

UNIFORM STATUTORY TRUST ENTITY ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM STATUTORY TRUST ENTITY ACT

[ARTICLE] 1

GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. In this [act]:

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

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

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

(4) “Designated office” means:

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

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

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

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

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

(8) “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.

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

(10) “Qualified foreign statutory trust” means a foreign statutory trust that is registered to do business in this state.

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

(12) “Related person”, with respect to a person that is a trustee, officer, employee, manager, or beneficial owner, means:

(A) the spouse of the person;

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

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

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

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

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

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

(14) “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) “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) “Statutory trust” means an entity formed under this [act].

(17) “Trust” includes a common-law trust, statutory trust, and foreign statutory trust.

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

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

SECTION 103. GOVERNING INSTRUMENT.

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

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

(2) the rights, interests, duties, obligations, and powers of, and the relations among,

the trustees, the beneficial owners, the statutory trust, and other persons.

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

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

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

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

- (1) provide the means by which beneficial ownership is determined and evidenced;
- (2) limit a beneficial owner's right to transfer its beneficial interest;
- (3) provide for one or more series under [Article] 4;
- (4) to the extent that voting rights are granted under the governing instrument,

include terms relating to:

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

(B) waiver of notice;

(C) action by consent without a meeting;

(D) establishment of record dates, quorum requirements, or voting in person, by proxy, any form of communication that creates a record, telephone, or video conference, or in any other manner; or

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

- (5) provide for the creation of one or more classes of trustees, beneficial owners, or

beneficial interests having separate rights, powers, or duties;

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

(A) amendment of the governing instrument;

(B) merger, conversion, or reorganization;

(C) appointment of trustees;

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

(E) dissolution of the statutory trust;

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

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

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

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

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

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

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

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

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

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

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

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

(1) vary the requirements of [Article] 2;

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

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

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

(5) vary the standards of conduct for trustees under Section 505, but the governing

instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;

(6) restrict the nonliability under Section 506 of a trustee or other person that relies in good faith on the terms of the governing instrument, the records of the statutory trust, or the opinions, reports, or statements of an expert, but the governing instrument may prescribe the standards for assessing whether the reliance was in good faith, if the standards are not manifestly unreasonable;

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

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

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

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

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

(12) restrict the right of a beneficial owner to bring an action under Section 609, but the

governing instrument may subject the right to additional standards and restrictions, including the a requirement that beneficial owners owning a specified amount or type of beneficial interest including, in a series trust, an interest in the series, join in bringing the action, if the additional standards and restrictions are not manifestly unreasonable;

(13) vary the provisions pertaining to conversion and merger in Sections 701, 704, 705, 708, and 709;

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

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

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

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

SECTION 106. RULE OF CONSTRUCTION.

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

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

[ARTICLE] 2

FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS

SECTION 201. CERTIFICATE OF TRUST.

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

(b) A certificate of trust must state:

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

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

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

(4) whether the trust may have one or more series.

(c) A certificate of trust may contain any term in addition to those required by subsection (b).

(d) Subject to Section 204(c), a statutory trust is formed when a certificate of trust that complies with subsection (b) is filed by the [Secretary of State].

(e) A filed certificate of trust, a filed statement of cancellation or change, or filed articles of conversion or merger prevail over inconsistent terms of a trust instrument.

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF TRUST.

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

(1) the name of the trust;

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

(3) the changes to the certificate.

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

(1) cause the certificate to be amended; or

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

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

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

SECTION 203. SIGNING OF RECORDS.

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

(b) Any person may sign by an attorney in fact any record filed pursuant to this [act].

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

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

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

[act].

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

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

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

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

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

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

(A) the specified date; or

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

SECTION 205. CORRECTING FILED RECORD.

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

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

(1) may not state a delayed effective date;

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

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

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

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

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

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

SECTION 206. CERTIFICATE OF GOOD STANDING.

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

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

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

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

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

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

(b) A certificate of good standing must state:

(1) the name of the trust;

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

and

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

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

SECTION 207. NAME OF STATUTORY TRUST.

