

**PART 10**  
**LIABILITY OF TRUSTEES AND RIGHTS**  
**OF PERSONS DEALING WITH TRUSTEES**  
**General Comments**

Part 10, Liability of Trustees and Rights of Persons Dealing with Trustees, addresses three areas of concern: (1) what may occur when a trustee is found to have breached a duty of trust, (2) procedural requirements for a beneficiary bringing an action against a trustee for breach of trust, and (3) expectations of third parties interacting with trustees.

Part 10 proceeds logically from the available remedies after a court finds a breach of trust, to damages, to compensation of those who undertook to bring the wrong-doing to light. Procedurally, the requirements to bring an action against the trustee are limited by time, the reasonableness of actions taken during trust administration (particularly with regard to notice of beneficiaries), protections given by the settlor to the trustee, and approval by beneficiaries. Finally, the expectations of third parties when interacting with trustees are considered with respect to when a trustee is actually, or appears to be, acting on behalf of the trust or as an individual.

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**Colorado Comments**

The following changes have been made to the Uniform Trust Code as presented to the Colorado Legislature on November 13, 2013:

- 1001(b)(8) and 1002(a)(2) permit a court to order a trustee, who is found to have breached the duty of trust, to disgorge previously paid compensation. [10/20/16 Minutes]
- 1001(c) incorporates the provisions of C.R.S. §§ 15-10-501, *et seq.*, which already hold fiduciaries accountable under Colorado law. [10/20/16 Minutes]
- 1004 substitutes the provisions of C.R.S. §§ 15-10-601, *et seq.*, for determining an award of cost and compensation to trustees, their attorneys and third persons. [10/20/16 Minutes]
- 1005 imposes time restrictions on the ability to bring an action against a trustee. 1005(a) provides one year from the date a report is sent to a beneficiary for a beneficiary to commence an action. Where a report is not involved, the general period for a beneficiary bringing an action against a trustee for breach of trust will be three years consistent with current law. However, there will now be certain event triggers for when that three year window starts. In the absence of those event triggers, the three years will run from when the cause of action for breach occurs. The death of a trustee will also create different

time periods for commencing an action for breach of trust. [10/20/16; 11/17/16; 12/15/16 Minutes]

- 1010(d) requires a court proceeding to determine how to apportion liability between the trust and the individual trustee. [10/20/16; 11/17/16 Minutes]
- 1010(e) protects a trustee who has not received actual notice of a child born of genetic material whose existence may alter trust distributions. 1010(f) requires the trustee to examine public records for designated beneficiary agreements only in those counties in which a decedent is known to have resided during life. [10/20/16; 11/17/16 Minutes]