

D R A F T

FOR APPROVAL

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

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

WITHOUT PREFATORY NOTES OR COMMENTS, BUT WITH REPORTERS' NOTES

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Jointly By

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
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AMERICAN BAR ASSOCIATION

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

May 31, 2011

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HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT

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HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT

Introductory Reporters' Note

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

The Comments to the act have been omitted from this document to reduce its length. Following the approval of the changes in this document by the Conference, the Comments will be restored with appropriate changes.

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

HUB	Business Organizations Act
META	Model Entity Transactions Act
MORAA	Model Registered Agents Act
UPA	Uniform Partnership Act (1997)
ULPA	Uniform Limited Partnership Act (2001)
ULLCA	Uniform Limited Liability Company Act (2006)
USTEA	Uniform Statutory Trust Entity Act
Coop Act	Uniform Limited Cooperative Association Act
UUNAA	Uniform Unincorporated Nonprofit Association Act (2008)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Regular type is used to show changes that, (i) adopt language from the HUB, META, or MORAA, (ii) are merely relocations of current language, or (iii) are corrections for the sake of internal consistency within an act. *Changes that adopt language from other unincorporated entity acts are shown in italics.* CHANGES THAT DO NOT HAVE A SOURCE IN ONE OF THE EXISTING UNINCORPORATED ENTITY ACTS ARE SHOWN IN SMALL CAPS. Often a change in SMALL CAPS made to one act will be replicated in other acts as a matter of harmonization. These replications are shown in regular type when the SMALL CAPS change is made in the HUB, META, or MORAA, and are shown in italics when the SMALL CAPS change is made in one of the other acts

Harmonization and USTEA

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

Although USTEA is the Conference’s newest entity statute (with some clear improvements over earlier acts), UPA, ULPA, and ULLCA comprise the core of the

Conference's approach to unincorporated entities. These statutes reflect substantial policy decisions made by the Conference over the past two decades.

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

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

In the view of the Harmonization drafting committee, many of USTEA's unusual provisions fit one or the other of the two reasons. When the first reason applies, other acts are being harmonized to USTEA. When the second reason applies, the other acts are not being harmonized with USTEA. When neither reason seems to apply, this draft chooses harmonization.

The Harmonization drafting committee, its chair, vice chair, and co-reporters deeply appreciate the insightful help provided by Professor Robert Sitkoff, reporter for USTEA and Commissioner from Massachusetts.

1 **HARMONIZED UNIFORM STATUTORY TRUST ENTITY ACT**

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

7 **SECTION 102. DEFINITIONS.** In this [act]:

8 (1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust ~~OR~~
9 ~~FOREIGN STATUTORY TRUST.~~

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

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

19 ~~(4) “Designated office” means:~~

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

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

23 (4) “Contribution”, except in the phrase “right of contribution”, means property or a
24 benefit described in Section 604 which is provided by a person to a statutory trust to become a

beneficial owner or in the person's capacity as a beneficial owner.

(5) "Distribution" means a transfer of money or other property from a statutory trust on account of a beneficial interest. The term includes redemption or other purchase by a statutory trust of a beneficial interest.

~~(5)~~ (6) "Foreign statutory trust" means a trust ~~that is~~ formed under the ~~laws~~ law of a jurisdiction other than this state which would be a statutory trust if formed under the ~~laws~~ law of this state.

~~(6)~~ (7) "Governing instrument" means the trust instrument and certificate of trust.

~~(7)~~ (8) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction under whose law the entity is formed or, in the case of a limited liability partnership or foreign limited liability partnership, the jurisdiction in which the partnership's statement of qualification is filed.

~~(8)~~ (10) ~~"Person" means an individual, corporation, statutory trust, estate, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.~~

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

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

1 ~~(9)~~ (12) “Property” means all property, whether real, personal, or mixed; or tangible or
2 intangible, or any *right or* interest therein.

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

5 ~~(11)~~ (13) “Record”, used as a noun, means information that is inscribed on a tangible
6 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

10 ~~(10)~~ (15) “Qualified Registered foreign statutory trust” means a foreign statutory trust
11 that is registered to do business in this state pursuant to a ~~certificate~~ statement of registration
12 filed by the [Secretary of State].

13 ~~(12)~~ (16) “Related party”, with respect to a party that is a trustee, officer, employee,
14 manager, or beneficial owner, means:

15 (A) the spouse of the party;

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

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

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

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

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

(13) (17) "Series trust" means a statutory trust that has one or more series created under Section 401.

(14) (18) "Sign" means, with the present intent to authenticate or adopt a record:

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

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

(15) (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) (20) "Statutory trust", ~~except in the phrase "foreign statutory trust"~~, means an entity formed under this [act] or that becomes subject to this [act] under [Article] 7.

(21) "Transfer" includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including a mortgage or security interest;

(F) a gift; and

(G) a transfer by operation of law.

(17) (22) "Trust" includes a common-law trust, statutory trust, and foreign statutory trust.

(18) (23) "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 activities and affairs. The term includes a trust agreement, a declaration of trust, and bylaws.

(19) (24) "Trustee" means a person designated, appointed, or elected as a trustee of a

1 statutory trust or foreign statutory trust in accordance with the governing instrument or
2 applicable law.

3 **Reporters' Note**

4 *Section 10(21) [trust instrument]* – substituting “activities and affairs” for “business”
5 reflects the decision not to require a statutory entity trust to have a business purpose. See Section
6 303(a). However, a statutory trust may not have primarily donative purpose. See Section
7 303(b).
8

9 **SECTION 103. GOVERNING INSTRUMENT.**

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

12 (1) the management, affairs, and conduct of the ~~business~~ activities and affairs of a
13 statutory trust; and

14 (2) the rights, interests, duties, obligations, and powers of, and the relations
15 among, the trustees, a person designated under subsection (e)(8) or (9), the beneficial owners,
16 and the statutory trust, ~~and other persons~~.

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

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

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

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

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

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

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

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

- (A) notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;
- (B) waiver of notice;
- (C) action by consent without a meeting;
- (D) establishment of record dates;
- (E) quorum requirements;
- (F) voting:
 - (i) in person;
 - (ii) by proxy;
 - (iii) by any form of communication that creates a record, telephone, or video conference; or
 - (iv) in any other manner; or
- (G) any other matter with respect to the exercise of the right to vote;

(5) SUBJECT TO SECTION 404, provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;

(6) SUBJECT TO SECTION 404, provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:

- (A) amendment of the governing instrument;
- (B) merger, interest exchange, conversion, or ~~reorganization~~ domestication;

1 (C) appointment of trustees;

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

4 (E) dissolution of the statutory trust;

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

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

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

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

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

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

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

24 (12) provide that a person becomes a beneficial owner, acquires a beneficial

1 interest, and is bound by the governing instrument if the person complies with the conditions for
2 becoming a beneficial owner set forth in the governing instrument, such as payment to the
3 statutory trust or to a previous beneficial owner;

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

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

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

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

12 (1) ~~vary the requirements of [Article] 2~~ vary any requirement, procedure, or other
13 provision of this [act] pertaining to:

14 (A) registered agents; or

15 (B) the [Secretary of State], including provisions pertaining to records authorized
16 or required to be delivered to the [Secretary of State] for filing under this [act];

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

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

19 (4) VARY THE PROVISIONS PERTAINING TO THE DURATION OF A STATUTORY TRUST UNDER
20 SECTION 306(A);

21 (5) vary the capacity of a statutory trust under Section 308 to sue and be sued in its own
22 name;

23 ~~(4)~~ (6) vary the provisions pertaining to series trusts in Sections 401, 402(b), 402(c), 403,
24 404, and ~~404(e)~~ 405(c);

1 ~~(5)~~ (7) vary the standards of conduct for trustees under Section 505, but the governing
2 instrument may prescribe the standards by which good faith, best interests of the statutory trust,
3 and care that a person in a similar position would reasonably believe appropriate under similar
4 circumstances are determined, if the standards are not manifestly unreasonable;

5 ~~(6)~~ (8) vary the obligation under Section 506 to act ~~IN GOOD FAITH~~ REASONABLY if a
6 trustee or other person is not to be liable for relying on a term of the governing instrument, a
7 record of the statutory trust, or an opinion, report, or statement of another person, but the
8 governing instrument may prescribe the standards for assessing whether the reliance was in good
9 faith, if the standards are not manifestly unreasonable;

10 ~~(7)~~ (9) restrict the right of a trustee to information under Section 508, but the governing
11 instrument may prescribe the standards for assessing whether information is reasonably related to
12 the trustee's discharge of the trustee's duties as trustee, if the standards are not manifestly
13 unreasonable;

14 ~~(8)~~ (10) vary the prohibition under Section 509 of indemnification, advancement of
15 expenses, or exoneration for conduct involving bad faith, willful misconduct, or ~~reckless~~
16 ~~indifference~~ recklessness;

17 ~~(9)~~ (11) vary the obligation of a trustee under Section 510(c) not to follow a direction that
18 is manifestly contrary to the terms of the governing instrument or would constitute a serious
19 breach of fiduciary duty by the trustee;

20 ~~(12) RESTRICT THE RIGHT OF A JUDGMENT CREDITOR OF A BENEFICIAL OWNER TO SEEK A~~
21 ~~CHARGING ORDER- VARY THE PROVISIONS PERTAINING TO THE TRANSFER OF A BENEFICIAL~~
22 INTEREST AND THE POWER OF A COURT UNDER SECTION 602(B) THROUGH (D);

23 ~~(11)~~ (13) restrict the right of a beneficial owner to information under Section 608, but the
24 governing instrument may prescribe the standards for assessing whether information is

1 reasonably related to the beneficial owner's interest, if the standards are not manifestly
2 unreasonable;

3 ~~(12)~~ (14) restrict the right of a beneficial owner to bring an action under Section 609 or
4 610, but the governing instrument may subject the right to additional standards and restrictions,
5 including a requirement that beneficial owners owning a specified amount or type of beneficial
6 interest, including in a series trust an interest in the series, join in bringing the action, if the
7 additional standards and restrictions are not manifestly unreasonable;

8 (15) VARY THE RULES UNDER SECTION 613, IF A STATUTORY TRUST APPOINTS A SPECIAL
9 LITIGATION COMMITTEE;

10 ~~(13)~~ (16) vary the ~~provisions pertaining to conversion and merger in Sections 701, 704,~~
11 ~~705, 708, and 709~~ right of a beneficial owner under Section 723(a)(2), 733(a)(2), 743(a)(2), or
12 753(a)(2) to approve a merger, interest exchange, conversion, or domestication;

13 ~~(14)~~ (17) vary ~~THE PROVISIONS PERTAINING TO DISSOLUTION IN SECTIONS 801(1) AND 802~~
14 ~~THROUGH 808~~ [ARTICLE] 8;

15 ~~(15)~~ (18) vary the ~~provisions relating to foreign statutory trusts in [Article] 9; or~~

16 ~~(16)~~ (19) vary the miscellaneous provisions in [Article] 10; or

17 (20) restrict the rights under this [act] of a person other than a trustee, person
18 designated under subsection (e)(8) and (9), or beneficial owner.

19 **SECTION 105. APPLICABILITY OF TRUST LAW.** The law of this state pertaining
20 to common-law trusts supplements this [act]. However, a the governing instrument may
21 supersede or modify application to the statutory trust of any law of this state pertaining to
22 common-law trusts.

1 **Reporters' Note**

2
3 This language is purposefully different than the traditional reference to “law and equity.”
4 The USTEA drafting committee made a considered decision to use trust law as the background
5 and gap filler.

6 **SECTION 106. RULE OF CONSTRUCTION.**

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

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

11 **Reporters' Notes**

12
13 *Former Subsection (a)* – This provision is a symbol for and product of the strict
14 contractarian perspective, and the Conference has never previously accepted the provision. To
15 the contrary, UPA has no such provision, and during the drafting of ULPA and ULLCA the issue
16 was assiduously considered and the position rejected.

17
18 The provision is not necessary to the full functioning of the governing instrument, which
19 is not necessarily even a contract. (Indeed, as Professor Sitkoff has explained to the
20 Harmonization committee, a breach of the governing instrument is treated as a breach of trust,
21 not a breach of contract.)
22

23 Moreover, the “maximum effect” provision can cause mischief – not only for the
24 unsophisticated, *see e.g.* Daniel S. Kleinberger, “Careful What You Wish For--Freedom of
25 Contract and the Necessity of Careful Scrivening,” XXIV PUBOGRAM 19 (October, 2006)
26 (Committee on Partnerships and Unincorporated Business Organizations of the ABA Business
27 Law Section), but also for the sophisticated. *See e.g. Fisk Ventures, LLC v. Segal*, No. Civ. A.
28 3017-CC, 2008 WL 1961156, at *8 (Del. Ch., May 7, 2008) (stating that “limited liability
29 companies...are creatures not of the state but of contract” – despite the LLC’s dependence on the
30 state for its formal creation and, more importantly, the liability shield for the LLC’s members).
31

32 Given the statutory trust’s role as a business organization, it is impossible to discern a
33 rationale for including the provision here and not in UPA, ULPA, and ULLCA. But inserting a
34 “maximum effect” provision in those statutes would reverse almost 30 years of Conference
35 policy.
36

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

1 deliberately derogate the common law of trusts and should be interpreted in accordance with that
2 purpose.”

3
4 **SECTION 107. CONSTRUCTIVE NOTICE.** *A person that is not a beneficial owner is*
5 *deemed to have notice of a statutory trust’s merger, interest exchange, conversion, or*
6 *domestication 90 days after articles of merger, interest exchange, conversion, or domestication*
7 *under [Article] 7 become effective.*

8 **Reporters' Note**

9
10 Unlike UPA, ULPA, and ULLCA, USTEA does not define knowledge and notice. The
11 omission is not problematic from a harmonization perspective, because USTEA does not contain
12 the same type of provisions for constructive notice as do these other acts. However, consistent
13 with harmonization, a constructive notice provision relating to organic transactions (merger, etc.)
14 has been added.

15 **SECTION 108. RESERVATION OF POWER TO AMEND OR REPEAL.** The
16 [name of state legislature] has power to amend or repeal all or part of this [act] at any time and
17 all statutory trusts and foreign statutory trusts subject to this [act] are governed by the
18 amendment or repeal.

19 **[ARTICLE] 2**

20 **FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; ~~PROCESS~~**

21 **SECTION 201. FORMATION OF STATUTORY TRUST; CERTIFICATE OF**
22 **TRUST.**

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

25 (b) A certificate of trust must state:

26 (1) the name of the statutory trust, which must comply with Section 213;

27 (2) ~~the street and mailing address of the designated office of the trust~~ the street
28 and mailing addresses of the trust’s principal office;

29 (3) the name and street and mailing ~~address of the initial~~ addresses within this

1 state of the registered agent ~~of the trust for service of process~~; and

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

3 (c) A certificate of trust may contain any term in addition to those required by subsection
4 (b), but may not vary or otherwise affect the provisions specified in Section 104 in a manner
5 inconsistent with that section.

6 (d) ~~Subject to Section 207, a~~ A statutory trust is formed when a the certificate of trust ~~that~~
7 ~~complies with subsection (b) is filed by the [Secretary of State]~~ becomes effective.

