

1 [ARTICLE] 2

2 FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS

3 SECTION 201. CERTIFICATE OF TRUST.

4 (a) To form a statutory trust, a person must deliver a certificate of trust to the [Secretary
5 of State] for filing.

6 (b) A certificate of trust must contain:

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

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

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

11 (4) notice whether the trust may have one or more series under Section 401.

12
13 (c) A certificate of trust may contain any provision in addition to that required by
14 subsection (b) except as otherwise provided in Section 103(c).

15 (d) Except as otherwise provided in Section 204(c), a statutory trust is formed when a
16 certificate of trust that complies with subsection (b) is filed by the [Secretary of State].

17 (e) If a provision of a trust instrument is inconsistent with the filed certificate of trust, a
18 filed statement of cancellation or change, or filed articles of conversion or merger, the certificate
19 of trust, statement of cancellation, or change or articles of conversion or merger prevails.

20 **Comment**

21
22 **Principal Sources** – Uniform Limited Partnership Act §201 (2001); Delaware Statutory
23 Trust Act §3810; Connecticut Statutory Trust Act §34-503.

24
25 Unlike a common-law trust, a statutory trust is a creature of statute that requires a filing
26 with the state to come into existence. Filing rules are typical of limited liability entities. Such
27 filing rules serve a notice function, alerting interested parties to creation and existence of a new
28 limited liability juridical entity. See Section 204(b), which entitles any person to a certified copy
29 of a filing made pursuant to this act.

1
2 A statutory trust comes into existence only if (1) a certificate of trust is prepared and
3 delivered to the specified public official for filing, and (2) the public official files the certificate.
4 (For more on the meaning of “filing,” see Section 204 and the comment thereto.) The certificate
5 of trust provides notice to interested third parties of the existence of the statutory trust and the
6 identification of the statutory trust’s initial agent for service of process. Pursuant to Section 40_,
7 the certificate of trust also puts third parties on notice if the statutory trust further segregates its
8 assets and liabilities by creating one or more series.
9

10 Although formed by making a public filing, a statutory trust is also a creature of contract.
11 As such, it will be possible, though improper, for the trust instrument to be inconsistent with the
12 certificate of trust or other public filings relating to the statutory trust. Paragraph (d) provides
13 that in such circumstances the public filing controls.
14

15 Under Section 103(c)(1), this Section is not subject to override by the governing
16 instrument.
17

18 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF** 19 **TRUST.**

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

22 (1) the name of the trust;

23 (2) the date of filing of its initial certificate; and

24 (3) the changes to the certificate.

25 (b) A trustee that knows or has reason to know that any information in a filed certificate
26 of trust was incorrect when the certificate was filed or has become incorrect shall promptly:

27 (1) cause the certificate to be amended; or

28 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
29 correction.

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

(d) An amended or restated certificate is effective as provided in Section 204(c).

Comment

Principal Sources – Uniform Limited Partnership Act §202 (2001); Delaware Statutory Trust Act §3810; Connecticut Statutory Trust Act §34-503.

Paragraph (a) provides a mechanism for updating a statutory trust's filed certificate of trust. Paragraph (b) imposes an obligation directly on the trustee rather than on the statutory trust.

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 203. SIGNING OF RECORDS.

(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].

Comment

Principal Sources – Uniform Limited Partnership Act §204 (2001); Delaware Statutory Trust Act §3811; Connecticut Statutory Trust Act §34-504.

Paragraph (b) confirms that the signing of a public record by a trustee is a delegable act.

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

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 record's purpose, be in a medium permitted by the [Secretary of State], and be delivered to the [Secretary of State]. If all filing fees have been paid, unless the [Secretary of State] determines that a 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) Upon request and payment of a 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 212, 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.

Comment

Principal Sources – Uniform Limited Partnership Act §206 (2001); Delaware Statutory Trust Act §3812; Connecticut Statutory Trust Act §34-505.

