HARMONIZED
UNIFORM STATUTORY TRUST ENTITY ACT
(Amendments to Uniform Statutory Trust Entity Act)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 4 – 6, 2011 Drafting Committee Meeting on
Harmonization of Business Entity Acts

Without Comments but with Reporters’ Notes

Strike and Score Version

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**Introductory Reporters’ Note**

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Reporters’ Notes in this document are limited to explaining the source of certain of the proposed changes. Following the approval of the changes in this document by the Conference, the Reporters’ Notes will be replaced with more usual comments that explain the provisions of the act.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters’ Notes by the abbreviations listed below:

- **HUB** Business Organizations Act
- **META** Model Entity Transactions Act
- **MORAA** Model Registered Agents Act
- **UPA** Uniform Partnership Act (1997)
- **ULPA** Uniform Limited Partnership Act (2001)
- **ULLCA** Uniform Limited Liability Company Act (2006)
- **USTEA** Uniform Statutory Trust Entity Act
- **Coop Act** Uniform Limited Cooperative Association Act
- **UUNAA** Uniform Unincorporated Nonprofit Association Act

Changes to the currently effective text of the act are shown by striking through text to be deleted and underlining text to be added. Black type is used to show changes that adopt language from the HUB, META, or MORAA, or are merely relocations of current language or corrections to cross references. Changes that adopt language from other unincorporated entity acts are shown in blue type. Changes that do not have a source in one of the existing unincorporated entity acts are shown in red type. Often a “red” change made to one act will be replicated in other acts as a matter of harmonization. These replications are shown in black when the “red” change is made in the HUB, META, or MORAA, and are shown in blue when the “red” change is made in one of the other acts.

**Harmonization and USTEA**

Harmonizing USTEA requires special sensitivity, because USTEA seeks to be simultaneously an act based on trust principles and a business entity statute. See USTEA § 105 (“The law of this state pertaining to common-law trusts supplements this [act].”) and Prefatory Note (referring to the “[i]ncreasing use of the statutory trust as a mode of business organization”).

Although USTEA is the Conference’s newest entity statute (with some clear improvements over earlier acts), RUPA, ULPA, and ULLCA comprise the core of the
Conference’s approach to unincorporated entities. These statutes reflect substantial policy
decisions made by the Conference over the past two decades.

Because, with proper drafting of the trust documents, an USTEA statutory trust can
function interchangeably with partnerships, limited partnerships, and limited liability companies,
the harmonization question is of critical importance. Absent a distinguishing policy reason, it
makes no sense for the Conference to take a particular policy decision in HRUPA, HULPA, and
HULLCA, and then abandon that position in HUSTEA. Moreover, the recent (and already
notorious) case of Olmstead v. F.T.C., 44 So.3d 76 (Fl. 2010) illustrates the danger of courts
interpreting one statute involving one type of unincorporated entity in terms of language added
or omitted in another statute involving another type of unincorporated entity.

Either of two reasons justifies choosing USTEA’s approach over RUPA-ULPA-
RULLCA core: (i) USTEA has a better approach, applicable across the board; or (ii) a clear,
articulated policy reason exists for USTEA having a unique approach.

In the view of the Chair, Vice Chair, and Co-Reporters for the Harmonization project
(who jointly prepared this draft), many of USTEA’s unusual provisions fit one or the other of the
two reasons. When the first reason applies, other acts are being harmonized to USTEA. When
the second reason applies, the other acts are not being harmonized with USTEA. When neither
reason seems to apply, this draft chooses harmonization.
HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Statutory Trust Entity Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust, series of a statutory trust, or foreign statutory trust.

(2) “Certificate of trust” means the record filed by the [Secretary of State] under certificate required by Section 201. The term includes the record certificate as amended or restated.

(3) “Common-law trust” means a fiduciary relationship with respect to property arising from a manifestation of intent to create that relationship and subjecting the person that holds title to the property to duties to deal with the property for the benefit of charity or for one or more persons, at least one of which is not the sole trustee, whether the purpose of the trust is donative or commercial. The term includes the type of trust known at common law as a “business trust”, “Massachusetts trust”, or “Massachusetts business trust”.

(4) “Designated office” means:

(A) for a statutory trust, the street address that it is required to designate under Section 201(b)(2); or

(B) for a foreign statutory trust, its principal office.

(4) “Contribution”, except in the phrase “right of contribution”, means a benefit provided by a person to a statutory trust to become a beneficial owner or in the person’s capacity as a
beneficial owner.

(5) “Distribution” means a transfer of money or other property from a statutory trust on account of a beneficial interest. The term:

(A) includes:

(i) a redemption or other purchase by a statutory trust of a beneficial interest; and

(ii) a transfer to a beneficial owner in return for the beneficial owner’s relinquishment of any right to participate as a beneficial owner in the management or conduct of the statutory trust’s activities; or have access to records or other information concerning the trust’s activities; and

(B) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary of business under a bond fide retirement plan or other bona fide benefits program.

(6) “Foreign statutory trust” means a trust that is formed under the laws of a jurisdiction other than this state which would be a statutory trust if formed under the laws of this state.

(7) “Governing instrument” means the trust instrument and certificate of trust.

(8) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a foreign country, or a subdivision of a foreign country.

(9) “Person” means an individual, corporation, statutory trust, estate, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
The term does not include a common-law trust. “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative-association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or-governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Principal office” means the principal executive office of a statutory trust or foreign statutory trust, whether or not the office is located in this state.

(9) (11) “Property” means all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.

(10) “Qualified foreign statutory trust” means a foreign statutory trust that is registered to do business in this state pursuant to a certificate of registration filed by the [Secretary of State].

(11) (12) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Registered agent” means an agent of a statutory trust or foreign statutory trust which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the trust.

(10) (14) “Qualified Registered foreign statutory trust” means a foreign statutory trust that is registered to do business in this state pursuant to a certificate statement of registration filed by the [Secretary of State].

(12) (15) “Related party”, with respect to a party that is a trustee, officer, employee, manager, or beneficial owner, means:
(A) the spouse of the party;

(B) a child, parent, sibling, grandchild, or grandparent of the party, or the spouse of one of them;

(C) an individual having the same residence as the party;

(D) a trust or estate of which a related party described in subparagraph (A), (B), or (C) is a substantial beneficiary;

(E) a trust, estate, legally incapacitated individual, conservatee, or minor for which the party is a fiduciary; or

(F) a person that directly or indirectly controls, is controlled by, or is under common control with, the party.

Series trust” means a statutory trust that has one or more series created under Section 401.

“Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Statutory trust”, except in the phrase “foreign statutory trust”, means an entity formed under this [act].

“Trust” includes a common law trust, statutory trust, and foreign statutory trust.

“Transfer” includes:
(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including by mortgaging or granting a security interest;

(F) a gift;

(G) and transfer by operation of law.

18 (21) “Trust instrument” means a record other than the certificate of trust which provides for the governance of the affairs of a statutory trust and the conduct of its business. The term includes a trust agreement, a declaration of trust, and bylaws.

19 (21) “Trustee” means a person designated, appointed, or elected as a trustee of a statutory trust or foreign statutory trust in accordance with the governing instrument or applicable law.

Reporters’ Notes

Changes shown in blue are to conform to HULLCA.

We note that USTEA does not contain a definition of “beneficial interest”. We believe it inappropriate to provide a definition that parallels the partnership/LLC concept of “transferable interest” because:

- a “beneficial interest” is not necessarily limited to economic rights;
- the “transferable interest” construct:
  - reflects the bifurcated nature of an ownership interest in a partnership or limited liability company; and
  - functions as part of the built-in, statutory transfer restrictions in partnership and LLC statutes.

We assume that USTEA’s drafters intentionally left “beneficial interest” undefined, and as just indicated, harmonization does not require a different result.

Section 101(1) – The proposed addition (“series of a statutory trust”) appears appropriate unless every owner of an interest in a series is necessarily also an owner of a beneficial interest in the trust itself.
Former Section 101(4) [principal office] – This term has been deleted to harmonize with the HUB and the other spokes.

Subsection (101)(6) [distribution] – This definition is as important for what it excludes as for what it includes.

Subsection 101(7) [jurisdiction] – This is the HUB definition but does not currently appear in HULLCA, HULPA, and HUPA. Suggest conform those acts to USTEA on this point.

Subsection 101(13) [registered agent] – added, as in most other spokes, to facilitate HUB-related revisions to the Act.

Subsection 101(14) [registered foreign statutory trust] – revisions to facilitate HUB-related revisions to the Act.

Former Section 101(17) [trust] – the term seems never to appear just by itself.

SECTION 103. GOVERNING INSTRUMENT.

(a) Except as otherwise provided in subsection (b) or Section 104, the governing instrument governs:

(1) the management, affairs, and conduct of the business of a statutory trust; and

(2) the rights, interests, duties, obligations, and powers of, and the relations among, the trustees, the beneficial owners, and the statutory trust, and other persons.

(b) To the extent the governing instrument does not otherwise provide for a matter described in subsection (a), this [act] governs the matter.

(c) The governing instrument may include one or more instruments, agreements, declarations, bylaws, or other records and refer to or incorporate any record.

(d) The governing instrument may be amended with the approval of all the beneficial owners.

(e) Subject to Section 104, without limiting the terms that may be included in a governing instrument, the governing instrument may:

(1) provide the means by which beneficial ownership is determined and
evidenced;

(2) limit a beneficial owner’s right to transfer its beneficial interest;

(3) provide for one or more series under [Article] 4;

(4) to the extent that voting rights are granted under the governing instrument, include terms relating to:

(A) notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;

(B) waiver of notice;

(C) action by consent without a meeting;

(D) establishment of record dates;

(E) quorum requirements;

(F) voting:

(i) in person;

(ii) by proxy;

(iii) by any form of communication that creates a record, telephone, or video conference; or

(iv) in any other manner; or

(G) any other matter with respect to the exercise of the right to vote;

(5) provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;

(6) provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:
(A) amendment of the governing instrument;

(B) merger, interest exchange, conversion, or reorganization
domestication;

(C) appointment of trustees;

(D) sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and

(E) dissolution of the statutory trust;

(7) provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;

(8) provide for the appointment, election, or engagement of agents or independent contractors of the statutory trust or delegates of the trustees, or agents, officers, employees, managers, committees, or other persons that may manage the business and affairs of the statutory trust, designate their titles, and specify their rights, powers, and duties;

(9) provide rights to any person, including a person that is not a party to the governing instrument;

(10) subject to paragraph (11), specify the manner in which the governing instrument may be amended, including, unless waived by all persons for whose benefit the condition or requirement was intended:

(A) a condition that a person that is not a party to the instrument must approve the amendment for it to be effective; and

(B) a requirement that the governing instrument may be amended only as
provided in the governing instrument or as otherwise permitted by law;

(11) provide that a person may comply with paragraph (10) by a representative authorized by the person orally, in a record, or by conduct;

(12) provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies with the conditions for becoming a beneficial owner set forth in the governing instrument, such as payment to the statutory trust or to a previous beneficial owner;

(13) provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;

(14) provide for the establishment of record dates; and

(15) grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter.

Reporters’ Notes

Subsection (a) – At its most recent meeting, the Harmonization Committee decided that the reference to subsection (b) in the analogous HUPA, HULPA, and HULLCA provisions was circular. We should harmonize on this highly technical point, one way or the other.

Subsection (a)(2) – reference to “other persons” deleted as overbroad – i.e., as appearing to apply to the rights of persons that are external to the statutory trust.

SECTION 104. MANDATORY RULES. The governing instrument may not:

(1) vary the requirements of [Article];

(2) vary any requirements or procedures pertaining to:

(A) records authorized or required to be delivered to the [secretary of state] for filing under this act; and
(B) registered agents;

(2) vary the choice of governing law applicable under Section 301;

(3) negate the exclusion of a predominantly donative purpose under Section 303;

(4) vary a statutory trust’s capacity under Section 308 to sue and be sued in its own name;

(4)(5) vary the provisions pertaining to series trusts in Sections 401, 402(b), 403, and 404(c);

(5)(6) vary the standards of conduct for trustees under Section 505, but the governing instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;

(6)(7) vary the obligation under Section 506 to act in good faith if a trustee or other person is not to be liable for relying on a term of the governing instrument, a record of the statutory trust, or an opinion, report, or statement of another person, but the governing instrument may prescribe the standards for assessing whether the reliance was in good faith, if the standards are not manifestly unreasonable;

(7)(8) restrict the right of a trustee to information under Section 508, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the trustee’s discharge of the trustee’s duties as trustee, if the standards are not manifestly unreasonable;

(8)(9) vary the prohibition under Section 509 of indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful misconduct, or reckless indifference;

(9)(10) vary the obligation of a trustee under Section 510(c) not to follow a direction that
is manifestly contrary to the terms of the governing instrument or would constitute a serious breach of fiduciary duty by the trustee;

(10) restrict the right of a judgment creditor of a beneficial owner to seek a charging order under Section 606;

(11) restrict the right of a beneficial owner to information under Section 608, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner’s interest, if the standards are not manifestly unreasonable;

(12) restrict the right of a beneficial owner to bring an action under Section 609, but the governing instrument may subject the right to additional standards and restrictions, including a requirement that beneficial owners owning a specified amount or type of beneficial interest, including in a series trust an interest in the series, join in bringing the action, if the additional standards and restrictions are not manifestly unreasonable;

(13) vary the provisions pertaining to conversion and approve a merger, interest exchange, conversion or domestication under in Sections 701, 704, 705, 708, and 709 723(a)(2), 733(a)(2), 734(a)(2) and 735(a)(2);

(14) vary the provisions pertaining to dissolution in Sections 801(1) and 802 through 808;

(15) vary the provisions relating to foreign statutory trusts in [Article] 9; or

(16) vary the miscellaneous provisions in [Article] 10; or

(17) restrict the rights under this [act] of a person other than a trustee or beneficial owner.

Reporters' Notes

Subsection 104(1) – Previously, drafters have assumed that the “third party protection” (added below in new paragraph (17)) handled this issue. However, for certainty’s sake, USTEA’s approach seems safer. The language has been changed to avoid a negative implication re: other “Article 2-like” provisions that appear elsewhere in the Act.
Former Subsection 104(10) – The cross referenced section is proposed for deletion. See Reporters’ Notes to Section 606.

Subsection 104(17) – This language originated (in slightly different form) in RUPA.

SECTION 105. APPLICABILITY OF TRUST AND OTHER LAW.

(a) The law of this state pertaining to common-law trusts supplements this [act]. However, a the governing instrument may supersede or modify application to the statutory trust of any law of this state pertaining to common-law trusts.

(b) Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

Reporters’ Notes

Subsection (b) – A provision like this has been standard for the Conference’s unincorporated acts since RUPA. Query, however, whether this standard language will create mischief in light of Section 105(a).

SECTION 106. RULE OF CONSTRUCTION.

(a) This [act] must be liberally construed to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments.

(b) The presumption that a civil statute in derogation of the common law is construed strictly does not apply to this [act].

Reporters’ Notes

Subsection (a) – This provision is a symbol for and product of the strict contractarian perspective, and the Conference has never previously accepted the provision. To the contrary, RUPA has no such provision, and during the drafting of ULPA (2001) and Re-ULLCA the issue was assiduously considered and the position rejected.

The provision is not necessary to the full functioning of the governing instrument (which is not necessarily even a contract). Moreover, the provision can cause mischief – not only for the unsophisticated, see e.g. Daniel S. Kleinberger, “Careful What You Wish For--Freedom of Contract and the Necessity of Careful Scrivening,” XXIV PUBOGRAM 19 (October, 2006) (Committee on Partnerships and Unincorporated Business Organizations of the ABA Business Law Section), but also for the sophisticated. See e.g. Fisk Ventures, LLC v. Segal, No. Civ. A. 3017-CC, 2008 WL 1961156, at *8 (Del. Ch., May 7, 2008) (stating that “limited liability
companies…are creatures not of the state but of contract” – despite the LLC’s dependence on the state for its formal creation and, more importantly, the liability shield for the LLC’s members).

Given the statutory trust’s role as a business organization, it is impossible to discern a rationale for including the provision here and not in HUPA, HULPA, and HULCA. But harmonizing those statutes to this provision would reverse almost 30 years of Conference policy.