8 (e) A filed certificate of trust, a filed statement of cancellation or change, or filed articles
9 ~~of conversion or merger under [Article] 7~~ prevail over inconsistent terms of a trust instrument.

10 **Reporters' Note**

11
12 Subsection (e) has not been harmonized to the other unincorporated entity acts because
13 USTEA follows the corporate paradigm under which the publicly filed document always
14 controls.

15 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF** 16 **TRUST; ~~STATEMENT OF CORRECTION.~~**

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

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

20 (1) the name of the trust;

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

22 (3) the changes the amendment makes to the certificate as most recently amended
23 or restated.

24 (c) To restate its certificate of trust, a statutory trust must deliver to the [Secretary of
25 State] for filing a restatement designated as such in its heading.

26 ~~(b)~~ (d) ~~A~~ If a trustee ~~that~~ knows ~~or has reason to know~~ that any information in a filed

certificate of trust was ~~incorrect~~ inaccurate when the certificate was filed or has become
~~incorrect shall~~ inaccurate due to changed circumstances, the trustee promptly shall:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the [Secretary of State] for filing a statement of
change under Section 217 or a statement of correction under Section 209.

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

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

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

(b) Any ~~person may sign by an attorney in fact any~~ record filed ~~pursuant to~~ under this
[act] may be signed by an agent. When this [act] requires a particular individual to sign a
record and the individual is deceased or incompetent, the record may be signed by a legal
representative of the individual.

(c) A person that signs a record as an agent or legal representative thereby affirms as a
fact that the person is authorized to sign the record.

SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

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

(1) the person to sign the record;

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

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

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

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

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

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

12 (b) ~~On request and payment of the required fee, the [Secretary of State] shall send to any~~
13 ~~person a certified copy of a record filed in the office of the [Secretary of State] pursuant to this~~
14 ~~[act].~~

15 (c) ~~Except as otherwise provided in Sections 205 and 211, a record delivered to the~~
16 ~~[Secretary of State] for filing under this [act] may specify an effective time and a delayed~~
17 ~~effective date. Except as otherwise provided in this [act], a record filed by the [Secretary of~~
18 ~~State] is effective:~~

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

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

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

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

~~(A) the specified date; or~~

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

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

~~(A) the specified date; or~~

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

SECTION 205. DELIVERY OF RECORD.

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

(b) Delivery to the [Secretary of State] is effective only when a record is received by the [Secretary of State].

SECTION 206. FILING REQUIREMENTS.

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

(1) The filing of the record must be required or permitted by this [act].

(2) The record must be physically delivered in written form unless and to the extent the [Secretary of State] permits electronic delivery of records.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The record must be signed by a person authorized or required under this [act] to sign the record.

1 (5) The record must state the name and capacity, if any, of each individual who
2 signed it, either on the individual's behalf or on behalf of a person authorized or required to sign
3 the record, but need not contain a seal, attestation, acknowledgment, or verification.

4 (b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of
5 information contained in a record delivered to the [Secretary of State] for filing, the [Secretary of
6 State] shall accept the record if the record otherwise complies with this [act] but may redact the
7 information.

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

11 (d) The [Secretary of State] may require that a record delivered in written form be
12 accompanied by an identical or conformed copy.

13 **SECTION 207. EFFECTIVE TIME AND DATE.** Except as otherwise provided in
14 Section 208 and subject to Section 209(c), an entity filing is effective:

15 (1) on the date and at the time of its filing by the [Secretary of State] as provided in
16 Section 210;

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

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

21 (4) if a delayed effective date is specified, which may not be more than 90 days after the
22 date of filing, but no time is specified, at 12:01 a.m. on the date specified.

1 **SECTION 208. WITHDRAWAL OF FILED RECORD BEFORE**
2 **EFFECTIVENESS.**

3 (a) Except as provided in [Article] 7, a record delivered to the [Secretary of State] for
4 filing may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a
5 statement of withdrawal.

6 (b) A statement of withdrawal must:

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

9 (2) identify the record to be withdrawn; and

10 (3) if signed by fewer than all the persons that signed the record being withdrawn,
11 state that the record is withdrawn in accordance with the agreement of all the persons that signed
12 the record.

13 (c) On filing by the [Secretary of State] of a statement of withdrawal, the action or
14 transaction evidenced by the original record does not take effect.

15 **SECTION ~~205~~ 209. CORRECTING FILED RECORD.**

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

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

20 ~~(1) may not state a delayed effective date;~~

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

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

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

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

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

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

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

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

11 (2) the record was defectively signed; or

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

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

16 (c) A statement of correction:

17 (1) may not state a delayed effective date;

18 (2) must be signed by the person correcting the filed record;

19 (3) must identify the filed record to be corrected;

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

21 (5) must correct the inaccuracy or defect.

22 (d) A statement of correction is effective as of the effective date of the filed record that it
23 corrects except for purposes of Section 107 and as to persons relying on the uncorrected filed
24 record and adversely affected by the correction. For those purposes and as to those persons, the

1 statement of correction is effective when filed.

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

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

8 (b) When the [Secretary of State] files a record, the [Secretary of State] shall record it as
9 filed on the date and at the time of its delivery to the [Secretary of State]. After filing a record,
10 the [Secretary of State] shall deliver to the person that submitted the record a copy of the record
11 with an acknowledgment of the date and time of filing.

12 (c) If the [Secretary of State] refuses to file a record, the [Secretary of State] shall, not
13 later than [15] business days after the record is delivered:

14 (1) return the record or notify the person that submitted the record of the refusal;
15 and

16 (2) provide a brief explanation in a record of the reason for the refusal.

17 (d) If the [Secretary of State] refuses to file a record, the person that submitted the filing
18 may petition the [appropriate court] to compel filing of the record. The record and the
19 explanation of the [Secretary of State] of the refusal to file shall be attached to the petition. The
20 court may decide the matter in a summary proceeding.

21 (e) The filing of or refusal to file a record does not create a presumption that the
22 information contained in the record is correct or incorrect.

23 (f) Except as provided by Section 220 or by law other than this [act], the [Secretary of
24 State] may deliver any record to a person by delivering it:

- 1 (1) in person to the person that submitted it;
2 (2) to the address of the person's registered agent;
3 (3) to the principal office of the person; or
4 (4) to another address the person provides to the [Secretary of State] for delivery.

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

6 **RECORD.**

7 (a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by
8 the [Secretary of State] contains inaccurate information, a person that suffers loss by reliance on
9 the information may recover damages for the loss from:

10 (1) a person that signed the record, or caused another to sign it on the person's
11 behalf, and knew the information to be inaccurate at the time the record was signed; and

12 (2) subject to subsection (b), a trustee of a statutory trust, if:

13 (A) the record was delivered for filing on behalf of the trust; and

14 (B) the trustee had notice of the inaccuracy for a reasonably sufficient
15 time before the information was relied upon so that, before the reliance, the trustee reasonably
16 could have:

17 (i) effected an amendment under Section 202;

18 (ii) filed a petition under Section 204; or

19 (iii) delivered to the [Secretary of State] for filing a statement of
20 change under Section 217 or a statement of correction under Section 209.

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

1 **SECTION ~~206~~ 212. CERTIFICATE OF GOOD STANDING OR**
2 **REGISTRATION.**

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

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

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

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

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

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

16 ~~(b) A certificate of good standing must state:~~

17 ~~(1) the name of the trust;~~

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

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

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

24 (a) On request of any person, the [Secretary of State] shall issue a certificate of good

1 standing for a statutory trust or a certificate of registration for a registered foreign statutory trust.

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

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

5 (2) in the case of a trust:

6 (A) that a certificate of trust has been filed and has taken effect;

7 (B) the date the certificate became effective;

8 (C) the period of the trust's duration if the records of the [Secretary of
9 State] reflect that its period of duration is less than perpetual; and

10 (D) that:

11 (i) articles of dissolution or statement of administrative dissolution
12 have not been filed;

13 (ii) the records of the [Secretary to State] do not otherwise reflect
14 that the trust has been dissolved or terminated; and

15 (iii) a proceeding is not pending under Section 807;

16 (3) in the case of a foreign trust, that it is registered to do business in this state;

17 (4) that all fees, taxes, interest, and penalties owed to this state by the trust or the
18 foreign trust and collected through the [Secretary of State] have been paid, if:

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

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

22 (5) that the most recent [annual] [biennial] report required by Section 221 has
23 been delivered to the [Secretary of State] for filing; and

24 (6) other facts reflected in the records of the [Secretary of State] pertaining to the

1 trust or foreign trust which the person requesting the certificate reasonably requests.

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

5 **SECTION ~~207~~ 213. NAME OF STATUTORY TRUST PERMITTED NAMES.**

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

10 ~~(a)~~ (b) Except as otherwise provided in subsection ~~(e)~~ (e), the name of a statutory trust
11 and the name under which a foreign statutory trust may register to do business in this state must
12 be distinguishable in on the records of the [Secretary of State] from any:

13 (1) ~~the name of any a person that is already incorporated, organized, formed, or~~
14 ~~authorized to do business in this state~~ whose formation requires the filing of a record by the
15 [Secretary of State];

16 (2) name of a limited liability partnership;

17 (3) name of a person registered to do business in this state by the filing of a record
18 by the [Secretary of State];

19 ~~(2)~~ (4) ~~any name reserved under Section ~~208~~ 214 for other state laws allowing the~~
20 ~~reservation or registration of business names, including fictitious or assumed name statutes]~~ or
21 other law of this state providing for the reservation of a name by the filing of a record by the
22 [Secretary of State];

23 (5) name registered under Section 215 or law of this state other than this [act]
24 providing for the registration of a name by the filing of a record by the [Secretary of State]; and

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

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

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

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

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

14 (A) ~~has merged with the applicant;~~

15 (B) ~~has been converted into the applicant; or~~

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

18 (c) If a person consents in a record to the use of its name and submits an undertaking in a
19 form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable
20 on the records of the [Secretary of State] from any name in any category of names in subsection
21 (b), the name of the consenting person may be used by the person to which the consent was
22 given.

23 (d) ~~Subject to Section 906, this section applies to any foreign statutory trust that does~~
24 ~~business in this state, has a certificate of registration to do business in this state, or has applied~~

~~for a certificate of registration.~~ Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “LP”, “limited liability partnership”, “LLP”, “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”, “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability company”, or “LLC”, may not be taken into account.

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

(f) The name of a statutory trust or foreign statutory trust may not contain the words [insert prohibited words or words that may be used only with approval by the appropriate state agency].

SECTION ~~208~~ 214. RESERVATION OF NAME.

~~(a) The exclusive right to the use of a name that complies with Section 207 213 may be reserved by:~~

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

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

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

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

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

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

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

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

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

18 ~~(1) a notice of transfer that states the reserved name, the name and street and~~
19 ~~mailing address of some other person to which the reservation is to be transferred, and the~~
20 ~~paragraph of subsection (a) that applies to the person; or~~

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

22 (a) A person may reserve the exclusive use of the name by delivering an application to
23 the [Secretary of State] for filing. The application must state the name and address of the
24 applicant and the name to be reserved. If the [Secretary of State] finds that the name is available,

1 the [Secretary of State] shall reserve the name for the applicant's exclusive use for [120] days.

2 (b) The owner of a reserved name may transfer the reservation to another person that is
3 not an individual by delivering to the [Secretary of State] a signed notice in a record of the
4 transfer which states the name and address of the transferee.

5 **SECTION 215. REGISTRATION OF NAME.**

6 (a) A foreign statutory trust not registered to do business in this state under [Article] 9 may
7 register its name, or an alternate name adopted pursuant to Section 906, if the name is distinguishable on
8 the records of the [Secretary of State] from the names that are not available under Section 213.

9 (b) To register its name or an alternate name adopted pursuant to Section 806, a foreign
10 statutory trust must deliver to the [Secretary of State] for filing an application stating the trust's
11 name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to
12 Section 906. If the [Secretary of State] finds that the name applied for is available, the
13 [Secretary of State] shall register the name for the applicant's exclusive use.

14 (c) The registration of a name under this section is effective for [one year] after the date
15 of registration.

16 (d) A foreign statutory trust whose name registration is effective may renew the
17 registration for successive one-year periods by delivering, not earlier than [three months] before
18 the expiration of the registration, to the [Secretary of State] for filing a renewal application that
19 complies with this section. When filed, the renewal application renews the registration for a
20 succeeding one-year period.

21 (e) A foreign statutory trust whose name registration is effective may register as a foreign
22 statutory trust under the registered name or consent in a signed record to the use of that name by
23 another person that is not an individual.

1 **SECTION ~~209~~ 216. REGISTERED AGENT FOR SERVICE OF PROCESS.**

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

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

10 (c) The only duties under this [act] of a registered agent that has complied with this [act]
11 are:

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

15 (2) if the registered agent resigns, to provide the notice required by Section 218(c)
16 to the trust at the address most recently supplied to the agent by the trust; and

17 (3) to keep current the information with respect to the agent in the certificate of
18 trust.

19 **SECTION ~~210~~ 217. CHANGE OF ~~DESIGNATED OFFICE OR~~ REGISTERED**
20 **AGENT ~~FOR SERVICE OF PROCESS~~ OR ADDRESS FOR REGISTERED AGENT.**

21 (a) A statutory trust or ~~qualified~~ registered foreign statutory trust may change its
22 registered agent ~~for service of process, or~~ the address of its registered agent ~~for service of~~
23 ~~process, or its designated office~~ by delivering to the [Secretary of State] for filing a statement of
24 change ~~containing~~ which states:

(1) the name of the trust or foreign trust; and

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

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

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

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

(b) The beneficial owners or trustees of a statutory trust need not approve the filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office, if any, of the
trust in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an
affirmation of fact by the statutory trust or registered foreign statutory trust that the agent has
consented to serve.

(d) As an alternative to using the procedure in this section, a statutory trust or registered
foreign statutory trust may amend its certificate of trust.

**SECTION ~~211~~ 218. RESIGNATION OF REGISTERED AGENT ~~FOR SERVICE~~
~~OF PROCESS~~.**

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

(1) the name of the trust;

1 (2) the name of the agent; ~~and~~

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

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

6 (b) ~~A resigning agent shall transmit a copy of a statement of resignation to the designated~~
7 ~~office of the statutory trust or qualified foreign statutory trust and a copy to the principal office if~~
8 ~~the address of the office appears in the records of the [Secretary of State] and is different from~~
9 ~~the address of the designated office. A statement of resignation takes effect on the earlier of:~~

10 (1) the 31st day after the day on which it is filed by the [Secretary of State]; or

11 (2) the designation of a new registered agent for the statutory trust or registered
12 foreign statutory trust.

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

17 (d) When a statement of resignation takes effect, the registered agent ceases to have
18 responsibility under this [act] for any matter thereafter tendered to it as agent for the statutory
19 trust or registered foreign statutory trust. The resignation does not affect any contractual rights
20 the trust has against the agent or that the agent has against the trust.

