

SBW Working Copy
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With CT Bill Section Numbers and
Substantive LCO Changes
Includes Article 3

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CONNECTICUT UNIFORM TRUST CODE

ARTICLE 1 **GENERAL PROVISIONS AND DEFINITIONS**

SECTION 101. (Section 1) SHORT TITLE. This [Act] may be cited as the Connecticut Uniform Trust Code.

SECTION 102. (Section 2) SCOPE. This [Code] applies to express trusts, whether testamentary or inter vivos, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

We had to add this because CUTC treats testamentary trusts differently than inter vivos ones.

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SECTION 103. (Section 3) DEFINITIONS.

Note -- phraseology changed to be consistent with (e.g.) Uniform Transfers to Minors Act --C.G.S. 45a-557 et seq.

~~For purposes of~~ this [Code]:

- (1) “Action,” with respect to an act of a trustee, includes a failure to act.
- (2) “Beneficiary” means a person that:
 - (A) has a present or future beneficial interest in a trust, vested or contingent; or
 - (B) in a capacity other than that of trustee, holds a power of appointment over trust property.
- (3) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in Section 405(a).

(4) “~~Conservator~~” means a person appointed by the court to administer the estate of a minor or adult individual and includes a guardian of the estate of a minor.

(5) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) “~~Guardian~~” means a person appointed by the court ~~[, a parent, or a spouse]~~ to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual and includes a conservator of the person of an adult. The term does not include a guardian ad litem.

Note: We deleted reference to parent or spouse per NCCUSL comments, which say that those references were only appropriate in UPC jurisdictions.

(7) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(8) “Inter vivos trust” means any trust that is not a testamentary trust.

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~~(8)(9)~~ “Jurisdiction,” with respect to a geographic area, includes a State or country.

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~~(9)(10)~~ “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, court, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

~~(10)(11)~~ “Power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

~~(11)(12)~~ “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

~~(12)(13)~~ “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~(13)~~(14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

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~~(14)~~(15) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

~~(15)~~(16) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

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~~(16)~~(17) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

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~~(17)~~(18) “Terms of a trust” or “terms of the trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

Note: addition made because “terms of the trust” appears elsewhere.

(19) “Testamentary trust” means a trust created under the a will of a settlor who died a domiciliary of this state or a non domiciliary who died owning real property located property in this state and any other trust created, authorized or approved by order of the a Probate eCourt.

~~(18)~~(20) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

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~~(19)~~(21) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

SECTION 104. (Section 4) KNOWLEDGE.

- (a) Subject to subsection (b), a person has knowledge of a fact if the person:
- (1) has actual knowledge of it;
 - (2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

SECTION 105. (Section 5) DEFAULT AND MANDATORY RULES.

(a) Except as otherwise provided in the terms of the trust, this [Code] governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this [Code] except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement of [Section 404](#) that a trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under Sections 410 through 416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in [Article] 5;

(6) the power of the court under Section 702 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) with respect to the qualified beneficiaries of ~~an irrevocable~~ a revocable trust that has become irrevocable who have attained ~~25-21~~ years of age, the duty under Section 813(b) ~~(2)~~ (3) to notify them of the existence of the trust, of the identity of the trustee, and of their right, unless waived or modified by the terms of the trust, to request trustee's reports;

(9) with respect to the qualified beneficiaries of a testamentary trust or an inter vivos trust created ~~by court order or~~ pursuant to a court approved settlement who have attained 21 years of age, the duties under Section 813(a); and ~~(b) and (c);~~

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Note: Both the representatives of the Family Law section and the judges felt that age 25 was too old. The Family Law lawyers requested that it be the age of majority; the judges were comfortable with 21. We debated this while drafting and decided on 21. The drafting committee felt this was a reasonable compromise.

~~(9)~~(10) the duty under Section 813(a)(2) to respond to the request of a qualified beneficiary of an irrevocable trust for ~~trustee's reports and other~~ information reasonably related to the administration of a trust;

Note: Changed to align (10) with 813(a)(2), which only requires that information, not reports, be given upon request. We inserted the reference to Section 813(a)(2) in order to clarify that the duty you cannot waive in (10) is that one.

~~(10)~~(11) _____ the effect of an exculpatory term under Section 1008;

~~(11)~~(12) _____ the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary;

~~(12)~~(13) _____ periods of limitation for commencing a judicial proceeding; ~~and~~

~~(13)~~(14) _____ the power of the court to take such action and exercise such jurisdiction as may be ~~conferred in this code and/or 45a-98~~ necessary in the interests of justice; ~~and~~

~~(14)~~(15) _____ the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 203 and 204]; ~~and~~

(16) the provisions of this [Code] specifically dealing with the supervision of testamentary trusts by the court.

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SECTION 106. (Section 6) COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY. The common law of trusts and principles of equity supplement this [Code], except to the extent modified by this [Code] or another statute of this State.

SECTION 107. (Section 7) GOVERNING LAW.

(a) The meaning and effect of the terms of an inter vivos trust are determined by:

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~~(a)~~(1) the law of the jurisdiction designated in the terms of the trust unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

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~~(b)~~(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) The meaning and effect of the terms of a testamentary trust are determined by the law of this State.

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Note: This allows the settlor to select any jurisdiction.

SECTION 108. (Section 8) PRINCIPAL PLACE OF ADMINISTRATION.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction;

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) The principal place of administration of a testamentary trust shall be (1) in the district of this State in which the settlor's estate was or is being administered; (2) in the district of this State in which the court creating the trust is located, or (3) or, in the case of a trust transferred to this state subject to the continuing supervision of the court, the district in which the trustee's principal place of business is located, where the trustee resides or where all or part of the administration occurs.

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~~(c)~~(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee of an inter vivos trust, and the trustee of a testamentary trust with court approval, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States.

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~~(d)~~(e) The trustee of an inter vivos trust shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

Note: No need for the notice of testamentary trust transfers, because court will notify before hearing.

- (1) the name of the jurisdiction to which the principal place of administration is to be transferred;
- (2) the address and telephone number at the new location at which the trustee can be contacted;
- (3) an explanation of the reasons for the proposed transfer; and
- (4) the date on which the proposed transfer is anticipated to occur; and

~~(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.~~

~~(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.~~

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 704.

Note: We revised this section to eliminate the qualified beneficiaries' ability to object to a transfer on 11/10/01. Section 108(b) covers the beneficiaries and they have removal rights under 706.

Note - See Section 204. This section indirectly deals with jurisdiction since "venue" is in the place of administration. We tried to make appropriate changes here and in Article 2. This repeals 45a-477, because per Linda Dow that statute is so narrow it is unworkable and this is a welcome expansion.

SECTION 109. (Section 9) METHODS AND WAIVER OF NOTICE.

(a) Notice to a person under this [Code] or the sending of a document to a person under this [Code] must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery,

delivery to the person’s last known place of residence or place of business, or a properly directed electronic message, if the person has consented in advance to receive notice by electronic message.

(b) Notice otherwise required under this [Code] or a document otherwise required to be sent under this [Code] need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this [Code] or the sending of a document under this [Code] may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the any applicable court rules of civil procedure.

SECTION 110. (Section 10) OTHERS TREATED AS QUALIFIED BENEFICIARIES.

~~(a) Whenever notice to qualified beneficiaries of a trust is required under this [Code], the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.~~

~~(b)~~(a) A charitable organization expressly mandated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this [Code].

