

WORKING DRAFT

HOUSE BILL NO. _____

Uniform Trust Code.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the Uniform Trust Code; creating
 2 the Uniform Trust Code; repealing the Uniform
 3 Trustees' Powers Act; repealing the Uniform Prudent
 4 Investor Act and incorporating provisions of that Act
 5 within the Uniform Trust Code; amending the rule
 6 against perpetuities as specified; providing for
 7 electronic signatures as specified; conforming
 8 provisions; specifying applicability of the act; and
 9 providing for an effective date.

10

11 *Be It Enacted by the Legislature of the State of*
 12 *Wyoming:*

13

14 **Section 1.** W.S. 4-10-101 through 4-10-111,
 15 4-10-201 through 4-10-204, 4-10-301 through 4-10-305,

1 4-10-401 through 4-10-415, 4-10-501 through 4-10-508,
 2 4-10-601 through 4-10-604, 4-10-701 through 4-10-717,
 3 4-10-801 through 4-10-817, 4-10-901 through 4-10-912,
 4 4-10-1001 through 4-10-1014 and 4-10-1101 through
 5 4-10-1104 are created to read:

TITLE 4

TRUSTS

CHAPTER 10

UNIFORM TRUST CODE

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

4-10-101. Short title.

This act may be cited as the Uniform Trust Code.

4-10-102. Scope.

1 This act applies to charitable or noncharitable
2 express trusts, ~~charitable or noncharitable,~~ and
3 trusts created pursuant to a statute, judgment or
4 decree that requires the trust to be administered in
5 the manner of an express trust.

6

7 **4-10-103. Definitions.**

8

9 (a) As used in this act:

10

11 (i) "Action," with respect to an act of a
12 trustee, includes a failure to act;

13

14 (ii) "Beneficiary" means a person that:

15

16 (A) Has a present or future beneficial
17 interest in a trust, vested or contingent; or

18

19 (B) In a capacity other than that of
20 trustee, holds a power of appointment over trust
21 property.

22

1 (iii) "Charitable trust" means a trust, or
2 portion of a trust, created for a charitable purpose
3 described in W.S. 4-10-406(a);
4

5 (iv) "Conservator" for the purposes of this
6 act means ~~a person appointed by the court to~~
7 ~~administer the estate of a minor or adult individual~~
8 as defined in W.S. 3-1-101(a)(iii);
9

10 (v) "Environmental law" means a federal,
11 state, or local law, rule, regulation, or ordinance
12 relating to protection of the environment;
13

14 (vi) "Excluded fiduciary" means any
15 fiduciary excluded from exercising certain powers
16 under the trust instrument which powers may be
17 exercised by the grantor, trust advisor or trust
18 protector;
19

20 (vii) "Fiduciary" means a trustee under a
21 testamentary or other trust, an executor,
22 administrator, or personal representative of a
23 decendent's estate, or any other party including a

1 trust advisor or a trust protector, who is acting in a
2 fiduciary capacity for any person, trust or estate;

3
4 (viii) "Guardian" for the purposes of this
5 act means ~~a person appointed by the court to make~~
6 ~~decisions regarding the support, care, education,~~
7 ~~health and welfare of a minor or adult individual. The~~
8 ~~term does not include a guardian ad litem~~ as defined
9 in W.S. 3-1-101(a)(v);

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11 *****Staff Comment*****

12
13 Arguably, the phrase "for the purposes
14 of this act" in paragraphs (iv) and (viii)
15 are redundant, since the introductory phrase
16 in (a) says "As used in this act" and "This
17 act" is defined herein. WEPAC probably added
18 the phrase to reinforce that these
19 definitions are not applicable outside this
20 act.
21

22 (ix) "Incapacity" or "incompetency" or
23 "incompetent person" means as defined in W.S. 3-1-
24 101(ix) unless otherwise defined by the terms of the
25 trust;

26

1 (x) "Interests of the beneficiaries" means
2 the beneficial interests provided in the terms of the
3 trust;

4
5 (xi) "Jurisdiction," with respect to a
6 geographic area, includes a state or country;

7
8 (xii) "Person" means an individual,
9 corporation, business trust, estate, trust,
10 partnership, limited liability company, association,
11 joint venture, government, governmental subdivision,
12 agency or instrumentality, public corporation or any
13 other legal or commercial entity;

14
15 (xiii) "Power of withdrawal" means a
16 presently exercisable general power of appointment
17 other than a power exercisable only upon consent of
18 the trustee or a person holding an adverse interest;

19
20 (xiv) "Property" means anything that may be
21 the subject of ownership, whether real or personal,
22 legal or equitable, or any interest therein;

23

1 (xv) "Qualified beneficiary" means a
2 beneficiary who, ~~on the date of the beneficiary's~~
3 ~~qualification~~ is currently entitled to distributions
4 of income or principal from the trust or has a vested
5 remainder interest in the trust; ~~determined;~~

6
7 ~~(A) is a distributee or permissible~~
8 ~~distributee of trust income;~~

9
10 ~~(B) would be a distributee or~~
11 ~~permissible distributee of trust income or principal~~
12 ~~if the interests of the distributees described in~~
13 ~~subparagraph (A) terminated on that date; or~~

14
15 ~~(C) would be a distributee or~~
16 ~~permissible distributee of trust income or principal~~
17 ~~if the trust terminated on that date.~~

18
19 (xvi) "Regulated financial services
20 institution" means a financial institution as defined
21 in W.S. 13-1-101(a)(ix) and any other financial
22 services provider regulated by the state of Wyoming or
23 agency of the federal government.

24

1 (xvii) "Revocable," as applied to a trust,
2 means revocable by the settlor without the consent of
3 the trustee or a person holding an adverse interest;

4
5 (xviii) "Settlor" means a person, including
6 a testator, grantor, trust maker, conservator or an
7 agent with the power to establish a trust, who
8 creates, or contributes property to, a trust. If more
9 than one (1) person creates or contributes property to
10 a trust, each person is a settlor of the portion of
11 the trust property attributable to that person's
12 contribution except to the extent another person has
13 the power to revoke or withdraw that portion;

14
15 (xix) "Spendthrift provision" means a term
16 of a trust which restrains both voluntary and
17 involuntary transfer of a beneficiary's interest and
18 shall not include or prevent a disclaimer of an
19 interest of a beneficiary;

20
21 (xx) "State" means a state of the United
22 States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or
24 insular possession subject to the jurisdiction of the

1 United States. The term includes an Indian tribe or
2 band recognized by federal law or formally
3 acknowledged by a state;

4
5 (xxi) "Terms of a trust" means the
6 manifestation of the settlor's intent regarding a
7 trust's provisions as expressed in the trust
8 instrument or as may be established by other evidence
9 that would be admissible in a judicial proceeding;

10
11 (xxii) "Trust advisor" means the grantor of
12 a trust instrument or other fiduciaries whose
13 appointment is provided in the trust instrument and
14 whose powers are defined and limited in W.S. 4-10-712;

15
16 (xxiii) "Trust protector" means any
17 disinterested party whose appointment is provided for
18 in the trust instrument or who is appointed by a court
19 of competent jurisdiction and whose powers are defined
20 and limited in W.S. 4-10-710;

21
22 (xxiv) "Trust instrument" means an
23 instrument executed by the settlor that contains terms
24 of the trust, including any amendments thereto;

1

2

(xxv) "Trustee" includes an original,
additional and successor trustee and a cotrustee;

4

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6

(xxvi) "This act" means W.S. 4-10-101
through 4-10-1104.

7

8

4-10-104. Knowledge.

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11

(a) Subject to subsection (b) of this section, a
person has knowledge of a fact if the person:

12

13

(i) Has actual knowledge of it;

14

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16

(ii) Has received a notice or notification
of it; or

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

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(b) An organization that conducts activities
through employees has notice or knowledge of a fact
involving a trust only from the time the information

1 was received by an employee having responsibility to
2 act for the trust, or would have been brought to the
3 employee's attention if the organization had exercised
4 reasonable diligence. An organization exercises
5 reasonable diligence if it maintains reasonable
6 routines for communicating significant information to
7 the employee having responsibility to act for the
8 trust and there is reasonable compliance with the
9 routines. Reasonable diligence does not require an
10 employee of the organization to communicate
11 information unless the communication is part of the
12 individual's regular duties or the individual knows a
13 matter involving the trust would be materially
14 affected by the information.

15

16 **4-10-105. Default and mandatory rules.**

17

18 (a) Except as otherwise provided in the terms of
19 the trust, this act governs the duties and powers of a
20 trustee, relations among trustees and the rights and
21 interests of a beneficiary.

22

23 (b) The terms of a trust prevail over any
24 provision of this act except:

1

2

(i) The requirements for creating a trust;

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

6

7

8

(iii) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

10

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14

(iv) The power of the court to modify or terminate a trust under W.S. ~~4-10-4110 through 4-10-416~~ 4-10-411 through 4-10-417;

15

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18

(v) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5 of this act;

19

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21

22

(vi) The power of the court under W.S. 4-10-702 to require, dispense with, or modify or terminate a bond;

23

24

1 (vii) The power of the court under W.S. 4-
2 10-708(b) to adjust a trustee's compensation specified
3 in the terms of the trust which is unreasonably low or
4 high;

5 ~~(viii) With respect to the qualified~~
6 ~~beneficiaries of an irrevocable trust who have~~
7 ~~attained 25 years of age, the duty under W.S. 4-10-~~
8 ~~813(b) (ii) and (iii) to notify them of the existence~~
9 ~~of the trust, of the identity of the trustee, and of~~
10 ~~their right to request trustee's reports;~~

11
12 ~~(ix) The duty under W.S. 4-10-813(a) to~~
13 ~~respond to the request of a [qualified] beneficiary of~~
14 ~~an irrevocable trust for trustee's reports and other~~
15 ~~information reasonably related to the administration~~
16 ~~of a trust;~~

17
18 ~~(x)~~ (viii) The effect of an exculpatory term
19 under W.S. 4-10-1008;

20
21 ~~(xi)~~ (ix) The rights under W.S. 4-10-1010
22 through 4-10-1013 of a person other than a trustee or
23 beneficiary;

24
25 (x) Periods of limitation for commencing a
26 judicial proceeding;

27

1 (xi) The power of the court to take such
2 action and exercise such jurisdiction as may be
3 necessary in the interests of justice; and

4
5 (xii) The subject-matter jurisdiction of
6 the court and venue for commencing a proceeding as
7 provided in W.S. 4-10-203 and 4-10-204.

8

9 **4-10-106. Common law of trusts; principles of**
10 **equity.**

11

12 The common law of trusts and principles of equity
13 supplement this act, except to the extent modified by
14 this act or another statute of this state.

15

16 **4-10-107. Governing law.**

17

18 (a) The meaning and effect of the terms of a
19 trust are determined by:

20

21 (i) The law of the jurisdiction designated
22 in the terms of the trust ~~unless the designation of~~
23 ~~that jurisdiction's law is contrary to a strong public~~

1 ~~policy of the jurisdiction having the most~~
2 ~~significant relationship to the matter at issue; or;~~

3
4 (ii) In the absence of a controlling
5 designation in the terms of the trust, the law of the
6 jurisdiction having the most significant relationship
7 to the matter at issue; or

8
9 (b) The law of the jurisdiction designated in
10 the terms of the trust may be changed to the principal
11 place of administration by a court with subject matter
12 jurisdiction.

13
14 **4-10-108. Principal place of administration.**

15
16 (a) Without precluding other means for
17 establishing a sufficient connection with the
18 designated jurisdiction, terms of a trust designating
19 the principal place of administration are valid and
20 controlling if:

21
22 (i) A trustee's principal place of business
23 is located in, or a trustee is a resident of, the
24 designated jurisdiction;

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(ii) All or part of the administration occurs in the designated jurisdiction; or

(iii) The settlor was a resident of the designated jurisdiction at creation of the trust instrument.

(b) ~~A trustee is under a continuing duty to administer the trust at a~~ Unless otherwise designated as provided in subsection (a) of this section or changed as provided in subsection (c) of this section, the principal administration of a trust is the usual place appropriate to its purposes, its administration, and the interests of the beneficiaries where the activity of the trust is carried on by the trustee who is primarily responsible for the day-to-day administration of the trust.

(c) Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, ~~in furtherance of the duty prescribed by subsection (b), of this section,~~ may transfer the trust's

1 principal place of administration to another state or
2 to a jurisdiction outside of the United States.

3

4 (d) The trustee shall notify the qualified
5 beneficiaries of a proposed transfer of a trust's
6 principal place of administration to another
7 jurisdiction not less than ~~sixty (60)~~ thirty (30) days
8 before initiating the transfer, unless waived by
9 written consent of all qualified beneficiaries. The
10 notice of proposed transfer shall include:

11

12 (i) The name of the jurisdiction to which
13 the principal place of administration is to be
14 transferred;

15

16 (ii) The address and telephone number at
17 the new location at which the trustee can be
18 contacted;

19

20 (iii) An explanation of the reasons for the
21 proposed transfer;

22

23 (iv) The date on which the proposed
24 transfer is anticipated to occur; and

1

2 (v) The date, not less than ~~sixty (60)~~
3 thirty (30) days after the giving of the notice, by
4 which the qualified beneficiary is required to notify
5 the trustee of an objection to the proposed transfer.