1
2 For a record prepared by a private person to become part of the public record under this
3 Act, (1) someone must put a properly prepared version of the record into the possession of the
4 public official specified in the Act as the appropriate filing officer, and (2) the filing officer must
5 determine that the record complies with the filing requirements of this Act and then officially
6 make the record part of the public record. This Act refers to the first step as “delivery to the
7 [Secretary of State] for filing” and refers to the second step as “filing.” Thus, under this Act
8 “filing” is an official act.
9

10 Under paragraph (a), the caption need only indicate the title of the record—for example,
11 “Certificate of Trust” or “Statement of Change for Statutory Trust.” Filing officers typically
12 note on a filed record the fact, date, and time of filing. Copies provided by the filing officer
13 under paragraph (a) should contain that notation. This Act does not provide a remedy if the
14 filing officer wrongfully fails or refuses to file a record.
15

16 Paragraph (c) allows most records to have a delayed effective date, up to 90 days after
17 the date the record is filed by the filing officer. A record specifying a longer delay will not be
18 rejected. Instead, under paragraph (c)(3) and (4), the delayed effective date is adjusted by
19 operation of law to the “90th day after the record is filed.” This Act does not require the filing
20 officer to notify anyone of the adjustment.
21

22 Consistent with the existing statutory trust acts, but inconsistent with most corporate
23 codes, this Act makes no provision for collecting a franchise tax. See generally Marcel Kahan &
24 Ehud Kamar, Price Discrimination in the Market for Corporate Law, 86 Cornell L. Rev. 1205,
25 1218-33 (2001).
26

27 Under Section 103(c)(1), this Section is not subject to override by the governing
28 instrument.
29

30 **SECTION 205. CORRECTING FILED RECORD.**

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

34 (b) A statement of correction under subsection (a) may not state a delayed effective date
35 and must:

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

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

(3) correct the incorrect information or defective or erroneous signature.

(c) When filed by the [Secretary of State], a statement of correction 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 persons that relied on the uncorrected record and would be adversely affected by the correction, when filed.

Comment

Principal Source – Uniform Limited Partnership Act §207 (2001).

A statement of correction is appropriate only to correct inaccuracies that existed or signatures that were defective “at the time of filing.” A statement of correction may not be used to amend or revise a record that was accurate when filed but has become inaccurate as a result of subsequent events.

Under paragraph (c), a statement of correction “relates back” by way of retroactive application except against persons that have relied on the uncorrected record and would be adversely affected if the correction related back.

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 206. CERTIFICATE OF GOOD STANDING.

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

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

(2) all fees and penalties due under this [act] or other law to the [Secretary of

1 State] have been paid;

2 (3) the most recent annual report of the trust required by Section 215 has been
3 filed by the [Secretary of State];

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

6 (5) the [Secretary of State] has not filed a notice of administrative dissolution
7 under Section 805 or, if the [Secretary of State] has filed such a notice, that the [Secretary of
8 State] has filed a declaration of reinstatement under Section 806.

9 (b) A certificate of good standing must state:

10 (1) the name of the trust;

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

12 and

13 (3) that the conditions stated in subsection (a) have been satisfied.

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

17 **Comment**

18
19 **Principal Source** – Uniform Limited Partnership Act §209 (2001).

20
21 A certificate of good standing can reveal only information present in the public record.
22 Under this Act significant information bearing on the status of a statutory trust may be outside
23 the public record. ~~{To be modified with new article 9: Section 905 — provides for the~~
24 ~~issuance of a certificate of registration for a qualified foreign statutory trust.}~~

25
26 Under Section 103(c)(1), this Section is not subject to override by the governing
27 instrument.
28

1 **SECTION 207. NAME OF STATUTORY TRUST.**

2 (a) Unless authorized by the [Secretary of State] under subsection (c), the name of a
3 statutory trust must be distinguishable in the records of the [Secretary of State] from:

4 (1) the name of any person that is already incorporated, organized, formed, or
5 authorized to do business in this state; and

6 (2) any name reserved under Section 210 [or other state laws allowing the
7 reservation or registration of business names, including fictitious or assumed name statutes].