~~(b)~~ The attorney general of this State has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

~~(c)~~The attorney general of this State has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

Note: Sub (b) gives a charitable beneficiary of a charitable trust the rights of a Q beneficiary, because that grants them rights under the Code they would otherwise not have. A charitable trust does not have “beneficiaries” (no Q) as defined in 103(2). Such trusts benefit the public, not a particular beneficiary, and no one person holds a beneficial interest in them. Therefore, although “person” includes entities, a charitable beneficiary of a purely charitable trust is not a “regular” beneficiary under 103(2). (See the comments.)

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SECTION 111. (Section 11) NONJUDICIAL SETTLEMENT AGREEMENTS.

(a) For purposes of this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsections (c) and (e), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving an inter vivos trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this [Code] or other applicable law.

~~(e)~~(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee’s report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee’s compensation;
- (5) transfer of a trust’s principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

~~(e)~~(e) A nonjudicial settlement agreement may not modify or terminate an irrevocable trust. Such modification or termination may only be accomplished under the provisions of Article 4.

Note: We have not referred to “noncharitable” trusts, to avoid the implication that you can terminate a charitable trust, since that is not our intent.

~~(e)~~(f) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in [Article] 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

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SECTION 112. RULES OF CONSTRUCTION. ~~The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.~~

We tinkered with this and decided we had to delete it altogether. Later, we will have to review all rules of construction that apply to wills and determine which should apply to trusts.

ARTICLE 2 JUDICIAL PROCEEDINGS

SECTION 201. (Section 12) ROLE OF COURT IN ADMINISTRATION OF TRUST.

(a) A testamentary trust is subject to continuing judicial supervision. For this purpose, a testamentary trust shall include any trust created under the laws of another jurisdiction, the principal place of administration of which is transferred to this state and expressly made (by court order or otherwise) subject to the continuing supervision of the court by the transferring court or the document of transfer.

~~(a)(b)~~ The court may intervene in the administration of an inter vivos trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(c) An inter vivos trust is not subject to continuing judicial supervision, [unless ordered by the court.]

Note: 45a-175(d) says that when you voluntarily file an inter vivos trust account, that does not subject the trust to continuing jurisdiction. The drafting committee revised (c) to track that language.

~~(c)(d)~~ A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, a request for instructions and an action to declare rights, but not limited to, a proceeding to:

- (1) request instructions or declare rights;
- (2) approve a nonjudicial settlement;
- (3) interpret or construe the terms of the trust;
- (4) determine the validity of a trust or of any of its terms;
- (5) approve a trustee's report or accounting or compel a trustee to report or account;

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- (6) direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;
- (7) review the actions of a trustee, including the exercise of a discretionary power;
- (8) accept the resignation of a trustee;
- (9) appoint or remove a trustee;
- (10) determine a trustee's compensation;
- (11) transfer a trust's principal place of administration or a trust's property to another jurisdiction;
- (12) determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;
- (13) modify or terminate a trust;
- (14) combine trusts or divide a trust;
- (15) determine liability of a trust for debts of a beneficiary and living settlor; and
- (16) determine liability of a trust for debts, expenses of administration, and statutory allowances chargeable against the estate of a deceased settlor.

Note: This expands 45a-98.

SECTION 202. (Section 13) JURISDICTION OVER TRUSTEE AND BENEFICIARY.

- (a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
- (b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
- (c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

SECTION 203. (Section 14) SUBJECT-MATTER JURISDICTION.

- (a) The ~~designate~~ Probate eCourt has exclusive jurisdiction of proceedings in this State brought by a trustee or beneficiary concerning the administration of a testamentary trust.

(b) The ~~designate~~ Probate Court and the Superior Court have ~~has~~ concurrent jurisdiction ~~with other courts of this State~~ of other proceedings involving a trust.

Note: The “pure” code would give Probate Courts exclusive jurisdiction for “administration” matters, concurrent for all others. Section 203 makes a distinction that I would call “internal” vs. “external.” As to matters involving duties and disputes among the parties to a trust, the probate courts would have exclusive jurisdiction. That means such matters as trustee accounts and compensation, claims by beneficiaries against trustees, actions to construe, modify, terminate, etc. A good long list is in the comment to Sec. 201.

In the pure code, the matters for which the Superior Courts would have concurrent jurisdiction are matters external to the trust. (i.e., claims by third persons against the trustee in that capacity, such as by a party claiming breach of contract arising out of a transaction with the trust; or a tort claim for an injury suffered on real estate owned by the trust). This makes sense: third parties ought to be able to avail themselves of the Superior Court for matters that typically go to that court, even if the party adverse to them happens to be a trust. - Tim Fisher.

We revised (a) to make Probate Court jurisdiction exclusive over administrative (internal) matters only as to testamentary trusts. We suggest a reversion to the “pure” code to give the Probate Courts exclusive jurisdiction over such internal matters involving inter vivos trusts when the systemic changes currently being considered have been implemented. -SBW

Note: 45a-175 should be amended to include a reference to this Section.

SECTION 204. (Section 15) VENUE.

(a) Venue for a judicial proceeding in the Superior Court involving a trust shall be as provided in Chapter 890 of the general statutes.

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~~(a)~~(b) Except as otherwise provided in subsection ~~(c)~~ of this section, venue for a judicial proceeding in a Probate Court involving: (1) an inter vivos trust is, in the following order of priority, (a) in the ~~county~~ district of this State in which the trust’s principal place of administration is or will be located; (b) in the district of this State where the trustee resides or has a principal place of business or (c) in the district of this State where the settlor’s estate was or is being administered; and; (2) if the a testamentary trust is created by will and the estate is not yet closed, is in the ~~county~~ district of this State in which the decedent’s settlor’s estate trust’s principal place of administration is located. is being administered or in which the court creating the trust is located.

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~~(b)~~(c) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is (1) in the case of an inter vivos trust in the following order of priority, (a) in a ~~county~~district of this State in which a beneficiary resides, (b) in a ~~county~~district of this State in which any trust property is located or (c) in the district of this State in which the trust's principal place of administration is located; and (2) in the case of a testamentary trust is in the district of this State in which the trust's principal place of administration is located.

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The UTC Conference Committee felt that venue should be determined in the same manner as for admission of a Will: Settlor's domicile at death. We want to discourage forum-shopping or any approach requiring that all actions be filed in one Court. (Multi-location, multi-jurisdiction banks might abuse the freedom afforded by this Section.) To prevent forum shopping, we added the requirement of the order of priority.

~~(e)~~(d) A judicial proceeding other than one described in subsection (a) or (b) must be commenced in accordance with the rules of venue applicable to civil actions.

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Note: (d) was added per Dave English's suggestion. (a) was added by LCO because what we originally submitted probably violated our constitution.

ARTICLE 3 REPRESENTATION

(This is existing law in CT (C.G.S. Section 45a-487a through 487f); it is being folded in and changed slightly as a result.)

SECTION 301. (Section 16) REPRESENTATION; BASIC EFFECT.

- (a) Notice to a person who may represent and bind another under sections 16 to 20, inclusive, of this act has the same effect as if notice were given directly to the other person.
- (b) The consent of a person who may represent and bind another person under sections 16 to 20, inclusive, of this act is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.
- (c) Except as otherwise provided in sections 31 and 46 of this act, a person who under sections 16 to 20, inclusive, of this act may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) Notwithstanding any provision of the general statutes, sections 16 to 20, inclusive, of this act shall apply to all judicial proceedings and all nonjudicial settlements, agreements or acts under sections 1 to 85, inclusive, of this act and under any other provisions of the general statutes pertaining to trust matters.