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

23 **SECTION 219. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.**

24 (a) If a registered agent changes its name or address, the agent may deliver to the

1 [Secretary of State] for filing a statement of change that states:

2 (1) the name of the statutory trust or registered foreign statutory trust represented
3 by the registered agent;

4 (2) the name of the agent as currently shown in the records of the [Secretary of
5 State] for the trust or foreign trust;

6 (3) if the name of the agent has changed, its new name; and

7 (4) if the address of the agent has changed, its new address.

8 (b) A registered agent promptly shall furnish notice to the represented statutory trust or
9 registered foreign statutory trust of the filing by the [Secretary of State] of the statement of
10 change and the changes made by the statement.

11 **Reporters' Note**

12 A legislative note will suggest that enacting jurisdictions consider authorizing the filing
13 office to adopt procedures under which a single statement of change filed by a registered agent
14 would apply to every entity represented by the agent.

15 **SECTION ~~212~~ 220. SERVICE OF PROCESS, NOTICE, OR DEMAND.**

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

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

23 ~~(1) the date the agent for the statutory trust or qualified foreign statutory trust~~
24 ~~receives the process, notice, or demand;~~

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

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

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

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

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

11 (b) If a statutory trust or registered foreign statutory trust ceases to have a registered
12 agent, or if its registered agent cannot with reasonable diligence be served, the trust may be
13 served by registered or certified mail, return receipt requested, or by similar commercial delivery
14 service, addressed to the trust at the trust's principal office. The address of the principal office
15 shall be as shown in the trust's most recent [annual] [biennial] report filed by the [Secretary of
16 State]. Service is effected under this subsection on the earliest of:

17 (1) the date the trust receives the mail or delivery by the commercial delivery
18 service;

19 (2) the date shown on the return receipt, if signed by the trust; or

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

22 (c) If process, notice, or demand cannot be served on a statutory trust or registered
23 foreign statutory trust pursuant to subsection (a) or (b), service may be made by handing a copy
24 to the individual in charge of any regular place of business or activity of the trust if the individual

1 served is not a plaintiff in the action.

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

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

6 **SECTION ~~213~~ 221. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF**
7 **STATE].**

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

10 ~~(1) for a statutory trust:~~

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

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

14 ~~(2) for a qualified foreign statutory trust:~~

15 ~~(A) any alternate name adopted under Section 906;~~

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

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

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

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

24 ~~(c) The first [annual] [biennial] report under this section must be delivered to the~~

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

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

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

14 (a) Each statutory trust and registered foreign statutory trust shall deliver to the [Secretary
15 of State] for filing a [an annual] [a biennial] report that states:

16 (1) the name of the trust or foreign trust;

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

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

19 (4) the name of at least one trustee; and

20 (5) in the case of a foreign statutory trust, its jurisdiction of formation and any
21 alternate name adopted under Section 906.

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

24 (c) The first [annual] [biennial] report must be delivered to the [Secretary of State] after

1 [January 1] and before [April 1] of the year following the calendar year in which the statutory
2 trust's certificate of trust became effective or the foreign statutory trust registered to do business
3 in this state. Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State]
4 after [January 1] and before [April 1] of each [second] calendar year thereafter.

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

8 (e) If [an annual] [a biennial] report contains the name or address of a registered agent
9 which differs from the information shown in the records of the [Secretary of State] immediately
10 before the [annual] [biennial] report becomes effective, the differing information in the [annual]
11 [biennial] report is considered a statement of change under Section 217.

12 **[ARTICLE] 3**

13 **GOVERNING LAW; AUTHORIZATION; DURATION; POWERS**

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

15 (1) the internal affairs of a statutory trust;

16 (2) the liability of a beneficial owner as beneficial owner, ~~AND~~ a trustee as trustee, AND A
17 PERSON DESIGNATED UNDER SECTION 103(E)(8) OR (9) AS A PERSON IN THE DESIGNATED
18 CAPACITY, for a debt, obligation, or other liability of a statutory trust or a series thereof; and

19 (3) the ~~ENFORCEABILITY OF~~ EXTENT TO WHICH:

20 (A) a debt, obligation, or other liability of THE STATUTORY TRUST OR A SERIES
21 ~~THEREOF~~ A SERIES TRUST IS ENFORCEABLE against the property of ~~THE TRUST OR~~ any series
22 thereof; AND

23 (B) A DEBT, OBLIGATION, OR OTHER LIABILITY OF A SERIES OF A SERIES TRUST IS
24 ENFORCEABLE AGAINST THE PROPERTY OF THE TRUST OR ANY OTHER SERIES THEREOF.

1 **Reporters' Notes**

2
3 *Paragraph (2)* - The added language is analogous to the protection offered managers of
4 an LLC.

5
6 *Paragraph (3)* – The change is to make certain that the language applies only to the
7 question of internal shields. For example, the paragraph does not purport to choose the law to
8 determine whether a valid claim exists against the assets of a series trust. The paragraph does
9 control which assets of the trust are amenable to attachment and levy in enforcing that claim.

10
11 **SECTION 302. STATUTORY TRUST AS ENTITY.** A statutory trust is an entity
12 ~~separate~~ distinct from its trustees and beneficial owners.

13 **SECTION 303. PERMISSIBLE PURPOSES.**

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

16 (b) A statutory trust may not have a predominantly donative purpose.

17 **Reporters' Note**

18 *Subsection (a)* – A statutory trust may not have a predominantly donative purpose in
19 order to prevent avoidance through use of a statutory trust of the various policy-based limits on
20 donative transfers that apply to common-law trust. Consistent with ULPA and ULLCA,
21 however, a trust need not have a profit-making or business purpose.

22
23 **~~SECTION 304. STATUTORY TRUST SOLELY LIABLE FOR DEBT,~~**
24 **~~OBLIGATION, OR OTHER LIABILITY OF STATUTORY TRUST~~ LIMITATION ON**
25 **LIABILITY OF TRUSTEES AND BENEFICIAL OWNERS.**

26 (a) A debt, obligation, or other liability of a statutory trust or series thereof is solely ~~at~~ the
27 debt, obligation, or other liability of the trust or series thereof. A beneficial owner, trustee, ~~agent~~
28 ~~of the trust, or agent of the trustee~~ or person designated pursuant to Section 103(e)(8) or (9) is
29 not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt,
30 obligation, or other liability of the trust or series thereof solely by reason of being or acting as a
31 ~~trustee~~, beneficial owner, trustee, or agent of the trust, or agent of the trustee person designated

1 pursuant to Section 103(e)(8) or (9); ~~or beneficial owner.~~ This subsection applies regardless of
2 the dissolution of the trust.

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

6 **SECTION 305. NO CREDITOR RIGHTS IN TRUST PROPERTY.** A creditor of a
7 beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable
8 remedies with respect to, the property of a statutory trust or any series thereof.

9 **SECTION 306. DURATION.**

10 (a) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN ITS CERTIFICATE OF TRUST, A statutory trust;

11 (1) has perpetual duration; AND

12 (2) MAY NOT BE TERMINATED OR REVOKED EXCEPT IN ACCORDANCE WITH THIS

13 [ACT] OR THE TERMS OF THE TRUST'S CERTIFICATE OF TRUST.

14 (b) A SERIES OF A statutory trust; ~~OR ANY SERIES THEREOF;~~ may not be terminated or
15 revoked except in accordance with this [act] or the terms of the governing instrument.

16 (c) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner,
17 ~~OR~~ trustee, OR PERSON DESIGNATED UNDER SECTION 103(E)(8) OR (9) does not result in the
18 termination or dissolution of a statutory trust or any series thereof.

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

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

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

[ARTICLE 4]

SERIES TRUSTS

SECTION 401. STATUTORY TRUST HAVING SERIES.

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

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

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

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

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

(D) SUBJECT TO SECTION 404, THE GOVERNING INSTRUMENT MAY PROVIDE FOR THE
CREATION OF ONE OR MORE CLASSES OF TRUSTEES, BENEFICIAL OWNERS, OR BENEFICIAL
INTERESTS HAVING SEPARATE RIGHTS, POWERS, OR DUTIES WITH RESPECT TO THE STATUTORY
TRUST OR ANY SERIES THEREOF.

SECTION 402. LIABILITY OF SERIES TRUST.

(a) In a series trust:

(1) a debt, obligation, or other liability incurred or otherwise existing with respect

1 to the property of a particular series is enforceable against the property of the series only, and not
2 against the property of the trust generally or any other series thereof; and

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

6 (b) THE RULES PERTAINING TO DISTRIBUTIONS UNDER SECTIONS 615 AND 616 APPLY TO A
7 DISTRIBUTION FROM A SERIES TRUST AND FROM THE PROPERTY OF ANY SERIES THEREOF, EXCEPT
8 FOR A DISTRIBUTION UNDER SECTION 405.

9 (c) The association, disassociation, or reassociation of property of a statutory trust or a
10 series thereof to or with the trust or a series thereof, including by ~~conversion or merger~~ a
11 transaction under [Article] 7, is deemed to be a transfer between separate persons under
12 [Uniform Fraudulent Transfers Act or other state fraudulent transfer statute] AND A DISTRIBUTION
13 UNDER SECTION 615.

14 Reporters' Notes

15
16 *Subsection (b)-* Although a series is not a separate entity, distributions can be made from
17 the property of a series. It is necessary, therefore, to apply the act's rules on permissible
18 distributions to distributions from a series. Section 405 pertains to liquidating distributions.
19 Section 615 contains a comparable exclusion for liquidating distributions from the trust entity.
20

21 *Subsection (c) –* This subsection seeks to protect creditors and pertains principally to
22 shifts of property from one series to another, or between the trust and a series. The added
23 language adds another protection and parallels the double protection that applies to distributions
24 – i.e., both section 615 and the UFTA.
25

26 SECTION 403. CLAIMS PERTAINING TO A SERIES.

27 (a) A series of a statutory trust may not sue or be sued in its own name.

28 (b) If a series trust has a claim against a person which pertains to the property of a series
29 thereof, the trust may assert the claim under Section 308 and shall allocate the proceeds of the
30 claim under Sections 401 and 402.

1 (c) If a person has a claim against a series trust which pertains to the property of a series
2 thereof, to assert the claim the person must bring the claim against the trust, stating that the claim
3 pertains to the property of a series thereof and specifying the series if known. To the extent the
4 claim succeeds and is reduced to judgment:

5 (1) the judgment must state that it is collectable only against the property of the
6 specified series; and

7 (2) the judgment creditor may levy on the judgment only by serving the series
8 trust, which shall satisfy the judgment using only the property of the specified series.

9 **SECTION ~~403~~ 404. DUTIES OF TRUSTEE IN SERIES TRUST.** If there is at least
10 one trustee of a series trust that, in discharging its duties, is obligated to consider the interests of
11 the trust and all series thereof, the governing instrument may provide that one or more other
12 trustees, in discharging their duties, may consider only the interests of the trust or one or more
13 series thereof.

14 **SECTION ~~404~~ 405. DISSOLUTION OF SERIES.**

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

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

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

24 (d) A person, including a trustee, that under the governing instrument is responsible for

winding up the affairs of a series of a series trust is not liable to the creditors of the dissolved series SOLELY by reason of the ~~PERSON'S ACTIONS IN WINDING UP THE SERIES~~ PERSON ACTING IN THAT CAPACITY.

[ARTICLE 5]

TRUSTEES AND TRUST MANAGEMENT

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

SECTION 502. TRUSTEE POWERS. A trustee may exercise:

- (1) powers conferred by the governing instrument;
- (2) except as limited by the governing instrument, any other powers necessary or convenient to carry out the ~~business~~ activities and affairs of the statutory trust; and
- (3) other powers conferred by this [act].

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

- (1) The trustees act by majority of the trustees.
- (2) The trustees may act without a meeting, without previous notice, and without a vote, if the minimum number of trustees necessary to authorize or take the action at a meeting at which all trustees entitled to vote thereon were present and voted consent in a signed record. However, prompt notice of the action must be given to those trustees that did not consent.
- (3) A trustee may vote in person or by proxy, but, if by proxy, the proxy must be in a signed record.

SECTION 504. PROTECTION OF PERSON DEALING WITH TRUSTEE.

(a) A person that in good faith assists a trustee, or in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's

power, is protected from liability as if the trustee properly exercised the power.

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

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

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

Reporters' Notes

Subsection (a) considers both a person assisting and one dealing with a trustee. In contrast, subsection (b) refers only to a person dealing with the trustee. The difference between the subsections makes sense in light of the comment: "Subsection (b) therefore overrides the application to a statutory trust under Section 105 of the outmoded common-law rule that third parties that deal with the trustee are charged with constructive notice of the trust's governing instrument and its contents." However, the difference could be read as implying a negative (i.e. those the opposite of subsection (b) applies to those who assist). That implication is not intended. A comment will explain that this formulation merely follows the Trust Code and no negative implication is intended

SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.

(a) Subject to Section 403 ~~404~~, in exercising the powers of trusteeship, a trustee shall act in good faith and in a manner the trustee reasonably believes to be in the best interests of the statutory trust.

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

SECTION 506. ~~GOOD-FAITH~~ REASONABLE RELIANCE. A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8) or (9), is not liable to the trust or to a beneficial owner for breach of any duty,

1 including a fiduciary duty, to the extent the breach results from ~~GOOD FAITH~~ REASONABLE
2 reliance on:

- 3 (1) a term of the governing instrument;
- 4 (2) a record of the statutory trust; or
- 5 (3) an opinion, report, or statement of another person that the person to which the
6 opinion, report, or statement is made or delivered reasonably believes is within the other person's
7 professional or expert competence and is made or delivered to the trustee, officer, employee,
8 manager, or committee of a statutory trust, or other person designated pursuant to Section
9 103(e)(8) or (9).

10 **Reporters' Note**

11 To harmonize this section with Uniform Trust Code § 1006, on which this section was
12 based, the standard of reliance was changed from good faith to reasonable.

13 **SECTION 507. INTERESTED TRANSACTIONS.**

14 (a) In this section, "covered party" means a trustee, officer, employee, or manager of a
15 statutory trust, or a related party of a trustee, officer, employee, manager, or other person
16 designated pursuant to Section 103(e)(8) or (9).

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

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

24 **SECTION 508. TRUSTEE'S RIGHT TO INFORMATION.** A trustee has the right
25 to receive from a statutory trust or another trustee information relating to the affairs of the trust
26

1 which is reasonably related to the trustee's discharge of the trustee's duties as trustee. The trustee
2 may enforce this right by summary proceeding in the [appropriate court].

3 **SECTION 509. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT,**
4 **AND EXONERATION.**

5 (a) A statutory trust shall reimburse a trustee for any payment made by the trustee in the
6 course of the trustee's activities on behalf of the statutory trust, if the trustee complied with
7 Sections 505 and 615 in making the payment.

8 ~~(a)~~ (b) A statutory trust may indemnify and hold harmless a trustee, beneficial owner, or
9 ~~other~~ person designated pursuant to Section 103(e)(8) or (9) with respect to any claim or
10 demand against the person by reason of the person's relationship with the trust if the claim or
11 demand does not arise from the person's bad faith, willful misconduct, or reckless indifference.

