

**Chart Comparing  
Revised Re-ULLCA (Re-Re-ULLCA)  
(as prepared for the Committee’s March, 2010 meeting)  
with  
USTEA**

**The chart omits “Hub” subject matter. “Category III” indicates seemingly parallel provisions that should not be harmonized (too dissimilar in purpose or function).**

<b>Revised Re-ULLCA</b>	<b>USTEA</b>	<b>Co-Reporter’s Tentative Suggestion</b>
<b>Section 102 Definitions</b>	<b>Section 102 Definitions</b>	
(2) “Contribution”, except in the phrase “right of contribution,” means any benefit provided by a person to a limited liability company in order to become a member or in the person’s capacity as a member.	no definition	Re-Re-ULLCA
4) “Designated office” means: (A) the office that a limited liability company is required to designate and maintain under Section 113; or (B) the principal office of a foreign limited liability company.	(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.	the choice is for Style
(5) “Distribution”, except as otherwise provided in Section 405(g), means a transfer of money or other property from a limited liability company to another person on account of a transferable interest and includes a redemption or other purchase by a limited company of a transferable interest.	no definition	Re-Re-ULLCA
(7) “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.	(5) “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.	Re-Re-ULLCA is not perfect, but USTEА is less clear.
(8) “Limited liability company”, except in the phrase “foreign limited liability company”, means an entity formed under this [act].	(16) “Statutory trust”, except in the phrase “foreign statutory trust”, means an entity formed under this [act].	Harmonized
(9) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(c).	(19) “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.	Category III

(11) “Member” means a person that has become a member of a limited liability company under Section 401 and has not dissociated under Section 602.	(1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust or foreign statutory trust.	Category III, unless the Committee wishes to harmonize USTEA to Re-Re-ULLCA
(13) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 110(a). The term includes the agreement as amended or restated.	(18) “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.	Category III
(20) “Transfer” includes an assignment, conveyance, sale, , lease, mortgage, , encumbrance, gift, and transfer by operation of law.	No definition	
(21) “Transferable interest” means the right, as initially owned by some person in the person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement. The term applies, whether or not the person remains a member or continues to own any part of the right and includes any fraction of the right.	No definition. But see § 102(1) (“‘Beneficial owner’ means the owner of a beneficial interest in a statutory trust or foreign statutory trust.”)	
(22) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.	No definition	
<b>SECTION 103. KNOWLEDGE; NOTICE.</b>	No parallel provision	
<b>SECTION 104. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.</b> (a) A limited liability company is an entity distinct from its members. (b) A limited liability company may have any lawful purpose, regardless of whether for profit. (c) A limited liability company has perpetual duration. <b>SECTION 105. POWERS.</b> A limited liability company has the capacity to sue and be sued in its own name and the power to do all things	<b>SECTION 303. PERMISSIBLE PURPOSES.</b> (a) Except as otherwise provided in subsection (b), a statutory trust may have any lawful purpose. (b) A statutory trust may not have a predominantly donative purpose. <b>SECTION 306. DURATION.</b> (a) A statutory trust has perpetual existence. (b) A statutory trust, or any series thereof, may not be terminated or	

<p>necessary or convenient to carry on its activities.</p>	<p>revoked except in accordance with this [act] or the terms of the governing instrument.</p> <p>(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.</p> <p>(d) A statutory trust or any series thereof does not terminate because the same person is the sole trustee and sole beneficial owner.</p> <p><b>SECTION 307. POWER TO HOLD PROPERTY; TITLE TO TRUST PROPERTY.</b> 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.</p> <p><b>SECTION 308. POWER TO SUE AND BE SUED.</b> A statutory trust may sue and be sued in its own name.</p>	
<p><b>SECTION 106. GOVERNING LAW.</b> The law of this state governs:</p> <p>(1) the internal affairs of a limited liability company; and</p> <p>(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.</p>	<p><b>SECTION 301. GOVERNING LAW.</b> The law of this state governs:</p> <p>(1) the internal affairs of a statutory trust;</p> <p>(2) the liability of a beneficial owner as beneficial owner and a trustee as trustee for a debt, obligation, or other liability of a statutory trust or a series thereof; and</p> <p>(3) the enforceability of a debt, obligation, or other liability of the statutory trust or a series thereof against the property of the trust or any series thereof.</p>	<p>Style prefers the singular – “a debt, etc.” The plural is prevalent in LLC statutes.</p>
<p><b>SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW.</b> Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].</p>	<p><b>SECTION 105. APPLICABILITY OF TRUST LAW.</b> The law of this state pertaining to common-law trusts supplements this [act]. However, a governing instrument may supersede or modify application to the statutory trust of any law of this state pertaining</p>	<p>USTEA, § 105 is Category III, as is § 106(b). Section, § 106(a) (contract is deity) is Category II</p>