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

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

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

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

22 (3) the applicant delivers to the [Secretary of State] proof satisfactory to the
23 [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 assets, including the conflicting name, to the applicant.

(d) Subject to Section ~~906~~, this section applies to any foreign statutory trust doing business in this state, having a certificate of qualification to do business in this state, or applying for a certificate of qualification.

Comment

Principal Sources – Uniform Limited Partnership Act §108 (2001); Delaware Statutory Trust Act §3814.

The drafting committee opted not to require that the name of a statutory trust contain a traditional limited liability appellation. Such a requirement would be inconsistent with current practice under the Delaware Act, though the drafting committee contemplated that an enacting jurisdiction with a strong policy regarding names of limited liability entities might modify this Section accordingly. Moreover, other regulatory law will sometimes limit the range of permissible names notwithstanding this Section. For example, the names of mutual funds typically do not contain a limited liability appellation, but Section 35(d) of the Investment Company Act of 1940, which is applicable to a statutory trust that is a registered investment company, prohibits “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d). See also Rule 35d-1, 17 C.F.R. §270.35d-1 (listing types of names that have been deemed “materially deceptive or misleading”).

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 208. RESERVATION OF NAME.

(a) The exclusive right to the use of a name that complies with Section 207 may be reserved by:

(1) a person intending to form a statutory trust under this [act] and adopt the name;

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

1 name;

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

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

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

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

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

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

19 (d) A person that has reserved a name under this section may deliver to the [Secretary of
20 State] for filing:

21 (1) a notice of transfer that states the reserved name, the name and street and
22 mailing addresses of some other person to which the reservation is to be transferred, and the
23 paragraph of subsection (a) that applies to the other person; or

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

2 (e) A transfer or termination under subsection (d) is effective as provided in Section
3 204(c).

4 **Comment**

5 **Principal source** – Uniform Limited Partnership Act §109 (2001).

6
7 Under Section 103(c)(1), this Section is not subject to override by the governing
8 instrument.
9

10 **SECTION 209. AGENT FOR SERVICE OF PROCESS.**

11 (a) A statutory trust or a qualified foreign statutory trust shall designate and continuously
12 maintain in this state an agent for service of process.

13 (b) An agent for service of process of a statutory trust or qualified foreign statutory trust
14 must be an individual who is a resident of this state or a person incorporated, organized, formed,
15 or authorized to do business in this state which maintains an office in this state.

16 **Comment**

17
18 **Principal Sources** – Uniform Limited Partnership Act §114 (2001); Delaware Statutory
19 Trust Act §3804; Connecticut Statutory Trust Act §34-507.
20

21 Under Section 201(a)(3), the initial designation of a statutory trust's agent for service of
22 process is made in the original certificate of trust. Under Section ~~802902~~2902(a)(~~34~~), the initial
23 designation of a foreign statutory trust's agent for service of process is made in the original
24 application for a certificate of qualification ~~[to be reworked after new article 9]~~. The initial
25 designation may be changed pursuant to a statement of change under Section 210, by an
26 amendment to the certificate of trust under Section 202, or by an annual report under Section
27 213(e).
28

29 Under Section 103(c)(1), this Section is not subject to override by the governing
30 instrument.
31

32 **SECTION 210. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**
33 **SERVICE OF PROCESS.** A statutory trust or qualified foreign statutory trust may change its

agent for service of process, the address of its agent for service of process, or its designated office by delivering to the [Secretary of State] for filing a statement of change containing:

- (1) the name of the trust;
- (2) the street and mailing addresses of the current designated office of the trust;
- (3) if the designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses 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.

Comment

Principal Source – Uniform Limited Partnership Act §115 (2001).