12 ~~(b)~~ (c) Expenses, including reasonable attorney's fees and costs, incurred by a trustee,
13 beneficial owner, or ~~other~~ person designated pursuant to Section 103(e)(8) or (9) in connection
14 with a claim or demand against the person by reason of the person's relationship to a statutory
15 trust may be paid by the trust before the final disposition of the claim or demand, upon an
16 undertaking by or on behalf of the person to repay the trust if the person is ultimately determined
17 not to be entitled to be indemnified under subsection ~~(a)~~ (b).

18 ~~(c)~~ (d) A term in the governing instrument relieving or exonerating a trustee or person
19 designated under Section 103(e)(8) or (9) from liability is unenforceable to the extent it relieves
20 or exonerates the trustee from liability for conduct involving bad faith, willful misconduct, or
21 reckless indifference.

22 (e) A statutory trust may purchase and maintain insurance on behalf of a trustee, person
23 designated under Section 103(e)(8) or (9), or beneficial owner of the trust against liability
24 asserted against or incurred by the trustee, person, or beneficial owner in that capacity or

arising from that status even if, under Section 104(9), the trust instrument could not eliminate or limit the person's liability to the trust for the conduct giving rise to the liability.

SECTION 510. DIRECTION OF TRUSTEES.

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

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

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

SECTION 511. DELEGATION BY TRUSTEE.

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

(1) selecting an agent;

(2) establishing the scope and terms of the delegation; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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

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

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

(e) An agent of a trustee submits to the jurisdiction of the courts of this state by accepting a delegation of powers or duties from a trustee with respect to a claim related to the agency.

SECTION 512. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT COMPANY.

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

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

[ARTICLE] 6

~~BENEFICIARIES AND BENEFICIAL RIGHTS~~ OWNERS

SECTION 601. BENEFICIAL INTEREST.

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

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

1 ~~(e)~~ (b) A beneficial interest in a statutory trust is not an interest in specific property of the
2 statutory trust.

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

5 **SECTION 602. TRANSFER OF BENEFICIAL INTEREST**

6 (A) IN THIS SECTION, “COVERED CREDITOR” MEANS A JUDGMENT CREDITOR OF A
7 BENEFICIAL OWNER OR A PERSON TO WHICH A BENEFICIAL INTEREST HAS BEEN TRANSFERRED BY
8 OPERATION OF LAW.

9 (B) A BENEFICIAL INTEREST IN A STATUTORY TRUST IS FREELY TRANSFERABLE.

10 (C) THE GOVERNING INSTRUMENT MAY NOT LIMIT THE TRANSFERABILITY OF A BENEFICIAL
11 INTEREST IF THE SAME PERSON IS THE SOLE TRUSTEE AND SOLE BENEFICIAL OWNER.

12 (D) TO THE EXTENT A BENEFICIAL INTEREST IS NOT FREELY TRANSFERABLE BY A
13 BENEFICIAL OWNER SUCH THAT ANY TRANSFEREE BECOMES A BENEFICIAL OWNER WITHOUT
14 FURTHER REQUIREMENT EXCEPT NOTICE TO THE STATUTORY TRUST, THE FOLLOWING RULES APPLY:

15 (1) ON PETITION BY A COVERED CREDITOR, [THE APPROPRIATE COURT] MAY
16 AUTHORIZE THE PETITIONER TO REACH THE BENEFICIAL OWNER’S INTEREST BY ATTACHMENT OF
17 PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIAL OWNER OR BY
18 OTHER MEANS. THE COURT MAY LIMIT THE AWARD TO RELIEF THAT IS APPROPRIATE UNDER THE
19 CIRCUMSTANCES.

20 (2) ON PETITION BY A COVERED CREDITOR, TO THE EXTENT A TRUSTEE HAS NOT
21 COMPLIED WITH A STANDARD OF DISTRIBUTION PROVIDED IN THE GOVERNING INSTRUMENT OR HAS
22 ABUSED THE TRUSTEE'S DISCRETION TO MAKE A DISTRIBUTION, [THE APPROPRIATE COURT]:

23 (A) MAY ORDER A DISTRIBUTION TO THE BENEFIT OF THE PETITIONER; AND

24 (B) IF A DISTRIBUTION IS ORDERED, SHALL DIRECT THE TRUSTEE TO PAY TO

1 THE PETITIONER AN EQUITABLE AMOUNT BUT NOT MORE THAN THE AMOUNT THE TRUSTEE WOULD
2 HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR THE BENEFIT OF THE BENEFICIAL OWNER IF THE
3 TRUSTEE HAD COMPLIED WITH THE STANDARD OR HAD NOT ABUSED THE DISCRETION.

4 Reporters' Notes

5
6 This section, derived from the Uniform Trust Code § 504, replaces former Section 606
7 (on charging orders). The USTEA drafting committee intended former Section 606 to protect
8 legitimate creditors from abusive uses of statutory entity trusts. The Harmonization Committee
9 welcomed the goal but believed that – for various historical and political reasons and in light of
10 the very different role for charging orders under HULLCA, HULPA, and RUPA – the charging
11 order rubric was not the proper approach for USTEA. The Reporter for USTEA suggested
12 reference to the Uniform Trust Code, and he and the Harmonization co-reporters fashioned this
13 remedy.
14

15 **SECTION ~~602~~ 603. VOTING OR CONSENT BY BENEFICIAL OWNERS.** On any
16 matter that is to be acted on by beneficial owners, the following rules apply:

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

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

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

25 **SECTION ~~603~~ 604. FORM OF AND LIABILITY FOR CONTRIBUTIONS**
26 **CONTRIBUTION BY BENEFICIAL OWNER.**

27 (a) ~~A contribution of a beneficial owner to a statutory trust may be in cash, property, or~~
28 ~~services rendered or a promissory note or other obligation to contribute cash or property or to~~
29 ~~perform services. A contribution may consist of property transferred, services performed, or~~
30 ~~another benefit provided to the statutory trust or an agreement to transfer property, perform~~

1 services, or provide another benefit.

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

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

15 (d) If a person does not fulfill an obligation to make a contribution, the person is
16 obligated at the option of the trustee to contribute money equal to the value of the part of the
17 contribution which has not been made.

18 ~~(c)~~ (e) The governing instrument may provide that a beneficial owner that fails to make a
19 required contribution, or comply with the terms and conditions of the governing instrument, is
20 subject to ~~SPECIFIED PENALTIES FOR OR~~ consequences of the failure, including:

21 (1) reduction or elimination of the defaulting beneficial owner's proportionate
22 interest in the statutory trust or series thereof;

23 (2) subordination of the defaulting beneficial owner's beneficial interest to that of
24 nondefaulting beneficial owners;

(3) forced sale ~~OR FORFEITURE~~ of the defaulting beneficial owner's beneficial interest;

(4) imposition of an obligation to repay a loan to the statutory trust by another beneficial owner of the amount necessary to meet the defaulting beneficial owner's commitment;

(5) redemption or sale of the defaulting beneficial owner's beneficial interest at a value fixed by appraisal or by formula; and

(6) specific performance of an obligation under the governing instrument.

SECTION ~~604~~ 605. DISTRIBUTION TO BENEFICIAL OWNER RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

~~(a) When~~ Any distributions made by a statutory trust before its dissolution and winding up must be in proportion to the beneficial interests.

~~(b) If~~ a beneficial owner becomes entitled to receive a distribution, with respect to the distribution, the beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the statutory trust with respect to the distribution.

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

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

SECTION ~~605~~ 606. REDEMPTION OF BENEFICIAL INTEREST. A statutory trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series

thereof. A beneficial interest acquired under this section is canceled.

SECTION 606. CHARGING ORDER.

~~(A) IF A BENEFICIAL INTEREST IS NOT FREELY TRANSFERABLE BY A BENEFICIAL OWNER SO THAT THE TRANSFEREE HAS ALL RIGHTS OF THE TRANSFEROR, A JUDGMENT CREDITOR OF A BENEFICIAL OWNER MAY SATISFY THE JUDGMENT AGAINST THE BENEFICIAL OWNER'S BENEFICIAL INTEREST ONLY AS PROVIDED IN THIS SECTION.~~

~~(B) ON APPLICATION BY A JUDGMENT CREDITOR OF A BENEFICIAL OWNER, THE [APPROPRIATE COURT] MAY ISSUE A CHARGING ORDER AGAINST THE BENEFICIAL OWNER'S RIGHT TO DISTRIBUTIONS FROM THE TRUST FOR THE UNSATISFIED PART OF THE JUDGMENT AND:~~

~~(1) APPOINT A RECEIVER OF THE DISTRIBUTIONS SUBJECT TO THE CHARGING ORDER, WITH THE POWER TO ENFORCE THE BENEFICIAL OWNER'S RIGHT TO A DISTRIBUTION; AND~~

~~(2) MAKE OTHER ORDERS NECESSARY TO GIVE EFFECT TO THE CHARGING ORDER.~~

~~(C) A CHARGING ORDER ISSUED UNDER SUBSECTION (B) IS A LIEN ON THE BENEFICIAL OWNER'S RIGHT TO DISTRIBUTIONS AND REQUIRES THE STATUTORY TRUST TO PAY OVER TO THE JUDGMENT CREDITOR ANY DISTRIBUTION THAT WOULD OTHERWISE BE PAID TO THE BENEFICIAL OWNER UNTIL THE JUDGMENT HAS BEEN SATISFIED.~~

~~(D) A STATUTORY TRUST OR BENEFICIAL OWNER THAT IS NOT SUBJECT TO A CHARGING ORDER ISSUED UNDER SUBSECTION (B) MAY PAY TO THE JUDGMENT CREDITOR THE FULL AMOUNT DUE UNDER THE JUDGMENT LIEN AND THEREBY SUCCEED TO THE RIGHTS OF THE JUDGMENT CREDITOR, INCLUDING THE CHARGING ORDER.~~

~~(E) THIS [ACT] DOES NOT DEPRIVE A BENEFICIAL OWNER OR A TRANSFEREE OF THE BENEFICIAL INTEREST OF ANY EXEMPTION APPLICABLE TO THE BENEFICIAL INTEREST.~~

SECTION 607. TRANSACTION WITH BENEFICIAL OWNER. Subject to Section 507, a beneficial owner or related party of a beneficial owner may lend money to,

1 borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an
2 obligation of, provide collateral for, or do other business with the statutory trust and, subject to
3 law other than this [act], has the same rights and obligations with respect to those matters as a
4 person that is not a beneficial owner.

5 **SECTION 608. BENEFICIAL OWNER'S RIGHT TO INFORMATION.** A

6 beneficial owner has the right to receive from the statutory trust or a trustee information relating
7 to the affairs of a statutory trust which is reasonably related to the beneficial owner's interest.

8 The beneficial owner may enforce this right by summary proceeding in the [appropriate court].

9 **SECTION 609. DIRECT ACTION BY BENEFICIAL OWNER.**

10 (a) A beneficial owner may maintain a direct action against a statutory trust to redress an
11 injury sustained by, or to enforce a duty owed to, the beneficial owner ~~if the beneficial owner can~~
12 ~~prevail without showing an injury or breach of duty to the trust~~ only if the owner can plead and
13 prove an actual or threatened injury that is not solely the result of an injury suffered or
14 threatened to be suffered by the statutory trust.

15 **SECTION 610. DERIVATIVE ACTION.** ~~(b)~~ A beneficial owner may maintain a

16 derivative action ~~to redress an injury sustained by, or~~ enforce a ~~duty owed to,~~ right of a statutory
17 trust if:

18 (1) the beneficial owner first makes a demand on the trustees, requesting that the trustees
19 cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not
20 bring the action within a reasonable time; or

21 (2) a demand would be futile.

22 **SECTION 611. PROPER PLAINTIFF.** A derivative action ~~on behalf of a statutory~~

23 ~~trust~~ to enforce a right of a statutory trust may be maintained only by a person that is a
24 beneficial owner at the time the action is commenced and:

(1) that was a beneficial owner when the conduct giving rise to the action occurred; or

(2) ~~acquired the~~ whose status as a beneficial owner devolved upon the person by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct.

SECTION 612. PLEADING. ~~(d)~~ In a derivative action ~~on behalf of the~~ to enforce a right of a 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 by the trustees; or

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

SECTION 613. SPECIAL LITIGATION COMMITTEE.

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

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

(c) A special litigation committee may be appointed:

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

1 proceeding; and

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

4 (d) After appropriate investigation, a special litigation committee may determine that it is
5 in the best interests of the statutory trust that the proceeding:

6 (1) continue under the control of the plaintiff;

7 (2) continue under the control of the committee;

8 (3) be settled on terms approved by the committee; or

9 (4) be dismissed.

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

20 **SECTION 614. PROCEEDS AND EXPENSES.**

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

22 (1) any proceeds or other benefits of a derivative action ~~on behalf of a statutory~~
23 ~~trust~~, whether by judgment, compromise, or settlement, ~~are the property of~~ belong to the trust
24 and not ~~of~~ to the plaintiff; and

(2) if the plaintiff receives any proceeds ~~or other benefits~~, the plaintiff shall ~~immediately~~ remit them immediately to the trust.

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

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

SECTION 615. LIMITATIONS ON DISTRIBUTIONS.

(a) A statutory trust may not make a distribution, including a distribution under Section 803(b)(2), if after the distribution:

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

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

(b) A trustee may base a determination that a distribution is not prohibited under subsection (a) on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

1 (1) in the case of a distribution by purchase, redemption, or other acquisition of a
2 beneficial interest, as of the earlier of the date:

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

4 and

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

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

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

10 (A) the distribution is authorized, if the payment occurs not later than 120
11 days after that date; or

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

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

17 (e) A statutory trust's indebtedness, including indebtedness issued as a distribution, is not
18 a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of
19 principal and interest are made only if and to the extent that payment of a distribution could then
20 be made under this section. If indebtedness is issued as a distribution, each payment of principal
21 or interest is treated as a distribution, the effect of which is measured on the date the payment is
22 actually made. If indebtedness is issued as a distribution, each payment of principal or interest
23 is treated as a distribution, the effect of which is measured on the date the payment is actually
24 made.

1 (f) In measuring the effect of a distribution under Section 803(b)(2), the debts and
2 obligations of a dissolved statutory trust do not include any claim that has been disposed of
3 under Section 804, 805, or 806.

4 **SECTION 616. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

5 (a) If a trustee of a statutory trust consents to a distribution made in violation of Section
6 615 and in consenting to the distribution fails to comply with Section 505, the trustee is
7 personally liable to the trust or the series thereof for the amount of the distribution which
8 exceeds the amount that could have been distributed without the violation of Section 505.

9 (b) A person that receives a distribution knowing that the distribution to that person was
10 made in violation of Section 615 is personally liable to the statutory trust or series thereof but
11 only to the extent that the distribution received by the person exceeded the amount that could
12 have been properly paid under Section 615.

13 (c) A person against which an action is commenced because the person is liable under
14 subsection (a) or (b) may implead:

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

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

20 (d) An action under this section is barred if not commenced not later than two years after
21 the distribution.

