

**UNIFORM TRUST CODE COMMITTEE  
ARTICLE 10  
LIABILITY OF TRUSTEES AND  
RIGHTS OF PERSON DEALING WITH TRUSTEE**

1. UTC Section	<b>1001</b>
2. Subject	<b>Remedies for breach of trust.</b>
3. UTC Statute	<p>(a) A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.</p> <p>(b) TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:</p> <p style="padding-left: 40px;">(1) COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES;</p> <p style="padding-left: 40px;">(2) ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST;</p> <p style="padding-left: 40px;">(3) COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY, <u>BY BEING SURCHARGED OR SANCTIONED</u>, OR OTHER MEANS;</p> <p style="padding-left: 40px;">(4) ORDER A TRUSTEE TO ACCOUNT, PROVIDE <u>A STATUS OR FINANCIAL REPORT OR AN INVENTORY</u>;</p> <p style="padding-left: 40px;">(5) APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST;</p> <p style="padding-left: 40px;">(6) <u>RESTRAIN, RESTRICT OR</u> SUSPEND THE TRUSTEE;</p> <p style="padding-left: 40px;">(7) REMOVE THE TRUSTEE AS PROVIDED IN SECTION <u>15-5-706</u>;</p> <p style="padding-left: 40px;">(8) REDUCE OR DENY COMPENSATION TO THE TRUSTEE <u>OR REQUIRE THE TRUSTEE TO DISGORGE COMPENSATION PREVIOUSLY PAID</u>;</p> <p style="padding-left: 40px;">(9) SUBJECT TO SECTION <u>15-5-1012</u>, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR CONSTRUCTIVE TRUST ON TRUST PROPERTY, OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS; OR</p> <p style="padding-left: 40px;">(10) ORDER ANY OTHER APPROPRIATE RELIEF.</p> <p>(c) <u>IF A REMEDY FOR A BREACH OF TRUST IS SOUGHT BY A CO-TRUSTEE, BENEFICIARY OR INTERESTED PERSON, OR THE COURT ACTS SUA SPONTE, THE PROVISIONS OF PART 5 OF ARTICLE 10 OF TITLE 15, C.R.S. SHALL APPLY.</u></p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee	The judicial toolbox was developed (C.R.S. §§ 15-10-501 <i>et</i>

Comments	<i>seq.)</i> after the UTC failed to pass the first time. This Colorado statute was developed with the judiciary and through the bar to address breaches of trust. Changes that were made were to incorporate into the UTC changes that had already been made an approved as part of the judicial toolbox.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1002</b>
<b>2. Subject</b>	<b>Damages for breach of trust.</b>
3. UTC Statute	<p>(a) <u>IN ADDITION TO OTHER REMEDIES PROVIDED BY THIS ARTICLE</u>, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF:</p> <p style="padding-left: 40px;">(1) THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED; OR</p> <p style="padding-left: 40px;">(2) THE PROFIT THE TRUSTEE MADE, <u>OR THE BENEFIT THE TRUSTEE RECEIVED (OTHER THAN REASONABLE COMPENSATION)</u> BY REASON OF THE BREACH.</p> <p>(b) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (b), IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	<p>(a)(2) The court may consider any benefit received by the trustee, not just profit to the trust, exclusive of reasonable compensation of the trustee.</p> <p>(a) <i>Beyer v. First National Bank</i>, 843 P.2d 53 (Colo. App. 1992). Beneficiaries signed Consent and Release forms relieving the first bank trustee from any liability for any loss incurred in connection with the trust's purchase of two limited partnership interests. Successor bank trustee FNB had beneficiaries sign similar consent and indemnification forms before they took over as trustee. Held, no breach.</p>