Paragraph (a) uses “may” rather than “must” because a statutory trust may also change the information by an amendment to its certificate of trust under Section 202 and a qualified foreign statutory trust may also change the information by an amendment to its certificate of qualification under Section ____ [article 9 problem]. Further, if the information currently in the public record is not inaccurate, a statutory trust or qualified foreign statutory trust may change the information in an annual report under Section 213(e).

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 211. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

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

(1) the name of the trust;

(2) the name of the agent;

1 (3) a statement that the agent resigns as agent for service of process.

2 (b) The resigning agent must transmit a copy of the statement of resignation to the
3 designated office of the statutory trust or qualified foreign statutory trust and another copy to the
4 principal office if the address of the office appears in the records of the [Secretary of State] and
5 is different from the address of the designated office.

6 (c) An agency for service of process is terminated on the 31st day after the [Secretary of
7 State] files the statement of resignation under subsection (a).

8 **Comment**

9
10 **Principal Source** – Uniform Limited Partnership Act §116 (2001).

11
12 This section provides the exclusive means for an agent to resign without cooperation
13 from the statutory trust or qualified foreign statutory trust and the only way the agent, rather than
14 the statutory trust or foreign statutory trust, can effect a change in the public record. Unlike most
15 records authorized or required to be delivered to the filing officer for filing under this Act, a
16 statement of resignation may not provide for a delayed effective date.

17
18 Paragraph (c) mandates the effective date of the agent's resignation. An effective date
19 included in a statement of resignation is disregarded. To satisfy Section 212(a), the statutory
20 trust or qualified foreign statutory trust must designate a new agent for service of process before
21 the effective date. If the statutory trust or foreign statutory trust fails to do so, under Section 212
22 service on the statutory trust or foreign statutory trust may be made on the Secretary of State.

23
24 Under Section 103(c)(1), this Section is not subject to override by the governing
25 instrument.
26

27 **SECTION 212. SERVICE OF PROCESS.**

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

31 (b) If a statutory trust or qualified foreign statutory trust does not appoint or maintain an
32 agent for service of process in this state or the agent for service of process cannot with

1 reasonable diligence be found at the agent's address on file with the [Secretary of State], the
2 [Secretary of State] is an agent of the trust for service of process.

3 (c) Service of any process, notice, or demand on the [Secretary of State] under subsection
4 (b) may be made by delivering to and leaving with the [Secretary of State] two copies of the
5 process, notice, or demand. If a process, notice, or demand is served on the [Secretary of State],
6 the [Secretary of State] shall forward one of the copies by registered or certified mail, return
7 receipt requested, to the statutory trust or qualified foreign statutory trust at its designated office.

8 (d) Service is effected at the earliest of:

9 (1) the date the agent for the statutory trust or qualified foreign statutory trust
10 receives the process, notice, or demand;

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

12 (3) five days after the process, notice, or demand is deposited with the United
13 States Postal Service by the [Secretary of State], if correctly addressed and with sufficient
14 postage.

15 (e) The [Secretary of State] shall keep a record of each process, notice, and demand
16 served pursuant to this section and record the time of, and the action taken regarding, the service.

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

19 **Comment**

20
21 **Principal Source** – Uniform Limited Partnership Act §117 (2001).

22
23 Paragraph (f) confirms that the authority of the Secretary of State to accept process under
24 a state long-arm statute exists independently of paragraphs (b) through (e) of this Section.

25
26 Under Section 103(c)(1), this Section is not subject to override by the governing
27 instrument.
28

1 **SECTION 213. ANNUAL REPORT FOR [SECRETARY OF STATE].**

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

4 (1) in the case of a statutory trust:

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

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

8 (2) in the case of a qualified foreign statutory trust:

9 (A) any alternate name adopted under Section ~~706(a)~~906;

10 (B) the name of the state or other jurisdiction under whose law the trust is
11 formed; and

12 (C) the street and mailing addresses of its principal office and, if the laws
13 of the jurisdiction under which the trust is formed require it to maintain an office in that
14 jurisdiction, the street and mailing addresses of that office; and

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

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

19 (c) The first annual report under this section must be delivered to the [Secretary of State]
20 between [January 1 and April 1] of the year following the calendar year in which a statutory trust
21 was formed or a qualified foreign statutory trust was authorized to do business in this State. An
22 annual report must be delivered to the [Secretary of State] between [January 1 and April 1] of
23 each subsequent calendar year.

