

PART 7
OFFICE OF TRUSTEE
General Comment

This article contains a series of default rules dealing with the office of trustee. Sections 701 and 702 address the process for getting a trustee into office, including the procedures for indicating an acceptance and whether bond will be required. Section 703 addresses cotrustees, permitting the cotrustees to act by majority action and specifying the extent to which one trustee may delegate to another. Sections 704 through 707 address changes in the office of trustee, specifying the circumstances when a vacancy must be filled, the procedure for resignation, the grounds for removal, and the process for appointing a successor. Sections 708 and 709 prescribe the standards for determining trustee compensation and reimbursement for expenses advanced.

Except for the court's authority to order bond, all of the provisions of this article are subject to modification in the terms of the trust. *See* Section 105.

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Colorado Comments

701(a) (2) Language, which is currently in CRS 15-16-702, was added to this section to avoid the interpretation that a provision in the trust specifying a method to accept or decline trusteeship is not construed to be the exclusive method to do so unless the document clearly states it is the exclusive method. This language is in response to the Colorado Appellate Court Case

701 (c) (1) Adds language that a person designated as trustee may send a rejection of trusteeship to any other acting trustee. In circumstances where co-trustees are appointed it would be appropriate to add into this statute that notice of rejection of trusteeship be sent to an acting co-trustee.

702 (c) Language was added to allow the settlor to specify in the terms of the trust whether the cost of a bond is charged to the trust.

703 (g) (2) The language was changed to allow a cotrustee to pursue a broad range of remedies to address a cotrustee's breach of duty. This avoids the problem that the UTC language would be interpreted to require a cotrustee to engage in litigation to address a cotrustee's breach of duty. This will allow the trustee to pursue less adversarial methods of resolution were considered appropriate.

704 (d) (2) The language was changed to provide adequate notice of the selection of a trustee to the Attorney General rather than requiring that the Attorney General concur with the selection. This language was added in response to difficulty in receiving notice of concurrence from the Attorney General's office.

705 (b) Language was added to insure that approval of the court is necessary for a resignation under the terms of this section and not for resignations under the terms of the trust instrument.

708 **Compensation of trustee.** The language was changed by the Colorado Committee to incorporate the existing Cost and Compensation statute which was enacted after extensive consideration and work by members of the Colorado Bar several years ago.

709 (b) The term reasonable was added to ensure that this section provides for only reasonable advances.