6

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

13

14 (f) In connection with a transfer of the trust's
15 principal place of administration, the trustee may
16 transfer some or all of the trust property to a
17 successor trustee designated in the terms of the trust
18 or appointed pursuant to W.S. 4-10-704.

19

20 **4-10-109. Methods and waiver of notice.**

21

22 (a) Notice to a person under this act or the
23 sending of a document to a person under this act shall
24 be accomplished in a manner reasonably suitable under

1 the circumstances and likely to result in receipt of
2 the notice or document. Permissible methods of notice,
3 or for sending a document, include first-class mail,
4 personal delivery, delivery to the person's last known
5 place of residence or place of business or a properly
6 directed electronic message.

7
8 (b) Notice otherwise required under this act or
9 a document otherwise required to be sent under this
10 act need not be provided to a person whose identity or
11 location is unknown to and not reasonably
12 ascertainable by the trustee.

13
14 (c) Notice under this act or the sending of a
15 document under this act may be waived by the person to
16 be notified or sent the document.

17
18 (d) Notice of a judicial proceeding shall be
19 given as provided in the Wyoming Rules of Civil
20 Procedure.

21
22 **4-10-110. Others treated as qualified**
23 **beneficiaries.**

24

1 (a) Whenever notice to qualified beneficiaries
2 of a trust is required under this act before the death
3 of the settlor, the trustee ~~must also~~ may give notice
4 to any ~~other~~ beneficiary ~~who has sent~~ from whom the
5 trustee has received a written request for notice if
6 the trustee has the written consent of the settlor.

7
8 (b) Whenever notice to qualified beneficiaries
9 of a trust is required under this act after the death
10 of the settlor, the trustee shall give notice to any
11 beneficiary from whom the trustee has received a
12 written request for notice unless the terms of the
13 trust specify otherwise.

14
15 (c) A charitable organization expressly
16 ~~designated~~ mandated to receive distributions under the
17 terms of a charitable trust or a person appointed to
18 enforce a trust created for the care of an animal or
19 another noncharitable purpose as provided in W.S. ~~4-~~
20 ~~10-408~~ ~~or~~ 4-10-409 or 4-10-410 has the rights of a
21 qualified beneficiary under this act.

22
23 (d) The attorney general of this state ~~has~~ may
24 exercise the rights of a qualified beneficiary with

1 respect to a charitable trust having its principal
2 place of administration in this state by notifying the
3 trustee by written notice.

4
5 **4-10-111. Nonjudicial settlement agreements.**

6
7 (a) For purposes of this section, "interested
8 persons" means persons whose consent would be required
9 in order to achieve a binding settlement if the
10 settlement is to be approved by the court.

11
12 (b) Except as otherwise provided in subsection
13 (c) of this section, interested persons may enter into
14 a binding nonjudicial settlement agreement with
15 respect to any matter involving a trust.

16
17 (c) A nonjudicial settlement agreement is valid
18 only to the extent it does not violate a material
19 purpose of the trust and includes terms and conditions
20 that could be properly approved by the court under
21 this act or other applicable law.

22
23 (d) Matters that may be resolved by a
24 nonjudicial settlement agreement include:

1

2

(i) The interpretation or construction of
the terms of the trust;

4

5

6

(ii) The approval of a trustee's report or
accounting;

7

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11

(iii) Direction to a trustee to refrain
from performing a particular act or the grant to a
trustee of any necessary or desirable power;

12

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(iv) The resignation or appointment of a
trustee and the determination of a trustee's
compensation;

16

17

18

(v) Transfer of a trust's principal place
of administration; and

19

20

21

(vi) Liability of a trustee for an action
relating to the trust.

22

23

24

(e) Any interested person may request the court
to approve a nonjudicial settlement agreement, to
determine whether the representation as provided in

1 article 3 of this act was adequate, and to determine
2 whether the agreement contains terms and conditions
3 the court could have properly approved.

4
5 ~~4-10-112. Rules of construction.~~

6
7 ~~The rules of construction that apply in this state to~~
8 ~~the interpretation of and disposition of property by~~
9 ~~will also apply as appropriate to the interpretation~~
10 ~~of the terms of a trust and the disposition of the~~
11 ~~trust property.~~

12 *****Staff Comment*****

13 The rules of construction provisions are
14

15
16 **ARTICLE 2**

17 **JUDICIAL PROCEEDINGS**

18
19 **4-10-201. Role of court in administration of**
20 **trust.**

21
22 (a) The court may intervene in the
23 administration of a trust to the extent its

1 jurisdiction is invoked by an interested person or as
2 provided by law.

3

4 (b) A trust is not subject to continuing
5 judicial supervision unless ordered by the court.

6

7 (c) A judicial proceeding involving a trust may
8 relate to any matter involving the trust's
9 administration, including a request for instructions,
10 an action to declare rights, or to appoint a trust
11 protector.

12

13 **4-10-202. Jurisdiction over trustee and**
14 **beneficiary.**

15

16 (a) By accepting the trusteeship of a trust
17 having its principal place of administration in this
18 state or by moving the principal place of
19 administration to this state, the trustee submits
20 personally to the jurisdiction of the courts of this
21 state regarding any matter involving the trust.

22

23 (b) With respect to their interests in the
24 trust, the beneficiaries of a trust having its

1 principal place of administration in this state are
2 subject to the jurisdiction of the courts of this
3 state regarding any matter involving the trust. By
4 accepting a distribution from such a trust, the
5 recipient submits personally to the jurisdiction of
6 the courts of this state regarding any matter
7 involving the trust.

8
9 (c) This section does not preclude other methods
10 of obtaining jurisdiction over a trustee, beneficiary
11 or other person receiving property from the trust.

12

13 **4-10-203. Subject matter jurisdiction.**

14

15 (a) The district court has exclusive
16 jurisdiction of proceedings in this state brought by a
17 trustee or beneficiary concerning the administration
18 of a trust.

19

20 (b) The district court has concurrent
21 jurisdiction with other courts of this state in other
22 proceedings involving a trust.

23

24 **4-10-204. Venue.**

1

2 (a) Except as otherwise provided in subsection s

3 (b) and (c) of this section, venue for a judicial

4 proceeding involving a trust is in the county of this

5 state in which the trust's principal place of

6 administration is or will be located and, if the trust

7 is created by will and the estate is not yet closed,

8 in the county in which the decedent's estate is being

9 administered.

10

11 (b) If a trust has no trustee, venue for a

12 judicial proceeding for the appointment of a trustee

13 is in a county of this state in which a beneficiary

14 resides, in a county in which any trust property is

15 located, and if the trust is created by will, in the

16 county in which the decedent's estate was or is being

17 administered.

18

19 (c) If the governing law of a trust designates

20 this state, the venue for judicial proceeding

21 involving a trust is in a county of this state in

22 which a beneficiary resides, in a county in which any

23 trust property is located or in a county where the

24 trustee maintains an office.

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ARTICLE 3

REPRESENTATION

4-10-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this article 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 this article is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

(c) Except as otherwise provided in W.S. ~~4-10-411~~ 4-10-413 and 4-10-602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

1

2

**4-10-302. Representation by holder of general
testamentary power of appointment.**

4

5

~~To the extent there is no conflict of interest between~~

6

The holder of a general testamentary power of

7

appointment ~~and the persons represented with respect~~

8

~~to the particular question or dispute, the holder~~ may

9

represent and bind persons whose interests, as

10

permissible appointees, takers in default, or

11

otherwise, are subject to the power.

12

13

**4-10-303. Representation by fiduciaries and
parents.**

15

16

(a) To the extent there is no conflict of

17

interest between the representative and the person

18

represented or among those being represented with

19

respect to a particular question or dispute:

20

21

(i) A conservator may represent and bind

22

the estate that the conservator controls;

23

1 (ii) A guardian may represent and bind the
2 ward if a conservator of the ward's estate has not
3 been appointed;

4
5 (iii) An agent having authority to act with
6 respect to the particular question or dispute may
7 represent and bind the principal;

8
9 (iv) A trustee may represent and bind the
10 beneficiaries of the trust;

11
12 (v) A personal representative of a
13 decedent's estate may represent and bind persons
14 interested in the estate;

15
16 (vi) A parent with legal custody may
17 represent and bind each of the parent's minor or
18 ~~unborn child~~ incapacitated children if ~~a conservator~~
19 ~~or guardian for the child~~ no legal representative has
20 been appointed. by a court for that child, unborn
21 children of that parent, the unborn descendants of
22 each child, and each minor or incapacitated descendant
23 of each child if no legal representative has been
24 appointed by a court for that descendant, to the

1 extent there is no conflict of interest between the
2 parent and the person or class of persons represented
3 with respect to a particular question or dispute; and
4

5 (vii) A beneficiary who is not a qualified
6 beneficiary shall be represented and bound by the
7 decisions, actions and omissions of the qualified
8 beneficiary through whom, or by reason of whose death
9 or exercise of a power of appointment, the beneficiary
10 will receive his interest, if any, in the trust,
11 including without limitations for the purposes of W.S.
12 4-10-802, 4-10-813, 4-10-1005 and 4-10-1009.
13

14 (b) A trustee may rely on a certificate of the
15 fiduciary described in paragraphs (a)(i) through (v)
16 of this section with regard to whether or not any such
17 conflict of interest exists.
18

19 **4-10-304. Representation by person having**
20 **substantially identical interest.**
21

22 Unless otherwise represented, a minor, incapacitated
23 or unborn individual, or a person whose identity or
24 location is unknown and not reasonably ascertainable,

1 may be represented by and bound by another having a
2 substantially identical interest with respect to the
3 particular question or dispute, but only to the extent
4 there is no conflict of interest between the
5 representative and the person represented.

6

7 **4-10-305. Appointment of representative.**

8

9 (a) If the court determines that an interest is
10 not represented under this article, or that the
11 otherwise available representation might be
12 inadequate, the court may appoint a representative to
13 receive notice, give consent and otherwise represent,
14 bind and act on behalf of a minor, incapacitated or
15 unborn individual, or a person whose identity or
16 location is unknown. A representative may be appointed
17 to represent several persons or interests.

18

19 (b) A representative may act on behalf of the
20 individual represented with respect to any matter
21 arising under this act, whether or not a judicial
22 proceeding concerning the trust is pending.

23

1 (c) In making decisions, a representative may
2 consider general benefit accruing to the living
3 members of the individual's family.

4
5 **ARTICLE 4**

6
7 **CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF**
8 **TRUST**

9
10 **4-10-401. Methods of creating trust.**

11
12 (a) A trust may be created by:

13
14 (i) Transfer of property to another person
15 as trustee during the settlor's lifetime or by will or
16 other disposition taking effect upon the settlor's
17 death;

18
19 (ii) Declaration by the owner of property
20 that the owner holds identifiable property as trustee;

21
22 (iii) Exercise of a power of appointment in
23 favor of a trustee;

24

1 (iv) The court as provided in W.S. 3-3-
2 607(a)(vi); or

3

4 (v) An agent under a power of attorney
5 where the express authority is designated with the
6 appointment document and where the trust directs
7 distribution upon the settlor's death consistent with
8 an existing will or other testamentary instrument or
9 in absence thereof in accordance with the law of
10 intestate succession as provided in W.S. 2-4-101.

11

12 **4-10-402. Title of trust property.**

13

14 (a) Property transferred to a trust shall be
15 titled:

16

17 (i) If it is real property, in accordance
18 with W.S. 34-2-122; and

19

20 (ii) If it is personal property, in:

21

22 (A) The name of the current trustee as
23 the trustee of such trust;

24

1 (B) The name of "the trustee" as the
2 trustee of such trust;

3

4 (C) The name of the nominee of the
5 trustee; or

6

7 (D) The name of the trust.

8

9 (b) Any reference to the trustee shall be deemed
10 to include any successor or substitute trustee serving
11 from time to time.

12

13 ~~4-10-402~~ 4-10-403. **Requirements for creation.**

14

15 (a) A trust is created only if:

16

17 (i) The settlor has capacity to create a
18 trust;

19

20 (ii) The settlor indicates an intention to
21 create the trust;

22

23 (iii) The trust has a definite beneficiary
24 or is:

1

2

(A) A charitable trust;

3

4

5

(B) A trust for the care of an animal,
as provided in W.S. ~~4-10-408~~ 4-10-409; or

6

7

8

(C) A trust for a noncharitable
purpose, as provided in W.S. ~~4-10-409~~ 4-10-410.

9

10

(iv) The trustee has duties to perform; and

11

12

13

(v) The same person is not the sole trustee
and sole beneficiary.

14

15

16

17

(b) A beneficiary is definite if the beneficiary
can be ascertained now or in the future, subject to
~~any applicable rule against perpetuities~~ W.S. 34-1-
139.

18

19

20

21

22

23

24

(c) A power in a trustee, trust advisor, trust
protector or other party designated in the trust
instrument 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

1 subject to the power passes to the persons who would
2 have taken the property had the power not been
3 conferred.

4

5 ~~4-10-403~~4-10-404. **Trusts created in other**
6 **jurisdictions.**

7

8 (a) A trust not created by will is validly
9 created if its creation complies with the law of the
10 jurisdiction in which the trust instrument was
11 executed, or the law of the jurisdiction in which, at
12 the time of creation:

13

14 (i) The settlor was domiciled, had a place
15 of abode, or was a national;

16

17 (ii) A trustee was domiciled or had a place
18 of business; or

19

20 (iii) Any trust property was located.