1 (d) If an annual report does not contain the information required in subsection (a), the
2 [Secretary of State] shall promptly notify the reporting trust and return the report to it for
3 correction. If the report is corrected to contain the information required in subsection (a) and
4 delivered to the [Secretary of State] within 30 days after the date of the notice, it is timely
5 delivered.

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

10 **Comment**

11 **Source** – Uniform Limited Partnership Act §210 (2001).

12
13 A statutory trust that fails to comply with this section is subject to administrative
14 dissolution. See Section 805.

15
16 Under Section 103(c)(1), this Section is not subject to override by the governing
17 instrument.

1 [ARTICLE] 9

2 FOREIGN STATUTORY TRUSTS

3
4 SECTION 901. GOVERNING LAW.

5 (a) The law of the state or other jurisdiction under which a foreign statutory trust is
6 formed governs:

7 (1) the internal affairs of the trust;

8 (2) the liability of a beneficial owner as beneficial owner and trustee as trustee for
9 the debts, obligations, or other liabilities of the trust or any series thereof; and

10 (3) the liability of a series of a foreign statutory trust with respect to the trust and
11 other series thereof. [For Discussion: This choice of law provision is in some tension with
12 our non-entity conception of the series. The same comment, and any fixes, apply to
13 Section 305, governing law for a (domestic) statutory trust.]

14 (b) The [Secretary of State] may not deny a foreign statutory trust a certificate of
15 qualification by reason of any difference between the laws of the jurisdiction under which the
16 foreign statutory trust is formed and the laws of this state.

17 (c) A certificate of qualification does not authorize a foreign statutory trust to engage in
18 any business or exercise any power that a statutory trust may not engage in or exercise in this
19 state.

20 Comment

21
22 **Principal Sources** – Revised Uniform Limited Liability Company §801 (2006); Uniform
23 Limited Partnership Act §901 (2001); Delaware Statutory Trust Act §3851; Connecticut
24 Statutory Trust Act §34-530.

25
26 Paragraph (a) parallels and is analogous in scope and effect to Section 305 for a domestic
27 statutory trust. Paragraph (b) allows for a foreign statutory trust to operate domestically even if
28 the law governing it is different from the laws governing domestic statutory trusts, but under

1 paragraph (c) a foreign statutory trust cannot engage in any business or exercise any power that a
2 domestic statutory trust could not.

3
4 Under Section 103(c)(1), this Section is not subject to override by the governing
5 instrument.
6

7 **SECTION 902. APPLICATION FOR CERTIFICATE OF QUALIFICATION.**

8 (a) A foreign statutory trust may apply for a certificate of qualification to transact
9 business in this state by delivering an application to the [Secretary of State] for filing. The
10 application must contain:

11 (1) the name of the trust and, if the name does not comply with Section ~~209~~207,
12 an alternate name adopted pursuant to Section ~~807~~906(a).

13 (2) the name of the state or other jurisdiction under whose law the trust is formed;

14 (3) the street and mailing addresses of the trust's principal office and, if the laws
15 of the jurisdiction under which the trust is formed require it to maintain an office in that
16 jurisdiction, the street and mailing address of the required office; and

17 (4) the name and street and mailing addresses of the trust's initial agent for
18 service of process in this state.

19 (b) A foreign statutory trust shall deliver with a completed application under subsection
20 (a) a certificate of ~~existence~~good standing or a record of similar import signed by the [Secretary
21 of State] or other official having custody of the foreign statutory trust's publicly filed records in
22 the state or other jurisdiction under whose law the foreign statutory trust is formed.