	<p>to common-law trusts.</p> <p><b>SECTION 106. RULE OF CONSTRUCTION.</b></p> <p>(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.</p> <p>(b) The presumption that a civil statute in derogation of the common law is construed strictly does not apply to this [act].</p>	
<b>SECTION 108. NAME.</b>	....	Hub
<b>SECTION 109. RESERVATION OF NAME.</b> <i>The Acts use significantly different structures to address the foundational document. Harmonization “in the particulars” will not be easy (and likely will not be useful) without harmonizing the structures, which will likely not be attractive.</i>	....	Hub
<b>SECTION 110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.</b>	<b>SECTION 103. GOVERNING INSTRUMENT. LIMITATIONS.</b>	
<p>(a) Except as otherwise provided in subsections (b) , (c) and (d), the operating agreement governs:</p> <p>(1) relations among the members as members and between the members and the limited liability company;</p> <p>(2) the rights and duties under this [act] of a person in the capacity of manager;</p> <p>(3) the activities of the company and the conduct of those activities; and</p> <p>(4) the means and conditions for amending the operating agreement.</p>	<p>(a) Except as otherwise provided in subsection (b) or Section 104, the governing instrument governs:</p> <p>(1) the management, affairs, and conduct of the business of a statutory trust; and</p> <p>(2) the rights, interests, duties, obligations, and powers of, and the relations among, the trustees, the beneficial owners, the statutory trust, and other persons.</p> <p>...</p> <p>(d) The governing instrument may be amended with the approval of all the beneficial owners.</p>	<p>Category III (assuming that USTEAA has some reason for its arguably narrower language). QUERY whether it is clear that USTEAA, § 103(d) is a default rule.</p>
(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection (a), this [act] governs the matter.	(b) To the extent the governing instrument does not otherwise provide for a matter described in subsection (a), this [act] governs the matter.	Harmonized
(c) An operating agreement may not:	<b>SECTION 104. MANDATORY RULES.</b> The governing instrument	Much variance between parallel
(1) vary a limited liability		

<p>company's capacity under Section 105 to sue and be sued in its own name;</p> <p>(2) vary the law applicable under Section 106;</p> <p>(3) vary the power of the court under Section 204 except to provide for arbitration of claims seeking relief under that Section;</p> <p>(4) eliminate all fiduciary duty, but may, if not manifestly unreasonable:</p> <p>(i) restrict or eliminate the duties stated in Section 409 (b) and (g);</p> <p>(ii) identify specific types or categories of activities that do not violate the duty of loyalty;</p> <p>(iii) alter the duty of care, except to authorize intentional misconduct or knowing violation of law; and</p> <p>(iv) alter any other fiduciary duty, including eliminating particular aspects of that duty;</p> <p>(v) eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but may prescribe the standards, if not manifestly unreasonable, by which to measure the performance of that obligation;</p> <p>(6) unreasonably restrict the duties and rights stated in Section 410, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;<sup>1</sup></p>	<p>may not:</p> <p>(1) vary the requirements of [Article] 2;<sup>2</sup></p> <p>(2) vary the choice of governing law under Section 301;</p> <p>(3) negate the exclusion of a predominantly donative purpose under Section 303;</p> <p>(4) vary the provisions pertaining to series trusts in Sections 401, 402(b), 403, and 404(c);</p> <p>(5) 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;</p> <p>(6) <sup>3</sup>restrict the nonliability under Section 506 of a trustee or other person that relies in good faith on the terms of the governing instrument, the records of the statutory trust, or the opinions, reports, or statements of an expert, but the governing instrument may prescribe the standards for assessing whether the reliance was in good faith, if the standards are not manifestly unreasonable;</p> <p>(7) restrict the right of a trustee to information under Section 508, but the governing instrument may prescribe</p>	<p>provisions.</p>
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<sup>1</sup> Source: ULPA § 110(b)(4)

<sup>2</sup> QUERY why necessary, given the general exclusion of non-effect on third parties. Not present in any of the previous entity acts.

<sup>3</sup> This provision is remarkable (to understate the matter). The provision makes it impossible to vary the following exculpatory language and arguably means that a trustee who breaches the trust agreement in good faith is not liable for breach of the agreement:

**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, including a fiduciary duty, to

<p>(7) vary the power of a court to decree dissolution in the circumstances specified in Section 701(a)(4)(A) and (5), except to provide for arbitration of claims seeking dissolution under those provisions;</p> <p>(8) vary the requirement to wind up a limited liability company's business as specified in Section 702(a) and (b)(1);</p> <p>(9) unreasonably restrict the right of a member to maintain an action under [Article] 9;</p> <p>(10) vary the rights of a member under Section 1014; or</p> <p>(11) except as otherwise provided in Sections 111 and 112(b), restrict the rights under this [act] of a person other than a member or manager.</p>	<p>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;</p> <p>(8) vary the prohibition under Section 509 of indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful misconduct, or reckless indifference;</p> <p>(9) 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;</p> <p>(10) restrict the right of a judgment creditor of a beneficial owner to seek a charging order under Section 606;</p> <p>(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 ability<sup>4</sup> to enforce its rights as a beneficial owner, if the standards are not manifestly unreasonable;</p> <p>(12) restrict the right of a</p>	
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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).

<sup>4</sup> Narrower permission ("is reasonably related to the beneficial owner's ability...") than in Re-Re-ULLCA § 110(c)( 6) ("reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use").

	<p>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;</p> <p>(13) vary the provisions pertaining to conversion and merger in Sections 701, 704, 705, 708, and 709;</p> <p>(14) vary the provisions pertaining to dissolution in Sections 801(1) and 802 through 808;</p> <p>(15) vary the provisions relating to foreign statutory trusts in [Article] 9;<sup>5</sup> or</p> <p>(16) vary the miscellaneous provisions in [Article] 10.</p>	
<p>(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.</p> <p>(e) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this [act] and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.</p> <p>(f) The operating agreement may</p>	<p>[103](e) Subject to Section 104, without limiting the terms that may be included<sup>6</sup> in a governing instrument, the governing instrument may:</p> <p>(1) provide the means by which beneficial ownership is determined and evidenced;</p> <p>(2) limit a beneficial owner's right to transfer its beneficial interest;</p> <p>(3) provide for one or more series under [Article] 4;</p> <p>(4) to the extent that voting rights are granted under the governing instrument, include terms relating to:</p> <p>(A) notice of the date, time, place, or purpose of any</p>	<p>509(c) A term</p>

<sup>5</sup> QUERY how a trust instrument of a domestic trust could vary regulatory requirements pertaining to the a foreign trust.