	<p>“[B]eneficiaries, acting with knowledge of the facts and of their legal rights, may direct the trustee’s performance and, if losses are sustained thereby, they cannot be heard to complain” (citing Bogert §941, Scott on Trusts §216). The court quoted Restatement (Second) of Trusts §216 in its entirety, which states that a beneficiary cannot hold a trustee liable for a breach of trust if the beneficiary has consented to the act or omission by the trustee.</p> <p>(b) <i>Estate of Foiles</i>, 338 P.3d 1098 (Colo. App. Div. 3 2014): Larry Foiles was both a co-trustee and a beneficiary. Court found that Bank co-trustee’s ratification of a transaction by Larry as individual co-trustee did not preclude a breach of fiduciary duty claim, where the trust instrument contained language that “no individual trustee shall exercise or join in the exercise of such powers for his or her own benefit, directly or indirectly. Whenever . . . the participation in income or principal of a beneficiary who is also a trustee is being considered or may be affected by other action under consideration, all decisions shall be made exclusively and solely by [the Bank].” Only the consent of all beneficiaries could ratify an action that was in violation of the trust terms. Remanded.</p>
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1003</b>
<b>2. Subject</b>	<b>Damages in absence of breach.</b>
3. UTC Statute	<p>(a) A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.</p> <p>(b) ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	<b>The <i>Heller</i> court held that in reviewing investments made by a trustee, a court may not use the advantage of hindsight. Subsection (b) is consistent with this.</b>
6. Colorado Law	
7. Recommendations	

1. UTC Section	1004
2. Subject	<u>COMPENSATION AND COSTS.</u>
3. UTC Statute	<p><u>EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE PROVISIONS OF PART 6 OF ARTICLE 10 OF TITLE 15, C.R.S. GOVERN THE ENTITLEMENT TO AND PAYMENT OF COMPENSATION AND COSTS TO TRUSTEES, THEIR ATTORNEYS AND OTHER PERSONS.</u></p> <p><del><b>Attorney fees and costs.</b> (a) IN A JUDICIAL PROCEEDING INVOLVING THE ADMINISTRATION OF A TRUST, THE COURT, AS JUSTICE AND EQUITY MAY REQUIRE, MAY AWARD COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, TO ANY PARTY, TO BE PAID BY ANOTHER PARTY OR FROM THE TRUST THAT IS THE SUBJECT OF THE CONTROVERSY.</del></p> <p><del>———— (b) EXCEPT AS PROVIDED IN SUBSECTION (d) OF THIS SECTION, IF ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, OR COURT APPOINTED TRUSTEE OR FIDUCIARY DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH, WHETHER SUCCESSFUL OR NOT, HE OR SHE IS ENTITLED TO RECEIVE FROM THE TRUST HIS OR HER NECESSARY EXPENSES AND DISBURSEMENTS, INCLUDING REASONABLE ATTORNEY FEES AND COSTS INCURRED. EXCEPT AS LIMITED BY COURT ORDER OR BY THE TERMS OF THE TRUST, COMPENSATION MAY BE PAID AND EXPENSES REIMBURSED WITHOUT COURT ORDER.</del></p> <p><del>———— (c) IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, ANY LAWYER FOR A TRUSTEE, ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE TRUST, AND ANY PERSON APPOINTED BY THE COURT AS FIDUCIARY IS ENTITLED TO REIMBURSEMENT FOR COSTS AND REASONABLE COMPENSATION FROM THE TRUST.</del></p> <p><del>———— (d) ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, OR COURT APPOINTED TRUSTEE OR FIDUCIARY WHO IS UNSUCCESSFUL IN DEFENDING THE PROPRIETY OF HIS OR HER ACTIONS FOR BREACH OF FIDUCIARY DUTY IS NOT ENTITLED TO RECOVER HIS OR HER EXPENSES, INCLUDING ATTORNEY FEES AND COSTS, UNDER THIS SECTION TO THE EXTENT OF ANY MATTER IN WHICH A BREACH OF FIDUCIARY DUTY IS FOUND.</del></p> <p><del>———— (e) IF ANY TRUSTEE, PERSON NOMINATED AS TRUSTEE, COURT APPOINTED TRUSTEE OR FIDUCIARY, ANY LAWYER FOR THE ABOVE, OR ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE TRUST IS REQUIRED TO DEFEND HIS OR HER FEES OR COSTS, THE COURT SHALL CONDUCT A FEE REVIEW AT THE END OF SUCH PROCEEDING AND SHALL CONSIDER AND MAY AWARD THE FEES AND EXPENSES INCURRED BY SUCH PARTIES IN THE REVIEW OF THEIR FEES AND COSTS, INCLUDING BUT NOT LIMITED TO THEIR ATTORNEY FEES AND COSTS, AS THE COURT</del></p>