(a) Except as otherwise provided in subsection (c), the name of a statutory trust must be distinguishable in the records of the [Secretary of State] from:

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

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

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

(c) A person may apply to the [Secretary of State] to use a name that does not comply with

subsection (a). The [Secretary of State] shall authorize use of the name applied for if, as to a conflicting name:

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

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

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

(A) has merged with the applicant;

(B) has been converted into the applicant; or

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

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

SECTION 208. RESERVATION OF NAME.

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

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

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

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

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

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

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

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

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

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

(1) a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the

paragraph of subsection (a) that applies to the person; or

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

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

SECTION 209. AGENT FOR SERVICE OF PROCESS.

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

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

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

- (1) the name of the trust;
- (2) the street and mailing address of the current designated office of the trust;
- (3) if the designated office is to be changed, the street and mailing address of the new designated office;
- (4) the name and street and mailing address of the current agent of the trust for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

SECTION 211. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

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

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

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

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

SECTION 212. SERVICE OF PROCESS.

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

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

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

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

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

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

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

SECTION 213. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE].

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

(1) in the case of a statutory trust:

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

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

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

(A) any alternate name adopted under Section 906;

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

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

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

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

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

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

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

[ARTICLE] 3

GOVERNING LAW; AUTHORIZATION; DURATION; POWERS

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

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

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

SECTION 303. PERMISSIBLE PURPOSES.

(a) Except as otherwise provided in subsection (b), a statutory trust may have any lawful purpose.

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

SECTION 304. STATUTORY TRUST SOLELY LIABLE FOR DEBTS, OBLIGATIONS, OR OTHER LIABILITIES OF STATUTORY TRUST. A debt, obligation, or other liability of a statutory trust or series thereof is solely a debt, obligation, or other liability of the trust or series thereof. A beneficial owner, trustee, agent of the trust, or agent of the trustee is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the trust or series thereof solely by reason of being or acting as a trustee, beneficial owner, agent of the trust, or agent of the trustee.

SECTION 305. NO CREDITOR RIGHTS IN TRUST PROPERTY. Except as

otherwise provided in Section 606, a creditor of a beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a statutory trust or any series thereof.

SECTION 306. DURATION.

(a) A statutory trust has perpetual existence.

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

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

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

SECTION 307. POWER TO HOLD PROPERTY; TITLE TO TRUST PROPERTY.

A statutory trust may hold or take title to property in its own name, or in the name of a trustee in the trustee's capacity as trustee, whether in an active, passive, or custodial capacity.

SECTION 308. POWER TO SUE AND BE SUED.

(a) A statutory trust may sue and be sued in its own name.

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

[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 that 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 having one or more series is set forth in the certificate of trust as required by Section 201(b)(4).

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

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

SECTION 402. LIABILITY OF SERIES TRUST.

(a) In a series trust:

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

(2) none of the debts, obligations, or other liabilities incurred or otherwise existing with respect to the trust generally or the property of any other series thereof is enforceable against the property of the series;.

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

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

SECTION 404. DISSOLUTION OF SERIES.

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

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

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

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

[ARTICLE 5]

TRUSTEES AND TRUST MANAGEMENT

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

SECTION 502. TRUSTEE POWERS. A trustee may exercise:

- (1) powers conferred by the governing instrument;
- (2) except as limited by the governing instrument, any other powers necessary or convenient to carry out the business and affairs of the statutory trust; and
- (3) any 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 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, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.

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

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

SECTION 506. GOOD-FAITH RELIANCE. A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 104(c)(8), is not liable to the trust or to a beneficial owner for breach of any duty, including a fiduciary duty, to the extent the breach results from good-faith reliance on:

(1) a term of the governing instrument;

(2) a record of the statutory trust; or

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

SECTION 507. INTERESTED TRANSACTIONS.

(a) In this section, “covered party” means a trustee, officer, employee, or manager of a statutory trust, or a related person of a trustee, officer, employee, or manager.