1 [ARTICLE] 7

2 ~~CONVERSION AND MERGER, INTEREST EXCHANGE,~~

3 ~~CONVERSION, AND DOMESTICATION~~

4 ~~SECTION 701. DEFINITIONS. In this [article]:~~

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

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

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

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

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

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

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

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

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

1 **~~SECTION 702. CONVERSION.~~**

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

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

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

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

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

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

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

15 ~~(4) the organizational documents of the converted organization.~~

16 **~~SECTION 703. ACTION ON PLAN OF CONVERSION BY CONVERTING~~**
17 **~~STATUTORY TRUST.~~**

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

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

22 ~~(1) as provided in the plan; and~~

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

1 **~~SECTION 704. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.~~**

2 ~~(a) After a conversion is approved:~~

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

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

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

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

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

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

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

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

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

20 ~~(C) a statement that the conversion was approved in a manner that~~
21 ~~complied with the organization's governing law.~~

22 ~~(b) A conversion becomes effective when the certificate of conversion is effective as~~
23 ~~provided in Section 204(c).~~

1 **~~SECTION 705. EFFECT OF CONVERSION.~~**

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

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

5 ~~(1) all property owned by the converting organization remains vested in the~~
6 ~~converted organization;~~

7 ~~(2) all debts, obligations, and other liabilities of the converting organization,~~
8 ~~including those existing with respect to the property of a series thereof, continue as debts,~~
9 ~~obligations, or other liabilities of the converted organization limited to the property of any series~~
10 ~~thereof as provided for by the plan of conversion and the governing law of the converted~~
11 ~~organization;~~

12 ~~(3) an action or proceeding pending by or against the converting organization~~
13 ~~continues as if the conversion had not occurred;~~

14 ~~(4) except as prohibited by law other than this [act], the rights, privileges,~~
15 ~~immunities, powers, and purposes of the converting organization remain vested in the converted~~
16 ~~organization;~~

17 ~~(5) except as otherwise provided in the plan of conversion, the terms and~~
18 ~~conditions of the plan of conversion take effect; and~~

19 ~~(6) except as otherwise agreed, the conversion does not dissolve a converting~~
20 ~~statutory trust or any series thereof for the purposes of Section 801.~~

21 ~~(c) A converted organization that is a foreign organization consents to the jurisdiction of~~
22 ~~the courts of this state to enforce any debt, obligation, or other liability for which the converting~~
23 ~~statutory trust is liable, if, before the conversion, the converting statutory trust was subject to suit~~
24 ~~in this state on the debt, obligation, or other liability. A converted organization that is a foreign~~

1 organization and not authorized to do business in this state may be served with process in
2 accordance with Section 212.

3 **~~SECTION 706. MERGER.~~**

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

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

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

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

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

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

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

17 (4) ~~if the surviving organization is to be created by the merger, the surviving~~
18 ~~organization's organizational documents; and~~

19 (5) ~~if the surviving organization is not to be created by the merger, any~~
20 ~~amendments to be made by the merger to the surviving organization's organizational documents.~~

21 **~~SECTION 707. ACTION ON PLAN OF MERGER BY CONSTITUENT~~**
22 **~~STATUTORY TRUST.~~**

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

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

3 ~~(1) as provided in the plan; and~~

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

6 **~~SECTION 708. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.~~**

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

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

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

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

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

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

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

19 ~~(A) if it will be a statutory trust, the trust's certificate of trust; or~~

20 ~~(B) if it will be an organization other than a statutory trust, the~~
21 ~~organizational document that creates the organization;~~

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

24 ~~(5) a statement as to each constituent organization that the merger was approved~~

1 as required by the organization's governing law;

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

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

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

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

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

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

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

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

15 **~~SECTION 709. EFFECT OF MERGER.~~**

16 (a) ~~When a merger becomes effective:~~

17 (1) ~~the surviving organization continues or comes into existence;~~

18 (2) ~~each constituent organization that merges with the surviving organization~~
19 ~~ceases to exist as a separate organization;~~

20 (3) ~~all property owned by each constituent organization that ceases to exist vests~~
21 ~~in the surviving organization;~~

22 (4) ~~all debts, obligations, and other liabilities of each constituent organization that~~
23 ~~ceases to exist, including those existing with respect to the property of a series thereof, continue~~
24 ~~as debts, obligations, or other liabilities of the surviving organization limited to the property~~

1 ~~thereof as provided for by the plan of merger and the governing law of the surviving~~
2 ~~organization;~~

3 ~~(5) an action or proceeding pending by or against any constituent organization~~
4 ~~that ceases to exist continues as if the merger had not occurred;~~

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

8 ~~(7) except as otherwise provided in the plan of merger, the terms and conditions~~
9 ~~of the plan of merger take effect;~~

10 ~~(8) if the surviving organization is created by the merger and:~~

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

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

14 ~~(9) if the surviving organization preexisted the merger, any amendment provided~~
15 ~~for in the articles of merger for the organizational document that created the organization~~
16 ~~becomes effective.~~

17 ~~(b) A surviving organization that is a foreign organization consents to the jurisdiction of~~
18 ~~the courts of this state to enforce any debt, obligation, or other liability of a constituent~~
19 ~~organization if, before the merger, the constituent organization was subject to suit in this state on~~
20 ~~the debt, obligation, or other liability. A surviving organization that is a foreign organization not~~
21 ~~authorized to do business in this state may be served with process in accordance with Section~~
22 ~~212.~~

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

1 [PART] 1

2 GENERAL PROVISIONS

3 SECTION 701. DEFINITIONS. In this [article]:

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

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

8 (3) “Conversion” means a transaction authorized by [Part] 4.

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

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

14 (6) “Distributional interest” means the right under an unincorporated entity’s organic law
15 and organic rules to receive distributions from the entity.

16 (7) “Domestic”, with respect to an entity, means governed as to its internal affairs by the
17 law of this state.

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

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

23 (10) “Domestication” means a transaction authorized by [Part] 5.

24 (11) “Entity”:

1 (A) means:

2 (i) a business corporation;

3 (ii) a nonprofit corporation;

4 (iii) a general partnership, including a limited liability partnership;

5 (iv) a limited partnership, including a limited liability limited partnership;

6 (v) a limited liability company;

7 [(vi) a general cooperative association;]

8 (vii) a limited cooperative association;

9 (viii) an unincorporated nonprofit association;

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

11 (x) any other person that has:

12 (I) a legal existence separate from any interest holder of that

13 person; or

14 (II) the power to acquire an interest in real property in its own

15 name; and

16 (B) does not include:

17 (i) an individual;

18 (ii) a testamentary or inter vivos trust with a predominantly donative
19 purpose, or a charitable trust;

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

23 (iv) a decedent's estate; [or]

24 (v) a government or a governmental subdivision, agency, or

1 instrumentality[; or]

2 [(vi) a person excluded under Section 709].

3 (12) “Filing entity” means an entity whose formation requires the filing of a public
4 organic record.

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

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

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

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

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

13 (15) “Governor” means:

14 (A) a director of a business corporation;

15 (B) a director or trustee of a nonprofit corporation;

16 (C) a general partner of a general partnership;

17 (D) a general partner of a limited partnership;

18 (E) a manager of a manager-managed limited liability company;

19 (F) a member of a member-managed limited liability company;

20 [(G) a director of a general cooperative association;]

21 (H) a director of a limited cooperative association;

22 (I) a manager of an unincorporated nonprofit association;

23 (J) a trustee of a statutory trust, business trust, or common-law business trust; or

24 (K) any other person by or under whose authority the powers of an entity are

1 exercised and under whose direction the activities and affairs of the entity are managed pursuant
2 to the organic law and organic rules of the entity.

3 (16) “Interest” means:

4 (A) a share in a business corporation;

5 (B) a membership in a nonprofit corporation;

6 (C) a partnership interest in a general partnership;

7 (D) a partnership interest in a limited partnership;

8 (E) a membership interest in a limited liability company;

9 [(F) a share in a general cooperative association;]

10 (G) a member’s interest in a limited cooperative association;

11 (H) a membership in an unincorporated nonprofit association;

12 (I) a beneficial interest in a statutory trust, business trust, or common-law business

13 trust; or

14 (J) a governance interest or distributional interest in any other type of

15 unincorporated entity.

16 (17) “Interest exchange” means a transaction authorized by [Part] 3.

17 (18) “Interest holder” means:

18 (A) a shareholder of a business corporation;

19 (B) a member of a nonprofit corporation;

20 (C) a general partner of a general partnership;

21 (D) a general partner of a limited partnership;

22 (E) a limited partner of a limited partnership;

23 (F) a member of a limited liability company;

24 [(G) a shareholder of a general cooperative association;]

1 (H) a member of a limited cooperative association;

2 (I) a member of an unincorporated nonprofit association;

3 (J) a beneficiary or beneficial owner of a statutory trust, business trust, or
4 common-law business trust; or

5 (K) any other direct holder of an interest.

6 (19) “Interest holder liability” means:

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

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

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

12 (B) an obligation of an interest holder under the organic rules of an entity to
13 contribute to the entity.

14 (20) “Merger” means a transaction authorized by [Part] 2.

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

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

19 (23) “Organic rules” means the public organic record and private organic rules of an
20 entity.

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

23 (25) “Plan of conversion” means a plan under Section 742.

24 (26) “Plan of domestication” means a plan under Section 752.

1 (27) “Plan of interest exchange” means a plan under Section 732.

2 (28) “Plan of merger” means a plan under Section 722.

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

6 (A) the bylaws of a business corporation;

7 (B) the bylaws of a nonprofit corporation;

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

9 (D) the partnership agreement of a limited partnership;

10 (E) the operating agreement of a limited liability company;

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

12 (G) the bylaws of a limited cooperative association;

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

14 (I) the trust instrument of a statutory trust or similar rules of a business trust or
15 common-law business trust.

16 (30) “Protected agreement” means:

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

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

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

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

23 (31) “Public organic record” means the record the filing of which by the [Secretary of
24 State] is required to form an entity and any amendment to or restatement of that record. The

1 term includes:

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

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

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

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

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

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

8 (G) the certificate of trust of a statutory trust or similar record of a business trust.

9 (32) “Registered foreign entity” means a foreign entity that is registered to do business in
10 this state pursuant to a record filed by the [Secretary of State].

11 (33) “Statement of conversion” means a statement under Section 745.

12 (34) “Statement of domestication” means a statement under Section 755.

13 (35) “Statement of interest exchange” means a statement under Section 735.

14 (36) “Statement of merger” means a statement under Section 725.

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

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

18 (A) recognized at common law; or

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

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

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

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

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

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

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

18 **SECTION 706. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
19 ascertainable outside the plan if the manner in which the facts will operate upon the plan is
20 specified in the plan. The facts may include the occurrence of an event or a determination or
21 action by a person, whether or not the event, determination, or action is within the control of a
22 party to the transaction.

23 **SECTION 707. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.**
24 Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of

1 a transaction under this [article] by the unanimous vote or consent of its interest holders satisfies
2 the requirements of this [article] for approval of the transaction.

3 **SECTION 708. APPRAISAL RIGHTS.**

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

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

10 (2) the organic rules provide such a limit.

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

14 (1) the entity's organic rules; or

15 (2) the plan.

16 **[SECTION 709. EXCLUDED ENTITIES AND TRANSACTIONS.**

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

18 (1)

19 (2).

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

21 (1)

22 (2).]

1 **[PART] 2**

2 **MERGER**

3 **SECTION 721. MERGER AUTHORIZED.**

4 (a) By complying with this [part]:

5 (1) one or more domestic statutory trusts may merge with one or more domestic
6 or foreign entities into a domestic or foreign surviving entity; and

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

8 (b) By complying with the provisions of this [part] applicable to foreign entities, a
9 foreign entity may be a party to a merger under this [part] or may be the surviving entity in such
10 a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

11 **SECTION 722. PLAN OF MERGER.**

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

14 (1) as to each merging entity, its name, jurisdiction of formation, and type of
15 entity;

16 (2) if the surviving entity is to be created in the merger, a statement to that effect
17 and the entity's name, jurisdiction of formation, and type of entity;

18 (3) the manner of converting the interests in each party to the merger into
19 interests, securities, obligations, money, other property, rights to acquire interests or securities, or
20 any combination of the foregoing;

21 (4) if the surviving entity exists before the merger, any proposed amendments to
22 its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a
23 record;

24 (5) if the surviving entity is to be created in the merger, its proposed public

1 organic record, if any, and the full text of its private organic rules that are proposed to be in a
2 record;

3 (6) the other terms and conditions of the merger; and

4 (7) any other provision required by the law of a merging entity's jurisdiction of
5 formation or the organic rules of a merging entity.

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

8 **SECTION 723. APPROVAL OF MERGER.**

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

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

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

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

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

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

23 (c) A merger involving a foreign merging entity is not effective unless the merger is
24 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of

1 formation.

2 **SECTION 724. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

3 (a) A plan of merger may be amended only with the consent of each party to the plan,
4 except as otherwise provided in the plan.

5 (b) A domestic merging statutory trust may approve an amendment of a plan of merger:

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

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

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

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

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

20 (c) After a plan of merger has been approved and before a statement of merger becomes
21 effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a
22 domestic merging statutory trust may abandon the plan in the same manner as the plan was
23 approved.

24 (d) If a plan of merger is abandoned after a statement of merger has been delivered to the

1 [Secretary of State] for filing and before the statement becomes effective, a statement of
2 abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for
3 filing before the statement of merger becomes effective. The statement of abandonment takes
4 effect upon filing, and the merger is abandoned and does not become effective. The statement of
5 abandonment must contain:

6 (1) the name of each party to the plan of merger;

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

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

11 **SECTION 725. STATEMENT OF MERGER.**

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

14 (b) A statement of merger must contain:

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

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

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

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

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

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

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

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

8 (d) If the surviving entity is a domestic entity, its public organic record, if any, must
9 satisfy the requirements of the law of this state, but the public organic record does not need to be
10 signed.

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

16 **SECTION 726. EFFECT OF MERGER.**

17 (a) When a merger becomes effective:

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

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

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

22 (4) all debts, obligations, and liabilities of each merging entity are debts,
23 obligations, and liabilities of the surviving entity;

24 (5) except as otherwise provided by law or the plan of merger, all the rights,

1 privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

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

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

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

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

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

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

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

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

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

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

17 (B) its private organic rules are effective; and

18 (10) the interests in each merging entity which are to be converted in the merger
19 are converted, and the interest holders of those interests are entitled only to the rights provided to
20 them under the plan of merger and to any appraisal rights they have under Section 708 and the
21 merging entity's organic law.

22 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
23 the merger does not give rise to any rights that an interest holder, governor, or third party would
24 otherwise have upon a dissolution, liquidation, or winding up of the merging entity.

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

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

9 (1) The merger does not discharge any interest holder liability under the organic
10 law of the domestic merging entity to the extent the interest holder liability arose before the
11 merger became effective.

12 (2) The person does not have interest holder liability under the organic law of the
13 domestic merging entity for any liability that arises after the merger becomes effective.

14 (3) The organic law of the domestic merging entity continues to apply to the
15 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
16 if the merger had not occurred and the surviving entity were the domestic merging entity.

17 (4) The person has whatever rights of contribution from any other person as are
18 provided by law other than this [act], this [act], or the organic rules of the domestic merging
19 entity with respect to any interest holder liability preserved under paragraph (1) as if the merger
20 had not occurred.