	<p>DEEMS EQUITABLE. AN AWARD OF FEES AND COSTS TO THE TRUSTEE, FIDUCIARY, LAWYER, OR BENEFICIARY MAY BE ORDERED PAID FROM, AND MAY BE ALLOCATED FROM THE TRUST, OR FROM THE PERSON, PARTY, OR ORGANIZATION THAT REQUIRED THE TRUSTEE, FIDUCIARY, LAWYER, OR BENEFICIARY TO DEFEND HIS OR HER FEES OR COSTS, AS THE COURT DEEMS JUST.</p> <p>—— (f) IF THE COURT DETERMINES THAT ANY PLEADINGS UNDER THIS SECTION WERE NOT SUBSTANTIALLY WARRANTED OR WERE BROUGHT IN BAD FAITH, THE COURT MAY AWARD FEES AND COSTS INCURRED BY THE TRUSTEE OR AFFECTED PARTIES IN RESPONDING TO THE PLEADINGS. NOTHING IN THIS SECTION IS INTENDED TO LIMIT ANY OTHER REMEDY AS PROVIDED BY LAW.</p> <p>—— (g) FACTORS TO BE CONSIDERED AS GUIDES IN DETERMINING THE REASONABLENESS OF ANY FEE REFERRED TO IN THIS SECTION INCLUDE THE FOLLOWING:</p> <p>—— (1) THE TIME AND LABOR REQUIRED, THE NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUISITE TO PERFORM THE SERVICES PROPERLY;</p> <p>—— (2) THE LIKELIHOOD, IF APPARENT, THAT THE ACCEPTANCE OF THE PARTICULAR EMPLOYMENT WILL PRECLUDE THE PERSON EMPLOYED FROM OTHER EMPLOYMENT;</p> <p>—— (3) THE FEE CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR SERVICES;</p> <p>—— (4) THE AMOUNT INVOLVED AND THE RESULTS OBTAINED;</p> <p>—— (5) THE TIME LIMITATIONS IMPOSED BY THE CIRCUMSTANCES; AND</p> <p>—— (6) THE EXPERIENCE, REPUTATION, AND ABILITY OF THE PERSON PERFORMING THE SERVICES.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	Substantially all of the changes that were previously made are consistent with Colorado common law. We are keeping the attorneys' fees and costs statute and simply referring to it in the UTC (15-5-1004). Consensus within this subcommittee is that the current attorney fees and costs statute (C.R.S. §§ 15-10-601 <i>et seq.</i> ) is working pretty well and we are not interested in changing it at this time.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1005</b>
<b>2. Subject</b>	<b>Limitation of actions against trustee.</b>
3. UTC Statute	(a) A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR BREACH OF TRUST MORE THAN ONE YEAR <del>SIX</del>

	<p><del>MONTHS</del> AFTER THE DATE <del>THAT</del> THE BENEFICIARY OR A <del>REPRESENTATIVE OF</del> <u>PERSON WHO MAY REPRESENT AND BIND</u> THE BENEFICIARY, <u>AS PROVIDED IN PART 3 OF THIS ARTICLE</u>, WAS SENT <del>RECEIVED</del> 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.</p> <p>(b) A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS <del>OR SHOULD HAVE KNOWN</del> OF THE POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS EXISTENCE.</p> <p>(c) IF SUBSECTION (A) OF THIS SECTION DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN <del>FIVE</del> <u>THREE</u> YEARS AFTER THE FIRST TO OCCUR OF:</p> <ol style="list-style-type: none"> <li>(1) THE REMOVAL, OR RESIGNATION, <del>OR DEATH</del> OF THE TRUSTEE;</li> <li>(2) THE TERMINATION OF THE BENEFICIARY’S INTEREST IN THE TRUST; OR</li> <li>(3) THE TERMINATION OF THE TRUST.</li> </ol> <p>(d) <u>FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, A BENEFICIARY IS DEEMED TO HAVE BEEN SENT <del>RECEIVED</del> A REPORT IF:</u></p> <ol style="list-style-type: none"> <li><u>(1) IN THE CASE OF A BENEFICIARY WHO IS AN ADULT AND <del>HAS</del>-HAVING CAPACITY, IT IS SENT TO <del>RECEIVED-BY</del> THE BENEFICIARY; OR</u></li> <li><u>(2) IN THE CASE OF A BENEFICIARY WHO, UNDER PART 3 OF THIS ARTICLE, MAY BE REPRESENTED AND BOUND BY ANOTHER PERSON, IT IS SENT TO <del>RECEIVED-BY</del> THE OTHER PERSON.</u></li> </ol> <p><u>(e) THIS SECTION DOES NOT PRECLUDE AN ACTION TO RECOVER FOR FRAUD OR MISREPRESENTATION RELATED TO THE REPORT.</u></p> <p><u>(f) IF A TRUSTEE DIES, THEN A DISTRIBUTE OR A BENEFICIARY MUST COMMENCE A JUDICIAL PROCEEDING FOR BREACH OF TRUST AGAINST THE TRUSTEE’S ESTATE WITHIN THE TIMEFRAMES SPECIFIED IN THE COLORADO PROBATE CODE FOR SUCH ACTIONS.</u></p>
4. National Conference of Commissioners on Uniform State Laws Comments	