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

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

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

SECTION 509. INDEMNIFICATION, ADVANCEMENT, AND EXONERATION.

(a) A statutory trust may indemnify and hold harmless a trustee or beneficial owner or other person with respect to any claim or demand on the person by reason of the person’s relationship with the trust if the claim or demand does not arise from the person’s bad faith, willful misconduct, or reckless indifference.

(b) Expenses, including reasonable attorney’s fees and costs, incurred by a trustee, beneficial owner, or any other person in connection with a claim or demand on the person by reason of the person’s relationship to a statutory trust may be paid by the trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (a).

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

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 a trustee to which 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.

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. [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

SECTION 601. BENEFICIAL INTEREST.

- (a) A beneficial interest in a statutory trust is freely transferable.
- (b) A beneficial owner's interest in a statutory trust is personal property regardless of the nature of the property of the trust.
- (c) A beneficial owner's interest is not an interest in specific property of a statutory trust.
- (d) A beneficial owner does not have a preemptive right to subscribe to any additional issue of beneficial interests or any other interest of a statutory trust.

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

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

SECTION 603. CONTRIBUTION BY BENEFICIAL OWNER.

- (a) A contribution of a beneficial owner to a statutory trust may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to

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

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

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

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

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

(3) forced sale or forfeiture of the defaulting beneficial owner's beneficial interest;

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

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

SECTION 604. DISTRIBUTION TO BENEFICIAL OWNER.

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

(b) A beneficial owner does not have a right to demand or to receive a distribution from the trust in any form other than money.

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

SECTION 605. REDEMPTION OF BENEFICIAL INTEREST. A statutory trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series thereof. A beneficial interest so acquired 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 all other orders necessary to give effect to the charging order.

(c) A charging order issued under subsection (b) constitutes 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 unsatisfied amount of the judgment has been satisfied.

(d) A statutory trust or beneficial owner that is not subject to the charging order 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 law applicable to the beneficial interest.

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

SECTION 608. BENEFICIAL OWNER'S RIGHT TO INFORMATION. A beneficial owner has the right to receive from the statutory trust or a trustee information relating to the affairs of a statutory trust that is reasonably related to the beneficial owner's interest. The beneficial owner may enforce this right by summary proceeding in the [appropriate court].

SECTION 609. ACTION BY BENEFICIAL OWNER.

(a) A beneficial owner may maintain a direct action against a statutory trust to redress an injury sustained by, or to enforce a duty owed to, the beneficial owner if the beneficial owner can prevail without showing an injury or breach of duty to the trust.

(b) A beneficial owner may maintain a derivative action in the [appropriate court] to redress an injury sustained by, or enforce a duty owed to, a statutory trust if:

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

(2) a demand would be futile.

(c) A derivative action on behalf of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and:

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

(2) 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.

(d) In a derivative action on behalf of the statutory trust, the complaint must state with particularity:

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

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

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

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

(2) if the plaintiff receives any proceeds, it shall immediately remit them to the trust.

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

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

[ARTICLE] 7

CONVERSION AND MERGER

SECTION 701. DEFINITIONS. In this [article]:

- (1) “Constituent organization” means an organization that is party to a merger.
- (2) “Constituent statutory trust” means a constituent organization that is a statutory trust.
- (3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 702 through 705.
- (4) “Converting organization” means an organization that converts into another organization pursuant to Section 702.
- (5) “Converting statutory trust” means a converting organization that is a statutory trust.
- (6) “Governing law” means the law that governs the organization’s internal affairs.
- (7) “Organization” means a common-law trust that does not have a predominantly donative purpose; general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; corporation; or foreign statutory trust. The term includes a domestic or foreign organization whether or not organized for profit.
- (8) “Organizational documents” means the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.
- (9) “Surviving organization” means an organization into which one or more other organizations are merged, whether the surviving organization preexisted the merger or was created by the merger.

SECTION 702. CONVERSION.

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

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

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

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

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

(4) the organizational documents of the converted organization.