21

22 ~~4-10-404~~4-10-405. **Trust purposes.**

23

1 A trust may be created only to the extent its purposes
2 are lawful, not contrary to public policy, and
3 possible to achieve. A trust and its terms shall be
4 for the benefit of its beneficiaries.

5

6 ~~4-10-405~~4-10-406. Charitable purposes;
7 enforcement.

8

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

14

15 (b) If the terms of a charitable trust do not
16 indicate or otherwise provide for selection of a
17 particular charitable purpose or beneficiary or if the
18 designated charitable purpose cannot be completed or
19 no longer exists, the court may select one (1) or more
20 charitable purposes or beneficiaries. The selection
21 shall be consistent with the settlor's intention to
22 the extent it can be ascertained.

23

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

4
5 ~~4-10-406~~4-10-407. **Creation of trust induced by**
6 **fraud, duress, or undue influence.**

7
8 A trust is void to the extent its creation was induced
9 by fraud, duress or undue influence.

10
11 ~~4-10-407~~4-10-408. **Evidence of oral trust.**

12
13 Except as required by a statute other than this act, a
14 trust need not be evidenced by a trust instrument, but
15 the creation of an oral trust and its terms may be
16 established only by clear and convincing evidence.

17
18 ~~4-10-408~~4-10-409. **Trust for care of animal.**

19
20 (a) A trust may be created to provide for the
21 care of an animal alive during the settlor's lifetime.
22 The trust terminates upon the death of the animal or,
23 if the trust was created to provide for the care of

1 more than one (1) animal alive during the settlor's
2 lifetime, upon the death of the last surviving animal.

3

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

11

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

21

22 ~~4-10-409~~4-10-410. **Noncharitable trust without**
23 **ascertainable beneficiary.**

24

1 (a) Except as otherwise provided in W.S. ~~4-10-~~
2 ~~408~~4-10-409 or by another statute, the following
3 rules apply:

4 *****Staff Comment*****

5
6 The cross-reference to section 408 in
7 (a)(intro) was in the Model act and the
8 WEPAC version, but I believe it should have
9 been changed to W.S. 4-10-409, based on the
10 new W.S. 4-10-402 created by WEPAC which
11 caused renumbering of all subsequent
12 sections in this article
13

14
15 (i) A trust may be created for a noncharitable
16 purpose without a definite or definitely
17 ascertainable beneficiary or for a noncharitable
18 but otherwise valid purpose to be selected by the
19 trustee. ~~The trust may not be enforced for more~~
20 ~~than 21 years.~~
21

22 *****Staff Comment*****

23
24 This last sentence in (a)(i) was stricken by
25 LSO because it appeared to have been drafted
26 to conform with the current rule against
27 perpetuities, W.S. 34-1-139, which is
28 proposed for amendment in this legislation.
29

30 (ii) A trust authorized by this section may
31 be enforced by a trust advisor, trust protector,
32 person appointed in the terms of the trust or, if no

1 person is so appointed, by a person appointed by the
2 court.

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

13

14 ~~4-10-410~~4-10-411. **Modification or termination of**
15 **trust; proceedings for approval or disapproval.**

16

17 (a) In addition to the methods of termination
18 prescribed by W.S. ~~4-10-411 through 4-10-414~~4-10-412
19 through 4-10-415, a trust terminates to the extent the
20 trust is revoked or expires pursuant to its terms, no
21 material purpose of the trust remains to be achieved
22 or the purposes of the trust have become unlawful,
23 contrary to public policy or impossible to achieve.

24

1 (b) A proceeding to approve or disapprove a
2 proposed modification or termination under W.S. ~~4-10-~~
3 ~~411 through 4-10-416~~4-10-412 through 4-10-417, or
4 trust combination or division under W.S. ~~4-10-417~~4-10-
5 418, may be commenced by a trustee or beneficiary, and
6 a proceeding to approve or disapprove a proposed
7 modification or termination under W.S. ~~4-10-411~~4-10-
8 412 may be commenced by the settlor. The settlor of a
9 charitable trust may maintain a proceeding to modify
10 the trust under W.S. ~~4-10-413~~4-10-414.

11

12 ~~4-10-411~~4-10-412. **Modification or termination of**
13 **noncharitable irrevocable trust by consent.**

14

15 (a) A noncharitable irrevocable trust may be
16 modified or terminated upon consent of the settlor and
17 all beneficiaries, even if the modification or
18 termination is inconsistent with a material purpose of
19 the trust. A settlor's power to consent to a
20 modification or trust's termination of a trust may be
21 exercised by an agent under a power of attorney only
22 to the extent expressly authorized by the power of
23 attorney or the terms of the trust or, if no agent is
24 so authorized, then by the settlor's conservator or

1 guardian or, if none, then by the settlor's
2 conservator or guardian, in each case with the
3 approval of the court supervising the conservatorship
4 or guardianship ~~if an agent is not so authorized; or~~
5 ~~by the settlor's guardian with the approval of the~~
6 ~~court supervising the [guardianship] if an agent~~ upon
7 a finding by the court that such action is not ~~so~~
8 authorized and a conservator has not been appointed
9 inconsistent with the settlor's purpose or intent.

10
11 (b) A non-charitable irrevocable trust may be
12 modified or terminated by a trust protector provided
13 that the terms of the trust authorize a protector and
14 grant the trust protector the power to modify or
15 terminate the trust.

16
17 ~~(b)~~ (c) A noncharitable irrevocable trust may be
18 terminated upon consent of all of the beneficiaries if
19 the court concludes that continuance of the trust is
20 not necessary to achieve any material purpose of the
21 trust. A noncharitable irrevocable trust may be
22 modified upon consent of all of the beneficiaries if
23 the court concludes that modification is not
24 inconsistent with a material purpose of the trust.

1

2 ~~(e)~~(d) A spendthrift provision in the terms of
3 the trust is not presumed to constitute a material
4 purpose of the trust for purposes of this section.

5

6 ~~(d)~~(e) Upon termination of a trust under
7 subsection (a), ~~or~~ (b) or (c) of this section, the
8 trustee shall distribute the trust property as
9 provided in the terms of the trust or in default of
10 such terms of the trust as agreed by all the
11 beneficiaries.

12

13 ~~(e)~~(f) If not all the beneficiaries consent to
14 a proposed modification or termination of the trust
15 under subsection (a), ~~or~~ (b) or (c) of this section,
16 the modification or termination may be approved by the
17 court if the court is satisfied that:

18

19 (i) If all of the beneficiaries had
20 consented, the trust could have been modified or
21 terminated under this section; and

22

23 (ii) The interests of a beneficiary who
24 does not consent will be adequately protected.

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~~4-10-412~~4-10-413. **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 shall 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.

~~4-10-413~~4-10-414. **Cy pres.**

1

2 (a) Except as otherwise provided in ~~subsection~~
3 ~~(b) of this section~~ the terms of the trust, if a
4 particular charitable purpose becomes unlawful,
5 impracticable, impossible to achieve, or wasteful:

6

7 (i) The trust does not fail, in whole or in
8 part;

9

10 (ii) The trust property does not revert to
11 the settlor or the settlor's successors in interest;
12 and

13

14 (iii) The court may apply cy pres to modify
15 or terminate the trust by directing that the trust
16 property be applied or distributed, in whole or in
17 part, in a manner consistent with the settlor's
18 charitable purposes.

19

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

1

2

~~(i) The trust property is to revert to the settlor and the settlor is still living; or~~

4

5

~~(ii) Fewer than twenty one (21) years have elapsed since the date of the trust's creation.~~

7

8

~~4-10-414~~4-10-415. **Modification or termination of uneconomic trust.**

9

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21

~~(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than fifty thousand dollars (\$50,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.~~If the fair market value of a trust is less than one hundred fifty thousand dollars (\$150,000.00), the trustee may terminate the trust by the following procedure:

22

23

24

25

26

27

28

(i) The trustee shall determine a plan of distribution that agrees, as nearly as possible, with the purposes of the trust;

(ii) The trustee shall give notice to all qualified beneficiaries of his intent to distribute the assets in accordance with the plan unless a

1 qualified beneficiaries objects within twenty (20)
2 days after the date of the notice;

3
4 (iii) If no objection is received within
5 twenty (20) days after the date of the notice, the
6 trustee shall proceed to distribute the trust assets
7 in accordance with the plan;

8
9 (iv) If the trustee receives a written
10 objection to the plan within twenty (20) days of the
11 date of the notice, the trustee shall not distribute
12 the assets of the trust, but may then petition the
13 court for an order authorizing distribution in
14 accordance with the plan. The court shall have plenary
15 authority to approve, modify or reject the trustee's
16 petition.

17
18 (b) ~~The court may modify or terminate a trust or~~
19 ~~remove the trustee and appoint a different trustee if~~
20 ~~it determines that the value of the trust property is~~
21 ~~insufficient to justify the cost of administration.~~The
22 existence of a spendthrift or similar provision shall
23 not affect the trustee's powers under this section
24 unless the trust instrument specifically provides that

1 the trustee shall not have the power to terminate the
2 trust.

3

4 (c) ~~Upon termination of a trust under this~~
5 ~~section, the trustee shall distribute the trust~~
6 ~~property in a manner consistent with the purposes of~~
7 ~~the trust.~~ This section does not apply to an easement
8 for conservation or preservation.

9

10 ~~4-10-415~~ 4-10-416. **Reformation to correct**
11 **mistakes.**

12

13 The court may reform the terms of a trust, even if
14 unambiguous, to conform the terms to the settlor's
15 intention if it is proved by clear and convincing
16 evidence that both the settlor's intent and the terms
17 of the trust were affected by a mistake of fact or
18 law, whether in expression or inducement.

19

20 ~~4-10-416~~ 4-10-417. **Modification to achieve**
21 **settlor's tax objectives.**

22

23 To achieve the settlor's tax objectives, the court may
24 modify the terms of a trust in a manner that is not

1 contrary to the settlor's probable intention as proved
2 by a preponderance of the evidence. The court may
3 provide that the modification has retroactive effect.

4
5 ~~4-10-417~~4-10-418. **Combination and division of**
6 **trusts.**

7
8 After notice to the qualified beneficiaries, a trustee
9 may combine two (2) or more trusts into a single trust
10 or divide a trust into two (2) or more separate
11 trusts, if the result does not impair the rights of
12 any beneficiary or adversely affect achievement of the
13 purposes of the trust.

14
15 **ARTICLE 5**

16
17 **CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY**
18 **TRUSTS**

19
20 **4-10-501. Rights of beneficiary's creditor or**
21 **assignee.**

22
23 To the extent a beneficiary's interest is not
24 protected by a spendthrift provision, the court may

1 authorize a creditor or assignee of the beneficiary to
2 reach the beneficiary's interest by attachment of
3 present or future distributions to, or for the benefit
4 of, the beneficiary or by other means. The court may
5 limit the award to such relief as is appropriate under
6 the circumstances.

7
8 **4-10-502. Spendthrift provision.**

9
10 (a) A spendthrift provision is valid only if it
11 restrains both voluntary and involuntary transfers of
12 a beneficiary's interest.

13
14 (b) A term of a trust providing that the
15 interest of a beneficiary is held subject to a
16 "spendthrift trust," or words of similar import, is
17 sufficient to restrain both voluntary and involuntary
18 transfers of the beneficiary's interest.

19
20 (c) Other than by valid disclaimer under W.S. 2-
21 1-401, a beneficiary may not transfer an interest in a
22 trust in violation of a valid spendthrift provision
23 and, except as otherwise provided in this article, a
24 creditor or assignee of the beneficiary may not reach

1 the interest or a distribution by the trustee before
2 its receipt by the beneficiary.

3

4 **4-10-503. Exceptions to spendthrift provision.**

5

6 (a) As used in this section, "child" includes
7 any person for whom an order or judgment for child
8 support has been entered in this or another state.

9

10 (b) Even if a trust contains a spendthrift
11 provision, a beneficiary's child, ~~spouse, or former~~
12 ~~spouse~~ who has a judgment or court order against the
13 beneficiary for support or maintenance, or a judgment
14 creditor who has provided services for the protection
15 of a beneficiary's interest in the trust, may obtain
16 from a court an order attaching present or future
17 distributions to, or for the benefit of, the
18 beneficiary.

19

20 ~~(c) A spendthrift provision is unenforceable~~
21 ~~against a claim of this state or the United States to~~
22 ~~the extent a statute of this state or federal law so~~
23 ~~provides.~~

24

1 **4-10-504. Discretionary trusts; effect of**
2 **standard.**

3
4 ~~(a) As used in this section, "child" includes~~
5 ~~any person for whom an order or judgment for child~~
6 ~~support has been entered in this or another state.~~

7
8 ~~b) Except as otherwise provided in subsection~~
9 ~~(c) of this section, Whether or not a trust contains a~~
10 ~~spendthrift provision, a creditor of a beneficiary may~~
11 ~~not compel a distribution that is subject to the~~
12 ~~trustee's discretion, even if:~~

13
14 (i) The discretion is expressed in the form
15 of a standard of distribution; or

16
17 (ii) The trustee has abused the discretion.