5. Colorado Committee Comments	(a) UPC is different (six months received and 15-16-307). (c) Subcommittee kept Colorado 3-year statute of limitations in 1005 rather than adopt UTC 5-year statute of limitations to maintain consistency with Colorado law.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1006</b>
<b>2. Subject</b>	<b>Reliance on trust instrument.</b>
3. UTC Statute	A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST AS EXPRESSED IN THE TRUST INSTRUMENT IS NOT LIABLE TO A BENEFICIARY FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	“Reasonable reliance” should consist of whether the trustee is aware of prior or pending court decree, or a non-judicial settlement. The Colorado Committee also supports maintaining the right in equity to petition a court for instruction.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1007</b>
<b>2. Subject</b>	<b>Event affecting administration or distribution.</b>
3. UTC Statute	(a) IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE OF EDUCATIONAL REQUIREMENTS, OR DEATH, AFFECTS THE ADMINISTRATION OR DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM THE TRUSTEE'S LACK OF KNOWLEDGE.  <u>(b) A TRUSTEE IS NOT PERSONALLY LIABLE FOR MAKING A DISTRIBUTION OF PROPERTY THAT DOES NOT TAKE INTO CONSIDERATION THE POSSIBLE BIRTH OF A POSTHUMOUSLY CONCEIVED CHILD UNLESS, PRIOR TO THE DISTRIBUTION, THE TRUSTEE RECEIVED NOTICE OR ACQUIRED ACTUAL KNOWLEDGE THAT:</u>  <u>(1) THERE IS OR MAY BE AN INTENTION TO USE AN INDIVIDUAL'S GENETIC MATERIAL TO CREATE A CHILD;</u> <u>AND</u> <u>(2) THE BIRTH OF THE CHILD COULD AFFECT THE DISTRIBUTION OF THE TRUST ASSETS.</u>

	<u>(c) IF A TRUSTEE HAS REVIEWED THE RECORDS OF THE COUNTY CLERK AND RECORDER IN EVERY COUNTY IN COLORADO IN WHICH THE TRUSTEE HAS ACTUAL KNOWLEDGE THAT THE DECEDENT WAS DOMICILED AT ANY TIME DURING THE THREE YEARS PRIOR TO THE DECEDENT'S DEATH AND THE TRUSTEE DOES NOT HAVE ACTUAL NOTICE OR ACTUAL KNOWLEDGE OF THE EXISTENCE OF A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION, THE TRUSTEE SHALL NOT BE INDIVIDUALLY LIABLE FOR DISTRIBUTIONS MADE TO DEVISEES OR HEIRS AT LAW THAT DO NOT TAKE INTO CONSIDERATION THE DESIGNATED BENEFICIARY AGREEMENT.</u>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	UTC §§ 1007 and 1008 contain protections of the trustee which are not in UTC § 1011.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1008</b>
<b>2. Subject</b>	<b>Exculpation of trustee.</b>
3. UTC Statute	<p>(a) A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT:</p> <p style="padding-left: 40px;">(1) RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES; OR</p> <p style="padding-left: 40px;">(2) WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.</p> <p>(b) AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	UTC §§ 1007 and 1008 contain protections of the trustee which are not in UTC § 1011.
6. Colorado Law	