Subsection (b) – The Conference long ago stopped including this language in its Acts. However, the Comments to USTEA identify a special need: “Subsection (b) directs the courts not to apply to this act the canon of construction that statutes in derogation of the common law are to be strictly construed. The drafting committee included this provision because many of this act’s provisions are designed specifically to override one or more common-law trust principles that would otherwise be applicable to a statutory trust under Section 105. Such provisions deliberately derogate the common law of trusts and should be interpreted in accordance with that purpose.”

Reporters’ Notes on the Absence of a Section on Knowledge and Notice

Unlike HUPA, HULPA, and HULLCA, USTEA does not define knowledge and notice. The omission is not problematic from a harmonization perspective, because USTEA does not contain the same type of provisions for constructive notice as do these other acts. However, we should consider a constructive notice provision relating to organic transactions (merger, etc.), either here or in the META-based provisions.
FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS
SECTION 201. FORMATION OF STATUTORY TRUST; CERTIFICATE OF TRUST.

(a) One or more persons may form a statutory trust, a person must deliver by signing and delivering a certificate of trust to the [Secretary of State] for filing a certificate of trust.

(b) A certificate of trust must state:

(1) the name of the statutory trust, which must comply with Section 207;

(2) the street and mailing address of the designated office of the trust;

(3) the name and street and mailing address of the initial registered agent of the trust for service of process; and

(4) if the trust may have one or more series trusts, a statement to that effect.

(c) Subject to Section 104, a certificate of trust may contain any term in addition to those required by subsection (b).

(d) Subject to Section 204(e) TBD, a statutory trust is formed when a certificate of trust that complies with subsection (b) is filed by the [Secretary of State] has become effective. If the certificate states a delayed effective date, a statutory is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the [Secretary of State] for filing and the [Secretary of State] files the certificate.

(e) Subject to Section TBD [re: delayed effective date], a filed certificate of trust, a filed statement of cancellation or change, or filed articles of conversion or merger under Article 7 prevail over inconsistent terms of a trust instrument.
SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF TRUST; STATEMENT OF CORRECTION.

(a) A certificate of trust may be amended or restated at any time.

(b) To amend its certificate of trust, a statutory trust must deliver to the [Secretary of State] for filing an amendment, articles of conversion, or articles of merger stating:

   (1) the name of the trust;
   (2) the date of filing of its initial certificate; and
   (3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) A trustee that knows or has reason to know that any information in a filed certificate of trust was incorrect when the certificate was filed or has become incorrect, inaccurate owing to changed circumstances, the trustee shall promptly:

   (1) cause the certificate to be amended; or
   (2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section TBD or a statement of correction under Section TBD.

(e) A restated certificate of trust must be delivered to the [Secretary of State] for filing in the same manner as an amendment.

SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].

(a) A record delivered by the statutory trust to the [Secretary of State] for filing pursuant to this [act] must be signed by at least one of the trustees.

(b) Any person may sign by an attorney in fact any record filed pursuant to this [act].
SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this [act] to sign a record or deliver a record to the [Secretary of State] for filing under [this act] does not do so, any other person that is aggrieved may petition the [appropriate court] to order:

(1) the person to sign the record;

(2) the person to deliver the record to the [Secretary of State] for filing; or

(3) the [Secretary of State] to file the record unsigned.

(b) If a petitioner under subsection (a) is not the statutory trust or foreign statutory to which the record pertains, the petitioner shall make the trust a party to the action.

(c) A record filed unsigned pursuant to subsection (a)(3) is effective without being signed.

SECTION 204. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF STATE]; EFFECTIVE TIME AND DATE.

(a) A record authorized or required to be delivered to the [Secretary of State] for filing under this [act] must be captioned to describe the subject of the record and be in a medium permitted by the [Secretary of State]. If all filing fees have been paid, unless the [Secretary of State] determines that the record does not comply with the filing requirements of this [act], the [Secretary of State] shall file the record and make available a copy of the filed record to the person on whose behalf the record was filed.

(b) On request and payment of the required fee, the [Secretary of State] shall send to any person a certified copy of a record filed in the office of the [Secretary of State] pursuant to this [act].
(c) Except as otherwise provided in Sections 205 and 211, a record delivered to the Secretary of State for filing under this [act] may specify an effective time and a delayed effective date. Except as otherwise provided in this [act], a record filed by the Secretary of State is effective:

(1) if the record does not specify an effective time or delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at

12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(4) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed.

SECTION 205. DELIVERY OF RECORD.

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, mail by the United States Postal Service, commercial delivery, and electronic transmission.

(b) Delivery to the Secretary of State is effective only when the record is received by the Secretary of State.
SECTION 206. FILING REQUIREMENTS.

(a) To be filed by the [Secretary of State] pursuant to this [act], a record must be received by the [Secretary of State] and must comply with this [act] and satisfy the following:

1. The filing of the record must be required or permitted by this [act].
2. The record must be physically delivered in written form unless and to the extent the [Secretary of State] permits electronic delivery of records in other than written form.
3. The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
4. The record must be signed by a person authorized to sign the filing under Section ___.
5. The record must state the name and capacity, if any, of each person that signed it but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of information contained in a record filed by the [Secretary of State], the [Secretary of State] shall accept the filing if the filing otherwise complies with this section but the [Secretary of State] may redact the information.

(c) When a record is delivered to the [Secretary of State] for filing, any fee required under this [act] and any fee, tax, or penalty required to be paid under this [act] or law other than this [act] must be paid in a manner permitted by the [Secretary of State] or by that law.

(d) The [Secretary of State] may require that a record delivered in written form be accompanied by an identical or conformed copy.
SECTION 207. EFFECTIVE TIME AND DATE. Except as otherwise provided in Section __ and subject to Section __, an entity filing is effective:

(1) on the date and at the time of its filing by the [Secretary of State];

(2) on the date of filing and at the time specified in the entity filing as its effective time, if later than the time under paragraph (1);

(3) at a specified delayed effective time and date, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified as permitted by this [act], but no time is specified, at 12:01 a.m. on the date specified.

SECTION 208. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.

(a) Except as otherwise provided in Chapter __, a filed record may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

(b) A statement of withdrawal must:

(1) be signed on behalf of each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) identify the filed record to be withdrawn and the date of its filing; and

(3) if not signed on behalf of each person that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons who signed the record.

(c) On filing by the [Secretary of State] of a statement of withdrawal, the action or
SECTION 205. CORRECTING FILED RECORD.

(a) If, at the time of filing, a record contained incorrect information or was defectively or erroneously signed, a statutory trust or qualified foreign statutory trust shall deliver to the [Secretary of State] for filing a statement of correction to correct the record.

(b) A statement of correction under subsection (a):

(1) may not state a delayed effective date;

(2) must describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(3) must specify the incorrect information and the reason it is incorrect or the manner in which the signing is defective or erroneous; and

(4) must correct the incorrect information or defective or erroneous signature.

(c) A statement of correction filed by the [Secretary of State] under subsection (a) is effective:

(1) except as otherwise provided in paragraph (2), retroactively as of the effective date of the record the statement corrects; or

(2) with respect to a person that relied on the uncorrected record and would be adversely affected by the correction, when filed.

(a) A person on whose behalf a filed record was delivered to the [Secretary of State] for filing may correct the record if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the [Secretary of State] was
defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the Secretary of State must deliver to the [Secretary of State] for filing a statement of correction.

(c) A statement of correction:

(1) may not state a delayed effective date;

(2) must be signed on behalf of the person correcting the filed record;

(3) must identify the filed record to be corrected or have attached a copy and state the date of its filing;

(4) must specify the inaccuracy or defect to be corrected; and

(5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Section 103(d) and persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and persons, the statement of correction is effective when filed.

SECTION 210. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE; TRANSMISSION OF INFORMATION BY THE [SECRETARY OF STATE].

(a) The [Secretary of State] shall file a record delivered to the [Secretary of State] for filing which satisfies this [act]. The duty of the [Secretary of State] under this section is ministerial.

(b) When the [Secretary of State] files a record pursuant to this [act], the [Secretary of State]
State] shall record it as filed on the date and time of its delivery. After filing a record, the

[Secretary of State] shall deliver a copy of the filing with an acknowledgment of the date and
time of filing to the person on whose behalf the record was delivered for filing and, in the case of
a statement of denial, also to the statutory trust to which the statement pertains.

(c) If the [Secretary of State] refuses to file a record pursuant to this [act], the [Secretary
of State] shall return the record or notify the person that submitted the record not later than [15]
business days after the record is delivered, together with a brief explanation in a record of the
reason for the refusal.

(d) If the [Secretary of State] refuses to file a record pursuant to this act, the person that
submitted the filing may seek review of the refusal by the [appropriate court] under the following
procedures:

(1) The review proceeding is commenced by petitioning the court to compel filing
of the record and by attaching to the petition the record and the explanation of the [Secretary of
State] of the refusal to file.

(2) The court may summarily order the [Secretary of State] to file the record or
take other action the court considers appropriate.

(3) The final decision of the court may be appealed as in other civil proceedings.

(e) The filing of or refusal to file a record pursuant to this [act] does not:

(1) affect the validity or invalidity of the filing in whole or in part;

(2) affect the correctness or incorrectness of information contained in the filing; or

(3) create a presumption that the filing is valid or invalid or that information
(f) Except as provided by Section ___ or by law other than this [act], the [Secretary of State] may deliver any record to a person by delivering it to the person that submitted it, to the address of the person’s registered agent, to the principal office of the person, or to another address the person provides to the [Secretary of State] for delivery.

**SECTION 211. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.**

(a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record, or caused another to sign it on the person’s behalf, and knew the information to be inaccurate at the time the record was signed.

(b) An individual who signs a record authorized or required to be filed under this [act] affirms under penalty of perjury that the information stated in the record is accurate.

**SECTION 206 212. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

(a) The [Secretary of State], on request and payment of the required fee, shall furnish to the person making the request a certificate of good standing for a statutory trust if the records filed with the [Secretary of State] show that:

(1) the [Secretary of State] has filed a certificate of trust;

(2) all fees, taxes, and penalties due under this [act] or other law to the [Secretary of State] have been paid;

(3) the most recent [annual] [biennial] report of the trust required by Section 213
has been filed by the [Secretary of State];

(4) a statement of cancellation or dissolution has not been filed by the [Secretary of State]; and

(5) the [Secretary of State] has not filed a notice of administrative dissolution under Section 806 or, if the [Secretary of State] has filed such a notice, that the [Secretary of State] has filed a declaration of reinstatement under Section 807.

(b) A certificate of good standing must state:

(1) the name of the trust;

(2) that the trust was formed under the laws of this state and the date of formation; and

(3) that subsection (a) has been satisfied.

(c) Subject to any qualification stated in the certificate, a certificate of good standing issued by the [Secretary of State] is conclusive evidence that the statutory trust is in good standing as of the date the certificate is issued.

(a) On request of any person, the [Secretary of State] shall issue a certificate of good standing for a statutory trust or a certificate of registration for a registered foreign statutory trust.

(b) A certificate under subsection (a) must state:

(1) the statutory trust’s name or the registered foreign statutory trust’s name used in this state;

(2) that a certificate of formation pertaining to the statutory trust is effective under the law of this state and the effective date of that certificate, or that the registered foreign statutory trust is registered to do business in this state;
(3) that all fees, taxes, interest, and penalties owed to this state by the statutory
trust or the registered foreign statutory and collected through the [Secretary of State] have been
paid, if:

(A) payment is reflected in the records of the [Secretary of State]; and

(B) nonpayment affects the good standing or registration of the statutory
trust or foreign statutory trust;

(4) that the most recent annual report required by Section ___ has been delivered
for filing to the [Secretary of State]; and

(5) that, with respect to a statutory trust, no statement of dissolution, statement of
termination, or declaration of dissolution has been filed and no proceeding is pending under
Section____.

(c) Subject to any qualification stated in the certificate, a certificate issued by the
[Secretary of State] under subsection (a) may be relied upon as conclusive evidence of the facts
stated in the certificate.

SECTION 207 213. NAME OF STATUTORY TRUST.

(b) (a) The name of a statutory trust may contain the words “company”, “association”,
“club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”,
or words or abbreviations of similar import, and may contain the name of a beneficial owner, a
trustee, or any other person.

(a) (b) Except as otherwise provided in subsections (c) and (d), the name of a statutory
trust must be distinguishable in on the records of the [Secretary of State] from any:

(1) the name of any a person that is not an individual and that is already
incorporated, organized, formed, or authorized to do business transact in this state; and

(2) any name reserved under Section 208 214 [or other state laws allowing the
reservation or registration of business names, including fictitious or assumed name statutes]; and

(3) assumed name registered under [this state's assumed name statute].

(c) A person may apply to the [Secretary of State] to use a name that does not comply
with subsection (a). The [Secretary of State] shall authorize use of the name applied for if, as to a
conflicting name:

   (1) the present user, registrant, or owner of the conflicting name consents in a
signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of
State] to dissolve or to change the conflicting name to a name that complies with subsection (a)
and is distinguishable in the records of the [Secretary of State] from the name applied for;

   (2) the applicant delivers to the [Secretary of State] a certified copy of the final
judgment of a court of competent jurisdiction establishing the applicant’s right to use in this state
the name applied for; or

   (3) the applicant delivers to the [Secretary of State] proof satisfactory to the
[Secretary of State] that the present user, registrant, or owner of the conflicting name:

       (A) has merged with the applicant;

       (B) has been converted into the applicant; or

       (C) has transferred substantially all of its property, including the
conflicting name, to the applicant.

(c) Subsection (b) does not apply if the other entity or the person for which the name is
reserved or registered consents in a record to the use of the name and submits an undertaking in a
form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable
on the records of the [Secretary of State] from any name in any category of names in subsection (a).

(d) Subject to Section 906, this section applies to any foreign statutory trust that does business in this state, has a certificate of registration to do business in this state, or has applied for a certificate of registration. Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “limited liability partnership”, “LLP”, “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”, “LLL”, “registered limited liability limited partnership”, “RLLLP”, “limited liability company”, or “LLC”, may not be taken into account.

(e) The holder of a name under subsection (b) may consent in a record to the use of a name that is not distinguishable on the records of the [Secretary of State] from its name except for the addition of a word, phrase, or abbreviation indicating the type of entity described in subsection (d). In such a case, the holder need not change its name pursuant to subsection (b).

(f) An entity name may not contain the words [insert prohibited words or words that may be used only with approval by the appropriate state agency].

(g) Subject to Section , this section applies to a foreign statutory trust transacting business in this state which has or has applied for a foreign registration statement.

SECTION 208 214. RESERVATION OF NAME.

(a) The exclusive right to the use of a name that complies with Section 207 213 may be reserved by:
(1) a person intending to form a statutory trust under this [act] and to adopt the name;

(2) a statutory trust or a qualified foreign statutory trust intending to adopt the name;

(3) a foreign statutory trust intending to obtain a certificate of registration to do business in this state and adopt the name;

(4) a person intending to organize a foreign statutory trust and intending to have it obtain a certificate of registration to do business in this state and adopt the name;

(5) a foreign statutory trust formed under the name; or

(6) a foreign statutory trust formed under a name that does not comply with Section 207, but the name reserved under this paragraph may differ from the foreign statutory trust’s name only to the extent necessary to comply with Section 207.

(b) A person may apply to reserve a name under subsection (a) by delivering to the [Secretary of State] for filing an application that states the name to be reserved and the paragraph of subsection (a) that applies. If the [Secretary of State] finds that the name is available for use by the applicant, the [Secretary of State] shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for a 120-day period.

(c) A person that has reserved a name pursuant to subsection (b) may reserve the same name for additional 120-day periods. A person having a current reservation for a name may not apply for an additional 120-day period for the same name until 90 days have elapsed under the current reservation.

(d) A person that has reserved a name under this section may deliver to the [Secretary of State] for filing:
(1) a notice of transfer that states the reserved name, the name and street and
mailing address of some other person to which the reservation is to be transferred, and the
paragraph of subsection (a) that applies to the person; or

(2) a notice of termination of the person’s reservation.

(a) A person may reserve the exclusive use of the name of a statutory trust, including a
fictitious or assumed name for a foreign statutory trust whose name is not available, by
delivering an application to the [Secretary of State] for filing. The application must state the
name and address of the applicant and the name proposed to be reserved. If the [Secretary of
State] finds that the name applied for is available, the [Secretary of State] shall reserve the name
for the applicant’s exclusive use for a [120]-day period.