18
19 ~~(c) To the extent a trustee has not complied~~
20 ~~with a standard of distribution or has abused a~~
21 ~~discretion:~~

22
23 ~~(i) A distribution may be ordered by the~~
24 ~~court to satisfy a judgment or court order against the~~

1 ~~beneficiary for support or maintenance of the~~
2 ~~beneficiary's child, spouse, or former spouse; and~~

3
4 ~~(ii) The court shall direct the trustee to~~
5 ~~pay to the child, spouse, or former spouse such amount~~
6 ~~as is equitable under the circumstances but not more~~
7 ~~than the amount the trustee would have been required~~
8 ~~to distribute to or for the benefit of the beneficiary~~
9 ~~had the trustee complied with the standard or not~~
10 ~~abused the discretion.~~

11 ~~(d)~~ (b) This section shall not limit the right of
12 a beneficiary to maintain a judicial proceeding
13 against a trustee for an abuse of discretion or
14 failure to comply with a standard for distribution.

15
16 **4-10-505. Creditor's claim against settlor.**

17
18 (a) Whether or not the terms of a trust contain
19 a spendthrift provision, the following rules apply:

20
21 (i) During the lifetime of the settlor, the
22 property of a revocable trust is subject to claims of
23 the settlor's creditors;

24

1 (ii) With respect to an irrevocable trust,
2 a creditor or assignee of the settlor may reach the
3 maximum amount that can be distributed to or for the
4 settlor's benefit. If a trust has more than one (1)
5 settlor, the amount the creditor or assignee of a
6 particular settlor may reach may not exceed the
7 settlor's interest in the portion of the trust
8 attributable to that settlor's contribution;

9
10 (iii) After the death of a settlor, and
11 subject to the settlor's right to direct the source
12 from which liabilities will be paid, the property of a
13 trust that was revocable at the settlor's death is
14 subject to claims of the settlor's creditors, costs of
15 administration of the settlor's estate, the expenses
16 of the settlor's funeral and disposal of remains and
17 statutory allowances as provided in W.S. 2-5-101 and
18 2-5-103 to a surviving spouse and children to the
19 extent the settlor's probate estate is inadequate to
20 satisfy those claims, costs of administration,
21 expenses and allowances as provided in W.S. 2-5-101
22 and 2-5-103.

23
24 (b) For purposes of this section:

1

2 (i) During the period the power may be
3 exercised, the holder of a power of withdrawal is
4 treated in the same manner as the settlor of a
5 revocable trust to the extent of the property subject
6 to the power; and

7

8 (ii) Upon the lapse, release or waiver of
9 the power, the holder is treated as the settlor of the
10 trust only to the extent the value of the property
11 affected by the lapse, release or waiver exceeds the
12 greater of the amount specified in Section 2041(b)(2)
13 or 2514(e) of the Internal Revenue Code of 1986, or
14 Section 2503(b) of the Internal Revenue Code of 1986,
15 in each case as in effect on July 1, 2003.

16

17 **4-10-506. Limitation on action by creditors.**

18

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

22

23 (i) Three (3) years after the settlor's
24 death;

1

2 (ii) Ninety (90) days after the trustee
3 sent the person a copy of the trust instrument and a
4 notice informing the person of the trust's existence,
5 of the trustee's name and address and of the time
6 allowed for commencing a proceeding;

7

8 (iii) Ninety (90) days after a notice of
9 the intent of the trustee to have the property of the
10 settlor distributed as permitted under the terms of
11 the trust has been published for two (2) consecutive
12 weeks in a newspaper of general circulation in the
13 county or counties where venue of the trust is
14 properly established as provided in W.S. 4-10-204; or

15

16 (iv) Ninety (90) days after known creditors
17 have been mailed notice, by certified mail return
18 receipt requested. The notice shall inform the
19 creditor:

20

21 (A) Of the trust's existence;

22

23 (B) Of the trustee's name and
24 address;

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(C) That the creditor shall make all claims to the trustee within thirty (30) days of the date of mailing of the notice; and

(D) That time allowed for commencing a proceeding to contest the validity of a trust or of the proposed distribution of the trustee is one hundred twenty (120) days from the date of mailing of the notice.

(b) A person failing to file his claim or to commence a judicial proceeding to contest the validity of a trust within the times provided is forever prohibited from making any claim against the assets of the settlor's trust or commencing any judicial proceeding against the settlor or the assets of the settlor's trust.

*****Staff Comment*****

The timelines established in this paragraph (a)(ii) through (iv) of this section are inconsistent with the timeline established in W.S. 4-10-604(a)(ii), on page 64. Additionally, the timeline in subparagraph (a)(iv)(D) of this section appears inconsistent with the rest of the

1 subsection. It is agreed that the timelines
2 in (a) (iv) and (a) (iv) (D) need to agree.

3

4

5

~~4-10-506~~4-10-507. **Overdue distribution.**

6

7 Whether or not a trust contains a spendthrift
8 provision, a creditor or assignee of a beneficiary may
9 reach a mandatory distribution of income or principal,
10 including a distribution upon termination of the
11 trust, if the trustee has not made the distribution to
12 the beneficiary within a reasonable time after the
13 ~~designated~~mandated distribution date.

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ARTICLE 6

REVOCABLE TRUSTS

1 **4-10-601. Capacity of settlor of revocable**
2 **trust.**

3

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

8

9 **4-10-602. Revocation or amendment of revocable**
10 **trust.**

11

12 (a) ~~Unless~~ Except to the extent that the terms
13 of a trust expressly provide that the trust is
14 ~~irrevocable~~ revocable or amendable, the settlor may
15 not revoke or amend the trust. ~~This subsection does~~
16 ~~not apply to a trust created under an instrument~~
17 ~~executed before July 1, 2003.~~

18

19 (b) If a revocable trust is created or funded by
20 more than one (1) settlor:

21

22 (i) To the extent the trust consists of
23 community property, the trust may be revoked by either

1 spouse acting alone but may be amended only by joint
2 action of both spouses; and

3

4 (ii) To the extent the trust consists of
5 property other than community property, each settlor
6 may revoke the trust with regard the portion of the
7 trust property attributable to that settlor's
8 contribution; however, the trust may only be amended
9 by joint action of all settlors.

10

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

13

14 (i) By substantial compliance with a method
15 provided in the terms of the trust; or

16

17 (ii) If the terms of the trust do not
18 provide a method, or the method provided in the trust
19 is not ~~expressly~~ [LSO deletion] made exclusive, by:

20

21 (A) A ~~later will or codicil that~~
22 statement expressly ~~refers to the trust or specifically~~
23 ~~devises property that would otherwise have passed according to~~
24 ~~the terms of the trust~~ amending or revoking the trust in a

1 writing signed by the settlor or in the settlor's
2 will; or

3

4 (B) Any other method manifesting clear
5 and convincing evidence of the settlor's intent.

6

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

10

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

16

17 (f) Except to the extent otherwise provided in
18 the terms of the trust, a power to revoke a trust
19 includes the power to amend the trust.

20

21 ~~(f)~~(g) A conservator of the settlor or, if no
22 conservator has been appointed, a guardian of the
23 settlor may exercise a settlor's powers with respect
24 to revocation, amendment, or distribution of trust

1 property only with the approval of the court
2 supervising the conservatorship or guardianship and
3 finding that it meets the settlor's purpose or intent
4 in establishing the trust.

5
6 ~~(g)~~(h) A trustee who does not know or have
7 actual knowledge that a trust has been revoked or
8 amended is not liable to the settlor or settlor's
9 successors in interest for distributions made and
10 other actions taken on the assumption that the trust
11 had not been amended or revoked.

12
13 **4-10-603. Settlor's powers; powers of**
14 **withdrawal.**

15
16 (a) While a trust is revocable and the settlor
17 has capacity to revoke the trust, rights of the
18 beneficiaries are subject to the control of, and the
19 duties of the trustee are owed exclusively to, the
20 settlor.

21
22 (b) If a revocable trust has more than one (1)
23 settlor, the duties of the trustee are owed to all of
24 the settlors having capacity to revoke the trust.

1

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

7

8 **4-10-604. Limitation on action contesting**
9 **validity of revocable trust; distribution of trust**
10 **property.**

11

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

15

16 (i) Three (3) years after the settlor's
17 death; or

18

19 (ii) One hundred twenty (120) days after
20 the trustee sent the person a copy of the trust
21 instrument and a notice informing the person of the
22 trust's existence, of the trustee's name and address
23 and of the time allowed for commencing a proceeding.

24

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

6
7 (i) The trustee knows of a pending judicial
8 proceeding contesting the validity of the trust; or

9
10 (ii) A potential contestant has notified
11 the trustee of a possible judicial proceeding to
12 contest the trust and a judicial proceeding is
13 commenced within sixty (60) days after the contestant
14 sent the notification.

15
16 (c) A beneficiary of a trust that is determined
17 to have been invalid is liable to return any
18 distribution received.

19
20 **ARTICLE 7**

21
22 ~~OFFICE OF TRUSTEE~~

23 TRUSTEES, TRUST ADVISORS AND TRUST PROTECTORS

24

1 **4-10-701. Accepting or declining trusteeship.**

2

3 (a) Except as otherwise provided in subsection
4 (c) of this section, a person designated as trustee
5 accepts the trusteeship:

6

7 (i) By substantially complying with a
8 method of acceptance provided in the terms of the
9 trust; or

10

11 (ii) If the terms of the trust do not
12 provide a method or the method provided in the trust
13 is not made exclusive, by accepting delivery of the
14 trust property, exercising powers or performing duties
15 as trustee, or otherwise indicating acceptance of the
16 trusteeship.

17

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

24

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

3

4 (i) Act to preserve the trust property if,
5 within a reasonable time after acting, the person
6 sends a written rejection of the trusteeship to the
7 settlor or, if the settlor is dead or lacks capacity,
8 to a qualified beneficiary; and

9

10 (ii) Inspect or investigate trust property
11 to determine potential liability under environmental
12 or other law or for any other purpose.

13

14 **4-10-702. Trustee's bond.**

15

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

22

1 (b) The court may specify the amount of a bond,
2 its liabilities, and whether sureties are necessary.
3 The court may modify or terminate a bond at any time.
4

5 (c) A regulated financial services institution
6 qualified to do trust business in this state need not
7 give bond, even if required by the terms of the trust.
8

9 **4-10-703. Cotrustees.**

10
11 (a) Cotrustees who are unable to reach a
12 unanimous decision may act by majority decision.
13

14 (b) If a vacancy occurs in a cotrusteeship, the
15 remaining cotrustees may act for the trust.
16

17 (c) A cotrustee shall participate in the
18 performance of a trustee's function unless the
19 cotrustee is unavailable to perform the function
20 because of absence, illness, disqualification under
21 other law or other temporary incapacity or the
22 cotrustee has properly delegated the performance of
23 the function to another trustee.
24

1 (d) If a cotrustee is unavailable to perform
2 duties because of absence, illness, disqualification
3 under other law or other temporary incapacity, and
4 prompt action is necessary to achieve the purposes of
5 the trust or to avoid injury to the trust property,
6 the remaining cotrustee or a majority of the remaining
7 cotrustees may act for the trust.

8
9 (e) A trustee may ~~not~~ delegate to a cotrustee
10 the performance of any function ~~the settlor reasonably~~
11 ~~expected the trustees to perform jointly~~ unless the
12 delegation is expressly prohibited in the terms of the
13 trust. Unless a delegation was irrevocable, a trustee
14 may revoke a delegation previously made.

15
16 (f) Except as otherwise provided in subsection
17 (g) of this section, a trustee who does not join in an
18 action of another trustee is not liable for the
19 action.

20
21 (g) Each trustee shall exercise reasonable care
22 to:

23

1 (i) Prevent a cotrustee from committing a
2 serious breach of trust; and

3

4 (ii) Compel a cotrustee to redress a
5 serious breach of trust.

6

7 (h) A dissenting trustee who joins in an action
8 at the direction of the majority of the trustees and
9 who notified any cotrustee of the dissent at or before
10 the time of the action is not liable for the action,
11 unless the action is a serious breach of trust.

12

13 **4-10-704. Vacancy in trusteeship; appointment of**
14 **successor.**

15

16 (a) A vacancy in a trusteeship occurs if:

17

18 (i) A person designated as trustee rejects
19 the trusteeship;

20

21 (ii) A person designated as trustee cannot
22 be identified or does not exist;

23

24 (iii) A trustee resigns;

1

2

(iv) A trustee is disqualified or removed;

3

4

(v) A trustee dies; or

5

6

(vi) A guardian or conservator is appointed
for an individual serving as trustee.

8

9

(b) If one (1) or more cotrustees remain in
office, a vacancy in a trusteeship need not be filled.
A vacancy in a trusteeship shall be filled if the
trust has no remaining trustee.

13

14

15

16

17

18

19

20

21

22

23

24

(i) By a person designated in the terms of
the trust to act as successor trustee or in accordance
with a manner specified in the trust;

(ii) By a person appointed by unanimous
agreement of the qualified beneficiaries; or

1 (iii) By a person appointed by the court.

2

3 (d) A vacancy in a trusteeship of a charitable
4 trust that is required to be filled shall be filled in
5 the following order of priority:

6

7 (i) By a person designated in the terms of
8 the trust to act as successor trustee or in accordance
9 with a manner specified in the trust;

10

11 (ii) By a person selected by the charitable
12 organization expressly designated to receive
13 distributions and noncharitable beneficiary, if any
14 named, under the terms of the trust if the attorney
15 general of the state of Wyoming concurs in the
16 selection; or

17

18 (iii) By a person appointed by the court.

19

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

1

2

4-10-705. Resignation of trustee.

3

4

(a) For a revocable living trust, a trustee may
resign:

5

6

7

(i) Upon at least thirty (30) days notice
to the ~~qualified beneficiaries, the~~ settlor, if
living, and all other cotrustees; or

8

9

10

11

(ii) With the approval of the court.

