

## PART 10

### LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

**15-5-1006. Reliance on trust instrument.** 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.

NCCUSL comments:

It sometimes happens that the intended terms of the trust differ from the apparent meaning of the trust instrument. This can occur because the court, in determining the terms of the trust, is allowed to consider evidence extrinsic to the trust instrument. *See* Section 103(17) (definition of "terms of a trust"). Furthermore, if a trust is reformed on account of mistake of fact or law, as authorized by Section 415, provisions of a trust instrument can be deleted or contradicted and provisions not in the trust instrument may be added. The concept of the "terms of a trust," both as defined in this Code and as used in the doctrine of reformation, is intended to effectuate the principle that a trust should be administered and distributed in accordance with the settlor's intent. However, a trustee should also be able to administer a trust with some dispatch and without concern that a reasonable reliance on the terms of the trust instrument is misplaced. This section protects a trustee who so relies on a trust instrument but only to the extent the breach of trust resulted from such reliance. This section is similar to Section 1(b) of the Uniform Prudent Investor Act, which protects a trustee from liability to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

This section protects a trustee only if the trustee's reliance is reasonable. For example, a trustee's reliance on the trust instrument would not be justified if the trustee is aware of a prior court decree or binding nonjudicial settlement agreement clarifying or changing the terms of the trust.

The 2005 UTC committee recommended adopting 1006 as is.

The 2016 Part 10 Subcommittee recommends adopting UTC 1006 as is and notes:

- Loring & Rounds: A Trustee's Handbook (2014) at Section 3.5.2.5., Right in Equity to Rely on Trust Instrument, refers to UTC Section 1006 and notes that a court could determine after a trustee assumed office that "intended terms of the trust" are not the "expressed" terms of the trust. Section 3.5.2.6. in Loring & Rounds is the "Right in Equity to Seek Instructions from Court."
- The Part 10 Subcommittee supports maintaining the right in equity to petition a court for instruction.
- Colorado case law generally permits the court to consider extrinsic evidence if there is a patent or a latent ambiguity in a settlor's/testator's intent. *See, e.g., Denver Foundation v. Wells Fargo Bank, N.A.*, 163 P.3d 1116, 1122 & 1126 (Colo. 2007); *Bennett College v. United Bank of Denver, Nat. Ass'n*, 799 P.2d 364, 371 (Colo. 1990); *Matter of Estate of Holmes*, 821 P.2d 300, 303-304 (Colo.App. 1991); and *Matter of Gross' Estate*, 646 P.2d 396, 397-398 (Colo.App. 1981).
- C.R.S. § 15-1.1-101(b) states: "(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust."
- Regarding the last sentence of the NCCUSL comments above, "reasonable reliance" should consist of whether the trustee is aware of prior or pending court decree, or a non-judicial settlement.