(e) For the purposes of this section, “represent” shall not be construed to permit a person who has not been admitted as an attorney pursuant to section 51-80 of the general statutes to serve as legal counsel for any other person in any matter arising under sections 1 to 85, inclusive, of this act.

Presently codified as 45a-487a(2) and 487f(a),(b) and (c).

SECTION 302. (Section 17) REPRESENTATION BY HOLDER OF POWER OF APPOINTMENT. To the extent there is no conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute: (1) The sole holder or all coholders of any power of appointment, whether or not presently exercisable, shall represent the potential appointees; and (2) the sole holder or all coholders of a power of revocation or a general power of appointment, including one in the form of a power of amendment, shall also represent the takers in default of the exercise thereof.

Same as 45a-487b.

SECTION 303. (Section 18) REPRESENTATION BY FIDUCIARIES AND PARENTS. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: (1) A conservator may represent and bind the estate that the conservator controls; (2) a guardian may represent and bind the ward if a conservator of the ward’s estate has not been appointed; (3) an agent having authority to do so may represent and bind the principal; (4) a trustee may represent and bind the beneficiaries of the trust; (5) an executor or administrator of a decedent’s estate may represent and bind persons interested in the estate; and (6) if a conservator or guardian has not been appointed, a parent may represent and bind the parent’s minor unborn child.

Same as 45a-487c.

SECTION 304. (Section 19) REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST. Unless otherwise represented, a minor,

an incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person being represented.

Same as 45a-487d.

SECTION 305. (Section 20) APPOINTMENT OF REPRESENTATIVE.

(a) If the court determines that an interest is not represented under sections 16 to 20, inclusive, of this act, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind and act on behalf of a minor, an incapacitated or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(b) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under sections 1 to 85, inclusive, of this act, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions in any matter, a guardian ad litem may consider general benefit accruing to the living members of the individual's family.

Same as 45a-487e.

**ARTICLE 4
CREATION, VALIDITY, MODIFICATION,
AND TERMINATION OF TRUST**

SECTION 401. (Section 21) METHODS OF CREATING TRUST. A trust may be created by:

- (1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) declaration by the owner of property that the owner holds identifiable property as trustee; or

- (3) exercise of a power of appointment in favor of a trustee.

SECTION 402. (Section 22) REQUIREMENTS FOR CREATION.

- (a) A trust is created only if:
 - (1) the settlor has capacity to create a trust;
 - (2) the settlor indicates an intention to create the trust;
 - (3) the trust has a definite beneficiary or is:
 - (A) a charitable trust;
 - (B) a trust for the care of an animal, as provided in Section 408; or
 - (C) a trust for a noncharitable purpose, as provided in Section 409; and
 - (4) the trustee has duties to perform.

~~(5) the same person is not the sole trustee and sole beneficiary.~~

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Note -- Dave English suggested that the simplest way to deal with our anti-merger statute was to delete (a)(5), so we did.

With respect to (a)(1), we asked Dave when capacity is determined, if a trust isn't created until it's funded. For example, assume X signs a typical revocable trust agreement, and gives his atty in fact the authority to fund the trust, which the atty-in-fact is expected to do when X is incapacitated. At that point the settlor will not have the requisite capacity to "create" the trust. Terry read the comments to say that capacity would be determined the minute any property right is given to the Trustee. This would include the initial transfer of \$5 designation of the Trust as beneficiary of life insurance or any other benefit. Dave English's view is that the settlor must have capacity with respect to the actions the settlor took to create the trust. So, if the settlor was capable when he or she signed the trust and the POA, the capacity requirement in 402(a)(1) is met, despite the settlor's lack of capacity when the agent later funds the trust.

Note -- There was some discussion in the conf. committee about adding a requirement that a written trust be executed with two witnesses, as required for will (as in Florida) or in the same manner as deeds in CT. Ultimately, we decided that such a requirement would put written trusts without the proper formalities on the same footing as oral trusts, and decided against it.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

SECTION 403. (Section 23) TRUSTS CREATED IN OTHER JURISDICTIONS.

An inter vivos trust ~~not created by will~~ is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

SECTION 404. (Section 24) TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. ~~A trust and its terms must be for the benefit of its beneficiaries.~~

SECTION 405. (Section 25) CHARITABLE PURPOSES; ENFORCEMENT.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

SECTION 406. (Section 26) CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

SECTION 407. (Section 27) EVIDENCE OF ORAL TRUST. Except as required by a statute other than this [Code], a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

SECTION 408. (Section 28) TRUST FOR CARE OF ANIMAL.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 409. (Section 29) NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as otherwise provided in Section 408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than ~~21~~90 years.

Note: If we adopt the proposed Alternate Rule then we would need to build in the ability for the trust to continue for an unlimited period by specific statement in the document and specific adoption of the Alternate Rule.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 410. (Section 30) MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.

(a) In addition to the methods of termination prescribed by Sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 411 through 416, or trust combination or division under Section 417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413.

SECTION 411. (Section 31) MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's [modification or termination](#) may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated [or modified](#) upon consent of all of the beneficiaries if the court concludes that [the termination or modification is not inconsistent with a material purpose of the trust and the probable intent of the settlor, continuance of the trust is not necessary to achieve any material purpose of the trust.](#)

~~A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.~~

Note - Sec. 411(a) is not limited to qualified beneficiaries. Therefore, presumably, a consensual termination (or modification) could not be done, without court approval, if there were minors (because a guardian of the estate would need to be appointed and the guardian could not approve the termination without court authority).

(c) ~~For purposes of this Section, a~~ spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust. In determining whether or not a spendthrift provision is a material purpose of a trust, for purposes of modification or termination of the trust, the court shall consider the settlor's intent, and the facts and circumstances surrounding the creation of the trust.

(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust ~~property as~~ properties agreed by the parties consenting to the termination of the trust, beneficiaries in a manner consistent with the purposes of the trust.

Note: We extensively debated how the trust property should be distributed in terminations. We had trouble, initially, with allowing the consenting parties to decide how to divide the trust. Ultimately, Dave English persuaded us that the safeguards in (a) and (b) would ensure that the settlor's intent would be honored in the process. So we left this as you see it.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

- (1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- (2) the interests of a beneficiary who does not consent will be adequately protected.

SECTION 412. (Section 32) MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

SECTION 413. (Section 33) CY PRES.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

- (1) the trust does not fail, in whole or in part;
- (2) the trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

- (1) the trust property is to revert to the settlor and the settlor is still living; or
- (2) fewer than 21 years have elapsed since the date of the trust's creation.

Note: Because the definition of "charitable trust" in Sec. 103 is a trust," or a portion of a trust" created for a "charitable purpose," only the remainder interest of a charitable remainder trust would be a "charitable trust" and therefore subsection (b)(2) should not be a problem.

SECTION 414. (Section 34) MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.

(a) After notice to the qualified beneficiaries, the trustee of an inter vivos noncharitable trust, and the trustee of a testamentary noncharitable trust who obtains court approval, consisting of trust property having a total value less than [\$50,000] may [but need

~~not~~ terminate the trust if the trustee concludes that the termination is not inconsistent with the probable intent of the settlor and the value or character of the trust property is insufficient or inappropriate to justify the cost of administration.