21 (e) When a merger becomes effective, a foreign entity that is the surviving entity may be
22 served with process in this state for the collection and enforcement of any debts, obligations, or
23 other liabilities of a domestic merging entity as provided in Section 220.

24 (f) When a merger becomes effective, the registration to do business in this state of any

foreign merging entity that is not the surviving entity is canceled.

[PART] 3

INTEREST EXCHANGE

SECTION 731. INTEREST EXCHANGE AUTHORIZED.

(a) By complying with this [part]:

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

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

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

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

SECTION 732. PLAN OF INTEREST EXCHANGE.

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

(1) the name of the acquired entity;

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

2 (3) the manner of converting the interests in the acquired entity into interests,
3 securities, obligations, money, other property, rights to acquire interests or securities, or any
4 combination of the foregoing;

5 (4) any proposed amendments to the governing instrument that are, or are
6 proposed to be, in a record of the acquired entity;

7 (5) the other terms and conditions of the interest exchange; and

8 (6) any other provision required by the law of this state or the governing
9 instrument of the acquired entity.

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

12 **SECTION 733. APPROVAL OF INTEREST EXCHANGE.**

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

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

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

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

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

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

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

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

8 **SECTION 734. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
9 **EXCHANGE.**

10 (a) A plan of interest exchange may be amended only with the consent of each party to
11 the plan, except as otherwise provided in the plan.

12 (b) A domestic acquired statutory trust may approve an amendment of a plan of interest
13 exchange:

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

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

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

22 (B) the governing instrument of the acquired trust that will be in effect
23 immediately after the interest exchange becomes effective, except for changes that do not require
24 approval of the beneficial owners of the acquired trust under this [act] or the trust instrument; or

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

3 (c) After a plan of interest exchange has been approved and before a statement of interest
4 exchange becomes effective, the plan may be abandoned, the plan may be abandoned as
5 provided in the plan. Unless prohibited by the plan, a domestic acquired statutory trust may
6 abandon the plan in the same manner as the plan was approved.

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

13 (1) the name of the acquired statutory trust;

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

16 (3) a statement that the interest exchange has been abandoned in accordance with
17 this section.

18 **SECTION 735. STATEMENT OF INTEREST EXCHANGE.**

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

21 (b) A statement of interest exchange must contain:

22 (1) the name of the acquired statutory trust;

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

24 (3) a statement that the plan of interest exchange was approved by the acquired

1 entity in accordance with this [part]; and

2 (4) any amendments to the acquired statutory trust's certificate of trust approved
3 as part of the plan of interest exchange.

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

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

11 **SECTION 736. EFFECT OF INTEREST EXCHANGE.**

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

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

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

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

22 (4) the provisions of the trust instrument of the acquired trust are amended to the
23 extent provided in the plan of interest exchange.

24 (b) Except as otherwise provided in the trust instrument of a domestic acquired statutory

1 trust, the interest exchange does not give rise to any rights that a beneficial owner, trustee, or
2 third party would otherwise have upon a dissolution, liquidation, or winding up of the acquired
3 trust.

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

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

13 (1) The interest exchange does not discharge any interest holder liability to the
14 extent the interest holder liability arose before the interest exchange became effective.

15 (2) The person does not have interest holder liability for any liability that arises
16 after the interest exchange becomes effective.

17 (3) The person has whatever rights of contribution from any other person as are
18 provided by law other than this [act], this [act], or the trust instrument of the acquired entity with
19 respect to any interest holder liability preserved under paragraph (1) as if the interest exchange
20 had not occurred.

21 **[PART] 4**

22 **CONVERSION**

23 **SECTION 741. CONVERSION AUTHORIZED.**

24 (a) By complying with this [part], a domestic statutory trust may become:

1 (1) a domestic entity of a different type; or

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

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

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

11 **SECTION 742. PLAN OF CONVERSION.**

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

14 (1) the name of the converting statutory trust;

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

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

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

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

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

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

1 the converting statutory trust.

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

4 **SECTION 743. APPROVAL OF CONVERSION.**

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

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

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

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

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

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

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

1 **SECTION 744. AMENDMENT OR ABANDONMENT OF PLAN OF**
2 **CONVERSION.**

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

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

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

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

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

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

18 (b) After a plan of conversion has been approved by a domestic converting statutory trust
19 and before a statement of conversion becomes effective, the plan may be abandoned as provided
20 in the plan. Unless prohibited by the plan, in the same manner as the plan was approved.

21 (c) If a plan of conversion is abandoned after a statement of conversion has been
22 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement
23 of abandonment, signed by the converting entity, must be delivered to the [Secretary of State] for
24 filing before the time the statement of conversion becomes effective. The statement of

abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting statutory trust;

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

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

SECTION 745. STATEMENT OF CONVERSION.

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

(b) A statement of conversion must contain:

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

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

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

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

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

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

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

3 (d) If the converted entity is a domestic entity, its public organic record, if any, must
4 satisfy the requirements of the law of this state, but the public organic does not need to be signed.

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

10 **SECTION 746. EFFECT OF CONVERSION.**

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

13 (1) the converted entity is:

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

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

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

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

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

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

1 (6) its public organic record is effective;

2 (7) the trust instrument of the converted entity is effective; and

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

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

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

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

18 (1) The conversion does not discharge any interest holder liability to the extent
19 the interest holder liability arose before the conversion became effective.

20 (2) The person does not have interest holder liability for any liability that arises
21 after the conversion becomes effective.

22 (3) The person has whatever rights of contribution from any other person as are
23 provided by law other than this [act], this [act], or the trust instrument of the converting entity
24 with respect to any interest holder liability preserved under paragraph (1) as if the conversion

1 had not occurred.

2 (e) When a conversion becomes effective, a foreign entity that is the converted entity
3 may be served with process in this state for the collection and enforcement of any of its debts,
4 obligations and liabilities as provided in Section 220.

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

7 (g) A conversion does not require the entity to wind up its affairs and does not constitute
8 or cause the dissolution of the entity.

9 **[PART] 5**

10 **DOMESTICATION**

11 **SECTION 751. DOMESTICATION AUTHORIZED.**

12 (a) By complying with this [part], a domestic statutory trust may become a foreign
13 statutory trust if the domestication is authorized by the law of the foreign jurisdiction.

14 (b) By complying with the provisions of this [part] applicable to foreign statutory trusts, a
15 foreign statutory trust may become a domestic statutory trust if the domestication is authorized
16 by the law of the foreign statutory trust's jurisdiction of formation.

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

21 **SECTION 752. PLAN OF DOMESTICATION.**

22 (a) A domestic statutory trust may become a foreign statutory trust in a domestication by
23 approving a plan of domestication. The plan must be in a record and contain:

24 (1) the name of the domesticating statutory trust;

1 (2) the name and jurisdiction of formation of the domesticated statutory trust;

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

5 (4) the proposed certificate of trust of the domesticated statutory trust;

6 (5) the full text of the trust instrument of the domesticated statutory trust;

7 (6) the other terms and conditions of the domestication; and

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

10 (b) In addition to the requirements of subsection (a), a plan of domestication may contain
11 any other provision not prohibited by law.

12 **SECTION 753. APPROVAL OF DOMESTICATION.**

13 (a) A plan of domestication of a domestic domesticating statutory trust is not effective
14 unless it has been approved:

15 (1) by all the beneficial owners entitled to vote on or consent to any matter; and

16 (2) in a record, by each beneficial owner that will have interest holder liability for
17 debts, obligations and liabilities that arise after the domestication becomes effective, unless:

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

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

24 (b) A domestication of a foreign domesticating statutory trust is not effective unless it is

1 approved in accordance with the law of the foreign statutory trust's jurisdiction of formation.

2 **SECTION 754. AMENDMENT OR ABANDONMENT OF PLAN OF**
3 **DOMESTICATION.**

4 (a) A plan of domestication of a domestic domesticating statutory trust may be amended:

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

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

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

13 (B) the certificate of trust or trust instrument of the domesticated statutory
14 trust that will be in effect immediately after the domestication becomes effective, except for
15 changes that do not require approval of the beneficial owners of the domesticated statutory trust
16 under its organic law or trust instrument; or

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

19 (b) After a plan of domestication has been approved by a domestic domesticating
20 statutory trust and before a statement of domestication becomes effective, the plan may be
21 abandoned:

22 (1) as provided in the plan; or

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

24 (c) If a plan of domestication is abandoned after a statement of domestication has been

1 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement
2 of abandonment, signed by the domesticating statutory trust, must be delivered to the [Secretary
3 of State] for filing before the time the statement of domestication becomes effective. The
4 statement of abandonment takes effect upon filing, and the domestication is abandoned and does
5 not become effective. The statement of abandonment must contain:

6 (1) the name of the domesticating statutory trust;

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

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

11 **SECTION 755. STATEMENT OF DOMESTICATION.**

12 (a) A statement of domestication must be signed by the domesticating statutory trust and
13 delivered to the [Secretary of State] for filing.

14 (b) A statement of domestication must contain:

15 (1) the name and jurisdiction of formation of the domesticating statutory trust;

16 (2) the name and jurisdiction of formation of the domesticated statutory trust;

17 (3) if the domesticating statutory trust is a domestic statutory trust, a statement
18 that the plan of domestication was approved in accordance with this [part] or, if the
19 domesticating statutory trust is a foreign statutory trust, a statement that the domestication was
20 approved in accordance with the law of its jurisdiction of formation;

21 (4) the certificate of trust of the domesticated statutory trust, as an attachment; and

22 (5) if the domesticated foreign statutory trust is not a registered foreign statutory
23 trust, a mailing address to which the [Secretary of State] may send any process served on the
24 [Secretary of State] pursuant to Section 756(e).

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

3 (d) The certificate of trust of a domesticated domestic statutory trust must satisfy the
4 requirements of the law of this state, but the certificate does not need to be signed.

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

10 **SECTION 756. EFFECT OF DOMESTICATION.**

11 (a) When a domestication becomes effective:

12 (1) the domesticated statutory trust is:

13 (A) organized under and subject to the organic law of the domesticated
14 trust; and

15 (B) the same entity without interruption as the domesticating trust;

16 (2) all property of the domesticating trust continues to be vested in the
17 domesticated entity without transfer, reversion, or impairment;

18 (3) all debts, obligations, and other liabilities of the domesticating trust continue
19 as debts, obligations, and other liabilities of the domesticated trust;

20 (4) except as otherwise provided by law or the plan of domestication, all the
21 rights, privileges, immunities, powers, and purposes of the domesticating trust remain in the
22 domesticated trust;

23 (5) the name of the domesticated trust may be substituted for the name of the
24 domesticating trust in any pending action or proceeding;

1 (6) the certificate of trust of the domesticated trust is effective;

2 (7) the trust instrument of the domesticated trust is effective; and

3 (8) the interests in the domesticating trust are converted to the extent and as
4 approved in connection with the domestication, and the beneficial owners of the domesticating
5 trust are entitled only to the rights provided to them under the plan of domestication and to any
6 appraisal rights they have under Section 708.

7 (b) Except as otherwise provided in the organic law or trust instrument of the
8 domesticating statutory trust, the domestication does not give rise to any rights that an interest
9 holder or third party would otherwise have upon a dissolution, liquidation, or winding up of the
10 domesticating trust.

11 (c) When a domestication becomes effective, a person that did not have interest holder
12 liability with respect to the domesticating statutory trust and that becomes subject to interest
13 holder liability with respect to a domestic trust as a result of the domestication has interest holder
14 liability only to the extent provided by the organic law of the trust and only for those debts,
15 obligations, and liabilities that arise after the domestication becomes effective.

16 (d) When a domestication becomes effective:

17 (1) The domestication does not discharge any interest holder liability under this
18 [act] to the extent the interest holder liability arose before the domestication became effective.

19 (2) A person does not have interest holder liability under this [act] for any debts,
20 obligations, and other liabilities that arise after the domestication becomes effective.

21 (3) A person has whatever rights of contribution from any other person as are
22 provided by other law or this [act] or the partnership agreement of a domestic domesticating
23 statutory trust with respect to any interest holder liability preserved under paragraph (1) as if the
24 domestication had not occurred.

(e) When a domestication becomes effective, a foreign statutory trust that is the domesticated trust may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section 220.

(f) If the domesticating statutory trust is a registered foreign statutory trust, the registration of the trust is canceled when the domestication becomes effective.

(g) A domestication does not require the statutory trust to wind up its affairs and does not constitute or cause the dissolution of the trust.

[ARTICLE] 8

DISSOLUTION AND WINDING UP

SECTION 801. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved only by:

(1) an administrative dissolution under Section 806; or

(2) the filing of articles of dissolution under Section 802:

~~(A) ON THE OCCURRENCE OF AN EVENT OR CIRCUMSTANCE THAT THE GOVERNING INSTRUMENT STATES CAUSES DISSOLUTION; OR~~

~~(B)~~ with the approval of all the beneficial owners; OR

(B) AS PROVIDED IN THE CERTIFICATE OF TRUST.

SECTION 802. ARTICLES OF DISSOLUTION.

(a) If dissolution of a statutory trust is authorized under Section 801, the trust shall deliver to the [Secretary of State] for filing articles of dissolution setting forth:

(1) the name of the trust; and

(2) the date of the dissolution.

(b) Except as otherwise provided in Section 204(c), a statutory trust is dissolved when articles of dissolution that comply with subsection (a) are filed by the [Secretary of State].

1 **SECTION 803. WINDING UP.**

2 (a) A dissolved statutory trust shall wind up its activities, and the trust and each series
3 thereof continues after dissolution only for the purpose of ~~its~~ winding up.

4 (b) In winding up its activities, a statutory trust shall:

5 (1) discharge the trust's debts, obligations, and other liabilities, settle and close
6 the trust's activities, and marshal and distribute the property of the trust; and

7 (2) distribute any surplus property after complying with paragraph (1) to the
8 beneficial owners in proportion to their beneficial interests.

9 (c) In winding up its activities, a statutory trust may:

10 (1) preserve the trust's activities and property as a going concern for a reasonable
11 time;

12 (2) institute, maintain, and defend actions and proceedings, whether civil,
13 criminal, or administrative;

14 (3) transfer the trust's property;

15 (4) settle disputes; and

16 (5) perform other acts necessary or appropriate to its winding up.

17 (d) Trustees of a dissolved statutory trust that has disposed of claims under Section 804
18 or 805 are not liable for breach of duty with respect to claims against the trust that are barred or
19 satisfied under Section 804 or 805.

20 (e) The dissolution of a statutory trust does not terminate the authority of its agent for
21 service of process.

22 (f) On application of any person that shows good cause, the [appropriate court] may
23 appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any
24 action that might have been done by the trust during its winding up if the action is necessary for

1 final settlement of the trust.

2 **SECTION 804. ~~NOTICE TO CLAIMANT~~ KNOWN CLAIMS AGAINST**
3 **DISSOLVED STATUTORY TRUST.**

4 (a) Except as otherwise provided in subsection ~~(e)~~ (d), a dissolved statutory trust may
5 ~~dispose~~ give notice of a known claim ~~against it by sending notice to the claimant in a record of~~
6 ~~the dissolution of the trust. The notice must:~~ under subsection (b), which has the effect provided
7 in subsection (c).