23 **Comment**

24
25 **Principal Source** – Uniform Limited Partnership Act §902 (2001).
26

27 A certificate of qualification applied for under this section is different than a ~~certificate of~~
28 ~~existence furnished under Section 207~~ or a certificate of registration under Section ~~806~~905. A
29 certificate of qualification confirms that a foreign statutory trust may do business in the state. A

1 certificate of registration provides conclusive evidence that a foreign statutory trust has a valid
2 certificate of qualification on file as of the date of the certificate of registration. A certificate of
3 registration for a foreign statutory trust is akin to a certificate of good standing for a statutory
4 trust under Section 206. ~~[Article 2 cross-references (e.g., 205, 209), to come after resolution~~
5 ~~of the global Article 8 issues are resolved.]~~[Further commentary to come.]
6

7 Under Section 103(c)(1), this Section is not subject to override by the governing
8 instrument.
9

10 **SECTION 903. AMENDMENT OR RESTATEMENT OF CERTIFICATE. ~~[For~~**
11 **Discussion: Doesn't Section 210 cover this?]**

12 ~~—— (a) To amend its certificate of qualification, a qualified foreign statutory trust must~~
13 ~~deliver to the [Secretary of State] for filing an amendment or articles of merger stating:~~

14 ~~—— (1) the name of the trust;~~

15 ~~—— (2) the date of filing of its initial certificate; and~~

16 ~~—— (3) the changes that the amendment makes to the certificate as most recently~~
17 ~~amended or restated.~~

18 ~~—— (b) A trustee that knows or has reason to know that any information in a filed certificate~~
19 ~~of qualification was incorrect when the certificate was filed or has become incorrect due to~~
20 ~~changed circumstances shall promptly:~~

21 ~~—— (1) cause the certificate to be amended; or~~

22 ~~—— (2) if appropriate, deliver to the [Secretary of State] for filing a statement of~~
23 ~~correction pursuant to Section 206.~~

24 ~~—— (c) A certificate of qualification of a foreign statutory trust may be amended at any time~~
25 ~~for any purpose as determined by the trustees.~~

26 ~~—— (d) An amendment or restated certificate of qualification of a foreign statutory trust is~~
27 ~~effective as provided in Section 204(c).~~

1 **Comment**

2
3 ~~—— **Principal Source** Uniform Limited Partnership Act §202 (2001).~~

4
5 ~~—— Paragraph (a) provides a mechanism for updating a statutory trust's certificate of~~
6 ~~qualification. Paragraph (b) imposes an obligation directly on the trustee rather than on the~~
7 ~~statutory trust.~~

8
9 ~~—— Under Section 103(c)(1), this Section is not subject to override by the governing~~
10 ~~instrument.~~

11
12 **SECTION ~~904~~903. ACTIVITIES NOT CONSTITUTING TRANSACTING**
13 **BUSINESS.**

14 (a) Activities of a foreign statutory trust which do not constitute transacting business in
15 this state within the meaning of this [article] include:

16 (1) maintaining, defending, or settling an action or proceeding;

17 (2) holding meetings of its trustees or carrying on any other activity concerning
18 its internal affairs;

19 (3) maintaining accounts in financial institutions;

20 (4) maintaining offices or agencies for the transfer, exchange, and registration of
21 the trust's own beneficial interests or securities or maintaining trustees or depositories with respect
22 to those beneficial interests or securities;

23 (5) selling through independent contractors;

24 (6) soliciting or obtaining orders, whether by mail or electronic means or through
25 employees or agents or otherwise, if the orders require acceptance outside this state before they
26 become contractual obligations;

27 (7) creating or acquiring indebtedness, mortgages, or security interests in real or
28 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 within 30 days and is not in the course of similar transactions; and

(10) transacting 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 the state solely by reason of being a trustee or a beneficial owner of a foreign statutory trust that does transact business in this state.

Comment

Principal Sources – Uniform Limited Partnership Act §903 (2001).