(b) The owner of a name reserved for a statutory trust may transfer the reservation to
another person by delivering to the [Secretary of State] for filing a signed notice in a record of
the transfer which states the name and address of the transferee.

SECTION 209 215. REGISTERED AGENT FOR SERVICE OF PROCESS.

(a) A Each statutory trust or a qualified and each foreign statutory trust that is registered
under Section _____ to do business in this state shall designate and maintain in this state an a
registered agent for service of process in this state. The designation of a registered agent pursuant
to this subsection is an affirmation of fact by the statutory trust or foreign statutory trust that the
agent has consented to serve.

(b) An A registered agent for service of process of a statutory trust or qualified foreign
statutory trust must be an individual who is a resident of this state or a person incorporated,
organized, formed, or authorized to do business in this state which maintains an office have a
place of business in this state.
(c) The duties of a registered agent are:

(1) to forward to the statutory trust or foreign statutory trust at the address most recently supplied to the agent by the trust any process, notice, or demand pertaining to the trust which is served on or received by the agent; and

(2) if the registered agent resigns, to provide the notice required by Section ___ to the trust at the address most recently supplied to the agent by the trust.

SECTION 210. CHANGE OF DESIGNATED OFFICE OR REGISTERED AGENT FOR SERVICE OF PROCESS OR ADDRESS FOR REGISTERED AGENT. A statutory trust or qualified foreign statutory trust may change its registered agent for service of process, or the address of its registered agent for service of process, or its designated office by delivering to the [Secretary of State] for filing a statement of change containing which states:

(1) the name of the trust; and

(2) the street and mailing address of the current designated office of the trust; the information that is to be in effect as a result of the filing of the statement of change.

(3) if the designated office is to be changed, the street and mailing address of the new designated office;

(4) the name and street and mailing address of the current agent of the trust for service of process; and

(5) if the current agent for service of process or an address of the agent is to be changed, the new information.

SECTION 211. RESIGNATION OF REGISTERED AGENT FOR SERVICE OF PROCESS.

(a) To resign as an agent for service of process A registered agent may resign as agent for
of a statutory trust or qualified foreign statutory trust, the agent must deliver by delivering to the
[Secretary of State] for filing a statement of resignation containing that states:

    (1) the name of the trust;
    (2) the name of the agent; and
    (3) a statement that the agent resigns as agent for service of process that the agent
resigns from serving as registered agent for the trust; and

    (4) the address of the trust to which the agent will send the notice required by
subsection (c).

    (b) A resigning agent shall transmit a copy of a statement of resignation to the designated
office of the statutory trust or qualified foreign statutory trust and a copy to the principal office if
the address of the office appears in the records of the [Secretary of State] and is different from
the address of the designated office. A statement of resignation takes effect on the earlier of the
31st day after the day on which it is filed by the [Secretary of State] or the designation of a new
registered agent for the statutory trust or foreign statutory trust.

    (c) An agency for service of process terminates on the 31st day after the [Secretary of
State] files the statement of resignation under subsection (a). A registered agent promptly shall
furnish the statutory trust or foreign statutory trust notice in a record of the date on which a
statement of resignation was filed.

    (d) When a statement of resignation takes effect, the registered agent ceases to have
responsibility for any matter tendered to it as agent for the statutory trust or foreign statutory
trust. The resignation does not affect any contractual rights the trust has against the agent or that
the agent has against the trust.

    (e) A registered agent may resign with respect to a statutory trust or foreign statutory trust
whether or not the trust is in good standing.

**SECTION 218. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.**

(a) If a registered agent changes its name or address, the agent may deliver to the [Secretary of State] for filing a statement of change signed by the agent which states:

1. The name of the statutory trust represented by the registered agent.
2. The name of the agent as currently shown in the records of the [Secretary of State] for the trust.
3. If the name of the agent has changed, its new name.
4. If the address of the agent has changed, its new address.

(b) A statement of change under this section takes effect upon its filing by the [Secretary of State].

(c) A registered agent shall promptly furnish notice to the represented statutory trust of the filing of the statement of change and the changes made by the statement.

**SECTION 219. SERVICE OF PROCESS, NOTICE, OR DEMAND.**

(a) An agent for service of process appointed by a statutory trust or qualified foreign statutory trust is an agent of the trust for service of any process, notice, or demand required or permitted by law to be served on the trust.

(b) If a statutory trust or qualified foreign statutory trust no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the trust may be served by registered or certified mail, return receipt requested, at its principal office in accordance with any applicable rules and procedures. Service is effected under this subsection at the earliest of:

1. the date the agent for the statutory trust or qualified foreign statutory trust receives the process, notice, or demand;
(2) the date shown on the return receipt, if signed on behalf of the trust; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

(e) If process, notice, or demand cannot be served on a statutory trust or qualified foreign statutory trust pursuant to subsection (b), service may be made by handing a copy to the manager, clerk, or other individual in charge of any regular place of business or activity of the trust if the individual served is not a plaintiff in the action.

(d) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

(a) A statutory trust or foreign statutory trust may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a statutory trust or foreign statutory trust no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the trust may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the trust at its principal office in accordance with any applicable judicial rules and procedures. Service is effected under this subsection on the earliest of:

(1) the date the trust receives the mail or delivery by a similar commercial delivery service;

(2) the date shown on the return receipt, if signed on behalf of the trust; or

(3) five days after its deposit with the United States Postal Service, or similar commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on a statutory trust or statutory trust pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in
charge of any regular place of business or activity of the trust if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record.

(e) Service of process, notice, or demand may be made by other means under law other than this [act].

SECTION 243. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE].

(a) A statutory trust or qualified foreign statutory trust must deliver to the [Secretary of State] for filing [an annual] [a biennial] report that contains the name of the trust and:

(1) for a statutory trust:

(A) the street and mailing address of its designated office; and

(B) the name and street and mailing address of its agent for service of process; or

(2) for a qualified foreign statutory trust:

(A) any alternate name adopted under Section 906;

(B) the name of the state or other jurisdiction of formation of the trust;

(C) the street and mailing address of its principal office and, if the laws of the jurisdiction of formation of the trust require it to maintain an office in that jurisdiction, the street and mailing address of that office; and

(D) the name and street and mailing address of its agent for service of process in this state.

(b) Information in [an annual] [a biennial] report under this section must be current as of
the date the report is delivered to the [Secretary of State] for filing.

c. The first [annual] [biennial] report under this section must be delivered to the
[Secretary of State] after [January 1] and before [April 1] of the year following the calendar year
in which a statutory trust was formed or a qualified foreign statutory trust was authorized to do
business in this state. The report must be delivered to the [Secretary of State] after [January 1]
and before [April 1] of each subsequent [second] calendar year.

d. If [an annual] [a biennial] report under this section does not contain the information
required in subsection (a), the [Secretary of State] shall notify the trust promptly and return the
report to it for correction. If the report is corrected to contain the information required in
subsection (a) and is delivered to the [Secretary of State] not later than the 30th day after the date
of the notice, the report is timely delivered.

e. If [an annual] [a biennial] report under this section contains an address of a
designated office or the name or address of an agent for service of process which differs from the
information shown in the records of the [Secretary of State] immediately before the filing, the
differing information in the report is deemed a statement of change under Section 210.

(a) Each statutory trust and foreign statutory trust registered to do business in this state
shall deliver to the [Secretary of State] for filing a [an annual] [biennial] report that states:

(1) the name of the trust;

(2) the name and street and mailing addresses of its registered agent in this state;

(3) the street and mailing addresses of its principal office; and

(4) the name of at least one trustee;

(5) in the case of a foreign statutory trust, the state or other jurisdiction under
whose law the company is formed and any alternate name adopted under Section ___.

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(b) Information in the [annual] [biennial] report must be current as of the date the report is signed by the statutory trust or foreign statutory trust.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] after [January 1] and before [April 1] of the year following the calendar year in which a statutory trust was created or a foreign statutory trust registered to do business in this state. Subsequent [annual][biennial] reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each [second] calendar year thereafter.

(d) If an annual report under this section does not contain the information required in by subsection (a), the [Secretary of State] shall promptly notify the reporting statutory trust or foreign statutory trust in a record and return the report to the trust for correction.

(e) If an annual report under this section contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the [annual] [biennial] report becomes effective, the differing information in the [annual] [biennial] report is considered a statement of change under Section ____.

Reporters' Notes

Subsection (a)(4) – This requirement was also added to HULLCA, with this explanation: “Originally added at the December 2010 “Plumbing Subcommittee” meeting and subsequently modified for clarity, these provisions reflect a compromise between ULLCA’s approach (bare bones certificate) and the HUB’s requirement that filing entities disclose all the governors (which in the case of a member-managed LLC would be all the members). The discussion at the Subcommittee was influenced by concern about pending federal legislation requiring disclosure of beneficial owners.
GOVERNING LAW; AUTHORIZATION; DURATION; POWERS

SECTION 301. GOVERNING LAW. The law of this state governs:

(1) the internal affairs of a statutory trust;
(2) the liability of a beneficial owner as beneficial owner and a trustee as trustee for a debt, obligation, or other liability the debts, obligations, or other liabilities of a statutory trust or a series thereof; and
(3) the enforceability of a debt, obligation, or other liability of:
   (A) the statutory trust or a series thereof against the property of the trust or any series thereof; and
   (B) a series trust again the property of the statutory trust or any other series.

Reporters' Notes

Paragraph (1) - Query whether to add a reference to series?

Paragraph (3) – The change is to make certain that the language applies only to the question of internal shields. For example, the original language could be read to apply to: “the enforceability of a debt, obligation, or other liability of the statutory trust …against the property of the trust ….” That reading might seem to indicate that the enforceability vel non of a trust obligation is necessarily settled by the law of the state of formation.

SECTION 302. STATUTORY TRUST AS ENTITY. A statutory trust is an entity separate from its trustees and beneficial owners.

SECTION 303. PERMISSIBLE PURPOSES.

(a) Except as otherwise provided in subsection (b), a statutory trust may have any lawful purpose, regardless of whether for profit.

(b) A statutory trust may not have a predominantly donative purpose.
Reporters’ Notes

Subsection (a) – A statutory trust may have a predominantly donative purpose, but need it have a profit-making or business purpose? For example, may a statutory trust could a lakeshore cabin, used by the beneficial owners of the trust? If so, the added language makes the point clear beyond peradventure. (The concern for greater certainty comes from issues in the LLC realm, which are perhaps inapposite here.)

SECTION 304. STATUTORY TRUST SOLELY LIABLE FOR DEBT, OBLIGATION, OR OTHER LIABILITY OF STATUTORY TRUST LIABILITY OF TRUSTEES AND BENEFICIAL OWNERS.

(a) A debt, obligation, or other liability of a statutory trust or series thereof is solely a debt, obligation, or other liability of the trust or series thereof. A beneficial owner or trustee, agent of the trust, or agent of the trustee is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the trust or series thereof solely by reason of being or acting as a trustee or beneficial owner, agent of the trust, or agent of the trustee.

(b) Except as otherwise provided in [Article] 4, property of a statutory trust held in the name of the trust or by the trustee in the trustee’s capacity as trustee is subject to attachment and execution to satisfy a debt, obligation, or other liability of the trust.

(c) The failure of a statutory trust to observe any formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on any trustee or beneficial owner of a statutory trust for any debt, obligation, or other liability of the trust.

Reporters’ Notes

Subsection (b) – Does the same rule apply to property of a series?

Subsection (c) – The proposed addition is for harmonization purposes. The language originated in RULLCA but is being added to RUPA (re: LLPs), HULPA, and even the limited cooperative act.
SECTION 305. NO CREDITOR RIGHTS IN TRUST PROPERTY. A creditor of a beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a statutory trust or any series thereof.

SECTION 306. DURATION.

(a) A statutory trust has perpetual duration.

(b) A statutory trust, or any series thereof, may not be terminated or revoked except in accordance with this [act] or the terms of the governing instrument.

(c) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner or trustee does not result in the termination or dissolution of a statutory trust or any series thereof.

(d) A statutory trust or any series thereof does not terminate because the same person is the sole trustee and sole beneficial owner.

SECTION 307. POWER TO HOLD PROPERTY; TITLE TO TRUST PROPERTY. A statutory trust may hold or take title to property in its own name, or in the name of a trustee in the trustee’s capacity as trustee, whether in an active, passive, or custodial capacity.

SECTION 308. POWER TO SUE AND BE SUED. A statutory trust may sue and be sued in its own name.
SERIES TRUSTS

SECTION 401. STATUTORY TRUST HAVING SERIES.

(a) The governing instrument may provide for the creation by the statutory trust of one or more series with respect to specified property of the statutory trust if:

(1) records are maintained for the series which reasonably identify the property of the series, including by specific listing, category, type, quantity, or computational or allocational formula or procedure, such as a percentage or share of any property, or by any other method by which the identity of the property of the series is objectively determinable; and

(2) notice that the trust may have one or more series is set forth in the certificate of trust as required by Section 201(b)(4).

(b) A series of a statutory trust is not an entity separate from the statutory trust.

(c) A series of a statutory trust may have a separate purpose from the trust or any other series thereof if the purpose of the series is lawful and not a predominantly donative purpose.

SECTION 402. LIABILITY OF SERIES TRUST.

(a) In a series trust:

(1) a debt, obligation, or other liability incurred or otherwise existing with respect to the property of a particular series is enforceable against the property of the series only, and not against the property of the trust generally or any other series thereof; and

(2) a debt, obligation, or other liability incurred or otherwise existing with respect to the trust generally or the property of any other series thereof is not enforceable against the property of the series.

(b) The association, disassociation, or reassociation of property of a statutory trust or a
series thereof to or with the trust or a series thereof, including by conversion or merger under
[Article] 7, is deemed to be a transfer between separate persons under [Uniform Fraudulent
Transfers Act or other state fraudulent transfer statute].

**SECTION 403. DUTIES OF TRUSTEE IN SERIES TRUST.** If there is at least one
trustee of a series trust that, in discharging its duties, is obligated to consider the interests of the
trust and all series thereof, the governing instrument may provide that one or more other trustees,
in discharging their duties, may consider only the interests of the trust or one or more series
thereof.

**SECTION 404. DISSOLUTION OF SERIES.**

(a) A series of a series trust may be dissolved or its property distributed without causing
the dissolution of the trust or any other series thereof.

(b) A series of a series trust is dissolved, and its activities must be wound up, on the
occurrence of an event or circumstance that the governing instrument states causes dissolution of
the series or upon the dissolution of the trust.

(c) On dissolution of a series of a series trust, the persons that under the governing
instrument are responsible for winding up the affairs of the series may cause the trust to take all
actions permitted under Section 803 and shall take actions with respect to the claims and
obligations of the series as provided in Sections 803 through 805.

(d) A person, including a trustee, that under the governing instrument is responsible for
winding up the affairs of a series of a series trust is not liable to the creditors of the dissolved
series by reason of the person’s actions in winding up the series.
[ARTICLE 5]

TRUSTEES AND TRUST MANAGEMENT

SECTION 501. MANAGEMENT OF STATUTORY TRUST. The business and affairs of a statutory trust must be managed by or under the authority of its trustees.

SECTION 502. TRUSTEE POWERS. A trustee may exercise:

(1) powers conferred by the governing instrument;

(2) except as limited by the governing instrument, any other powers necessary or convenient to carry out the business and affairs of the statutory trust; and

(3) other powers conferred by this [act].

SECTION 503. ACTION BY TRUSTEES. On any matter that is to be acted on by trustees, the following rules apply:

(1) The trustees act by majority of the trustees.

(2) The trustees may act without a meeting, without previous notice, and without a vote, if the minimum number of trustees necessary to authorize or take the action at a meeting at which all trustees entitled to vote thereon were present and voted consent in a signed record.

However, prompt notice of the action must be given to those trustees that did not consent.

(3) A trustee may vote in person or by proxy, but, if by proxy, the proxy must be in a signed record.

SECTION 504. PROTECTION OF PERSON DEALING WITH TRUSTEE.

(a) A person that in good faith assists a trustee, or in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee’s power, is protected from liability as if the trustee properly exercised the power.

(b) A person that in good faith deals with a trustee need not inquire into the extent of a
trustee’s power or the propriety of the exercise of the power.

(c) A person that in good faith delivers property to a trustee need not ensure its proper use.