<sup>6</sup> The phrase “without limiting the terms that may be included” is a useful addition, which has appeared to have survived scrutiny by the Style Committee.

<p>eliminate or limit a member or manager's liability to the limited liability company and members for money damages, whether directly or by providing indemnification therefor, except for:</p> <ul style="list-style-type: none"> <li>(1) breach of the duty of loyalty;</li> <li>(2) a financial benefit received by the member or manager to which the member or manager is not entitled;</li> <li>(3) a breach of a duty under Section 406;</li> <li>(4) intentional infliction of harm on the company or a member; or</li> <li>(5) an intentional violation of criminal law.</li> </ul>	<p>meeting at which any matter is to be voted on;</p> <ul style="list-style-type: none"> <li>(B) waiver of notice;</li> <li>(C) action by consent without a meeting;</li> <li>(D) establishment of record dates;</li> <li>(E) quorum requirements;</li> <li>(F) voting: <ul style="list-style-type: none"> <li>(i) in person;</li> <li>(ii) by proxy;</li> <li>(iii) any form of communication that creates a record, telephone, or video conference;; or</li> <li>(iv) in any other manner; or</li> </ul> </li> <li>(G) any other matter with respect to the exercise of the right to vote;</li> <li>(5) provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;</li> <li>(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: <ul style="list-style-type: none"> <li>(A) amendment of the governing instrument;</li> <li>(B) merger, conversion, or reorganization;</li> <li>(C) appointment of trustees;</li> <li>(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</li> </ul> </li> </ul>	<p>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.</p>
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	<p>(E) dissolution of the statutory trust;</p> <p>(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;</p> <p>(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;</p> <p>(9) provide rights to any person, including a person that is not a party to the governing instrument;</p> <p>(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:</p> <p>(A) a condition that a person that is not a party to the instrument must approve the amendment for it to be effective; and</p> <p>(B) a requirement that the governing instrument may be amended only as provided in the governing instrument or as otherwise permitted by law;</p> <p>(11) provide that a person may comply with paragraph (10) by a representative authorized by</p>	
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	<p>the person orally, in a record, or by conduct;</p> <p>(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;</p> <p>(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;</p> <p>(14) provide for the establishment of record dates; and</p> <p>(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.</p>	
<p>(g) The court shall decide any claim under subsection (c)(4) or (5) that a term of an operating agreement is manifestly unreasonable. The court:</p> <p>(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and</p> <p>(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:</p> <p>(A) the objective of the term is unreasonable; or</p> <p>(B) the term is an unreasonable means to achieve the provision's</p>	No comparable provision	

objective.		
<b>SECTION 111. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION AGREEMENT.</b>	No comparable provision.	
<p><b>SECTION 112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.</b></p> <p>(c) If a record that has been delivered by a limited liability company to the [Secretary of State] for filing and has become effective under this [act] contains a provision that would be ineffective under Section 110(c) if contained in the operating agreement, the provision is likewise ineffective in the record.</p> <p>(d) Subject to subsection (c), if a record that has been delivered by a limited liability company to the [Secretary of State] for filing and has become effective under this [act] conflicts with a provision of the operating agreement:</p> <p>(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and</p> <p>(2) the record prevails as to other persons to the extent they reasonably rely on the record.</p>	<p>Some provisions relating to non-effect on third parties are sprinkled within Section 104 (Mandatory Rules). Section 201(e) provides: “A filed certificate of trust, a filed statement of cancellation or change, or filed articles of conversion or merger prevail over inconsistent terms of a trust instrument.” That approach conflicts with Re-Re-ULLCA § 112(d), which contains the more nuanced approach pioneered in ULLCA and following in ULPA.</p>	Do not conform Re-Re-ULLCA to USTEA.
<b>The remaining sections of Article 1 address “Hub topics.”</b>		
<p><b>SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY; CERTIFICATE OF ORGANIZATION.</b></p> <p>(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the [Secretary of State] for filing a certificate of organization.</p> <p>(b) A certificate of organization must state:</p> <p>(1) the name of the limited liability company, which must comply with Section 108;</p>	<p><b>SECTION 201. CERTIFICATE OF TRUST.</b></p> <p>(a) To form a statutory trust, a person must deliver a certificate of trust to the [Secretary of State] for filing.</p> <p>(b) A certificate of trust must state:</p> <p>(1) the name of the statutory trust, which must comply with Section 207;</p> <p>(2) the street and mailing address of the designated office</p>	<p>Subsections (a) “are” the same.</p> <p>Subsections (b) differ only in style, except for the quasi-shelf language of Re-Re-ULLCA.</p>