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

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

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

(1) as provided in the plan; and
(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

SECTION 704. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a conversion is approved:

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

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

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

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

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

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

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

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

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

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

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

SECTION 705. EFFECT OF CONVERSION.

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

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

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

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

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

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

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

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

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

in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to do business in this state may be served in accordance with Section 212.

SECTION 706. MERGER.

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

- (1) the merger is not prohibited by the governing law of any constituent organization; and
- (2) each of the other organizations complies with its governing law in effecting the merger.

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

- (1) the name and form of each constituent organization;
- (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting or exchanging the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
- (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and
- (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

SECTION 707. ACTION ON PLAN OF MERGER BY CONSTITUENT STATUTORY TRUST.

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

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

(1) as provided in the plan; and

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

SECTION 708. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 709. EFFECT OF MERGER.

(a) When a merger becomes effective:

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

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

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

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

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

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

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

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

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

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

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

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization if, before the merger, the constituent organization was subject to suit in this state on

the obligation. A surviving organization that is a foreign organization not authorized to do business in this state may be served in accordance with Section 212.

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

[ARTICLE] 8

DISSOLUTION AND WINDING UP

SECTION 801. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved only by:

- (a) an administrative dissolution under Section 806; or
- (b) the filing of articles of dissolution under Section 802:

- (1) on the occurrence of an event or circumstance that the governing instrument states causes dissolution; or

- (2) with the approval of all the beneficial owners.

SECTION 802. ARTICLES OF DISSOLUTION.

(a) If dissolution of a statutory trust is authorized under Section 801, the trust shall deliver to the [Secretary of State] for filing articles of dissolution setting forth:

- (1) the name of the trust; and
 - (2) the date of the dissolution.

(b) Except as otherwise provided in Section 204(c), a statutory trust is dissolved when articles of dissolution that comply with subsection (a) are filed by the [Secretary of State].

SECTION 803. WINDING UP.

(a) A dissolved statutory trust shall wind up its activities, and the trust and each series thereof continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a statutory trust shall:

- (1) discharge the trust's debts, obligations, and other liabilities, settle and close the trust's activities, and marshal and distribute the property of the trust; and

(2) distribute any surplus property after complying with paragraph (1) to the beneficial owners in proportion to their beneficial interests.

(c) In winding up its activities, a statutory trust may:

(1) preserve the trust's activities and property as a going concern for a reasonable time;

(2) institute, maintain, and defend actions and proceedings, whether civil, criminal, or administrative;

(3) transfer the trust's property;

(4) settle disputes; and

(5) perform other acts necessary or appropriate to the winding up.

(d) Trustees of a dissolved statutory trust that has disposed of claims under Sections 804 or 805 are not liable for breach of duty with respect to claims against the trust that are barred or satisfied under Section 804 or 805.

(e) The dissolution of a statutory trust does not terminate the authority of its agent for service of process.

(f) On application of any person that shows good cause, the [appropriate court] may appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any action that might have been done by the trust during its winding up if the action is necessary for final settlement of the trust.

SECTION 804. NOTICE TO CLAIMANT.

(a) Except as otherwise provided in subsection (c), a dissolved statutory trust may dispose of a known claim against it by sending notice to the claimant in a record of the dissolution of the trust. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is sent to the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(b) A claim against a dissolved statutory trust is barred if the requirements of subsection (a) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the trust:

(A) the trust notifies the claimant in a record that the claim is rejected and will be barred unless the claimant commences an action against the trust to enforce the claim by the 90th day after the claimant receives the notice; and

(B) the claimant does not commence the required action by the 90th day.

(c) This section does not apply to a claim based:

(1) on an event occurring after the effective date of dissolution; or

(2) on a liability that on that date is unmatured or contingent.

SECTION 805. PUBLICATION OF NOTICE.

(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 was last located;

(2) describe the information required for a claim and provide a mailing address to which the claim may be sent; and

(3) state that a claim against the trust is barred unless an action to enforce the claim is commenced not later than [three] years after publication of the notice.