Note: In (a), because of the need for continuing court jurisdiction over testamentary trusts, we limited non-judicial termination to a limited category of inter vivos trusts -- excluding those established by court order (either probate court or superior court) or those established pursuant to things such as separation agreements.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value or character of the trust property is insufficient or inappropriate to justify the cost of administration.

Note: We changed (b) because of our concern about Trustee charges where the only asset may be stock in a closely held business (or similar asset) where the Trustee is not rendering any service but nevertheless charges based on a standard fee schedule.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

Note: 45a-484, Termination of Small Trusts, would be repealed by this section. Presently, that statute allows a Probate Court to terminate a trust of \$40K or less if it determines that termination is fair and practical and the trust's continuation is not efficient or in the beneficiaries' best interests. A trustee, income beneficiary, or income beneficiary's legal representative may apply to a probate court to terminate a covered trust. It may not do so: (1) over the objections of the trust's creator; (2) where the beneficiaries' interest cannot be determined; or (3) if the trust is a spendthrift one. After terminating a trust, the court must order the trust's assets fairly distributed to the beneficiaries and may make any other appropriate order to protect the beneficiaries' interests.

SECTION 415. (Section 35) REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Note: The UTC Conference Committee extensively discussed what we perceived to be the inter-relation between sec. 406 and 415, and whether we should add the words "or

revoke" as above, on the theory that it is possible that a mistake could go to the actual creation of the trust.

We asked Dave English, who replied that neither Section 406 nor 415 addresses a trust whose very creation resulted from mistake. Dave felt that rescission should not be directly addressed and instead should be left to our common law. So, we left Section 415 as is.

SECTION 416. (Section 36) MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

SECTION 417. (Section 37) COMBINATION AND DIVISION OF TRUSTS. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

ARTICLE 5 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

SECTION 501. (Section 38) RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE. To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Note: 502 prohibits attachment by creditor and assignment by beneficiary because it refers to both voluntary and involuntary transfer of the beneficiary's interest.

SECTION 502. (Section 39) SPENDTHRIFT PROVISION

- (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary’s interest.
- (b) A term of a trust providing that the interest of a beneficiary is held subject to a “spendthrift trust,” or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s interest.
- (c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Note: See 105(b)(5) which says that the effect of the spendthrift provision and certain creditors' rights against the trust cannot be modified by the document. In addition, see 411(c), which in the “pure” code says that a spendthrift provision is NOT presumed to be a material purpose, the settlor has to intend that it be one. (The determination of whether the spendthrift provision is a material purpose is, in turn, relevant under 411 because if it is a material purpose, the trust cannot be terminated or modified (with the beneficiaries' consent and the court's approval) in violation of that material purpose.)

SECTION 503. (Section 40) EXCEPTIONS TO SPENDTHRIFT PROVISION.

- (a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.
- (b) Even if a trust contains a spendthrift provision, a beneficiary’s child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

~~(c) — A spendthrift provision is unenforceable against a claim of this State or the United States to the extent a statute of this State or federal law so provides.~~

Note: This provision was intended to reflect existing law, but in response to concerns that it might be misinterpreted, we deleted it. The Connecticut comments will state that the Legislative intent is to simply have existing law continue in regard to governmental claims. We need to make this change before this year's (2003-2004) bill is submitted.

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SECTION 504. (Section 41) DISCRETIONARY TRUSTS; EFFECT OF STANDARD.

- (a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.
- (b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:
- (1) the discretion is expressed in the form of a standard of distribution; or
 - (2) the trustee has abused the discretion.
- (c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
- (1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary’s child, spouse, or former spouse; and
 - (2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
- (d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

Note: The drafting committee decided to repeal 52-321, except for (e), which deals with expenses and should move to Article 10. The CT comments should indicate that our intent was to preserve our case law under 52-321. The Uniform Laws Subcommittee debated 52-321’s fate and did not conclusively decide how to handle it, but our discussions were consistent with this change.

SECTION 505. (Section 42) CREDITOR’S CLAIM AGAINST SETTLOR.

- (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
- (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor’s creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, except as otherwise provided in 45a-472, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and ~~the C.G.S. Section 45a-320 family allowance [statutory allowances]~~ to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses.

Note: 45a-472 validates the designation of an inter vivos or testamentary trust as beneficiary of life insurance, retirement plans, etc., and in sub (d) says that the proceeds are not, simply by virtue of the designation of the trust as beneficiary, subject to claims to any greater extent than if paid outright. We added the cross reference to it to preserve its benefits.

(b) With respect to claims, expenses, and taxes in connection with the settlement of a trust that was revocable at the settlor's death:

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(1) Any claim of a creditor which would be barred against the fiduciary of a decedent's estate, the estate of the decedent or any creditor or beneficiary of the decedent's estate, shall be barred against the trustee, the trust property and the creditors and beneficiaries of the trust.

(2) The trustee may use the optional notice procedures set forth in Section 45a-357 and upon the trustee's compliance with the procedures set forth therein, any person so notified shall be forever barred from asserting or recovering on any such claim from the trustee, the trust property or any creditor or beneficiary of the trust.

~~(4)~~(3) The provisions of Section 45a-365 dealing with the order of payment of claims, expenses and taxes shall apply to a revocable trust.

~~(5)~~(4) If any claim is not presented in writing to the fiduciary of the Settlor's estate or the trustee (i) within one hundred fifty (150) days from the date of the appointment of the first fiduciary of the settlor's estate, or (ii) if no fiduciary is appointed within one hundred fifty (150) days from the settlor's date of death, then within one hundred fifty (150) days from the settlor's date of death, no trustee shall be chargeable for any assets that a trustee may have paid or distributed in good faith in satisfaction of any lawful claims, expenses or taxes or to any beneficiary before such claim was presented. A payment or distribution of assets by a trustee shall be deemed to have been made in good faith unless the creditor can

prove that the trustee had actual knowledge of such claims at the time of such payment or distribution. Such one hundred fifty (150) day period shall not be interrupted or affected by the death, resignation or removal of a trustee, except that the time during which there is no fiduciary in office shall not be counted as part of such period.

Note: We have made some, but by no means all, of the provisions of the probate claims statute applicable to revocable trusts where there is not a related probate administration opened at the settlor's death. When there are creditors' claims that are contested, or the assets of the trust are potentially insufficient, we felt that a probate estate should be opened so the trustee can thereby obtain the benefits of the claims law.

~~(b)~~(c) For purposes of this section:

- (1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and
- (2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on [the effective date of this [Code]] [, or as later amended].

SECTION 506. (Section 43) OVERDUE DISTRIBUTION. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

SECTION 507. (Section 44) PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

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ARTICLE 6 REVOCABLE TRUSTS

SECTION 601. (Section 45) CAPACITY OF SETTLOR OF REVOCABLE TRUST.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Note: We wanted to keep what we believe to be our current standard for capacity, which is higher than testamentary capacity. But, there were numerous drafting complexities and we could not do it. The current CT law on capacity is murky, so this clear statement of requisite capacity is a helpful one.

SECTION 602. (Section 46) REVOCATION OR AMENDMENT OF REVOCABLE TRUST.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before [the effective date of this [Code]].

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard the portion of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil which has been admitted to probate and that expressly refers to the trust or expressly devises specifically identified items of real or personal property that would otherwise have passed according to the terms of the trust; or

(B) any other method manifesting clear and convincing evidence of the settlor's intent; provided, however, that:

(i) a written revocable trust may only be amended by a later written instrument; and

(ii) a written revocable trust may only be revoked by a later written instrument or by the burning, cancellation, tearing or obliteration of the revocable trust by the settlor or by some person in the settlor's presence and at the settlor's direction.