<p>(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the company; and</p> <p>(3) if the company will have no members when the [Secretary of State] files the certificate, a statement to that effect.</p> <p>(c) <u>Subject to Section 112(c)</u>, a certificate of organization may also contain statements as to matters other than those required by subsection (b). However, a statement in a certificate of organization is not effective as a statement of authority.</p> <p>(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3), the following rules apply:</p> <p>(1) A limited liability company is formed when the [Secretary of State] has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 205(c).</p> <p>(2) If the certificate states a delayed effective date, a limited liability company 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.</p> <p>(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the [Secretary of State] <u>is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.</u></p> <p>(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3), the following rules apply:</p> <p>(1) The certificate lapses and is void unless, within [90] days from the date the [Secretary of State] files the certificate, an organizer signs and delivers to the [Secretary of State] for filing a notice stating:</p> <p>(A) that the limited</p>	<p>of the trust;</p> <p>(3) the name and street and mailing address of the initial agent of the trust for service of process; and</p> <p>(4) if the trust may have one or more series, a statement to that effect.</p> <p>(c) A certificate of trust may contain any term in addition to those required by subsection (b).</p> <p>(d) Subject to Section 204(c), a statutory trust is formed when a certificate of trust that complies with subsection (b) is filed by the [Secretary of State].</p> <p>(e) A filed certificate of trust, a filed statement of cancellation or change, or filed articles of conversion or merger prevail over inconsistent terms of a trust instrument.</p>	<p>Difference in subsection (c) is substantive. Conform to Re-Re-ULLCA.</p> <p>Compare USTEA, § 201(e) with Re-Re-ULLCA, § 112(e). Do not conform Re-Re-ULLCA to USTEA.</p> <p>USTEA does not contain the phrase “conclusive proof”</p>
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<p>liability company has at least one member; and  (B) the date on which a person or persons became the company's initial member or members.</p> <p>(2) If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).</p> <p>(3) Except in a proceeding by this state to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.</p>		
<p><b>SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.</b></p> <p>(a) A certificate of organization may be amended or restated at any time.</p> <p>(b) To amend its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing an amendment stating:</p> <p>(1) the name of the company;</p> <p>(2) the date of filing of its certificate of organization; and</p> <p>(3) the changes the amendment makes to the certificate as most recently amended or restated.</p> <p>(c) To restate its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing a restatement, designated as such in its heading, stating:</p> <p>(1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;</p> <p>(2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and</p> <p>(3) the changes the restatement makes to the certificate as most recently</p>	<p><b>SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF TRUST; STATEMENT OF CORRECTION.</b></p> <p>(a) To amend its certificate of trust, a statutory trust must deliver to the [Secretary of State] for filing an amendment, <u>articles of conversion, or articles of merger</u> stating:</p> <p>(1) the name of the trust;</p> <p>(2) the date of filing of its initial certificate; and</p> <p>(3) the changes to the certificate.</p> <p>(b) 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 shall promptly:</p> <p>(1) cause the certificate to be amended; or</p> <p>(2) deliver to the [Secretary of State] for filing a statement of correction.</p> <p>(c) A restated certificate of trust must be delivered to the [Secretary of State] for filing in the same manner as an amendment.</p>	<p>Re-Re-ULLCA, § 202(a) omitted in USTEA</p> <p>Underlined language in USTEA, § 202(a) is different. Both Acts require the articles of merger, etc. to include any amendments made to the filed document of the surviving organization. However, Re-Re-ULLCA does not include the underlined language. Largely a question of style. Otherwise, Re-Re-ULLCA has been conformed</p>

<p>amended or restated.</p> <p>(d) Subject to Sections 112(c) and 205(c), an amendment to or restatement of a certificate of organization is effective when filed by the [Secretary of State].</p> <p>(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:</p> <p>(1) cause the certificate to be amended; or</p> <p>(2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section 114 or a statement of correction under Section 206.</p>		<p>to the Hub and should presumably be the standard.</p>
<p><b>The remaining sections of Article 2 address “Hub topics.”</b></p>		
<p><b>SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.</b></p> <p>(a) A member is not an agent of a limited liability company solely by reason of being a member.</p> <p>(b) A person’s status as a member does not prevent or restrict law other than this [act] from imposing liability on a limited liability company because of the person’s conduct.</p>	<p><b>SECTION 504. PROTECTION OF PERSON DEALING WITH TRUSTEE.</b></p> <p>(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.</p> <p>(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.</p> <p>(c) A person that in good faith delivers property to a trustee need not ensure its proper use.</p> <p>(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</p>	<p>Two entirely different worlds.</p>

	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.	
<b>SECTION 302. STATEMENT OF AUTHORITY.</b>	No comparable provision.	No need to harmonize USTEA, in light
<b>SECTION 303. STATEMENT OF DENIAL.</b>	No comparable provision.	of USTEA, § 504
<b>SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.</b> <sup>7</sup> (a) A debt, obligations, or other liability of a limited liability company is: solely the debt, obligation, or other liability of the company. A member, manager, agent of the company, or agent of a manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member, manager, agent of the company, or agent of a manager. (b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on any member, manager, agent of the company, or agent of a manager, for any debt, obligation, or other liability of the company.	(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, 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, 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.	Re-Re-ULLCA, § 304(a) has been conformed to USTEA, § 304(a). The subsections (b) have no substantive overlap. (Category III)
<b>SECTION 401. BECOMING MEMBER.</b> (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member. (b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in	No comparable provision, except for USTEA, § 603(a), second sentence (below).	Category III, except to conform USTEA, § 603(a), second sentence to Re-Re-ULLCA (better style, redundancy eliminated)

<sup>7</sup> Conformed to Trust Act, § 304(a).

<p>forming the company and may be, but need not be, one of the persons.</p> <p>(c) If a filed certificate of organization contains the statement required by Section 201(b)(3), a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.</p> <p>(d) After formation of a limited liability company, a person becomes a member:</p> <p>(1) as provided in the operating agreement;</p> <p>(2) as the result of a transaction effective under [Article] 10;</p> <p>(3) with the consent of all the members; or</p> <p>(4) if, within 90 consecutive days after the company ceases to have any members:</p> <p>(A) transferees owning a majority of the rights to receive distributions consent have at least one specified person become a member; and</p> <p>(B) at least one person becomes a member in accordance with the consent;</p> <p>.</p> <p>(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.</p>	<p>(a) .....[second sentence] 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.</p>	
<p><b>SECTION 402. FORM OF CONTRIBUTION.</b> A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.</p>	<p><b>SECTION 603. CONTRIBUTION BY BENEFICIAL OWNER.</b></p> <p>(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 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</p>	