(d) A person that in good faith and without knowledge that the trusteeship has terminated assists a former trustee as if the former trustee were still a trustee, or in good faith and for value deals with a former trustee as if the former trustee were still a trustee is protected from liability as if the former trustee were still a trustee.

Reporters’ Notes

Subsection (a) considers both a person assisting and one dealing with a trustee. In contrast, subsection (b) refers only to a person dealing with the trustee. The difference between the subsections makes sense in light of the comment: “Subsection (b) therefore overrides the application to a statutory trust under Section 105 of the outmoded common-law rule that third parties that deal with the trustee are charged with constructive notice of the trust’s governing instrument and its contents.” However, the difference could be read as implying a negative (i.e. those the opposite of subsection (b) applies to those who assist). Is that implication intended?

Reporters’ Notes Concerning Standard of Conduct

As the USTEA Comments explain, the USTEA drafting committee made a conscious decision to: (i) depart from the Delaware Act [but conform with reported Delaware practice] by codifying fiduciary duties; and (ii) follow a corporate model with regard to those duties. This approach may well be correct, but, from the perspective of harmonization, it is worth considering whether USTEA should use the same language as will be used in HULLCA, HULPA, and HUPA.

To facilitate discussion of this question, this draft first reproduces the USTEA, § 505 and then shows changes that would harmonize this section to HULLCA, HULPA, and HUPA. If the harmonizing approach is adopted, conforming changes will be required for Sections 104 and 507.

[USTEA PROVISION]

SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.

(a) Subject to Section 403, in exercising the powers of trusteeship, a trustee shall act in good faith and in a manner the trustee reasonably believes to be in the best interests of the
statutory trust.  

(b) A trustee shall discharge its duties with the care that a person in a similar position would reasonably believe appropriate under similar circumstances.

[HARMONIZATION ALTERNATIVE]

SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.

(a) Subject to Section 403, in exercising the powers of trusteeship, a trustee shall act in good faith and in a manner the trustee reasonably believes to be in the best interests of the statutory trust. A trustee owes to the trust and the beneficial owners the duties of loyalty and care stated in subsections (b) and (c).

(b) A trustee shall discharge its duties with the care that a person in a similar position would reasonably believe appropriate under similar circumstances. The fiduciary duty of loyalty of a trustee includes the duties:

(1) to account to the trust and to hold as trustee for it any property, profit, or benefit derived by the trustee:

(A) in the conduct or winding up of the trust’s activities;

(B) from a use by the trustee of the trust’s property; or

(C) from the appropriation of a trust opportunity;

(2) to refrain from dealing with the trust in the conduct or winding up of the trust’s activities as or on behalf of a person having an interest adverse to the trust; and

(3) to refrain from competing with the trust in the conduct of the trust’s activities before the dissolution of the trust.

(c) A trustee’s duty of care to the trust and the beneficial owners in the conduct and
winding up of the trust’s business is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A trustee shall discharge the duties under this [act] or under the trust instrument and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A trustee does not violate a duty or obligation under this [act] or under the trust instrument merely because the trustee’s conduct furthers the trustee’s own interest.

(f) All of the beneficial owners of a trust may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the statutory trust.

(h) If, as permitted by subsection (f), or the trust instrument, a trustee enters into a transaction with a statutory trust that otherwise would be prohibited by subsection (b)(2), the trustee’s rights and obligations arising from the transaction are the same as those of a person not a trustee.

(i) A beneficial owner does not have any duty to the statutory trust or to any other beneficial owner solely by reason of being a beneficial owner.

SECTION 506. GOOD-FAITH RELIANCE. A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8), is not liable to the trust or to a beneficial owner for breach of any duty under this [act], including a fiduciary duty, to the extent the breach results from good-faith reliance on:

(1) a term of the governing instrument;

(2) a record of the statutory trust; or

(3) an opinion, report, or statement of another person that the person to which the
opinion, report, or statement is made or delivered reasonably believes is within the other person’s professional or expert competence and is made or delivered to the trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8).

Reporters’ Notes

The change is intended to make clear that, as a default rule, good faith reliance is not a defense to a breach of contract claim. Certainly the trust instrument can create that protection for the trustee, but to provide that protection as a default rule would be seriously at odds with other contract-based Conference products.

SECTION 507. INTERESTED TRANSACTIONS.

(a) In this section, “covered party” means a trustee, officer, employee, or manager of a statutory trust, or a related party of a trustee, officer, employee, manager, or other person designated pursuant to Section 103(e)(8).

(b) Subject to subsection (c), a covered party may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide collateral for, or do other business with the statutory trust and, subject to law other than this [act], has the same rights and obligations with respect to those matters as a person that is not a covered party.

(c) A transaction described in subsection (b) is voidable by the statutory trust unless the covered party shows that the transaction is fair to the trust.

Reporters’ Notes

If the harmonized version of Section 505 is chosen, this Section will require revision.

SECTION 508. TRUSTEE’S RIGHT TO INFORMATION. A trustee has the right to receive from a statutory trust or another trustee information relating to the affairs of the trust which is reasonably related to the trustee’s discharge of the trustee’s duties as trustee. The trustee
may enforce this right by summary proceeding in the [appropriate court].

Reporters’ Notes

HUPA, HULPA, HULLCA, and HULCA (limited cooperative) act each provide far more detailed rules concerning access of managers to information. The Harmonization Committee’s assumption is that reasons exist not to harmonize.

SECTION 509. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT, AND EXONERATION INSURANCE.

(a) A statutory trust shall reimburse a trustee for any payment made by the trustee in the course of the trustee’s activities on behalf of the statutory trust, if the trustee complied with Sections 501, 505, and 610 in making the payment.

(b) A statutory trust may indemnify and hold harmless a trustee or beneficial owner, or other person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person’s former or present capacity as a trustee or beneficial owner relationship with the trust if the claim, or demand, debt, obligation or other liability does not arise from the person’s bad faith, willful misconduct, or reckless indifference breach of Section 501, 505, or 610.

(c) Expenses, including reasonable attorney’s fees and costs, incurred by a trustee, beneficial owner, or other person in connection with a claim or demand against the person by reason of the person’s relationship to a statutory trust may be paid by the trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (a). As a matter under Section 503(1), a statutory trust may advance reasonable expenses, including attorney’s fees and costs, incurred by a trustee or beneficial owner in connection with a claim or demand against the person by reason of the person’s former or
present capacity as a trustee or beneficial owner, if the person promises to repay the statutory trust if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(e) A term in the governing instrument relieving or exonerating a trustee from liability is unenforceable to the extent it relieves or exonerates the trustee from liability for conduct involving bad faith, willful misconduct, or reckless indifference.

(e) A statutory trust may purchase and maintain insurance on behalf of a trustee or beneficial owner of the trust against liability asserted against or incurred by the trustee or beneficial owner in that capacity or arising from that status even if, under Section 104(9), the trust instrument could not eliminate or limit the person’s liability to the company for the conduct giving rise to the liability.

Reporters' Notes

In general, this section has been harmonized to ULLCA (and HUPA and HULPA), after they had been improved by reference to the original language of this section.

Subsection (b) – For harmonization purposes, this change mandates indemnification as the default rule. Query the reason for having a different default in a statutory trust than in an LLC, limited partnership, or general partnership.

Subsection (c) – The introductory phrase (“As a matter under Section 503(1)”) is intended as the analog to the introductory phrase used in ULLCA (“As an activity in the ordinary course of its activities”).

Subsection (d) – Other acts have been harmonized to this provision.

SECTION 510. DIRECTION OF TRUSTEES.

(a) The governing instrument may authorize any person, including a beneficial owner, to direct a trustee or other person in the management of a statutory trust.

(b) The governing instrument may provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes
the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner.

(c) If the governing instrument confers on a person a power to direct actions by a trustee or other person, the trustee or other person shall act in accordance with an exercise of the power, unless the direction is manifestly contrary to the terms of the governing instrument or the trustee knows or has reason to know that following the direction would constitute a serious breach of fiduciary duty by the trustee.

SECTION 511. DELEGATION BY TRUSTEE.

(a) A trustee may delegate duties and powers. The trustee shall exercise the care a person in a similar position would reasonably believe appropriate under similar circumstances in:

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

(b) Subject to subsection (a), a trustee may delegate duties and powers to a co-trustee.

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

(d) A trustee that complies with subsection (a) is not liable to a beneficial owner or to the statutory trust for an act or omission of the agent of the trustee to which a function was delegated.

(e) An agent of a trustee submits to the jurisdiction of the courts of this state by accepting a delegation of powers or duties from a trustee with respect to a claim related to the agency.
SECTION 512. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT COMPANY.

(a) In this section, “affiliated person” and “interested person” have the meanings set forth in the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq. [or any successor statute] [and any regulations issued thereunder].

(b) If a statutory trust is registered as an investment company under the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [or any successor statute] [and any regulations issued thereunder,] a trustee is an independent trustee for all purposes under this [act] if the trustee is not an interested person of the trust. The receipt of compensation both for service as an independent trustee of the trust and for service as an independent trustee of one or more other investment companies managed by a single investment adviser or an affiliated person of an investment adviser, does not affect the status of the trustee as an independent trustee under this section.
SECTION 601. BENEFICIAL INTEREST.

(a) A beneficial interest in a statutory trust is freely transferable.

(b) A beneficial interest in a statutory trust is personal property regardless of the nature of the property of the trust.

(c) A beneficial interest in a statutory trust is not an interest in specific property of the statutory trust.

(d) A beneficial owner does not have a preemptive right to subscribe to any additional issue of beneficial interests or any other interest of a statutory trust.

(e) A beneficial interest may be evidenced by a certificate of the interest issued by the statutory trust in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(f) A statutory trust need not give effect to a transferee of a beneficial owner’s rights under this section until the trust has notice of the transfer.

Reporters' Notes

Subsection (b) – language deleted as unnecessary and as raising questions in other acts (which do not include the language).

Subsections (e) and (f) – included for the sake of harmonization, unless a trust-related reason indicates to the contrary.

SECTION 602. VOTING OR CONSENT BY BENEFICIAL OWNERS. On any matter that is to be acted on by beneficial owners, the following rules apply:

(1) The beneficial owners act by majority of the beneficial interests.

(2) The beneficial owners may take the action without a meeting, without notice, and
without a vote, if beneficial owners having at least the minimum number of votes necessary to
authorize or take the action at a meeting at which all beneficial owners entitled to vote thereon
were present and voted consent in a signed record. However, prompt notice of the action must be
given to those beneficial owners that did not consent.

(3) A beneficial owner may vote in person or by proxy, but if by proxy, the proxy must
be contained in a signed record.

SECTION 603. FORM OF AND LIABILITY FOR CONTRIBUTIONS

CONTRIBUTION BY BENEFICIAL OWNER.

(a) A contribution of a beneficial owner to a statutory trust may be in cash, property, or
services rendered or a promissory note or other obligation to contribute cash or property or to
perform services. A contribution may consist of tangible or intangible property or other benefit
to a statutory trust, including money, services performed, promissory notes, other agreements to
contribute money or property, and contracts for services to be performed.

(b) A person may become a beneficial owner of a statutory trust and may receive a
beneficial interest in a statutory trust without making a contribution or being obligated to make a
contribution to the trust.

(b) (c) A beneficial owner is liable to the statutory trust for failure to perform an
obligation to contribute cash or property or to perform services, even if the beneficial owner is
unable to perform because of death, disability, or any other reason. If a beneficial owner does not
make the required contribution of cash, property, or services, the beneficial owner is obligated, at
the option of the trust, to contribute cash equal to that part of the value of the contribution that
has not been made. This obligation is in addition to any other right, including the right to specific
performance, that the trust has against the beneficial owner under the governing instrument or
A person’s obligation to contribute money or other property or other benefit to, or to perform services for, a statutory trust is not excused by the person’s death, disability, or other inability to perform personally.

(d) If a person does not make a promised contribution, the person is obligated at the option of the statutory trust to contribute money equal to the value of the part of the contribution which has not been made.

(e) The governing instrument may provide that a beneficial owner that fails to make a required contribution, or comply with the terms and conditions of the governing instrument, is subject to specified penalties for or consequences of the failure, including:

1. reduction or elimination of the defaulting beneficial owner’s proportionate interest in the statutory trust or series thereof;
2. subordination of the defaulting beneficial owner’s beneficial interest to that of nondefaulting beneficial owners;
3. forced sale or forfeiture of the defaulting beneficial owner’s beneficial interest;
4. imposition of an obligation to repay a loan to the statutory trust by another beneficial owner of the amount necessary to meet the defaulting beneficial owner’s commitment;
5. redemption or sale of the defaulting beneficial owner’s beneficial interest at a value fixed by appraisal or by formula; and
6. specific performance of an obligation under the governing instrument.

**Reporters' Notes**

The deletions are consistent with Conference policy. No other entity act sanctions penalties or forfeitures. “Equity abhors a forfeiture,” and the common law of contracts does not permit penalties (although some academics have criticized that approach and asserted that the common law’s antipathy is more formal than real). Moreover, from the perspective of
harmonization, if these words remain in USTEA, they should be added to HULLCA, HULPA, and HUPA.

**SECTION 604. DISTRIBUTION TO BENEFICIAL OWNER RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.**

(a) When any distributions made by a statutory trust before its dissolution and winding up must be in proportion to the beneficial interests. If a beneficial owner becomes entitled to receive a distribution, with respect to the distribution, the beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the statutory trust with respect to the distribution.

(b) A beneficial owner has a right to a distribution before the dissolution and winding up of a statutory trust only if the trust decides to make an interim distribution. A beneficial owner does not have a right to demand or receive a distribution from the trust in any form other than money.

(c) Subject to Section 803(b), the trust may distribute an asset in kind only if each part of the asset is fungible with each other part and each beneficial owner receives a percentage of the asset equal in value to the beneficial owner's share of the distribution.

**Reporters' Notes**

Subsection (a) – For harmonization purposes, the new first sentence creates a default rule.

**SECTION 605. REDEMPTION OF BENEFICIAL INTEREST.** A statutory trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series thereof. A beneficial interest acquired under this section is canceled.

**SECTION 606. CHARGING ORDER.**

(a) If a beneficial interest is not freely transferable by a beneficial owner so that the transferee has all rights of the transferor, a judgment creditor of a beneficial owner may satisfy...
the judgment against the beneficial owner’s beneficial interest only as provided in this section.

(b) On application by a judgment creditor of a beneficial owner, the [appropriate court] may issue a charging order against the beneficial owner’s right to distributions from the trust for the unsatisfied part of the judgment and:

(1) appoint a receiver of the distributions subject to the charging order, with the power to enforce the beneficial owner’s right to a distribution; and

(2) make other orders necessary to give effect to the charging order.

(c) A charging order issued under subsection (b) is a lien on the beneficial owner’s right to distributions and requires the statutory trust to pay over to the judgment creditor any distribution that would otherwise be paid to the beneficial owner until the judgment has been satisfied.

(d) A statutory trust or beneficial owner that is not subject to a charging order issued under subsection (b) may pay to the judgment creditor the full amount due under the judgment lien and thereby succeed to the rights of the judgment creditor, including the charging order.

(e) This [act] does not deprive a beneficial owner or a transferee of the beneficial interest of any exemption applicable to the beneficial interest.

Reporters’ Notes

The charging order is a remedy that functions to protect the “pick your partner” principle of partnership and LLC law. As an entity whose interests are freely transferable, a statutory trust resembles a corporation rather a partnership or LLC. It would be virtually* unprecedented to allow an entity to impose transfer restrictions by private agreement and then protect those private arrangements with the charging order. To do so would put the Conference at odds with literally hundreds of cases (that, rightly or wrongly, consistently subject private transfer restrictions to strict scrutiny). Moreover, the charging order has become controversial as an unfair barrier to legitimate creditors. Particularly in light of that controversy, it is the wrong time for the Conference to seek radically to change the law.

SECTION 606. RESTRICTIONS ON TRANSFER OF BENEFICIAL INTERESTS.

(a) The governing instrument may impose restrictions for any reasonable purpose on the transfer of beneficial interests of a statutory trust. A restriction does not affect beneficial interests issued before the restriction was adopted unless the holders of the beneficial interests are parties to the governing instrument or voted in favor of the restriction.