12

13

(b) For an irrevocable, testamentary or
charitable trust, a trustee may resign upon:

14

15

16

(i) At least thirty (30) days notice to all
qualified beneficiaries and all other cotrustees; or

17

18

19

(ii) With approval of the court.

20

21

~~(b)~~(c) In approving a resignation, the court may
issue orders and impose conditions reasonably
necessary for the protection of the trust property.

22

23

24

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

5
6 **4-10-706. Removal of trustee.**

7
8 (a) The settlor, a cotrustee or a qualified
9 beneficiary may request the court to remove a trustee,
10 or a trustee may be removed by the court on its own
11 initiative as outlined in subsection (b) of this
12 section.

13
14 (b) The court may remove a trustee if:

15
16 (i) The trustee has committed a serious
17 breach of trust;

18
19 (ii) Lack of cooperation among cotrustees
20 substantially impairs the administration of the trust;

21
22 (iii) Because of unfitness, unwillingness
23 or persistent failure of the trustee to administer the
24 trust effectively, the court determines that removal

1 of the trustee best serves the interests of the
2 beneficiaries; or

3

4 (iv) There has been a substantial change of
5 circumstances, or removal is requested by all of the
6 qualified beneficiaries, and the court finds that
7 removal of the trustee best serves the interests of
8 all of the beneficiaries and is not inconsistent with
9 a material purpose of the trust, and a suitable
10 cotrustee or successor trustee is available.

11

12 (c) Pending a final decision on a request to
13 remove a trustee, or in lieu of or in addition to
14 removing a trustee, the court may order such
15 appropriate relief under W.S. 4-10-1001(b) as may be
16 necessary to protect the trust property or the
17 interests of the beneficiaries.

18

19 **4-10-707. Delivery of property by former**
20 **trustee.**

21

22 (a) Unless a cotrustee remains in office or the
23 court otherwise orders, and until the trust property
24 is delivered to a successor trustee or other person

1 entitled to it, a trustee who has resigned or been
2 removed has the duties of a trustee and the powers
3 necessary to protect the trust property.

4
5 (b) A trustee who has resigned or been removed
6 shall proceed expeditiously to deliver the trust
7 property within the trustee's possession to the
8 cotrustee, successor trustee or other person entitled
9 to it.

10
11 **4-10-708. Compensation of trustee.**

12
13 (a) If the terms of a trust do not specify the
14 trustee's compensation, a trustee is entitled to
15 compensation that is reasonable under the
16 circumstances. The trustee shall give notice in
17 advance of any change in the method or rate of the
18 trustee's compensation to the qualified beneficiaries.

19
20 (b) If the terms of a trust specify the
21 trustee's compensation, the trustee is entitled to be
22 compensated as specified, but the court may allow more
23 or less compensation if:

24

1 (i) The duties of the trustee are
2 substantially different from those contemplated when
3 the trust was created; or

4
5 (ii) The compensation specified by the
6 terms of the trust would be unreasonably low or high.

7
8 (c) The trustee shall be entitled to additional
9 compensation on agreement of all qualified
10 beneficiaries.

11
12 **4-10-709. Reimbursement of expenses.**

13
14 (a) A trustee is entitled to be reimbursed out
15 of the trust property, with interest, as appropriate,
16 for:

17
18 (i) Expenses that were properly incurred in
19 the administration of the trust; and

20
21 (ii) To the extent necessary to prevent
22 unjust enrichment of the trust, expenses that were not
23 properly incurred in the administration of the trust.

24

1 (b) An advance by the trustee of money for the
2 protection of the trust gives rise to a lien against
3 trust property to secure reimbursement with reasonable
4 interest.

5
6 **4-10-710. Trust protector.**

7
8 (a) Unless the trust instrument restricts or
9 provides additional powers and duties or such powers
10 and duties are modified by a judicial order appointing
11 a trust protector, the powers of the trust protector
12 shall include the following:

13
14 (i) To modify or amend the trust instrument
15 to achieve favorable tax status or because of changes
16 in the Internal Revenue Code, state law or the rulings
17 and regulations implementing such changes;

18
19 (ii) To amend or modify the trust
20 instrument to take advantage of changes in the rule
21 against perpetuities, laws governing restraints on
22 alienation, or other state laws restricting the terms
23 of the trust, the distribution of trust property, or
24 the administration of the trust;

1

2

(iii) To increase or decrease the interests
of any beneficiaries to the trust;

4

5

(iv) To appoint a successor trust
protector;

7

8

(v) To review and approve the accountings
of a trustee;

10

11

(vi) To change the governing law or
principal place of administration of the trust;

13

14

(vii) To remove and replace any trust
advisor for the reasons stated in the trust
instrument;

17

18

(viii) To remove a trustee, cotrustee or
successor trustee, for the reasons stated in the trust
instrument, and appoint a replacement;

21

22

(ix) To interpret terms of the trust
instrument at the request of the trustee;

24

1 (x) To advise the trustee or cotrustee on
2 matters concerning any beneficiary;

3
4 (xi) To direct, consent or disapprove a
5 trustee's or cotrustee's action or inaction in making
6 distributions to beneficiaries; and

7
8 (xii) To grant a power of appointment to
9 one (1) or more trust beneficiaries or terminate or
10 amend any power of appointment granted by the trust;
11 however, an amendment or grant of a power of
12 appointment may not grant a beneficial interest to any
13 person or class of persons not specifically provided
14 for under the trust instrument or to the trust
15 protector, the trust protector's estate or for the
16 benefit of the creditors of the trust protector. The
17 powers of a trust protector may or may not be
18 exercised in the sole and absolute discretion of the
19 trust protector and shall be binding on all
20 fiduciaries, beneficiaries and any other interested
21 persons.

22
23 **4-10-711. Trust protector as a fiduciary.**

24

1 Trust protectors are fiduciaries to the extent of the
2 powers, duties and discretions granted to them under
3 the terms of the trust instrument.

4
5 **4-10-712. Trust advisor.**

6
7 (a) The powers and discretions of a trust
8 advisor shall be provided in the trust instrument and
9 may, in the best interests of the trust, be exercised
10 or not exercised in the sole and absolute discretion
11 of the trust advisor and shall be binding on all other
12 persons. Such powers and discretions may include the
13 following:

14
15 (i) To perform a specific duty or function
16 that would normally be performed by the trustee,
17 cotrustee or trust protector;

18
19 (ii) To advise the trustee or cotrustee on
20 matters concerning any beneficiary;

21
22 (iii) To direct, consent or disapprove a
23 trustee's or cotrustee's action or inaction relating
24 to investments of trust assets;

1

2

(iv) To direct the acquisition, disposition
or retention of any trust investment; and

4

5

(v) To direct, consent or disapprove a
trustee's or cotrustee's action or inaction in making
distributions to beneficiaries.

8

*****Staff Comment*****

9 The introductory sentence in subsection (a)
10 states the powers and discretions of the
11 trust advisor "shall be binding on all other
12 persons." Paragraph (a)(ii) includes the
13 power to advise the trustee or cotrustee. Is
14 the intent to make that advice binding on
15 the trustee or cotrustee?
16

17

18

4-10-713. Trust advisor as a fiduciary.

19

20 Trust advisors are fiduciaries to the extent of the
21 powers, duties and discretions granted to them under
22 the terms of the trust instrument.

23

24

4-10-714. Trust advisor and trust protector
25 **subject to district court jurisdiction.**

26

1 By accepting appointment to serve as a trust advisor
2 or trust protector of a trust that is subject to the
3 laws of the state of Wyoming, the trust advisor or the
4 trust protector submits to the jurisdiction of the
5 courts of the state of Wyoming even if investment
6 advisory agreements or other related agreements
7 provide otherwise, and the trust advisor or trust
8 protector may be made a party to any action or
9 proceeding if issues relate to a decision, action or
10 inaction of the trust advisor or trust protector.

11

12 **4-10-715. Excluded fiduciary liability from**
13 **actions of trust advisor and trust protector.**

14

15 Unless the trust instrument states otherwise, an
16 excluded fiduciary is relieved of any duty or
17 responsibility to review the actions of a trust
18 advisor or trust protector duly named and appointed
19 under the trust instrument. The excluded fiduciary is
20 further relieved of any liability resulting from
21 breach of trust, failure to act, liability resulting
22 from actions taken or any loss resulting from
23 compliance with a direction by a trust advisor or
24 trust protector.

1

2 4-10-716. Power of trust advisor and trust
3 protector to act after death or incapacity of grantor.

4

5 Unless the trust instrument states otherwise, the
6 power and authority of a trust advisor or trust
7 protector shall not lapse at the death or incapacity
8 of the grantor.

9

10 4-10-717. Excluded fiduciary liability for loss
11 of action or inaction of trust advisor and trust
12 protector.

13

14 If the trust instrument appoints a trust protector or
15 trust advisor, the excluded fiduciary is not liable
16 for any loss resulting from any action or inaction of
17 the trust advisor or protector.

18

19

ARTICLE 8

20

21

DUTIES AND POWERS OF TRUSTEE

22

23

4-10-801. Duty to administer trust.

24

1 Upon acceptance of a trusteeship, the trustee shall
2 administer the trust in good faith, in accordance with
3 its terms and purposes and the interests of the
4 beneficiaries, and in accordance with this act.

5

6 **4-10-802. Duty of loyalty.**

7

8 (a) A trustee shall administer the trust solely
9 in the interests of the beneficiaries.

10

11 (b) Subject to the rights of persons dealing
12 with or assisting the trustee as provided in W.S. 4-
13 10-1012, a sale, encumbrance or other transaction
14 involving the investment or management of trust
15 property entered into by the trustee for the trustee's
16 own personal account or which is otherwise affected by
17 a conflict between the trustee's fiduciary and
18 personal interests is voidable by a beneficiary
19 affected by the transaction unless:

20

21 (i) The transaction was authorized by the
22 terms of the trust;

23

1 (ii) The transaction was approved by the
2 court;

3

4 (iii) The beneficiary did not commence a
5 judicial proceeding within the time allowed by W.S. 4-
6 10-1005;

7

8 (iv) The beneficiary consented to the
9 trustee's conduct, ratified the transaction or
10 released the trustee pursuant to W.S. 4-10-1009; or

11

12 (v) The transaction involves a contract
13 entered into or claim acquired by the trustee before
14 the person became or contemplated becoming trustee.

15

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

21

22 (i) The trustee's spouse;

23

1 (ii) The trustee's descendants, siblings,
2 parents, or their spouses;

3

4 (iii) An agent or attorney of the trustee;
5 or

6

7 (iv) A corporation or other person or
8 enterprise in which the trustee, or a person that owns
9 a significant interest in the trustee, has an interest
10 that might affect the trustee's best judgment.

11

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

20

21 (e) A transaction not concerning trust property
22 in which the trustee engages in the trustee's
23 individual capacity involves a conflict between
24 personal and fiduciary interests if the transaction

1 concerns an opportunity properly belonging to the
2 trust.

3
4 (f) An investment by a trustee in securities of
5 an investment company or investment trust to which the
6 trustee, or its affiliate, provides services in a
7 capacity other than as trustee is not presumed to be
8 affected by a conflict between personal and fiduciary
9 interests if the investment complies with the prudent
10 investor rule ~~of~~ as specified under [LSO change]
11 article 9 of this act. The trustee may be compensated
12 by the investment company or investment trust for
13 providing those services out of fees charged to the
14 trust if, as a condition precedent to receipt of such
15 compensation, and at least annually, the trustee ~~at~~
16 ~~least annually~~ notifies the persons entitled under
17 W.S. 4-10-813 to receive a copy of the trustee's
18 annual report of the rate and method by which the
19 compensation ~~was~~ is determined by delivery of
20 prospectus or other communication.

21
22 (g) In voting shares of stock or in exercising
23 powers of control over similar interests in other
24 forms of enterprise, the trustee shall act in the best

1 interests of the beneficiaries. If the trust is the
2 sole owner of a corporation or other form of
3 enterprise, the trustee shall elect or appoint
4 directors or other managers who will manage the
5 corporation or enterprise in the best interests of the
6 beneficiaries.

7

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

10

11 (i) An agreement between a trustee and a
12 ~~beneficiary~~ majority of the qualified beneficiaries
13 relating to the appointment or compensation of the
14 trustee;

15

16 (ii) Payment of reasonable compensation to
17 the trustee;

18

19 (iii) A transaction between a trust and
20 another trust, decedent's estate, or conservatorship
21 of which the trustee is a fiduciary or in which a
22 beneficiary has an interest;

23

1 (iv) A deposit of trust money in a
2 regulated financial services institution operated by
3 the trustee; or

4
5 (v) An advance by the trustee of money for
6 the protection of the trust.

7
8 (j) The court may appoint a special fiduciary to
9 make a decision with respect to any proposed
10 transaction that might violate this section if entered
11 into by the trustee.

12
13 **4-10-803. Impartiality.**

14
15 If a trust has two (2) or more beneficiaries, the
16 trustee shall act impartially in investing, managing
17 and distributing the trust property, giving due regard
18 to the beneficiaries' respective interests.

19
20 **4-10-804. Prudent administration.**

21
22 A trustee shall administer the trust as a prudent
23 person would, by considering the purposes, terms,
24 distributional requirements and other circumstances of

1 the trust. In satisfying this standard, the trustee
2 shall exercise reasonable care, skill, and caution.