	obligated to make a contribution to the trust.	
<p><b>SECTION 403. LIABILITY FOR CONTRIBUTIONS AND FOR PROPERTY IMPROPERLY PAID OR DISTRIBUTED.<sup>8</sup></b></p> <p>(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.</p> <p><sup>9</sup>(b) The obligation of a person to make a contribution or return money or other property paid or distributed in violation of this [Act] may be compromised only by consent of all members. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.</p>	<p>Section 603(b) 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 applicable law.</p> <p>(c) 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:</p> <ul style="list-style-type: none"> <li>(1) reduction or elimination of the defaulting beneficial owner's proportionate interest in the statutory trust or series thereof;</li> <li>(2) subordination of the defaulting beneficial owner's beneficial interest to that of nondefaulting beneficial owners;</li> <li>(3) forced sale or forfeiture of the defaulting beneficial owner's beneficial interest;</li> <li>(4) imposition of an obligation to repay a loan to the statutory trust by another beneficial</li> </ul>	<p>Some style differences, but also differences of substance:</p> <p>(i) compromise of contribution obligation (Re-Re-ULLCA addresses; USTEAA silent) [Conform USTEAA to Re-Re-ULLCA];</p> <p>(ii) Re-Re-ULLCA states that statutory claim is "at the option of the company" while USTEAA refers to statutory claim as "in addition to any other right; [Conform Re-Re-ULLCA to USTEAA]; (iii) USTEAA, § 603(c) authorizes forfeitures and penalties [Category II].</p>

<sup>8</sup> Change made to indicate the broader scope involved in the new subsection (b).

<sup>9</sup> Per a decision made at the October, 2009 meeting. Source: ULPA, § 502(c).

	<p>owner of the amount necessary to meet the defaulting beneficial owner's commitment;</p> <p>(5) redemption or sale of the defaulting beneficial owner's beneficial interest at a value fixed by appraisal or by formula; and</p> <p>(6) specific performance of an obligation under the governing instrument.</p>	
<p><b>SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.</b></p> <p>(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502 and any charging order in effect under Section 503.</p> <p>(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.</p> <p>(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 708(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.</p> <p>(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.</p>	<p><b>SECTION 604. DISTRIBUTION TO BENEFICIAL OWNER.</b></p> <p>No comparable provision.</p> <p>No comparable provision.</p> <p>(b) A beneficial owner does not have a right to demand or receive a distribution from the trust in any form other than money.</p> <p>(c) The trust may distribute an asset in kind 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.</p> <p>(a) When 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.</p>	<p>Category III – apparently the USTEAA provides no default rule.</p> <p>Category II</p> <p>Re-Re-ULLCA refers to “person” to encompass transferees. Re-Re-ULLCA refers to Section 708(c) to preserve the default rule requiring cash payout upon dissolution. Re-Re-ULLCA subsection (d) prefers “If” to “When”. Other differences are stylistic.</p>
No comparable provision.	<p><b>SECTION 605. REDEMPTION OF BENEFICIAL INTEREST. A</b></p>	Category II – is it necessary in

	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.	the LLC context to specifically mention this power? If so, the specification belongs in the powers section.
<b>SECTION 405. LIMITATIONS ON DISTRIBUTION</b>	No comparable provision.	Conform USTEA to Re-Re-ULLCA
<b>SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS</b>	No comparable provision.	Conform USTEA to Re-Re-ULLCA
<b>SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY</b> (a) A limited liability company is a member-managed limited liability company unless the operating agreement: <ul style="list-style-type: none"> <li>(1) expressly provides that: <ul style="list-style-type: none"> <li>(A) the company is or will be “manager-managed”;</li> <li>(B) the company is or will be “managed by managers”; or</li> <li>(C) management of the company is or will be “vested in managers”; or</li> </ul> </li> <li>(2) includes words of similar import.</li> </ul> (b) In a member-managed limited liability company, the following rules apply: <ul style="list-style-type: none"> <li>(1) The management and conduct of the company are vested in the members.</li> <li>(2) Each member has equal rights in the management and conduct of the company’s activities.</li> <li>(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.</li> <li>(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.</li> <li>(5) The operating agreement may be amended only with the consent of all members.</li> </ul> (c) In a manager-managed limited	<b>SECTION 501. MANAGEMENT OF STATUTORY TRUST.</b> The business and affairs of a statutory trust must be managed by or under the authority of its trustees. <b>SECTION 502. TRUSTEE POWERS.</b> A trustee may exercise: <ul style="list-style-type: none"> <li>(1) powers conferred by the governing instrument;</li> <li>(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</li> <li>(3) other powers conferred by this [act].</li> </ul> <b>SECTION 503. ACTION BY TRUSTEES.</b> On any matter that is to be acted on by trustees, the following rules apply: <ul style="list-style-type: none"> <li>(1) The trustees act by majority of the trustees.</li> <li>(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.</li> </ul>	Category III