7. Recommendations	
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<b>1. UTC Section</b>	<b>1009</b>
<b>2. Subject</b>	<b>Beneficiary's consent, release, or ratification.</b>
3. UTC Statute	(a) A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH, OR RATIFIED THE TRANSACTION CONSTITUTING THE BREACH, UNLESS: (1) THE CONSENT, RELEASE, OR RATIFICATION OF THE BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE; OR (2) AT THE TIME OF THE CONSENT, RELEASE, OR RATIFICATION, THE BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	This is 216 and 218 of 2 <sup>nd</sup> Restatement. This is not a change in Colorado law. [The Colorado Committee recommends adding the Colorado Comments from 2005.] The Colorado Court of Appeals has consistently held that were beneficiaries of a trust, after full disclosure, consented to actions of the trustee, they cannot later bring a claim for surcharge. The Colorado Court of Appeals held <i>In Trust for Julius F. Seeman</i> , 841 P.2d 403 (Colo.App. 1992), that the silence of co-trustees constituted consent to the actions of the sole trustee and that the co-trustees could not later complain concerning the actions of the sole trustee which benefitted the trust. In the case of <i>Beyer v. First National Bank</i> , 843 P.2d 53 (Colo.App. 1992), adult beneficiaries, after full disclosure of investments of the bank, consented to those investments. The Colorado Court of Appeals, in affirming the trial court, held the ratification of the investments of the bank by the beneficiaries precluded recovery for damages for loss resulting in poor investments.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1010</b>
<b>2. Subject</b>	<b>Limitation on personal liability of trustee.</b>
3. UTC Statute	(a) EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S FIDUCIARY CAPACITY IN THE

COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

(b) A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF ADMINISTERING A TRUST, OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY IF THE TRUSTEE IS PERSONALLY AT FAULT.

(c) A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, OR ON A TORT COMMITTED IN THE COURSE OF ADMINISTERING A TRUST, MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE FOR THE CLAIM.

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

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

(2) IN A PROCEEDING FOR ACCOUNTING, SURCHARGE,

INDEMNIFICATION, SANCTIONS, OR REMOVAL; OR

(3) IN OTHER APPROPRIATE PROCEEDINGS.

(E) A TRUSTEE IS NOT PERSONALLY LIABLE FOR MAKING A DISTRIBUTION OF PROPERTY THAT DOES NOT TAKE INTO CONSIDERATION THE POSSIBLE BIRTH OF A POSTHUMOUSLY CONCEIVED CHILD UNLESS, PRIOR TO THE DISTRIBUTION, THE TRUSTEE RECEIVED NOTICE OR ACQUIRED ACTUAL KNOWLEDGE THAT:

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

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

(F) IF A TRUSTEE HAS REVIEWED THE RECORDS OF THE COUNTY CLERK AND RECORDER IN EVERY COUNTY IN COLORADO IN WHICH THE TRUSTEE HAS ACTUAL KNOWLEDGE THAT THE DECEDENT WAS DOMICILED AT ANY TIME DURING THE THREE YEARS PRIOR TO THE DECEDENT'S DEATH AND THE TRUSTEE DOES NOT HAVE ACTUAL NOTICE OR ACTUAL KNOWLEDGE OF THE EXISTENCE OF A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION, THE TRUSTEE SHALL NOT BE INDIVIDUALLY LIABLE FOR DISTRIBUTIONS MADE TO DEVISEES OR HEIRS AT LAW THAT DO

	<u>NOT TAKE INTO CONSIDERATION THE DESIGNATED BENEFICIARY AGREEMENT.</u>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	Changes made to statute are to make this part of the UTC consistent with existing Colorado law regarding protections for fiduciaries who do not have knowledge of posthumously conceived children. Similar Redlines appear in 15-5-107. Subsections (d), (e), and (f) are based on C.R.S. §§ 15-16-306(4),(6), & (7), respectively.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1011</b>
<b>2. Subject</b>	<b>Interest as a general partner.</b>
3. UTC Statute	<p>(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS SECTION OR UNLESS PERSONAL LIABILITY IS IMPOSED IN THE CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY FILED PURSUANT TO THE "<u>COLORADO</u> UNIFORM PARTNERSHIP ACT (1997)", ARTICLE 64 OF TITLE 7, C.R.S., OR THE "<u>COLORADO</u> UNIFORM LIMITED PARTNERSHIP ACT <u>OF 1981</u>", ARTICLE 62 OF TITLE 7, C.R.S.</p> <p>(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS SECTION, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS PERSONALLY AT FAULT.</p> <p>(c) THE IMMUNITY PROVIDED BY THIS SECTION DOES NOT APPLY IF AN INTEREST IN THE PARTNERSHIP IS HELD BY THE TRUSTEE IN A CAPACITY OTHER THAN THAT OF TRUSTEE <b>OR IS HELD BY THE TRUSTEE'S SPOUSE OR ONE OR MORE OF THE TRUSTEE'S DESCENDANTS, SIBLINGS, OR PARENTS, OR THE SPOUSE OF ANY OF THEM.</b></p> <p>(d) IF THE TRUSTEE OF A REVOCABLE TRUST HOLDS AN INTEREST AS A GENERAL PARTNER, THE SETTLOR IS PERSONALLY LIABLE FOR CONTRACTS AND OTHER OBLIGATIONS OF THE PARTNERSHIP AS IF</p>