(c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), unless the claimant commences an action to enforce the claim against the trust not later than [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 not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced against undistributed property.

(e) A claim not barred under this section may be enforced if property of the trust has been distributed after dissolution, against a beneficial owner to the extent of that beneficial owner's proportionate share of the property distributed to the beneficial owner after dissolution. However, a beneficial owner's total liability for all claims under this subsection does not exceed the total amount of property distributed to the beneficial owner after dissolution.

SECTION 806. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may dissolve a statutory trust administratively if:

(1) the trust is without an agent for service of process in this state for [30] days;

(2) the trust does not file an annual report by the 60th day after it is due; or

(3) the trust does not pay, by the 60th day after the due date, any fee, tax, or penalty due to the [Secretary of State].

(b) If the [Secretary of State] determines that a ground exists for administratively dissolving a statutory trust, the [Secretary of State] shall file a notice of dissolution and send a copy to the trust's agent for service of process, or if the trust does not have an agent for service of process in this state, to the trust's designated office. The notice must state:

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

(2) the reason for the dissolution.

(c) Unless a statutory trust cures the failure to comply with subsection (a) stated in the notice of dissolution before the date stated in the notice, the [Secretary of State] shall dissolve the trust administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall file a notice of dissolution and send a copy to the trust's agent for service of process, or if the trust does not have an agent for service of process in this state, to the trust's designated office.

SECTION 807. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A statutory trust that has been dissolved administratively may apply to the [Secretary of State] for reinstatement. The application must be delivered to the [Secretary of State] for filing and state:

(1) the name of the trust and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the trust's name satisfies the requirements of Section 207.

(b) If the [Secretary of State] determines that an application under subsection (a) contains the required information and that the information is correct, the [Secretary of State] shall prepare a

declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and send a copy to the trust's agent for service of process.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the dissolution had not occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

SECTION 808. APPEAL FROM REJECTION OF REINSTATEMENT.

(a) If the [Secretary of State] rejects a statutory trust's application for reinstatement following administrative dissolution, the [Secretary of State] shall send a notice that states the reason for rejection to the trust's agent for service of process.

(b) A statutory trust may appeal from the rejection by petitioning the [appropriate court] to set aside the dissolution. The petition must be delivered to the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the trust's application for reinstatement, and the [Secretary of State's] notice of rejection.

(c) The court may order the [Secretary of State] to reinstate a dissolved statutory trust or take other action the court considers appropriate.

[ARTICLE] 9

FOREIGN STATUTORY TRUSTS

SECTION 901. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign statutory trust governs:

(1) the internal affairs of the trust;

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

(3) the enforceability of a debt, obligation, or other liability of the foreign statutory trust or any series thereof against the property of the trust or series.

(b) The [Secretary of State] may not deny a foreign statutory trust a certificate of registration by reason of any difference between the law of the jurisdiction of formation of the foreign statutory trust and the laws of this state.

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

SECTION 902. APPLICATION FOR CERTIFICATE OF REGISTRATION.

(a) To register to transact business in this state, a foreign statutory trust may apply for a certificate of registration to transact business in this state by delivering an application to the [Secretary of State] for filing. The application must contain:

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

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

(3) the street and mailing address of the trust's principal office and, if the laws of

the jurisdiction of formation of the the trust require it to maintain an office in that jurisdiction, the street and mailing address of the required office; and

(4) the name and street and mailing address of the trust's initial 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 903. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

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

- (1) maintaining, defending, or settling an action or proceeding;
- (2) holding meetings of its 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 or maintaining trustees or depositories with respect to those beneficial interests or securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contractual obligations;
- (7) creating or acquiring indebtedness, mortgages, or security interests in real or

personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;

(9) conducting an isolated transaction that is completed by the 30th day and is not in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) This section does not apply in determining the contacts or activities that may subject a foreign statutory trust to service of process, taxation, or regulation under law of this state other than this [act].

(c) A person does not do business in the state solely by reason of being a trustee or a beneficial owner of a foreign statutory trust that does transact business in this state.