Note: The judges had objected to (B)'s applying to written trusts, in order to prohibit oral modification of written ones. Dave English reviewed this change and agrees that it effectively prohibits oral modifications of written trusts.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

Note: A trust can say that such powers are personal to the settlor and cannot be exercised by an agent. Such provisions would override 602(e).

(f) Unless expressly prohibited by the terms of the trust, a ~~conservator~~ of the settlor or, if no ~~conservator~~ has been appointed, a ~~guardian~~ of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property ~~only~~ with the approval of the court supervising the ~~conservatorship~~ or ~~guardianship~~.

Note: The phrase "unless expressly prohibited by the terms of the trust" was added so we can draft trusts which cannot be undone or amended by a conservator. (This is similar to (e) which says attorneys in fact can only exercise the settlor's rights over trusts if the trust expressly permits them to do so.)

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

SECTION 603. (Section 47) SETTLOR'S POWERS; POWERS OF WITHDRAWAL.

(a) While a trust is revocable and the settlor ~~is alive has capacity to revoke the trust~~, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

SECTION 604. (Section 48) LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) two~~three~~ years after the settlor's death; or

Note: The limitation period in (1) was debated extensively by the UTC Conf. Committee. The Judges wanted it to be as long as possible to protect nonbeneficiaries who may not receive notice under 813 but would receive notice here. We reduced it to two years, so it matches the no claims period that applies to creditors' claims against a probate estate in 45a-375. This makes sense, since that was our rationale for revising sub (2) to 150 days.

We asked Dave English whether this limitation would be an absolute bar if there are minors, unborn or disabled heirs or potential contestants. His reply was that the question as to whether the SOL is tolled for minority or incapacity is a question of Connecticut law. Some states have general statutes tolling all SOL's.

(2) [1~~2~~50] days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. The trustee shall have the right to provide the documentation and information set forth in the preceding sentence to: (a) all persons who would be entitled to notice of the application for probate of a will or administration of an intestate estate or to notice of the admission of a will to probate or the granting of letters of administration; and (b) all persons whose interests are, in the opinion of the trustee, adversely affected by the trust.

Note: The bank representatives were concerned that a fiduciary sending the optional notice to potential contestants who are not beneficiaries would be violating the privacy rights of the settlor and/or beneficiaries. Our addition to (a)(2) addresses this.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; ~~or~~

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification; ~~or~~

(3) the trustee failed to give notice to the qualified beneficiaries in accordance with Section 813(b)(3).

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Note: This leaves potential contestants who “miss” distributions with a cause of action against the beneficiaries receiving it, but not the Trustee making it. So, the Trustee does not need to wait three years or give direct notice to avoid liability for distributing to a beneficiary before the three year statute of limitation expires. This adds to the question of whether a trustee owes a duty to a beneficiary who might be sued? The UTC Conference Committee extensively discussed adding 604(b)(3), which would make notice mandatory to all involved, including the settlor’s heirs. We were concerned with executors filing a 706 who might not know about a secret trust. Ultimately, we determined that mandatory notice to heirs would be impossible, if there is no probate estate and court to define the class of heirs.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Note: UTC Conference Committee discussed and decided AGAINST requiring that beneficiary receiving a distribution be told of the effect of 604(c), which renders them liable for successful, subsequent contests.

ARTICLE 7 OFFICE OF TRUSTEE

SECTION 701. (Section 49) ACCEPTING OR DECLINING TRUSTEESHIP.

(a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property,

exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship; or

(3) In the case of a testamentary trust, filing an acceptance of trust in the Probate court with jurisdiction over the trust.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

(d) Testamentary trustees must also comply with C.G.S. Section 45a-206.

SECTION 702. (Section 50) TRUSTEE'S BOND.

(a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) [A regulated financial service institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.]

Note: This should replace 45a-473, which covers bonds of testamentary trustees, per Linda Dow.

SECTION 703. (Section 51) COTRUSTEES.

(a) Co-trustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.

(c) A co-trustee must participate in the performance of a trustee's function unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the co-trustee has properly delegated the performance of the function to another trustee.

(d) If a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

~~(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made. A trustee may delegate to a co-trustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.~~

Note: Above deliberately prohibits delegation between co-trustees. Conference Committee voted to redraft (e) to eliminate "reasonably expected" and to employ positive instead of negative phrasing. Conference Committee wants rationale for this and other changes in the comments (CT Comments).

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action ~~provided such trustee notified the qualified beneficiaries and all co-trustees of the dissent.~~

Note: Reverted to "pure" code per Dave English's 11/26 memo.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a co-trustee from committing a serious breach of trust; and

(2) compel a co-trustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any co-trustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

SECTION 704. (Section 52) VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR.

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or

(6) A a [guardian] or [conservator] is appointed for an individual serving as trustee.

(b) If one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled; unless otherwise required by the terms of the trust. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of an inter vivos noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee; or appointed according to a procedure specified in those terms;

~~(4)~~(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) in the case of an inter vivos charitable trust, by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the [attorney general] concurs in the selection; or

~~(3)~~(4) by a person appointed by the court.

~~(d)~~A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

~~(2)~~by a person designated in the terms of the trust to act as successor trustee; by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the [attorney general] concurs in the selection; or

~~(3)~~by a person appointed by the court.

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~~(e)~~(d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Note: 45a-474 conflicts; per Linda Dow it should be repealed and replaced with above.

SECTION 705. (Section 53) RESIGNATION OF TRUSTEE.

(a) A trustee of an inter vivos trust may resign without court approval upon at least 30 days' notice to either: (1) the qualified beneficiaries, the settlor, if living, and all co-trustees; or (2) to the court.

(b) A trustee of a testamentary trust may resign: (1) without court approval upon at least 30 days notice to the qualified beneficiaries and the court; or (2) with the approval of the court.

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~~(b)~~(c) In approving a resignation under 705(b)(2), the court may issue orders and impose conditions reasonably necessary for the protection of the trust property-, the beneficiaries, and the other trustees, and may issue such other orders as law and equity may require.

~~(e)~~(d) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

SECTION 706. (Section 54) REMOVAL OF TRUSTEE.

(Presently codified as 45a-242, effective 10/1/01)

(a) The settlor, a co-trustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among co-trustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available. A successor corporate fiduciary shall not be removed in such a manner as to discriminate against state banks or national banking associations, nor shall any consolidated state bank or national banking association or any receiving state bank or national banking association be removed solely because it is a successor fiduciary, as defined in section 45a-245a.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

Note: We revised (4) to include changes made in P.A. 01-114, which amended 45a-242. The bankers said there would be opposition if not included here.

This should replace 45a-242, which differs slightly: in (4), it does not say “qualified” because that term is only relevant in the CUTC, and (a) is clearer on jurisdiction than 45a-242, which refers to the court “having jurisdiction.”

SECTION 707. (Section 55) DELIVERY OF PROPERTY BY FORMER TRUSTEE.

(a) Unless a co-trustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee’s possession to the co-trustee, successor trustee, or other person entitled to it.

SECTION 708. (Section 56) COMPENSATION OF TRUSTEE.

(a) If the terms of a trust do not specify the trustee’s compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee’s compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified by the terms of the trust would be unreasonably low or high.

SECTION 709. (Section 57) REIMBURSEMENT OF EXPENSES.