8 (b) A dissolved statutory trust may in a record notify its known claimants of the
9 dissolution. The notice must:

- 10 (1) specify the information required to be included in the claim;
- 11 (2) provide a mailing address to which the claim is to be sent;
- 12 (3) state the deadline for receipt of the claim, which may not be less than 120 days
- 13 after the date the notice is sent to the claimant; and
- 14 (4) state that the claim will be barred if not received by the deadline.

15 ~~(b)~~ (c) A claim against a dissolved statutory trust is barred if the requirements of
16 subsection ~~(a)~~ (b) are met and:

- 17 (1) the claim is not received by the specified deadline; or
- 18 (2) if the claim is timely received but rejected by the trust:
- 19 (A) the trust ~~notifies~~ causes the claimant to receive a notice in a record
- 20 stating that the claim is rejected and will be barred unless the claimant commences an action
- 21 against the trust to enforce the claim ~~by the 90th day~~ not later than 90 days after the claimant
- 22 receives the notice; and
- 23 (B) the claimant does not commence the required action ~~not later than the~~
- 24 ~~90th day~~ not later than 90 days.

(~~e~~) (d) This section does not apply to a claim based on ~~(1)~~ an event occurring after the effective date of dissolution; or ~~(2)~~ a liability that on that date is ~~unmatured or~~ contingent.

**SECTION 805. ~~PUBLICATION OF NOTICE~~ OTHER CLAIMS AGAINST
DISSOLVED STATUTORY TRUST.**

(a) A dissolved statutory trust may publish notice of its dissolution and request persons having claims against the trust to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the [county] in this state in which the dissolved statutory trust's principal office is located or, if it has none in this state, in the [county] in which the ~~trust's designated~~ office of the trust's registered agent is or was last located;

(2) describe the information required ~~for a claim~~ to be contained in a claim and
provide a mailing address to which the claim is to be sent; and

~~(3) provide a mailing address to which the claim may be sent; and~~

~~(4)~~ (3) state that a claim against the trust is barred unless an action to enforce the claim is commenced not later than ~~three~~ three years after publication of the notice.

(c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce a claim against the trust not later than ~~three~~ three years after the publication date of the notice, ~~the claim of each of the following claimants is barred:~~

(1) a claimant that did not receive notice in a record under Section 804;

(2) a claimant whose claim was timely sent to the trust but ~~was rejected or~~ not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after,

1 the effective date of dissolution.

2 (d) A claim not barred under this section or Section 804 may be enforced:

3 (1) against a dissolved statutory trust, to the extent of its undistributed property;

4 and

5 (2) except as provided in Section 806, if property of the trust have been distributed
6 after dissolution, against a beneficial owner to the extent of that person's proportionate share of
7 the claim or of the property distributed to the beneficial owner after dissolution, whichever is
8 less, but a person's total liability for all claims under this paragraph does not exceed the total
9 amount of assets distributed to the person after dissolution.

10 ~~(e) If property of the trust has been distributed after dissolution, a claim not barred under~~
11 ~~this section may be enforced against a beneficial owner to the extent of that beneficial owner's~~
12 ~~proportionate share of the property distributed to the beneficial owner after dissolution.~~
13 ~~However, a beneficial owner's total liability for all claims under this subsection does not exceed~~
14 ~~the total amount of property distributed to the beneficial owner after dissolution.~~

15 **SECTION 806. COURT PROCEEDINGS.**

16 (a) A dissolved statutory that has published a notice under Section 805 may file an
17 application with [the appropriate court] in the county where the dissolved trust's principal
18 office, or, if there is none in this state, the office of its registered agent, is located for a
19 determination of the amount and form of security to be provided for payment of claims that are
20 contingent or have not been made known to the dissolved trust or that are based on an event
21 occurring after the effective date of dissolution but which, based on the facts known to the
22 dissolved trust, are reasonably expected to arise after the effective date of dissolution. Provision
23 need not be made for any claim that is or is reasonably anticipated to be barred under Section
24 805(c).

1 (b) Not later than 10 days after the filing of the application, notice of the proceeding must
2 be given by the dissolved statutory trust to each claimant holding a contingent claim whose
3 contingent claim is shown on the records of the dissolved trust.

4 (c) The court may appoint a guardian ad litem to represent all claimants whose identities
5 are unknown in any proceeding brought under this section. The reasonable fees and expenses of
6 the guardian, including reasonable expert witness fees, must be paid by the dissolved statutory
7 trust.

8 (d) Provision by the dissolved statutory trust for security in the amount and the form
9 ordered by the court under subsection (a) satisfies the dissolved trust's obligations with respect
10 to claims that are contingent, have not been made known to the dissolved trust, or are based on
11 an event occurring after the effective date of dissolution, and such claims may not be enforced
12 against a beneficial owner that received assets in liquidation

13 **SECTION ~~806~~ 807. ADMINISTRATIVE DISSOLUTION.**

14 (a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) to
15 dissolve a statutory trust administratively if the trust does not:

16 (1) ~~is without an agent for service of process in this state for [30] days~~ pay any
17 fee, tax, or penalty required to be paid to the [Secretary of State] not later than [six months] after
18 it is due;

19 (2) ~~does not file an~~ deliver [an annual] [a biennial] report to the [Secretary of
20 State] not later than the 60th day [six months] after the it is due date; or

21 (3) ~~does not pay, not later than the 60th day after the due date, any fee, tax, or~~
22 penalty due to the [Secretary of State] have a registered agent in this state for [60] consecutive
23 days.

24 (b) If the [Secretary of State] determines that ~~a ground exists~~ one or more grounds exist

1 for administratively dissolving a statutory trust, the [Secretary of State] shall ~~file a notice of~~
2 ~~dissolution and send a copy of the notice to the trust's agent for service of process, or if the trust~~
3 ~~does not have an agent for service of process in this state, to the trust's designated office. The~~
4 ~~notice must state~~ serve the trust with notice in a record of the [Secretary of State's]
5 determination.

6 (1) ~~the effective date of the dissolution, which must be at least [60] days after the~~
7 ~~date the [Secretary of State] sends the copy; and~~

8 (2) ~~the reason for the dissolution.~~

9 (c) ~~Unless a statutory trust cures the grounds for dissolution under subsection (a) stated in~~
10 ~~the notice of dissolution before the date stated in the notice, the [Secretary of State] shall~~
11 ~~dissolve the trust administratively by preparing, signing, and filing a declaration of dissolution~~
12 ~~that states the grounds for dissolution. The [Secretary of State] shall send a copy of the~~
13 ~~declaration to the trust's agent for service of process, or if the trust does not have an agent for~~
14 ~~service of process in this state, to the trust's designated office. If a statutory trust, not later than~~
15 [60] days after service of the notice is effected under subsection (b), does not cure each ground
16 for dissolution or demonstrate to the satisfaction of the [Secretary of State] that each ground
17 determined by the [Secretary of State] does not exist, the [Secretary of State] shall dissolve the
18 trust administratively by signing a statement of administrative dissolution that recites the grounds
19 for dissolution and the effective date of dissolution. The [Secretary of State] shall file the
20 statement and serve a copy on the trust pursuant to Section 210.

21 (d) A statutory trust that is administratively dissolved continues in existence as an entity
22 but may not carry on any activities except as necessary to wind up its activities and affairs and
23 liquidate its assets under Section 803, to notify claimants under Sections 804 and 805, or to apply
24 for reinstatement under Section 808.

1 (e) The administrative dissolution of a statutory trust does not terminate the authority of
2 its registered agent.

3 **SECTION ~~807~~ 808. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
4 **~~DISSOLUTION.~~**

5 (a) A statutory trust that ~~has been~~ is dissolved administratively under Section 807 may
6 apply to the [Secretary of State] for reinstatement [not later than two years after the effective date
7 of dissolution]. The application must ~~be delivered to the [Secretary of State] for filing and state:~~

8 (1) the name of the trust ~~and the effective date of its dissolution~~ at the time of its
9 administrative dissolution and, if needed, a different name that satisfies Section 213;

10 (2) the address of the principal office of the trust and the name and address of its
11 registered agent;

12 (3) the effective date of the trust's administrative dissolution; and

13 (4) that the grounds for dissolution did not exist or have been cured; and

14 (3) ~~that the trust's name satisfies the requirements of Section 207.~~

15 (b) ~~If the [Secretary of State] determines that an application under subsection (a) contains~~
16 ~~the required information and that the information is correct, the [Secretary of State] shall prepare~~
17 ~~a declaration of reinstatement that states this determination, sign and file the original of the~~
18 ~~declaration of reinstatement, and send a copy to the trust's agent for service of process. To be~~
19 reinstated, a statutory trust must pay all fees, taxes, and penalties that were due to the [Secretary
20 of State] at the time of its administrative dissolution and all fees, taxes, and penalties that would
21 have been due to the [Secretary of State] while the trust was administratively dissolved.

22 (c) If the [Secretary of State] determines that the application contains the information
23 required by subsection (a), is satisfied that the information is correct, and determines that all
24 payments required to be made to the [Secretary of State] by subsection (b) have been made, the

1 [Secretary of State] shall cancel the statement of administrative dissolution and prepare a
2 statement of reinstatement that states the [Secretary of State's] determination and the effective
3 date of reinstatement, file the statement, and serve a copy on the statutory trust.

4 ~~(e)~~ (d) When a reinstatement ~~becomes~~ under this section is effective;

5 (1) it relates back to for all purposes and takes effect as of the effective date of the
6 administrative dissolution; and

7 (2) the statutory trust resumes carrying on its activities and affairs as if the
8 administrative dissolution had not never occurred, except for the rights of a person arising out of
9 an act or omission in reliance on the dissolution before the person knew or had reason to know
10 notice of the reinstatement.

11 **SECTION ~~808~~ 809. JUDICIAL REVIEW OF ~~REJECTION~~ DENIAL OF**
12 **REINSTATEMENT.**

13 (a) If the [Secretary of State] ~~rejects~~ denies a statutory trust's application for
14 reinstatement following administrative dissolution, the [Secretary of State] shall ~~send~~ serve the
15 trust with a notice in a record that states explains the reasons for rejection to the trust's agent for
16 service of process or, if the trust does not have an agent for service of process, to the trust's
17 designated office the denial.

18 (b) ~~A statutory trust may obtain review of the rejection by petitioning the [appropriate~~
19 ~~court] to set aside the dissolution. The petition must be delivered to the [Secretary of State] and~~
20 ~~contain a copy of the [Secretary of State's] declaration of dissolution, the trust's application for~~
21 ~~reinstatement, and the [Secretary of State's] notice of rejection. A statutory trust may seek~~
22 judicial review of denial of reinstatement in the [appropriate court] not later than [30] days after
23 service of the notice of denial.

24 ~~(c) The court may order the [Secretary of State] to reinstate a dissolved statutory trust or~~

1 ~~take other action the court considers appropriate.~~

2 **[ARTICLE] 9**

3 **FOREIGN STATUTORY TRUSTS**

4 **SECTION 901. GOVERNING LAW.**

5 (a) The law of the jurisdiction of formation of a foreign statutory trust governs:

6 (1) the internal affairs of the trust;

7 (2) the liability of a beneficial owner as beneficial owner and trustee as trustee for
8 a debt, obligation, or ~~other~~ liability of the trust or a series thereof; and

9 (3) the ~~ENFORCEABILITY OF~~ EXTENT TO WHICH:

10 (A) a debt, obligation, or ~~other~~ liability of the foreign statutory trust ~~OR~~
11 ~~ANY SERIES THEREOF IS ENFORCEABLE~~ against the property of ~~THE TRUST OR ANY SERIES THEREOF;~~

12 AND

13 (B) A DEBT, OBLIGATION, OR LIABILITY OF A SERIES OF A FOREIGN
14 STATUTORY TRUST IS ENFORCEABLE AGAINST THE PROPERTY OF THE TRUST OR ANY OTHER SERIES
15 THEREOF.

16 (b) ~~The [Secretary of State] may not deny a foreign statutory trust a certificate of~~
17 ~~registration~~ A foreign statutory trust is not precluded from registering to do business in this state
18 because of any difference between the law of its jurisdiction of formation and the ~~laws~~ law of
19 this state.

20 (c) ~~A certificate of registration~~ Registration of a foreign statutory trust to do business in
21 this state does not authorize a the foreign trust to engage in any ~~business~~ activities or affairs or
22 exercise any power that a ~~statutory~~ domestic trust may not engage in or exercise in this state.

23 **SECTION 902. REGISTRATION TO DO BUSINESS IN THIS STATE.**

24 (a) A foreign statutory trust may not do business in this state until it registers with the

1 [Secretary of State] under this [article].

2 (b) A foreign statutory trust doing business in this state may not maintain an action or
3 proceeding in this state unless it is registered to do business in this state.

4 (c) The failure of a foreign statutory trust to register to do business in this state does not
5 impair the validity of a contract or act of the trust or preclude it from defending an action or
6 proceeding in this state.

7 (d) A limitation on the liability of a beneficial owner or trustee of a foreign statutory trust
8 is not waived solely because the trust does business in this state without registering to do
9 business in this state.

10 (e) Section 901(a) and (b) applies even if a foreign statutory trust fails to register under
11 this [article].

12 **SECTION 902 903. APPLICATION FOR CERTIFICATE OF REGISTRATION**
13 **FOREIGN REGISTRATION STATEMENT.**

14 ~~(a)~~ To register to do business in this state, a foreign statutory trust ~~may apply for a~~
15 ~~certificate of registration to do business in this state by delivering an application~~ must deliver a
16 foreign registration statement to the [Secretary of State] for filing. The ~~application~~ statement
17 ~~must contain~~ state:

18 (1) the name of the trust and, if the name does not comply with Section ~~207~~ 213,
19 an alternate name adopted pursuant to Section 906(a);

20 (2) that the trust is a foreign statutory trust;

21 ~~(2)~~ (3) the name of the state or other trust's jurisdiction of formation of the trust;

22 ~~(3)~~ (4) the street and mailing address addresses of the trust's principal office and,
23 ~~if the laws law of the jurisdiction of formation of the trust require it~~ requires the trust to maintain
24 an office in that jurisdiction, the street and mailing address addresses of the required office; and

(4) ~~(5)~~ the name and street and mailing ~~address~~ addresses of the trust's ~~initial~~
registered agent for service of process in this state.

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

SECTION 904. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.

A registered foreign statutory trust shall deliver to the [Secretary of State] for filing an
amendment to its foreign registration statement if there is a change in:

- (1) the name of the trust;
- (2) the trust's jurisdiction of formation;
- (3) an address required by Section 903(4); or
- (4) the information required by Section 903(5).