<p>liability company, the following rules apply:</p> <p>(1) Except as otherwise expressly provided in this [act], any matter relating to the activities of the company is decided exclusively by the managers.</p> <p>(2) Each manager has equal rights in the management and conduct of the activities of the company.</p> <p>(3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.</p> <p>(4) The consent of all members is required to:</p> <p>(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;</p> <p>(B) approve a merger, conversion, or domestication under [Article] 10;</p> <p>(C) undertake any other act outside the ordinary course of the company's activities; and</p> <p>(D) amend the operating agreement.</p> <p>(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.</p> <p>(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.</p> <p>(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a</p>	<p>(3) A trustee may vote in person or by proxy, but, if by proxy, the proxy must be in a signed record.</p> <p><b>SECTION 602. VOTING OR CONSENT BY BENEFICIAL OWNERS.</b> On any matter that is to be acted on by beneficial owners, the following rules apply:</p> <p>(1) The beneficial owners act by majority of the beneficial interests.</p> <p>(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.</p> <p>(3) A beneficial owner may vote in person or by proxy, but if by proxy, the proxy must be contained in a signed record.</p>	
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<p>manager.</p> <p>(d) An action requiring the consent of members under this [act] may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.</p> <p>(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.</p> <p>(f) This [act] does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.</p>		
<p><b>SECTION 408. INDEMNIFICATION AND INSURANCE.</b></p> <p>(a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 405 and 409.</p> <p>(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 110(g), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.</p>	<p><b>SECTION 509. INDEMNIFICATION, ADVANCEMENT, AND EXONERATION.</b></p> <p>(a) A statutory trust may indemnify and hold harmless a trustee, beneficial owner, or other person with respect to any claim or demand against the person by reason of the person's relationship with the trust if the claim or demand does not arise from the person's bad faith, willful misconduct, or reckless indifference.</p> <p>(b) 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).</p>	<p>USTEA does not refer to insurance. Re-Re-ULLCA does not create a default rule in favor of advances.</p>

	(c) 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.	The “exoneration” provision of USTEA is an obverse way of stating what appears in Re-Re-ULLCA §110(f).
<b>SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.</b>	<b>SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.</b> <b>SECTION 506. GOOD-FAITH RELIANCE</b> <b>SECTION 507. INTERESTED TRANSACTIONS</b> <b>SECTION 510. DIRECTION OF TRUSTEES.</b> <b>SECTION 511. DELEGATION BY TRUSTEE.</b>	
<p>(a) The duty of loyalty of a member in a member-managed limited liability company includes the duties:</p> <p style="padding-left: 40px;">(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:</p> <p style="padding-left: 80px;">(A) in the conduct or winding up of the company’s activities;</p> <p style="padding-left: 80px;">(B) from a use by the member of the company’s property; or</p> <p style="padding-left: 80px;">(C) from the appropriation of a limited liability company opportunity;</p> <p style="padding-left: 40px;">(2) to refrain from dealing with the company in the conduct or winding up of the company’s activities as or on behalf of a person having an interest adverse to the company; and</p> <p style="padding-left: 40px;">(3) to refrain from competing with the company in the conduct of the company’s activities before the dissolution of the company.</p>	<p>No comparable provision.</p> <p><b>SECTION 507. INTERESTED TRANSACTIONS.</b></p> <p style="padding-left: 40px;">(a) In this section, “covered party” means a trustee, officer, employee, or manager of a statutory trust, or a related person of a trustee, officer, employee, manager, or other person designated pursuant to Section 103(e)(8).</p> <p style="padding-left: 40px;">(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 one or more obligations of, provide collateral for, or do other</p>	Category II

	business with the statutory trust and has the same rights and obligations with respect to those matters as a person that is not a covered party.	
(b) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.	<p><b>SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.</b></p> <p>(a) Subject to Section 403,<sup>10</sup> 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.</p> <p>(b) A trustee shall discharge its duties with the care that a person in a similar position would reasonably believe appropriate under similar circumstances.</p> <p><b>SECTION 506. GOOD-FAITH RELIANCE.</b> 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, including a fiduciary duty, to the extent the breach results from good-faith reliance on:</p> <p>(1) a term of the governing instrument;</p> <p>(2) a record of the statutory trust; or</p> <p>(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).</p>	

<sup>10</sup> Pertaining to "DUTIES OF TRUSTEE IN SERIES TRUST."

<p>(c) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this [act] or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.</p>	<p>No comparable provision. <i>Compare</i> Section 505(a): Subject to Section 403, in exercising the powers of trusteeship, <u>a trustee shall act in good faith</u> and in a manner the trustee reasonably believes to be in the best interests of the statutory trust.</p>	<p>In the USTEA provision, “good faith” is not contractual good faith.</p>
<p>(d) It is a defense to a claim under subsection (a)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. Subject to subsections (b)(2) and (f) and any other applicable law, if a member enters into transaction with a limited liability company in which the member has an interest adverse to the company, the member’s rights and obligations arising from the transaction are the same as those of a person not a member.</p>	<p>Section 505 (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. Section 505(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 one or more obligations of, provide collateral for, or do other business with the statutory trust and has the same rights and obligations with respect to those matters as a person that is not a covered party.</p>	
<p>(e) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.</p>	<p>No comparable provision.</p>	
<p>(f) In a manager-managed limited liability company, the following rules apply:  (1) Subsections (a), (b), (c), and (d) apply to the manager or managers and not the members.  (2) The duty stated under subsection (a)(3) continues until winding up is completed.  (3) Subsection (c) applies to the members and managers.  (4) Subsection (e) applies only to the members.  (5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.</p>	<p>No comparable provision.</p>	
<p><b>SECTION 410. RIGHT OF MEMBERS,</b></p>	<p><b>SECTION 508. TRUSTEE’S</b></p>	



<b>MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.</b>	<b>RIGHT TO INFORMATION.</b>	
(a) In a member-managed limited liability company, the following rules apply: [omitted]	No comparable provision.	
<p>(b) In a manager-managed limited liability company, the following rules apply:</p> <p>(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.</p> <p>(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:</p> <p>(A) the member seeks the information for a purpose material to the member's interest as a member;</p> <p>(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and</p> <p>(C) the information sought is directly connected to the member's purpose.</p> <p>(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall in a record inform the member that made the demand:</p> <p>(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and</p> <p>(B) if the company declines to provide any demanded information, the company's reasons for declining.</p>	<p>Section 508 – 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].</p> <p><b>SECTION 608. BENEFICIAL OWNER'S RIGHT TO INFORMATION.</b> 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].</p>	
<p>(4) Whenever this [act] or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.</p> <p>(c) On 10 days' demand made in a record</p>	No comparable provision.	