3

4 **4-10-805. Costs of administration.**

5

6 In administering a trust, the trustee may incur only
7 costs that are reasonable in relation to the trust
8 property, the purposes of the trust and the skills of
9 the trustee.

10

11 **4-10-806. Trustee's skills.**

12

13 A trustee who has special skills or expertise, or is
14 named trustee in reliance upon the trustee's
15 representation that the trustee has special skills or
16 expertise, shall use those special skills or
17 expertise.

18

19 **4-10-807. Delegation by trustee.**

20

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

1

2 (i) Selecting an agent;

3

4 (ii) Establishing the scope and terms of
5 the delegation, consistent with the purposes and terms
6 of the trust; and

7

8 (iii) Periodically reviewing the agent's
9 actions in order to monitor the agent's performance
10 and compliance with the terms of the delegation.

11

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

15

16 (c) A trustee who complies with subsection (a)
17 of this section is not liable to the beneficiaries or
18 to the trust for an action of the agent to whom the
19 function was delegated.

20

21 (d) By accepting a delegation of powers or
22 duties from the trustee of a trust that is subject to
23 the law of ~~this~~the state of Wyoming, an agent submits
24 to the jurisdiction of the courts of ~~this~~the state of

1 Wyoming even if the agency agreement provides
2 otherwise, and the agent may be made a party to any
3 action or proceeding if the issues relate to a
4 decision, action or inaction of the agent.

5

6 **4-10-808. Powers to direct.**

7

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

11

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

21

22 (c) The terms of a trust may confer upon a
23 trustee or other person, as provided in article 7 of

1 this act, a power to direct the modification or
2 termination of the trust.

3

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

11

12 **4-10-809. Control and protection of trust**
13 **property.**

14

15 A trustee shall take reasonable steps to take control
16 of and protect the trust property.

17

18 **4-10-810. Record keeping and identification of**
19 **trust property.**

20

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

23

1 (b) A trustee shall keep trust property separate
2 from the trustee's own property.

3

4 (c) Except as otherwise provided in subsection
5 (d) of this section, a trustee shall cause the trust
6 property to be designated or titled as provided in
7 W.S. 4-10-402 so that the interest of the trust, to
8 the extent feasible, appears in records maintained by
9 a party other than a trustee or beneficiary.

10

11 (d) If the trustee maintains records clearly
12 indicating the respective interests, a trustee may
13 invest as a whole the property of two (2) or more
14 separate trusts.

15

16 **4-10-811. Enforcement and defense of claims.**

17

18 A trustee shall take reasonable steps to enforce
19 claims of the trust and to defend claims against the
20 trust.

21

22 **4-10-812. Collecting trust property.**

23

24 A trustee shall take reasonable steps to compel a

1 former trustee or other person to deliver trust
2 property to the trustee, and may redress a breach of
3 trust known to the trustee to have been committed by a
4 former trustee.

5

6 **4-10-813. Duty to inform and report.**

7

8 (a) A trustee shall keep the qualified
9 beneficiaries of the trust reasonably informed about
10 the administration of the trust and of the material
11 facts necessary for them to protect their interests.
12 Unless unreasonable under the circumstances, a trustee
13 shall promptly respond to a qualified beneficiary's
14 request for information related to the administration
15 of the trust.

16

17 (b) A trustee shall comply with the following
18 provisions unless the trust instrument specifically
19 directs, limits or waives this requirement of a
20 trustee:

21

22 (i) Upon request of ~~a~~ any qualified
23 beneficiary, the trustee shall promptly furnish to the
24 beneficiary a copy of the trust instrument;

1

2 (ii) Within sixty (60) days after accepting
3 a trusteeship, the trustee shall notify the qualified
4 beneficiaries of the acceptance and of the trustee's
5 name, address and telephone number;

6

7 (iii) Within sixty (60) days after the date
8 the trustee acquires knowledge of the creation of an
9 irrevocable trust, or the date the trustee acquires
10 knowledge that a formerly revocable trust has become
11 irrevocable, whether by the death of the settlor or
12 otherwise, the trustee shall notify the qualified
13 beneficiaries of the trust's existence, of the
14 identity of the settlor or settlors, of the right to
15 request a copy of the trust instrument and of the
16 right to a trustee's report as provided in subsection
17 (c) of this section; and

18

19 (iv) The trustee shall notify the qualified
20 beneficiaries in advance of any change in the method
21 or rate of the trustee's compensation.

22

23 (c) A trustee shall send to ~~the distributees or~~
24 ~~permissible distributees of trust income or principal,~~

1 ~~and to other~~ qualified ~~or nonqualified~~ beneficiaries
2 ~~who request it~~, at least annually and at the
3 termination of the trust, a report of the trust
4 property, liabilities, receipts and disbursements,
5 including the ~~source and~~ amount of the trustee's
6 compensation, the allocation of receipts,
7 disbursements, trustee compensation and expenses of
8 administration between income and principal, a listing
9 of the trust assets and, if feasible, their respective
10 market values. Upon a vacancy in a trusteeship, unless
11 a cotrustee remains in office, a report shall be sent
12 to the qualified beneficiaries by the former trustee.
13 A personal representative, conservator or guardian of
14 a deceased or incapacitated trustee may send the
15 qualified beneficiaries a report on the trustee's
16 behalf.

17
18 (d) A beneficiary may waive the right to a
19 trustee's report or other information otherwise
20 required to be furnished under this section. A
21 beneficiary, with respect to future reports and other
22 information, may withdraw a waiver previously given.

23
24 **4-10-814. Discretionary powers; tax savings.**

1

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

9

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

13

14 (i) A person other than a settlor who is a
15 beneficiary and trustee of a trust that confers on the
16 trustee a power to make discretionary distributions to
17 or for the trustee's personal benefit may exercise the
18 power only in accordance with an ascertainable
19 standard relating to the trustee's individual health,
20 education, support or maintenance within the meaning
21 of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal
22 Revenue Code of 1986, as in effect on July 1, 2003;
23 and

24

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

5
6 (c) A power whose exercise is limited or
7 prohibited by subsection (b) of this section may be
8 exercised by a majority of the remaining trustees
9 whose exercise of the power is not so limited or
10 prohibited. If the power of all trustees is so limited
11 or prohibited, the court may appoint a special
12 fiduciary with authority to exercise the power.

13
14 (d) Subsection (b) of this section does not
15 apply to:

16
17 (i) A power held by the settlor's spouse
18 who is the trustee of a trust for which a marital
19 deduction, as defined in Section 2056(b)(5) or 2523(e)
20 of the Internal Revenue Code of 1986, as in effect on
21 July 1, 2003, was previously allowed;

22
23 (ii) Any trust during any period that the
24 trust may be revoked or amended by its settlor; or

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4-10-815. General powers of trustee.

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(iii) ~~A trust if~~ Contributions to ~~the a~~
trust that qualify for the annual exclusion under
Section 2503(c) of the Internal Revenue Code of 1986,
as in effect on July 1, 2003, and which are subject to
an annual withdrawal right.

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

(i) Powers conferred by the terms of the
trust; ~~or~~ and

(ii) Except as limited by the terms of the
trust:

(A) All powers over the trust property
which an unmarried competent owner has over
individually owned property;

(B) Any other powers appropriate to
achieve the proper investment, management and

1 distribution of the trust property; and

2

3 (C) Any other powers conferred by this
4 act.

5

6 (b) The exercise of a power under this act is
7 subject to the fiduciary duties prescribed by this
8 article.

9

10 **4-10-816. Specific powers of trustee.**

11

12 (a) Without limiting the authority conferred by
13 W.S. 4-10-815, a trustee may:

14

15 (i) Collect trust property and accept or
16 reject additions to the trust property from a
17 settlor or any other person;

18

19 (ii) Acquire or sell property, for cash or
20 on credit, at public or private sale;

21

22 (iii) Exchange, partition or otherwise
23 change the character of trust property;

24

1 (iv) Deposit trust money in an account in a
2 regulated financial services institution;

3

4 (v) Borrow money, with or without security,
5 and mortgage or pledge trust property for a period
6 within or extending beyond the duration of the
7 trust;

8

9 (vi) With respect to an interest in a
10 proprietorship, partnership, limited liability
11 company, business trust, corporation or other form
12 of business or enterprise, continue the business or
13 other enterprise and take any action that may be
14 taken by shareholders, partners, members or
15 property owners, including merging, dissolving or
16 otherwise changing the form of business
17 organization or contributing additional capital;

18

19 (vii) With respect to stocks or other
20 securities, exercise the rights of an absolute
21 owner, including the right to:

22

23 (A) Vote, or give proxies to vote,
24 with or without power of substitution, or enter into

1 or continue a voting trust agreement;

2

3 (B) Hold a security in the name of a
4 nominee or in other form without disclosure of the
5 trust so that title may pass by delivery;

6

7 (C) Pay calls, assessments and other
8 sums chargeable or accruing against the securities,
9 and sell or exercise stock subscription or conversion
10 rights;

11

12 (D) Exercise stock options and other
13 rights; and

14

15 (E) Deposit the securities with a
16 depository or other regulated financial services
17 institution.

18

19 (viii) With respect to an interest in real
20 property, construct, or make ordinary or extraordinary
21 repairs to, alterations to, or improvements in,
22 buildings or other structures, demolish improvements,
23 raze existing or erect new party walls or buildings,
24 subdivide or develop land, dedicate land to public use

1 or grant public or private easements and make or
2 vacate plats and adjust boundaries;

3

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

10

11 (x) Grant an option involving a sale, lease
12 or other disposition of trust property or acquire an
13 option for the acquisition of property, including an
14 option exercisable beyond the duration of the trust,
15 and exercise an option so acquired;

16

17 (xi) Insure the property of the trust
18 against damage or loss and insure the trustee, the
19 trustee's agents and beneficiaries against liability
20 arising from the administration of the trust;

21

22 (xii) Abandon or decline to administer
23 property of no value or of insufficient value to
24 justify its collection or continued administration;

1

2

3

(xiii) With respect to possible liability
for violation of environmental law:

4

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12

(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;

13

14

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19

(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;

20

21

22

23

24

(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;

1 (D) Compromise claims against the
2 trust which may be asserted for an alleged violation
3 of environmental law; and
4

5 (E) Pay the expense of any inspection,
6 review, abatement or remedial action to comply with
7 environmental law.
8

9 (xiv) Pay or contest any claim, settle a
10 claim by or against the trust and release, in whole or
11 in part, a claim belonging to the trust;
12

13 (xv) Pay taxes, assessments, compensation
14 of the trustee and of employees and agents of the
15 trust and other expenses incurred in the
16 administration of the trust;
17

18 (xvi) Exercise elections with respect to
19 federal, state, and local taxes;
20

21 (xvii) Select a mode of payment under any
22 employee benefit or retirement plan, annuity or life
23 insurance payable to the trustee, exercise rights
24 thereunder, including exercise of the right to

1 indemnification for expenses and against liabilities,
2 and take appropriate action to collect the proceeds;

3

4 (xviii) Make loans out of trust property,
5 including loans to a beneficiary on terms and
6 conditions the trustee considers to be fair and
7 reasonable under the circumstances, and the trustee
8 has a lien on future distributions for repayment of
9 those loans;

10

11 (xix) Pledge trust property to guarantee
12 loans made by others to the beneficiary;

13

14 (xx) Appoint a trustee to act in another
15 jurisdiction with respect to trust property located in
16 the other jurisdiction, confer upon the appointed
17 trustee all of the powers and duties of the appointing
18 trustee, require that the appointed trustee furnish
19 security and remove any trustee so appointed;

20

21 (xxi) Pay an amount distributable to a
22 beneficiary who is under a legal disability or who the
23 trustee reasonably believes is incapacitated, by
24 paying it directly to the beneficiary or applying it

1 for the beneficiary's benefit, or by:

2

3 (A) Paying it to the beneficiary's
4 conservator or, if the beneficiary does not have a
5 conservator, the beneficiary's guardian;

6

7 (B) Paying it to the beneficiary's
8 custodian under the Uniform Transfers to Minors Act ~~or~~
9 ~~custodial trustee under the Uniform Custodial Trust~~
10 ~~Act~~ [Stricken by LSO because Wyoming has not enacted
11 the UCTA] and, for that purpose, creating a
12 custodianship or custodial trust;

13

14 (C) If the trustee does not know of a
15 conservator, guardian, custodian or custodial trustee,
16 paying it to the person's agent under a power of
17 attorney or, if none, to an adult relative or other
18 person having legal or physical care or custody of the
19 beneficiary, to be expended on the beneficiary's
20 behalf; ~~or~~

21

22 (D) Managing it as a separate fund on
23 the beneficiary's behalf, subject to the beneficiary's
24 continuing right to withdraw the distribution; and

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(E) Creating or funding a plan under Section 529 of the Internal Revenue Code of 1986, in effect on July 1, 2003, for the beneficiary's benefit.

(xxii) 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;

(xxiii) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(xxiv) 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;

(xxv) Sign and deliver contracts and other

1 instruments that are useful to achieve or facilitate
2 the exercise of the trustee's powers; ~~and~~

3

4 (xxvi) Purchase and pay from trust
5 principal the premiums on life insurance; and

6

7 (xxvii) On termination of the trust,
8 exercise the powers appropriate to wind up the
9 administration of the trust and distribute the trust
10 property to the persons entitled to it.