(b) A restriction under subsection (a) on the transfer of beneficial interests is valid and enforceable against the holder if the restriction is noted conspicuously on the front or back of the certificate. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer of beneficial interests may:

(1) obligate the beneficial owner first to offer the statutory trust or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted beneficial interests;

(2) obligate the statutory trust or other persons (separately, consecutively, or simultaneously) to acquire the restricted beneficial interests;

(3) require the statutory trust, the holders of any class or series trust, or another person to approve the transfer of the restricted beneficial interests, if the requirement is not manifestly unreasonable; and

(4) prohibit the transfer of the restricted beneficial interests to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

Reporters’ Notes

This section is designed to resemble MBCA § 6.27.

SECTION 607. TRANSACTION WITH BENEFICIAL OWNER. Subject to
Section 507, a beneficial owner or related party of a beneficial owner may lend money to,
borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an
obligation of, provide collateral for, or do other business with the statutory trust and, subject to
law other than this [act], has the same rights and obligations with respect to those matters as a
person that is not a beneficial owner.

Reporters’ Notes

Even if the harmonized approach is adopted for Section 505, this section should remain
essentially as is.

SECTION 608. BENEFICIAL OWNER’S RIGHT TO INFORMATION. A

beneficial owner has the right to receive from the statutory trust or a trustee information relating
to the affairs of a statutory trust which is reasonably related to the beneficial owner’s interest.
The beneficial owner may enforce this right by summary proceeding in the [appropriate court].

Reporters’ Notes

HUPA, HULPA, HULLCA, and HULCA (limited cooperative) act each provide far more
detailed rules concerning access of equity owners to information. (Note, e.g., the absence of a
requirement of a proper purpose; the absence of express authority for the trustee to impose
restrictions independent of the governing instrument). The Harmonization Committee’s
assumption is that reasons exist not to harmonize.

SECTION 609. DIRECT ACTION BY BENEFICIAL OWNER.

(a) A beneficial owner may maintain a direct action against a statutory trust to redress an
injury sustained by, or to enforce a duty owed to, the beneficial owner if the beneficial owner can
prevail without showing an injury or breach of duty to the trust. Subject to subsection (b), a
beneficial owner may maintain a direct action against another beneficial owner, a trustee, or the
statutory trust to enforce the beneficial owner’s rights and otherwise protect the beneficial
owner’s interests, including rights and interests under the governing instrument or this [act] or
arising independently of the beneficial owner relationship.
A beneficial owner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the statutory trust.

Reporters' Notes

The substituted language conforms to Conference precedent and with the lion’s share of case law. Until 2004, Delaware used the “special injury” approach, but in Tooley the court joined the majority and “disapprove[d]” of that approach. Tooley v. Donaldson, Lufkin, & Jenrette, Inc., 845 A.2d 1031, 1035 (Del. 2004). The “duty owed” approach is the law in very few states and can lead to substantial confusion.

**SECTION 610. DERIVATIVE ACTION.** A beneficial owner may maintain a derivative action to redress an injury sustained by, or enforce a duty owed to, right of a statutory trust if:

1. the beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not bring the action within a reasonable time; or
2. a demand would be futile.

**SECTION 611. PROPER PLAINTIFF.** A derivative action on behalf of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and:

1. that was a beneficial owner when the conduct giving rise to the action occurred; or
2. acquired the status as a beneficial owner by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct.

**SECTION 612. PLEADING.** In a derivative action on behalf of the statutory trust, the
complaint must state with particularity:

(1) the date and content of the plaintiff’s demand and the response to the demand by the trustees; or

(2) why the demand should be excused as futile.

**SECTION 613. SPECIAL LITIGATION COMMITTEE.**

(a) If a statutory trust is named as or made a party in a derivative proceeding, the trust may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the trust. If the trust appoints a special litigation committee, on motion by the committee made in the name of the trust, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person’s right to information under Section 508 or 608, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be trustees.

(c) A special litigation committee may be appointed:

(1) by a majority of the trustees not named as defendants or plaintiffs in the proceeding; and

(2) if all trustees are named as defendants or plaintiffs in the proceeding, by a majority of the trustees named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the statutory trust that the proceeding:
(1) continue under the control of the plaintiff;
(2) continue under the control of the committee;
(3) be settled on terms approved by the committee; or
(4) be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to proceed under the direction of the plaintiff.

Reporters' Notes
This section is added: (i) for harmonization purposes [HULPA and HULLCA; HUPA does not provide for derivative suits]; (ii) because there is some suggestion in the LLC case law that an entity may not create an SLC absent statutory authority or an express provision in its operating agreement; and (iii) to adopt the Auerbach rule for assessing a report of an SLC. Auerbach v. Bennett, 393 N.E.2d 994 (N.Y. 1979). Auerbach is by far the majority rule.

SECTION 614. PROCEEDS AND EXPENSES.

(e) (a) Except as otherwise provided in subsection (f) (b):

(1) any proceeds or other benefits of a derivative action on behalf of a statutory trust, whether by judgment, compromise, or settlement, are the property of the trust and not of the plaintiff; and
(2) if the plaintiff receives any proceeds or other benefits, the plaintiff shall
immediately remit them immediately to the trust.

(4) (b) If a derivative action on behalf of a statutory trust is successful in whole or in part, the court may award the plaintiff reasonable attorney’s fees, costs, and other expenses, including attorney’s fees and costs, from the recovery by the trust.

(g) A derivative action on behalf of a statutory trust may not be voluntarily dismissed or settled without the court’s approval.

Reporters’ Notes

Former Subsection (g) – deleted for the sake of harmonization, but perhaps the better result would be to reinstate and harmonize other acts to USTEA.

SECTION 615. LIMITATIONS ON DISTRIBUTIONS.

(a) A statutory trust may not make a distribution if after the distribution:

(1) the trust would not be able to pay its debts as they become due in the ordinary course of the trust’s activities; or

(2) the trust’s total assets would be less than the sum of its total liabilities plus, unless the governing instrument permits otherwise, the amount that would be needed, if the trust were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of beneficial owners whose preferential rights are superior to those of persons receiving the distribution.

(b) A statutory trust may base a determination that a distribution is not prohibited under subsection (a) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:
(1) in the case of a distribution as defined in Section 102(6), as of the earlier of the date:

(A) money or other property is transferred or debt incurred by the trust;

and

(B) the person entitled to the distribution ceases to own the interest or rights being acquired by the trust in return for the distribution;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A statutory trust’s indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the trust’s indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A statutory trust’s indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution could be made under this section. If indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(f) This section does not apply to distributions under Section 803.
In their July 2, 2010 letter to Dean Haynsworth, Professors Langbein and Sitkoff explained the absence of clawback provisions as follows: “USTEA contains no provision for the recapture of distributions made while the entity is insolvent. Thus, in the absence of an applicable provision in the governing instrument, under Section 105 ordinary trust law will apply. See, e.g., Austin W. Scott, William F. Fratcher & Mark L. Ascher, 4 Scott and Ascher on Trusts § 26.7 (5th ed. 2007).” With respect and for two reasons, the Harmonization Committee believes that this explanation does not justify treating USTEA differently than the other acts. Common law remedies also exist with respect to other entities – most notably the fraudulent transfer/conveyance laws, but the Conference policy has been to follow corporate law and provide a separate, statutory remedy when an entity act provides a liability shield for owners. Moreover, as Professors Langbein and Sitkoff note, “ordinary trust law” applies “in the absence of an applicable provision in the governing instrument.” (Emphasis added) Statutory clawback provisions are not subject to variation by the private agreement.

SECTION 616. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a trustee of a statutory trust consents to a distribution made in violation of Section 615 and in consenting to the distribution fails to comply with Section 505, the trustee is personally liable to the trust for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 505.

(b) To the extent the governing instrument of a statutory trust expressly relieves a trustee of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other trustees, the liability stated in subsection (a) applies to the other trustees and not the trustee that the governing instrument relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 615 is personally liable to the statutory trust but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 615.
(d) A person against which an action is commenced because the person is liable under subsection (a) may:

(1) implead any other person that is subject to liability under subsection (a) and seek to enforce a right of contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred if not commenced within two years after the distribution.
SECTION 701. DEFINITIONS. In this article:

(1) “Constituent organization” means an organization that is party to a merger.

(2) “Constituent statutory trust” means a constituent organization that is a statutory trust.

(3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 702 through 705.

(4) “Converting organization” means an organization that converts into another organization pursuant to Section 702.

(5) “Converting statutory trust” means a converting organization that is a statutory trust.

(6) “Governing law” means the law that governs an organization’s internal affairs.

(7) “Organization” means a common-law trust that does not have a predominantly donative purpose; general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; corporation; or foreign statutory trust. The term includes a domestic or foreign organization whether or not organized for profit.

(8) “Organizational documents” means the records that create an organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(9) “Surviving organization” means an organization into which one or more other organizations are merged, whether the surviving organization preexisted the merger or was created by the merger.
SECTION 702. CONVERSION.

(a) An organization other than a statutory trust may convert to a statutory trust, and a statutory trust may convert to another organization pursuant to this section and Sections 703 through 705 and a plan of conversion, if:

(1) the conversion is not prohibited by the governing law of the other organization; and

(2) the other organization complies with its governing law in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner of and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization.

SECTION 703. ACTION ON PLAN OF CONVERSION BY CONVERTING STATUTORY TRUST.

(a) A plan of conversion must be consented to by all trustees and all beneficial owners of a converting statutory trust.

(b) A converting statutory trust may amend a plan of conversion or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same consent as was required to
SECTION 704. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a conversion is approved:

(1) a converting statutory trust shall deliver to the [Secretary of State] for filing articles of conversion, which must include:

(A) a statement that the trust has been converted into another organization;

(B) the name and form of the converting organization and the jurisdiction of its governing law;

(C) a statement that the conversion was approved as required by this [act];

(D) a statement that the conversion is not prohibited by the governing law of the converted organization; and

(E) if the converted organization is a foreign organization not authorized to do business in this state, the street and mailing address of an office that the [Secretary of State] may use for the purposes of Section 705(c); and

(2) if the converting organization is not a statutory trust, the converting organization shall deliver to the [Secretary of State] for filing a certificate of trust, which must include, in addition to the information required by Section 201:

(A) a statement that the trust was converted from another organization;

(B) the name and form of the converting organization and the jurisdiction of its governing law; and

(C) a statement that the conversion was approved in a manner that complied with the organization’s governing law.

approve the plan:
A conversion becomes effective when the certificate of conversion is effective as provided in Section 204(c).

**SECTION 705. EFFECT OF CONVERSION.**

(a) An organization that has been converted pursuant to this [article] is for all purposes the same organization that existed before the conversion.

(b) When a conversion under this [article] takes effect:

1. All property owned by the converting organization remains vested in the converted organization;

2. All debts, obligations, and other liabilities of the converting organization, including those existing with respect to the property of a series thereof, continue as debts, obligations, or other liabilities of the converted organization limited to the property of any series thereof as provided for by the plan of conversion and the governing law of the converted organization;

3. An action or proceeding pending by or against the converting organization continues as if the conversion had not occurred;

4. Except as prohibited by law other than this [act], the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

5. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

6. Except as otherwise agreed, the conversion does not dissolve a converting statutory trust or any series thereof for the purposes of Section 801.

(e) A converted organization that is a foreign organization consents to the jurisdiction of
the courts of this state to enforce any debt, obligation, or other liability for which the converting
statutory trust is liable, if, before the conversion, the converting statutory trust was subject to suit
in this state on the debt, obligation, or other liability. A converted organization that is a foreign
organization and not authorized to do business in this state may be served with process in
accordance with Section 212.

SECTION 706. MERGER.

(a) A statutory trust may merge with one or more other constituent organizations
pursuant to this section and Sections 707 through 709 and a plan of merger if:

(1) the merger is not prohibited by the governing law of any constituent
organization; and

(2) each of the other organizations complies with its governing law in effecting
the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving
organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for
converting or exchanging the interests in each constituent organization into any combination of
money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving
organization’s organizational documents; and

(5) if the surviving organization is not to be created by the merger, any
amendments to be made by the merger to the surviving organization’s organizational documents.
SECTION 707. ACTION ON PLAN OF MERGER BY CONSTITUENT STATUTORY TRUST.

(a) A plan of merger must be consented to by all trustees and all beneficial owners of a constituent statutory trust.

(b) After a merger is approved, and at any time before a filing is made under Section 708, a constituent statutory trust may amend the plan or abandon the planned merger:

(1) as provided in the plan; and

(2) except as prohibited by the plan, with the same consent as was required to approve the plan.

SECTION 708. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent statutory trust, by one or more trustees or other authorized representative; and

(2) each other constituent organization, by an authorized representative.

(b) Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing law;

(2) the name and form of the surviving organization, the jurisdiction of its governing law, and, if the surviving organization is created by the merger, a statement to that effect;

(3) if the surviving organization is to be created by the merger:

(A) if it will be a statutory trust, the trust’s certificate of trust; or
(B) if it will be an organization other than a statutory trust, the
organizational document that creates the organization;

(4) if the surviving organization preexisted the merger, any amendments provided
for in the plan of merger for the organizational document that created the organization;

(5) a statement as to each constituent organization that the merger was approved
as required by the organization’s governing law;

(6) if the surviving organization is a foreign organization not authorized to do
business in this state, the street and mailing address of an office that the [Secretary of State] may
use for the purposes of Section 709(b); and

(7) any additional information required by the governing law of any constituent
organization.

(c) Articles of merger must be delivered to the office of the [Secretary of State] for
filing.

(d) A merger becomes effective under this [article]:

(1) if the surviving organization is a statutory trust, on the later of:

(A) filing of the articles of merger by the [Secretary of State]; or

(B) subject to Section 204(c)(2), (3), or (4), as specified in the articles of
merger; or

(2) if the surviving organization is not a statutory trust, as provided by the
governing law of the surviving organization:

SECTION 709. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;
each constituent organization that merges with the surviving organization ceases to exist as a separate organization;

all property owned by each constituent organization that ceases to exist vests in the surviving organization;

all debts, obligations, and other liabilities of each constituent organization that ceases to exist, including those existing with respect to the property of a series thereof, continue as debts, obligations, or other liabilities of the surviving organization limited to the property thereof as provided for by the plan of merger and the governing law of the surviving organization;

an action or proceeding pending by or against any constituent organization that ceases to exist continues as if the merger had not occurred;

except as prohibited by law other than this [act], all rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

if the surviving organization is created by the merger and:

(A) if it is a statutory trust, the certificate of trust becomes effective; or

(B) if it is an organization other than a statutory trust, the organizational document that creates the organization becomes effective; and

if the surviving organization preexisted the merger, any amendment provided for in the articles of merger for the organizational document that created the organization becomes effective.
(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability of a constituent organization if, before the merger, the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization not authorized to do business in this state may be served with process in accordance with Section 212.

SECTION 710. [ARTICLE] NOT EXCLUSIVE. This [article] does not preclude an organization from being converted or merged under law other than this [act].

[PART] 1

GENERAL PROVISIONS

SECTION 701. DEFINITIONS. In this [article]:

(1) “Acquired entity” means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.


(4) “Converted entity” means the converting entity as it continues in existence after a conversion.

(5) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 743 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) “Distributional interest” means the right under an unincorporated entity’s organic law to receive distributions from the entity.
(7) “Domestic”, with respect to a statutory trust, means governed as to its internal affairs by the law of this state.

(8) “Domesticated statutory trust” means the domesticating statutory trust as it continues in existence after a domestication.

(9) “Domesticating statutory trust” means the domestic statutory trust that approves a plan of domestication pursuant to Section 753 or the foreign statutory trust that approves a domestication pursuant to the law of its jurisdiction of formation.


(11) “Entity”:

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership;

(iv) a limited partnership;

(v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

(ix) a statutory trust, business trust, or common-law business trust; or

(x) any other person that has a legal existence separate from any interest holder of that person or that has the power to acquire an interest in real property in its own name;

and

(B) does not include:
(i) an individual;

(ii) a testamentary, inter vivos, or charitable trust, except a statutory trust, business trust, or common-law business trust;

(iii) an association or relationship that is not a partnership solely by reason of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform Partnership Act] or a similar provision of the law of another jurisdiction;

(iv) a decedent’s estate; [or]

(v) a government or a governmental subdivision, agency, or instrumentality [; or] []

[vi] a person excluded under Section 709.]