	THE SETTLOR WERE A GENERAL PARTNER.
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	<p>Providing protection for trustee is the goal. By inserting family members in key positions we need to look at this more carefully. Why would we impute liability to trustee?</p> <p>(c) This deviates from 2<sup>nd</sup> Rstmt. section 264. There is nothing in 15-16-306 that discusses this issue in 1011(c). This broadens what current Colorado law is. Spouses of grandson's descendants is broad.</p> <p>Proposed language change: The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.</p> <p>Lackner case (codified at UTC 15-5-507). Darla researched and Shepardized Lackner. UTC 1010 and 1011 are consistent with C.R.S. § 15-16-306, trustee is liable only if personally at fault, need for actions as trustee for trustee to be liable.</p>
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1012</b>
<b>2. Subject</b>	<b>Protection of person dealing with trustee.</b>
3. UTC Statute	<p>(a) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A TRUSTEE, OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE TRUSTEE'S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY EXERCISED THE POWER.</p> <p>(b) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH DEALS WITH A TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS OR THE PROPRIETY OF THEIR EXERCISE.</p> <p>(c) A PERSON WHO IN GOOD FAITH DELIVERS ASSETS TO A TRUSTEE NEED NOT ENSURE THEIR PROPER APPLICATION.</p> <p>(d) A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A FORMER TRUSTEE, OR WHO IN GOOD FAITH AND FOR</p>

	<p>VALUE DEALS WITH A FORMER TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.</p> <p>(e) COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER THE PROTECTION PROVIDED BY THIS SECTION.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	Ease of management; resides all liability with trustee. Knowledge is a defined term.
6. Colorado Law	
7. Recommendations	

<b>1. UTC Section</b>	<b>1013</b>
<b>2. Subject</b>	<b>Certification of trust.</b>
3. UTC Statute	<p>(a) INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:</p> <p>(1) THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED;</p> <p>(2) THE IDENTITY OF THE SETTLOR;</p> <p>(3) THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE;</p> <p>(4) THE POWERS OF THE TRUSTEE <u>IN THE PENDING TRANSACTION</u>;</p> <p>(5) THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST;</p> <p>(6) THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE TRUSTEE; AND</p> <p>(7) THE NAME IN WHICH TITLE TO TRUST PROPERTY MAY BE TAKEN.</p> <p>(b) A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED BY ANY TRUSTEE.</p> <p>(c) A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN REVOKED, MODIFIED, OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE REPRESENTATIONS CONTAINED IN THE</p>

	<p>CERTIFICATION OF TRUST TO BE INCORRECT.</p> <p>(d) A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF A TRUST.</p> <p>(e) A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER UPON THE TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION.</p> <p>(f) A PERSON WHO ACTS IN RELIANCE UPON A CERTIFICATION OF TRUST WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED THEREIN ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING UPON THE CERTIFICATION.</p> <p>(g) A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE UPON A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.</p> <p>(h) A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO A CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR <u>COSTS, EXPENSES, ATTORNEY FEES, AND</u> DAMAGES IF THE COURT DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST INSTRUMENT.</p> <p>(i) THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.</p>
4. National Conference of Commissioners on Uniform State Laws Comments	
5. Colorado Committee Comments	Changes to a certificate of trust 11-105-111 proposed by bankers needs to be harmonized with 15-5-1013, which is the UTC version of a certificate of trust.
6. Colorado Law	
7. Recommendations	