The schedule of activities that in paragraph (a) that do not constitute transacting business in the state are illustrative and not exhaustive. As revised in 2006, the Delaware Statutory Trust Act contains a similar schedule. See 2006 Delaware Laws Ch. 418 §20 (H.B. 445), adding Delaware Statutory Trust Act §3863.

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 905904. APPLICATION FOR FILING OF CERTIFICATE OF QUALIFICATION. Unless the [Secretary of State] determines that an application for a certificate of qualification does not comply with the filing requirements of this [Act], the [Secretary of State], upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of qualification to transact 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. ~~If all filing fees have been paid, unless the [Secretary of State] determines that an application for~~

1 | ~~qualification of a foreign statutory trust does not comply with the filing requirements of this [act],~~
2 | ~~the [Secretary of State] shall file the application.~~

3 | **Comment**

4 |
5 | **Principal Source** –Uniform Limited Partnership Act §904 (2001).

6 |
7 | ~~An application for qualification filed under this section is different than a certificate of~~
8 | ~~registration under Section 806~~For discussion of the certificate of qualification and its differences
9 | from a certificate of registration, see the comment to Section 902.

10 |
11 | Under Section 103(c)(1), this Section is not subject to override by the governing
12 | instrument.
13 |

14 | **SECTION 906905. CERTIFICATE OF QUALIFICATIONREGISTRATION.**

15 | (a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish a
16 | certificate of ~~qualification~~registration for a qualified foreign statutory trust if the records filed in
17 | the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of
18 | qualification, has not revoked the certificate of qualification, and has not filed a notice of
19 | cancellation. ~~A certificate of registration must state:~~

20 | ~~_____ (1) the name of the trust and any alternate name adopted under Section 807 for use~~
21 | ~~in this state;~~

22 | ~~_____ (2) that all fees and penalties due to the [Secretary of State] have been paid;~~

23 | ~~_____ (3) that the [Secretary of State] has not filed a notice of cancellation; and~~

24 | ~~_____ (4) whether the foreign statutory trust's most recent annual report required by~~
25 | ~~Section 214 has been filed by the [Secretary of State].~~

26 | (b) Subject to any limitation stated in the certificate, a certificate of qualification issued by
27 | the [Secretary of State] to a foreign statutory trust may be relied upon as conclusive evidence that
28 | the trust is authorized to transact business in this state as of the date of the certificate.

1 **Comment**

2 **Principal Source** – Uniform Limited Partnership Act §209 (2001).

3 The provisions of this section, which concern the issuance of a certificate of ~~qualification~~
4 registration for a qualified foreign statutory trust, are analogous to the provisions of Section 206
5 concerning the issuance of a certificate of ~~existence~~ good standing for a statutory trust.

6
7 Under Section 103(c)(1), this Section is not subject to override by the governing
8 instrument.
9

10 **SECTION ~~907~~906. NONCOMPLYING NAME OF FOREIGN STATUTORY**
11 **TRUST.**

12 (a) A foreign statutory trust whose name does not comply with Section 207 may not obtain
13 a certificate of qualification until it adopts, for the purpose of transacting business in this state, an
14 alternate name that complies with Section 207. A foreign statutory trust that adopts an alternate
15 name under this subsection and obtains a certificate of qualification with the name need not
16 comply with [fictitious or assumed name statute]. After obtaining a certificate of qualification
17 with an alternate name, a foreign statutory trust shall transact business in this state under the name
18 unless the trust is authorized under [fictitious or assumed name statute] to transact business in this
19 state under another name.

20 (b) If a qualified foreign statutory trust changes its name to one that does not comply with
21 Section 107, it may not thereafter transact business in this state until it complies with subsection
22 (a) and obtains an amended certificate of qualification.

23 **Comment**

24
25 **Principal Source** – Uniform Limited Partnership Act §905 (2001).