SECTION ~~903~~ 905. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

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

- (1) maintaining, defending, mediating, arbitrating, or settling an action or
proceeding;
- (2) carrying on any activity concerning its internal affairs, including holding
meetings of its beneficial owners or trustees ~~or carrying on any other activity concerning its~~
~~internal affairs;~~
- (3) maintaining accounts ~~or depositing assets~~ in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of
~~the trust's own beneficial interests or securities of the trust~~ or maintaining trustees or depositories

1 with respect to those ~~beneficial interests or~~ securities;

2 (5) selling through independent contractors;

3 (6) soliciting or obtaining orders, ~~whether by mail or electronic means or through~~
4 ~~employees or agents or otherwise, by any means,~~ if the orders require acceptance outside this
5 state before they become ~~contractual obligations~~ contracts;

6 (7) creating or acquiring indebtedness, mortgages, or security interests in ~~real or~~
7 ~~personal~~ property;

8 (8) securing or collecting debts or enforcing mortgages or ~~other~~ security interests
9 in property securing the debts, and holding, protecting, or maintaining property ~~so acquired~~;

10 (9) conducting an isolated transaction that ~~is completed by the 30th day and~~ is not
11 in the course of similar transactions; and

12 (10) owning, without more, property; and

13 ~~(10)~~ (11) doing business in interstate commerce.

14 (b) A person does not do business in this state solely by being a beneficial owner or
15 trustee of a foreign statutory trust that does business in this state.

16 ~~(b)~~ (c) This section does not apply in determining the contacts or activities that may
17 subject a foreign statutory trust to service of process, taxation, or regulation under law of this
18 state other than this [act].

19 ~~(c) A person does not do business in this state solely because of being a trustee or a~~
20 ~~beneficial owner of a foreign statutory trust that does do business in this state.~~

21 **~~SECTION 904. FILING OF CERTIFICATE OF REGISTRATION.~~** Unless the
22 [Secretary of State] determines that an application for a certificate of registration does not
23 comply with the filing requirements of this [act], the [Secretary of State], on payment of all filing
24 fees, shall file the application, prepare, sign, and file a certificate of registration to do business in

1 this state, and send a copy of the filed certificate, together with a receipt for the fees, to the
2 foreign statutory trust or its representative.

3 **SECTION 905. CERTIFIED COPY OF CERTIFICATE OF REGISTRATION.**

4 (a) ~~The [Secretary of State], on request and payment of the required fee, shall furnish a~~
5 ~~certified copy of the certificate of registration for a qualified foreign statutory trust if the records~~
6 ~~filed with the [Secretary of State] show that the [Secretary of State] has filed a certificate of~~
7 ~~registration, has not revoked the certificate of registration, and has not filed a notice of~~
8 ~~cancellation.~~

9 (b) ~~Subject to any limitation stated in the certificate, the certified copy of the certificate of~~
10 ~~registration issued by the [Secretary of State] to a foreign statutory trust may be relied upon as~~
11 ~~conclusive evidence that the trust is authorized to do business in this state as of the date of the~~
12 ~~certificate.~~

13 **SECTION 906. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.**

14 (a) A foreign statutory trust whose name does not comply with Section ~~207~~ 213 may not
15 ~~obtain a certificate of registration~~ register to do business in this state until it adopts, for the
16 purpose of doing business in this state, an alternate name that complies with Section ~~207~~ 213. A
17 registered foreign statutory trust that ~~adopts~~ registers under an alternate name under this
18 subsection ~~and obtains a certificate of registration with the name~~ need not comply with [this
19 state's ~~fictitious or assumed~~ or fictitious name statute]. After ~~obtaining a certificate of~~
20 ~~registration~~ registering to do business in this state with an alternate name, a registered foreign
21 statutory trust shall do business in this state under:

22 (1) the alternate name;

23 (2) the trust's name, with the addition of its jurisdiction of formation; or

24 (3) the name unless the trust an assumed or fictitious name the trust is authorized

1 to use under [this state's ~~fictitious or assumed~~ or fictitious name statute] to do business in this
2 state under another name.

3 (b) If a ~~qualified~~ registered foreign statutory trust changes its name to one that does not
4 comply with Section ~~207~~ 213, it may not ~~thereafter~~ do business in this state until it complies with
5 subsection (a) ~~and obtains an amended certificate of registration~~ by amending its registration to
6 adopt an alternate name that complies with Section 213.

7 **SECTION 907. WITHDRAWAL OF REGISTRATION OF REGISTERED**
8 **FOREIGN STATUTORY TRUST.**

9 (a) A registered foreign statutory trust may withdraw its registration by delivering a
10 statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must
11 state:

12 (1) the name of the trust and its jurisdiction of formation;

13 (2) that the trust is not doing business in this state and that it withdraws its
14 registration to do business in this state;

15 (3) that the trust revokes the authority of its registered agent to accept service on
16 its behalf in this state; and

17 (4) an address to which service of process may be made under subsection (b).

18 (b) After the withdrawal of the registration of a foreign statutory trust, service of process
19 in any action or proceeding based on a cause of action arising during the time the trust was
20 registered to do business in this state may be made pursuant to Section 220.

21 **SECTION 908. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC**
22 **FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.** A registered
23 foreign statutory trust that converts to a domestic limited liability partnership or to a domestic
24 entity that is organized, incorporated, or otherwise formed through the delivery of a record to the

1 [Secretary of State] for filing is deemed to have withdrawn its registration on the effective date
2 of the conversion.

3 **SECTION 909. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO**
4 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

5 (a) A registered foreign statutory trust that has dissolved and completed winding up or
6 has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise
7 formed through the public filing of a record, other than a limited liability partnership, shall
8 deliver a statement of withdrawal to the [Secretary of State] for filing. The statement must state:

9 (1) in the case of a trust that has completed winding up:

10 (A) its name and jurisdiction of formation;

11 (B) that the trust surrenders its registration to do business in this state; and

12 (2) in the case of a foreign trust that has converted:

13 (A) the name of the converting trust and its jurisdiction of formation;

14 (B) the type of entity to which the trust has converted and its jurisdiction
15 of formation;

16 (C) that the converted entity surrenders the converting trust's registration
17 to do business in this state and revokes the authority of the converting trust's registered agent to
18 act as registered agent in this state on the behalf of the trust or the converted entity; and

19 (D) a mailing address to which service of process may be made under
20 subsection (b).

21 (b) After a withdrawal under this section of a foreign statutory trust that has converted to
22 another type of entity is effective, service of process in any action or proceeding based on a
23 cause of action arising during the time the foreign statutory trust was registered to do business in
24 this state may be made pursuant to Section 220.

1 **SECTION 910. TRANSFER OF REGISTRATION.**

2 (a) When a registered foreign statutory trust has merged into a foreign entity that is not
3 registered to do business in this state or has converted to a foreign entity required to register with
4 the [Secretary of State] to do business in this state, the foreign statutory trust shall deliver to the
5 [Secretary of State] for filing an application for transfer of registration. The application must
6 state:

7 (1) the name of the foreign statutory trust before the merger or conversion;

8 (2) that before the merger or conversion the registration pertained to a foreign
9 statutory trust;

10 (3) the name of the applicant foreign entity into which the foreign statutory trust
11 has merged or to which it has been converted, and, if the name does not comply with Section
12 213, an alternate name adopted pursuant to Section 906(a);

13 (4) the type of entity into which it has merged or to which it has been converted
14 and its jurisdiction of formation;

15 (5) the street and mailing addresses of the principal office of the applicant foreign
16 entity and, if the law of that entity's jurisdiction of formation requires the entity to maintain an
17 office in that jurisdiction, the street and mailing addresses of that office; and

18 (6) the name and street and mailing addresses of the applicant foreign entity's
19 registered agent in this state.

20 (b) When an application for transfer of registration takes effect, the registration of the
21 foreign statutory trust to do business in this state is transferred without interruption to the entity
22 into which it has merged or to which it has been converted.

1 **SECTION ~~907~~ 911. REVOCATION OF CERTIFICATE TERMINATION OF**
2 **REGISTRATION.**

3 (a) The [Secretary of State] may ~~revoke the certificate of~~ terminate the registration of a
4 ~~qualified~~ registered foreign statutory trust in the manner provided in subsections (b) and (c) if the
5 trust does not:

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

7 ~~(2) deliver for filing a statement of change not later than the 60th day after a~~
8 ~~change has occurred in the name or address of the agent;~~

9 ~~(3) file an [annual] [biennial] report pursuant to Section 213 not later than the~~
10 ~~60th day after the due date; or~~

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

13 (1) pay, not later than [60] days after the due date, any fee, tax, interest, or penalty
14 required to be paid to the [Secretary of State] under this [article] or law other than this [act];

15 (2) deliver to the [Secretary of State] for filing, not later than [60] days after the
16 due date, [an annual] [a biennial] report required under Section 221;

17 (3) have a registered agent as required by Section 216; or

18 (4) deliver to the [Secretary of State] for filing a statement of change under
19 Section 217 not later than 30 days after a change has occurred in the name or address of the
20 registered agent.

21 (b) ~~To revoke a certificate of registration of a foreign statutory trust, the [Secretary of~~
22 ~~State] must prepare, sign, and file a notice of revocation and send a copy to the trust's agent for~~
23 ~~service of process in this state, or if the trust does not appoint and maintain a agent for service of~~
24 ~~process in this state, to the trust's designated office. The [Secretary of State] may terminate the~~

1 registration of a registered foreign statutory trust by:

2 (1) filing a notice of termination or noting the termination in the records of the
3 [Secretary of State], and

4 (2) delivering a copy of the notice or the information in the notation to the trust's
5 registered agent, or if the trust does not have a registered agent, to the trust's principal office.

6 (c) The notice must state or the information in the notation under subsection (b) must
7 include:

8 (1) the effective date of the ~~revocation~~ termination, which must be at least [60]
9 days after the date the [Secretary of State] ~~sends~~ delivers the copy; and

10 (2) the ~~basis for the revocation~~ grounds for termination under subsection (a).

11 ~~(c) Unless a foreign statutory trust cures the grounds for revocation under subsection (a)~~
12 ~~stated in the notice of revocation before the date stated in the notice, the authority of the trust to~~
13 ~~do business in this state ceases on that date.~~

14 ~~(d) If a foreign statutory trust cures the grounds stated in the notice of revocation under~~
15 ~~subsection (b), the [Secretary of State] shall indicate that the trust is reinstated on the filed notice.~~
16 ~~The reinstatement of the trust relates back to for all purposes and takes effect as of the date of the~~
17 ~~notice of revocation, except for the rights of a person arising out of an act or omission in reliance~~
18 ~~on the dissolution before the person knew or had reason to know of the reinstatement.~~

19 (d) The authority of a registered foreign statutory trust to do business in this state ceases
20 on the effective date of the notice of termination or notation under subsection (b) unless before
21 that date the trust cures each ground for termination stated in the notice or notation. If the trust
22 cures each ground, the [Secretary of State] shall file a record so stating.

23 **SECTION 908. CANCELLATION OF CERTIFICATE OF REGISTRATION.**

24 ~~(a) To cancel its certificate of registration to do business in this state, a qualified foreign~~

1 statutory trust must deliver to the [Secretary of State] for filing a notice of cancellation that
2 states:

3 (1) the name of the trust;

4 (2) the date of filing of its initial certificate of registration;

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

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

7 (b) A certificate of registration is canceled when the notice of cancellation becomes
8 effective under Section 204.

9 **~~SECTION 909. EFFECT OF FAILURE TO HAVE CERTIFICATE OF~~**
10 **~~REGISTRATION.~~**

11 (a) ~~A foreign statutory trust doing business in this state may not maintain an action or~~
12 ~~proceeding in this state unless it has a certificate of registration to do business in this state.~~

13 (b) ~~The failure of a foreign statutory trust to have a certificate of registration to do~~
14 ~~business in this state does not impair the validity of a contract or act of the trust or preclude the~~
15 ~~trust from defending an action or proceeding in this state.~~

16 (c) ~~A trustee or beneficial owner of a foreign statutory trust is not liable for a debt,~~
17 ~~obligation, or other liability of the trust solely because the trust did business in this state without~~
18 ~~a certificate of registration.~~

19 (d) ~~If a foreign statutory trust does business in this state without a certificate of~~
20 ~~registration or cancels its certificate of registration, the trust may be served in accordance with~~
21 ~~Section 212 for actions arising out of doing business in this state.~~

22 **[SECTION 910 912. ACTION BY [ATTORNEY GENERAL].** The [Attorney
23 General] may maintain an action to enjoin a foreign statutory trust from doing business in this
24 state in violation of this [article].]

1 [ARTICLE] 10

2 MISCELLANEOUS PROVISIONS

3 SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

6 SECTION 1002. SEVERABILITY CLAUSE. If any provision of this [act] or its
7 application to any person or circumstance is held invalid, the invalidity does not affect other
8 provisions or applications of this [act] which can be given effect without the invalid provision or
9 application, and to this end the provisions of this [act] are severable.

10 Legislative Note: Include this section only if this state lacks a general severability statute or
11 decision by the highest court of this state stating a general rule of severability.

12 SECTION ~~1002~~ 1003. RELATION TO ELECTRONIC SIGNATURES IN
13 GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, ~~and~~ or
14 supersedes the ~~federal~~ Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
15 Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15
16 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in
17 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

18 SECTION ~~1003~~ 1004. SAVINGS CLAUSE. This [act] does not affect an action
19 commenced, proceeding brought, or right accrued before [the effective date of this [act]] takes
20 effect.

21 ~~SECTION 1004. RESERVATION OF POWER TO AMEND OR REPEAL. The~~
22 ~~[name of state legislature] has power to amend or repeal all or part of this [act] at any time and~~
23 ~~all statutory trusts and foreign statutory trusts subject to this [act] are governed by the~~
24 ~~amendment or repeal.~~

25 SECTION 1005. APPLICATION TO EXISTING RELATIONSHIPS.

1 (a) This [act] does not limit, prohibit, or invalidate the existence, acts, or obligations of
2 any common-law trust created or doing business in this state before, on, or after [the effective
3 date of ~~the~~ this [act]]. The law of this state other than this [act] pertaining to trusts apply to
4 common-law trusts.

5 (b) A common-law trust created under the law of this state before, on, or after [the
6 effective date of this [act]] that does not have a predominantly donative purpose may elect to be
7 governed by this [act] by filing a certificate of trust under Section 201.

8 [(c) A trust created pursuant to a statute of this state that was required by that statute to
9 file a certificate of trust with [the Secretary of State] before [the effective date of this [act]] may
10 elect to be governed by the provisions of this [act] by filing an amendment to its certificate of
11 trust under Section 202.]

12 [(d) On [two years after the effective date of this [act]], this [act] governs the organization
13 and internal affairs of all trusts created pursuant to a statute of this state that was required by that
14 statute to file a certificate of trust with the [Secretary of State] before [the effective date of this
15 [act]].]

16 **SECTION 1006. REPEALS.** [On [all-inclusive date], the] [The] following are
17 repealed:

18 (1) [the state Statutory Trust Act as amended and in effect immediately before [the
19 effective date of this [act]]];

20 (2) [the state Business Trust Act as amended and in effect immediately before [the
21 effective date of this [act]]]; and

22 (3) [the state Real Estate Investment Trust Act as amended and in effect immediately
23 before [the effective date of this [act]]].

24 **SECTION 1007. EFFECTIVE DATE.** This [act] takes effect