

PART 2
JUDICIAL PROCEEDINGS
General Comment

(Changes from the UTC Text are in boldface, italicized font.)

This article addresses selected issues involving judicial proceedings concerning trusts, particularly trusts with contacts in more than one State or country. This article is not intended to provide comprehensive coverage of court jurisdiction or procedure with respect to trusts. These issues are better addressed elsewhere, for example in the State's rules of civil *or probate* procedure, or as provided by court rule.

Section 201 makes clear that the jurisdiction of the court is available as invoked by interested persons or as otherwise provided by law. Proceedings involving the administration of a trust normally will be brought in the court at the trust's principal place of administration. Section 202 provides that the trustee and beneficiaries are deemed to have consented to the jurisdiction of the court at the principal place of administration as to any matter relating to the trust. Sections 203 and 204 are optional *in the UTC, and have been adopted in the CTC*.

Sections 205 through 209 of the CTC have been added to incorporate a modified, optional trust registration system, based on current Colorado statutes. No comparable system is provided under the UTC.

Section 210 tracks current Colorado statutes on the judicial approval of probate and trust related settlements.

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15-5-201. UTC Section 201 limited the examples of judicial proceedings that involve the trust's administration to (a) requests for instructions and (b) actions to declare rights. Because courts could construe the UTC provision to limit the situations in which judicial intervention is authorized, numerous additional examples have been added to the CTC, drawn from a synthesis of similar statutes in other jurisdictions.

15-5-202. No changes were made to this Section.

15-5-203. The fact that district courts are, in Colorado, the courts of appropriate jurisdiction for trust administrative matters is specifically stated. The CTC provision identifies typical proceedings involving trusts that are not covered by the Code and the jurisdictional grant of this Section.

15-5-204. Given the UTC's general deference to the terms of a trust (See 15-5-107), in determining the proper venue for a judicial proceeding, CTC Section 204 has been modified to

give priority to the county expressly selected under the governing trust instrument – provided that county has a substantial relationship to the trust’s administration. The “substantial relationship” requirement parallels the limitations on choice of law provisions for contracts under Restatement (Second) Conflict of Laws § 187, and is intended to avoid *forum non conveniens* issues.

Changes to the remainder of CTC Section 204 involve non-substantive reformatting and reorganization to provide greater clarity.

Sections 15-5-205 through 209 incorporate and revise current CRS §§ 15-16-101 through 105, regarding the registration of Colorado trusts. A redlined version of these Sections, reflecting changes made to the current statutes follows the redlined text of CTC Part 2. Substantive changes to existing law are as follows:

15-5-205. The registration regime under the CTC is optional – not mandatory. The text of 15-16-201 has been revised to reflect this change. “Principal place of administration” is a defined term under CTC §15-5-108. Thus, the text of 15-16-201 to this end has been eliminated.

15-5-206. The current trust registration statutes do not prescribe who, other than the proper court, is required to receive the trust registration statement. CRS § 15-16-303(2) provides that “current beneficiaries and, if possible, one or more persons who . . . represent beneficiaries with future interests . . .” are to be advised of the court in which the trust is registered. However, there is no requirement the registration statement be delivered to anyone. Subsection (c) has been added to the CTC provision, to ensure that specified parties are notified of the trust’s registration, while providing certain privacy protections.

Subsection (e) modifies 15-16-101(3) to reflect the possibility that a registration with a foreign court may not be at odds with registration in Colorado.

Current Section **15-16-103** is deleted, as the jurisdictional and venue consequences of registration are provided under 15-5-203 and 204.

15-5-207. Current CRS § 15-16-104 is modified to reflect the optional nature of trust registration. To this end, the longstanding – but routinely unenforced – penalty provisions for failure to register are deleted.

15-5-208. No substantive changes are made to current CRS § 15-16-105.

15-5-209. Rule 8.6 of the Colorado Rules of Probate Procedure contemplates a judicial process to effect the release of a trust’s registration. The CTC attempts to minimize a court’s involvement in a release by this Section, which is intended to replace Rule 8.6.

15-5-210. This Section is not uniform law, but was added (as proposed CRS § 15-5-306) by the 2005 Colorado UTC committee to track sections of the Probate Code that establish the manner in which settlements may be judicially approved.