERCISE OF
18 THE DECANTING POWER WAS INTENDED TO DISTRIBUTE ALL THE PRINCIPAL
19 OF THE FIRST TRUST TO ONE OR MORE SECOND TRUSTS, LATER-DISCOVERED
20 PROPERTY BELONGING TO THE FIRST TRUST AND PROPERTY PAID TO OR
21 ACQUIRED BY THE FIRST TRUST AFTER THE EXERCISE OF THE POWER IS
22 PART OF THE TRUST ESTATE OF THE SECOND TRUST OR TRUSTS.

23 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
24 SECTION, IF EXERCISE OF THE DECANTING POWER WAS INTENDED TO
25 DISTRIBUTE LESS THAN ALL THE PRINCIPAL OF THE FIRST TRUST TO ONE OR
26 MORE SECOND TRUSTS, LATER-DISCOVERED PROPERTY BELONGING TO THE
27 FIRST TRUST OR PROPERTY PAID TO OR ACQUIRED BY THE FIRST TRUST

1 AFTER EXERCISE OF THE POWER REMAINS PART OF THE TRUST ESTATE OF
2 THE FIRST TRUST.

3 (3) AN AUTHORIZED FIDUCIARY MAY PROVIDE IN AN EXERCISE OF
4 THE DECANTING POWER OR BY THE TERMS OF A SECOND TRUST FOR
5 DISPOSITION OF LATER-DISCOVERED PROPERTY BELONGING TO THE FIRST
6 TRUST OR PROPERTY PAID TO OR ACQUIRED BY THE FIRST TRUST AFTER
7 EXERCISE OF THE POWER.

8 **15-16-927. Obligations.** A DEBT, LIABILITY, OR OTHER
9 OBLIGATION ENFORCEABLE AGAINST PROPERTY OF A FIRST TRUST IS
10 ENFORCEABLE TO THE SAME EXTENT AGAINST THE PROPERTY WHEN HELD
11 BY THE SECOND TRUST AFTER EXERCISE OF THE DECANTING POWER.

12 **15-16-928. Uniformity of application and construction.** IN
13 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
14 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
15 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

16 **15-16-929. Relation to electronic signatures in global and**
17 **national commerce act.** THIS PART 9 MODIFIES, LIMITS, OR SUPERSEDES
18 THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE
19 ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR
20 SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR
21 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN
22 SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

23 **15-16-930. Severability.** IF ANY PROVISION OF THIS PART 9 OR ITS
24 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
25 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
26 THIS PART 9 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
27 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS

1 PART 9 ARE SEVERABLE.

2 **15-16-931. Reserved.**

3 **SECTION 2. Inclusion of official comments.** The revisor of
4 statutes shall include in the publication of the "Colorado Uniform Trust
5 Decanting Act", as nonstatutory matter, following each section of the act,
6 the full text of the official comments to that section contained in the
7 official volume containing the 2015 official text of the "Uniform Trust
8 Decanting Act" issued by the Uniform Law Commission, with any
9 changes in the official comments or Colorado comments to correspond to
10 Colorado changes in the uniform act. The revisor shall prepare the
11 comments for approval by the committee on legal services.

12 **SECTION 3. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2016 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.