(12) “Filing entity” means an entity that is formed by the filing of a public organic record.

(13) “Foreign” with respect to an entity, means an entity governed as to its internal affairs by the laws of a jurisdiction other than this state.

(14) “Governance interest” means the right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for the election of the governors of the entity; or

(C) receive notice of or vote on any issue involving the internal affairs of the entity.

(15) “Governor” means:

(A) a director of a business corporation;
(B) a director or trustee of a nonprofit corporation;
(C) a general partner of a general partnership;
(D) a general partner of a limited partnership;
(E) a manager of a manager-managed limited liability company;
(F) a member of a member-managed limited liability company;
[(G) a director of a general cooperative association;]
(H) a director of a limited cooperative association;
(I) a manager of an unincorporated nonprofit association;
(J) a trustee of a statutory trust, business trust, or common-law business trust; or
(K) any other person under whose authority the powers of an entity are exercised
and under whose direction the activities and affairs of the entity are managed pursuant to the
organic law and organic rules of the entity.

(16) “Interest” means:
(A) a share in a business corporation;
(B) a membership in a nonprofit corporation;
(C) a partnership interest in a general partnership;
(D) a partnership interest in a limited partnership;
(E) a membership interest in a limited liability company;
[(F) a share in a general cooperative association;]
(G) a member’s interest in a limited cooperative association;
(H) a membership in an unincorporated nonprofit association;
(I) a beneficial interest in a statutory trust, business trust, or common-law business
trust;
(J) a governance interest in any other type of unincorporated entity; or

(K) a distributional interest in an unincorporated entity.

(17) “Interest holder” means:

(A) a shareholder of a business corporation;
(B) a member of a nonprofit corporation;
(C) a general partner of a general partnership;
(D) a general partner of a limited partnership;
(E) a limited partner of a limited partnership;
(F) a member of a limited liability company;
(G) a shareholder of a general cooperative association;
(H) a member of a limited cooperative association;
(I) a member of an unincorporated nonprofit association;
(J) a beneficiary of a statutory trust, business trust, or common-law business trust;
or

(K) any other direct holder of an interest.

(18) “Interest holder liability” means:

(A) personal liability for a liability of an entity that is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.
(19) “Jurisdiction of formation” means the jurisdiction whose law includes the organic law of an entity.

(20) “Merger” means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a record filed by the [Secretary of State].

(21) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(22) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.


(24) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust or common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(25) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

(26) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic record, if any. The term includes:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;
the partnership agreement of a limited partnership;

the partnership agreement of a limited liability company;

[(F) the bylaws of a general cooperative association;]

(G) the bylaws of a limited cooperative association;

(H) the governing principles of an unincorporated nonprofit association; and

(I) the trust instrument of a statutory trust, business trust, or common-law business trust.

(27) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date of this [act];

(B) an agreement that is binding on an entity on the effective date of this [act];

(C) the organic rules of an entity in effect on the effective date of this [act]; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this [act].

(28) “Public organic record” means the record the filing of which by the [Secretary of State] forms an entity and any amendment to or restatement of that record. The term includes:

(A) the articles of incorporation of a business corporation;

(B) the articles of incorporation of a nonprofit corporation;

(C) the certificate of limited partnership of a limited partnership;

(D) the certificate of organization of a limited liability company;

[(E) the articles of incorporation of a general cooperative association;]

(F) the articles of organization of a limited cooperative association; and

(G) the certificate of trust of a statutory trust or business trust.
(29) “Registered foreign entity” means a foreign entity that is registered to do business or otherwise qualified in this state pursuant to a record filed by the [Secretary of State].

(30) “Surviving entity” means the entity that continues in existence after or is created by a merger.

(31) “Type of entity” means a generic form of entity:

(A) recognized at common law; or

(B) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

**Reporters' Notes**

Patterned after harmonized META § 102.

*Paragraphs (16)(I) and 17(J)* - Query whether to add series; is it possible for person to be a beneficial owner of series without being a beneficial owners of trust? Are series entitled to merge, etc. independently?

**SECTION 702. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.** This [article] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [article].

**Reporters’ Note**

Patterned after harmonized META § 103(b).

**SECTION 703. REQUIRED NOTICE OR APPROVAL.**

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger must give the notice or obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or
foreign entity immediately before a transaction under this [article] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of [name of court] [the attorney general] specifying the disposition of the property.

Reporters’ Note

Patterned after harmonized META § 104.

SECTION 704. STATUS OF FILINGS. A filing under this [article] signed by a domestic entity becomes part of the public organic record of the entity if the entity’s organic law provides that similar filings under that law become part of the public organic record of the entity.

Reporters’ Note

Patterned after harmonized META § 105.

SECTION 705. NONEXCLUSIVITY. The fact that a transaction under this [article] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [article].

Reporters’ Note

Patterned after harmonized META § 106.

SECTION 706. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.
SECTION 707. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [article] by the unanimous vote or consent of its interest holders satisfies the requirements of this [article] for approval of the transaction.

SECTION 708. APPRAISAL RIGHTS.

(a) An interest holder of a domestic merging, acquired, or converting entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity’s organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this [article] to the extent provided:

(1) in the entity’s organic rules; or

(2) in the plan.
[SECTION 709. EXCLUDED ENTITIES AND TRANSACTIONS.]

(a) The following entities may not participate in a transaction under this [article]:

(1)

(2).

(b) This [article] may not be used to effect a transaction that:

(1)

(2)

(3).

Reporters’ Note

Patterned after harmonized META § 110.

[PART] 2

MERGER

SECTION 721. MERGER AUTHORIZED.

(a) By complying with this [part]:

(1) one or more domestic statutory trusts may merge with one or more domestic

or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic statutory trust.

(b) By complying with the provisions of this [part] applicable to foreign entities a

foreign entity may be a party to a merger under this [part] or may be the surviving entity in such

a merger if the merger is authorized by the law of the foreign entity’s jurisdiction of formation.

Reporters’ Note

Patterned after harmonized META § 201(a), (b), and (d).
SECTION 722. PLAN OF MERGER.

(a) A domestic statutory trust may become a party to a merger under this [part] by approving a plan of merger. The plan must be in a record and contain:

1. as to each merging entity, its name, jurisdiction of formation, and type;
2. if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of formation, and type;
3. the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
4. if the surviving entity exists before the merger, any proposed amendments to its public organic record or to its private organic rules that are, or are proposed to be, in a record;
5. if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;
6. the other terms and conditions of the merger; and
7. any other provision required by the law of a merging entity’s jurisdiction of formation or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

Reporters’ Note

Patterned after harmonized META § 202.

SECTION 723. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

1. by a domestic merging statutory trust, by all of the beneficial owners of the
trust entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner of a domestic merging statutory trust

that will have interest holder liability for debts, obligations and other liabilities that arise after the

merger becomes effective, unless:

(A) the trust instrument of the statutory trust provides in a record for the

approval of a merger in which some or all of its beneficial owners become subject to interest

holder liability by the vote or consent of fewer than all of the beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that

provision of the trust instrument or became a beneficial owner after the adoption of that

provision.

(b) A merger involving a domestic merging entity that is not a statutory trust is not
effective unless the merger is approved by that entity in accordance with its organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is

approved by the foreign entity in accordance with the law of the foreign entity’s jurisdiction of

formation.

Reporters’ Note

Subsections (a) is a simplified version of harmonized META § 203(a). Subsection (b) is
new and supplies some of the provisions of harmonized META § 203(a). Subsection (c) is
patterned after harmonized META § 203(b).

SECTION 724. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger of a domestic merging statutory trust may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for

the manner in which it may be amended; or

(2) by the beneficial owners of the trust in the manner provided in the plan, but a
beneficial owner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic record or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(b) After a plan of merger has been approved by a domestic merging statutory trust and before a statement of merger becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of merger is abandoned after a statement of merger has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by a merging entity, must be delivered to the [Secretary of State] for filing before the statement of merger becomes effective. The statement of abandonment takes effect upon filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity:
(2) the date on which the statement of merger was delivered to the [Secretary of State] for filing; and

(3) a statement that the merger has been abandoned in accordance with this section.

Reporters’ Note
Patterned after harmonized META § 204.

SECTION 725. STATEMENT OF MERGER.

(a) A statement of merger must be signed by each merging entity and delivered to the [Secretary of State] for filing.

(b) A statement of merger must contain:

(1) the name, jurisdiction of formation, and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of formation, and type of the surviving entity;

(3) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(4) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(5) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its [statement of qualification], as an attachment; and

(7) if the surviving entity is a foreign entity that is not a qualified foreign entity, a
mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 726(e).

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [article] to a statement of merger refer to the plan of merger filed under this subsection.

Reporters’ Note

Patterned after harmonized META § 205.

SECTION 726. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) all debts, obligations and other liabilities of each merging entity are debts, obligations and other liabilities of the surviving entity;
(5) except as otherwise provided by law or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all of its property continues to be vested in it without transfer, reversion or impairment;

(B) it remains subject to all of its debts, obligations and other liabilities;

and

(C) all of its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic record, if any, is amended as provided in the statement of merger; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger:

(A) its public organic record, if any, is effective; and

(B) its private organic rules are effective; and

(10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 708 and the merging entity’s organic law.
(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations and other liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

1. The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;
2. The person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;
3. The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and
4. The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity:
may be served with process in this state for the collection and enforcement of any debts, obligations or other liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those debts, obligations and other liabilities.

(f) When a merger becomes effective, the registration to do business or other foreign qualification in this state of any foreign merging entity that is not the surviving entity is canceled.

Reporters’ Note

Patterned after harmonized META § 206.

[PART] 3

INTEREST EXCHANGE

SECTION 731. INTEREST EXCHANGE AUTHORIZED.

(a) By complying with this [part]:

(1) a domestic statutory trust may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic statutory trust may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) By complying with the provisions of this [part] applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an interest exchange under this [part] if
the interest exchange is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic statutory trust is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this [act].

Reporters’ Note

Patterned after harmonized META § 301(a) – (c) and (e).

SECTION 732. PLAN OF INTEREST EXCHANGE.

(a) A domestic statutory trust may be the acquired entity in an interest exchange under this [part] by approving a plan of interest exchange. The plan must be in a record and contain:

1. the name of the acquired entity;
2. the name, jurisdiction of formation, and type of the acquiring entity;
3. the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
4. any proposed amendments to the certificate of trust or trust instrument that are, or are proposed to be, in a record of the acquired entity;
5. the other terms and conditions of the interest exchange; and
6. any other provision required by the law of this state or the trust instrument of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

Reporters’ Note

Patterned after harmonized META § 302.
SECTION 733. APPROVAL OF INTEREST EXCHANGE.

(a) A plan of interest exchange is not effective unless it has been approved:

(1) by all of the beneficial owners of a domestic acquired statutory trust entitled to
vote on or consent to any matter; and

(2) in a record, by each beneficial owner of the domestic acquired statutory trust
that will have interest holder liability for debts, obligations and other liabilities that arise after the
interest exchange becomes effective, unless:

(A) the trust instrument of the statutory trust provides in a record for the
approval of an interest exchange or a merger in which some or all of its beneficial owners
become subject to interest holder liability by the vote or consent of fewer than all of the
beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that
provision of the trust instrument or became a beneficial owner after the adoption of that
provision.

(b) An interest exchange involving a domestic acquired entity that is not a statutory trust
is not effective unless it is approved by the domestic entity in accordance with its organic law.

(c) An interest exchange involving a foreign acquired entity is not effective unless it is
approved by the foreign entity in accordance with the law of the foreign entity’s jurisdiction of
formation.

(d) Except as otherwise provided in its organic law or organic rules, the interest holders
of the acquiring entity are not required to approve the interest exchange.

Reporters’ Note

Subsection (a) is a simplified version of harmonized META § 303(a). Subsection (b) is
new and supplies some of the provisions of harmonized META § 303(a). Subsections (c) and (d)
SECTION 734. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange of a domestic acquired statutory trust may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the beneficial owners of the trust in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the beneficial owners of the acquired statutory trust under the plan;

(B) the certificate of trust or trust instrument of the acquired statutory trust that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the beneficial owners of the acquired statutory trust under this Act or the trust instrument; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired statutory trust and before a statement of interest exchange becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has
been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired statutory trust, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

1. the name of the acquired statutory trust;
2. the date on which the statement of interest exchange was delivered to the [Secretary of State] for filing; and
3. a statement that the interest exchange has been abandoned in accordance with this section.

Reporters’ Note

Patterned after harmonized META § 304.

SECTION 735. STATEMENT OF INTEREST EXCHANGE.

(a) A statement of interest exchange must be signed by a domestic acquired statutory trust and delivered to the [Secretary of State] for filing.

(b) A statement of interest exchange must contain:

1. the name of the acquired statutory trust;
2. the name, jurisdiction of formation, and type of the acquiring entity;
3. a statement that the plan of interest exchange was approved by the acquiring entity in accordance with this [part]; and
4. any amendments to the acquired statutory trust’s certificate of trust approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b), a statement of interest exchange
may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed by a domestic acquired statutory trust and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [article] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

Reporters’ Note

Patterned after harmonized META § 305(a) – (d).

SECTION 736. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange in which the acquired entity is a domestic statutory trust becomes effective:

(1) the interests in the domestic acquired statutory trust that are the subject of the interest exchange cease to exist or are converted or exchanged, and the beneficial owners holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 708;

(2) the acquiring entity becomes the holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) the certificate of trust of the acquired entity is amended as provided in the statement of interest exchange; and

(4) the provisions of the trust instrument of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(b) Except as otherwise provided in the trust instrument of a domestic acquired statutory trust, the interest exchange does not give rise to any rights that a partner or third party would
otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired statutory trust and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations and liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired statutory trust with respect to which the person had interest holder liability is as follows:

(1) the interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability for any liability that arises after the interest exchange becomes effective; and

(3) the person has whatever rights of contribution from any other person as are provided by other law or the partnership agreement of the acquired entity with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

Reporters’ Note

Patterned after harmonized META § 306.

[PART] 4

CONVERSION

SECTION 741. CONVERSION AUTHORIZED.

(a) By complying with this [part], a domestic statutory trust may become:
(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this [part] applicable to foreign entities a foreign entity that is not a foreign statutory trust may become a domestic statutory trust if the conversion is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this [act].

Reporters’ Note

Patterned after harmonized META § 401.

SECTION 742. PLAN OF CONVERSION.

(a) A domestic statutory trust may convert to a different type of entity under this [part] by approving a plan of conversion. The plan must be in a record and contain:

(1) the name of the converting statutory trust;

(2) the name, jurisdiction of formation, and type of the converted entity;

(3) the manner of converting the interests in the converting statutory trust into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic record of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are
proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this state or the trust instrument of the converting statutory trust.

(b) A plan of conversion may contain any other provision not prohibited by law.

Reporters’ Note

Patterned after harmonized META § 402.

SECTION 743. APPROVAL OF CONVERSION.

(a) A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting statutory trust by all of the beneficial owners of the statutory trust entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner of a domestic converting statutory trust that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective:

(A) the trust instrument of the statutory trust provides in a record for the approval of a conversion or a merger in which some or all of its beneficial owners become subject to interest holder liability by the vote or consent of fewer than all of the beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that provision of the trust instrument or became a beneficial owner after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a statutory trust is not effective unless it is approved by the domestic converting entity in accordance with its organic
law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity’s jurisdiction of formation.

Reporters’ Notes

Subsection (a) is a simplified version of harmonized META § 403(a). Subsection (b) is new and supplies some of the provisions of harmonized META § 403(a). Subsection (c) is patterned after harmonized META § 403(b).

SECTION 744. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

(a) A plan of conversion of a domestic converting statutory trust may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the beneficial owners of the trust in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.
(b) After a plan of conversion has been approved by a domestic converting statutory trust and before a statement of conversion becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the [Secretary of State] for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting statutory trust;

(2) the date on which the statement of conversion was delivered to the [Secretary of State] for filing; and

(3) a statement that the conversion has been abandoned in accordance with this section.

Reporters’ Note

Patterned after harmonized META § 404.

SECTION 745. STATEMENT OF CONVERSION.

(a) A statement of conversion must be signed by the converting entity and delivered to the [Secretary of State] for filing.

