

NOTES ON 1011

Underlined items were added by the 2005 CO committee

2005 CO committee: this is based on 7-306 of the UPC

Key NCCUSL comments:

- This section protects a trustee from personal liability for contracts entered into or torts committed by a general or limited partnership of which the trustee was a general partner.
 - o Whether the trustee signs the contract or not
 - o Torts: trustee is protected from personal liability for torts of the partnership unless the trustee was personally at fault.
 - o Contracts: trustee is protected from personal liability IF the other party is on notice of the fiduciary relationship, either in the contract itself or counterparts, AND the trustee is not personally at fault.

Review of current CO law:

1010 is generally consistent with our 15-16-306(1) through (3) – differences in wording need to be examined and highlighted.

1011 does not seem to have a counterpart in the Colorado Probate Code.

Handwritten note: 1011 P. obj. out

15-1-804(2)(I) and (2)(ii) provide:

- (I) To continue or to participate in the operation of any business activity or enterprise, including a sole proprietorship or partnership, existing at the inception of the estate or trust (in the case of an estate having due regard for those having claims against the estate) and to incorporate or otherwise change its form;
- (ii) Subject to the terms of the documents controlling the entity concerned, to retain or acquire interests in any entity in which the fiduciary does not have general liability, regardless of form, including but not limited to any partnership, corporation, limited liability company, and joint venture, and to become a shareholder, partner, member, or joint venturer.

C.R.S. 15-16-306 provides

Article 16. Trust Administration

Part 3. DUTIES AND LIABILITIES OF TRUSTEES

Current through Chapter 364 of the 2015 Legislative Session

§ 15-16-306. Personal liability of trustee to third parties

- (1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and

identify the trust estate in the contract.

- (2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration, may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.
- (4) The question of liability as between the trust estate and the trustee individually may be determined:
 - (a) In a proceeding pursuant to section **15-10-504** ;
 - (b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or
 - (c) In other appropriate proceedings.
- (5) and (6) Repealed.
- (7) 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:
 - (a) There is or may be an intention to use an individual's genetic material to create a child; and
 - (b) The birth of the child could affect the distribution of the trust assets.
- (8) 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.

15-5-1011. Interest as a general partner.

- (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 "COLORADO UNIFORM PARTNERSHIP ACT (1997)", ARTICLE 64 OF TITLE 7, C.R.S., OR THE "COLORADO UNIFORM LIMITED PARTNERSHIP ACT OF 1981", ARTICLE 62 OF TITLE 7, C.R.S.
- (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.
- (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 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.

- (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 THE SETTLOR WERE A GENERAL PARTNER.