26
27 Under Section 103(c)(1), this Section is not subject to override by the governing
28 instrument.
29

1 **SECTION 908. REVOCATION OF CERTIFICATE OF QUALIFICATION.** ~~For~~
2 ~~**Discussion: This section is perhaps the clearest example of the nomenclature problem**~~
3 ~~**flagged above.**~~

4 (a) A certificate of qualification of a qualified foreign statutory trust to transact business in
5 this state may be revoked by the [Secretary of State] in the manner provided in subsections (b) and

6 (c) if the trust does not:

7 (1) appoint and maintain an agent for service of process;

8 (2) deliver for filing a statement of change within 30 days after a change has
9 occurred in the name or address of the agent;

10 (3) file an annual report pursuant to Section 213; or

11 (4) pay, within 60 days after the due date, any fee, tax, or penalty due to the
12 [Secretary of State].

13 (b) To revoke a certificate of qualification of a foreign statutory trust, the [Secretary of
14 State] must prepare, sign, and file a notice of revocation and send a copy to the trust's agent for
15 service of process in this state, or if the trust does not appoint and maintain a proper agent in this
16 state, to the trust's designated office. The notice must state:

17 (1) the effective date of the revocation, which must be at least 60 days after the date
18 the [Secretary of State] sends the copy; and

19 (2) the basis for the revocation.

20 (c) Unless a foreign statutory trust cures the failures to comply with subsection (a) stated in
21 the notice of revocation before the date stateded in the notice, the authority of the trust to transact
22 business in this state ceases on that date.

23 (d) If a foreign statutory trust cures the failures stated in the notice of revocation under

subsection (c), the [Secretary of State] shall indicate that the trust is reinstated on the filed notice.
The reinstatement of the trust relates back for all purposes to the date of the notice of revocation.

Comment

Principal Source – Uniform Limited Partnership Act §906 (2001).

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 909. CANCELLATION OF CERTIFICATE OF QUALIFICATION.

(a) To cancel its certificate of qualification—~~“certificate of qualification” is one of the~~
~~key vocabulary problems~~ to transact business in this state, a qualified foreign statutory trust
must deliver to the [Secretary of State] for filing a notice of cancellation that states:

(1) the name of the trust;

(2) the date of filing of its initial certificate of qualification;

(3) that the certificate of qualification is being canceled; and

(4) any other information as determined by the trustees filing the statement.

(b) A certificate of qualification under subsection (a) is canceled when the notice of
cancellation becomes effective under Section 204.

Comment

Principal Source – Uniform Limited Partnership Act §907 (2001).

Under Section 103(c)(1), this Section is not subject to override by the governing instrument.

SECTION 910. EFFECT OF FAILURE TO HAVE CERTIFICATE.

(a) A foreign statutory trust transacting business in this state may not maintain an action or
proceeding in this state unless it has a certificate of qualification to transact business in this state.

1 (b) The failure of a foreign statutory trust to have a certificate of qualification to transact
2 business in this state does not impair the validity of a contract or act of the trust or prevent the trust
3 from defending an action or proceeding in this state.

4 (c) A trustee or beneficial owner of a statutory trust is not liable for the debts, obligations,
5 or other liabilities of the trust solely because the trust transacted business in this state without a
6 certificate of qualification.

7 (d) If a foreign statutory trust transacts business in this state without a certificate of
8 qualification or cancels its certificate of qualification, the [Secretary of State] is its agent for
9 service of process for actions arising out of the transaction of business in this state.

10 **Comment**

11
12 **Principal Source** – Uniform Limited Partnership Act §907 (2001).

13
14 Under Section 103(c)(1), this Section is not subject to override by the governing
15 instrument.
16

17 **SECTION 911. ACTION BY [ATTORNEY GENERAL].** The [Attorney General] may
18 maintain an action to enjoin a foreign statutory trust from transacting business in this state in
19 violation of this [article].

20 **Comment**

21
22 **Principal Source** – Uniform Limited Partnership Act §908 (2001).

23 Under Section 103(c)(1), this Section is not subject to override by the governing
24 instrument.
25