(b) A statement of conversion must contain:

(1) the name, jurisdiction of formation, and type of the converting entity;

(2) the name, jurisdiction of formation, and type of the converted entity;
(3) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this [part] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;

(5) if the converted entity is a domestic limited liability partnership, the text of its [statement of qualification], as an attachment; and

(6) if the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 746(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of conversion that is signed by a domestic converting entity and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [article] to a statement of conversion refer to the plan of conversion filed under this subsection.
Reporters’ Note

Patterned after harmonized META § 405(a) – (e).

SECTION 746. EFFECT OF CONVERSION.

(a) When a conversion in which the converted entity is a domestic statutory trust becomes effective:

(1) the converted entity is:

(A) organized under and subject to this [act]; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations and liabilities of the converting entity continue as debts, obligations and liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic record is effective;

(7) if the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(9) the interests in the converting entity are converted, and the interest holders of
the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 708 and the converting entity’s organic law.

(b) Except as otherwise provided in the trust instrument of a domestic converting statutory trust, the conversion does not give rise to any rights that a beneficial owner, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations and liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic statutory trust with respect to which the person had interest holder liability is as follows:

(1) the conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective;

(2) the person does not have interest holder liability for any liability that arises after the conversion becomes effective; and

(3) the person has whatever rights of contribution from any other person as are provided by other law or the partnership agreement of the converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of
any of its debts, obligations and liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those debts, obligations and liabilities.

(f) If the converting entity is a registered foreign entity, the registration to do business or other foreign qualification in this state of the converting entity is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Reporters’ Note

Patterned after harmonized META § 406.

[PART] 5

DOMESTICATION

SECTION 751. DOMESTICATION AUTHORIZED.

(a) By complying with this [part], a domestic statutory trust may become a foreign statutory trust if the domestication is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this [part] applicable to foreign statutory trusts a foreign statutory trust may become a domestic statutory trust if the domestication is authorized by the law of the foreign statutory trust’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to a domestication, the provision applies to a domestication of the statutory trust as if the domestication were a merger until the provision is amended after the effective date of this [act].
SECTION 752. PLAN OF DOMESTICATION.

(a) A domestic statutory trust may become a foreign statutory trust in a domestication by approving a plan of domestication. The plan must be in a record and contain:

- (1) the name of the domesticating statutory trust;
- (2) the name and jurisdiction of formation of the domesticated statutory trust;
- (3) the manner of converting the interests in the domesticating statutory trust into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed certificate of trust of the domesticated statutory trust;
- (5) the full text of the trust instrument of the domesticated statutory trust that are proposed to be in a record;
- (6) the other terms and conditions of the domestication; and
- (7) any other provision required by the law of this state or the trust instrument of the domesticating statutory trust.

(b) A plan of domestication may contain any other provision not prohibited by law.

SECTION 753. APPROVAL OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating statutory trust is not effective unless it has been approved:

- (1) by all of the beneficial owners entitled to vote on or consent to any matter;
and

(2) in a record, by each beneficial owner that will have interest holder liability for
debts, obligations and liabilities that arise after the domestication becomes effective, unless:

(A) the trust instrument of the entity in a record provide for the approval
of a domestication or merger in which some or all of its beneficial owners become subject to
interest holder liability by the vote or consent of fewer than all of the beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that
provision of the trust instrument or became a beneficial owner after the adoption of that
provision.

(b) A domestication of a foreign domesticating statutory trust is not effective unless it is
approved in accordance with the law of the foreign statutory trust’s jurisdiction of formation.

Reporters’ Note

Subsection (a) is a simplified version of harmonized META § 503(a). Subsection (b) is
patterned after harmonized META § 503(b).

SECTION 754. AMENDMENT OR ABANDONMENT OF PLAN OF
DOMESTICATION.

(a) A plan of domestication of a domestic domesticating statutory trust may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for
the manner in which it may be amended; or

(2) by the beneficial owners of the trust in the manner provided in the plan, but a
beneficial owner that was entitled to vote on or consent to approval of the domestication is
entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to
acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
received by any of the beneficial owners of the domesticating statutory trust under the plan;

(B) the certificate of trust or trust instrument of the domesticated statutory trust that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the beneficial owners of the domesticated statutory trust under its organic law or trust instrument; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owners in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating statutory trust and before a statement of domestication becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement of abandonment, signed by the domesticating statutory trust, must be delivered to the [Secretary of State] for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating statutory trust;

(2) the date on which the statement of domestication was delivered to the [Secretary of State] for filing; and

(3) a statement that the domestication has been abandoned in accordance with this section.
SECTION 755. STATEMENT OF DOMESTICATION.

(a) A statement of domestication must be signed by the domesticating statutory trust and delivered to the [Secretary of State] for filing.

(b) A statement of domestication must contain:

(1) the name and jurisdiction of formation of the domesticating statutory trust;

(2) the name and jurisdiction of formation of the domesticated statutory trust;

(3) if the domesticating statutory trust is a domestic statutory trust, a statement that the plan of domestication was approved in accordance with this [part] or, if the domesticating statutory trust is a foreign statutory trust, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(4) the certificate of trust of the domesticated statutory trust, as an attachment;

(5) if the domesticated foreign statutory trust is not a registered foreign statutory trust, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 756(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) The certificate of trust of a domesticated domestic statutory trust must satisfy the requirements of the law of this state, except that it does not need to be signed.

(e) A plan of domestication that is signed by a domesticating domestic statutory trust and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for
filing instead of a statement of domestication and upon filing has the same effect. If a plan of
domestication is filed as provided in this subsection, references in this [article] to a statement of
domestication refer to the plan of domestication filed under this subsection.

Reporters’ Note

Patterned after harmonized META § 505(a) – (e).

SECTION 756. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated statutory trust is:

(A) organized under and subject to the organic law of the domesticated
statutory trust; and

(B) the same entity without interruption as the domesticating statutory
trust;

(2) all property of the domesticating statutory trust continues to be vested in the
domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and liabilities of the domesticating statutory trust
continue as debts, obligations, and liabilities of the domesticated statutory trust;

(4) except as otherwise provided by law or the plan of domestication, all of the
rights, privileges, immunities, powers, and purposes of the domesticating statutory trust remain
in the domesticated statutory trust;

(5) the name of the domesticated statutory trust may be substituted for the name
of the domesticating statutory trust in any pending action or proceeding;

(6) the certificate of trust of the domesticated statutory trust is effective;

(7) the provisions of the trust instrument of the domesticated statutory trust that
are to be in a record, if any, approved as part of the plan of domestication are effective; and

(8) the interests in the domesticating statutory trust are converted to the extent and

as approved in connection with the domestication, and the beneficial owners of the domesticating

statutory trust are entitled only to the rights provided to them under the plan of domestication and
to any appraisal rights they have under Section 708.

(b) Except as otherwise provided in the organic law or trust instrument of the
domesticating statutory trust, the domestication does not give rise to any rights that an interest
holder or third party would otherwise have upon a dissolution, liquidation, or winding-up of the
domesticating statutory trust.

(c) When a domestication becomes effective, a person that did not have interest holder
liability with respect to the domesticating statutory trust and that becomes subject to interest
holder liability with respect to a domestic entity as a result of the domestication has interest
holder liability only to the extent provided by the organic law of the entity and only for those
debts, obligations and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under this
[act] to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under this [act] for any debts,
obligations, and liabilities that arise after the domestication becomes effective;

(3) a person has whatever rights of contribution from any other person as are
provided by other law or the partnership agreement of a domestic domesticating statutory trust
with respect to any interest holder liability preserved under paragraph (1) as if the domestication
had not occurred.
(e) When a domestication becomes effective, a foreign statutory trust that is the
domesticated statutory trust:

(1) may be served with process in this state for the collection and enforcement of
any of its debts, obligations, and liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for
collecting or enforcing those debts, obligations and liabilities.

(f) If the domesticating statutory trust is a registered foreign statutory trust, the
registration of the statutory trust is canceled when the domestication becomes effective.

(g) A domestication does not require the statutory trust to wind up its affairs and does
not constitute or cause the dissolution of the statutory trust.

Reporters’ Note

Patterned after harmonized META § 506.
DISSOLUTION AND WINDING UP

SECTION 801. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved only by:

(1) an administrative dissolution under Section 806; or

(2) the filing of articles of dissolution under Section 802:

(A) on the occurrence of an event or circumstance that the governing instrument states causes dissolution; or

(B) with the approval of all the beneficial owners.

SECTION 802. ARTICLES OF DISSOLUTION.

(a) If dissolution of a statutory trust is authorized under Section 801, the trust shall deliver to the [Secretary of State] for filing articles of dissolution setting forth:

(1) the name of the trust; and

(2) the date of the dissolution.

(b) Except as otherwise provided in Section 204(c), a statutory trust is dissolved when articles of dissolution that comply with subsection (a) are filed by the [Secretary of State].

SECTION 803. WINDING UP.

(a) A dissolved statutory trust shall wind up its activities, and the trust and each series thereof continues after dissolution only for the purpose of its winding up.

(b) In winding up its activities, a statutory trust shall:

(1) discharge the trust’s debts, obligations, and other liabilities, settle and close the trust’s activities, and marshal and distribute the property of the trust; and

(2) distribute any surplus property after complying with paragraph (1) to the
beneficial owners in proportion to their beneficial interests.

(c) In winding up its activities, a statutory trust may:

(1) preserve the trust’s activities and property as a going concern for a reasonable time;
(2) institute, maintain, and defend actions and proceedings, whether civil, criminal, or administrative;
(3) transfer the trust’s property;
(4) settle disputes; and
(5) perform other acts necessary or appropriate to its winding up.

(d) Trustees of a dissolved statutory trust that has disposed of claims under Section 804 or 805 are not liable for breach of duty with respect to claims against the trust that are barred or satisfied under Section 804 or 805.

(e) The dissolution of a statutory trust does not terminate the authority of its agent for service of process.

(f) On application of any person that shows good cause, the [appropriate court] may appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any action that might have been done by the trust during its winding up if the action is necessary for final settlement of the trust.

Reporters’ Notes

Like HULLCA § 703, should a statutory trust be able to rescind dissolution? If so, a section similar to Section 703 needs to be added.

SECTION 804. NOTICE TO CLAIMANT KNOWN CLAIMS AGAINST DISSOLVED STATUTORY TRUST.

(a) Except as otherwise provided in subsection (e) (d), a dissolved statutory trust may
dispose give notice of a known claim against it by sending notice to the claimant in a record of
the dissolution of the trust. The notice must: under subsection (b), which has the effect as
provided in subsection (c).

(b) A dissolved statutory trust may in a record notify its known claimants of the
dissolution. The notice must:

(1) specify the information required to be included in the claim;
(2) provide a mailing address to which the claim is to be sent;
(3) state the deadline for receipt of the claim, which may not be less than 120 days
after the date the notice is sent to the claimant; and
(4) state that the claim will be barred if not received by the deadline.

(b) (c) A claim against a dissolved statutory trust is barred if the requirements of
subsection (a) (b) are met and:
(1) the claim is not received by the specified deadline; or
(2) if the claim is timely received but rejected by the trust:
(A) the trust notifies causes the claimant to receive a notice in a record
stating that the claim is rejected and will be barred unless the claimant commences an action
against the trust to enforce the claim by the 90th day within 90 days after the claimant receives
the notice; and
(B) the claimant does not commence the required action not later than the
90th day within 90 days.

(e) (d) This section does not apply to a claim based on (1) an event occurring after the
effective date of dissolution; or (2) a liability that on that date is unmatured or contingent.

SECTION 805. PUBLICATION OF NOTICE OTHER CLAIMS AGAINST
DISSOLVED STATUTORY TRUST.

(a) A dissolved statutory trust may publish notice of its dissolution and request persons having claims against the trust to present them in accordance with the notice.

(b) A notice under subsection (a) must:

1. be published at least once in a newspaper of general circulation in the [county] in this state in which the dissolved statutory trust’s principal office is located or, if it has none in this state, in the [county] in which the trust’s designated office of the trust’s registered agent is or was last located;

2. describe the information required for a claim to be contained in a claim and provide a mailing address to which the claim is to be sent; and

3. provide a mailing address to which the claim may be sent; and

4. state that a claim against the trust is barred unless an action to enforce the claim is commenced not later than [three] three years after publication of the notice.

(c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce a claim against the trust not later than [three] three years after the publication date of the notice:

1. a claimant that did not receive notice in a record under Section 804;

2. a claimant whose claim was timely sent to the trust but was rejected or not acted on; and

3. a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section or Section 804 may be enforced:
against a dissolved statutory trust, to the extent of its undistributed property;

and

(2) except as provided in Section 806, if assets of the trust have been distributed after dissolution, against a beneficial owner to the extent of that person’s proportionate share of the claim or of the assets distributed to the beneficial owner after dissolution, whichever is less, but a person’s total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

(e) If property of the trust has been distributed after dissolution, a claim not barred under this section may be enforced against a beneficial owner to the extent of that beneficial owner’s proportionate share of the property distributed to the beneficial owner after dissolution. However, a beneficial owner’s total liability for all claims under this subsection does not exceed the total amount of property distributed to the beneficial owner after dissolution.

SECTION 806. COURT PROCEEDINGS.

(a) A dissolved statutory that has published a notice under section 805 may file an application with the [appropriate court] in the county where the dissolved trust’s principal office, or, if none in this state, the office of its registered agent, is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved trust or that are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved trust, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 805(c).

(b) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved statutory trust to each claimant holding a contingent claim whose
contingent claim is shown on the records of the dissolved trust.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, must be paid by the dissolved statutory trust.

(d) Provision by the dissolved statutory trust for security in the amount and the form ordered by the court under subsection (a) satisfies the dissolved trust’s obligations with respect to claims that are contingent, have not been made known to the dissolved trust, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a beneficial owner that received assets in liquidation.

SECTION 806 807. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) to dissolve a statutory trust administratively if the trust does not:

(1) is without an agent for service of process in this state for 30 days pay any fee, tax, or penalty required to be paid to the [Secretary of State] not later than six months after it is due;

(2) does not file deliver an [annual] [biennial] report to the [Secretary of State] not later than the 60th day [six months] after the it is due date; or

(3) does not pay, not later than the 60th day after the due date, any fee, tax, or penalty due to the [Secretary of State] have a registered agent in this state for 60 consecutive days.

(b) If the [Secretary of State] determines that one or more grounds exist for administratively dissolving a statutory trust, the [Secretary of State] shall file a notice of
dissolution and send a copy of the notice to the trust’s agent for service of process, or if the trust does not have an agent for service of process in this state, to the trust’s designated office. The notice must state serve the company pursuant to Section ___ with notice in a record of the [Secretary of State’s] determination.

(1) the effective date of the dissolution, which must be at least [60] days after the date the [Secretary of State] sends the copy; and

(2) the reason for the dissolution.

(c) Unless a statutory trust cures the grounds for dissolution under subsection (a) stated in the notice of dissolution before the date stated in the notice, the [Secretary of State] shall dissolve the trust administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall send a copy of the declaration to the trust’s agent for service of process, or if the trust does not have an agent for service of process in this state, to the trust’s designated office. If a statutory trust, not later than [60] days after service of the notice is effected pursuant to subsection (b), does not correct each ground for dissolution or demonstrate to the satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall dissolve the company administratively by signing a declaration of dissolution that recites the ground or grounds for dissolution and its effective date. The [Secretary of State] shall file the original of the declaration and serve a copy on the company pursuant to Section ___.

(d) A statutory trust that is dissolved administratively continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and liquidate its assets under Sections ___ and ___, to notify claimants under Sections ___ and ___, or to apply for reinstatement under Section 808.
SECTION 807. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A statutory trust that has been dissolved administratively under Section 807 may apply to the Secretary of State for reinstatement not later than two years after the effective date of dissolution. The application must be delivered to the Secretary of State for filing and state:

1. The name of the trust and the effective date of its dissolution at the time of its administrative dissolution and, if needed, a different name that satisfies Section 207;
2. The address of the principal office of the statutory trust and the name and address of its registered agent;
3. The effective date of the statutory trust’s dissolution; and
4. That the grounds for dissolution either did not exist or have been cured; and

(b) If the Secretary of State determines that an application under subsection (a) contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and send a copy to the trust’s agent for service of process. To be reinstated, a statutory trust must pay all fees, taxes, and penalties that were due to the Secretary of State at the time of its administrative dissolution and all fees, taxes, and penalties that would have been due to the Secretary of State while the statutory trust was dissolved administratively.