(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the defense or administration of the trust, unless the trustee is determined to have committed a breach of trust; and
 - (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
- (b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

**ARTICLE 8
DUTIES AND POWERS OF TRUSTEE**

SECTION 801. (Section 58) DUTY TO ADMINISTER TRUST. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes, the intentions of the settlor and the interests of the beneficiaries, and in accordance with this [Code].

SECTION 802. (Section 59) DUTY OF LOYALTY.

(a) A trustee shall invest and manage the trust assets solely in the interests of the beneficiaries. *Note: We originally submitted the following change: “Except as otherwise provided in this section, in administering the trust a trustee shall not place the trustee’s personal interests or the interests of others above those of the beneficiaries.” However, after discussions with LCO, we had to revert to the pure text, because (a) is presently codified in Prudent Investor at 45a-541e, which applies to other fiduciaries by virtue of 45a-203.*

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the terms of the trust;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by Section 1005;
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 1009; or
- (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) the trustee's spouse;
- (2) the trustee's descendants, siblings, parents, or their spouses;
- (3) an agent or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) The following transactions are not presumed to be affected by a conflict of interest between a trustee's personal and fiduciary interests provided that the transaction and any

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investment made pursuant to the transaction complies with the [Prudent Investor Rule of Article 9]:An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of [Article] 9. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliates, provides services in a capacity other than as trustee;

(2) an investment by a trustee in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or its affiliate;

(3) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

A trustee may be compensated for any transaction described in this subsection out of fees charged to the trust if the trustee at least annually notifies the persons entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

Note: This language was supplied by Dave English; it is being used in Missouri to address the concerns of fiduciaries running family offices.

~~(f)(g)~~ In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

~~(g)(h)~~ This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or [conservatorship] of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

~~(h)~~(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SECTION 803. [IMPARTIALITY. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.]

Note -- 803 is almost identical to §45a-541f, which reads: "If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries."

SECTION 804. (Section 60) PRUDENT ADMINISTRATION. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SECTION 805. [COSTS OF ADMINISTRATION. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.]

Note -- 805 is almost identical to §45a-541g, so it is not in the Bill.

SECTION 806. [TRUSTEE'S SKILLS. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.]

Note -- This is almost identical to §45a-541b(f).

SECTION 807. [DELEGATION BY TRUSTEE.]

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated. ~~[provided the trustee has notified the qualified beneficiaries of the delegation.]~~

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.]

Note -- The language of 807 differs slightly from §45a-541i, which has language in (b) providing that an attempted exoneration of the agent from liability is void, and which adds at the end of (d) the phrase "and can be held liable by the courts of this state for any breach of duty arising out of the delegation agreement or the terms of section 45a-541 to 45a-541i, inclusive." So, we would prefer the CUTC language be used, instead, to replace 45a-541i.

SECTION 808. (Section 61) POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

Note -- The UTC subcommittee, in discussing Art. 8 at its 11/6/00 meeting, were concerned about the modifiers “manifestly” and “serious,” and wondered if they should be deleted. On reflection, the drafting subcommittee is inclined to leave the language as is. It appears that the use of these modifiers may be have designed to avoid the trustee’s having to (or being able to) second-guess the decisions of a trust protector, except where the trust protector was directing the trustee to do something that is obviously wrong.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

SECTION 809. (Section 62) CONTROL AND PROTECTION OF TRUST PROPERTY. A trustee shall take reasonable steps to take control of and protect the trust property.

SECTION 810. (Section 63) RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee’s own property.

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

SECTION 811. (Section 64) ENFORCEMENT AND DEFENSE OF CLAIMS. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

SECTION 812. (Section 65) COLLECTING TRUST PROPERTY. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

SECTION 813. (Section 66) DUTY TO INFORM AND REPORT.

(a) ~~Unless, under the circumstances, disclosure is unreasonable;~~ (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests; ~~and-~~ ~~Unless unreasonable under the circumstances;~~ (2) a trustee shall promptly respond to a qualified beneficiary's request for information reasonably related to the administration of the trust.

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Note -- Revised to deal with "compromised" beneficiary. Trustee should be able to withhold information from beneficiary who is drug-addicted, etc. This would also cover administrative inconvenience.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number; and

(3) within 60 days after the date the trustee acquires knowledge ~~of~~ of the creation of an irrevocable trust, or the date the trustee acquires knowledge ~~of~~ that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c); ~~and~~

~~(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.~~

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Note: We deleted (4) as a concession to reality and negative impact on small firms, large banks, irrevocable insurance trusts, etc.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities,

receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. An executor, administrator, or personal representative, [conservator], or [guardian] may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Judicial approval of a trustee's report forecloses claims as to those given notice of the proceeding as to matters disclosed in the report.

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Note: Dave English (11/20/00) suggested that we add a subsection (e) to the effect that court approval of the "report" forecloses claims by those given notice of the proceeding, and including a cross-reference to our 30-day appeal period. The minutes also reflect that he suggested, in response to the Family Law rep's concern for "beneficiaries who have not received notice and who would not otherwise know about a trust" that we put in a requirement "of a report under 813(c)."

SECTION 814. (Section 67) DISCRETIONARY POWERS; TAX SAVINGS.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust, the intentions of the settlor and the interests of the beneficiaries.

(b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended]; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended], was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended].

**Note -- This is a "cut back" type of statute, so it differs from 45a-487.*

Repeal? - LCO included it in the repeals.

SECTION 815. (Section 68) GENERAL POWERS OF TRUSTEE.

(a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; ~~or~~ and

(2) except as limited by the terms of the trust:

~~(B)(C)~~ all powers over the trust property which an unmarried competent owner has over individually owned property;

~~(C)(D)~~ any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

~~(D)(E)~~ any other powers conferred by this [Code].

(b) The exercise of a power is subject to the fiduciary duties prescribed by this [article].

Sections 815 and 816 are intended to supplement, but not replace, CT's Fiduciary Powers Act (§45a-234 and §45a-235).

SECTION 816. (Section 69) SPECIFIC POWERS OF TRUSTEE. Without limiting the authority conferred by Section 815, a trustee may:

- (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - (D) deposit the securities with a depository or other regulated financial-service institution;
- (8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or

develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

- (16) exercise elections with respect to federal, state, and local taxes;
- (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
- (18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;
- (19) pledge trust property to guarantee loans made by others to the beneficiary;
- (20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;
- (21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
 - (A) paying it to the beneficiary's [conservator] or, if the beneficiary does not have a [conservator], the beneficiary's [guardian];
 - (B) paying it to the beneficiary's custodian under [the Uniform Transfers to Minors Act] or custodial trustee under [the Uniform Custodial Trust Act], and, for that purpose, creating a custodianship or custodial trust;
 - (C) if the trustee does not know of a [conservator], [guardian], custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
 - (D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;
- (22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
- (23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

- (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
- (25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
- (26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

SECTION 817. (Section 70) DISTRIBUTION UPON TERMINATION.

- (a) Upon termination or partial termination of a trust, the trustee of an inter vivos trust may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.
- (b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.
- (c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:
 - (1) it was induced by improper conduct of the trustee; or
 - (2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

**ARTICLE 10
LIABILITY OF TRUSTEES AND RIGHTS
OF PERSONS DEALING WITH TRUSTEE**

SECTION 1001. (Section 71) REMEDIES FOR BREACH OF TRUST.