received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).		
(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.	No comparable provision.	
(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) applies both to the agent or legal representative and the member or dissociated member.	No comparable provision.	
(f) The rights under this section do not extend to a person as transferee.	No comparable provision.	
(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.	No comparable provision.	
<b>SECTION 501. NATURE OF TRANSFERABLE INTEREST.</b> A transferable interest is personal property.	Section 601(b) –A beneficial interest in a statutory trust is personal property regardless of the nature of the property of the trust.	Conform to Re-Re-ULLCA
<b>SECTION 502. TRANSFER OF</b>	Section 601(a) – A beneficial interest	

<p><b>TRANSFERABLE INTEREST.</b></p> <p>(a) A transfer, in whole or in part, of a transferable interest: [details omitted]</p>	<p>in a statutory trust is freely transferable.</p>	
<p><b>SECTION 503. CHARGING ORDER.</b></p> <p>(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.</p>	<p><b>SECTION 606. CHARGING ORDER.</b></p> <p>[subsection (a) is below]</p> <p>(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..... [continued below]</p> <p>(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.</p>	<p>Conform to Re-Re-ULLCA</p>
<p>(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:</p> <p>(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and</p> <p>(2) make all other orders necessary to give effect to the charging order.</p>	<p>[subsection b continued] and:</p> <p>(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</p> <p>(2) make other orders necessary to give effect to the charging order.</p>	
<p>(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 502.</p>	<p>No comparable provision.</p>	
<p>(d) At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the</p>	<p>No comparable provision.</p>	

court that issued the charging order.		
(e) At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.	(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.	
(f) This [act] does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.	(e) This [act] does not deprive a beneficial owner or a transferee of the beneficial interest of any exemption applicable to the beneficial interest.	
(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.	(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. <sup>11</sup>	
<b>SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER.</b> If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Section 502(c) and, for the purposes of settling the estate, the rights of a current member under Section 410.	No comparable provision.	In the default mode under USTEAA, the Re-Re-ULLCA provision is unnecessary. Beneficial interests are freely transferable.
<b>[ARTICLE] 6 MEMBER'S DISSOCIATION</b>	No comparable article. Section 306(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.	
<b>SECTION 701. EVENTS CAUSING DISSOLUTION.</b> (a) A limited liability company is	<b>SECTION 801. EVENTS CAUSING DISSOLUTION.</b> A statutory trust is dissolved only by:	Category III. Note the absence of any

<sup>11</sup> Query – rights under UCC, Article 9? Query further – if the default rule is free transferability, why provide the charging order protection for contractual arrangements that limit free transferability. No other statute does so.

<p>dissolved, and its activities must be wound up, upon the occurrence of any of the following:</p> <p>(1) an event or circumstance that the operating agreement states causes dissolution;</p> <p>(2) the consent of all the members;</p> <p>(3) the passage of 90 consecutive days during which the company has no members;</p> <p>(4) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that:</p> <p>(A) the conduct of all or substantially all of the company’s activities is unlawful; or</p> <p>(B) it is not reasonably practicable to carry on the company’s activities in conformity with the certificate of organization and the operating agreement; or</p> <p>(5) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that the managers or those members in control of the company:</p> <p>(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or</p> <p>(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.</p> <p>(b) In a proceeding brought under subsection (a)(5), the court may order a remedy other than dissolution.</p>	<p>(1) an administrative dissolution under Section 806; or</p> <p>(2) the filing of articles of dissolution under Section 802:</p> <p>(A) on the occurrence of an event or circumstance that the governing instrument states causes dissolution; or</p> <p>(B) with the approval of all the beneficial owners.</p>	<p>oppression remedy under USTEA.</p>
<p>Section 701(b)(2)(A) – [dissolved LLC] may ... deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the company and that the company is dissolved;</p>	<p><b>SECTION 802. ARTICLES OF DISSOLUTION.</b></p> <p>(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:</p> <p>(1) the name of the trust; and</p> <p>(2) the date of the dissolution.</p>	

	<p>(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].</p>	
<p><b>SECTION 702. WINDING UP.</b></p> <p>(a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.</p> <p>(b) In winding up its activities, a limited liability company:</p> <p>(1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and</p> <p>(2) may:</p> <p>(A) deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the company and that the company is dissolved;</p> <p>(B) preserve the company activities and property as a going concern for a reasonable time;</p> <p>(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;</p> <p>(D) transfer the company's property;</p> <p>(E) settle disputes by mediation or arbitration;</p> <p>(F) deliver to the [Secretary of State] for filing a statement of termination, stating the name of the company and that the company is terminated and including any other information the limited liability company determines; and</p> <p>(G) perform other acts necessary or appropriate to the winding up.</p> <p>(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under Section</p>	<p><b>SECTION 803. WINDING UP.</b></p> <p>(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.</p> <p>(b) In winding up its activities, a statutory trust shall:</p> <p>(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</p> <p>(2) distribute any surplus property after complying with paragraph (1) to the beneficial owners in proportion to their beneficial interests.</p> <p>(c) In winding up its activities, a statutory trust may:</p> <p>(1) preserve the trust's activities and property as a going concern for a reasonable time;</p> <p>(2) institute, maintain, and defend actions and proceedings, whether civil, criminal, or administrative;</p> <p>(3) transfer the trust's property;</p> <p>(4) settle disputes; and</p> <p>(5) perform other acts necessary or appropriate to its winding up.</p> <p>(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.</p> <p>(e) The dissolution of a</p>	