(c) If the Secretary of State determines that an application contains the information required by subsection (a), is satisfied that the information is correct, and determines that all payments required to be made to the Secretary of State by subsection (b) have been made, the Secretary of State shall cancel the declaration of dissolution and prepare a statement of...
reinstatement that states the [Secretary of State’s] determination and the effective date of
reinstatement, file the original of the statement, and serve a copy on the statutory trust.

(d) When a reinstatement becomes effective, it relates back to all purposes and takes effect as of the effective date of the administrative dissolution and the statutory trust resumes carrying on its activities as if the administrative dissolution had not occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

SECTION 808 809. JUDICIAL REVIEW OF REJECTION DENIAL OF

(a) If the [Secretary of State] rejects a statutory trust’s application for reinstatement following administrative dissolution, the [Secretary of State] shall serve the statutory trust with a notice in a record that explains the reason or reasons for rejection to the trust’s agent for service of process or, if the trust does not have an agent for service of process, to the trust’s designated office.

(b) A statutory trust may obtain review of the rejection by petitioning the [appropriate court] to set aside the dissolution. The petition must be delivered to the [Secretary of State] and contain a copy of the [Secretary of State’s] declaration of dissolution, the trust’s application for reinstatement, and the [Secretary of State’s] notice of rejection. A statutory trust may seek judicial review of denial of reinstatement in the [appropriate court] not later than [30] days after service of the notice of denial.

(c) The court may order the [Secretary of State] to reinstate a dissolved statutory trust or take other action the court considers appropriate.
FOREIGN STATUTORY TRUSTS

SECTION 901. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign statutory trust governs:

(1) the internal affairs of the trust;

(2) the liability of a beneficial owner that a person has as a beneficial owner and

or trustee as trustee for a debt, obligation, or other liability of the trust or a series thereof; and

(3) the enforceability of a debt, obligation, or other liability of:

(A) the statutory trust or a series thereof against the property of the trust

or any series thereof; and

(B) a series trust again the property of the statutory trust or any other

series thereof.

(b) The [Secretary of State] may not deny a foreign statutory trust a certificate of

registration. A foreign statutory trust is not precluded from registering to do business in this state

because of any difference between the law of its jurisdiction of formation and the laws law of

this state.

(c) A certificate of registration. Registration of a foreign statutory trust to do business in

this state does not authorize a foreign statutory trust to engage in any business or exercise any

power that a statutory trust may not engage in or exercise in this state.

Reporters' Notes

Subsection (a)(3) - proposed changes mirror those proposed for Section 301.

SECTION 902. REGISTRATION TO DO BUSINESS IN THIS STATE.

(a) A foreign statutory trust may not do business in this state until it registers with the
(b) A foreign statutory trust doing business in this state may not maintain an action in this state unless it is registered to do business in this state.

(c) The failure of a foreign statutory trust to register to do business in this state does not impair the validity of a contract or act of the foreign statutory trust or preclude it from defending an action or proceeding in this state.

(d) The liability of a beneficial owner or trustee of a foreign statutory trust is governed by the laws of its jurisdiction of formation. Any limitation on that liability is not waived solely because the foreign statutory trust does business in this state without registering.

(e) Section 901(a) and (b) applies even if a foreign statutory trust fails to register under this article.

Reporters' Notes


SECTION 902. APPLICATION FOR CERTIFICATE OF REGISTRATION

FOREIGN REGISTRATION STATEMENT.

(a) To register to do business in this state, a foreign statutory trust may apply for a certificate of registration to do business in this state by delivering an application must deliver a foreign registration statement to the [Secretary of State] for filing. The application statement must contain state:

(1) the name of the trust and, if the name does not comply with Section 207, an alternate name adopted pursuant to Section 906(a);

(2) the name of the state or other jurisdiction of formation of the trust’s jurisdiction of formation:
(3) the street and mailing address of the trust's principal office of the foreign statutory trust and, if the laws of the law of its jurisdiction of formation of the trust require requires it to maintain an office in that jurisdiction, the street and mailing address of the required office; and

(4) the name and street and mailing address of the trust’s initial registered agent for service of process in this state.

(b) A foreign statutory trust shall deliver with a completed application under subsection (a) a certificate of good standing or a record of similar import signed by the [Secretary of State] or other official having custody of the foreign statutory trust’s publicly filed records in the state or other jurisdiction of formation of the foreign statutory trust.

SECTION 904. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.

(a) A registered foreign statutory trust shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the trust;

(2) the jurisdiction of formation;

(3) the address or addresses required by Section 903(3); or

(4) the information required by Section 903(4).

(b) The requirements of Section 903 for an original foreign registration statement apply to an amendment of a foreign registration statement under this section.

Reporters’ Note

Patterned after Harmonized Business Organizations Act § 1-504.

SECTION 903 905. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

(a) Activities of a foreign statutory trust which do not constitute doing business in this
state within the meaning of under this [article] include:

(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) carrying on any activity concerning its internal affairs, including holding meetings of its beneficial owners or trustees or carrying on any other activity concerning its internal affairs;

(3) maintaining accounts or depositing assets in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the trust’s own beneficial interests or securities of the trust or maintaining trustees or depositaries with respect to those beneficial interests or securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, by any means if the orders require acceptance outside this state before they become contractual obligations contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;

(9) conducting an isolated transaction that is completed by the 30th day and is not in the course of similar transactions; and

(10) owning, without more, property; and

(11) doing business in interstate commerce.

(b) This section does not apply in determining the contacts or activities that may subject a
foreign statutory trust to service of process, taxation, or regulation under law of this state other
than this [act].

(c) A person does not do business in this state solely because of being a trustee or a
beneficial owner of a foreign statutory trust that does do business in this state.

SECTION 904. FILING OF CERTIFICATE OF REGISTRATION. Unless the
[Secretary of State] determines that an application for a certificate of registration does not
comply with the filing requirements of this [act], the [Secretary of State], on payment of all filing
fees, shall file the application, prepare, sign, and file a certificate of registration to do business in
this state, and send a copy of the filed certificate, together with a receipt for the fees, to the
foreign statutory trust or its representative.

SECTION 905. CERTIFIED COPY OF CERTIFICATE OF REGISTRATION.

(a) The [Secretary of State], on request and payment of the required fee, shall furnish a
certified copy of the certificate of registration for a qualified foreign statutory trust if the records
filed with the [Secretary of State] show that the [Secretary of State] has filed a certificate of
registration, has not revoked the certificate of registration, and has not filed a notice of
cancellation.

(b) Subject to any limitation stated in the certificate, the certified copy of the certificate of
registration issued by the [Secretary of State] to a foreign statutory trust may be relied upon as
conclusive evidence that the trust is authorized to do business in this state as of the date of the
certificate.

SECTION 906. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.

(a) A foreign statutory trust whose name does not comply with Section 207 may not
obtain a certificate of registration register to do business in this state until it adopts, for the
purpose of doing business in this state, an alternate name that complies with Section 207. A foreign statutory trust that adopts registers under an alternate name under this subsection and obtains a certificate of registration with the name need not comply with [this state’s fictitious or assumed name statute]. After obtaining a certificate of registration registering to do business in this state with an alternate name, a foreign statutory trust shall may do business in this state under:

(1) the alternate name;

(2) its name in its jurisdiction of formation, with the addition of its jurisdiction of formation clearly identified; or

(3) the name unless the trust an assumed or fictitious name the trust is authorized to use under [this state’s fictitious or assumed name statute] to do business in this state under another name.

(b) If a qualified registered foreign statutory trust changes its name to one that does not comply with Section 207, it may not thereafter do business in this state until it complies with subsection (a) and obtains an amended certificate of registration by amending its registration to adopt an alternate name that complies with Section 207.

SECTION 907. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN STATUTORY TRUST.

(a) A registered foreign statutory trust may withdraw its registration by delivering a statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must state:

(1) the name of the foreign statutory trust and the name of the jurisdiction under whose law it is formed;
(2) that the trust is not doing business in this state and that it withdraws its
registration to do business in this state;
(3) that the trust revokes the authority of its registered agent to accept service on
its behalf; and
(4) an address to which service of process may be made under subsection (b).
(b) After the withdrawal of the registration of a foreign statutory trust, service of process
in any action or proceeding based on a cause of action arising during the time it was registered to
do business in this state may be made pursuant to Section ____.

Reporters’ Note
Patterned after Harmonized Business Organizations Act § 1-507.

SECTION 908. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC
FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP. A registered
foreign statutory trust that converts to any type of domestic filing entity or to a domestic limited
liability partnership is deemed to have withdrawn its registration on the effective date of the
conversion.

Reporters’ Note
Patterned after Harmonized Business Organizations Act § 1-508.

SECTION 909. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO
NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.
(a) A registered foreign statutory trust that has dissolved and completed winding up or
that has converted to a domestic or foreign nonfiling entity other than a limited liability
partnership shall deliver a statement of withdrawal to the [Secretary of State] for filing. The
statement must state:
(1) the name of the foreign statutory trust and the name of the jurisdiction under whose law it was formed before the dissolution or conversion;

(2) that the foreign statutory trust surrenders its registration to do business in this state as a registered foreign statutory trust; and

(3) if the foreign statutory trust has converted to a foreign nonfiling entity other than a foreign limited liability partnership:

(A) the type of nonfiling entity to which it has converted and the jurisdiction whose laws govern its internal affairs;

(B) that it revokes the authority of its registered agent to accept service on its behalf; and

(C) a mailing address to which service of process may be made under subsection (b).

(b) After the withdrawal under this section of a foreign statutory trust that has converted to a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of action arising during the time it was registered to do business in this state may be made pursuant to Section ____. 

(c) After the withdrawal under this section of a foreign statutory trust that has converted to a domestic nonfiling entity other than a limited liability partnership is effective, service of process may be made on the nonfiling entity pursuant to Section ____. 

Reporters’ Note

Patterned after Harmonized Business Organizations Act § 1-509.

SECTION 1-510. TRANSFER OF REGISTRATION.

(a) When a registered foreign statutory trust has merged into a nonregistered foreign
entity or has converted to a foreign entity required to register with the [Secretary of State] to do
business in this state, the foreign statutory trust shall deliver to the [Secretary of State] for filing
an application for transfer of registration. The application must state:

(1) the name of the foreign statutory trust;

(2) the name of the entity into which it has merged or to which it has been converted, and, if the name does not comply with Section 207, an alternate name adopted pursuant to Section 906(a);

(3) the type of entity into which it has merged or to which it has been converted and the jurisdiction whose law governs its internal affairs; and

(4) the following information regarding the entity into which it has merged or to which it has been converted, if different than the information for the applicant entity:

(A) the street and mailing address of the principal office of the entity and, if the law of the entity’s jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing address of that office; and

(B) the name and street and mailing address of its registered agent in this state.

(b) When an application for transfer of registration takes effect, the registration of the foreign statutory trust to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted.

Reporters’ Note

Patterned after Harmonized Business Organizations Act § 1-510.
SECTION 907. REVOCATION OF CERTIFICATE TERMINATION OF REGISTRATION.

(a) The [Secretary of State] may revoke the certificate of terminate the registration of a qualified foreign statutory trust to do business in this state in the manner provided in subsections (b) and (c) if the trust does not:

(1) appoint and maintain an agent for service of process;

(2) deliver for filing a statement of change not later than the 60th day after a change has occurred in the name or address of the agent;

(3) file an [annual] [biennial] report pursuant to Section 213 not later than the 60th day after the due date; or

(4) pay, by the 60th day after the due date, any fee, tax, or penalty due to the [Secretary of State].

(b) To revoke a certificate of registration of a foreign statutory trust, the [Secretary of State] must prepare, sign, and file a notice of revocation and send a copy to the trust’s agent for service of process in this state, or if the trust does not appoint and maintain a agent for service of
process in this state, to the trust’s designated office. The [Secretary of State] may terminate the
registration of a foreign statutory trust by filing a notice of termination or noting the termination
in the records of the [Secretary of State] and by delivering a copy of the notice or the information
in the notation to the trust’s registered, or if the trust does not have a registered agent, to the
trust’s principal office as designated in Section 903(4). The notice must state or the information
in the notation must include:

   (1) the effective date of the revocation termination, which must be at least [60]
days after the date the [Secretary of State] sends delivers the copy; and

   (2) the basis for the revocation grounds for termination under subsection (a).

(c) Unless a foreign statutory trust cures the grounds for revocation under subsection (a)
stated in the notice of revocation before the date stated in the notice, the authority of the trust to
do business in this state ceases on that date. The authority of a foreign statutory trust to do
business in this state ceases on the effective date of the notice of termination unless before that
date the trust cures each ground for termination stated in the notice filed under subsection (b). If
the trust cures each ground, the [Secretary of State] shall file a record so stating.

(d) If a foreign statutory trust cures the grounds stated in the notice of revocation under
subsection (b), the [Secretary of State] shall indicate that the trust is reinstated on the filed notice.
The reinstatement of the trust relates back to for all purposes and takes effect as of the date of the
notice of revocation, except for the rights of a person arising out of an act or omission in reliance
on the dissolution before the person knew or had reason to know of the reinstatement.

SECTION 908. CANCELLATION OF CERTIFICATE OF REGISTRATION.

(a) To cancel its certificate of registration to do business in this state, a qualified foreign
statutory trust must deliver to the [Secretary of State] for filing a notice of cancellation that
(1) the name of the trust;

(2) the date of filing of its initial certificate of registration;

(3) that the certificate of registration is being canceled; and

(4) any other information as determined by the trustee filing the statement.

(b) A certificate of registration is canceled when the notice of cancellation becomes effective under Section 204.

SECTION 909. EFFECT OF FAILURE TO HAVE CERTIFICATE OF REGISTRATION.

(a) A foreign statutory trust doing business in this state may not maintain an action or proceeding in this state unless it has a certificate of registration to do business in this state.

(b) The failure of a foreign statutory trust to have a certificate of registration to do business in this state does not impair the validity of a contract or act of the trust or preclude the trust from defending an action or proceeding in this state.

(c) A trustee or beneficial owner of a foreign statutory trust is not liable for a debt, obligation, or other liability of the trust solely because the trust did business in this state without a certificate of registration.

(d) If a foreign statutory trust does business in this state without a certificate of registration or cancels its certificate of registration, the trust may be served in accordance with Section 212 for actions arising out of doing business in this state.

[SECTION 910 912. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to enjoin a foreign statutory trust from doing business in this state in violation of this [article].]
MISCELLANEOUS PROVISIONS

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1003. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before this [act] takes effect.

SECTION 1004. RESERVATION OF POWER TO AMEND OR REPEAL. The [name of state legislature] has power to amend or repeal all or part of this [act] at any time and all statutory trusts and foreign statutory trusts subject to this [act] are governed by the amendment or repeal.

SECTION 1005. APPLICATION TO EXISTING RELATIONSHIPS.

(a) This [act] does not limit, prohibit, or invalidate the existence, acts, or obligations of any common-law trust created or doing business in this state before, on, or after [the effective date of the act]. The law of this state other than this [act] pertaining to trusts apply to common-law trusts.

(b) A common-law trust created under the law of this state before, on, or after [the
effective date of this [act]] that does not have a predominantly donative purpose may elect to be
governed by this [act] by filing a certificate of trust under Section 201.

[(c) A trust created pursuant to a statute of this state that was required by that statute to
file a certificate of trust with [the Secretary of State] before [the effective date of this [act]] may
elect to be governed by the provisions of this [act] by filing an amendment to its certificate of
trust under Section 202.]

[(d) On two years after the effective date of this [act]], this [act] governs the
organization and internal affairs of all trusts created pursuant to a statute of this state that was
required by that statute to file a certificate of trust with the [Secretary of State] before the
effective date of this [act].]

**SECTION 1006. REPEALS.** [On [all-inclusive date], the] [The] following are
repealed:

1. [the state Statutory Trust Act as amended and in effect immediately before [the
effective date of this [act]]];

2. [the state Business Trust Act as amended and in effect immediately before [the
effective date of this [act]]]; and

3. [the state Real Estate Investment Trust Act as amended and in effect immediately
before [the effective date of this [act]].]

**SECTION 1007. EFFECTIVE DATE.** This [act] takes effect . . . .