11

12 **4-10-817. Distribution upon termination.**

13

14 (a) Upon termination or partial termination of a
15 trust, the trustee may send to the beneficiaries a
16 proposal for distribution. The right of any
17 beneficiary to object to the proposed distribution
18 terminates if the beneficiary does not notify the
19 trustee of an objection within thirty (30) days after
20 the proposal was sent but only if the proposal
21 informed the beneficiary of the right to object and of
22 the time allowed for objection.

23

24 (b) Upon the occurrence of an event terminating

1 or partially terminating a trust, the trustee shall
2 proceed expeditiously to distribute the trust property
3 to the persons entitled to it, subject to the right of
4 the trustee to retain a reasonable reserve for the
5 payment of debts, expenses, and taxes.

6
7 (c) A release by a beneficiary of a trustee from
8 liability for breach of trust is invalid to the
9 extent:

10
11 (i) It was induced by improper conduct of
12 the trustee; or

13
14 (ii) The beneficiary, at the time of the
15 release, did not know of the beneficiary's rights or
16 of the material facts relating to the breach.

17
18 **ARTICLE 9**

19
20 **UNIFORM PRUDENT INVESTOR ACT**

21
22 *****Staff Comment*****

23 The comment to the Model UTC suggests the
24 state adopt its Uniform Prudent Investor Act
25 (UPIA) as Article 9 of the UTC. Wyoming's

1 UPIA is currently found at W.S. 4-9-101 et
2 seq. This Article 9 is for the most part a
3 recodification of the Wyoming UPIA with some
4 provisions moved to Article 8, as
5 recommended by the Model UTC. Thus, this
6 Article 9 contains no stricken language or
7 underlined text to show differences between
8 Model UTC proposed language and WEPAC
9 suggestions. It merely conforms the UPIA to
10 fit within the UTC.
11

12 **4-10-901. Prudent investor rule; definitions.**

13

14 (a) Except as otherwise provided in subsection
15 (b) of this section, a trustee who invests and manages
16 trust assets owes a duty to the beneficiaries of the
17 trust to comply with the prudent investor rule set
18 forth in this article.

19

20 (b) The prudent investor rule, a default rule,
21 may be expanded, restricted, eliminated or otherwise
22 altered by the provisions of a trust. A trustee is not
23 liable to a beneficiary to the extent that the trustee
24 acted in reasonable reliance on the provisions of the
25 trust.

26

27 **4-10-902. Standard of care; portfolio strategy;**
28 **risk and return objectives.**

29

1 (a) A trustee shall invest and manage trust
2 assets as a prudent investor would, by considering the
3 purposes, terms, distribution requirements and other
4 circumstances of the trust. In satisfying this
5 standard, the trustee shall exercise reasonable care,
6 skill and caution.

7
8 (b) A trustee's investment and management
9 decisions respecting individual assets shall be
10 evaluated not in isolation but in the context of the
11 trust portfolio as a whole and as a part of an overall
12 investment strategy having risk and return objectives
13 reasonably suited to the trust.

14
15 (c) Among circumstances that a trustee shall
16 consider in investing and managing trust assets are
17 such of the following as are relevant to the trust or
18 its beneficiaries:

19

20 (i) General economic conditions;

21

22 (ii) The possible effect of inflation or
23 deflation;

24

1 (iii) The expected tax consequences of
2 investment decisions or strategies;

3

4 (iv) The role that each investment or
5 course of action plays within the overall trust
6 portfolio, which may include financial assets,
7 interests in closely held enterprises, tangible and
8 intangible personal property and real property;

9

10 (v) The expected total return from income
11 and the appreciation of capital;

12

13 (vi) Other resources of the beneficiaries;

14

15 (vii) Needs for liquidity, regularity of
16 income and preservation or appreciation of capital;

17 and

18

19 (viii) An asset's special relationship or
20 special value, if any, to the purposes of the trust or
21 to one (1) or more of the beneficiaries.

22

23 (d) A trustee shall make a reasonable effort to
24 verify facts relevant to the investment and management

1 of trust assets.

2

3 (e) A trustee may invest in any kind of property
4 or type of investment consistent with the standards of
5 this article.

6

7 **4-10-903. Diversification.**

8

9 A trustee shall diversify the investments of the trust
10 unless the trustee reasonably determines that, because
11 of special circumstances, the purposes of the trust
12 are better served without diversifying.

13

14 **4-10-904. Duties at inception of trusteeship.**

15

16 Within a reasonable time after accepting a trusteeship
17 or receiving trust assets, a trustee shall review the
18 trust assets and make and implement decisions
19 concerning the retention and disposition of assets, in
20 order to bring the trust portfolio into compliance
21 with the purposes, terms, distribution requirements
22 and other circumstances of the trust, and with the
23 requirements of this article.

24

1 **4-10-905. Loyalty.**

2

3 A trustee shall invest and manage the trust assets
4 solely in the interest of the beneficiaries.

5

6 **4-10-906. Impartiality.**

7

8 If a trust has two (2) or more beneficiaries, the
9 trustee shall act impartially in investing and
10 managing the trust assets, taking into account any
11 differing interests of the beneficiaries.

12

13 **4-10-907. Investment costs.**

14

15 In investing and managing trust assets, a trustee may
16 only incur costs that are appropriate and reasonable
17 in relation to the assets, the purposes of the trust,
18 and the skills of the trustee.

19

20 **4-10-908. Reviewing compliance.**

21

22 Compliance with the prudent investor rule under this
23 article is determined in light of the facts and
24 circumstances existing at the time of a trustee's

1 decision or action and not by hindsight.

2

3 **4-10-909. Delegation of investment and**
4 **management functions.**

5

6 (a) A trustee may delegate investment and
7 management functions that a prudent trustee of
8 comparable skills could properly delegate under the
9 circumstances. The trustee shall exercise reasonable
10 care, skill and caution in:

11

12 (i) Selecting an agent;

13

14 (ii) Establishing the scope and terms of
15 the delegation, consistent with the purposes and terms
16 of the trust; and

17

18 (iii) Periodically reviewing the agent's
19 actions in order to monitor the agent's performance
20 and compliance with the terms of the delegation.

21

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

1

2 (c) A trustee who complies with the requirements
3 of subsection (a) of this section is not liable to the
4 beneficiaries or to the trust for the decisions or
5 actions of the agent to whom the function was
6 delegated.

7

8 (d) By accepting the delegation of a trust
9 function from the trustee of a trust that is subject
10 to the law of this state, an agent submits to the
11 jurisdiction of the courts of the state of Wyoming
12 even if investment advisory agreements or other
13 related agreements provide otherwise, and the agent
14 may be made a party to any action or proceeding if
15 issues relate to a decision, action or inaction of the
16 agent.

17

18 **4-10-910. Language invoking standard of this**
19 **article.**

20

21 (a) The following terms or comparable language
22 in the provisions of a trust, unless otherwise limited
23 or modified, authorizes any investment or strategy
24 permitted under this article:

1

2

(i) "Investments permissible by law for investment of trust funds";

4

5

(ii) "Legal investments";

6

7

(iii) "Authorized investments";

8

9

(iv) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital";

16

17

18

19

(v) "Prudent man rule", "prudent trustee rule", "prudent person rule" or "prudent investor rule".

20

21

22

4-10-911. Application to public funds of the state of Wyoming.

23

24

This article does not apply to public funds of the

1 state of Wyoming unless specific reference is made to
2 this article.

3

4 **4-10-912. Short title.**

5

6 This article may be cited as the "Wyoming Uniform
7 Prudent Investor Act".

8

9

ARTICLE 10

10

11 **LIABILITY OF ~~TRUSTEES~~ FIDUCIARIES AND RIGHTS OF**

12 **PERSONS DEALING WITH ~~TRUSTEES~~ FIDUCIARIES**

13

14 **4-10-1001. Remedies for breach of trust.**

15

16 (a) A violation by a ~~trustee~~ fiduciary of a duty
17 the ~~trustee~~ fiduciary owes to a beneficiary is a
18 breach of trust.

19

20 (b) To remedy a breach of trust that has
21 occurred or may occur, the court may:

22

23 (i) Compel the ~~trustee~~ fiduciary to perform
24 the fiduciary's duties;

1

2 (ii) Enjoin the ~~trustee~~fiduciary from
3 committing a breach of trust;

4

5 (iii) Compel the ~~trustee~~fiduciary to
6 redress a breach of trust by paying money, restoring
7 property or other means;

8

9 (iv) Order a ~~trustee~~fiduciary to account;

10

11 (v) Appoint a special fiduciary to take
12 possession of the trust property and administer the
13 trust;

14

15 (vi) Suspend the ~~trustee~~fiduciary;

16

17 (vii) Remove the ~~trustee~~fiduciary as
18 provided in W.S. 4-10-706;

19

20 (viii) Reduce or deny compensation to the
21 ~~trustee~~fiduciary;

22

23 (ix) Subject to W.S. 4-10-1012, void an act
24 of the ~~trustee~~fiduciary, impose a lien or a

1 constructive trust on trust property or trace trust
2 property wrongfully disposed of and recover the
3 property or its proceeds; or

4

5 (x) Order any other appropriate relief.

6

7 **4-10-1002. Damages for breach of trust.**

8

9 (a) A ~~trustee~~fiduciary who commits a breach of
10 trust is liable to the beneficiaries affected for the
11 greater of:

12

13 (i) The amount required to restore the
14 value of the trust property and trust distributions to
15 what they would have been had the breach not occurred;
16 or

17

18 (ii) The profit the ~~trustee~~fiduciary made
19 by reason of the breach.

20

21 (b) Except as otherwise provided in this
22 subsection, if more than one (1) ~~trustee~~fiduciary is
23 liable to the beneficiaries for a breach of trust, a
24 ~~trustee~~fiduciary is entitled to contribution from the

1 other ~~trustee~~fiduciary or ~~trustees~~fiduciaries. A
2 ~~trustee~~fiduciary is not entitled to contribution if
3 the ~~trustee~~fiduciary was substantially more at fault
4 than another ~~trustee~~fiduciary or if the ~~trustee~~
5 fiduciary committed the breach of trust in bad faith
6 or with reckless indifference to the purposes of the
7 trust or the interests of the beneficiaries. A ~~trustee~~
8 fiduciary who received a benefit from the breach of
9 trust is not entitled to contribution from another
10 ~~trustee~~fiduciary to the extent of the benefit
11 received.

12
13 **4-10-1003. Damages in absence of breach.**

14
15 (a) A ~~trustee~~fiduciary is accountable to an
16 affected beneficiary for any profit made by the
17 ~~trustee~~fiduciary arising from the administration of
18 the trust, even absent a breach of trust.

19
20 (b) Absent a breach of trust, a ~~trustee~~
21 fiduciary is not liable to a beneficiary for a loss or
22 depreciation in the value of trust property or for not
23 having made a profit.

24

1 **4-10-1004. Attorney's fees and costs.**

2

3 In a judicial proceeding involving the administration
4 of a trust, the court, as justice and equity may
5 require, may award costs and expenses, including
6 reasonable attorney's fees, to any party, to be paid
7 by another party or from the trust that is the subject
8 of the controversy.

9

10 **4-10-1005. Limitation of action against ~~trustee~~**
11 **fiduciary.**

12

13 (a) A beneficiary may not commence a proceeding
14 against a ~~trustee~~fiduciary for breach of trust more
15 than one (1) year after the date the beneficiary or a
16 representative of the beneficiary was sent a report
17 that adequately disclosed the existence of a potential
18 claim for breach of trust and informed the beneficiary
19 of the time allowed for commencing a proceeding.

20

21 (b) A report adequately discloses the existence
22 of a potential claim for breach of trust if it
23 provides sufficient information so that the
24 beneficiary or representative knows of the potential

1 claim or should have inquired into its existence.

2

3 (c) If subsection (a) of this section does not
4 apply, a judicial proceeding by a beneficiary against
5 a ~~trustee~~fiduciary for breach of trust shall be
6 commenced within ~~five (5)~~three (3) years after the
7 first of the following to occur:

8

9 (i) The removal, resignation, or death of
10 the ~~trustee~~fiduciary;

11

12 (ii) The termination of the beneficiary's
13 interest in the trust; or

14

15 (iii) The termination of the trust.

16

17 **4-10-1006. Reliance on trust instrument.**

18

19 A ~~trustee~~fiduciary who acts in reasonable reliance on
20 the terms of the trust as expressed in the trust
21 instrument is not liable to a beneficiary for a breach
22 of trust to the extent the breach resulted from the
23 reliance.

24

1 **4-10-1007. Event affecting administration or**
2 **distribution.**

3
4 If the happening of an event, including marriage,
5 divorce, performance of educational requirements or
6 death, affects the administration or distribution of a
7 trust, a ~~trustee~~fiduciary who has exercised
8 reasonable care to ascertain the happening of the
9 event is not liable for a loss resulting from the
10 ~~trustee's~~fiduciary's lack of knowledge.

11

12 **4-10-1008. Exculpation of ~~trustee~~fiduciaries.**

13

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

17

18 (i) Relieves the ~~trustee~~fiduciary of
19 liability for breach of trust committed in bad faith
20 or with reckless indifference to the purposes of the
21 trust or the interests of the beneficiaries; or

22

23 (ii) Was inserted as the result of an abuse
24 by the ~~trustee~~fiduciary of a fiduciary or

1 confidential relationship to the settlor.