<p>407(c) and is deemed to be a manager for the purposes of Section 304(a)(2).</p> <p>(d) If the legal representative under subsection (c) declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:</p> <p>(1) has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a)(2); and</p> <p>(2) shall promptly deliver to the [Secretary of State] for filing an amendment to the company's certificate of organization to:</p> <p>(A) state that the company has no members;</p> <p>(B) state that the person has been appointed pursuant to this subsection to wind up the company; and</p> <p>(C) provide the street and mailing addresses of the person.</p> <p>(e) The [appropriate court] may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:</p> <p>(1) on application of a member, if the applicant establishes good cause;</p> <p>(2) on the application of a transferee, if:</p> <p>(A) the company does not have any members;</p> <p>(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and</p> <p>(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c); or</p> <p>(3) in connection with a proceeding under Section 701(a)(4) or (5).</p>	<p>statutory trust does not terminate the authority of its agent for service of process.</p> <p>(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.</p>	
<p><b>SECTION 702B. REVERSING DISSOLUTION</b> At any time after the</p>	<p>No comparable provision</p>	

<p>dissolution of a limited liability company and before the winding up of its business is completed, all of the members may waive the right to have the partnership's business wound up and the partnership terminated. In that event:</p> <p>(1) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the limited liability company after the dissolution and before the waiver is determined as if dissolution had never occurred; and</p> <p>(2) the rights of a third party <sup>12</sup>arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.</p>		
<b>SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.</b>	<b>SECTION 804. NOTICE TO CLAIMANT.</b>	"Best" version to be formulated, taking into account current MBCA provisions
<b>SECTION 704. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.</b>	<b>SECTION 805. PUBLICATION OF NOTICE.</b>	"Best" version to be formulated, taking into account current MBCA provisions
<b>SECTION 704A. COURT PROCEEDINGS</b>	No comparable provision.	
<b>Provisions pertaining to Administrative Dissolution omitted, b/c they address Hub topics.</b>		
<b>SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.</b> <p>(a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.</p> <p>(b) After a limited liability company</p>	No comparable provision.	USTEA provides no default rules, which is consistent with the USTEA's approach to operating

<sup>12</sup> Source: RUPA, § 803(b). QUERY whether "and" (between items (1) and (2)) should be "but" or "except that"?



<p>complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Section 503:</p> <p>(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and</p> <p>(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502.</p> <p>(c) If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.</p> <p>(d) All distributions made under subsections (b) and (c) must be paid in money.</p>		distributions.
<p><b>Article 8 – foreign LLCs – Hub topic</b></p>		
<p><b>SECTION 901. DIRECT ACTION BY MEMBER.</b></p> <p>(a) Subject to subsection (b), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member’s rights and otherwise protect the member’s interests, including rights and interests under the operating agreement or this [act] or arising independently of the membership relationship.</p> <p>(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of a injury suffered or threatened to be suffered by the limited liability company.</p>	<p><b>SECTION 609. ACTION BY BENEFICIAL OWNER.</b></p> <p>(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.</p>	Conform to Re-Re-ULLCA
<p><b>SECTION 902. DERIVATIVE ACTION.</b> A member may maintain a derivative action to enforce a right of a limited liability company if:</p> <p>(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other</p>	<p>(b) A beneficial owner may maintain a derivative action <u>to redress an injury sustained by, or enforce a duty owed to, a statutory trust</u> if:</p> <p>(1) the beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an <u>action to redress the injury or</u> enforce the right, and the</p>	Add underlined language to Re-Re-ULLCA

members do not bring the action within a reasonable time; or (2) a demand under paragraph (1) would be futile.	trustees do not bring the action within a reasonable time; or (2) a demand would be futile.	
<b>SECTION 903. PROPER PLAINTIFF.</b> A derivative action may be maintained only by a person that is a member at the time the action is commenced and: (1) that was a member when the conduct giving rise to the action occurred; or (2) whose status as a member devolved upon the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct. <sup>13</sup>	(c) 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) 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.	Conform to USTEA.
<b>SECTION 904. PLEADING.</b> In a derivative action under Section 902, the complaint must state with particularity: (1) the date and content of plaintiff's demand and the response to the demand by the managers or other members; or (2) why demand should be excused as futile. <sup>14</sup>	(d) 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 trustees' response to the demand; or (2) the reason the demand should be excused as futile.	Style differences.
<b>SECTION 905. SPECIAL LITIGATION COMMITTEE.</b> (a) If a limited liability company is named as or made a party in a derivative proceeding, the company 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 company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, 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	No comparable provision.	Conform to Re-Re-ULLCA.

<sup>13</sup> Conformed to ULPA, § 1002 (returning to the contemporaneous ownership rule).

<sup>14</sup> Conformed to ULPA, § 1004(2)

information under Section 410 or, 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 members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

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

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

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company 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, giving notice to the plaintiff. 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.		
<b>SECTION 906. PROCEEDS AND EXPENSES.</b> (a) Except as otherwise provided in subsection (b): (1) any proceeds or other benefits of a derivative action under Section 902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company. (b) If a derivative action under Section 902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.	(e) Except as otherwise provided in subsection (f): (1) any proceeds or other benefits of a derivative action on behalf of a statutory trust, whether by judgment 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 to the trust. (f) 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, <u>and other expenses from the recovery</u> by the trust.	Query whether to include underlined language.
No comparable provision.	(g) A derivative action on behalf of a statutory trust may not be voluntarily dismissed or settled without the court's approval.	Conform to the substance of USTEA