- (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

- (b) To remedy a breach of trust that has occurred or may occur, the court may:
- (1) compel the trustee to perform the trustee's duties;
 - (2) enjoin the trustee from committing a breach of trust;
 - (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
 - (4) order a trustee to account;
 - (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
 - (6) suspend the trustee;
 - (7) remove the trustee as provided in Section 706;
 - (8) reduce or deny compensation to the trustee;
 - (9) subject to Section 1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 - (10) order any other appropriate relief.

SECTION 1002. (Section 72) DAMAGES FOR BREACH OF TRUST.

- (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

Note: The "greater of" measure is probably new to Connecticut.

- (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

Note: (1) reflects existing law. See Champagne v. Champagne, 43 Conn. App. 844, 685 A.2d 1153 (1996), after remand, 54 Conn. App. 321, 734 A.2d 1048 (1999); Restatement (Third) of Trusts, Prudent Investor Rule § 205 (1992). This is known as "appreciation" damages.

- (2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, 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.

Note: We considered limiting the requirements of contribution to cases where the co-trustee is equally at fault and rejected that idea. First, per Tim Fisher, a comparative fault rule such as this is a fairer one than the “per capita” alternative (everyone pays because they all bear some responsibility). Second, co-trustees are never equally at fault and that requirement could be used as a defense to avoid liability. Third, the Comments to Section 1002 which discuss the rationale for the use of comparative fault, how it is determined and when it is applied, and as so explained that model makes sense.

SECTION 1003. (Section 73) DAMAGES IN ABSENCE OF BREACH.

(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.

Note: Terry believes an absolute prohibition against such profits is unfair. What about long time advisor who sells the insurance policy and is the trustee of the ILIT? Why should he not receive a profit/commission on the policy? The Comment to Section 1003 says that R.S.2d §203 precludes the trustee’s receipt of such a commission. Section 802 would also prohibit it.

So, we discussed creating an exception, to say something like: Provided (a) does not preclude [the trustee from receiving such a commission] if it is routine and disclosed to the settlor. We discussed this with Dave English who said that (a), which obligates the trustee to disgorge the profit even absent a breach, is accepted common law. In the end, we left (a) as is, because a transaction like this will be allowed under 802 if it is authorized in the trust, approved by the beneficiaries, etc. (See 802(b)).

(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.

Note: 1003 would not eliminate simple negligence as a COA. Any breach of trust is actionable, with the remedies spelled out in 1001. This section simply absolves the trustee for losses, if there was no breach, and imposes liability for profits, even without a breach.

SECTION 1004. [RESERVED]~~ATTORNEY'S FEES AND COSTS.~~

~~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's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.~~

SECTION 1005. (Section 74) LIMITATION OF ACTION AGAINST TRUSTEE.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent 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.

Note: "One" changed to "three" by UTC Conference Committee. We later decided to use one year, which seems to make much more sense, since you are disclosing potential claims in the report. We want to make sure that if you file an account and submit it to a court, you will still be absolved from liability under 45a-175. (See 411.)

(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 of the potential claim or should have inquired into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within ~~five~~six years after the first to occur of:

Note: Changed by UTC Conference to "match" other SOL's (9/10/01). We may revisit and look at 3 years or the tort SOL.

- (1) the removal or, resignation, ~~or death~~ of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

Note: UTC Conference Committee discussed cross-referencing the claims period that applies against the estate of a deceased trustee, because we felt this should not trump that statute. Do we need to cross reference the appeal period of a probate decree here, or is that impossible? (Dave Hemond?)

In Section 1005(c), which we have changed to a six year statute of limitation, we thought that this would run even if the trustee has not accounted and we were concerned with

that. The judges felt that the trustee should be on the hook forever if it doesn't account at all, and we did not disagree with that. We agreed that as a policy matter we should encourage fiduciaries to account. As drafted, this section would allow a trustee to resign without filing an account, wait six years, and then be off the hook. We felt that at a minimum we should eliminate death and limit the statute of limitations protection here to situations where the trust terminates or the trustee resigns. So, claims against a deceased trustee must be brought within the claims period in 45a-375.

SECTION 1006. (Section 75) 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.

Note: "Reasonable reliance" is a familiar term in civil law. Per the comments, it is also the prudence standard used in the Prudent Investor Act 1(b).

SECTION 1007. (Section 76) EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION. 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.

SECTION 1008. (Section 77) EXCULPATION OF TRUSTEE.

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

- (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
- (2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) Except for terms intended to provide protection for carrying out a stated trust purpose. 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.

Note: CT comments should say that we revised (b) to cover cases where trust holds stock in family business, or vacation home, so the requested the exculpatory language, since otherwise retention of the asset would, by itself, be a breach of trust.

Note: Steve Fast's revisions to (b) are designed to allow for certain exculpatory provisions. We were concerned that the trustee would never be able to prove fairness and adequate communication under any circumstances. At a minimum, the trustee should be relieved of that burden where the exculpatory provision "covers" trustee actions that are unique to or required by the trust.

Note: In (a)(1), we considered cross-referencing Section 404, but decided it was unnecessary. 1008(b) shifts the BOP by creating a rebuttable presumption. There are factors in the Comments for a court to consider in determining whether there was undue influence. David English advised us not to incorporate them.

The fairness test appears to be applicable to circumstances at drafting, so it is not prospective.

SECTION 1009. (Section 78) BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. A trustee is not liable to a beneficiary for breach of trust if the beneficiary, ~~while having capacity,~~ 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.

Note: The reference to "improper conduct" was taken from the Restatement of Trusts. It also appears in case law.

SECTION 1010. (Section 79) LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.

- (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) Except as otherwise limited by state statute or common law, 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.

Note: Above change designed to maintain existing law on trustee liability for environmental clean up, since we do not want to change it. Dave English thought it should be more specific.

(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.

SECTION 1011. (Section 80) INTEREST AS GENERAL PARTNER.

(a) Except as otherwise provided in subsection (c) 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 [Uniform Partnership Act or Uniform Limited Partnership Act].

(b) Except as otherwise provided in subsection (c), 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.

SECTION 1012. (Section 81) PROTECTION OF PERSON DEALING WITH TRUSTEE.

- (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.
- (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.
- (c) A person who in good faith delivers assets to a trustee need not ensure their proper application.
- (d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for 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.
- (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.

Note: The UTC Conference Committee discussed whether this adequately defined when a person acts in "good faith" in reliance upon a trustee's actions. How can a third party be acting in good faith if he or she never inquires into the scope of the trustee's power?

The answer is, this section gives no protection to the third party if the person with whom they are dealing was never a trustee, so that creates a minimal duty of inquiry as to whether they are a trustee. Once the third party determines that, he or she is held to a standard of good faith.

SECTION 1013. (Section 82) CERTIFICATION OF TRUST.

- (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:
 - (1) that the trust exists and the date the trust instrument was executed;
 - (2) the identity of the settlor;
 - (3) the identity and address of the currently acting trustee;

- (4) the powers of the trustee;
 - (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
 - (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;
 - (7) the trust's taxpayer identification number; and
 - (8) the manner of taking title to trust property.
- (b) A certification of trust may be signed or otherwise authenticated by any trustee.
 - (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 certification of trust to be incorrect.
 - (d) A certification of trust need not contain the dispositive terms of a trust.
 - (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 which designate the trustee and confer upon the trustee the power to act in the pending transaction.
 - (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.~~
 - (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.
 - (h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.
 - (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.

ARTICLE 11
MISCELLANEOUS PROVISIONS

SECTION 1101. (Section 83) UNIFORMITY OF APPLICATION AND

CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 1102. [ELECTRONIC RECORDS AND SIGNATURES. The provisions of this [Code] governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.]