2

3 (b) An exculpatory term drafted or caused to be
4 drafted by the ~~trustee~~fiduciary is invalid as an
5 abuse of a fiduciary or confidential relationship
6 unless the ~~trustee~~fiduciary proves that the
7 exculpatory term is fair under the circumstances and
8 that its existence and contents were adequately
9 communicated to the settlor.

10

11 **4-10-1009. Beneficiary's consent, release or**
12 **ratification.**

13

14 (a) A ~~trustee~~fiduciary is not liable to a
15 beneficiary for breach of trust if the beneficiary
16 consented to the conduct constituting the breach,
17 released the ~~trustee~~fiduciary from liability for the
18 breach or ratified the transaction constituting the
19 breach, unless:

20

21 (i) The consent, release, or ratification
22 of the beneficiary was induced by improper conduct of
23 the ~~trustee~~fiduciary; or

24

1 (ii) At the time of the consent, release,
2 or ratification, the beneficiary did not know of the
3 beneficiary's rights or of the material facts relating
4 to the breach.

5
6 **4-10-1010. Limitation on personal liability of**
7 **~~trustee~~ fiduciary.**

8
9 (a) Except as otherwise provided in the
10 contract, a ~~trustee~~fiduciary is not personally liable
11 on a contract properly entered into in ~~the trustee's~~
12 ~~fiduciary~~its capacity as a fiduciary in the course of
13 administering the trust if the ~~trustee~~fiduciary in
14 the contract disclosed the fiduciary capacity.

15
16 (b) A ~~trustee~~fiduciary is personally liable for
17 torts committed in the course of administering a
18 trust, or for obligations arising from ownership or
19 control of trust property, including liability for
20 violation of environmental law, only if the ~~trustee~~
21 fiduciary is personally at fault.

22
23 (c) A claim based on a contract entered into by
24 a ~~trustee~~fiduciary in ~~the trustee's fiduciary~~its

1 capacity as a fiduciary, on an obligation arising from
2 ownership or control of trust property, or on a tort
3 committed in the course of administering a trust, may
4 be asserted in a judicial proceeding against the
5 ~~trustee~~ fiduciary in ~~the trustee's fiduciary~~ its
6 capacity as a fiduciary, whether or not the ~~trustee~~
7 fiduciary is personally liable for the claim.

8
9 **4-10-1011. Liability of successor fiduciaries**
10 **for actions of predecessor.**

11
12 Successor fiduciaries are not liable for actions,
13 errors or omissions of any prior or predecessor
14 fiduciaries.

15
16 ~~4-10-1011~~ **4-10-1012. Interest of trustee as**
17 **general partner.**

18
19 (a) Except as otherwise provided in subsection
20 (c) of this section or unless personal liability is
21 imposed in the contract, a trustee who holds an
22 interest as a general partner in a general or limited
23 partnership is not personally liable on a contract
24 entered into by the partnership after the trust's

1 acquisition of the interest if the fiduciary capacity
2 was disclosed in the contract or in a statement
3 previously filed pursuant to W.S. 17-14-201 through
4 17-14-209 or 17-21-101 through 17-21-1105.

5

6 (b) Except as otherwise provided in subsection
7 (c) of this section, a trustee who holds an interest
8 as a general partner is not personally liable for
9 torts committed by the partnership or for obligations
10 arising from ownership or control of the interest
11 unless the trustee is personally at fault.

12

13 (c) The immunity provided by this section does
14 not apply if an interest in the partnership is held by
15 the trustee in a capacity other than that of trustee
16 or is held by the trustee's spouse or one (1) or more
17 of the trustee's descendants, siblings, or parents, or
18 the spouse of any of them.

19

20 (d) If the trustee of a revocable trust holds an
21 interest as a general partner, the settlor is
22 personally liable for contracts and other obligations
23 of the partnership as if the settlor were a general
24 partner.

1

*****Staff Comment*****

2

In the preceding section, the WEPAC did not propose changing "trustee" to "fiduciary" in the document provided to LSO.

5

6

~~4-10-1012~~4-10-1013. **Protection of person dealing with ~~trustee~~fiduciary.**

8

(a) A person other than a beneficiary who in good faith assists a ~~trustee~~fiduciary, or who in good faith and for value deals with a ~~trustee~~fiduciary, without knowledge that the ~~trustee~~fiduciary is exceeding or improperly exercising the ~~trustee's~~fiduciary's powers is protected from liability as if the ~~trustee~~fiduciary properly exercised the power.

16

(b) A person other than a beneficiary who in good faith deals with a ~~trustee~~fiduciary is not required to inquire into the extent of the ~~trustee's~~fiduciary's powers or the propriety of their exercise.

21

(c) A person who in good faith delivers assets to a ~~trustee~~fiduciary need not ensure their proper application.

25

1 (d) A person other than a beneficiary who in
2 good faith assists a former ~~trustee~~fiduciary, or who
3 in good faith and for value deals with a former
4 ~~trustee~~fiduciary, without knowledge that the
5 ~~trusteeship~~appointment has terminated is protected
6 from liability as if the former ~~trustee~~fiduciary were
7 still a ~~trustee~~fiduciary.

8
9 (e) Comparable protective provisions of other
10 laws relating to commercial transactions or transfer
11 of securities by fiduciaries prevail over the
12 protection provided by this section.

13
14 ~~4-10-1013~~4-10-1014. **Certification or affidavit**
15 **of trust.**

16
17 (a) Instead of furnishing a copy of the trust
18 instrument to a person other than a beneficiary, the
19 trustee may furnish to the person a certification or
20 affidavit of trust containing the following
21 information:

22
23 (i) That the trust exists and the date the
24 trust instrument was executed;

1

2 (ii) The identity of the settlor;

3

4 (iii) The identity and address of the
5 currently acting trustee;

6

7 (iv) The powers of the trustee;

8

9 (v) The revocability or irrevocability of
10 the trust and the identity of any person holding a
11 power to revoke the trust;

12

13 (vi) The authority of cotrustees to sign or
14 otherwise authenticate and whether all or less than
15 all are required in order to exercise powers of the
16 trustee;

17

18 (vii) The trust's taxpayer identification
19 number; and

20

21 (viii) The manner of taking title to trust
22 property.

23

24 (b) A certification or affidavit of trust may be

1 signed or otherwise authenticated by any trustee.

2

3 (c) A certification or affidavit of trust shall
4 state that the trust has not been revoked, modified or
5 amended in any manner that would cause the
6 representations contained in the certification of
7 trust to be incorrect.

8

9 (d) A certification or affidavit of trust need
10 not contain the dispositive terms of a trust.

11

12 (e) A recipient of a certification or affidavit
13 of trust may require the trustee to furnish copies of
14 those excerpts from the original trust instrument and
15 later amendments which designate the trustee and
16 confer upon the trustee the power to act in the
17 pending transaction.

18

19 (f) A person who acts in reliance upon a
20 certification or affidavit of trust without knowledge
21 that the representations contained therein are
22 incorrect is not liable to any person for so acting
23 and may assume without inquiry the existence of the
24 facts contained in the certification or affidavit.

1 Knowledge of the terms of the trust may not be
2 inferred solely from the fact that a copy of all or
3 part of the trust instrument is held by the person
4 relying upon the certification or affidavit.

5
6 (g) A person who in good faith enters into a
7 transaction in reliance upon a certification or
8 affidavit of trust may enforce the transaction against
9 the trust property as if the representations contained
10 in the certification or affidavit were correct.

11
12 (h) A person making a demand for the trust
13 instrument in addition to a certification or affidavit
14 of trust or excerpts is liable for damages if the
15 court determines that the person did not act in good
16 faith in demanding the trust instrument.

17
18 (j) This section does not limit the right of a
19 person to obtain a copy of the trust instrument in a
20 judicial proceeding concerning the trust.

21 *****Staff Comment*****

22 In the preceding section, the WEPAC did not
23 propose changing "trustee" to "fiduciary" in
24 the document provided to LSO.

25

1

ARTICLE 11

2

3

MISCELLANEOUS PROVISIONS

4

5

4-10-1101. Uniformity of application and construction.

6

7

In applying and construing this ~~uniform~~ act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

8

9

4-10-1102. Electronic records and signatures.

10

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The provisions of this act 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. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

21

22

1 **4-10-1103. Severability clause.**

2

3 If any provision of this act or its application to any
4 person or circumstances is held invalid, the
5 invalidity does not affect other provisions or
6 applications of this act which can be given effect
7 without the invalid provision or application, and to
8 this end the provisions of this act are severable.

9

10 ~~4-10-1106~~4-10-1104. **Application to existing**
11 **relationships.**

12

13 (a) Except as otherwise provided in this act, on
14 July 1, 2003:

15

16 (i) This act, applies to all trusts created
17 before, on or after July 1, 2003;

18

19 (ii) This act applies to all judicial
20 proceedings concerning trusts commenced on or after
21 July 1, 2003;

22

23 (iii) This act applies to judicial
24 proceedings concerning trusts commenced before July 1,

1 2003, unless the court finds that application of a
2 particular provision of this act, would substantially
3 interfere with the effective conduct of the judicial
4 proceedings or prejudice the rights of the parties, in
5 which case the particular provision of this act, does
6 not apply and the superseded law applies;

7
8 (iv) Any rule of construction or
9 presumption provided in this act applies to trust
10 instruments executed before July 1, 2003, unless there
11 is a clear indication of a contrary intent in the
12 terms of the trust; and

13
14 (v) An ~~act done~~ action taken before July 1,
15 2003, is not affected by this act.]

16 *****Staff Comment*****

17 The change in paragraph (v) was made by LSO
18 because an "act done" is ambiguous, i.e.,
19 does it mean an act enacted or an action
20 taken?
21

22 (b) If a right is acquired, extinguished, or
23 barred upon the expiration of a prescribed period that
24 has commenced to run under any other statute before
25 July 1, 2003, that statute continues to apply to the
26 right even if it has been repealed or superseded.

1

*****Staff Comment*****

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Sections 1104 and 1105 of the Model UTC were not included in Article 11, as proposed, because those provisions (the effective date of the act and the repeal section, respectively) are non-codified provisions of this bill (see Sections 3 and 4 of the bill on page 143).

Section 2. W.S. 2-3-301(a), 4-8-101(a)(iii), 13-5-108(c) and 34-1-139 are amended to read:

2-3-301. Standard for fiduciaries; authority to acquire and retain property and investments.

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care of a prudent investor as specified under W.S. ~~4-9-101~~ 4-10-901 through ~~4-9-113~~ 4-10-912.

4-8-101. Definitions.

(a) As used in this act:

1 (iii) "Prudent investor" means as specified
2 under W.S. ~~4-9-101~~ 4-10-901 through ~~4-9-113~~ 4-10-912;

3
4 **13-5-108. Laws applicable; matters of contract.**

5
6 (c) In performing its duties under a trust, a
7 trust company shall be subject to the provisions of
8 the Uniform Trustees' Powers Act, W.S. ~~4-8-101~~ 4-10-
9 801 et seq.

10
11 **34-1-139. Perpetuities; time limits for vesting;**
12 **restrictions on selected lives; legislative intent.**

13
14 (a) No interest in real or personal property
15 shall be good unless it must vest not later than
16 twenty-one (21) years after some life in being at the
17 creation of the interest and any period of gestation
18 involved in the situation to which the limitation
19 applies. The lives selected to govern the time of
20 vesting must not be so numerous nor so situated that
21 evidence of their deaths is likely to be unreasonably
22 difficult to obtain. It is intended by the enactment
23 of this statute to make effective in this state the
24 American common-law rule against perpetuities.

1

2 (b) Subsection (a) of this section shall not
3 apply to a trust created after July 1, 2003 if:

4

5 (i) The instrument creating the trust
6 states that the rule against perpetuities as provided
7 in subsection (a) of this section shall not apply to
8 the trust;

9

10 (ii) The instrument creating the trust
11 states that the trust shall terminate no later than
12 one thousand (1,000) years after the trust's creation;
13 and

14

15 (iii) The trust is governed by the laws of
16 this state and the trustee maintains a place of
17 business, administers the trust in this state or is a
18 resident of this state.

19

20 (c) The election provided in subsection (b) of
21 this section shall not be available to real property
22 owned and held in a trust making an election under
23 subsection (b) of this section. Subsection (a) of this
24 section shall apply to such real property held in a

1 trust making an election under subsection (b) of this
2 section. Subsection (b) of this section shall apply to
3 the remaining assets of such trust.

4
5 (d) Real property for the purpose of subsection
6 (b) of this section shall not include a mineral
7 interest or an interest in a corporation, limited
8 liability company, partnership, business trust or
9 other entity.

10 *****Staff Comment*****

11
12 Whether this proposed change to the rule against
13 perpetuities would pass constitutional muster is
14 unclear. Article 1, Section 30, of the Wyoming
15 Constitution states that "Perpetuities and monopolies
16 are contrary to the genius of a free state, and shall
17 not be allowed . . .". The Attorney General's office
18 has opined that the framers of the Wyoming
19 Constitution left it to the Legislature to determine
20 how to regulate and define "perpetuities". The
21 American common-law rule against perpetuities, as
22 specified in subsection (a), is actually in effect in
23 a minority of states currently.
24

25 **Section 3.** W.S. 4-8-101 through 4-8-112 and
26 4-9-101 through 4-9-113 are repealed.

27
28 **Section 4.** This act is effective July 1, 2003.

29
30 (END)