SECTION 904. FILING OF CERTIFICATE OF REGISTRATION. Unless the [Secretary of State] determines that an application for a certificate of registration does not comply with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of registration to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign statutory trust or its representative.

SECTION 905. CERTIFIED COPY OF CERTIFICATE OF REGISTRATION.

(a) The [Secretary of State], upon request and payment of the required fee, shall furnish a certified copy of the certificate of registration for a qualified foreign statutory trust if the records filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of registration, has not revoked the certificate of registration, and has not filed a notice of cancellation.

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

SECTION 906. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.

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

(b) If a qualified foreign statutory trust changes its name to one that does not comply with Section 207, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of registration.

SECTION 907. REVOCATION OF CERTIFICATE OF REGISTRATION.

(a) The [Secretary of State] may revoke the certificate of registration of a qualified foreign statutory trust if the trust does not:

- (1) appoint and maintain an agent for service of process;
- (2) deliver for filing a statement of change by the 60th day after a change has occurred in the name or address of the agent;
- (3) file an annual report pursuant to Section 213 by the 60th day after it is due; or

(4) pay, by the 60th day after the due date, any fee, tax, or penalty due to the [Secretary of State].

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

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

(2) the basis for the revocation.

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

(d) If a foreign statutory trust cures the failure stated in the notice of revocation under subsection (b), the [Secretary of State] shall indicate that the trust is reinstated on the filed notice. The reinstatement of the trust relates back for all purposes to the date of the notice of revocation, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

SECTION 908. CANCELLATION OF CERTIFICATE OF REGISTRATION.

(a) To cancel its certificate of registration to transact business in this state, a qualified foreign statutory trust must deliver to the [Secretary of State] for filing a notice of cancellation that states:

(1) the name of the trust;

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

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

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

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

SECTION 909. EFFECT OF FAILURE TO HAVE CERTIFICATE OF REGISTRATION.

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

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

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

(d) If a foreign statutory trust transacts business in this state without a certificate of registration or cancels its certificate of registration, the trust may be served in accordance with Section 212 for actions arising out of the transaction of business in this state.

SECTION 910. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to enjoin a foreign statutory trust from transacting business in this state in violation of this [article].

[ARTICLE] 10

MISCELLANEOUS PROVISIONS

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1003. SAVING CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before this [act] takes effect.

SECTION 1004. RESERVATION OF POWER TO AMEND OR REPEAL. The [name of state legislature] has power to amend or repeal all or part of this [act] at any time and all statutory trusts and foreign statutory trusts subject to this [act] are governed by the amendment or repeal.

SECTION 1005. APPLICATION TO EXISTING RELATIONSHIPS.

(a) This [act] does not limit, prohibit, or invalidate the existence, acts, or obligations of any common-law trust created or doing business in this state before, on, or after [the effective date of the act]. The laws of this state other than this [act] pertaining to trusts apply to common-law trusts.

(b) A common-law trust arising under the law of this state before, on, or after [the effective date of this [act]] that does not have a predominantly donative purpose may elect to be governed by this [act] by filing of a certificate of trust under Section 201.

[(c) A trust created pursuant to a statute of this state that was required by that statute to file a certificate of trust with [the Secretary of State] before [the effective date of this [act]] may elect to be governed by the provisions of this [act] by filing an amendment to its certificate of trust under Section 202.]

[(d) On [two years after the effective date of this [act]], this [act] governs the organization and internal affairs of all trusts created pursuant to a statute of this state that was required by that statute to file a certificate of trust with the [Secretary of State] before the effective date of this [act].]

SECTION 1006. REPEALS. [On [all-inclusive date], the] [The] following are repealed:

(1) [the state Statutory Trust Act as amended and in effect immediately before [the effective date of this [act]]];

(2) [the state Business Trust Act as amended and in effect immediately before [the effective date of this [act]]]; and

(3) [the state Real Estate Investment Trust Act as amended and in effect immediately before [the effective date of this [act]]].

SECTION 1007. EFFECTIVE DATE. This [act] takes effect