SECTION 1103. (Section 84) SEVERABILITY CLAUSE. (*Effective January 1, 2004*) If any provision of sections 1 to 85, inclusive, of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of sections 1 to 85, inclusive, of this act which can be given effect without the invalid provision or application, and to this end the provisions of sections 1 to 85, inclusive, of this act are severable.

(Section 85). (NEW) (*Effective January 1, 2004*) (a) Except as otherwise provided in sections 1 to 85, inclusive, of this act, on the effective date of this section:

- (1) Sections 1 to 85, inclusive, of this act applies to all trusts created before, on or after the effective date of this section;
- (2) Sections 1 to 85, inclusive, of this act applies to all judicial proceedings concerning trusts commenced on or after the effective date of this section;
- (3) Sections 1 to 85, inclusive, of this act applies to judicial proceedings concerning trusts commenced before the effective date of this section, unless the court finds that application of a particular provision of sections 1 to 85, inclusive, of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of sections 1 to 85, inclusive, of this act does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in sections 1 to 85, inclusive, of this act applies to trust instruments executed before the effective date of this section unless there is a clear indication of a contrary intent in the terms of the trust;

(5) An act done before the effective date of this section is not affected by sections 1 to 85, inclusive, of this act;

(6) The ninety-year period in subdivision (1) of section 29 of this act only applies to trusts that become irrevocable on or after the effective date of this section;

(7) The provisions of subdivision (3) of subsection (a) of section 42 of this act only apply to revocable trusts of settlors dying on or after the effective date of this section;

(8) To the extent that they apply to a spouse or former spouse, the provisions of subsection (b) of section 40 of this act and subsection (c) of section 41 of this act do not apply to testamentary and inter vivos trusts created under trust instruments, whether revocable or irrevocable, executed prior to the effective date of this section, and not amended on or after the effective date of this section; and

(9) The provisions of subsections (b) and (c) of section 66 of this act only apply to trusts that become irrevocable on or after the effective date of this section.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this section, such statute continues to apply to the right even if it has been repealed or superseded.

(Sec. 86.) Subsection (a) of section 45a-98 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2004*):

(a) Courts of probate in their respective districts shall have the power to: (1) [grant] Grant administration of intestate estates of persons who have died domiciled in their districts and of intestate estates of persons not domiciled in this state which may be granted as provided [by] in section 45a-303; (2) admit wills to probate of persons who have died domiciled in their districts or of nondomiciliaries whose wills may be proved in their districts as provided in section 45a-287; (3) except as provided in section 45a-98a or as limited by an applicable statute of limitations, determine title or rights of possession and use in and to any real, tangible or intangible property that constitutes, or may constitute, all or part of any trust, any decedent's estate, or any estate under control of a guardian or conservator, which trust or estate is otherwise subject to the jurisdiction of the Probate Court, including the rights and obligations of any beneficiary of the trust or estate and including the rights and obligations of any joint tenant with respect to survivorship property; (4) except as provided in section 45a-98a, construe the meaning and effect of any will or trust agreement if a construction is required in connection with the administration

or distribution of a trust or estate otherwise subject to the jurisdiction of the Probate Court, or, with respect to an inter vivos trust, if that trust is or could be subject to jurisdiction of the court for an accounting pursuant to section 45a-175, provided such an accounting need not be required; (5) except as provided in section 45a-98a, apply the doctrine of cy pres or approximation; (6) to the extent provided for in section 45a-175, call executors, administrators, trustees, guardians, conservators, persons appointed to sell the land of minors, and attorneys-in-fact acting under powers of attorney created in accordance with section 45a-562, to account concerning the estates entrusted to their charge; (7) in trust matters, to take any action, authorized in subsection (d) of section 12 of this act; and [(7)] (8) make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of this state.

(Sec. 87.) Subsection (c) of section 45a-475 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2004*):

(c) The provisions of section [45a-474 shall] 52 of this act do not apply to the trusts specified in this section.

(Sec. 88.) Section 45a-482 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2004*):

When the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the death of the life tenant, or because the beneficiary has reached a stipulated age, or if such trust would qualify for termination under section [45a-484] 34 of this act, or for any other reason, the fiduciary of such estate or prior trust may distribute, with the approval of the court of probate having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to such remaindermen, without the interposition of the establishment of such trust or successive trust. If distribution is based on the fact that the trust would qualify for termination under section [45a-484] 34 of this act, reasonable notice shall be provided to all beneficiaries who are known and in being and who have vested or contingent interests in the trust.

(Sec. 89.) Section 52-321 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2004*):

[Except as provided in sections 52-321a and 52-352b:

(a) If property has been given to trustees to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold the income, and the income has not been expressly given for the support of the beneficiary or

his family, the income shall be liable in equity to the claims of all creditors of the beneficiary.

(b) Any creditor of the beneficiary who has secured a judgment against the beneficiary may bring an action against him and serve the trustees with garnishee process, and the court to which the action is returnable may direct the trustees to pay over the net income derived from the trust estate to the judgment creditor, as the income may accrue, until the creditor's debt is satisfied.

(c) The court having jurisdiction over the fund may make such an order for payment pursuant to subsection (b) when the beneficiary is a nonresident of this state, as well as when the beneficiary is a resident, but in the case of a nonresident beneficiary notice shall be given to the nonresident of the action against him as provided in section 52-87. The nonresidence of the beneficiary shall not deprive the court of authority to make such an order.

(d) If any such trust has been expressly provided to be for the support of the beneficiary or his family, a court of equity having jurisdiction may make such order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require.

(e) The defendant trustee in any such action] In any action brought by a creditor of a beneficiary of a trust to enforce a judgment against the beneficiary in which a defendant trustee is served with garnishee process, the trustee shall be entitled to charge in the administration account of the trust such expenses and disbursements as the court to which the action is brought determines to be reasonable and proper.

(Sec. 90.) *(Effective January 1, 2004)* Sections 45a-473, 45a-474, 45a-477, 45a-484 and 45a-487 to 45a-487f, inclusive, of the general statutes are repealed.

This act shall take effect as follows:	
Section 1	<i>January 1, 2004</i>
Sec. 2	<i>January 1, 2004</i>
Sec. 3	<i>January 1, 2004</i>
Sec. 4	<i>January 1, 2004</i>
Sec. 5	<i>January 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>January 1, 2004</i>
Sec. 8	<i>January 1, 2004</i>
Sec. 9	<i>January 1, 2004</i>
Sec. 10	<i>January 1, 2004</i>
Sec. 11	<i>January 1, 2004</i>
Sec. 12	<i>January 1, 2004</i>

Sec. 13	<i>January 1, 2004</i>
Sec. 14	<i>January 1, 2004</i>
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Sec. 84	<i>January 1, 2004</i>
Sec. 85	<i>January 1, 2004</i>
Sec. 86	<i>January 1, 2004</i>
Sec. 87	<i>January 1, 2004</i>
Sec. 88	<i>January 1, 2004</i>
Sec. 89	<i>January 1, 2004</i>
Sec. 90	<i>January 1, 2004</i>

SECTION 1104. ~~REPEALS.~~ The following Acts are repealed:

- ~~(1)Uniform Trustee Powers Act;~~
- ~~(2)Uniform Probate Code, Article VII;~~
- ~~(3)Uniform Trusts Act (1937); and~~
- ~~(4)Uniform Prudent Investor Act.~~

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